

**BOARD BOOK OF  
OCTOBER 10, 2019**



**J. B. Goodwin, Chair**

**Leslie Bingham Escareño, Vice-Chair**

**Paul Braden, Member**

**Asusena Reséndiz, Member**

**Sharon Thomason, Member**

**Leo Vasquez, III, Member**

## Texas Department of Housing and Community Affairs

### PROGRAMMATIC IMPACT IN FISCAL YEAR 2018

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

#### **Multifamily New Construction & Rehabilitation:**

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

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

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

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

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

#### **Single Family Homeownership Program:**

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

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

#### **Rental Assistance:**

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

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

#### **Weatherization Assistance Program:**

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

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

#### **Homelessness:**

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

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

#### **Comprehensive Energy Assistance Program:**

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

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

#### **Community Services Block Grant:**

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

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

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

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



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

**A G E N D A  
8:00 AM  
OCTOBER 10, 2019**

**Texas Capitol Extension, E1.028  
1100 Congress Ave  
Austin, Texas 78701**

**CALL TO ORDER**

**ROLL CALL**

**CERTIFICATION OF QUORUM**

**J.B. Goodwin, Chair**

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

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

**CONSENT AGENDA**

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

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

**EXECUTIVE**

- a) Presentation, discussion, and possible action on Board meeting minutes summaries for June 27, 2019 and July 25, 2019

**J. Beau Eccles**  
General Counsel

**LEGAL**

- b) Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning related scattered site properties Mitay Inc Scattered Site (HTC 92009 / CMTS 1026), 2512 Thorne (HTC 70046 / CMTS 2344), 2904 Walnut (HTC 70054 / CMTS 2345), 1213 Pecan (HTC 70083 / CMTS 912), and 2503 N Wilson (HTC 70084 / CMTS 913)
- c) Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning Weldon Blackard (HOME 539112 / CMTS 2706)

**Jeffrey T. Pender**  
Deputy General Counsel

**ASSET MANAGEMENT**

- d) Presentation, discussion, and possible action a Material Amendment to the Housing Tax Credit Land Use Restriction Agreement  
01150 Limestone Ridge Apartments                      Big Spring

**Rosalio Banuelos**  
Director of  
Asset Management

**HOME AND HOMELESSNESS PROGRAMS**

- e) Presentation, discussion, and possible action on 2020 Homeless Housing and Services Program Youth Set-Aside funds for the City of San Antonio

**Abigail Versyp**  
Director of HOME and  
Homelessness Programs

**RULES**

- f) Presentation, discussion, and possible action on an order proposing amendments to 10 TAC §8.7, Tenant Selection and Screening; an order proposing amendments to 10 TAC §23.61, Tenant-Based Rental Assistance (TBRA) General Requirements; and directing their publication in the *Texas Register*
- g) Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC §2.203, Termination and Reduction of Funding for CSBG Eligible Entities; an order adopting new 10 TAC §2.203, Termination and Reduction of Funding for CSBG Eligible Entities; an order adopting the repeal of 10 TAC §2.204, Contents of a Quality Improvement Plan; an order adopting new 10 TAC §2.204, Contents of a Quality Improvement Plan; and directing that they be published for adoption in the *Texas Register*
- h) Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC Chapter 21, Minimum Energy Efficiency Requirements for Single Family Construction Activities, an order adopting new 10 TAC Chapter 21, Minimum Energy Efficiency Requirements for Single Family Construction Activities, and directing their publication in the *Texas Register*
- i) Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC Chapter 24, Texas Bootstrap Loan Program Rule, and an order adopting new 10 TAC Chapter 24, Texas Bootstrap Loan Program Rule, and directing their publication for public comment in the *Texas Register*

**Brooke Boston**  
Director of  
Programs

**Gavin Reid**  
Manager, Planning &  
Training

**Raul Gonzales**  
Director of  
OCI, HTF, NSP Division

**BOND FINANCE**

- j) Presentation, discussion, and possible action on Inducement Resolution No. 20-002 for Multifamily Housing Revenue Bonds Regarding Authorization for Filing Applications for Private Activity Bond Authority
 

19611	Granada Terrace	Houston
19613	THF 333 Holly	The Woodlands
19614	THF The Pines	The Woodlands
19615	Oaks on Clark	San Antonio
- k) Presentation, discussion, and possible action on Resolution No. 20-003 Authorizing the Execution of an Irrevocable Instructions and Agreement relating to the Multifamily Housing Mortgage Revenue Bonds for Churchill at Pinnacle Park Series 2004
- l) Presentation, discussion, and possible action on Resolution No. 20-004 authorizing request to the Texas Bond Review Board for annual waiver of Single Family Mortgage Revenue Bond set-aside requirements; authorizing the execution of documents and instruments relating thereto; making certain findings and determinations in connection therewith; and containing other provisions relating to the subject

**Teresa Morales**  
Director of  
Multifamily Bonds

**Monica Galuski**  
Director of  
Bond Finance

**CONSENT AGENDA REPORT ITEMS**

**ITEM 2: THE BOARD ACCEPTS THE FOLLOWING REPORTS:**

- a) Outreach and Activities Report (Sept-Oct)
- b) Report on the closing of the Department’s 2019 Series A Single Family Mortgage Revenue Bonds
- c) Report regarding a Request for Proposal for Underwriters issued by the Texas Department of Housing and Community Affairs

**Michael Lyttle**  
Director of  
External Affairs

**Monica Galuski**  
Director of  
Bond Finance



and Procedures, and directing its publication for public comment in the *Texas Register*

- e) Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC Chapter 20, Single Family Programs Umbrella Rule, and an order adopting new 10 TAC Chapter 20, Single Family Programs Umbrella Rule, and directing their publication in the *Texas Register*
- f) Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC Chapter 26, Texas Housing Trust Fund Rule, and an order adopting new 10 TAC Chapter 26, Texas Housing Trust Fund Rule, and directing their publication in the *Texas Register*
- g) Presentation, discussion, and possible action on an order proposing the repeal of 10 TAC Chapter 90, Migrant Labor Housing Facilities; an order proposing new 10 TAC Chapter 90, Migrant Labor Housing Facilities; and directing its publication for public comment in the *Texas Register*

**Raul Gonzales**  
Director of  
OCI, HTF, NSP Division

**Tom Gouris**  
Director of HOME and  
Special Initiatives

**ITEM 8: MULTIFAMILY FINANCE**

- a) Presentation, discussion and possible action on requests for return and reallocation of tax credits under 10 TAC §11.6(5) related to Credit Returns Resulting from Force Majeure Events
  - 17028 The Vineyard on Lancaster Fort Worth
  - 17295 Legacy Trails of Decatur Decatur
  - 17327 Legacy Trails of Lindale Lindale
  - 17736 Providence at Ted Trout Drive Hudson
  - 17290 Golden Trails West
  - 17259 Mistletoe Station Fort Worth
- b) Presentation, discussion, and possible action on a timely filed appeal of the expiration of a Commitment of Housing Tax Credits for 19223 Bamboo Estates Apartments
- c) Presentation, discussion, and possible action regarding the issuance of a Determination Notice for 4% Housing Tax Credit Applications
  - 19407 Norwood Estates Austin
  - 19436 Bridge at Granada Austin
  - 19440 Ventura at Parmer Austin ETJ
  - 19441 Decker Lofts Austin ETJ
  - 19437 Residences at Stillwater Georgetown
- d) Presentation, discussion, and possible action regarding the issuance of a Determination Notice for 4% Housing Tax Credit Applications and a determination of eligibility under 10 TAC §11.101 of the Qualified Allocation Plan
  - 19429 Govalle Terrace Austin
  - 19433 Wayman Manor Temple
- e) Presentation, Discussion and Possible Action on a Determination regarding Eligibility under 10 TAC §11.101(a)(3) related to Neighborhood Risk Factors for Bridge at Canyon View (#19411) in Austin
- f) Presentation, discussion, and possible action on a Determination Notice for Housing Tax Credits and an Award of Direct Loan Funds (#19418, Bridge at Loyola Lofts, Austin)
- g) Presentation, discussion, and possible action regarding a determination of eligibility under 10 TAC §13.5(d)(2) of the 2018 Multifamily Direct Loan Rule
  - 18509 El Sereno Apartments Cibolo
- h) Presentation, discussion and possible action regarding an Award of Direct Loan

**Marni Holloway**  
Director of  
Multifamily Finance

**Teresa Morales**  
Director of  
Multifamily Bonds

**Andrew Sinnott**  
Multifamily Loans Program  
Administrator

funds from the 2019-1 Multifamily Direct Loan Notice of Funding Availability  
19503 Sierra Royale Robstown

- i) Presentation, discussion, and possible action on the Fifth Amendment to the 2019-1 Multifamily Direct Loan Annual Notice of Funding Availability and approving its publication in the *Texas Register*

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

#### **EXECUTIVE SESSION**

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

**J.B. Goodwin**  
Chair

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

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

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

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

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

#### **OPEN SESSION**

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

#### **ADJOURN**

To access this agenda and details on each agenda item in the board book, please visit our website at [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us) or contact Michael Lyttle, 512-475-4542, TDHCA, 221 East 11<sup>th</sup> Street, Austin, Texas 78701, and request the information. 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 MeLissa Nemecek, ADA Responsible Employee, at 512-475-3959 or Relay Texas at 1-800-735-2989, at least five days before the meeting so that appropriate arrangements can be made. Non-English speaking individuals who require interpreters for this meeting should contact Elena Peinado, 512-475-3814, at least five days before the meeting so that appropriate arrangements can be made.

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

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

Pursuant to Section 30.07, 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.

**THIS RESTRICTION IS APPLICABLE TO THE IDENTIFIED MEETING 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

BOARD SECRETARY

OCTOBER 10, 2019

Presentation, discussion, and possible action on Board meeting minutes summaries for June 27, 2019, and July 25, 2019

RECOMMENDED ACTION

Approve the Board meeting minutes summaries for June 27, 2019, and July 25, 2019

RESOLVED, that the Board meeting minutes summaries for June 27, 2019, and July 25, 2019, are hereby approved as presented.

Texas Department of Housing and Community Affairs Governing Board  
Board Meeting Minutes Summary  
June 27, 2019

On Thursday, the twenty-seventh day of June 2019, at 8:00 a.m., the regular meeting of the Governing Board (Board) of the Texas Department of Housing and Community Affairs (TDHCA or the Department) was held in Room JHR 140 of the John H. Reagan Building, 105 W. 15<sup>th</sup> Street, Austin, Texas.

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

- J.B. Goodwin
- Leslie Bingham-Escareño
- Paul A. Braden
- Asusena Reséndiz
- Sharon Thomason
- Leo Vasquez

J.B. Goodwin served as Chair, and James “Beau” Eccles, TDHCA General Counsel, served as Secretary.

- 1) The Board unanimously approved the Consent Agenda as presented.
- 2) The Board did not hear Action Item 3 – Presentation, discussion, and possible action on the election of Governing Board Officers for the upcoming biennium pursuant to Tex. Gov't Code §2306.030 – as it was pulled from the agenda.
- 3) Action Item 4 – Report on the meeting of the Internal Audit and Finance Committee (i. Approval of the updated FY 2020 Operating Budget; and ii. Approval of the FY 2020 Housing Finance Division Budget) – was presented by Sharon Thomason, Chair of the TDHCA Board Audit and Finance Committee. The Board heard the report and approved unanimously both budgets as presented.
- 4) Action Item 5 – Presentation, discussion, and possible action on the 2020-2021 State Housing Trust Fund Biennial Plan – was presented by Raul Gonzales, TDHCA Director of OCI/HTF/NSP. The Board unanimously approved staff recommendation to approve the plan and submit to the appropriate legislative offices.
- 5) Action Item 6 – Presentation, discussion, and possible action on a Dispute of the Compliance Division’s assessment of the Applicant’s compliance history to be reported to the Executive Award Review Advisory Committee (listed below) – was presented by Patricia Murphy, TDHCA

Director of Compliance, with additional information from David Cervantes, TDHCA Acting Director, and Mr. Eccles.

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

The Board unanimously approved staff recommendation of approving the applicant disputes for subitems 19094, 19095, 19179, 19228, and 19232.

Following public comment (listed below), and other evidence presented to the Board, the Board unanimously denied staff recommendation to uphold the compliance assessment and render these applications ineligible and approved the applicant dispute for subitems 19414, 19415, 19340, and 19344.

- Kent Hance, attorney representing the Housing Authority of the City of El Paso, testified in opposition to staff recommendation

6) Action Item 7(a) – Report of remanded Third Party Request for Administrative Deficiency under 10 TAC §11.10 of the 2019 Qualified Allocation Plan for #19315 Hammack Creek Apartments – was presented by Marni Holloway, TDHCA Director of Multifamily Finance. The Board heard and unanimously accepted the report.

7) Action Item 7(b) – Presentation, discussion and possible action on a request for return and reallocation of tax credits under 10 TAC §11.6(5) related to Credit Returns Resulting from Force Majeure Events for Application #18269, 2400 Bryan – was presented by Ms. Holloway. The Board unanimously approved staff recommendation to treat the application under the force majeure rule, subject to the 2018 Qualified Allocation Plan and the 2019 program calendar.

8) Action Item 7(c) – Presentation, discussion and possible action on timely filed appeals for 19013 Our Lady of Charity Apartments, San Antonio; 19126 3104 Division Lofts, Arlington; 19158 Pendleton Square, Harlingen; 19215 West Ridge Apartments, Pharr; 19307 Briarwest Apartments, Houston; and 19368 Sweetwater Springs, Sweetwater – was presented by Ms. Holloway with additional information from Brent Stewart, TDHCA Director of Real Estate Analysis, and Mr. Eccles.

Following public comment (listed below), the Board unanimously approved staff recommendation to deny the appeals from 19013, 19158, 19215, and 19368; and unanimously denied staff recommendations, approving applicant appeals, from subitems 19126 and 19307.

- Ryan Wilson, Franklin Companies and representing co-developer on 19013, testified in opposition to staff recommendation on subitem 19013
- Michael Lyttle, TDHCA Director of External Affairs, read letters into the record in opposition to staff recommendation for subitem 19013 from the Honorable Peter P. Flores, State Senator, District 19, and the Honorable Barbara Gervin-Hawkins, State Representative, District 120
- Cynthia Bast, Locke Lord attorney representing a competing application of subitem 19013, testified in support of staff recommendation
- Chip Collins, Alamo Architects, provided additional information on subitem 19013
- Henry Flores, developer, provided additional information on subitem 19013
- Barry Palmer, Coats Rose attorney and representing the developer on subitem 19013, testified in opposition to staff recommendation
- Sarah André, applicant on subitem 19126, testified in opposition to staff recommendation
- Linda Brown, Casa Linda Development Corporation, testified in support of staff recommendation on subitem 19126
- John Shackelford, attorney representing the applicant on subitem 19158, testified in opposition to staff recommendation
- Ms. Bast, attorney representing a competing application to subitem 19158, testified in support of staff recommendation
- Lora Myrick, BETCO Consulting and representing the applicant on subitem 19158, testified in opposition to staff recommendation
- Mr. Palmer, attorney representing a competing application to subitem 19158, testified in support of staff recommendation
- Ron Bibbs, City of Houston, testified in opposition to staff recommendation on subitem 19307
- Ms. André testified in support of staff recommendation on subitem 19307
- Nathan Kelly, Blazer Residential and the applicant for subitem 19307, testified in opposition to staff recommendation
- Joel North, Bridge Shore Development, testified in support of staff recommendation on subitem 19307
- Andrea Steel, Coats Rose attorney representing the applicant on subitem 19307, testified in opposition to staff recommendation
- Claude Foster, Houston resident, testified in opposition to staff recommendation on subitem 19307
- Tamea Dula, Coats Rose attorney representing the applicant on subitem 19307, testified in opposition to staff recommendation

- Matt Fuqua, Blazer Residential and the applicant for subitem 19307, testified in opposition to staff recommendation
- Mr. Palmer, attorney representing the applicant on subitem 19307, testified in opposition to staff recommendation
- Charlie Duncan, Texas Housers, testified in support of staff recommendation on subitem 19307
- Isabelle Atkinson provided additional information on subitem 19307
- Robbye Meyer, Arx Advantage, testified in opposition to staff recommendation on subitem 19368
- Mr. Shackelford, attorney representing a competing application to subitem 19368, testified in support of staff recommendation
- Ms. Bast, Locke Lord attorney representing the applicant on subitem 19368, testified in opposition to staff recommendation

9) Action Item 7(d) – Presentation, discussion and possible action on staff recommendations regarding Application disclosure under 10 TAC §11.101(a)(3) related to Neighborhood Risk Factors for 19227 Reserve at Risinger, Fort Worth – was presented by Ms. Holloway. Following public comment (listed) below, the Board unanimously approved staff recommendation to find the site ineligible.

- Tamea Dula, Coats Rose attorney representing the applicant, testified in opposition to staff recommendation
- Cynthia Bast, Locke Lord attorney representing competing applications to 19227, testified in support of staff recommendation
- Dr. Isaac Carrier, University of Louisiana at Monroe, provided additional information on the item
- Tom Huth, Palladium USA, testified in support of staff recommendation
- Darren Smith, MVAH Partners and the applicant, testified in opposition to staff recommendation
- Linda Brown, Casa Linda Development Corporation representing competing applications to 19227, testified in support of staff recommendation
- Barry Palmer, Coats Rose attorney representing the applicant, testified in opposition to staff recommendation

10) Action Item 7(e) – Presentation, discussion, and possible action on staff recommendations regarding Application disclosure under 10 TAC §11.101(a)(2) related to Undesirable Site Features for 19180 St. Elmo Commons, Austin; and 19185 Edgewood Villas, Killeen – was presented by Ms. Holloway. Following public comment (listed below), the Board unanimously approved staff recommendation to find the site for subitem 19180 ineligible; and on a 5-1 vote (Mr. Vasquez voting nay) approved staff recommendation to find the site for subitem 19185 ineligible.

- John Guttman, JES Development and the applicant for subitem 19180, testified in opposition to staff recommendation
- Zachary Krochtengel, developer for subitem 19185, testified in opposition to staff recommendation

(At the beginning of this item, Ms. Bingham-Escareño and Ms. Reséndiz were not present on the dais. However, Ms. Reséndiz did return during deliberations on this agenda item)

11) Action Item 7(f) – Presentation, discussion, and possible action on staff determinations regarding Application disclosures under 10 TAC §§11.101(a)(2) related to Undesirable Site Features; 11.101(a)(3) related to Neighborhood Risk Factors; and 10 TAC §11.10 related to Request for Administrative Deficiency, for #19301 Prince Hall – was presented by Ms. Holloway. Following public comment (listed below), the Board voted (4-1 with Mr. Braden voting 'nay') to approve staff recommendation finding the site ineligible.

- Mr. Lyttle read a letter into the record from the Honorable Joe D. Deshotel, State Representative, District 22, in opposition to staff recommendation
- Chris Akbari, ITEX Development and the applicant, testified in opposition to staff recommendation
- Charlie Duncan, Texas Housers, testified in support of staff recommendation
- Raynard Richardson, representing the applicant, testified in opposition to staff recommendation
- Erica Scott, Herman & Kittle Properties, testified in support of staff recommendation
- Natasha Martin, Graves Dougherty Hearon & Moody attorney, testified in support of staff recommendation
- Gerry Pels, Locke Lord attorney representing the applicant, testified in opposition to staff recommendation
- Tamea Dula, Coats Rose attorney representing the applicant, testified in opposition to staff recommendation
- Harry Chevalier, Prince Hall resident, testified in opposition to staff recommendation
- Barry Palmer, Coats Rose attorney representing the applicant, testified in opposition to staff recommendation

12) Action Item 7(g) – Presentation, discussion, and possible action to issue a list of approved Applications for 2019 Housing Tax Credits in accordance with Tex. Gov't Code §2306.6724(e) – was presented by Sharon Gamble, TDHCA Competitive Housing Tax Credit Program Administrator. Following public comment (listed below), the Board unanimously approved the list of eligible applications as amended by Ms. Gamble.

- Janae Winfield, staff member for Houston City Council member Martha Castex-Tatum, read a letter into the record from Councilmember Castex-Tatum providing additional information on the item



- Carl David Evans, Fort Bend Houston Super Neighborhood Council 41, provided additional information on the item
- Willie Rainwater provided additional information on the item
- Claude Foster provided additional information on the item
- Regina Gardner provided additional information on the item
- Charity Carter, Houston Arts Foundation, provided additional information on the item

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

- Ms. Winfield provided comments from Councilmember Castex-Tatum on the housing tax credit program
- Cheryl Hughes, Briargate resident, provided comments on the proposed list of eligible application for 2019 9% HTC awards
- Aaron Adams, Briargate resident, provided comments on the proposed list of eligible application for 2019 9% HTC awards
- Taylor Ross, Briargate resident, provided comments on the proposed list of eligible application for 2019 9% HTC awards
- Shirley Warner, Briargate resident, provided comments on the proposed list of eligible application for 2019 9% HTC awards
- Barbara Blue, Briargate resident, provided comments on the proposed list of eligible application for 2019 9% HTC awards

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

There being no further business to come before the Board, the meeting adjourned at 1:44 p.m. The next meeting is set for Thursday, July 25, 2019.

\_\_\_\_\_  
Secretary

Approved:

\_\_\_\_\_  
Chair

Texas Department of Housing and Community Affairs Governing Board  
Board Meeting Minutes Summary  
July 25, 2019

On Thursday, the twenty-fifth day of July 2019, at 8:00 a.m., the regular meeting of the Governing Board (Board) of the Texas Department of Housing and Community Affairs (TDHCA or the Department) was held in Room JHR 140 of the John H. Reagan Building, 105 W. 15<sup>th</sup> Street, Austin, Texas.

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

- J.B. Goodwin
- Leslie Bingham-Escareño
- Paul A. Braden
- Asusena Reséndiz
- Sharon Thomason
- Leo Vasquez

J.B. Goodwin served as Chair, and James “Beau” Eccles, TDHCA General Counsel, served as Secretary.

- 1) The Board unanimously approved the Consent Agenda as presented except for Item 1(j) – Presentation, discussion, and possible action on the 2020 Regional Allocation Formula Methodology – which was moved to the Action Item Agenda.
- 2) The Board went into Executive Session at 8:12 a.m. and reconvened in open session at 9:10 a.m. During the executive session the Board did not adopt any policy, position, resolution, rule, regulation, take any formal action, or vote on any item. The Board did deliberate personnel matters pursuant to Tex. Gov’t Code §551.074.
- 3) Action Item 3 – Presentation, discussion, and possible action to employ an Executive Director – was presented by Chairman Goodwin. The Board unanimously approved a motion to name Bobby Wilkinson as Executive Director pending Governor Abbott’s approval, and effective as of August 15, 2019; and also directed Acting Director David Cervantes to resume his position as Director of Administration and thanked Mr. Cervantes for serving as Acting Director. Mr. Wilkinson then made some brief comments expressing appreciation to the Board.
- 4) Action Item 1(j) – Presentation, discussion, and possible action on the 2020 Regional Allocation Formula Methodology – was presented by Elizabeth Yevich, TDHCA Director of the Housing Resource Center, with additional information from Mr. Cervantes and Brooke Boston, TDHCA Director of Programs. The Board unanimously approved staff recommendation to approve the methodology.

5) Action Item 4 – Presentation, discussion, and possible action authorizing the Department to submit an application for Mainstream Housing Vouchers in response to a Notice of Funding Availability released by the U.S. Department of Housing and Urban Development, and if successfully awarded to operate such program – was not heard by the Board as it was pulled from the agenda.

6) Action Item 5 – Presentation, discussion, and possible action regarding waiver and loan modification for Villas of Brownwood II (Multifamily Direct Loan No. 1001714001) – was presented by Rosalio Banuelos, TDHCA Director of Asset Management. Following public comment (listed below), the Board unanimously approved staff recommendation to approve the waiver and loan modification requests.

- Justin MacDonald, general partner for the development, provided information on the item

7) Action Item 6(a) – Presentation, discussion, and possible action on an order proposing the repeal of 10 TAC §2.203, Termination and Reduction of Funding for CSBG Eligible Entities; an order proposing new 10 TAC §2.203, Termination and Reduction of Funding for CSBG Eligible Entities; an order proposing the repeal of 10 TAC §2.204, Contents of a Quality Improvement Plan; an order proposing new 10 TAC §2.204, Contents of a Quality Improvement Plan; and directing that they be published for public comment in the Texas Register – was presented by Gavin Reid, TDHCA Community Affairs Manager of Planning and Training. The Board unanimously approved staff recommendation to repeal the aforementioned rules and publish the new draft rules.

8) Action Item 6(b) – Presentation, discussion, and possible action on an order proposing the repeal of 10 TAC Chapter 20, Single Family Programs Umbrella Rule, and an order proposing new 10 TAC Chapter 20, Single Family Programs Umbrella Rule, and directing their publication for public comment in the Texas Register – was presented by Raul Gonzales, TDHCA Director of the Housing Trust Fund, Office of Colonia Initiatives, and Neighborhood Stabilization Program. The Board unanimously approved staff recommendation to repeal the aforementioned rule and publish the new draft rule.

9) Action Item 6(c) – Presentation, discussion, and possible action on an order proposing the repeal of 10 TAC Chapter 21, Minimum Energy Efficiency Requirements for Single Family Construction Activities, and an order proposing new 10 TAC Chapter 21, Minimum Energy Efficiency Requirements for Single Family Construction Activities, and directing their publication for public comment in the Texas Register – was presented by Mr. Gonzales. The Board unanimously approved staff recommendation to repeal the aforementioned rule and publish the new draft rule.

10) Action Item 6(d) – Presentation, discussion, and possible action on an order proposing the repeal of 10 TAC Chapter 24, Texas Bootstrap Loan Program Rule, and an order proposing new 10 TAC Chapter 24, Texas Bootstrap Loan Program Rule, and directing their publication for public comment in the Texas Register – was presented by Mr. Gonzales. The Board unanimously approved staff recommendation to repeal the aforementioned rule and publish the new draft rule.

11) Action Item 6(e) – Presentation, discussion, and possible action on an order proposing the repeal of 10 TAC Chapter 26, Texas Housing Trust Fund Rule, and an order proposing new 10 TAC Chapter 26, Texas Housing Trust Fund Rule, and directing its publication for public comment in the Texas Register – was presented by Mr. Gonzales. The Board unanimously approved staff recommendation to repeal the aforementioned rule and publish the new draft rule.

12) Action Item 7 – Presentation, discussion, and possible action on increase in service contract with Onsite Insight to perform Uniform Physical Condition Standards inspections from \$350,000 to \$430,000 pursuant to Tex. Gov't Code §2155.088(b)(2) – was presented by Patricia Murphy, TDHCA Director of Compliance, with additional information from Mr. Eccles. The Board unanimously approved staff recommendation on the increase in the contract.

13) Action Item 8(a) – Presentation, discussion, and possible action on a waiver and award of a Predevelopment grant from the 2019-2 Special Purpose Notice of Funding Availability: Predevelopment to 19550 Project Transitions, Inc., Austin – was presented by Andrew Sinnott, TDHCA Multifamily Loans Programs Administrator. The Board unanimously approved staff recommendation to grant the waiver and make the award.

14) Action Item 8(b) – Presentation, discussion and possible action regarding an Award of Direct Loan funds from the 2018-1 Multifamily Direct Loan Notice of Funding Availability 18503 Eastern Oaks Apartments, Austin – was presented by Marni Holloway, TDHCA Director of Multifamily Finance, with additional information from Brent Stewart, TDHCA Director of Real Estate Analysis. Following public comment (listed below), the Board unanimously approved staff recommendation to make the award

- Robert Onion, Housing Authority of Travis County and the developer, provided information on the item

15) Action Item 8(c) – Presentation, discussion, and possible action on timely filed appeals of material deficiencies in and scoring of Housing Tax Credit Applications under the Department's Multifamily Program Rules for 19003 The Legacy at Piedmont, San Antonio – was presented by Ms. Holloway. Following public comment (listed below), the Board unanimously approved a motion to grant the appeal.

- Cynthia Bast, Locke Lord attorney and representing the applicant, testified in support of the appeal

- Brad McMurray, Prospera HCS and representing a competing application, testified in opposition to the appeal
- Henry Flores, Madhouse Development and representing a competing application, testified in opposition to the appeal
- Ray Lucas, Lucas and Associates, testified in opposition to the appeal

16) Action Item 8(d) – Presentation, discussion, and possible action on the Second Amendment to the 2019-1 Multifamily Direct Loan Notice of Funding Availability – was presented by Mr. Sinnott. The Board unanimously approved staff recommendation to amend the NOFA.

17) Action Item 8(e) – Presentation, discussion, and possible action on the Third Amendment to the 2019-1 Multifamily Direct Loan Notice of Funding Availability – was presented by Mr. Sinnott. The Board unanimously approved staff recommendation to amend the NOFA.

18) Action Item 8(f) – Presentation, discussion, and possible action regarding awards of Direct Loan funds from the 2019-1 Multifamily Direct Loan Notice of Funding Availability to 9% Housing Tax Credit Layered Applications (listed below) – was presented by Mr. Sinnott. The Board unanimously approved staff recommendation as amended on the awards.

19051 Casa de Manana Apartments	Corpus Christi
19053 Foundation Village	Austin
19179 Riverwood Commons II	Bastrop
19202 Heritage Heights at Big Spring	Big Spring
19214 Lakeridge Villas	Ennis
19216 Heritage Heights at Abilene	Abilene
19234 The Residence at Alsbury	Burleson
19235 The Reserves at Saddleback Ranch	Wolfforth
19236 Tool Cedar Trails	Tool
19238 Franklin Trails	Franklin
19304 The Residences at Overlook Ridge	Canyon Lake
19332 Avanti at South Bluff	Corpus Christi
19365 Heritage Estates at Huntsville	Huntsville
19367 Avanti Legacy Bayside	Corpus Christi

19) Action Item 8(g) – Presentation, discussion, and possible action regarding awards from the 2019 State Competitive Housing Credit Ceiling and approval of the waiting list for the 2019 Competitive Housing Tax Credit Application Round (all listed below) and confirming obligations to the Section 811 Project Rental Assistance Program for those properties that sought and were awarded points for providing program units – was presented by Sharon Gamble, TDHCA Competitive Housing Tax Credit Program Administrator. The Board unanimously approved staff recommendation for the awards, waiting list, and confirming the Section 811 obligations.

19003 The Legacy at Piedmont	San Antonio
19008 Palladium Fain Street	Fort Worth

19009 Churchill at Golden Triangle	Fort Worth
19011 Palladium Venus	Venus
19016 Palladium Waxahachie Senior Living	Waxahachie
19020 Riva Keene	Keene
19024 Morning Star Apartments	Wharton
19026 National Church Residences-Robinson	Robinson
19028 Casitas Lantana	Brownsville
19030 Freedom's Path at Kerrville II	Kerrville
19039 Blue Oaks	San Antonio
19040 Vista East	Houston
19047 Parkway Meadows	Houston
19051 Casa de Manana Apartments	Corpus Christi
19052 SilverLeaf at Tool	Tool
19053 Foundation Village	Austin
19057 SilverLeaf at Chandler III	Chandler
19058 Country Terrace Apartments	Highlands
19062 Residences at Thousand Oaks	San Antonio
19063 Residences at Lake Waco	Waco
19064 4242 Jackson Apartments	McAllen
19070 South Rice Apartments	Houston
19073 Gala at Central Park	Hurst
19074 900 Winston	Houston
19076 Belfort Park Apartments	Houston
19077 Telephone Road Elderly	Houston
19078 Provision at Patriot Place	Hurst
19079 Provision at Patriot Parkway	Venus
19085 Gala at MacGregor	Houston
19086 Trinity Place Apartments	Round Rock
19087 Sonora Seniors Apartments	Sonora
19088 Metro Tower Lofts	Lubbock
19094 Laurel Vista	Beaumont
19100 Carver Ridge Apartments	Midland
19102 Ranch Court Apartments	Dripping Springs
19107 City View at Hyde Park	Austin
19109 Verdin Square	Houston
19111 Colorado City Seniors Apartments	Colorado City
19112 Hebronville Apartments	Hebronville (CDP)
19113 Livingston Seniors Apartments	Livingston
19114 Sunset Vista Seniors	El Paso
19116 Amber Ridge Apartments	Angleton
19117 Ridgestone Estates	El Paso
19120 Villas at Augusta	El Paso
19124 Maple Street Lofts	Abilene
19126 3104 Division Lofts	Arlington

19132 Village at Boyer	San Antonio
19133 Alazan Lofts	San Antonio
19134 Village at Nogalitos	San Antonio
19136 Luna Flats	San Antonio
19139 Hamilton Wolfe Lofts	San Antonio
19143 Reserve at New York	Arlington
19146 New Hope Housing Avenue J	Houston
19148 Reserve at Lake Shore	Waco
19158 Pendleton Square	Harlingen
19159 Mid Tule Village Apartments	Tulia
19161 Star of Texas Housing	Montgomery
19164 Commerce Street Apartments	Belton
19166 Villas at Robinett	Killeen
19176 Anthony Palms	Anthony
19177 Edgemere Palms	El Paso
19179 Riverwood Commons II	Bastrop
19182 Waterpark Palms	Anthony
19187 The Ellington	Houston
19189 Lakewood Crossing	Granbury
19191 Hillcrest Senior Village	Kerrville
19202 Heritage Heights at Big Spring	Big Spring
19204 Cottonview Terrace	Taft
19205 Patriot Park Seniors	Plano
19208 Trail Village	Brownsville
19214 Lakeridge Villas	Ennis
19215 West Ridge Apartments	Pharr
19216 Heritage Heights at Abilene	Abilene
19217 Redwood Apartments	Dumas
19223 Bamboo Estates Apartments	Progreso
19225 Rosewood Senior Villas	Tyler
19228 Chaparral Apartments	Midland
19230 Campanile on Fondren	Houston
19232 The Commons at St. Anthony's	Amarillo
19234 The Residences at Alsbury	Burleson
19235 The Reserves at Saddleback Ranch	Wolfforth
19236 Tool Cedar Trails	Tool
19237 Gatesville Trails	Gatesville
19238 Franklin Trails	Franklin
19239 Talavera Lofts	Austin
19242 The Tramonti	Houston
19244 Mariposa at Harris Road	Arlington
19245 Huntington Chimney Rock	Houston
19250 Cypress Creek at Waxahachie	Waxahachie
19257 Blue Ridge Villas	Houston

19266 County Line Lofts	Venus
19273 Nolana Villas	McAllen
19276 Sunset at Fash Place	Fort Worth
19277 Cielo Place	Fort Worth
19285 Everly Plaza	Fort Worth
19286 West Little York Apartments	Houston
19288 Vi Collina	Austin
19295 The Abali	Austin
19296 McKee City Living	Houston
19299 2222 Pierce	Houston
19304 The Residences at Overlook Ridge	Canyon Lake
19307 Briarwest Apartments	Houston
19315 Hammack Creek Apartments	Kennedale
19319 Bardin Apartments	Arlington
19327 Edison Lofts	Houston
19330 Avanti Legacy Emerald Point	McAllen
19331 Avanti at Emerald Point	McAllen
19332 Avanti at South Bluff	Corpus Christi
19338 Ennis Trails	Ennis
19340 Nuestra Senora	El Paso
19344 Patriot Place	El Paso
19356 Pine Hills Estates I & II Devine	Pearsall
19357 Woodlands Estates I & II	Hempstead, Sweeny
19360 Legacy Trails of Longview	Longview
19364 The Villas at Cedar Grove	Lufkin
19365 Heritage Estates at Huntsville	Huntsville
19367 Avanti Legacy Bayside	Corpus Christi

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

There being no further business to come before the Board, the meeting adjourned at 11:33 a.m. The next meeting is set for Thursday, September 5, 2019.

\_\_\_\_\_  
Secretary

Approved:

\_\_\_\_\_  
Chair



1b

**BOARD ACTION REQUEST**

**LEGAL DIVISION**

**OCTOBER 10, 2019**

Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning related scattered site properties Mitay Inc Scattered Site (HTC 92009 / CMTS 1026, 2512 Thorne (HTC 70046 / CMTS 2344), 2904 Walnut (HTC 70054 / CMTS 2345), 1213 Pecan (HTC 70083 / CMTS 912), and 2503 N Wilson (HTC 70084 / CMTS 913)

**RECOMMENDED ACTION**

**WHEREAS**, Mitay Inc. Scattered Site, 2512 Thorne, and 2904 Walnut, owned by Mitay, Inc. (Mitay Owner), have uncorrected compliance findings relating to the applicable land use restriction agreements and the associated statutory and rule requirements;

**WHEREAS**, 1213 Pecan, owned by 1213 Pecan Street Series LLC (Pecan Owner), has uncorrected compliance findings relating to the applicable land use restriction agreement and the associated statutory and rule requirements;

**WHEREAS**, 2503 N Wilson, personally owned by Byron W. Miles, has uncorrected compliance findings relating to the applicable land use restriction agreement and the associated statutory and rule requirements;

**WHEREAS**, above Mitay, Inc. and 1213 Pecan Street Series LLC are related entities, ultimately controlled by Annie Miles, Edgar Miles, and Byron Miles (collectively known as "Owner");

**WHEREAS**, Owner representatives have attended multiple informal conferences and signed prior Agreed Final Orders in 2013 and 2015;

**WHEREAS**, both prior Agreed Final Orders were violated and file monitoring violations remain unresolved, including annual reports, utility allowance, missing annual eligibility certifications, incomplete tenant files, household income violations, incomplete tenant selection criteria, and failure to submit pre-onsite documentation;

**WHEREAS**, administrative penalties totaling \$22,000 came due under the prior Agreed Final Orders because of owner's failure to remedy the above violations, and full payment was made;

**WHEREAS**, TDHCA identified the following new violations that were not timely resolved and remain unresolved today: 2016 through 2018 Annual Owner's Compliance Reports (AOCRs) for all five properties, and Uniform Physical Condition Standards (UPCS) violations for Mitay Inc Scattered Site, 2512 Thorne, 1213 Pecan, 2503 N Wilson;

**WHEREAS**, on August 28, 2019, Owner representatives participated in an informal conference with the Enforcement Committee and agreed, subject to Board approval, to enter into Agreed Final Orders for each property, assessing the maximum potential administrative penalty of \$20,000. The penalty is to be divided among the properties, including \$7750 for Mitay Inc, \$4000 for 2512 Thorne, \$3000 for 2904 Walnut,

\$4000 for 1213 Pecan, and \$1250 for 2503 N Wilson. As an incentive to comply, the penalty is to be partially probated, with 75% to be paid on or before 12/9/2019, and the remaining 25% to be forgiven if all violations are resolved as specified in the Agreed Final Order on or before 12/9/2019;

**WHEREAS**, the recommended Agreed Final Orders include the 2016 AOCR, 2017 AOCR, 2018 AOCR, and the above referenced UPCS violations, but exclude the above referenced file monitoring violations because they were already penalized in 2015. In order to be considered repeated violations, and therefore eligible for a second administrative penalty, they must be identified again during a subsequent monitoring review and referred for an administrative penalty. This has not yet occurred; 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 totaling \$20,000, subject to division among the properties and partial forgiveness as outlined above, for noncompliance at Mitay Inc Scattered Site (HTC 92009 / CMTS 1026), 2512 Thorne (HTC 70046 / CMTS 2344), and 2904 Walnut (HTC 70054 / CMTS 2345), 1213 Pecan (HTC 70083 / CMTS 912), 2503 N Wilson (HTC 70084 / CMTS 913), 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

Mitay Inc Scattered Site (HTC 92009 / CMTS 1026), 2512 Thorne (HTC 70046 / CMTS 2344), and 2904 Walnut (HTC 70054 / CMTS 2345), 1213 Pecan (HTC 70083 / CMTS 912), 2503 N Wilson (HTC 70084 / CMTS 913) are small housing tax credit allocations of between 1 and 4 units each, located in Amarillo, Potter County, and controlled by the Miles family.

Property	Owner	HTC Allocation	LURA effective	# Units
Mitay Inc Scattered Site	Mitay, Inc.	\$4,000	2/16/1994	4 (includes a duplex and two single family homes)
2512 Thorne	Mitay, Inc.	\$1,160	11/15/1990	1
2904 Walnut	Mitay, Inc.	\$1,173	11/30/1990	1
1213 Pecan	1213 Pecan Street Series LLC	\$1,138	11/15/1990	1
2503 N Wilson	Byron W Miles	\$1175	11/19/1990	1

Records of the Texas Secretary of State show Annie Miles, Edgar Miles, and Byron Miles as officers of the above referenced corporate entities. CMTS lists Byron Miles and Annie Miles as the primary contacts for Owner. The properties are self-managed.

Despite numerous attempts by the Compliance Division, Legal Division, and Enforcement Committee to provide technical assistance and obtain acceptable corrective action, Owner has failed to operate the properties in compliance with LURA requirements and does not respond to monitoring deadlines. As a result, the maximum potential administrative penalty is being sought for each property, but with partial forgiveness of 25% as an incentive to comply. Owner has attended multiple informal conferences with the Enforcement Committee and signed Agreed Final Orders in 2013 and 2015. Those Orders were violated and although administrative penalties totaling \$22,000 have been paid as required, file monitoring violations under those orders remain unresolved, including annual reports, utility allowance, missing annual eligibility certifications, incomplete tenant files, household income violations, incomplete tenant selection criteria, and failure to submit pre-onsite documentation. The violations remain unresolved, but have already been penalized and are not included in the current administrative penalty referral as a result. They could only be penalized again in the future if they are identified gain as repeated findings of noncompliance during a subsequent file monitoring review.

The following compliance violations identified during 2018 and 2019 were referred for an administrative penalty and are unresolved. They are part of the current administrative penalty referral.

1. 2016 Annual Owner's Compliance Report (AOCR) for each property, which came due on 4/30/2017;
2. 2017 AOCR for each property, which came due on 4/30/2018; and
3. 2018 AOCR for each property, which came due on 4/30/2019; and
4. Uniform Physical Condition Standards (UPCS) findings for Mitay Inc Scattered Site, 2512 Thorne, 1213 Pecan, and 2503 N Wilson.

Owner representatives participated in an informal conference with the Enforcement Committee on August 28, 2019, and agreed to sign Agreed Final Orders with the following terms:

1. A \$20,000 administrative penalty divided among the properties, including \$7750 for Mitay Inc, \$4000 for 2512 Thorne, \$3000 for 2904 Walnut, \$4000 for 1213 Pecan, and \$1250 for 2503 N Wilson, subject to partial forgiveness as indicated below;
2. Owner must submit a 75% portion of the administrative penalty on or before 12/9/2019;
3. Owner must correct the reporting and UPCS violations as indicated in the Agreed Final Order, and submit full documentation of the corrections to TDHCA on or before 12/9/2019;
4. If Owner complies with all requirements and addresses all violations as required, the remaining 25% of the administrative penalty 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 total amount of \$20,000, divided among the properties as indicated above, 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 MITAY,	§	BEFORE THE
INC. WITH RESPECT TO MITAY INC.	§	TEXAS DEPARTMENT OF
SCATTERED SITE (HTC FILE # 92009 /	§	HOUSING AND COMMUNITY
CMTS # 1026)	§	AFFAIRS
	§	

**AGREED FINAL ORDER**

**General Remarks and official action taken:**

On this 10<sup>th</sup> day of October, 2019, the Governing Board (Board) of the Texas Department of Housing and Community Affairs (TDHCA or Department) considered the matter of whether enforcement action should be taken against **MITAY, INC.**, a Texas corporation (Respondent).

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

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

**WAIVER**

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

**FINDINGS OF FACT (FOF)**

**Jurisdiction:**

1. During 1992, Respondent was awarded an allocation of Low Income Housing Tax Credits by the Board, in an annual amount of \$4,000 to acquire and rehabilitate Mitay Inc. Scattered Site (Property) (HTC file No. 92009 / CMTS No. 1026 / LDLD No. 328).

2. Respondent signed a land use restriction agreement (LURA) regarding the Property. The LURA was effective February 16, 1994, and filed of record at Volume 2394, Page 558 of the Official Public Records of Real Property of Potter County, Texas (Records).
3. Respondent is subject to the regulatory authority of TDHCA.

**Compliance Violations:**

4. Property has a history of violations and Respondent previously signed Agreed Final Orders in 2013 and 2015, both of which were violated.
5. On May 19, 2017, TDHCA sent notice that Respondent had failed to timely submit their 2016 Annual Owner's Compliance Report, a violation of 10 TAC §10.607 (Reporting Requirements), which requires each development to submit an Annual Owner's Compliance Report. The report remains delinquent.
6. On May 8, 2018, TDHCA sent notice that Respondent had failed to timely submit their 2017 Annual Owner's Compliance Report, a violation of 10 TAC §10.607 (Reporting Requirements), which requires each development to submit an Annual Owner's Compliance Report. The report remains delinquent.
7. A Uniform Physical Condition Standards (UPCS) inspection was conducted on 12/11/2018. Inspection reports showed numerous serious property condition violations, a violation of 10 TAC § 10.621 (Property Condition Standards). Notifications of noncompliance were sent and a January 14, 2019, corrective action deadline was set. No response was submitted to compliance and the violations listed at Exhibit 1 remain unresolved.
8. On May 2, 2019, TDHCA sent notice that Respondent had failed to timely submit their 2018 Annual Owner's Compliance Report, a violation of 10 TAC §10.607 (Reporting Requirements), which requires each development to submit an Annual Owner's Compliance Report. The report remains delinquent.
9. All violations listed above are considered unresolved at the time of this Order.

**CONCLUSIONS OF LAW**

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503 and 10 TAC Chapter 2.
2. Respondent is a "housing sponsor" as that term is defined in Tex. Gov't Code §2306.004(14).
3. Pursuant to IRC §42(m)(1)(B)(iii), housing credit agencies are required to monitor for noncompliance with all provisions of the IRC and to notify the Internal Revenue Service of such noncompliance.

4. Respondent violated 10 TAC §10.621 in 2018, by failing to comply with HUD's Uniform Physical Condition Standards when violations were discovered and not timely corrected.<sup>1</sup>
5. Respondent violated 10 TAC §10.607 in 2017, 2018, and 2019 by failing to submit Annual Owner's Compliance Reports for the years 2016 through 2018;
6. 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.
7. 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.
8. Because Respondent has violated rules promulgated pursuant to Tex. Gov't Code §2306.053 and has violated agreements with the Agency to which Respondent is a party, the Agency may impose an administrative penalty pursuant to Tex. Gov't Code §2306.041.
9. An administrative penalty of \$7,750 is an appropriate penalty in accordance with 10 TAC Chapter 2.

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

**IT IS HEREBY ORDERED** that Respondent is assessed an administrative penalty in the amount of \$7,750, subject to partial deferral as further ordered below.

**IT IS FURTHER ORDERED** that Respondent shall pay and is hereby directed to pay a 75% portion (\$5,812.50) of the assessed administrative penalty by cashier's check payable to the "Texas Department of Housing and Community Affairs" on or before December 9, 2019.

**IT IS FURTHER ORDERED** that Respondent shall repair all UPCS violations as indicated at Exhibit 1 and submit work orders in the correct format, and including all necessary parts, to document the corrections to TDHCA on or before December 9, 2019.

**IT IS FURTHER ORDERED** that Respondent shall submit annual reports as indicated at Exhibit 2 on or before December 9, 2019.

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<sup>1</sup> HUD's Uniform Physical Condition Standards are the standards adopted by TDHCA pursuant to 10 TAC 10.621(a).



**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 25% portion (\$1,937.50) of the administrative penalty will be deferred and forgiven.

**IT IS FURTHER ORDERED** that if Respondent fails to satisfy any conditions or otherwise violates any provision of this order, or the property is sold before the terms and conditions of this Agreed Final Order have been fully satisfied, then the full administrative penalty 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](mailto: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:

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

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

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

*[Remainder of page intentionally blank]*

Approved by the Governing Board of TDHCA on October 10, 2019.

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

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

**THE STATE OF TEXAS §**  
**§**  
**COUNTY OF TRAVIS §**

Before me, the undersigned notary public, on this 10th day of October, 2019, personally appeared J.B. Goodwin, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

\_\_\_\_\_  
Notary Public, State of Texas

**THE STATE OF TEXAS §**  
**§**  
**COUNTY OF TRAVIS §**

Before me, the undersigned notary public, on this 10th day of October, 2019, personally appeared James "Beau" Eccles, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

\_\_\_\_\_  
Notary Public, State of Texas

STATE OF TEXAS                                 §  
  §  
COUNTY OF \_\_\_\_\_ §

BEFORE ME, \_\_\_\_\_ (*notary name*), a notary public in and for the State of \_\_\_\_\_, on this day personally appeared \_\_\_\_\_ (*person signing document*), known to me or proven to me through circle one: personally known / driver's license / passport to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that (he/she) executed the same for the purposes and consideration therein expressed, who being by me duly sworn, deposed as follows:

1. "My name is \_\_\_\_\_, I am of sound mind, capable of making this statement, and personally acquainted with the facts herein stated.
2. I hold the office of \_\_\_\_\_ for Respondent. I am the authorized representative of Respondent, owner of **Mitay Inc. Scattered Site**, which is subject to a Land Use Restriction Agreement monitored by the TDHCA in the State of Texas, and I am duly authorized by Respondent to execute this document.
3. Respondent knowingly and voluntarily enters into this Agreed Final Order, and agrees with and consents to the issuance and service of the foregoing Agreed Order by the Governing Board of the Texas Department of Housing and Community Affairs."

**RESPONDENT:**  
**MITAY, INC.**, a Texas corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**Exhibit 1**

**UPCS Instructions**

- UPCS violations that must be corrected:

**Mitay, Inc. Scattered Site**

Inspected By: Chad Farquhar				Inspection Date: 12/11/2018				
Area	Bldg Name	Unit	Item	Deficiency	Level	Note	Completed Date	Completed By
Unit	1105 NW 19th	Unit 1	Bathroom	Lavatory Sink - Damaged/Missing	L1	Missing sink stopper		
Unit	1105 NW 19th	Unit 1	Bathroom	Plumbing - Leaking Faucet/Pipes	L1	Faucet leaking in bath tub		
Unit	1105 NW 19th	Unit 1	Bathroom	Shower/Tub - Damaged/Missing	L1	Missing tube stopper		
Unit	1105 NW 19th	Unit 1	Doors	Damaged Hardware/Locks	L2	Rear bedroom missing door hardware		
Unit	1901 NW 17th	Unit 1	Bathroom	Shower/Tub - Damaged/Missing	L1	Missing tub stopper		
Unit	1901 NW 17th	Unit 1	Doors	Damaged Hardware/Locks	L2	Missing door hardware in bedroom		
Unit	2419 N Hughes	Unit A	Bathroom	Lavatory Sink - Damaged/Missing	L1	Missing sink stopper		
Unit	2419 N Hughes	Unit B	Bathroom	Lavatory Sink - Damaged/Missing	L1	Missing sink stopper		
Unit	2419 N Hughes	Unit B	Doors	Damaged Hardware/Locks	L1	Missing closet door hardware in front bedroom		
Unit	2419 N Hughes	Unit B	Doors	Damaged Surface (Holes/Paint/Rusting)	L3	Hole in bathroom door		
Unit	2419 N Hughes	Unit B	Kitchen	Range/Stove - Missing/Damaged/Inoperable	L3	Oven is not functioning and right front burner is inoperable		

- Prepare corrective documentation following these guidelines:  
<http://www.tdhca.state.tx.us/pmcomp/inspections/docs/UPCS-WorkOrderGuidelines.pdf>
- Submit corrective documentation via CMTS following the instructions at  
<http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf>, then email Ysella Kaseman at [ysella.kaseman@tdhca.state.tx.us](mailto:ysella.kaseman@tdhca.state.tx.us) to let her know that the submission is ready for review.

## Exhibit 2

### **Annual Owner's Compliance Report Instructions**

Submit the 2016, 2017, and 2018 Annual Owner's Compliance Reports (AOCRs) online via CMTS.

CMTS is available at: <https://pox.tdhca.state.tx.us/aims2/pox>.

Each report has three parts, each of which must be submitted via CMTS:

- Part A: Owner's Certification of Program Compliance
- Part B: Unit Status Report
- Owner's Financial Certification

The 2016 AOCR was due 4/30/2017, reporting data as of 12/31/2016. Part A and the Owner's Financial Certification must be completed with information as of 12/31/2016; however, the Unit Status Report can be completed using current occupancy data.

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The 2018 AOCR was due 4/30/2019, reporting data as of 12/31/2018. Part A and the Owner's Financial Certification must be completed with information as of 12/31/2018; however, the Unit Status Report can be completed using current occupancy data.

#### *Technical support:*

- *Training materials regarding annual reporting is available at the following link: <https://www.tdhca.state.tx.us/pmcomp/reports.htm>.*
- *Please note that you must enter current occupancy data and individual household member information for each unit before the system will allow you to submit Part B. To update the Unit Status Report / Quarterly Vacancy Report, you will log in to CMTS. Once logged in, click on "Unit Status Report". Click on "Enter Unit Occupancy" at the top of the next screen. From there, you will be able to enter occupancy information for each unit, along with household member data. Once all units have been updated, submit that data via CMTS as the 2016, 2017, and 2018 AOCR Part B. To get to those reports, go back to the "Unit Status Reports" page in CMTS and submit the Unit Status Report for the required period.*

**Exhibit 3:**

**Texas Administrative Code**

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

---

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

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

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

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

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

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

(c) General Requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) Agreements among parties associated with the transfer;

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

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

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

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

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

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

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

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

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

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

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



ENFORCEMENT ACTION AGAINST MITAY,  
INC. WITH RESPECT TO 2512 THORNE  
(HTC 70046 / CMTS 2344)

§  
§  
§  
§  
§  
§

BEFORE THE  
TEXAS DEPARTMENT OF  
HOUSING AND COMMUNITY  
AFFAIRS

**AGREED FINAL ORDER**

**General Remarks and official action taken:**

On this 10<sup>th</sup> day of October, 2019, the Governing Board (Board) of the Texas Department of Housing and Community Affairs (TDHCA or Department) considered the matter of whether enforcement action should be taken against **MITAY, INC.**, a Texas corporation (Respondent).

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

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

**WAIVER**

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

**FINDINGS OF FACT (FOF)**

**Jurisdiction:**

1. During 1990, Walter C. Spear was awarded an allocation of Low Income Housing Tax Credits by the Board, in an annual amount of \$1,160 to acquire and rehabilitate one unit known as 2512 Thorne (HTC file No. 70046 / CMTS No. 2344 / LDLD No. 352).

2. Walter C. Spear signed a land use restriction agreement (“LURA”) regarding the Property. The LURA was effective November 15, 1990, and filed of record at Volume 2134, Page 842 of the Official Public Records of Real Property of Potter County, Texas (“Records”). In accordance with Section 2 of the LURA, the LURA is a restrictive covenant/deed restriction encumbering the property and binding on all successors and assigns for the full term of the LURA.
3. Walter C. Spear transferred his interests in the Property to Respondent through a Warranty Deed with Vendor’s Lien effective December 15, 1994, and filed in the Records at Volume 2134, Page 843. The restrictions remained in place in accordance with Section 2 of the LURA, thereby binding Respondent to the terms of the agreement.
4. Respondent is subject to the regulatory authority of TDHCA.

Compliance Violations:

5. Property has a history of violations and Respondent previously signed Agreed Final Orders in 2013 and 2015, both of which were violated.
6. On May 19, 2017, TDHCA sent notice that Respondent had failed to timely submit their 2016 Annual Owner’s Compliance Report, a violation of 10 TAC §10.607 (Reporting Requirements), which requires each development to submit an Annual Owner’s Compliance Report. The report remains delinquent.
7. On May 10, 2018, TDHCA sent notice that Respondent had failed to timely submit their 2017 Annual Owner’s Compliance Report, a violation of 10 TAC §10.607 (Reporting Requirements), which requires each development to submit an Annual Owner’s Compliance Report. The report remains delinquent.
8. A Uniform Physical Condition Standards (UPCS) inspection was conducted on 12/11/2018. Inspection reports showed numerous serious property condition violations, a violation of 10 TAC § 10.621 (Property Condition Standards). Notifications of noncompliance were sent and a January 14, 2019, corrective action deadline was set. No response was submitted to compliance and the violations listed at Exhibit 1 remain unresolved.
9. On May 2, 2019, TDHCA sent notice that Respondent had failed to timely submit their 2018 Annual Owner’s Compliance Report, a violation of 10 TAC §10.607 (Reporting Requirements), which requires each development to submit an Annual Owner’s Compliance Report. The report remains delinquent.
10. All violations listed above are considered unresolved at the time of this Order.

## CONCLUSIONS OF LAW

10. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503 and 10 TAC Chapter 2.
11. Respondent is a "housing sponsor" as that term is defined in Tex. Gov't Code §2306.004(14).
12. 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.
13. Respondent violated 10 TAC §10.621 in 2018, by failing to comply with HUD's Uniform Physical Condition Standards when violations were discovered and not timely corrected.<sup>2</sup>
14. Respondent violated 10 TAC §10.607 in 2017, 2018, and 2019 by failing to submit Annual Owner's Compliance Reports for the years 2016 through 2018;
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 §2306.053 and has violated agreements with the Agency to which Respondent is a party, the Agency may impose an administrative penalty pursuant to Tex. Gov't Code §2306.041.
18. An administrative penalty of \$4,000 is an appropriate penalty in accordance with 10 TAC Chapter 2.

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<sup>2</sup> HUD's Uniform Physical Condition Standards are the standards adopted by TDHCA pursuant to 10 TAC 10.621(a).

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

**IT IS HEREBY ORDERED** that Respondent is assessed an administrative penalty in the amount of \$4,000, subject to partial deferral as further ordered below.

**IT IS FURTHER ORDERED** that Respondent shall pay and is hereby directed to pay a 75% portion (\$3,000) of the assessed administrative penalty by cashier's check payable to the "Texas Department of Housing and Community Affairs" on or before December 9, 2019.

**IT IS FURTHER ORDERED** that Respondent shall repair all UPCS violations as indicated at Exhibit 1 and submit work orders in the correct format, and including all necessary parts, to document the corrections to TDHCA on or before December 9, 2019.

**IT IS FURTHER ORDERED** that Respondent shall submit annual reports as indicated at Exhibit 2 on or before December 9, 2019.

**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 25% portion (\$1,000) of the administrative penalty will be deferred and forgiven.

**IT IS FURTHER ORDERED** that if Respondent fails to satisfy any conditions or otherwise violates any provision of this order, or the property is sold before the terms and conditions of this Agreed Final Order have been fully satisfied, then the full administrative penalty 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](mailto: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 <sup>th</sup> St Austin, Texas 78701	TDHCA Attn: Ysella Kaseman P.O. Box 13941 Austin, Texas 78711

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

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

*[Remainder of page intentionally blank]*

Approved by the Governing Board of TDHCA on October 10, 2019.

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

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

**THE STATE OF TEXAS §**  
**§**  
**COUNTY OF TRAVIS §**

Before me, the undersigned notary public, on this 10th day of October, 2019, personally appeared J.B. Goodwin, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

\_\_\_\_\_  
Notary Public, State of Texas

**THE STATE OF TEXAS §**  
**§**  
**COUNTY OF TRAVIS §**

Before me, the undersigned notary public, on this 10th day of October, 2019, personally appeared James "Beau" Eccles, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

\_\_\_\_\_  
Notary Public, State of Texas

STATE OF TEXAS §  
  §  
COUNTY OF \_\_\_\_\_ §

BEFORE ME, \_\_\_\_\_ (*notary name*), a notary public in and for the State of \_\_\_\_\_, on this day personally appeared \_\_\_\_\_ (*person signing document*), known to me or proven to me through circle one: personally known / driver's license / passport to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that (he/she) executed the same for the purposes and consideration therein expressed, who being by me duly sworn, deposed as follows:

1. "My name is \_\_\_\_\_, I am of sound mind, capable of making this statement, and personally acquainted with the facts herein stated.
2. I hold the office of \_\_\_\_\_ for Respondent. I am the authorized representative of Respondent, owner of **2512 Thorne**, which is subject to a Land Use Restriction Agreement monitored by the TDHCA in the State of Texas, and I am duly authorized by Respondent to execute this document.
3. Respondent knowingly and voluntarily enters into this Agreed Final Order, and agrees with and consents to the issuance and service of the foregoing Agreed Order by the Governing Board of the Texas Department of Housing and Community Affairs."

**RESPONDENT:**

**MITAY, INC.**, a Texas corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**Exhibit 1**

**UPCS Instructions**

1. UPCS violation that must be corrected:

**2512 Thorne**

Inspected By: Chad Farquhar      Inspection Date: 12/11/2018

Area	Bldg Name	Bldg Unit Name	Inspectable Item	Deficiency	Level	Note	Completed Date	Completed By
Unit	Bldg 1	Unit 1	Smoke Detector	Missing/Inoperable	L3	Missing smoke detector in master bedroom	EH&S Certification was sent in on 12/12/18, but no corrective action was submitted	

2. Prepare corrective documentation following these guidelines:  
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3. Submit corrective documentation via CMTS upload following the instructions at <http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf>, then email Ysella Kaseman at [ysella.kaseman@tdhca.state.tx.us](mailto:ysella.kaseman@tdhca.state.tx.us) to let her know that the submission is ready for review.



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) Agreements among parties associated with the transfer;

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

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

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

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

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

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

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

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

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

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

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

ENFORCEMENT ACTION AGAINST MITAY,  
INC. WITH RESPECT TO 2904 WALNUT  
(HTC 70054 / CMTS 2345)

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§  
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BEFORE THE  
TEXAS DEPARTMENT OF  
HOUSING AND COMMUNITY  
AFFAIRS

**AGREED FINAL ORDER**

**General Remarks and official action taken:**

On this 10<sup>th</sup> day of October, 2019, the Governing Board (Board) of the Texas Department of Housing and Community Affairs (TDHCA or Department) considered the matter of whether enforcement action should be taken against **MITAY, INC.**, a Texas corporation (Respondent).

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

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

**WAIVER**

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

**FINDINGS OF FACT (FOF)**

**Jurisdiction:**

1. During 1990, Respondent was awarded an allocation of Low Income Housing Tax Credits by the Board, in an annual amount of \$4,000 to acquire and rehabilitate Mitay Inc. Scattered Site (Property) (HTC file No. 92009 / CMTS No. 1026 / LDLD No. 328).

2. During 1990, Walter C. Spear was awarded an allocation of Low Income Housing Tax Credits by the Board, in an annual amount of \$1,173 to acquire, rehabilitate and operate one unit known as 2904 Walnut (HTC file No. 70054 / CMTS No. 2345 / LDLD No. 455).
3. Walter C. Spear signed a land use restriction agreement (“LURA”) regarding 2904 Walnut. The LURA was effective November 30, 1990, and filed of record at Volume 2137, Page 390 of 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.
4. Walter C. Spear transferred his interests in 2904 Walnut to Respondent through a Warranty Deed with Vendor’s Lien effective December 15, 1994, and filed in the Records at Volume 2134, Page 843. The restrictions remained in place in accordance with Section 2 of the LURA, thereby binding Respondent to the terms of the agreement.
5. Respondent is subject to the regulatory authority of TDHCA.

Compliance Violations:

6. Property has a history of violations and Respondent previously signed Agreed Final Orders in 2013 and 2015, both of which were violated.
7. On May 19, 2017, TDHCA sent notice that Respondent had failed to timely submit their 2016 Annual Owner’s Compliance Report, a violation of 10 TAC §10.607 (Reporting Requirements), which requires each development to submit an Annual Owner’s Compliance Report. The report remains delinquent.
8. On May 10, 2018, TDHCA sent notice that Respondent had failed to timely submit their 2017 Annual Owner’s Compliance Report, a violation of 10 TAC §10.607 (Reporting Requirements), which requires each development to submit an Annual Owner’s Compliance Report. The report remains delinquent.
9. On May 2, 2019, TDHCA sent notice that Respondent had failed to timely submit their 2018 Annual Owner’s Compliance Report, a violation of 10 TAC §10.607 (Reporting Requirements), which requires each development to submit an Annual Owner’s Compliance Report. The report remains delinquent.
10. All violations listed above are considered unresolved at the time of this Order.

*[remainder of page intentionally blank]*

## CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503 and 10 TAC Chapter 2.
2. Respondent is a "housing sponsor" as that term is defined in Tex. Gov't Code §2306.004(14).
3. Pursuant to IRC §42(m)(1)(B)(iii), housing credit agencies are required to monitor for noncompliance with all provisions of the IRC and to notify the Internal Revenue Service of such noncompliance.
4. Respondent violated 10 TAC §10.607 in 2017, 2018, and 2019 by failing to submit Annual Owner's Compliance Reports for the years 2016 through 2018;
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 §2306.053 and has violated agreements with the Agency to which Respondent is a party, the Agency may impose an administrative penalty pursuant to Tex. Gov't Code §2306.041.
8. An administrative penalty of \$3,000 is an appropriate penalty in accordance with 10 TAC Chapter 2.

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

**IT IS HEREBY ORDERED** that Respondent is assessed an administrative penalty in the amount of \$3,000, subject to partial deferral as further ordered below.

**IT IS FURTHER ORDERED** that Respondent shall pay and is hereby directed to pay a 75% portion (\$2,250) of the assessed administrative penalty by cashier's check payable to the "Texas Department of Housing and Community Affairs" on or before December 9, 2019.

**IT IS FURTHER ORDERED** that Respondent shall submit annual reports as indicated at Exhibit 1 on or before December 9, 2019.

**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 25% portion (\$750) of the administrative penalty will be deferred and forgiven.

**IT IS FURTHER ORDERED** that if Respondent fails to satisfy any conditions or otherwise violates any provision of this order, or the property is sold before the terms and conditions of this Agreed Final Order have been fully satisfied, then the full administrative penalty 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](mailto: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:

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

**IT IS FURTHER ORDERED** that Respondent shall follow the requirements of 10 TAC §10.406, a copy of which is included at Exhibit 2, 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 October 10, 2019.

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

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

**THE STATE OF TEXAS §**  
**§**  
**COUNTY OF TRAVIS §**

Before me, the undersigned notary public, on this 10th day of October, 2019, personally appeared J.B. Goodwin, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

\_\_\_\_\_  
Notary Public, State of Texas

**THE STATE OF TEXAS §**  
**§**  
**COUNTY OF TRAVIS §**

Before me, the undersigned notary public, on this 10th day of October, 2019, personally appeared James "Beau" Eccles, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

\_\_\_\_\_  
Notary Public, State of Texas

STATE OF TEXAS §  
§  
COUNTY OF \_\_\_\_\_ §

BEFORE ME, \_\_\_\_\_ *(notary name)*, a notary public in and for the State of \_\_\_\_\_,  
on this day personally appeared \_\_\_\_\_ *(person signing document)*,  
known to me or proven to me through *circle one: personally known / driver’s license / passport*  
to be the person whose name is subscribed to the foregoing instrument, and acknowledged to  
me that (he/she) executed the same for the purposes and consideration therein expressed,  
who being by me duly sworn, deposed as follows:

- 1. “My name is \_\_\_\_\_, I am of sound mind, capable of making this  
statement, and personally acquainted with the facts herein stated.
- 2. I hold the office of \_\_\_\_\_ for Respondent. I am the authorized  
representative of Respondent, owner of **2904 Walnut**, which is subject to a Land Use  
Restriction Agreement monitored by the TDHCA in the State of Texas, and I am duly  
authorized by Respondent to execute this document.
- 3. Respondent knowingly and voluntarily enters into this Agreed Final Order, and agrees with  
and consents to the issuance and service of the foregoing Agreed Order by the Governing  
Board of the Texas Department of Housing and Community Affairs.”

**RESPONDENT:**

**MITAY, INC.**, a Texas corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

## Exhibit 1

### **Annual Owner's Compliance Report Instructions**

Submit the 2016, 2017, and 2018 Annual Owner's Compliance Reports (AOCRs) online via CMTS.

CMTS is available at: <https://pox.tdhca.state.tx.us/aims2/pox>.

Each report has three parts, each of which must be submitted via CMTS:

- Part A: Owner's Certification of Program Compliance
- Part B: Unit Status Report
- Owner's Financial Certification

The 2016 AOCR was due 4/30/2017, reporting data as of 12/31/2016. Part A and the Owner's Financial Certification must be completed with information as of 12/31/2016; however, the Unit Status Report can be completed using current occupancy data.

The 2017 AOCR was due 4/30/2018, reporting data as of 12/31/2017. Part A and the Owner's Financial Certification must be completed with information as of 12/31/2017; however, the Unit Status Report can be completed using current occupancy data.

The 2018 AOCR was due 4/30/2019, reporting data as of 12/31/2018. Part A and the Owner's Financial Certification must be completed with information as of 12/31/2018; however, the Unit Status Report can be completed using current occupancy data.

#### *Technical support:*

- *Training materials regarding annual reporting is available at the following link: <https://www.tdhca.state.tx.us/pmcomp/reports.htm>.*
- *Please note that you must enter current occupancy data and individual household member information for each unit before the system will allow you to submit Part B. To update the Unit Status Report / Quarterly Vacancy Report, you will log in to CMTS. Once logged in, click on "Unit Status Report". Click on "Enter Unit Occupancy" at the top of the next screen. From there, you will be able to enter occupancy information for each unit, along with household member data. Once all units have been updated, submit that data via CMTS as the 2016, 2017, and 2018 AOCR Part B. To get to those reports, go back to the "Unit Status Reports" page in CMTS and submit the Unit Status Report for the required period.*

**Exhibit 2:**

**Texas Administrative Code**

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

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

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

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

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

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

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

(c) General Requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) Agreements among parties associated with the transfer;

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

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

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

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

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

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

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

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

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

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

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

ENFORCEMENT ACTION AGAINST	§	BEFORE THE
1213 PECAN STREET SERIES LLC WITH	§	TEXAS DEPARTMENT OF
RESPECT TO 1213 PECAN	§	HOUSING AND COMMUNITY
(HTC 70083 / CMTS 912)	§	AFFAIRS
	§	

**AGREED FINAL ORDER**

**General Remarks and official action taken:**

On this 10<sup>th</sup> day of October, 2019, the Governing Board (Board) of the Texas Department of Housing and Community Affairs (TDHCA or Department) considered the matter of whether enforcement action should be taken against **1213 PECAN STREET SERIES LLC**, a sole proprietorship controlled by Edgar A. Miles and Ann Miles, a married couple (Respondent).

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

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

**WAIVER**

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

**FINDINGS OF FACT (FOF)**

**Jurisdiction:**

1. During 1990, E.A. Miles was awarded an allocation of Low Income Housing Tax Credits by the Board, in an annual amount of \$1,138 to acquire, rehabilitate and operate one unit known as 1213 Pecan (HTC file No. 70083 / CMTS No. 912 / LDLD No. 454).

2. E.A. Miles signed a land use restriction agreement (“LURA”) regarding 1213 Pecan. The LURA was effective November 15, 1990, and filed of record at Volume 2134, Page 271 of the Records.
3. E.A Miles and Ann Miles transferred their interests in the Property to Respondent through a Special Warranty Deed on October 13, 2016, and filed in the Records at Document Number 20170PR0002645. The restrictions remained in place in accordance with Section 2 of the LURA, thereby binding Respondent to the terms of the agreement.
4. Respondent is subject to the regulatory authority of TDHCA.

**Compliance Violations:**

5. Property has a history of violations and Respondent previously signed Agreed Final Orders in 2013 and 2015, both of which were violated.
6. On May 19, 2017, TDHCA sent notice that Respondent had failed to timely submit their 2016 Annual Owner’s Compliance Report, a violation of 10 TAC §10.607 (Reporting Requirements), which requires each development to submit an Annual Owner’s Compliance Report. The report remains delinquent.
7. On May 10, 2018, TDHCA sent notice that Respondent had failed to timely submit their 2017 Annual Owner’s Compliance Report, a violation of 10 TAC §10.607 (Reporting Requirements), which requires each development to submit an Annual Owner’s Compliance Report. The report remains delinquent.
8. A Uniform Physical Condition Standards (UPCS) inspection was conducted on 12/11/2018. Inspection reports showed numerous serious property condition violations, a violation of 10 TAC § 10.621 (Property Condition Standards). Notifications of noncompliance were sent and a January 14, 2019, corrective action deadline was set. No response was submitted to compliance and the violations listed at Exhibit 1 remain unresolved.
9. On May 2, 2019, TDHCA sent notice that Respondent had failed to timely submit their 2018 Annual Owner’s Compliance Report, a violation of 10 TAC §10.607 (Reporting Requirements), which requires each development to submit an Annual Owner’s Compliance Report. The report remains delinquent.
10. All violations listed above are considered unresolved at the time of this Order.

**CONCLUSIONS OF LAW**

9. The Department has jurisdiction over this matter pursuant to Tex. Gov’t Code §§2306.041-.0503 and 10 TAC §2.
10. Respondent is a “housing sponsor” as that term is defined in Tex. Gov’t Code §2306.004(14).



11. 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.
12. Respondent violated 10 TAC §10.621 in 2018, by failing to comply with HUD's Uniform Physical Condition Standards when violations were discovered and not timely corrected.<sup>3</sup>
13. Respondent violated 10 TAC §10.607 in 2017, 2018, and 2019 by failing to submit Annual Owner's Compliance Reports for the years 2016 through 2018;
14. 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.
15. 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.
16. Because Respondent has violated rules promulgated pursuant to Tex. Gov't Code §2306.053 and has violated agreements with the Agency to which Respondent is a party, the Agency may impose an administrative penalty pursuant to Tex. Gov't Code §2306.041.
17. An administrative penalty of \$4,000 is an appropriate penalty in accordance with 10 TAC Chapter 2.

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

**IT IS HEREBY ORDERED** that Respondent is assessed an administrative penalty in the amount of \$4,000, subject to partial deferral as further ordered below.

**IT IS FURTHER ORDERED** that Respondent shall pay and is hereby directed to pay a 75% portion (\$3,000) of the assessed administrative penalty by cashier's check payable to the "Texas Department of Housing and Community Affairs" on or before December 9, 2019.

**IT IS FURTHER ORDERED** that Respondent shall repair all UPCS violations as indicated at Exhibit 1 and submit work orders in the correct format, and including all necessary parts, to document the corrections to TDHCA on or before December 9, 2019.

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<sup>3</sup> HUD's Uniform Physical Condition Standards are the standards adopted by TDHCA pursuant to 10 TAC 10.621(a)

**IT IS FURTHER ORDERED** that Respondent shall submit annual reports as indicated at Exhibit 2 on or before December 9, 2019.

**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 25% portion (\$1,000) of the administrative penalty will be deferred and forgiven.

**IT IS FURTHER ORDERED** that if Respondent fails to satisfy any conditions or otherwise violates any provision of this order, or the property is sold before the terms and conditions of this Agreed Final Order have been fully satisfied, then the full administrative penalty 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](mailto: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:

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

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

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

*[Remainder of page intentionally blank]*

Approved by the Governing Board of TDHCA on October 10, 2019.

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

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

**THE STATE OF TEXAS §**  
**§**  
**COUNTY OF TRAVIS §**

Before me, the undersigned notary public, on this 10th day of October, 2019, personally appeared J.B. Goodwin, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

\_\_\_\_\_  
Notary Public, State of Texas

**THE STATE OF TEXAS §**  
**§**  
**COUNTY OF TRAVIS §**

Before me, the undersigned notary public, on this 10th day of October, 2019, personally appeared James "Beau" Eccles, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

\_\_\_\_\_  
Notary Public, State of Texas

STATE OF TEXAS §  
§  
COUNTY OF \_\_\_\_\_ §

BEFORE ME, \_\_\_\_\_ (*notary name*), a notary public in and for the State of \_\_\_\_\_, on this day personally appeared Edgar Allen Miles (*person signing document*), known to me or proven to me through circle one: personally known / driver's license / passport to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that (he/she) executed the same for the purposes and consideration therein expressed, who being by me duly sworn, deposed as follows:

1. "My name is Edgar Allen Miles, 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 **1213 Pecan**, which is subject to a Land Use Restriction Agreement monitored by the TDHCA in the State of Texas, and I am duly authorized by Respondent to execute this document.
3. Respondent knowingly and voluntarily enters into this Agreed Final Order, and agrees with and consents to the issuance and service of the foregoing Agreed Order by the Governing Board of the Texas Department of Housing and Community Affairs."

**RESPONDENT:**

**1213 Pecan Street Series LLC**

By: \_\_\_\_\_

Name: Edgar Allen Miles

Title: \_\_\_\_\_

Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**Exhibit 1**

**UPCS Instructions**

1. UPCS violations that must be corrected:

**1213 Pecan**

Inspected By: Chad Farquhar      Inspection Date: 12/11/2018

Area	Bldg	Unit	Item	Deficiency	Level	Note	Completed Date	Completed By
Unit	Bldg 1	Unit 1	Outlets/Switches	Missing/Broken Cover Plates	L3	Missing outlet cover in kitchen and bedroom 1	12/12/18 EH&S Certification sent in, but no corrective action was sent in.	

2. Prepare corrective documentation 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>, then email Ysella Kaseman at [ysella.kaseman@tdhca.state.tx.us](mailto:ysella.kaseman@tdhca.state.tx.us) to let her know that the submission is ready for review.

## Exhibit 2

### **Annual Owner's Compliance Report Instructions**

Submit the 2016, 2017, and 2018 Annual Owner's Compliance Reports (AOCRs) online via CMTS.

CMTS is available at: <https://pox.tdhca.state.tx.us/aims2/pox>.

Each report has three parts, each of which must be submitted via CMTS:

- Part A: Owner's Certification of Program Compliance
- Part B: Unit Status Report
- Owner's Financial Certification

The 2016 AOCR was due 4/30/2017, reporting data as of 12/31/2016. Part A and the Owner's Financial Certification must be completed with information as of 12/31/2016; however, the Unit Status Report can be completed using current occupancy data.

The 2017 AOCR was due 4/30/2018, reporting data as of 12/31/2017. Part A and the Owner's Financial Certification must be completed with information as of 12/31/2017; however, the Unit Status Report can be completed using current occupancy data.

The 2018 AOCR was due 4/30/2019, reporting data as of 12/31/2018. Part A and the Owner's Financial Certification must be completed with information as of 12/31/2018; however, the Unit Status Report can be completed using current occupancy data.

#### *Technical support:*

- *Training materials regarding annual reporting is available at the following link: <https://www.tdhca.state.tx.us/pmcomp/reports.htm>.*
- *Please note that you must enter current occupancy data and individual household member information for each unit before the system will allow you to submit Part B. To update the Unit Status Report / Quarterly Vacancy Report, you will log in to CMTS. Once logged in, click on "Unit Status Report". Click on "Enter Unit Occupancy" at the top of the next screen. From there, you will be able to enter occupancy information for each unit, along with household member data. Once all units have been updated, submit that data via CMTS as the 2016, 2017, and 2018 AOCR Part B. To get to those reports, go back to the "Unit Status Reports" page in CMTS and submit the Unit Status Report for the required period.*

**Exhibit 3:**

**Texas Administrative Code**

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

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

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

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

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

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

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

(c) General Requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) Agreements among parties associated with the transfer;



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

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

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

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

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

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

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

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

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

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

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

ENFORCEMENT ACTION AGAINST	§	BEFORE THE
BYRON W. MILES WITH RESPECT TO	§	TEXAS DEPARTMENT OF
2503 N. WILSON	§	HOUSING AND COMMUNITY
(HTC 70084 / CMTS 913)	§	AFFAIRS
	§	

**AGREED FINAL ORDER**

**General Remarks and official action taken:**

On this 10<sup>th</sup> day of October, 2019, the Governing Board (Board) of the Texas Department of Housing and Community Affairs (TDHCA or Department) considered the matter of whether enforcement action should be taken against **BYRON W. MILES**, an individual (Respondent).

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

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

**WAIVER**

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

**FINDINGS OF FACT (FOF)**

**Jurisdiction:**

1. During 1990, James Hallihan was awarded an allocation of Low Income Housing Tax Credits by the Board, in an annual amount of \$1,175 to acquire, rehabilitate, and operate one unit known as 2503 N. Wilson (Property) (HTC file No. 70084 / CMTS No. 913 / LDLD No. 313).

2. Mr. Hallihan signed a land use restriction agreement (LURA) regarding the Property. The LURA was effective November 19, 1990, and filed of record at Volume 2135, Page 154 of the Official Public Records of Real Property of Potter County, Texas (Records). In accordance with Section 2 of the LURA, the LURA is a restrictive covenant/deed restriction encumbering the Property and binding on all successors and assigns for the full term of the LURA.
3. Respondent was the property manager for Mr. Hallihan. Mr. Hallihan later transferred his interests in the property to Respondent through a General Warranty Deed filed at Document Number 2017OPR0018164 of the Records on 12/14/2017. Respondent is therefore bound to the terms of the LURA in accordance with Section 2 thereof.
4. Respondent is subject to the regulatory authority of TDHCA.

**Compliance Violations:**

5. Property has a history of violations, and previously signed an Agreed Final Order in 2013, which was violated.
6. A Uniform Physical Condition Standards (UPCS) inspection was conducted on 12/11/2018. Inspection reports showed numerous serious property condition violations, a violation of 10 TAC § 10.621 (Property Condition Standards). Notifications of noncompliance were sent and a January 14, 2019, corrective action deadline was set. No response was submitted to compliance and the violations listed at Exhibit 1 remain unresolved.
7. On May 2, 2019, TDHCA sent notice that Respondent had failed to timely submit their 2018 Annual Owner's Compliance Report, a violation of 10 TAC §10.607 (Reporting Requirements), which requires each development to submit an Annual Owner's Compliance Report. The report remains delinquent.
8. All violations listed above are considered unresolved at the time of this Order.

**CONCLUSIONS OF LAW**

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503 and 10 TAC Chapter 2.
2. Respondent is a "housing sponsor" as that term is defined in Tex. Gov't Code §2306.004(14).
3. Pursuant to IRC §42(m)(1)(B)(iii), housing credit agencies are required to monitor for noncompliance with all provisions of the IRC and to notify the Internal Revenue Service of such noncompliance.

4. Respondent violated 10 TAC §10.621 in 2018, by failing to comply with HUD's Uniform Physical Condition Standards when violations were discovered and not timely corrected.<sup>4</sup>
5. Respondent violated 10 TAC §10.607 in 2019 by failing to submit Annual Owner's Compliance Reports for the years 2016 through 2018;
6. 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.
7. 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.
8. Because Respondent has violated rules promulgated pursuant to Tex. Gov't Code §2306.053 and has violated agreements with the Agency to which Respondent is a party, the Agency may impose an administrative penalty pursuant to Tex. Gov't Code §2306.041.
9. An administrative penalty of \$1,250 is an appropriate penalty in accordance with 10 TAC Chapter 2.

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

**IT IS HEREBY ORDERED** that Respondent is assessed an administrative penalty in the amount of \$1,250, subject to partial deferral as further ordered below.

**IT IS FURTHER ORDERED** that Respondent shall pay and is hereby directed to pay a 75% portion (\$937.50) of the assessed administrative penalty by cashier's check payable to the "Texas Department of Housing and Community Affairs" on or before December 9, 2019.

**IT IS FURTHER ORDERED** that Respondent shall repair all UPCS violations as indicated at Exhibit 1 and submit work orders in the correct format, and including all necessary parts, to document the corrections to TDHCA on or before December 9, 2019.

**IT IS FURTHER ORDERED** that Respondent shall submit annual reports as indicated at Exhibit 2 on or before December 9, 2019.

---

<sup>4</sup> HUD's Uniform Physical Condition Standards are the standards adopted by TDHCA pursuant to 10 TAC 10.621(a)

**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 25% portion (\$312.50) of the administrative penalty will be deferred and forgiven.

**IT IS FURTHER ORDERED** that if Respondent fails to satisfy any conditions or otherwise violates any provision of this order, or the property is sold before the terms and conditions of this Agreed Final Order have been fully satisfied, then the full administrative penalty 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](mailto: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:

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

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

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

*[Remainder of page intentionally blank]*

Approved by the Governing Board of TDHCA on October 10, 2019.

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

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

**THE STATE OF TEXAS §**  
**§**  
**COUNTY OF TRAVIS §**

Before me, the undersigned notary public, on this 10th day of October, 2019, personally appeared J.B. Goodwin, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

\_\_\_\_\_  
Notary Public, State of Texas

**THE STATE OF TEXAS §**  
**§**  
**COUNTY OF TRAVIS §**

Before me, the undersigned notary public, on this 10th day of October, 2019, personally appeared James "Beau" Eccles, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

\_\_\_\_\_  
Notary Public, State of Texas

STATE OF TEXAS §  
§  
COUNTY OF \_\_\_\_\_ §

BEFORE ME, \_\_\_\_\_ (*notary name*), a notary public in and for the State of \_\_\_\_\_, on this day personally appeared Byron W. Miles (*person signing document*), known to me or proven to me through circle one: personally known / driver's license / passport to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that (he/she) executed the same for the purposes and consideration therein expressed, who being by me duly sworn, deposed as follows:

1. “My name is Byron W. Miles, I am of sound mind, capable of making this statement, and personally acquainted with the facts herein stated.
2. I am the authorized representative of Respondent, owner of **2503 N. Wilson**, which is subject to a Land Use Restriction Agreement monitored by the TDHCA in the State of Texas, and I am duly authorized by Respondent to execute this document.
3. Respondent knowingly and voluntarily enters into this Agreed Final Order, and agrees with and consents to the issuance and service of the foregoing Agreed Order by the Governing Board of the Texas Department of Housing and Community Affairs.”

**RESPONDENT:**

By: \_\_\_\_\_  
Name: Byron W. Miles

Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**Exhibit 1**

**UPCS Instructions**

1. UPCS violations that must be corrected:

**2503 N. Wilson**

Inspected By: Chad Farquhar

Inspection Date: 12/11/2018

Area	Bldg	Unit	Item	Deficiency	Level	Note	Completed Date	Completed By
Unit	Bldg 1	Unit 1	Bathroom	Shower/Tub - Damaged/Missing	L1	Missing tub stopper hall bathroom		

2. Prepare corrective documentation 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>, then email Ysella Kaseman at [ysella.kaseman@tdhca.state.tx.us](mailto:ysella.kaseman@tdhca.state.tx.us) to let her know that the submission is ready for review.



## Exhibit 2

### **Annual Owner's Compliance Report Instructions**

Submit the 2018 Annual Owner's Compliance Report (AOCR) online via CMTS.

CMTS is available at: <https://pox.tdhca.state.tx.us/aims2/pox>.

Each report has three parts, each of which must be submitted via CMTS:

- Part A: Owner's Certification of Program Compliance
- Part B: Unit Status Report
- Owner's Financial Certification

The 2018 AOCR was due 4/30/2019, reporting data as of 12/31/2018. Part A and the Owner's Financial Certification must be completed with information as of 12/31/2018; however, the Unit Status Report can be completed using current occupancy data.

#### *Technical support:*

- *Training materials regarding annual reporting is available at the following link: <https://www.tdhca.state.tx.us/pmcomp/reports.htm>.*
- *Please note that you must enter current occupancy data and individual household member information for each unit before the system will allow you to submit Part B. To update the Unit Status Report / Quarterly Vacancy Report, you will log in to CMTS. Once logged in, click on "Unit Status Report". Click on "Enter Unit Occupancy" at the top of the next screen. From there, you will be able to enter occupancy information for each unit, along with household member data. Once all units have been updated, submit that data via CMTS as the 2018 AOCR Part B. To get to those reports, go back to the "Unit Status Reports" page in CMTS and submit the Unit Status Report for the required period.*

**Exhibit 3:**

**Texas Administrative Code**

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

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

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

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

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

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

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

(c) General Requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) Agreements among parties associated with the transfer;

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

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

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

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

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

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

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

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

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

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

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

1c

**BOARD ACTION REQUEST**

**LEGAL DIVISION**

**OCTOBER 10, 2019**

Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning Weldon Blackard (HOME 539112 / CMTS 2706)

**RECOMMENDED ACTION**

**WHEREAS**, Weldon Blackard Rental, owned by Neighborhood Housing Services of Dimmit County, Inc. (Owner), has uncorrected compliance findings relating to the applicable land use restriction agreement and the associated statutory and rule requirements;

**WHEREAS**, owner representatives have attended multiple informal conferences and signed a prior Agreed Final Order in 2015 relating to file monitoring findings of noncompliance;

**WHEREAS**, the terms of the 2015 Agreed Final Order were met and a \$2250 portion of the assessed administrative penalty was fully forgiven;

**WHEREAS**, further violations were identified during 2018 and 2019;

**WHEREAS**, on September 24, 2019, Owner's representatives participated in an informal conference with the Enforcement Committee and agreed, subject to Board approval, to enter into an Agreed Final Order assessing an administrative penalty of \$4,000, with \$500 to be paid within 30 days of signature and the remaining \$3,500 to be forgiven if all violations are resolved as specified in the Agreed Final Order on or before December 9, 2019;

**WHEREAS**, unresolved compliance findings include Tenant Selection Criteria and delinquent Part A for annual reporting years 2017 and 2018, which came due in 2018 and 2019, respectively; and

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

**NOW, therefore, it is hereby**

**RESOLVED**, that an Agreed Final Order assessing an administrative penalty of \$4,000, subject to partial forgiveness as outlined above, for noncompliance at Weldon Blackard, 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**

Neighborhood Housing Services of Dimmit County, Inc. (Owner) is the owner of Weldon Blackard Rental (Property), a low income apartment complex composed of 12 units, located in Big Wells, Dimmit County. The Executive Director is Manuel Estrada. Records of the Texas Secretary of State list the following members and/or officers: Enrique O Mata, Alfredo Castaneda, Elsa Betancourt, Alicia Correa, Hector Robles, Mariano Garcia, Joe Garcia, and Veronica Gonzalez. CMTS lists Manuel Estrada as the primary contact(s) for Owner, and Delia Navarro as the property manager. The property is self-managed.

The Property is subject to a Land Use Restriction Agreement (LURA) signed in 2000 in consideration for an interest free HOME loan in the amount of \$544,680 to build and operate the Property.

The Compliance Division, Legal Division, and Enforcement Committee have attempted to provide technical assistance and obtain acceptable corrective action on multiple occasions, and an Agreed Final Order was previously signed in 2015. The terms of that Order were met and a \$2,250 portion of the administrative penalty was forgiven. Improvements were observed in 2016 and 2017, but responsiveness and file quality declined in 2018, with Owner again failing to respond to monitoring deadlines. Owner states that the decline occurred because of downsizing at the nonprofit three years ago, loss of trained staff, and a ransomware attack that caused them to lose their files. The current administrative penalty referral includes extensive noncompliance; however, the majority of the findings were resolved upon issuance of an informal conference notice to Respondent. The property manager has signed up for training and will re-learn how to adhere to TDHCA requirements.

The following compliance violations identified during 2018 and 2019 were referred for an administrative penalty and have been resolved:

1. Failure to submit pre-onsite documentation;
2. Failure to affirmatively market;
3. Failure to implement a new utility allowance;
4. Collecting gross rents that exceed the limits for five units;
5. Failure to sign required lease language for five units;
6. Failure to provide tenant income certification for one household; and
7. Failure to prove eligibility for one household.

The following compliance violations identified during 2018 and 2019 were referred for an administrative penalty and are unresolved:

1. Failure to provide complete written policies and procedures, including tenant selection criteria, and to include copies in tenant files; and
2. Failure to provide 2017 and 2018 Annual Owner's Compliance Reports, which came due in 2018 and 2019.

Owner participated in an informal conference with the Enforcement Committee on September 24, 2019, and agreed to sign an Agreed Final Order with the following terms:

1. A \$4,000 administrative penalty, subject to partial forgiveness as indicated below;
2. Owner must submit \$500 portion of the administrative penalty on or before November 11, 2019;
3. Owner must correct the annual reporting and tenant selection criteria violations as indicated in the Agreed Final Order, and submit full documentation of the corrections to TDHCA on or before December 9, 2019;
4. If Owner complies with all requirements and addresses all violations as required, the remaining administrative penalty in the amount of \$3,500 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 \$4,000 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	§	BEFORE THE
NEIGHBORHOOD HOUSING SERVICES OF	§	TEXAS DEPARTMENT OF
DIMMIT COUNTY, INC. WITH RESPECT TO	§	HOUSING AND COMMUNITY
WELDON BLACKARD RENTAL	§	AFFAIRS
(HOME FILE # 539112 / CMTS # 2706)	§	

**AGREED FINAL ORDER**

**General Remarks and official action taken:**

On this 10<sup>th</sup> day of October, 2019, the Governing Board (Board) of the Texas Department of Housing and Community Affairs (TDHCA or Department) considered the matter of whether enforcement action should be taken against **NEIGHBORHOOD HOUSING SERVICES OF DIMMIT COUNTY, INC.**, a Texas nonprofit corporation (Respondent).

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

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

**WAIVER**

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

**FINDINGS OF FACT (FOF)**

**Jurisdiction:**

1. During 1999, Respondent received a HOME loan in the amount of \$544,680 to build and operate Weldon Blackard Rental (Property) (HTC file No. 539112 / CMTS No. 2706 / LDLD No. 101).

2. Respondent signed a land use restriction agreement (LURA) regarding the Property. The LURA was effective July 13, 2000, and filed of record at Volume 278, Page 01 of the Official Public Records of Real Property of Dimmit County, Texas (Records).
3. Respondent is subject to the regulatory authority of TDHCA.

Compliance Violations:

4. Property has a history of violations and previously signed an Agreed Final Order in 2015, agreeing to a \$2,500 Administrative Penalty, with \$250 payable and the remainder to be forgiven if complete corrective documentation was submitted as required by the Order. The terms of that Order were met and the remaining penalty was forgiven.
5. On May 11, 2018, TDHCA sent notice that Respondent had failed to timely submit their 2017 Annual Owner's Compliance Report (AOCR), a violation of 10 TAC §10.607 (Reporting Requirements), which requires each development to submit an Annual Owner's Compliance Report. Part B and the Owner's Financial Certification were submitted on 7/19/2019, after intervention by the Enforcement Committee. Part A remains delinquent.
6. On May 2, 2019, TDHCA sent notice that Respondent had failed to timely submit their 2018 Annual Owner's Compliance Report (AOCR), a violation of 10 TAC §10.607 (Reporting Requirements), which requires each development to submit an Annual Owner's Compliance Report. Part B and the Owner's Financial Certification were submitted on 7/19/2019, after intervention by the Enforcement Committee. Part A remains delinquent.
7. An on-site monitoring review was conducted on February 12, 2019, 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 9, 2019, corrective action deadline was set; however, no response was submitted to the Compliance Division.
  - i. Respondent failed to submit pre-onsite documentation, a violation of 10 TAC §10.607 and §10.618, which require all developments to submit necessary documentation as requested in preparation for an upcoming monitoring review. This finding was resolved August 21, 2019, after intervention by the Enforcement Committee.
  - ii. Respondent failed to maintain written tenant selection criteria, a violation of 10 TAC §10.610 (Written Policies and Procedures), which requires all developments to establish written tenant selection criteria that meet minimum TDHCA requirements. This finding remains unresolved.
  - iii. Respondent failed to maintain written tenant selection criteria in tenant files for units 1603, 1603.5, 1604, and 1604.5, a violation of 10 TAC §10.610 (Written Policies and Procedures), which requires all developments to include a copy of

the criteria under which each applicant was screened in the household's file. This finding remains unresolved.

- iv. Respondent failed to provide evidence of affirmative marketing outreach, a violation of 10 TAC §10.617 (Affirmative Marketing), which requires developments to maintain an affirmative marketing plan that meets minimum requirements and to distribute marketing materials to selected marketing organizations that reach groups identified as least likely to apply and to the disabled. An affirmative marketing plan was present during the onsite review, but the plan omitted the required marketing materials to prove that the development was carrying out marketing. This finding was resolved August 21, 2019, after intervention by the Enforcement Committee.
- v. Respondent failed to implement a new utility allowance established by the Department on 11/9/2018 using the HUD Model Schedule, for rents due on or after 12/9/2018, a violation of 10 TAC §10.614 (Utility Allowances), which requires all developments to establish and implement a utility allowance. This finding was resolved August 21, 2019, after intervention by the Enforcement Committee.
- vi. Respondent collected gross rents that exceeded income limits as a result of failure to implement an updated utility allowance for units 1603, 1603.5, 1604, 1604.5, and 1606. TDHCA publishes maximum rent limits for the tax credit program annually and owners are responsible for ensuring that the maximum rents that they charge include the amount of rent paid by the household, plus an allowance for utilities, plus any mandatory fees. For HOME properties, TDHCA also annually analyzes and sets a utility allowance. Exceeding the maximum rent is a violation of 10 TAC §10.622 (Special Rules Regarding Rents and Rent Limit Violations). This finding was resolved August 21, 2019, after intervention by the Enforcement Committee.
- vii. Respondent failed to execute required lease provisions or exclude prohibited lease language for units 1603, 1603.5, 1604, 1604.5, and 1606, a violation of 10 TAC §10.613 (Lease Requirements), which requires leases to include specific language protecting tenants from eviction without good cause. This finding was resolved August 21, 2019, after intervention by the Enforcement Committee.
- viii. Respondent failed to provide an annual self-certification for unit 1606, a violation of 10 TAC §10.612 (Tenant File Requirements), which requires HOME developments to perform a full recertification of each household every sixth year of the affordability period, and to collect self-certifications in the intervening years. This finding was resolved August 21, 2019, after intervention by the Enforcement Committee.
- ix. Respondent failed to provide documentation that household income was within prescribed limits upon initial occupancy for unit 1604.5, a violation of 10 TAC §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. This finding was resolved August 21, 2019, after intervention by the Enforcement Committee.

8. The following violations remain outstanding at the time of this order:
  - a. Annual Reporting violations described in FOF # 5 and 6; and
  - b. Written policy and procedures / tenant selection criteria violations described in FOF # 7(b) and 7(c).

### **CONCLUSIONS OF LAW**

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503, and 10 TAC Chapter 2.
2. Respondent is a "housing sponsor" as that term is defined in Tex. Gov't Code §2306.004(14).
3. Respondent violated 10 TAC §10.607 in 2018 and 2019 by failing to submit Annual Owner's Compliance Reports for the years 2017 and 2018.
4. Respondent violated 10 TAC §10.607 and §10.618 in 2019, by not submitting pre-onsite documentation in preparation for the monitoring review.
5. Respondent violated 10 TAC §10.610 in 2019, by not maintaining written tenant selection criteria meeting TDHCA requirements and not keeping copies in tenant files.
6. Respondent violated 10 TAC §10.617 in 2019, by failing to provide evidence of affirmative marketing outreach.
7. Respondent violated 10 TAC § 10.614 in 2018 by failing to implement an updated utility allowance.
8. Respondent violated 10 TAC §10.622 in 2019 by charging rents for five units that exceeded income limits as a result of its failure to implement a new utility allowance.
9. Respondent violated leasing requirements in 10 TAC §10.613 in 2019, by failing to execute required lease provisions for five units.
10. Respondent violated 10 TAC §10.612 in 2019, by failing to collect a self-certification for one unit.
11. Respondent violated 10 TAC §10.611 and Section 2.4 of the LURA in 2019, by failing to provide documentation that household income was within prescribed limits upon initial occupancy for one unit.

12. 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.
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 §2306.053 and has violated agreements with the Agency to which Respondent is a party, the Agency may impose an administrative penalty pursuant to Tex. Gov't Code §2306.041.
15. An administrative penalty of \$4,000 is an appropriate penalty in accordance with 10 TAC Chapter 2.

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

**IT IS HEREBY ORDERED** that Respondent is assessed an administrative penalty in the amount of \$4,000, subject to partial 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" within thirty days of the date this Agreed Final Order is approved by the Board.

**IT IS FURTHER ORDERED** that Respondent shall submit Part A of the AOCs for 2017 and 2018 via CMTS as indicated in Exhibit 1 on or before December 9, 2019.

**IT IS FURTHER ORDERED** that Respondent shall fully correct the file monitoring violations as indicated in Exhibits 2 and 3, and submit full documentation of those corrections to TDHCA on or before December 9, 2019.

**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 \$3,500 portion of the administrative penalty will be deferred and forgiven.

**IT IS FURTHER ORDERED** that if Respondent fails to satisfy any conditions or otherwise violates any provision of this order, or the property is sold before the terms and conditions of this Agreed Final Order have been fully satisfied, then the remaining administrative penalty in the

amount of \$3,500 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](mailto: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 <sup>th</sup> St Austin, Texas 78701	TDHCA Attn: Ysella Kaseman P.O. Box 13941 Austin, Texas 78711

**IT IS FURTHER ORDERED** that Respondent shall follow the requirements of 10 TAC §10.406, a copy of which is included at Exhibit 4, 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 \_\_\_\_\_, 2019.

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

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

**THE STATE OF TEXAS §  
  §  
COUNTY OF TRAVIS §**

Before me, the undersigned notary public, on this 10th day of October, 2019, personally appeared J.B. Goodwin, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

\_\_\_\_\_  
Notary Public, State of Texas

**THE STATE OF TEXAS §  
  §  
COUNTY OF TRAVIS §**

Before me, the undersigned notary public, on this 10th day of October, 2019, personally appeared James "Beau" Eccles, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

\_\_\_\_\_  
Notary Public, State of Texas

STATE OF TEXAS §  
§  
COUNTY OF \_\_\_\_\_ §

BEFORE ME, \_\_\_\_\_ (*notary name*), a notary public in and for the State of \_\_\_\_\_, on this day personally appeared \_\_\_\_\_ (*person signing document*), known to me or proven to me through circle one: personally known / driver's license / passport to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that (he/she) executed the same for the purposes and consideration therein expressed, who being by me duly sworn, deposed as follows:

1. "My name is \_\_\_\_\_, I am of sound mind, capable of making this statement, and personally acquainted with the facts herein stated.
2. I hold the office of \_\_\_\_\_ for Respondent. I am 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 Governing Board of the Texas Department of Housing and Community Affairs."

**RESPONDENT:**

**NEIGHBORHOOD HOUSING SERVICES OF DIMMIT COUNTY, INC.**, Texas nonprofit corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF \_\_\_\_\_

My Commission Expires: \_\_\_\_\_



## **Exhibit 1**

### **Annual Owner's Compliance Report Instructions**

Part A (Owner's Certification of Program Compliance) is delinquent for the 2017 and 2018 Annual Owner's Compliance Reports and must be submitted via CMTS.

CMTS is available at: <https://pox.tdhca.state.tx.us/aims2/pox>.

*Technical support:*

- *Training materials regarding annual reporting is available at the following link:*  
<https://www.tdhca.state.tx.us/pmcomp/reports.htm> .

## Exhibit 2

### File Monitoring Violation Resources and Instructions

#### Resources:

1. Refer to the following link for all references to the rules at 10 TAC §10 that are referenced below:  
[http://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac\\_view=5&ti=10&pt=1&ch=10&sch=F&rl=Y](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=10&pt=1&ch=10&sch=F&rl=Y)
2. **Corrections must be submitted via CMTS:** See link for steps to upload documents  
<http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf>.
3. **Important notes -**
  - i. Do not backdate any documents listed below.

#### Instructions:

4. **Written policies and procedures, including tenant selection criteria** – Respondent submitted written tenant selection criteria, however, the criteria were incomplete.

#### How to prepare compliant criteria:

- i. Place a copy of your old 2014 written policies and procedures, including tenant selection criteria, in the tenant files for each unit. Although these criteria are incomplete and unacceptable, they are the criteria under which each household was screened. (*Going forward, you will place your new written policies into the tenant files for each new move-in.*)
- ii. Watch the webinar presentation at: <http://www.tdhca.state.tx.us/pmcomp/presentations.htm>.
- iii. Prepare updated written policies and procedures, including tenant selection criteria, addressing all requirements at [10 TAC §10.610](#). Staff recommends using that rule as a checklist. Ensure that you include an effective date for the policy.

The attached letter excerpt provides feedback regarding why your 2014 policies are unacceptable.

The “10.610 (policy & procedures)” tab of this spreadsheet provides details regarding how TDHCA monitors for this item so that you can check over your work before submission:

<http://www.tdhca.state.tx.us/pmcdocs/OnsiteMonitoringForms.xlsx>

What to submit: Once your written policies and procedures are complete, no later than 12/9/2019, the owner must review the new policies, then submit via CMTS (1) a complete copy of the updated written policies and procedures (including tenant selection criteria and (2) a signed Owner Certification using the form included at Exhibit 3.

Property ID # 2706  
Property Weldon Blackard Rental  
HOME File: 539112

#### WPP FINDING ATTACHMENT

Noncompliance with tenant selection requirements described in §10.610 if this subchapter

Reason (Date of NC 10/1/2018): The Tenant Selection Criteria submitted for the Development as corrective action was found deficient in multiple areas.

1) 10TAC §10.610(b) Tenant Selection Criteria.

- 10TAC §10.610(b)(A) the plan must include the requirements that determine an applicant's basic eligibility for the property, including any preferences, restrictions, and any other tenancy requirements. The tenant selection criteria must specifically list:
  - 1) The income and rent limits;
  - 2) When applicable, restrictions on student occupancy and any exceptions to those restrictions; and
  - 3) Fees and/or deposits required as part of the application process. Developments with HOME, NHTF, NSP, Section 811 and/or TCAP RF units cannot collect an application deposit for units designated under these programs. Owners of HTC, TCAP and Exchange Developments are discouraged from collecting an application deposit. If an application deposit is collected it must soon after be converted into a refundable security deposit. No fees or deposits may be collected to place a household or applicant on a waiting list.
- 10TAC §10.610(b)(B) The applicant screening criteria must include what is screened and what scores or findings would result in ineligibility.
- 10TAC §10.610(b)(C) The screening criteria must list the occupancy standards. If fewer than two persons (over the age of six) per bedroom for each rental unit are required for reasons other than those directed by local building code or safety regulations, a written justification must be provided.
- 10TAC §10.610(b)(D) The screening criteria must contain the following statement: *"Screening criteria will be applied in a manner consistent with all applicable laws, including the Texas and Federal Fair Housing Acts, the Federal Fair Credit Reporting Act, program guidelines, and the Department's rules."*

2) 10TAC §10.610(c) Reasonable Accommodations Policy.

- Owners must maintain a written Reasonable Accommodations policy.
- The policy must provide:
  - A. Information on how an applicant or current resident with a disability may request a reasonable accommodation; and
  - B. A timeframe in which the Owner will respond to a request that is compliant with 10TAC §1.204(b)(3) and (d) (relating to Reasonable Accommodations).
- The policy must not:
  - A. Require a household to make a reasonable accommodation request in writing;

- B. Require a household whose need is readily apparent to provide third party documentation of a disability;
- C. Require a household to provide specific medical or disability information other than the disability verification that may be requested to verify eligibility for reasonable accommodation;
- D. Exclude a household with person(s) with disabilities from admission to the Development because an accessible unit is not currently available; or
- E. Require a household to rent a unit that has already been made accessible.

**3) 10TAC §10.610(d) Wait List Policy.**

- Owners must maintain a written wait list policy, regardless of current unit availability. The policy must be maintained at the Development.
- 10TAC §10.610(d)(1) The policy must include procedures the Development uses in:
  - A. Opening, closing, and selecting applicants from the wait list;
  - B. Determining how lawful preferences are applied; and
  - C. Procedures for prioritizing applicants needing accessible units in accordance with 24CFR §8.27 and Chapter 1, Subchapter B of this title.
- 10TAC §10.610(d)(2) Developments with additional rent and occupancy restrictions must maintain a waiting list for their lower rent restricted units. The Development's wait list policy must inform applicants and current residents of the availability of lower rent units and the process for renting a lower rent unit. Unless otherwise approved at application, underwriting and cost certification, all unit sizes must be available at the lower rent limits. The waitlist policy for Developments with lower rent restricted units must address how the waiting list for their lower rent restricted units will be managed and must include policies regarding changes in income that address the options available in §10.615 of this subchapter. The policy must not give a preference to prospective applicants over existing households. However, a Development may, but is not required to, prioritize existing households over prospective applicants.

**4) 10TAC §10.610(f) Denied Application Policy.**

- Owners must maintain a written policy regarding procedures for denying applications and notifying denied applicants of their rights.
  - 1) The policy must address the manner by which rejections of applications will be handled, including timeframes and appeal procedures, if any.
  - 2) Within seven days after the determination is made to deny an application, the owner must provide any rejected or ineligible applicant that completed the application process a written notification of the grounds for rejection. The written notification must include:
    - A. The specific reason for the denial and reference the specific leasing criteria upon which the denial is based;
    - B. Contact information for any third parties that provided the information on which the rejection was based and information on the appeals process, if one is used by the Development. An appeals procedure is required for HOME Developments that are owned by Community Housing Development Organizations, and units at Developments that lease units under the Department's Section 811-

PRA program. The appeals process must provide a 14 day period for the applicant to contest the reason for the denial and comply with other requirements of the HUD Handbook 4350.3 4-9; and

- C. The TDHCA form based on HUD form 5380 "Notice of Occupancy Rights under the Violence Against Women Act" and the HUD form 5382 "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation."

- 3) The Development must keep a log of all denied applicants that completed the application process to include:

- A. Basic household demographic and rental assistance information, if requested during any part of the application process;
- B. The specific reason for which an applicant was denied, the date the decision was made; and
- C. The date the denial notice was mailed or hand-delivered to the applicant.

- 4) A file of all rejected applications must be maintained the length of time specified in the applicable program's recordkeeping requirements and include:

- A. A copy of the written notice of denial; and
- B. The Tenant Selection Criteria policy under which an applicant was screened.

**5) 10TAC §10.610(h) Unit Transfer Policies.**

- Owners must maintain a written policy regarding procedures for households to request a unit transfer. The policy must address the following:
  - 1) How security deposits will be handled for both the current unit and the new unit;
  - 2) How transfers related to a reasonable accommodation will be addressed

**Exhibit 3:**

**Texas Department of Housing and Community Affairs  
Owner Certification of Corrected Noncompliance**

Development Name: Weldon Blackard CMTS ID: 2706

The above referenced Development was monitored on February 12, 2019 to determine if the Development is in compliance with the requirements of the HOME programs. The review resulted in a finding of noncompliance under Title 10, Chapter 10, Subchapter F related to Compliance Monitoring, §10.610, Written Policies and Procedures. Please see attached Findings Report for details as to the specific policy/procedure affected and the reason for which the noncompliance was cited. Update the policy/procedure as detailed on the Findings Report with a revised effective date.

Under 10 TAC §2.401(c)(1), *The Department may debar any Responsible Party who has materially or repeatedly violated any condition imposed by the Department in connection with the administration of a Department program, including a material or repeated violation of a land use restriction agreement (LURA) regarding a development supported with a housing tax credit allocation. Repeated failure to comply with the provisions prescribed in §10.610 may be considered a material violation of the LURA. Owners that repeatedly and materially violate their LURAs will be recommended for debarment from participation in programs administered by the Department. A copy of §10.610 is attached to ensure ongoing compliance.*

I, \_\_\_\_\_, on behalf of Weldon Blackard, am a duly authorized representative, who is so authorized by reason of my position as \_\_\_\_\_ to hereby certify, as true and correct, that the above referenced noncompliance related to §10.610 has been corrected in the manner described and that all required written policies and procedures under §10.610 are fully compliant with the rule. If at the next onsite review, there has not been an ownership transfer and this event of noncompliance is cited again, I understand that the owner will be recommended for debarment.

\_\_\_\_\_  
Signature of Authorized Owner Representative

\_\_\_\_\_  
Date

Warning: Title 18, Section 1001 of the U.S. Code makes it a criminal offense to make willful false statements or misrepresentations to any Department or Agency in the United States as to any matter within its jurisdiction.

TDHCA  
December 2016

**Exhibit 4:**

**Texas Administrative Code**

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

---

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

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

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

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

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

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

(c) General Requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) Agreements among parties associated with the transfer;



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

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

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

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

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

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

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

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

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

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

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

1d

**BOARD ACTION REQUEST**  
**ASSET MANAGEMENT DIVISION**  
**OCTOBER 10, 2019**

Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Land Use Restriction Agreement for Limestone Ridge Apartments (HTC #01150)

**RECOMMENDED ACTION**

**WHEREAS**, Limestone Ridge Apartments (the Development) received a 9% Housing Tax Credit (HTC) award in 2001 to construct 76 multifamily units in Big Spring, Howard County;

**WHEREAS**, the HTC application for the Development received points and/or other preferences for agreeing to provide a Right of First Refusal (ROFR) to purchase the Development over a two-year ROFR period;

**WHEREAS**, in 2015, the 84th Texas Legislature, Regular Session, amended Tex. Gov't Code §2306.6725 and §2306.6726 to allow, among other things, for a 180-day ROFR period and to permit a Qualified Entity to purchase a property under ROFR, and defined a Qualified Entity to mean an entity described by, or as amended, an entity controlled by an entity described by, 26 U.S.C. §42(i)(7)(A), Internal Revenue Code of 1986;

**WHEREAS**, UAH Limestone Ridge, L.P., the Development Owner, requests to amend the Land Use Restriction Agreement (LURA) for the Development to incorporate changes made to Tex. Gov't Code §2306.6725 and §2306.6726 in 2015; and

**WHEREAS**, amendment to the ROFR period in the LURA is a material change requiring Board approval under 10 TAC §10.405(b)(2)(E), and the Development Owner has complied with the procedural amendment requirements in 10 TAC §10.405(b) to place this request before the Board, including holding a public hearing;

**NOW, therefore, it is hereby**

**RESOLVED**, that the material LURA amendment for Limestone Ridge 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**

Limestone Ridge Apartments received a 9% HTC award in 2001 to construct 76 multifamily units in Big Spring, Howard County. In a letter dated August 20, 2019, Sharon Fritz on behalf of Spring City Housing, LLC, the General Partner of UAH Limestone Ridge, L.P., requested approval to amend the HTC LURA related to the ROFR provision.

In 2001, the Housing Tax Credit application allotted five points to the Development Owner in exchange for a two-year ROFR period. Upon completion of the Development, the Owner entered into a Declaration of Land Use Restrictive Covenants/Land Use Restriction Agreement for Low-Income Housing Tax Credits recorded in Howard County on December 12, 2002.

As approved in 2001, the additional use restrictions in the current HTC LURA would require, among other things, a two-year ROFR to sell the Development based on a set order of priority to a community housing development organization (as defined for purposes of the federal HOME Investment Partnership Program at 24 CFR Part 92), to a qualified nonprofit organization (as defined in Internal Revenue Code §42(h)(5)(C)), the Department or to a tenant organization, if at any time after the 15<sup>th</sup> year of the Compliance Period the owner decides to sell the property. The property is currently in the 17<sup>th</sup> year of the 40-year Extended Use Period specified in the LURA. However, the Owner desires to exercise its rights under Tex. Gov't Code §2306.6726 to amend the LURA to allow for a 180-day ROFR period.

In 2015, the 84th Texas Legislature, Regular Session, passed HB 3576, which amended Tex. Gov't Code §2306.6725 to allow for a 180-day ROFR period and Tex. Gov't Code §2306.6726 to allow for a Qualified Entity to purchase a development under a ROFR provision of the LURA and satisfy the ROFR requirement. Additionally, Tex. Gov't Code §2306.6726, as amended by HB 3576, defines Qualified Entity to mean an entity described by, or an entity controlled by an entity described by, §42(i)(7)(A) of the Internal Revenue Code of 1986. The Department's 2019 Uniform Multifamily Rules, Subchapter E, include administrative procedures to allow a Development Owner to conform to the new ROFR provisions described in the amended statute.

The Development Owner has complied with the amendment and notification requirements under 10 TAC §10.405(b). The Development Owner held a public hearing on the matter on September 3, 2019, at the Development's onsite office/community clubhouse. No negative public comment was received regarding the requested amendment.

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

**UAH LIMESTONE RIDGE, L.P.**  
2307 C. Roosevelt Drive  
Arlington, Texas 76016

August 20, 2019

**VIA HAND DELIVERY**

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

Re: TDHCA File No. 01150; Limestone Ridge Apartments (the "**Property**")

Dear Ms. Patience:

The undersigned, being the General Partner (herein so called) of Limestone Ridge Apartments, a Texas limited partnership (the "**Partnership**") and the current owner of the Property. This letter constitutes request for a material LURA amendment in order to modify the two-year Right of First Refusal ("**ROFR**") period.

**Request to Amend ROFR Period**

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

**LURA Amendment**

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

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

Sincerely,

**SPRING CITY HOUSING, LLC**  
a Texas limited liability company,

By: Housing Authority of the City of Big Spring,  
a public corporation created under Chapter 392 of the  
Texas Local Government code,  
its sole member

By:   
Sharon Fritz, Executive Director

**UAH LIMESTONE RIDGE, L.P.**  
2307 C. Roosevelt Drive  
Arlington, Texas 76016

August 20, 2019

MMA Limestone Ridge, LLC  
10 Arch Street  
Boston, MA 02110

Dear Sir or Madam:

UAH Limestone Ridge, L.P. (the "**Owner**") is the owner of Limestone Ridge Apartments (the "**Community**") which is located at 1401 US-87, Big Spring, Texas 79720. 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**").

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

In making its decision whether to approve Owner's request, the Department considers the opinions and views of the members of the Community and its elected representatives. Accordingly, there will be a public meeting to discuss this matter. This meeting will take place at the Community's management office/clubhouse on **September 3, 2019 at 2:00 p.m.** Information from this meeting will be submitted for consideration by the Texas Department of Housing and Community Affairs Governing Board at their next available meeting.

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

Sincerely,

**UAH LIMESTONE RIDGE, L.P.,**  
a Texas limited partnership

By: Spring City Housing, LLC,  
a Texas limited liability company,  
its general partner

By: Housing Authority of the City of Big Spring,  
a public corporation created under Chapter 392 of the  
Texas Local Government code,  
its sole member

By:   
Sharon Fritz, Executive Director



**UAH LIMESTONE RIDGE, L.P.**  
2307 C. Roosevelt Drive  
Arlington, Texas 76016

August 20, 2019

Midland Loan Services, a PNC Real Estate Business  
PO Box 25965  
Shawnee Mission, Kansas 66225-5965

Dear Sir or Madam:

UAH Limestone Ridge, L.P. (the "**Owner**") is the owner of Limestone Ridge Apartments (the "**Community**") which is located at 1401 US-87, Big Spring, Texas 79720. 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**").

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

In making its decision whether to approve Owner's request, the Department considers the opinions and views of the members of the Community and its elected representatives. Accordingly, there will be a public meeting to discuss this matter. This meeting will take place at the Community's management office/clubhouse on **September 3, 2019 at 2:00 p.m.** Information from this meeting will be submitted for consideration by the Texas Department of Housing and Community Affairs Governing Board at their next available meeting.

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

Sincerely,

**UAH LIMESTONE RIDGE, L.P.,**

a Texas limited partnership

By: Spring City Housing, LLC,  
a Texas limited liability company,  
its general partner

By: Housing Authority of the City of Big Spring,  
a public corporation created under Chapter 392 of the  
Texas Local Government code,  
its sole member

By:   
Sharon Fritz, Executive Director

**UAH LIMESTONE RIDGE, L.P.**  
2307 C. Roosevelt Drive  
Arlington, Texas 76016

August 20, 2019

Dear Resident:

Limestone Ridge Apartments (the "**Community**") is owned by UAH Limestone Ridge, 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](http://www.tdhca.state.tx.us)).

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

In making its decision whether to approve Owner's request, the Department considers the opinions and views of the members of the Community. Accordingly, there will be a public meeting to discuss this matter and we invite you to attend. The public hearing is your opportunity to discuss the amendment request and voice your concerns. The public hearing will take place at the Community's management office/clubhouse on **September 3, 2019, at 2:00 p.m.** Information from this meeting will be submitted for consideration by the Department's governing board at its next available meeting.

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

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

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

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

Thank you for choosing Limestone Ridge Apartments as your home.

Sincerely,

**UAH LIMESTONE RIDGE, L.P.,**  
a Texas limited partnership

By: Spring City Housing, LLC,  
a Texas limited liability company,  
its general partner

By: Housing Authority of the City of Big Spring,  
a public corporation created under Chapter 392 of the  
Texas Local Government code,  
its sole member

By:   
Sharon Fritz, Executive Director

  
**LIMESTONE RIDGE**  
A P A R T M E N T S

Sept 3, 2019. Public Hearing @ 2pm.  
Held at Limestone Clubhouse

Residents Attendance

Staff Attendance

Janet Kincaid \_\_\_\_\_

Alexander Guzman Jr \_\_\_\_\_

J. W. G. Maintenance \_\_\_\_\_  
Rock II

Quana Barry Prop Mgr. \_\_\_\_\_

Morry Boardman \_\_\_\_\_

A. M. Lamsch Sr \_\_\_\_\_

Sharon Jank Big Spring Housing \_\_\_\_\_

ended @ 2:45pm.

LIMESTONE RIDGE APARTMENTS  
PUBLIC HEARING  
SEPTEMBER 3, 2019, 2:00 P.M.

Minutes of the meeting are as follows:

- Morry Boardman, VP Operations Mayfair Management Group, introduced himself and the employees present
  - o Sharon Fritz – Big Spring Housing Authority
  - o Dianna Yanez – Limestone Ridge Property Manager
  - o Antonio Maldonado – Limestone Ridge Maintenance Tech
- Explanation that the property has a probable buyer and that part of the requirement of the transaction is to hold this meeting for the current residents to ask questions.
- Explanation that their current lease contract will not change
- Question was asked for us to explain what a “Tax Credit” property was. Explained the general concept of rent and income limits based on median figures for an area.
- Question was asked if rents would go up at the time of renewal. Explained that Management at that time would give the required advanced notification, per the lease agreement, if there were to be any rate increase.
- Question if current Management would continue here. Explained that the new owner would have their own management company and would be making those decisions.
- Several questions to Sharon Fritz on the potential of getting a housing voucher. She explained that they would need to come to the housing office to apply.

The meeting began at 2:05 p.m. and ended at 2:45 p.m.

1e

**BOARD ACTION REQUEST**

**HOME AND HOMELESSNESS PROGRAMS DIVISION**

**OCTOBER 10, 2019**

Presentation, discussion, and possible action on 2020 Homeless Housing and Services Program Youth Set-Aside funds for the City of San Antonio

**RECOMMENDED ACTION**

**WHEREAS**, the Homeless Housing and Services Program (HHSP) was created by the 81<sup>st</sup> Texas Legislature to be administered by the Texas Department of Housing and Community Affairs (the Department) to fund homelessness prevention and homeless services in Texas municipalities with populations over 285,500;

**WHEREAS**, House Bill (HB) 1 authorized by the 86<sup>th</sup> Legislature included Rider 16, which designated \$1,500,000 each fiscal year to provide services to unaccompanied homeless youth and homeless young adults 24 years of age and younger to be distributed through HHSP;

**WHEREAS**, the allocation formula for HHSP is set forth in 10 TAC §7.23, Allocation of Funds and Formula;

**WHEREAS**, the cities in Texas with a population that meet the threshold criteria for HHSP are Arlington, Austin, Corpus Christi, Dallas, El Paso, Fort Worth, Houston, Plano and San Antonio;

**WHEREAS**, the City of San Antonio applied to self-administer the HHSP youth set-aside funds;

**WHEREAS**, awards for the 2020 HHSP Contracts were approved at the Board meeting of July 25, 2019, except for the City of San Antonio which was undergoing Previous Participation Review (PPR); and

**WHEREAS**, the Executive Award Review Advisory Committee (EARAC) reviewed the compliance history and recommends the award;

**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 take any and all such actions as they or any of them may deem necessary or advisable to



effectuate the award of not less than \$268,670 in a SFY 2020 HHSP youth set-aside contract for the City of San Antonio.

### **BACKGROUND**

In 2019 the 86<sup>th</sup> Legislature's HB 1 authorized \$9,800,000 over the biennium (\$4,900,000 per year) for HHSP to be allocated in municipalities with a population greater than 285,500. According to HB 1, Rider 16, an additional \$1,500,000 per fiscal year must be allocated to provide services to unaccompanied homeless youth and homeless young adults 24 years of age and younger. Rider 16 specifies that the funds shall be distributed through HHSP. For the HHSP youth set-aside funds, Rider 16 specifically lists eligible services as case management, emergency shelter, street outreach, and transitional living.

In accordance with 10 TAC §7.21, Purpose and Use, HHSP provides funding to areas in municipalities with populations of 285,500 or greater, as determined by the most recent available One Year American Community Survey (ACS). HHSP is allocated to Arlington, Austin, Corpus Christi, Dallas, El Paso, Fort Worth, Houston, Plano, and San Antonio, per 10 TAC §7.23. Awards were approved in every city on July 25, 2019, except for the City of San Antonio for youth set-aside funds.

The Previous Participation Rule (10 TAC §1.302) includes a review of HHSP entities prior to Board recommendation. This review was pending for the City of San Antonio on July 25, 2019, but has since been completed. The City of San Antonio is being recommended without condition. The effective Contract Term for the HHSP youth set-aside funds with the City of San Antonio will be October 10, 2019, through August 31, 2020, the end of the state fiscal year.

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BOARD ACTION REQUEST  
EXECUTIVE DIVISION  
OCTOBER 10, 2019

Presentation, discussion, and possible action on an order proposing amendments to 10 TAC §8.7, Tenant Selection and Screening; an order proposing amendments to 10 TAC §23.61, Tenant-Based Rental Assistance (TBRA) General Requirements; and directing their publication for adoption in the Texas Register

RECOMMENDED ACTION

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

WHEREAS, oversight of the affirmative marketing requirements and the written policies and procedures (often called tenant selection criteria), and their associated review process, are being moved organizationally within the Department from the Compliance Division to the Fair Housing, Data Management and Reporting unit, and as a result the two sections of the Compliance rule that govern those processes (10 TAC §10.610 and 10 TAC §10.617) are proposed to be repealed, while under separate action being proposed as new sections within Chapter 10;

WHEREAS, references to 10 TAC §10.610 were made in two rules, that will now warrant revision to ensure accurate references are reflected in these rules, and this action proposes amendments to 10 TAC §8.7 Tenant Selection and Screening and to 10 TAC §23.61, Tenant-Based Rental Assistance (TBRA) General Requirements; and

WHEREAS, upon Board approval the proposed amendments will be released for public comment in the Texas Register from October 25, 2019, to November 25, 2019, and returned to the Board for final approval;

NOW, therefore, it is hereby

RESOLVED, that the proposed amendments to 10 TAC §8.7(g) Tenant Selection and Screening, and to 10 TAC §23.61, Tenant-Based Rental Assistance (TBRA) General Requirements together with the preambles presented to this meeting, are hereby approved for publication in the Texas Register for public comment; and,

FURTHER RESOLVED, that the Executive Director and his designees be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department,

to cause the proposed actions herein in the form presented to this meeting, to be published in the Texas Register for public comment, and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing including any requested revisions to the preambles.

### BACKGROUND

Oversight of the affirmative marketing requirements and the written policies and procedures (often called tenant selection criteria), and their associated review process, are being moved organizationally within the Department from the Compliance Division to the Fair Housing, Data Management and Reporting unit. As a result the two sections of the Compliance rule that govern those processes (10 TAC §10.610 and 10 TAC §10.617) are proposed to be repealed, while under separate action are being proposed as new sections within Chapter 10. To ensure accurate referential integrity the Department also must amend two other rules noted above to update references.

Attachment [1]: Preamble, including required analysis, for a proposed amendment to 10 TAC §8.7, Tenant Selection and Screening.

The Texas Department of Housing and Community Affairs (the Department) proposes an amendment to 10 TAC §8.7(g), Tenant Selection and Screening. The purpose of this amendment is to correct a citation referenced in the rule.

Tex. Gov't Code §2001.0045(b) does apply to the amendment being proposed and no exceptions are applicable. However, the rule already exists and the correction is only administrative in nature. There are no costs associated with this rule action, therefore no costs or impacts warrant a need to be offset.

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

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

1. Mr. Robert Wilkinson, Executive Director, has determined that, for the first five years the proposed amendment would be in effect, the proposed amendment does not create or eliminate a government program, but relates to correcting a citation in the rule.
2. The proposed amendment does not require a change in work that would require the creation of new employee positions, nor is the proposed repeal significant enough to reduce workload to a degree that any existing employee positions are eliminated.
3. The proposed amendment does not require additional future legislative appropriations.
4. The proposed amendment does not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department.
5. The proposed amendment is not creating a new regulation.
6. The proposed amendment will not repeal an existing regulation.
7. The proposed amendment will not increase nor decrease the number of individuals subject to the rule's applicability.
8. The proposed amendment will not negatively nor positively affect this state's economy.

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

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

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

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

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

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of the amended section would be clarity in requirements. There will not be economic costs to individuals required to comply with the amended section.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held October 25, 2019, to November 25, 2019, to receive input on the proposed amended section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email [brooke.boston@tdhca.state.tx.us](mailto:brooke.boston@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, NOVEMBER 25, 2019.

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

## §8.7 Program Regulations and Requirements

(a) Participation in the 811 PRA Program is encouraged and incentivized through the Department's Multifamily Rules. Once committed in the Multifamily Application, a Development must not accept a fund source that would prevent it from participating in the 811 PRA Program.

(b) An Existing Development that is already participating in the 811 PRA Program is eligible to have an additional commitment of 811 PRA Units as long as the integrated housing requirements as noted in §8.3(c) of this chapter (relating to Participation as a Proposed Development) are not violated.

(c) The types (e.g., accessible, one bedroom, first floor, etc.) and the specific number of Assisted Units (e.g., units 101, 201, etc.) will be "floating" (flexible) and dependent on the needs of the Department and the availability of the Assisted Units on the Eligible Multifamily Property.

(d) Occupancy Requirements. Owner is required to follow all applicable Program Requirements including but not limited to the following occupancy requirements found in HUD Handbook 4350.3 REV-1 and Housing Notices:

(1) H 2012-06, Enterprise Income Verification (EIV) System;

(2) H 2012-26, Extension of Housing Notice 2011-25, Enterprise Income Verification (EIV) & You Brochure-Requirements for Distribution and Use;

(3) H 2012-22, Further Encouragement for O/As to Adopt Optional Smoke-Free Housing Policies;

(4) H 2012-11, State Registered Lifetime Sex Offenders in Federally Assisted Housing;

(5) H 2012-09, Supplemental Information to Application for Assistance Regarding Identification of Family Member, Friend or Other Persons or Organization Supportive of a Tenant for Occupancy in HUD Assisted Housing; or

(6) H 2017-05, Violence Against Women Act (VAWA) Reauthorization Act of 2013, Additional Guidance for Multifamily Owners and Management Agents.

(e) Use Agreements. The Owner must execute the Use Agreement, as found in Exhibit 10 of the Cooperative Agreement, before the execution of the RAC and comply with the following:

(1) Use Agreement should be properly recorded according to local laws in the official public records on the Eligible Multifamily Property. The Owner shall provide to TDHCA within 30 days of its receipt of the recorded Use Agreement, a copy of the executed, recorded Use Agreement.

(2) From the date the Property Agreement is entered into, the Owner shall not enter into any future use agreements or other subsidy programs that would diminish the number of Assisted Units that can be placed on the Eligible Multifamily Property.

(3) TDHCA will enforce the provisions of the Use Agreement and RAC consistent with HUD's internal control and fraud monitoring requirements.

(f) Tenant Certifications, Reporting and Compliance.

(1) TRACS & EIV Systems. The Owner shall have appropriate software to access the Tenant Rental Assistance Certification System (TRACS) and the EIV System. The Owner shall be responsible for ensuring Program information is entered into these systems. TRACS is the only system by which an Eligible Multifamily Property can request Project Rental Assistance payments.

(2) Outside Vendors. The Owner has the right to refuse assistance from outside vendors hired by TDHCA, but is still required to satisfy the Program Requirements.

(3) Tenant Certification. The Owner shall transmit Eligible Tenant's certification and recertification data, transmit voucher data, and communicate errors electronically in a form consistent with HUD reporting requirements for HUD Secure Systems.

(g) Tenant Selection and Screening.

(1) Target Population. TDHCA will screen Eligible Applicants for compliance with TDHCA's Program Target Population criteria and do an initial screening for Program Requirements. The Inter-Agency Partnership Agreement describes the specific Target Population eligible for TDHCA's Program. The Target Population may be revised, with HUD approval.

(2) Tenant Selection Plan. Upon the execution of the Participation Agreement, the Owner will submit the Eligible Multifamily Property's Tenant Selection Criteria, as defined by and in accordance with 10 TAC §10.802640 (relating to Written Policies and Procedures), to TDHCA for approval. TDHCA will review the Tenant Selection Plan for compliance with existing Tenant Selection Criteria requirements, and consistent with TDHCA's Section 811 PRA Participant Selection Plan.

(3) Tenant Eligibility and Selection. The Owner is responsible for ultimate eligibility and selection of an Eligible Tenant and will comply with the following:

(A) The Owner must accept referrals of an Eligible Tenant from TDHCA and retain copies of all applications received. The Owner is responsible for notifying the prospective Eligible Tenant and TDHCA in writing regarding any denial of a prospective Eligible Tenant's application to an Eligible Multifamily Property and the reason for said denial. In the notice of denial, the Owner is responsible for notifying the Eligible Tenant of the right to dispute a denial, as outlined in HUD Handbook 4350.3. The results of the dispute must be sent to the Eligible Tenant and TDHCA in writing.

(B) The Owner is responsible for determining age of the qualifying member of the Eligible Families. Eligible Family member must be at least 18 years of age and under the age of 62.

(C) The Owner is responsible for criminal background screening as required by HUD Handbook 4350.3.

(D) Verification of Income. The Owner is responsible for determining income of Eligible Families. The Owner shall verify income through the Enterprise Income Verification (EIV) System. The Owner must certify an Eligible Tenant and Eligible Families at least annually and verify their income. If the household is also designated under the Housing Tax Credit or other Department administered program, the Owner must obtain third party, or first hand, verification of income in addition to using the EIV system.

(h) Rental Assistance Contracts.

(1) Applicability. If requested by TDHCA, the Owner shall enter into a RAC. Not all properties with an Owner Participation Agreement will have a RAC, but when notified by TDHCA, the Eligible Multifamily Property must enter into a RAC(s) and begin serving Eligible Applicants.

(2) Notice. TDHCA will provide written notice to the Owner if and when it intends to enter into a RAC with the Owner.

(3) Assisted Units. TDHCA will determine the number of Units (up to the maximum listed in the Property Agreement) to place in the RAC(s) which may be fewer than the number of Units identified in the Property Agreement.

(4) TDHCA will designate the bedroom composition of the Assisted Units, as required by the RAC. However, based on an actual Eligible Tenant, this may fluctuate. It is possible that an Eligible Multifamily Property will have a RAC for fewer units than the number committed in the Participation Agreement.

(5) If no additional applicants are referred to the property, the RAC may be amended to reduce the number of Assisted Units. Owners who have an executed RAC must continue to notify TDHCA of any vacancies for units not under a RAC if additional units were committed under the Agreement. For instance, if the Owner has committed 10 units under the Agreement and only has a RAC for five Assisted Units, the Owner must continue to notify TDHCA of all vacancies until there is a RAC for 10 Assisted Units.



(6) Amendments. The Owner agrees to amend the RAC(s) upon request of TDHCA. Some examples are amendments that may either increase or decrease the total number of Assisted Units or increase or decrease the associated bedroom sizes; multiple amendments to the RAC may occur over time. The total number of Assisted Units in the RAC will not exceed the number of Assisted Units committed in the Participation Agreement, unless by request of the Owner.

(7) Contract Term. TDHCA will specify the effective date of the RAC. During the first year of the RAC and with approval from HUD, the Owner may request to align the anniversary date of the RAC with existing federal or state housing programs layered on the Eligible Multifamily Property.

(8) Rent Increase. Owners must submit a written request to TDHCA 30 days prior to the anniversary date of the RAC to request an annual increase.

(9) Utility Allowance. The RAC will identify the TDHCA approved Utility Allowance being used for the Assisted Units for the Eligible Multifamily Property. The Owner must notify TDHCA if there are changes to the Utility Allowance calculation methodology being used.

(10) Termination. Although TDHCA has discretion to terminate a RAC due to good cause, an Owner cannot opt-out of a RAC. The RAC survives a foreclosure, assignment, sale in lieu of foreclosure, or sale of the Eligible Multifamily Property to the extent allowed by law.

(11) Foreclosure of Eligible Multifamily Property. Upon foreclosure, assignment, sale in lieu of foreclosure, or sale of the Eligible Multifamily Property to the extent allowed by law:

(A) The RAC shall be transferred to new owner by contractual agreement or by the new owner's consent to comply with the RAC, as applicable;

(B) Rental Assistance Payments will continue uninterrupted in accordance with the terms of the RAC; and

(C) Voluntary and involuntary transfers or conveyances of property must adhere to the ownership transfer process in 10 TAC §10.406, (as amended), regarding Ownership Transfer requests.

(i) Advertising and Affirmative Marketing.

(1) Advertising Materials. Upon the execution of the Property Agreement, the Owner must provide materials for the purpose of advertising the Eligible Multifamily Property, including but not limited to:

(A) Depictions of the units including floor plans;

(B) Brochures;

(C) Tenant selection criteria;

(D) House rules;

(E) Number and size of available units;

(F) Number of units with accessible features (including, but not limited to units designed to meet Uniform Federal Accessibility Standards, the Fair Housing Act, or the Americans with Disabilities Act);

(G) Documentation on access to transportation and commercial facilities; and

(H) A description of onsite amenities.

(2) Affirmative Marketing. TDHCA and its service partners will be responsible for affirmatively marketing the Program to Eligible Applicants.

(3) At any time, TDHCA may choose to advertise the Eligible Multifamily Property, even if the Eligible Multifamily Property has not yet entered into a RAC.

(j) Leasing Activities.

(1) Segregation of Assisted Units. The Owner must take actions or adopt procedures to ensure that the Assisted Units are not segregated to one area of a building (such as on a particular floor or part of a floor in a building) or in certain sections within the Eligible Multifamily Property.

(2) Form of Lease. The Owner will use the HUD Section 811 PRA Model Lease (HUD-92236-PRA), Exhibit 11 of the Cooperative Agreement and any Department approved Addendums, for all Eligible Families once a RAC is signed. The initial lease will be for not less than one year.

(3) Communication. Owners are required to document in writing all communication between the Eligible Tenant and the Owner, or Owner-designated agent regarding applications, notifications, evictions, complaints, non-renewals and move outs.

(4) Lease Renewals and Changes. The Owner must notify TDHCA of renewals of leases with Eligible Families and any changes to the terms of the lease.

(k) Rent.

(1) Tenant Rent Payment. The Owner is responsible for remitting any Tenant Rent payment due to the Eligible Tenant if the Utility Allowance exceeds the Total Tenant Payment. The Owner will determine the Tenant Rent payment of the Eligible Tenant, based on HUD Handbook 4350.3, and is responsible for collecting the Tenant Rent payment.

(2) Rent Increase. Owner must provide the Eligible Tenant with at least 30 days notice before increasing rent.

(3) Rent Restrictions. Owner will comply with the following rent restrictions:

(A) If the Development has a TDHCA enforced rent restriction that is equal to or lower than Fair Market Rent (FMR), the initial rent is the maximum TDHCA enforced rent restriction at the Development.

(B) If there is no existing TDHCA enforced rent restriction on the Unit, or the existing TDHCA enforced rent restriction is higher than FMR, TDHCA will work with the Owner to conduct a market analysis of the Eligible Multifamily Property to support that a rent higher than FMR is attainable.

(C) After the signing of the original RAC with TDHCA, the Owner may request a new anniversary date to be consistent with other rent restrictions on the Eligible Multifamily Property allowed by TDHCA.

(D) After the signing of the original RAC, upon request from the Owner to TDHCA, Rents may be adjusted on the anniversary date of the RAC.

(E) Adjustments may not result in higher rents charged for an Assisted Unit as compared to a non-assisted unit. The calculation or methodology used for the annual increase amount will be identified in the Eligible Multifamily Property's RAC.

(F) Owner can submit a request for a rent increase or to change the contract anniversary date using HUD Form 92458.

(l) Vacancy; Transfers; Eviction; Household Changes.

(1) Holding Assisted Units. Once an Owner signs a RAC, the Eligible Multifamily Property must hold an available Assisted Unit for 60 days while a qualified Eligible Applicant applies for and moves into the Assisted Unit.

(2) Notification. Owner will notify TDHCA of determination of ineligibility or the termination of any participating Eligible Families or any member of a participating Eligible Family.

(3) Initial Lease-up. Owners of newly constructed, acquired and/or rehabilitated Eligible Multifamily Property must notify TDHCA no later than 180 days before the Eligible Multifamily Property will be available for initial move-in.

(4) Vacancy. Once a RAC is executed, the Owner must notify TDHCA of the vacancy of any Unit, including those that have not previously been occupied by an Eligible Tenant, as soon as possible, not to exceed seven calendar days from when the Owner learns that an Assisted Unit will become available. TDHCA will acknowledge receipt of the notice by responding to the Owner in writing within three business days from when the notice is received by the Department stating whether or not TDHCA will be accepting the

available Unit, and making a subsequent referral for the Unit. If the qualifying Eligible Tenant vacates the Assisted Unit, TDHCA will determine if the remaining family members are eligible for continued assistance from the Program.

(5) Vacancy Payment. An Owner of an Eligible Multifamily Property that is not under a RAC may not receive a vacancy payment. TDHCA may make vacancy payments not to exceed 80% of the Contract Rent, during this time to the Eligible Multifamily Property, potentially for up to 60 days. After 60 days, the Owner may lease that Assisted Unit to a non-Eligible Tenant.

(6) Household Changes; Transfers. Owners must notify TDHCA if the Eligible Tenant requests an Assisted Unit transfer. Owner will notify TDHCA of any household changes in an Assisted Unit within three business days. If the Owner determines that, because of a change in household size, an Assisted Unit is smaller than appropriate for the Eligible Tenant to which it is leased or that the Assisted Unit is larger than appropriate, the Owner shall refer to TDHCA's written policies regarding family size, unit transfers, and waitlist management. If the household is determined by TDHCA to no longer be eligible, TDHCA will notify the Owner. Rental Assistance Payments with respect to the Assisted Unit will not be reduced or terminated until the eligible household has been transferred to an appropriately sized Assisted Unit.

(7) Eviction and Nonrenewal. Owners are required to notify the Department by sending a copy of the applicable notice via email to the 811 TDHCA Point of Contact, as identified in the Owner Participation Agreement, at least three calendar days before providing a Notice to Vacate or a Notice of Nonrenewal to the Tenant.

(m) Construction Standards, Accessibility, Inspections and Monitoring.

(1) Construction Standards. Upon execution of a RAC, the Eligible Multifamily Property shall be required to conform to Uniform Physical Conditions Standards (UPCS) which are uniform national standards established by HUD for housing that is decent, safe, sanitary, and in good repair. The site, building exterior, building systems, dwelling units and common areas of the Eligible Multifamily Property, as more specifically described in 24 CFR §5.703, must be inspected in any physical inspection of the property.

(2) Inspection. Prior to occupancy, the Eligible Tenant must be given the opportunity to be present for the move-in unit inspection.

(3) Repair and Maintenance. Owner will perform all repair and maintenance functions, including ordinary and extraordinary maintenance; will replace capital items; and will maintain the premises and equipment, appurtenant thereto, in good repair, safe and sanitary condition consistent with HUD and TDHCA requirements.

(4) Accessibility. Owner must ensure that the Eligible Multifamily Property will meet or exceed the accessibility requirements under 24 CFR Part 8, which implements Section 504 of the Rehabilitation Act of 1973; the Fair Housing Act Design Manual; Titles II and III of the Americans with Disabilities Act (42 U.S.C. §§12131 - 12189), as implemented by the U.S. Department of Justice regulations at 28 CFR Parts 35 and 36; and the Federal Fair Housing Act as implemented by HUD at 24 CFR Part 100. However, Assisted Units can consist of a mix of accessible units for those persons with physical disabilities and non-accessible units for those persons without physical disabilities.

(n) Owner Training. The Owner is obligated to train all property management staff on the requirements of the Program. The Owner will ensure that any new property management staff who is involved in serving Eligible Families review training materials found on the Program's webpage including webinars, manuals and checklists.

(o) Reporting Requirements. Owner shall submit to TDHCA such reports on the operation and performance of the Program as required by the Participation Agreement and as may be required by

TDHCA. Owner shall provide TDHCA with all reports necessary for TDHCA's compliance with 24 CFR Part 5, or any other federal or state law or regulation.

(p) Environmental Laws and Regulations.

(1) Compliance with Laws and Regulations. Owner must comply with, as applicable, any federal, state, or local law, statute, ordinance, or regulation, whether now or hereafter in effect, pertaining to health, industrial hygiene, or the environmental conditions on, under, or about the Land or the Improvements, including without limitation, the following, as now or hereafter amended:

(A) Hazardous Materials Transportation Act (49 U.S.C.A. §1801 et seq.);

(B) Insecticide Fungicide and Rodenticide Act (7 U.S.C.A. §136 et seq.);

(C) National Environmental Policy Act (42 U.S.C. §4321 et seq.) (NEPA);

(D) Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C.A. §9601 et seq.) (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. No. 99-499, 100 Stat. 1613, as amended Pub. L. No. 107-377) (Superfund or SARA);

(E) Resource, Conservation and Recovery Act (24 U.S.C.A. §6901 et seq.) (RCRA);

(F) Toxic Substances Control Act, (15 U.S.C.A. §2601 et seq.);

(G) Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C.A. §1101 et seq.);

(H) Clean Air Act (42 U.S.C.A. §7401 et seq.) (CAA);

(I) Federal Water Pollution Control Act and amendments (33 U.S.C.A. §1251 et seq.) (Clean Water Act or CWA);

(J) Any corresponding state laws or ordinances including but not limited to Chapter 26 of the Texas Water Code regarding Water Quality Control;

(K) Texas Solid Waste Disposal Act (Chapter 361 of the Texas Health & Safety Code, formerly Tex. Rev. Civ. Stat. Ann. Art. 4477-7);

(L) Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act (Chapter 363 of the Texas Health & Safety Code);

(M) County Solid Waste Control Act (Chapter 364 of the Texas Health & Safety Code);

(N) Texas Clean Air Act (Chapter 382 of the Texas Health & Safety Code);

(O) Hazardous Communication Act (Chapter 502 of the Texas Health & Safety Code); and

(P) Regulations, rules, guidelines, or standards promulgated pursuant to such laws, statute and regulations, as such statutes, regulations, rules, guidelines, and standards, as amended from time to time.

(2) Environmental Review. The environmental effects of each activity carried out with funds provided under this Agreement must be assessed in accordance with the provisions of the Program Requirements, National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. §432 et seq.). Each such activity must have an environmental review completed and support documentation prepared in accordance with 10 TAC §10.305 complying with the NEPA, including screening for vapor encroachment following American Society for Testing and Materials (ASTM) 2600-10.

(q) Labor Standards.

(1) Owner understands and acknowledges that every contract for the construction (rehabilitation, adaptive reuse, or new construction) of housing that includes 12 or more units assisted with Program funds must contain provisions in accordance with Davis-Bacon Regulations.

(2) Owner understands and acknowledges that every contract involving the employment of mechanics and laborers of said construction shall be subject to the provisions, as applicable, of the Contract Work Hours and Safety Standards Act, as amended (40 U.S.C. §§3701 to 3708), Copeland (Anti-Kickback) Act

(40 U.S.C. §3145), the Fair Labor Standards Act of 1938, as amended (29 U.S.C. §201, et seq.) and Davis-Bacon and Related Acts (40 U.S.C. §§3141 - 3148).

(3) Owner further acknowledges that if more housing units are constructed than the anticipated 11 or fewer housing units, it is the Owner's responsibility to ensure that all the housing units will comply with these federal labor standards and requirements under the Davis-Bacon Act as supplemented by the U.S. Department of Labor regulations ("Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction" at 29 CFR Part 5).

(4) Owner also understands that structuring the proposed assistance for the rehabilitation or construction of housing under this Agreement to avoid the applicability of the Davis-Bacon Act is prohibited.

(5) Construction contractors and subcontractors must comply with regulations issued under these federal acts described herein, with other federal laws, regulations pertaining to labor standards, including but not limited to "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction" at 29 CFR Part 5, HUD Federal Labor Provisions (HUD form 4010).

(r) Lead-Based Paint. Housing assisted with Program funds is subject to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4821 - 4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. §§4851 - 4856), and implementing regulations Title X of the 1992 Housing and Community Development Act at 24 CFR Part 35, (including subparts A, B, J, K, M and R). Owner shall also comply with the Lead: Renovation, Repair, and Painting Program Final Rule, 40 CFR Part 745 and Response to Children with Environmental Intervention Blood Lead Levels. Failure to comply with the lead-based paint requirements may be subject to sanctions and penalties pursuant to 24 CFR §35.170.

(s) Limited English Proficiency. Owner shall comply with the requirements in Executive Order 13166 of August 11, 2000, reprinted at 65 FR 50121, August 16, 2000, Improving Access to Services for Persons with Limited English Proficiency and 67 FR 41455. To ensure compliance the Owner must take reasonable steps to insure that LEP persons have meaningful access to the program and activities. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary.

(t) Procurement of Recovered Materials. Owner, its subrecipients, and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

(u) Drug-Free Workplace. Owner will follow the Drug-Free Workplace Act of 1988 (41 U.S.C §701, et seq.) and HUD's implementing regulations at 2 CFR Part 2429. Owner affirms by executing the Certification Regarding Drug-Free Workplace Requirements attached hereto as Addendum B, that it is implementing the Drug-Free Workplace Act of 1988.

(v) Nondiscrimination, Fair Housing, Equal Access and Equal Opportunity.

(1) Equal Opportunity. The Owner agrees to carry out an Equal Employment Opportunity Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1965, as amended, and its implementing regulations at 41 CFR Part 60.

(2) Fair Housing Poster. The Owner is required to place a fair housing poster (HUD-928.1 and HUD-9281.A) provided by TDHCA in the leasing office, online, or anywhere else rental activities occur pursuant to 24 CFR §200.620(e). A copy of the poster in Spanish and in English can be found at <http://www.tdhca.state.tx.us/section-811-pra/participating-agents.htm>.

(3) Nondiscrimination Laws. Owner shall ensure that no person shall, on the grounds of race, color, religion, sex, disability, familial status, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any Program or activity funded in whole or in part with funds provided under this Agreement. Owner shall follow Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. §2000d et seq.), the Age Discrimination Act of 1975 (42 U.S.C. §6101 et seq.) and its implementing regulations at 24 CFR Part 146, Titles II and III of the Americans with Disabilities Act (42 U.S.C. §§12131 - 12189; 47 U.S.C. §§155, 201, 218 and 255) as implemented by U.S. Department of Justice at 28 CFR Parts 35 and 36, Section 527 of the National Housing Act (12 U.S.C. §1701z-22), the Equal Credit Opportunity Act (15 U.S.C. §1691 et seq.), the Equal Opportunity in Housing (Executive Order 11063 as amended by Executive Order 12259) and its implementing regulations at 24 CFR Part 107 and The Fair Housing Act (42 U.S.C. §3601 et seq.), as implemented by HUD at 24 CFR Part 100-115.

(4) Affirmatively Furthering Fair Housing. By Owner's execution of the Agreement and pursuant to Section 808(e)(5) of the Fair Housing Act, Owner agrees to use funds in a manner that follows the State of Texas' "Analysis of Impediments" or "Assessment of Fair Housing", as applicable and as amended, and will maintain records in this regard.

(5) Protections for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking. Subpart L of 24 CFR part 5 shall apply to the Assisted Units in Eligible Multifamily Properties.

(w) Security of Confidential Information.

(1) Systems Confidentiality Protocols. Owner must undertake customary and industry standard efforts to ensure that the systems developed and utilized under this Agreement protect the confidentiality of every Eligible Applicant's and Eligible Tenant's personal and financial information, both electronic and paper, including credit reports, whether the information is received from the Eligible Applicants, Tenants or from another source. Owner must undertake customary and industry standard efforts so that neither they nor their systems vendors disclose any Eligible Applicant's or Tenant's personal or financial information to any third party, except for authorized personnel in accordance with this Agreement.

(2) Protected Health Information. If Owner collects or receives documentation for disability, medical records or any other medical information in the course of administering the Program, Owner shall comply with the Protected Health Information state and federal laws and regulations, as applicable, under 10 TAC §1.24, (relating to Protected Health Information), Chapter 181 of the Texas Health and Safety Code, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Pub. L. 104-191, 110 Stat. 1936, enacted August 21, 1996), and the HIPAA Privacy Rules (45 CFR Part 160 and Subparts A and E of 45 CFR Part 164). When accessing confidential information under this Program, Owner hereby acknowledges and further agrees to comply with the requirements under the Interagency Data Use Agreement between TDHCA and the Texas Health and Human Services Agencies dated October 1, 2015, as amended.

(x) Real Property Acquisition and Relocation. Except as otherwise provided by federal statute, HUD-assisted programs or projects are subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act or URA) (42 U.S.C. §4601), and the government wide implementing regulations issued by the U.S. Department of Transportation at 49 CFR Part 24. The Uniform Act's protections and assistance apply to acquisitions of real property and

displacements resulting from the acquisition, rehabilitation, or demolition of real property for federal or federally assisted programs or projects. With certain limited exceptions, real property acquisitions for a HUD-assisted program or project must comply with 49 CFR Part 24, Subpart B. To be exempt from the URA's acquisition policies, real property acquisitions conducted without the threat or use of eminent domain, commonly referred to as voluntary acquisitions, the Owner must satisfy the applicable requirements of 49 CFR §24.101(b)(1) - (5). Evidence of compliance with these requirements must be maintained by the recipient. The URA's relocation requirements remain applicable to any tenant who is displaced by an acquisition that meets the requirements of 49 CFR §24.101(b)(1) - (5). The relocation requirements of the Uniform Act, and its implementing regulations at 49 CFR Part 24, cover any person who moves permanently from real property or moves personal property from real property as a direct result of acquisition, rehabilitation, or demolition for a program or project receiving HUD assistance. While there are no statutory provisions for temporary relocation under the URA, the URA regulations recognize that there are circumstances where a person will not be permanently displaced but may need to be moved from a project for a short period of time. Appendix A of the URA regulation (49 CFR §24.2(a)(9)(ii)(D)) explains that any tenant who has been temporarily relocated for a period beyond one year must be contacted by the displacing agency and offered URA relocation assistance.

(y) Dispute Resolution; Conflict Management.

(1) Eligible Tenant Disputes. The Owner or Owner's representative is required to participate in a Dispute Resolution process, as required by HUD, to resolve an appeal of an Eligible Tenant dispute with the Owner.

(2) Agreement Disputes. In accordance with Tex. Gov't Code 2306.082, it is TDHCA's policy to encourage the use of appropriate alternative dispute resolution procedures (ADR) under the Governmental Dispute Resolution Act and the Negotiated Rulemaking Act (Chapters 2009 and 2006 respectively, Tex. Gov't Code), to assist in the fair and expeditious resolution of internal and external disputes involving the TDHCA and the use of negotiated rulemaking procedures for the adoption of TDHCA rules. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by TDHCA's ex parte communications policy, TDHCA encourages informal communications between TDHCA staff and the Owner, to exchange information and informally resolve disputes. TDHCA also has administrative appeals processes to fairly and expeditiously resolve disputes. If at any time the Owner would like to engage TDHCA in an ADR procedure, the Owner may send a proposal to TDHCA's Dispute Resolution Coordinator. For additional information on TDHCA's ADR policy, see TDHCA's Alternative Dispute Resolution and Negotiated Rulemaking at 10 TAC §1.17.

(3) Conflict Management. The purpose of the Conflict Management process is to address any concerns that Owner or Owner's agent or representative may have with an Eligible Family. At any time, an Eligible Family may choose to give consent to their Section 811 service coordinator to work directly with the property manager of the Eligible Multifamily Property. However, such consent cannot be made a condition of tenancy.

Attachment [2]: Preamble, including required analysis, for a proposed amendment to 10 TAC §23.61, Tenant-Based Rental Assistance (TBRA) General Requirements

The Texas Department of Housing and Community Affairs (the Department) proposes an amendment to 10 TAC §23.61, Tenant-Based Rental Assistance (TBRA) General Requirements. The purpose of this amendment is to correct a citation referenced in the rule.

Tex. Gov't Code §2001.0045(b) does apply to the amendment being proposed and no exceptions are applicable. However, the rule already exists and the correction is only administrative in nature. There are no costs associated with this rule action, therefore no costs or impacts warrant a need to be offset.

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

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

1. Mr. Robert Wilkinson, Executive Director, has determined that, for the first five years the proposed amendment would be in effect, the proposed amendment does not create or eliminate a government program, but relates to correcting a citation in the rule.

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

3. The proposed amendment does not require additional future legislative appropriations.

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

5. The proposed amendment is not creating a new regulation.

6. The proposed amendment will not repeal an existing regulation.

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

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

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

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

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

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



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

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of the amended section would be clarity in requirements. There will not be economic costs to individuals required to comply with the amended section.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held October 25, 2019, to November 25, 2019, to receive input on the proposed amended section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email [brooke.boston@tdhca.state.tx.us](mailto:brooke.boston@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, NOVEMBER 25, 2019.

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

§23.61, Tenant-Based Rental Assistance (TBRA) General Requirements

- (a) The Household must participate in a self-sufficiency program.
- (b) The amount of assistance will be determined using the Housing Choice Voucher method.
- (c) Households certifying to zero income must also complete a questionnaire which includes a series of questions regarding how basic hygiene, dietary, transportation, and other living needs are met.
- (d) The minimum Household contribution toward gross monthly rent must be ten percent of the Household's gross monthly income.
- (e) Activity funds are limited to:
  - (1) rental subsidy: Each rental subsidy term is limited to no more than twenty-four (24) months. Total lifetime assistance to a Household may not exceed thirty-six (36) months cumulatively, except that a maximum of twenty-four (24) additional months of assistance, for a total of sixty (60) months cumulatively may be approved if:
    - (A) the Household has applied for a Section 8 Housing Choice Voucher, HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program, and is placed on a waiting list during their TBRA participation tenure; and
    - (B) the Household has not been removed from the waiting list for the Section 8 Housing Choice Voucher, HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program due to failure to respond to required notices or other ineligibility factors; and
    - (C) the Household has not been denied participation in the Section 8 Housing Choice Voucher, HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program while they were being assisted with HOME TBRA; and
    - (D) the Household did not refuse to participate in the Section 8 Housing Choice Voucher, HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program when a voucher was made available.
  - (2) security deposit: no more than the amount equal to two (2) month's rent for the unit.
  - (3) utility deposit in conjunction with a TBRA rental subsidy.
- (f) The payment standard is determined at the date of assistance. The payment standard utilized by the Administrator must be:
  - (1) for metropolitan counties and towns, the current U.S. Department of Housing and Urban Development (HUD) Small Area Fair Market Rent for the Housing Choice Voucher Program;
  - (2) for nonmetropolitan counties and towns, the current HUD Fair Market Rent for the Housing Choice Voucher Program;
  - (3) for a HOME assisted unit, the current applicable HOME rent; or
  - (4) the Administrator may submit a written request to the Department for approval of a different payment standard. The request must be evidenced by a market study or documentation that the PHA serving the market area has adopted a different payment standard. An Administrator may request a Reasonable Accommodation as defined in §1.204 of this title for a specific Household if the Household, because of a disability, requires the features of a specific unit, and units with such features are not available in the Service Area at the payment standard.

(g) Administrators must select the method under which funds for administrative costs and Activity soft costs may be reimbursed prior to execution of an RSP agreement or at Application for an award of funds. Administrators of an existing RSP Agreement may request an amendment to an existing Agreement in accordance with Section 23.1 of this Chapter. Applicants and Administrators may choose from one of the following options, and in any case funds for Administrative costs may be increased by an additional 1 percent of Direct Activity Costs if Match is provided in an amount equal to 5 percent or more of Direct Activity Costs:

(1) Funds for Administrative costs are limited to 4 percent of Direct Activity Costs, excluding Match funds, and Activity soft costs are limited to \$1,200 per Household assisted. Activity soft costs may reimburse expenses for costs related to determining Household income eligibility, including recertification, and conducting Housing Quality Standards (HQS) inspections. All costs must be reasonable and customary for the Administrator's Service Area; or

(2) Funds for Administrative costs are limited to 8 percent of Direct Activity Costs, excluding Match funds, and Administrator may not be reimbursed for Activity soft costs.

(h) Administrators must have a written agreement with Owner that the Owner will notify the Administrator within one (1) month if a tenant moves out of an assisted unit prior to the lease end date.

(i) Administrator must not approve a unit if the owner is by consanguinity, affinity, or adoption the parent, child, grandparent, grandchild, sister, or brother of any member of the assisted Household, unless the Administrator determines that approving the unit would provide Reasonable Accommodation for a Household member who is a Person with Disabilities. This restriction against Administrator approval of a unit only applies at the time the Household initially receives assistance under a Contract or Agreement, but does not apply to Administrator approval of a recertification with continued tenant-based assistance in the same unit.

(j) Administrators must maintain Written Policies and Procedures established for the HOME Program in accordance with §10.802640 of this Title, except that where the terms Owner, Property, or Development are used Administrator or Program will be substituted, as applicable. Additionally, the procedures in subsection (l) of this section (relating to the Violence Against Women Act (if in conflict with the provisions in §10.802640 of this Title)) will govern.

(k) Administrators serving a Household under a Reservation Agreement may not issue a Certificate of Eligibility to the Household prior to reserving funds for the Activity.

(l) Administrators are required to comply with regulations and procedures outlined in the Violence Against Women Act (VAWA), and provide tenant protections as established in the Act.

(1) An Administrator of Tenant-Based Rental Assistance must provide all Applicants (at the time of admittance or denial) and Households (before termination from the Tenant-Based Rental Assistance program or from the dwelling assisted by the Tenant-Based Rental Assistance Coupon Contract) the Department's "Notice of Occupancy Rights under the Violence Against Women Act", (based on HUD form 5380) and also provide to Households "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking" (HUD form 5382) prior to execution of a Rental Coupon Contract and before termination of assistance from the Tenant-Based Rental Assistance program or from the dwelling assisted by the Tenant-Based Rental Assistance coupon contract.

(2) Administrator must notify the Department within three (3) calendar days when tenant submits a Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and/or alternate

documentation to Administrator and must submit a plan to Department for continuation or termination of assistance to affected Household members.

(3) Notwithstanding any restrictions on admission, occupancy, or terminations of occupancy or assistance, or any Federal, State or local law to the contrary, Administrator may "bifurcate" a rental coupon contract, or otherwise remove a Household member from a rental coupon contract, without regard to whether a Household member is a signatory, in order to evict, remove, terminate occupancy rights, or terminate assistance to any individual who is a recipient of TBRA and who engages in criminal acts of physical violence against family members or others. This action may be taken without terminating assistance to, or otherwise penalizing the person subject to the violence.

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**BOARD ACTION REQUEST**  
**COMMUNITY AFFAIRS DIVISION**  
**OCTOBER 10, 2019**

Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC §2.203, Termination and Reduction of Funding for CSBG Eligible Entities; an order adopting new 10 TAC §2.203, Termination and Reduction of Funding for CSBG Eligible Entities; an order adopting the repeal of 10 TAC §2.204, Contents of a Quality Improvement Plan; an order adopting new 10 TAC §2.204, Contents of a Quality Improvement Plan; and directing that they be published for adoption in the *Texas Register*

**RECOMMENDED ACTION**

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

**WHEREAS**, 10 TAC §§2.203 and 2.204 required revisions to streamline the Department's process for implementing the U.S. Department of Health and Human Services' (HHS) Information Memorandum (IM) 116 which describes the process of termination and reduction of funding for Community Services Block Grant (CSBG) Eligible Entities; and

**WHEREAS**, at the Board meeting of July 25, 2019, the Board approved the draft of these rules for public comment, comment has been received, and the Department has taken into consideration the comment and provided a reasoned response in the rules now being presented for adoption;

**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 adoption of the actions herein in the form presented to this meeting, to be published in the *Texas Register* for adoption, and in connection therewith, make such non-substantive technical corrections, including changes to the preambles, as they may deem necessary to effectuate the foregoing.

**BACKGROUND**

At the Board meeting of July 25, 2019, the Board approved proposed revisions within 10 TAC §§2.203 and 2.204 which would streamline the Department's implementation of the U.S. Department of Health and Human Services (HHS) Information Memorandum (IM) 116 process. HHS IM 116 is a guidance tool to support state implementation of requirements of specific actions of the CSBG Act. 10 TAC §§2.203 and 2.204 specifically address how the Department will enforce noncompliance with program requirements for Community Services Block Grant (CSBG) Eligible Entities (e.g., the initiation and approval of a Quality Improvement Plan (QIP) and its

contents, the State Office of Administrative Hearings process, the termination of an entity's CSBG Eligible Entity status or a reduction of its CSBG funding).

The revisions streamline the Department's implementation of the HHS IM 116 process by removing superfluous language, using consistent terminology, and describing steps in further detail that may have been confusing or imprecise as they exist in their present form. It is staff's goal that readers of the new rules will find the process easier to follow and understand.

The proposed rules were published for public comment in the *Texas Register* on August 9, 2019. Public comment was accepted from August 9, 2019, through September 9, 2019. In keeping with the requirements of the Administrative Procedures Act, staff has reviewed all comments received and has provided a reasoned response to those comments within the preamble to the adoption of the rule that follows below. Comment was received from two organizations.

The full set of rules being repealed and adopted, including the *Texas Register* preambles, are provided in Attachments 1 and 2. Behind the preambles, the rule is provided in blackline form reflecting the changes being recommended since the time of publication for public comment.

**Attachment 1: Preamble, including required analysis, for adopting the repeal of 10 TAC §2.203, Termination and Reduction of Funding for CSBG Eligible Entities and 10 TAC §2.204, Contents of a Quality Improvement Plan**

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of §2.203, Termination and Reduction of Funding for CSBG Eligible Entities and §2.204, Contents of a Quality Improvement Plan. The purpose of the repeal is to eliminate outdated rules that warrant revision while adopting new updated rules under separate action.

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

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

Mr. Wilkinson has determined that, for the first five years the repeal would be in effect:

1. The repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making a change to an existing activity, the administration of the Community Services Block Grant (CSBG).
2. The repeal does not require a change in work that would require the creation of new employee positions, nor is the repeal significant enough to reduce workload to a degree that any existing employee positions are eliminated.
3. The repeal does not require additional future legislative appropriations.
4. The repeal does not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The repeal is not creating a new regulation, except that it is being replaced by new rules simultaneously to provide for revisions.
6. The action will repeal existing regulations, but is associated with a simultaneous readoption making changes to an existing activity, of the rules governing the administration of the CSBG.
7. The repeal will not increase nor decrease the number of individuals subject to the rule's applicability.
8. The repeal will not negatively nor positively affect this state's economy.

**b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.** The Department has evaluated the repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

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



2. The rules relate to the Department's implementation of the U.S. Department of Health and Human Services' (HHS) Information Memorandum (IM) 116. Other than a CSBG Eligible Entity who may consider itself a small or micro-business, which would not generally be the case, no small or micro-businesses are subject to the rules. However, if a CSBG Eligible Entity considers itself a small or micro-business, the rule changes provide greater clarity.

3. The Department has determined that because the rules apply only to existing CSBG Eligible Entities, there will be no economic effect on small or micro-businesses or rural communities.

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

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

The Department has evaluated the rules as to their possible effects on local economies and has determined that for the first five years the repeal will be in effect there would be no economic effect on local employment because the rules relate only to a process which has already been in effect for existing CSBG Eligible Entities; therefore, no local employment impact statement is required to be prepared for the rules.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that the rules pertain to all CSBG Eligible Entities throughout the state, regardless of location, there are no "probable" effects of the new rules on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Robert Wilkinson, Executive Director, has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed sections would be a more streamlined version of the HHS IM 116 implementation process. There will not be economic costs to individuals required to comply with the repealed sections.

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

g. SUMMARY OF PUBLIC COMMENT. The Department accepted public comment August 9, 2019, to September 9, 2019. There were no comments submitted regarding the repeal of 10 TAC §§2.203 and 2.204.

STATUTORY AUTHORITY. The repeal is adopted pursuant to TEX. GOV'T CODE, §2306.053, which authorizes the Department to adopt rules. Except as described herein the repeal affects no other code, article, or statute.

**10 TAC §2.203. Termination and Reduction of Funding for CSBG Eligible Entities.**

**10 TAC §2.204. Contents of a Quality Improvement Plan.**

## **Attachment 2: Preamble for adopting new 10 TAC §2.203, Termination and Reduction of Funding for CSBG Eligible Entities and 10 TAC §2.204, Contents of a Quality Improvement Plan**

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC §2.203, Termination and Reduction of Funding for CSBG Eligible Entities and new 10 TAC §2.204, Contents of a Quality Improvement Plan. The purpose of the new sections are to update the rules to provide greater clarity to Community Services Block Grant (CSBG) Eligible Entities on how the Department will implement the U.S. Department of Health and Human Services' (HHS) Information Memorandum (IM) 116 process.

Tex. Gov't Code §2001.0045(b) does not apply to the new rules because it is exempt under §2001.0045(c)(4), which exempts rule changes necessary to receive a source of federal funds or to comply with federal law. The revisions provide more clarity to the process that will be used to either terminate the status of a CSBG Eligible Entity or reduce a CSBG Eligible Entity's funding. The Department does not anticipate any costs associated with this rule action. Compliance with the new rules are intended to ensure adherence to federal statute while operating federal grants.

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

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

Mr. Robert Wilkinson, Executive Director, has determined that, for the first five years the new rules would be in effect:

1. The new rules do not create or eliminate a government program, but relate to the repeal, and simultaneous readoption making changes to an existing activity, the administration of the Community Services Block Grant (CSBG).
2. The new rules do not require a change in work that would require the creation of new employee positions, nor are the new rules significant enough to reduce workload to a degree that eliminates any existing employee positions.
3. The new rules do not require additional future legislative appropriations.
4. The new rules will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The new rules are not creating new regulations, except that they are replacing rules being repealed simultaneously to provide for revisions.
6. The new rules will not expand, limit, or repeal existing regulations.
7. The new rules will not increase nor decrease the number of individuals subject to the rule's applicability.
8. The new rules will not negatively nor positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting the new rules, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, §2306, Subchapter E.

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

2. The new rules relate to the Department's implementation of the U.S. Department of Health and Human Services' (HHS) Information Memorandum (IM) 116. Other than a CSBG Eligible Entity who may consider itself a small or micro-business, which would not generally be the case, no small or micro-businesses are subject to the rules. However, if a CSBG Eligible Entity considers itself a small or micro-business, the rule changes provide greater clarity.

3. The Department has determined that because the new rules apply only to existing CSBG Eligible Entities, there will be no economic effect on small or micro-businesses or rural communities.

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

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

The Department has evaluated the new rules as to their possible effect on local economies and has determined that for the first five years the new rules will be in effect there would be no economic effect on local employment because the rules relate only to a process which has already been in effect for existing CSBG Eligible Entities; therefore, no local employment impact statement is required to be prepared for the new rules.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that the new rules pertain to all CSBG Eligible Entities throughout the state, regardless of location, there are no "probable" effects of the new rules on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has also determined that, for each year of the first five years the new rules are in effect, the public benefit anticipated as a result of the new rules would be a more streamlined version of the HHS IM 116 implementation process. There will not be economic costs to individuals required to comply with the new rules because the processes described by the rules have already been in place through the rules found at the sections being repealed.

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

g. SUMMARY OF PUBLIC COMMENT AND REASONED RESPONSE. The Department accepted public comment August 9, 2019, to September 9, 2019. Comments regarding the new rules were accepted in writing from (1) Stella Rodriguez, Executive Director, Texas Association of Community Action Agencies (represents 34 of 40 CSBG Eligible Entities) and (2) Dan Boyd, Executive Director, Community Services of Northeast Texas, Inc.

**1. Chapter 2, Subchapter B, §2.203(i)**

COMMENT SUMMARY (1): Commenter requests that the duration of time between the day of the Department’s notification to an Eligible Entity’s Executive Director and Board members and the day that staff will request that the Department’s Governing Board authorize staff to pursue a hearing with the State Office of Administrative Hearings (SOAH) be extended from “30 days” to “45 calendar days”. Extending the time by 15 days will provide ample time for an entity’s Board of Directors to schedule and hold a board meeting to discuss the issues and how to proceed. Not all local boards meet monthly and will therefore require that a special meeting of the local Board of Directors be scheduled. Furthermore, an extension of 15 days provides the opportunity to comply with the Texas Open Meeting Act in posting the agenda of the local board meeting. Inserting “calendar” before “days” provides consistency with the rest of the rule when days are referenced.

STAFF RESPONSE: To provide consistency in language and to ensure ample time is provided for a local board of directors to meet prior to the Department’s Governing Board meeting, the amount of time between notification to the Eligible Entity’s Executive Director and Board members and the Department’s Governing Board meeting will be changed from “30 days” to “45 calendar days”. Thank you for the comment.

**2. Chapter 2, Subchapter B, §2.203(k)**

COMMENT SUMMARY (2): Commenter points out that the rule, as written, suggests that the Department will only ever be involved in the termination of funding rather than also in the reduction of funding whereas the CSBG Act and IM 116 state that the Department may either terminate or reduce funding. Commenter states that the rule as written is contradictory and stands counter to the CSBG Act.

STAFF RESPONSE: To ensure consistency with the CSBG Act and IM 116, language regarding the reduction of funding will be added to the rule in Subsection (k) so that it conveys the Department may either terminate or reduce funding to a CSBG Eligible Entity for cause. Thank you for the comment.

h. STATUTORY AUTHORITY. The new rules are adopted pursuant to TEX. GOV’T CODE, §2306.053, which authorizes the Department to adopt rules. Except as described herein the new sections affect no other code, article, or statute.

***[Note that these rules are shown in blackline form below, reflecting the changes being recommended since the time of publication for public comment, for the purpose of the posting of Board materials but will be shown as clean proposed new language when submitted to the Texas Register for adoption.]***

**10 TAC §2.203. Termination and Reduction of Funding for CSBG Eligible Entities.**

(a) This section describes the Department's process for implementing HHS Information Memorandum 116 (Corrective Action, Termination, or Reduction of Funding) (IM 116) and 42 U.S.C. 9915.

(b) Capitalized words used herein have the meaning assigned in, Chapter 1 of this title (relating to Administration), Chapter 2 of this title (relating to Enforcement), Chapter 6 of this title (relating to Community Affairs Programs), or assigned by federal or state law.

(c) A Deficiency may be identified through failure to resolve issues identified in an onsite monitoring review, a review of the Eligible Entity's Single Audit, a review prompted by a complaint, through the Department's procedures for reviewing performance and expenditure reports, or in any other review under 42 U.S.C. §9914(a)(1) - (4).

(d) If a Deficiency is identified, the Eligible Entity will be notified in writing. The Department will also review the training and technical assistance that has been provided to the Eligible Entity to determine if further training and technical assistance germane to the Deficiency is warranted. If so, the Eligible Entity will be offered additional training and technical assistance that specifically focuses on the Deficiency.

(e) If an Eligible Entity does not respond to the written notification, does not resolve the Deficiency, or does not propose a reasonable corrective action plan, the uncorrected Deficiency identified by the Department will be considered a final decision that the Eligible Entity has failed to comply with requirements in a review pursuant to the CSBG Act, and can be considered cause for proceedings to terminate Eligible Entity status or reduce funding in accordance with IM 116 and 42 U.S.C. §§9908(b)(8) and 9915. Such a determination will be issued in a final determination letter from the Department to the Eligible Entity.

(f) If the Department determines that the development and implementation of a Quality Improvement Plan (QIP) is an appropriate requirement and/or that additional training and technical assistance are needed, that requirement will be stated in the final determination letter. The Eligible Entity will be provided 25 calendar days from the date of the final determination letter to submit a proposed QIP compliant with §2.204 of this subchapter and identifying dates for correction. In general, the Deficiency should be cured within 60 calendar days from the date of the final determination letter. If a Deficiency will require more than 60 calendar days, the Eligible Entity must explain why and propose a later date for correction, which the Department may elect to accept or deny. In the event a Deficiency cannot be corrected due to it being a singular past occurrence, the Eligible Entity must demonstrate to the Department that the Deficiency's cause has been identified and properly addressed, so that the Deficiency will not reoccur.

(g) Within 25 calendar days from the date the proposed QIP is received, the Department will either approve it or specify the reasons it cannot be approved. While the Department is reviewing the submitted QIP, the Department will consider the corrective action timeline proposed by the Eligible Entity and may accept that timeline, or recommend an alternate timeline, based on the nature of the Deficiency, and the nature of the correction. The Eligible Entity's inability to resolve the Deficiency within a reasonable timeframe may trigger the commencement of formal legal proceedings to terminate Eligible Entity status.

(h) The Department approved QIP must be implemented as soon as possible and resolution of the Deficiency must be fully met within the specified and approved timelines agreed to by the Department.

(i) If it is determined and/or documented that training and technical assistance are not appropriate; that a QIP is not appropriate; the QIP has not been approved; the QIP has not been

met within the specified and approved timeline agreed to within the QIP; or the processes described in subsection (f) of this section have failed to resolve the Deficiency, the Department will contact the Executive Director of the Eligible Entity, and all known members of the Eligible Entity's Board to notify them that staff will be requesting that the Department's Governing Board authorize staff to pursue a hearing with the State Office of Administrative Hearings (SOAH). Such notification will be made at least ~~30~~45 calendar days prior to the date of the meeting of the Department's Governing Board. If approved by the Department's Governing Board, the Department will arrange and set a date for a hearing with SOAH. If the Eligible Entity does not respond or appear for the SOAH hearing, the consideration of termination of the Eligible Entity's status or reduction of funding will appear on the agenda at a subsequent regularly scheduled meeting of the Department's Governing Board. An Eligible Entity receiving notice of the initiation of a contested case before SOAH is reminded that they will need to read and comply with SOAH's requirements in the way they handle and respond to the matter.

(j) SOAH will issue a proposal for decision to the TDHCA Governing Board recommending whether there is cause, as defined by the CSBG Act, 42 U.S.C. §9908(c), to terminate or reduce funding to the Eligible Entity. The TDHCA Governing Board will be provided the proposal for decision and it will be considered as part of any final order by the Board in the matter.

(k) If the TDHCA Governing Board determines that there is cause to terminate or reduce funding, pursuant to 42 U.S.C. §9915, the Department will notify the Eligible Entity that it has the right under 42 U.S.C. §9915 to seek review of the decision by the HHS. If HHS does not overturn the decision, or if the Eligible Entity does not seek HHS review, on the 90th calendar day after the TDHCA Governing Board decision, the CSBG funding will be reduced, or the entity's entity will lose its status as an Eligible Entity under the CSBG Act, and all active CSBG Contracts will be terminated on the 90th calendar day after the Board decision.

(l) Any right or remedy given to the Department by this chapter does not preclude the existence of any other right or remedy, nor shall any action or lack of action by the Department in the exercise of any right or remedy be deemed a waiver of any other right or remedy.

#### **10 TAC §2.204. Contents of a Quality Improvement Plan.**

(a) Capitalized words used herein have the meaning assigned in, Chapter 1 of this title (relating to Administration), Chapter 2 of this title (relating to Enforcement), Chapter 6 of this title (relating to Community Affairs Programs), or assigned by federal or state law.

(b) If a QIP is required of an Eligible Entity under §2.203(f) of this chapter (relating to Termination and Reduction of Funding for CSBG Eligible Entities), it must comply with this section. While each QIP developed by an Eligible Entity is unique and must be responsive to the specific Deficiency identified, all of the items in this section, at a minimum, must be addressed.

(c) The QIP must set forth a timeline for resolution of each Deficiency. In general, issues should be fully resolved within 60 calendar days from the final determination letter issued to the Eligible Entity as referenced in §2.203(e) of this chapter.

(d) At minimum, the QIP must identify:

(1) Specific actions that will be taken to address each Deficiency;

(2) The date by when each Deficiency will be corrected; and

(3) If applicable, an explanation for any Deficiency that cannot be corrected within 60 calendar days.

1h

**BOARD ACTION REQUEST**

**OCI, HTF & NSP DIVISION**

**OCTOBER 10, 2019**

Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC Chapter 21, Minimum Energy Efficiency Requirements for Single Family Construction Activities, an order adopting new 10 TAC Chapter 21, Minimum Energy Efficiency Requirements for Single Family Construction Activities, and directing their publication in the *Texas Register*

**RECOMMENDED ACTION**

**WHEREAS**, pursuant to Tex. Gov't Code §2306.053, the Department is authorized to adopt rules governing the administration of the Department and its programs;

**WHEREAS**, pursuant to Tex. Gov't Code §2306.187, the Department is required to develop and adopt rules relating to Minimum Energy Efficiency requirements for new construction, reconstruction, and rehabilitation activities for Single Family dwellings;

**WHEREAS**, the repeal of 10 TAC Chapter 21 and the new 10 TAC Chapter 21, Minimum Energy Efficiency Requirements for Single Family Construction Activities, are being made to clarify definitions, simplify dates of applicability, allow programs to outline certification of compliance with 10 TAC Chapter 21 within their respective Program Rules, include requirements for door installation, and improve readability; and

**WHEREAS**, at the Board meeting of July 25, 2019, the Board approved the draft of this rule for publication in the *Texas Register* for public comment from August 9, 2019, through September 9, 2019, public comment was received, and the Department is providing a reasoned response for the rule now being presented for adoption;

**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 repeal of 10 TAC Chapter 21 and adoption of new 10 TAC Chapter 21, regarding Minimum Energy Efficiency Requirements for Single Family Construction Activities, in the form presented to this meeting, to be published in the *Texas Register* for adoption and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing, including the preparation of the subchapter specific preambles.



## **BACKGROUND**

The purpose of repealing and replacing the Minimum Energy Efficiency Requirements for Single Family Construction Activities is to further clarify construction requirements. The proposed rule was published in the *Texas Register* on August 9, 2019, for public comment through September 9, 2019, and one public comment was received. Staff recommends a change to the proposed rule as published in the *Texas Register* in order to address the public comment. The rule is attached in black line form to indicate the change since the time of publication for public comment.

The significant updates originally proposed in the rule in July to 10 TAC Chapter 21 are:

- §21.2, General Requirements. This section was reworded to improve readability. The reference to certifying compliance with 10 TAC Chapter 21 was moved from §21.2, General Requirements, to §21.6, Rehabilitation Activities, and reworded to designate individual program rules as the place for defining certifications of compliance.
- §21.4, New Construction and Reconstruction Activities. This section updates the citation of the state-mandated energy code for all residential construction.
- §21.5, Manufactured Housing Unit Activities. This section removes dates of applicability that have passed and are no longer valid.
- §21.6, Rehabilitation Activities. This section removes dates of applicability that have passed and are no longer valid and contains the reference to certifying compliance which was moved from §21.2, General Requirements (above). This section also adds requirements for door installation.

**Attachment A: Preamble, including required analysis, for adoption of the repeal of 10 TAC Chapter 21, Minimum Energy Efficiency Requirements for Single Family Construction Activities**

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 21, §§21.2 – 21.6, Minimum Energy Efficiency Requirements for Single Family Construction Activities. The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

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

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

Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal will be in effect:

1. The repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous adoption making changes to the rule governing Minimum Energy Efficiency Requirements for Single Family Construction Activities.
2. The repeal does not require a change in work that will require the creation of new employee positions, nor will the repeal reduce workload to a degree that any existing employee positions are eliminated.
3. The repeal does not require additional future legislative appropriations.
4. The repeal does not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department.
5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.
6. The action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to the existing procedures for Minimum Energy Efficiency Requirements for Single Family Construction Activities.
7. The repeal will not increase nor decrease the number of individuals subject to the rule's applicability.
8. The repeal will not negatively nor positively affect this state's economy.

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

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

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

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

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal will be in effect there will be no economic effect on

local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be an elimination of an outdated rule while adopting a new updated rule under separate action. There will be no economic costs to individuals required to comply with the repealed section.

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

PUBLIC COMMENT AND REASONED RESPONSE. The public comment period was held from August 9, 2019, through September 9, 2019, to receive input on the proposed repealed rule. No comments on the repeal were received.

STATUTORY AUTHORITY. The repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules, and §2306.187, which authorizes the Department to develop and adopt rules relating to Minimum Energy Efficiency requirements for new construction, reconstruction, and rehabilitation activities for Single Family dwellings.

Except as described, herein the repealed rule affects no other code, article, or statute.

§21.1. Purpose.

§21.2. General Requirements.

§21.3. Definitions.

§21.4. New Construction and Reconstruction Activities.

§21.5. Manufactured Housing Unit Activities.

§21.6. Rehabilitation Activities.

**Attachment B: Preamble, including required analysis, for adopting new 10 TAC Chapter 21, Minimum Energy Efficiency Requirements for Single Family Construction Activities**

The Texas Department of Housing and Community Affairs (the Department) adopts, with changes, new 10 TAC Chapter 21, §§21.2 – 21.6, Minimum Energy Efficiency Requirements for Single Family Construction Activities. The purpose of the new rule is to further clarify construction requirements.

Tex. Gov't Code §2001.0045(b) does apply to the rule being adopted because no exceptions apply, however it should be noted that no costs are associated with this action that would have prompted a need to be offset.

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

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

Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed rule will be in effect:

1. The new rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes governing Minimum Energy Efficiency Requirements for Single Family Construction Activities.
2. The new rule does not require a change in work that will require the creation of new employee positions, nor will the new rule reduce workload to a degree that any existing employee positions are eliminated.
3. The new rule does not require additional future legislative appropriations.
4. The new rule does not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department.
5. The new rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.
6. The new rule will not limit, expand or repeal an existing regulation but merely revises a rule.
7. The new rule will not increase nor decrease the number of individuals subject to the rule's applicability.
8. The new rule will not negatively nor positively affect the state's economy.

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

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

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

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

The Department has evaluated the new rule as to its possible effects on local economies and has

determined that for the first five years the new rule will be in effect there will be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new rule is in effect, the public benefit anticipated as a result of the new rule would be to further clarify Minimum Energy Efficiency Requirements for Single Family Construction Activities. The purpose of the new rule is to further clarify construction requirements. There will be no economic costs to individuals required to comply with the new rule.

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

PUBLIC COMMENT AND REASONED RESPONSE. The public comment period was held from August 9, 2019, through September 9, 2019, to receive input on the new rule. One commenter provided public comment: the Webb County Self-Help Center (1). The comment summary and reasoned response are below. One revision in response to the comment is recommended to the rule.

1. §21.6 (b), Certification of Compliance for Rehabilitation Activities (Commenter 1)

Comment Summary: The commenter requested more detail on the requirements and checklists that will be used to certify that a rehabilitation activity complies with the minimum energy efficiency standards.

Staff Response: While the language in this section was not newly proposed language in the draft, the Department understands that the need for greater clarity would be helpful for Administrators. Because the Single Family Programs Umbrella Rule governs multiple single family programs, it is not the best location to provide that added clarity. The individual program rules and program manuals are better suited for providing the further details and forms for how an Administrator would proceed with certifying compliance with this rule. As such, staff is adding a clause to specifically state that such requirements will be outlined in the Program Rules. Staff suggests the revision as reflected below.

**§21.6. Rehabilitation Activities.**

“(b) Certifications of compliance with this Chapter shall be conducted by the Administrator or a code or other Qualified Inspector for release of final payment from the Department as outlined in the Program Rule.”

STATUTORY AUTHORITY. The new rule is adopted pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules, and §2306.187, which authorizes the Department to

develop and adopt rules relating to Minimum Energy Efficiency requirements for new construction, reconstruction, and rehabilitation activities for Single Family dwellings.

Except as described, herein the adopted new rule affects no other code, article, or statute. The agency certifies that legal counsel has reviewed the new rule and found it to be within the state agency's legal authority to adopt.

## **CHAPTER 21 MINIMUM ENERGY EFFICIENCY REQUIREMENTS FOR SINGLE FAMILY CONSTRUCTION ACTIVITIES**

### **§21.1. Purpose.**

(a) Tex. Gov't Code, §2306.187 requires that the Department develop and adopt rules relating to Minimum Energy Efficiency requirements for new construction, reconstruction, and rehabilitation activities in Single Family Programs.

(b) This chapter describes the Minimum Energy Efficiency Requirements for all single family construction activities, which includes the Department's HOME Investments Partnership Program (HOME), Housing Trust Fund (HTF), Neighborhood Stabilization Program (NSP), Office of Colonia Initiatives (OCI) Programs, and other single family programs as developed by the Department.

### **§21.2. General Requirements.**

Unless otherwise noted, this chapter only applies to single family programs. Program rules may impose additional requirements related to any provision of this chapter. Elements of local residential building codes that require a greater degree of energy efficiency than this chapter, in part or in whole, shall also be followed.

### **§21.3. Definitions.**

(a) Any capitalized terms that are defined in Tex. Gov't Code, §2306, and Chapter 1 of this title (relating to Administration), Chapter 2 of this title (relating to Enforcement), Chapter 20 of this title (relating to Single Family Programs Umbrella Rule), or other applicable Department Program Rule, have, when capitalized, the meanings ascribed to them therein.

(b) The following words and terms, when used in this chapter, shall have the following meanings unless the context or the Notice of Funding Availability (NOFA) indicates otherwise.

(1) ENERGY STAR Certified Appliances, Equipment, and Products--Labeled appliances, equipment, and products that are independently certified to save energy without sacrificing features or functionality, meeting the US EPA's specifications for energy efficiency and performance.

(2) ENERGY STAR Certified Home--A new construction home that has earned the ENERGY STAR label and has undergone a process of inspections, testing, and verification to meet requirements set forth by the US EPA.

(3) ENERGY STAR Certified Manufactured Housing Unit--A manufactured home that has been designed, produced and installed by the home manufacturer to meet ENERGY STAR requirements for energy efficiency.

(4) RESNET--Residential Energy Services Network. RESNET is an independent, nonprofit organization established in 1995 to help homeowners reduce the cost of their utility bills by making their homes more energy efficient. RESNET-certified Home Energy Systems Raters are required to inspect, test, and verify homes for ENERGY STAR certification.

(5) WaterSense Labeled Fixtures--Labeled products that are backed by independent, third-party testing and certification, meeting the US EPA's specifications for water efficiency and performance.

(6) US EPA--United States Environmental Protection Agency.

#### **§21.4. New Construction and Reconstruction Activities.**

- (a) Single family residential dwellings, as defined in §388.002 of the Health and Safety Code, that are newly constructed or reconstructed shall comply with §388 of the Health and Safety Code (Texas Building Energy Performance Standards).
- (b) Effective September 1, 2016, the Texas State Energy Conservation Office adopted the 2015 International Residential Code (Chapter 11) as the state-mandated energy code for all residential construction, which includes one- and two-family residences of three stories or less above grade.

#### **§21.5. Manufactured Housing Unit Activities.**

All Manufactured Housing Units installed as replacement for sub-standard housing shall be ENERGY STAR certified.

#### **§21.6. Rehabilitation Activities.**

- (a) All Rehabilitation activities shall comply with this chapter.
- (b) Certifications of compliance with this Chapter shall be conducted by the Administrator or a code or other Qualified Inspector for release of final payment from the Department as outlined in the Program Rule.
- (c) If the proposed scope of work or the awarded construction contract for the Rehabilitation of an existing single family residential unit includes an item described in paragraphs (1) - (10) of this subsection, the specific requirement so noted in paragraphs (1) - (10) shall apply:
- (1) Replacement or installation of central heating and cooling equipment and appliances shall be installed in accordance with the manufacturer's instructions and the requirements of Chapter 14 of the 2015 International Residential Code;
  - (2) Replacement or installation of duct systems serving heating, cooling and ventilation equipment shall be installed in accordance with the provisions of Chapter 16 of the 2015 International Residential Code;
  - (3) If central heating and cooling equipment is replaced or installed, attic insulation shall be installed or increased according to Chapter 11, Figure N1102.1.2 of the 2015 International Residential Code, including insulation covering the top plates of exterior walls. Eave baffles and access hatches shall be installed as specified in Chapter 11, Sections N1102.2.3- N1102.2.4 of the 2015 International Residential Code.
  - (4) If ductless heating and cooling systems (also known as mini-split, multi-split or variable refrigerant flow (VRF) heat pump systems) are replaced or installed, they shall be ENERGY STAR certified;
  - (5) If exhaust fans are replaced or installed in bathrooms or kitchens, they shall be ENERGY STAR certified and installed in accordance with Chapter 15 of the 2015 International Residential Code;
  - (6) If windows are installed, they shall be ENERGY STAR certified windows, meeting the U-factor and Solar Heat Gain Coefficient for the climate zone of the dwelling as identified in Chapter 11, Table N1102.1.2 of the 2015 International Residential Code;
  - (7) If doors are installed, they shall be ENERGY STAR certified doors;
  - (8) Electrical fixtures, equipment and appliances that are replaced or installed, where applicable, shall be ENERGY STAR certified products;



(9) Plumbing fixtures that are replaced or installed, where applicable, shall be WaterSense labeled products;  
and

(10) Domestic water heaters, storage and tankless, when replaced or installed, shall meet the Federal Energy Conservation Standards required by 10 CFR 430.32, as they may be revised from time to time.

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**BOARD ACTION REQUEST**

**OCI, HTF & NSP DIVISION**

**OCTOBER 10, 2019**

Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC Chapter 24, Texas Bootstrap Loan Program Rule, and an order adopting new 10 TAC Chapter 24, Texas Bootstrap Loan Program Rule, and directing their publication for public comment in the *Texas Register*

**RECOMMENDED ACTION**

**WHEREAS**, pursuant to Tex. Gov't Code §2306.053, the Department is authorized to adopt rules governing the administration of the Department and its programs;

**WHEREAS**, pursuant to Tex. Gov't Code, §2306.752, the Department is required to establish, operate, monitor, and fund an Owner-Builder Loan Program to enable Owner-Builders to purchase or refinance real property on which to build new residential housing or improve existing residential housing;

**WHEREAS**, the repeal of 10 TAC Chapter 24 and the new 10 TAC Chapter 24, Texas Bootstrap Loan Program Rule, are being made to further clarify program administration and Nonprofit Owner-Builder Housing Program certifications, modify the length of extension the Department may grant to an Owner-Builder, and improve readability and consistency throughout with the re-ordering of phrases and updating of terms; and

**WHEREAS**, at the Board meeting of July 25, 2019, the Board approved the draft of this rule for publication in the *Texas Register* for public comment from August 9, 2019, through September 9, 2019, and no public comment was received;

**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 repeal 10 TAC Chapter 24 and adopt the new 10 TAC Chapter 24, regarding the Texas Bootstrap Loan Program Rule, in the form presented to this meeting, to be published in the *Texas Register* for adoption and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing, including the preparation of the subchapter specific preambles.

## **BACKGROUND**

The purpose of repealing and replacing the Texas Bootstrap Loan Program Rule is to further clarify program administration and Nonprofit Owner-Builder Housing Program certifications, modify the length of extension the Department may grant to an Owner-Builder, and improve readability and consistency throughout with the re-ordering of phrases and updating of terms.

The proposed rule was published in the *Texas Register* on August 9, 2019, for public comment through September 9, 2019, and no public comment was received. Staff recommends adoption of the proposed rule as published in the *Texas Register*. The rule is attached in its final form.

The significant updates originally made to the proposed version were:

- 10 TAC §24.9 Program Administration, modifies the length of extension the Department may grant an Owner-Builder to their Applicant eligibility letter expiration date from 90 days to 180 days to complete construction and close their Program Loan, with the requirement that the Owner-Builder requalify for the program.
- 10 TAC §24.13 Nonprofit Owner-Builder Housing Program Certification, include citation to applicable requirements regarding Fair Housing, Affirmative Marketing, Homebuyer Counseling, and Reasonable Accommodation.

**Attachment A: Preamble, including required analysis, for adoption of the repeal of 10 TAC Chapter 24, Texas Bootstrap Loan Program**

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 24, §§24.1 – 24.13, Texas Bootstrap Loan Program Rule. The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

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

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

Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal will be in effect:

1. The repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous adoption making changes to the rule governing the Texas Bootstrap Loan Program.
2. The repeal does not require a change in work that will require the creation of new employee positions, nor will the repeal reduce workload to a degree that any existing employee positions are eliminated.
3. The repeal does not require additional future legislative appropriations.
4. The repeal does not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department.
5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.
6. The action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to the existing procedures for the Texas Bootstrap Loan Program.
7. The repeal will not increase nor decrease the number of individuals subject to the rule's applicability.
8. The repeal will not negatively nor positively affect the state's economy.

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

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

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

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

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

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be an elimination of an outdated rule while adopting a new updated rule under separate action. There will be no economic costs to individuals required to comply with the repealed section.

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

PUBLIC COMMENT AND REASONED RESPONSE. The public comment period was held from August 9, 2019, through September 9, 2019, to receive input on the proposed repealed rule. No comments were received.

STATUTORY AUTHORITY. The repeal is made pursuant to TEX. GOV'T CODE §2306.053, which authorizes the Department to adopt rules.

Except as described, herein the repealed rule affects no other code, article, or statute.

#### 10 TAC Chapter 24, Texas Bootstrap Loan Program

§24.1. Purpose.

§24.2. Definitions.

§24.3. Allocation of Funds.

§24.4. Participant Requirements.

§24.5. Program Activities.

§24.6. Prohibited Activities.

§24.7. Distribution of Funds.

§24.8. Criteria for Funding and Reservations.

§24.9. Program Administration.

§24.10. Owner-Builder Qualifications.

§24.11. Types of Funding Transactions.

§24.12. Property Guidelines and Related Issues.

§24.13. Nonprofit Owner-Builder Housing Program Certification.

**Attachment B: Preamble, including required analysis, for adopting new 10 TAC Chapter 24, Texas Bootstrap Loan Program Rule**

The Texas Department of Housing and Community Affairs (the Department) adopts, without changes, new 10 TAC Chapter 24, §§24.1 – 24.13, Texas Bootstrap Loan Program Rule. The purpose of the new rule is to further clarify program administration and Nonprofit Owner-Builder Housing Program certifications, modify the length of extension the Department may grant to an Owner-Builder, and improve readability and consistency throughout with the re-ordering of phrases and updating of terms.

Tex. Gov't Code §2001.0045(b) does apply to the rule being adopted because no exceptions apply, however it should be noted that no costs are associated with this action that would have prompted a need to be offset.

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

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

Bobby Wilkinson, Executive Director, has determined that, for the first five years the rule will be in effect:

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

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

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

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

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

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

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new rule is in effect, the public benefit anticipated as a result of the new rule would be to further clarify the Texas Bootstrap Loan Program. The purpose of the new rule is to further clarify aspects of program administration and to improve readability. There will be no economic costs to individuals required to comply with the new rule.

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

PUBLIC COMMENT AND REASONED RESPONSE. The public comment period was held from August 9, 2019, through September 9, 2019, to receive input on the new rule. No comments were received and no changes are recommended to the rule.

STATUTORY AUTHORITY. The new rule is adopted pursuant to TEX. GOV'T CODE, §2306.053, which authorizes the Department to adopt rules.

Except as described, herein the adopted new rule affects no other code, article, or statute. The agency certifies that legal counsel has reviewed the new rule and found it to be within the state agency's legal authority to adopt.



## **CHAPTER 24 TEXAS BOOTSTRAP LOAN PROGRAM RULE**

### **§24.1. Purpose.**

(a) This chapter clarifies the Texas Bootstrap Loan Program, administered by the Texas Department of Housing and Community Affairs (the Department), also known as the Owner-Builder Loan Program. The Texas Bootstrap Loan Program provides assistance to income-eligible individuals, families and households to purchase or refinance real property, on which to build new residential housing or improve existing residential housing. The Program is administered in accordance with Tex. Gov't Code, Chapter 2306, Subchapter FF, Chapter 1 of this title (relating to Administration), Chapter 2 of this title (relating to Enforcement), Chapter 20 of this title (relating to Single Family Programs Umbrella Rule), Chapter 21 of this title (relating to Minimum Energy Efficiency Requirements for Single Family Construction Activities), and Chapter 26 of this title (relating to Texas Housing Trust Fund Rule).

(b) The Texas Bootstrap Loan Program is a Self-Help construction Program that is designed to provide very low-income families an opportunity to help themselves attain homeownership or repair their existing homes through sweat equity. All applicable building codes and housing standards are adhered to under this Program.

### **§24.2. Definitions.**

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Other definitions may be found in Tex. Gov't Code, Chapter 2306, Chapter 1 of this title (relating to Administration), Chapter 2 of this title (relating to Enforcement), Chapter 20 of this title (relating to Single Family Programs Umbrella Rule), Chapter 21 of this title (relating to Minimum Energy Efficiency Requirements for Single Family Construction Activities), and Chapter 26 of this title (relating to Texas Housing Trust Fund Rule).

(1) Capital Recovery Fee--A charge or assessment imposed by a political subdivision against new development in order to generate revenue for funding or recouping the costs of capital improvements or facility expansions necessitated by and attributable to the new development. The term includes amortized charges, lump-sum charges, contributions in aid of construction, and any other fee that functions as described by this definition.

(2) Loan Origination Agreement--A written agreement, including all amendments thereto between the Department and the Participant that authorizes the Participant to originate certain loans under the Texas Bootstrap Loan Program.

(3) NOHP--Nonprofit Owner-Builder Housing Provider.

(4) Owner-Builder--A person, other than a person who owns or operates a construction business and who owns or purchases a piece of real property through a warranty deed and deed of trust; or is purchasing a piece of real property under a Contract for Deed entered into before January 1, 1999; and who undertakes to make improvements to that property.

(5) Participant--An NOHP or Colonia Self-Help Center that is certified by the Department to participate in the Program.

(6) Program--Texas Bootstrap Loan Program also known as the Owner-Builder Loan Program.

(7) Self-Help Housing Construction--The Self-Help Housing process enables Owner-Builders to Rehabilitate, Reconstruct or construct their own homes, usually working together in groups on other eligible Owner-Builder's houses at the same time. Owner-Builders use their own "sweat equity" to reduce the cost of their homes.

#### **§24.3. Allocation of Funds.**

- (a) The Department administers all Texas Bootstrap Loan Program funds provided to the Department in accordance with Tex. Gov't Code, Chapter 2306, Subchapter FF.
- (b) The Department may make loans for the Texas Bootstrap Loan Program from:
- (1) Available funds in the Housing Trust Fund established under Tex. Gov't Code, §2306.201; or
  - (2) Federal block grants that may be used for the purposes of this chapter.
- (c) Each state fiscal year the Department shall transfer at least \$3 million (or another amount if so required by Tex. Gov't Code and/or the General Appropriations Act) to the Texas Bootstrap Loan Program from money received under federal block grants or from available funds in the Housing Trust Fund.
- (d) The Department may use up to 10% of Program funds available per state fiscal year to enhance the ability of tax-exempt organizations described by Tex. Gov't Code §2306.755(a) to increase the number of such organizations that are able to implement the Program. The Department shall use that available revenue to provide financial assistance, technical training and management support.

#### **§24.4. Participant Requirements.**

- (a) Eligible Participants. The following organizations or entities are eligible to become Participants in the Texas Bootstrap Loan Program:
- (1) Colonia Self Help Centers established under Tex. Gov't Code, Chapter 2306, Subchapter Z; or
  - (2) NOHPs certified by the Department pursuant to Tex. Gov't Code §2306.755.
- (b) Eligibility requirements. The Participant must enter into a Loan Origination Agreement with the Department in order to be eligible to submit an Activity through the Reservation System. The Participant must have the capacity to administer and manage resources as evidenced by previous experience of managing state and/or federal programs.

#### **§24.5. Program Activities.**

Texas Bootstrap Loan Program funds may be used to finance affordable housing and promote homeownership through acquisition, new construction, reconstruction, or rehabilitation of residential housing. All eligible organizations that satisfy the requirements of this chapter may reserve funds by submitting a loan application on behalf of an Owner-Builder Applicant for the Texas Bootstrap Loan Program.

#### **§24.6. Prohibited Activities.**

The fees described in paragraphs (1) - (8) of this section are prohibited Program expenditures and may not be charged directly to the Owner-Builder; however, these expenses may be charged as an allowable cost by a third party lender or servicer for a Texas Bootstrap loan:

- (1) Payment of delinquent property taxes or related fees or charges on properties to be assisted with Texas Bootstrap Loan Program funds;
- (2) Loan origination fees;
- (3) Application fees;
- (4) Discount fees;
- (5) Underwriter fees;
- (6) Loan processing fees;
- (7) Loan servicing fees; and
- (8) Other fees not approved by the Department in writing prior to expenditure.

**§24.7. Distribution of Funds.**

(a) Set-Asides. In accordance with Tex. Gov't Code §2306.753(d), at least two-thirds of the dollar amount of Program loans made in each fiscal year must be made to Owner-Builders whose real property is located in a census tract that has a median household income that is not greater than 75% of the median state household income for the most recent year for which statistics are available.

(b) Balance of State. The remaining one-third of the dollar amount of Program loans made may be made to Owner-Builders anywhere in the state.

(c) Loan Priority. The Department may allow a Participant access to the Reservation System 24 hours prior to all other Participants for reservations for Owner-Builder Applicants that meet the following criteria:

- (1) Annual household income is less than \$17,500; or
- (2) Real property is located in a county and/or municipality that agrees in writing to waive the Capital Recovery Fees, building permit fee or other fees related to the house(s) to be built with the loan proceeds. Owner-Builder Applicant will not receive priority if there are none of the above fees imposed by the county and/or municipality or water supply company.

**§24.8. Criteria for Funding and Reservations.**

(a) The Department will distribute Program funds in accordance with the Texas Housing Trust Fund (SHTF) Plan in effect at the time. The Department will publish an announcement for a NOFA in the Texas Register and post the NOFA on the Department's website. The rules referenced in §24.1 of this chapter (relating to Purpose) and the NOFA will establish and define the terms, conditions, and maximum Reservation amounts allowed per Participant. The Department may also set a deadline for receiving Reservations and/or Applications. The NOFA will indicate the approximate amount of available funds. The Department may increase the amount of funds made available through the NOFA from time to time without republishing the NOFA in the Texas Register. Such increases will be reflected on the Department's website.

(b) Any Reservation containing false information will be disqualified. The Department will review and process all Reservations in the order received.

(c) Reservations received by the Department in response to a NOFA will be handled as described in paragraphs (1) - (5) of this subsection.

(1) The Department will accept Reservations until all funds under the NOFA have been committed. The Department may limit the eligibility of Reservations in the NOFA.

- (2) Each Reservation will be assigned a "received date" based on the date and time the Reservation was entered into the Texas Bootstrap Loan Program Reservation system. Each Reservation will be reviewed in accordance with the Program rules.
- (3) Reservations must comply with all applicable Texas Bootstrap Loan Program requirements or regulations established in this chapter. Reservations that do not comply with such requirements may be disqualified. The Participant will be notified in writing of any cancelled and/or disqualified Reservations.
- (4) If a Reservation contains deficiencies which, in the determination of the Department, require clarification or correction of information submitted at the time of the Reservation, the Department may request clarification or correction in the form of a deficiency notice to the Participant. If the Participant is unable to cure any deficiencies within 15 calendar days, the Department may decline to fund the Reservation. The Department may provide one 15-calendar-day extension to the deficiency notice.
- (5) Prior to issuing an Applicant eligibility letter the Department may decline to fund any Reservation entered into the Reservation system if the proposed housing Activities do not, in the Department's sole determination, represent a prudent use of the Department's funds. The Department is not obligated to proceed with any action pertaining to any Reservation which are entered, and may decide it is in the Department's best interest to refrain from committing the funds. If the Department has issued an Applicant eligibility letter to the Owner-Builder Applicant, but the Participant and/or Owner-Builder Applicant has not complied with all the Program rules and guidelines, the Department may suspend funding until the Participant and/or Owner-Builder Applicant has satisfied all requirements of the Program.

#### **§24.9. Program Administration.**

- (a) Pursuant to Tex. Gov't Code §2306.754(b), the Department shall not exceed \$45,000 in household assistance for any Texas Bootstrap Loan Program loan. If it is not possible for an Owner-Builder to purchase necessary real property and build or rehabilitate adequate housing for \$45,000, the Owner-Builder must obtain the additional amounts necessary from other sources, which may include other types of Department funds with the exception of other State Housing Trust Funds.
- (b) The Department shall make loans for Owner-Builder Applicants to enable them to:
- (1) Build new residential housing, including the purchase or refinance of real property, if needed, on which to undertake such Activity; or
  - (2) Improve existing residential housing, including the purchase or refinance of real property, if needed, on which to undertake such Activity.
- (c) Upon approval by the Department, the Participant shall enter into, execute, and deliver to the Department the Loan Origination Agreement. The Department may terminate the Loan Origination Agreement in whole or in part if the Participant has not performed as outlined in the Program Rule, NOFA, Loan Origination Agreement, and/or Program Manual.
- (d) If the Owner-Builder Applicant qualifies for the Program, the Department will issue an Applicant eligibility letter which reserves up to \$45,000 in funds for 12 months from the date of the Applicant eligibility letter. The Owner-Builder Applicant will not be required to re-qualify if the Owner-Builder Applicant closes by the expiration date on the Applicant eligibility letter. If an Owner-Builder Applicant does not close by the expiration date, the Owner-Builder Applicant must re-qualify for the Program; however, the Department may grant an extension of up to 180 days from the expiration date on the original

Applicant eligibility letter. If the Owner-Builder Applicant fails to close on the loan after the extension is granted the Reservation and/or loan will be cancelled.

(e) Roles and responsibilities for administering the Program Contract. Participants are required to:

- (1) Qualify potential Owner-Builders for loans;
- (2) Provide Owner-Builder homeownership education classes;
- (3) Supervise and assist Owner-Builders to build and/or Rehabilitate housing;
- (4) Facilitate loans made or purchased by the Department under the Program; and
- (5) Implement and administer the Program on behalf of the Department.

(f) Loan Servicing Agreement. If the Participant wishes to service the loans originated on behalf of the Department it must obtain prior approval and enter into a Loan Servicing Agreement with the Department. A Participant's approval to begin servicing loans and/or to continue servicing loans is at the written discretion of the Department.

(g) First Year Consultation Agreement. If the Department notifies the Participant that an Owner-Builder has failed to make a scheduled payment due under the Program loan, or other payments due under the Program loan documents, within the first 12 months of funding, the Participant must meet with the Owner-Builder and provide counseling to assist in bringing the payments current. After such consultation and in the event that the Department and Participant are not able to bring the Program loan current, the Department in accordance with its administrative rules may apply appropriate graduated sanctions leading up to, but not limited to, deobligation of funds and future debarment from participation in the Program.

(h) Administrative Fee. The Participant will be granted a 10% administration fee upon completion of the house and funding of each Mortgage loan.

(i) Blueprints. If the activity is new construction, Participant must submit a legible copy of the proposed blueprints for approval by the Department prior to the Participant accepting applications for Owner-Builder Applicants. Blueprints must include the construction requirements pursuant to Tex. Gov't Code §2306.514, and be prepared and executed by an architect or engineer licensed by the state of Texas.

(j) Work Write-up. If Participant's activity is rehabilitation, Participant must adhere to TMCS and submit work write-ups and cost estimations for Department approval prior to construction.

(k) Loan Program requirements. The Department may purchase or originate loans that conform to the lending parameters and the specific loan Program requirements as described in paragraphs (1) - (7) of this subsection:

- (1) Pursuant to Tex. Gov't Code §2306.754(b), the maximum Texas Bootstrap Loan Program loan amount per Household shall not exceed \$45,000. If it is not possible for an Owner-Builder to purchase necessary real property and build or rehabilitate adequate housing for \$45,000, the Owner-Builder must obtain the additional amounts necessary from other sources, which may include other types of Department funds with the exception of other State Housing Trust Funds;
- (2) Minimum loan amount is \$1,000;
- (3) Loan term may not exceed 30 years;
- (4) Loan term may not be less than five years;
- (5) 0% non-interest loan;
- (6) When refinancing a Contract for Deed, the Department will not disburse any portion of the Department's loan until the Owner-Builder receives a deed to the property; and

(7) Owner-Builder must have resided in Texas for the preceding six months prior to the date of loan application.

(l) Loan Assumption. A Program loan is assumable if the Department determines that the Owner-Builder Applicant complies with all Program requirements in effect at the time of the assumption.

(m) Forgivable Loan. The term for a Forgivable Loan may not exceed 15 years from the date of closing.

#### **§24.10. Owner-Builder Qualifications.**

The Owner-Builder must:

- (1) Own or be purchasing a piece of real property through a warranty deed or Contract for Deed;
- (2) Not have an annual household income that exceeds 60% of the greater of the state or local area median family income as determined by HUD's current income table. Eligibility Income is the total Household income including all income (salary, tips, bonus, overtime, alimony, child support, benefits, etc.) received by the Owner-Builder Applicant, co-Applicant and/or any other persons living in the home. This income is used to determine whether the household income exceeds 60% of the Area Median Family Income or 60% of the State Median Family Income, adjusted for Household size, whichever is greater. No income is excluded in this calculation.
- (3) Execute a Self-Help Agreement committing to specify and satisfy one of the criteria provided for in subparagraphs (A) - (D) of this paragraph:
  - (A) Provide at least 65% of the labor necessary to build or rehabilitate the proposed housing through a state-certified Participant;
  - (B) Provide an amount of labor equivalent to 65% in connection with building or rehabilitating housing for others through a state-certified Participant;
  - (C) Provide through the noncontract labor of friends, family, or volunteers and through personal labor at least 65% of the labor necessary to build or rehabilitate the proposed housing through a state-certified Participant; or
  - (D) If due to a documented disability or other limiting circumstances the Owner-Builder cannot provide the amount of personal labor otherwise required, provide through the noncontract labor of friends, family or volunteers at least 65% of the labor necessary to build or rehabilitate the proposed housing through a state-certified Participant;
- (4) Successfully complete an Owner-Builder homeownership education class prior to loan funding;
- (5) Not have any outstanding judgments and/or liens on the property; and
- (6) The Owner-Builder must occupy the residence as a Principal Residence within 30 days of the end of the construction period or the closing of the loan, whichever is later. If the Owner-Builder fails to do so, the Department may declare the loan in default and accelerate the note. Any additional habitable structures must be removed from the property prior to closing; however, a portion of the structure may be utilized as storage upon the Department's written approval prior to closing.

#### **§24.11. Types of Funding Transactions.**

All Mortgage Loans will be evidenced by a promissory note and will be secured by a lien on the subject property. The following transaction types are permitted by the Department under the Program.

- (1) Purchase Money. All Program funds are used to finance the purchase of a single-family dwelling unit and/or a piece of real property. The Department makes a permanent loan to the Owner-Builder and the Owner-Builder's repayment obligation begins immediately. In certain situations, eligible closing costs may be financed by the loan proceeds.
- (2) Residential Construction. This transaction is treated as a purchase and is a one-time closing with the Owner-Builder. Construction period may be up to 12 months.
- (3) Interim Construction (Closing with Participant). Interim construction is a commercial transaction between the Participant and the Department that is with respect to a specific Owner-Builder. The construction period may be up to 12 months. Once the construction of the home is completed, the closing with the Owner-Builder will take place as a purchase money transaction.
- (4) Purchase of Mortgage loans. The Department may purchase and take assignments from Mortgage lenders of notes and other obligations evidencing loans or interest in loans for purchase money transactions as described in paragraph (1) of this section or for residential construction transactions as described in paragraph (2) of this section.

#### **§24.12. Property Guidelines and Related Issues.**

- (a) A final appraisal is required by the Department on each property prior to closing.
- (b) Loan-to-value ratio may not exceed 95% of the appraised value. The lien amounts of Forgivable Loans and/or Grants will not be included in the loan-to-value calculation.
- (c) Combined loan-to-value ratio, which will be calculated to include the amounts of Forgivable Loans, may not exceed 100% of the appraised value.
- (d) Improvement Surveys are required on each property.
- (e) Category 1A (Texas Society of Professional Surveyors) lot surveys are required for all interim and residential construction loans. Upon Department approval a recorded subdivision plat may be used in lieu of lot surveys for interim construction loans only. Upon completion of construction an Improvement Survey must also be provided.
- (f) Title Commitment. A copy of the preliminary title report including complete legal description and copies of covenants, conditions and restrictions, easements, and any supplements thereto is required. The preliminary title report should not be more than 30 days old at the time the submission or funding package is sent to the Department and must list the Department's Loan.
- (g) Existing Property. A property inspection will be required to be completed by a professional inspector licensed by the Texas Real Estate Commission for all existing properties. A copy of the inspection report must be submitted and any deficiencies listed on the report must be corrected prior to closing. Cosmetic issues such as paint, wall texture, etc. may not be required to be corrected if utilizing a Self-Help construction Program. A copy of the inspection report must be provided to the Owner-Builder Applicant and the Department. The Participant and/or the Owner-Builder Applicant will be responsible for the selection and/or the fee of the licensed inspector.

#### **§24.13. Nonprofit Owner-Builder Housing Program Certification.**

(a) The term, Applicant, when used in this section, shall mean a Nonprofit Organization that is an NOHP or has submitted a request to the Department for certification as an NOHP in order to participate in the Texas Bootstrap Loan Program.

(b) Application Procedures for NOHP Certification or NOHP Recertification. An entity requesting NOHP certification or a Participant requesting recertification must submit an Application prior to submitting an Application for the Texas Bootstrap Loan Program Reservation system. Initial NOHP certification must meet all of the criteria listed in paragraphs (1) - (6) of this subsection. NOHP recertification must occur every three years. NOHP recertification for only loan servicing activities will only require that the NOHP be in good standing with the Department and that they complete an annual recertification to the loan servicing agreement. NOHP recertification for loan origination requires that the NOHP be in good standing with the Department; submission of the criteria listed in paragraphs (1) - (6) of this subsection is only required if any changes have occurred.

(1) The entity legal status must satisfy all of the criteria in subparagraphs (A) - (E) of this paragraph:

(A) Must be organized as a nonprofit organization under the Texas Business Code or other state not-for-profit/nonprofit statute as evidenced by charter or Certificate of Formation, or must be a Colonia Self-Help Center;

(B) Must be registered and in good standing with the Office of the Secretary of State and the State Comptroller's Office to do business in the state of Texas;

(C) No part of the Nonprofit Organization's net earnings may inure to the benefit of any member, founder, contributor, or individual, as evidenced by charter or Certificate of Formation;

(D) Must have the following tax status and a pending application for §501(c)(3) status cannot be used to comply with this requirement;

(i) a current letter of determination from the Internal Revenue Service (IRS) under §501(c)(3), a charitable, nonprofit corporation, of the Internal Revenue Code of 1986, as evidenced by a certificate from the IRS dated 1986 or later. The exemption ruling must be effective on the date of the Application and must continue to be effective while certified as an NOHP; or

(ii) classification as a subordinate of a central Nonprofit Organization under the Internal Revenue Code §501(c)(3), as evidenced by a current group exemption letter dated 1986 or later; and

(E) Must have among its purposes the provision of decent housing that is affordable to low and moderate income people as evidenced by a statement in the organization's charter, Certificate of Formation, Resolutions, or Bylaws.

(2) The entity must:

(A) Conform to the United States Generally Accepted Accounting Principles (GAAP) as evidenced by a:

(i) notarized statement by the Executive Director or chief financial officer of the organization in a form prescribed by the Department; or

(ii) certification from a Certified Public Accountant; and

(B) If the entity will be utilizing interim or residential construction funds it must provide an audited financial statement for the most recent fiscal year or a signed and dated financial statement for the period since last published audit. If the entity does not have audited financial statements or a signed and dated financial statement for the period since last published audit must provide a resolution from the Board of Directors that is signed and dated within 6 months from the date of application and certifies that the accounting



procedures used by the organization conform to the GAAP. Participants that are certified NOHPs and do not have audited financial statements or a signed and dated financial statement for the period since last published audit are restricted to only originating permanent loans and will be ineligible for any interim or residential construction loans until the Department has reviewed the most current audited financial statements;

(C) Have a demonstrated capacity of at least one year for carrying out Mortgage loan origination and Self-Help housing construction Activities, as evidenced by resumes and/or statements that describe the experience of key staff members who have successfully completed projects similar to those to be assisted with Texas Bootstrap Loan Program funds; or contract(s) with consultant firms or individuals who have housing experience similar to projects to be assisted with Texas Bootstrap Loan Program funds, to train appropriate key staff of the organization. If applying for NOHP recertification the organization is in good standing as determined by the Department, the organization will not be required to submit any additional information regarding experience.

(3) Must submit a current roster of all Board of Directors, including names and mailing addresses.

(4) A local or state government and/or public agency cannot qualify as an NOHP, but may sponsor the creation of an NOHP.

(5) Religious or Faith-based Organizations may sponsor an NOHP if the NOHP meets all the requirements of this section. While the governing board of an NOHP sponsored by a religious or a faith-based organization remains subject to all other requirements in this section, the religious or faith-based organization may retain control over appointments to the board. Subparagraphs (A) - (C) of this paragraph also apply:

(A) Housing developed must be made available exclusively for the residential use of Program beneficiaries, and must be made available to all persons regardless of religious affiliations or beliefs;

(B) Texas Bootstrap Loan Program funds may never be used to support any explicitly religious activities such as worship, religious instruction, or proselytizing; and

(C) Compliance with subparagraphs (A) and (B) of this paragraph must be evidenced by the Bylaws, charter or Certificate of Formation.

(6) A Colonia Self-Help Center as defined under Tex. Gov't Code, Chapter 2306, Subchapter Z is not required to complete the NOHP Certification process as long as it provides a letter from the unit of local government demonstrating performance is in good standing.

(c) Program Design. Must have policies for how the Owner-Builders participating in its program will meet the 65% sweat equity requirement.

(d) Must provide to the Department the number of houses they are proposing to build, type of proposed financing structure and construction timelines, to evidence its ability to carry out the Program.

(e) Must provide copies of Program guidelines and homebuyer course curriculum to evidence its experience in qualifying potential Owner-Builders and in providing education classes, counseling and training.

(f) Must be in compliance with 10 TAC §1.403, (relating to Single Audit Requirements), and 10 TAC §20.9, (relating to Fair Housing, Affirmative Marketing and Reasonable Accommodations), at the time of Application.

(g) Must be in compliance with any existing Contracts awarded by the Department and is subject to the Department's Previous Participation Review process provided for in 10 TAC §1.302 (relating to Previous

Participation Reviews for Department Program Awards Not Covered by §1.301 of this Subchapter) and §1.303 (relating to Executive Award and Review Advisory Committee (EARAC)) of this title.

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**BOARD ACTION REQUEST**  
**BOND FINANCE DIVISION**  
**OCTOBER 10, 2019**

Presentation, discussion, and possible action on Inducement Resolution No. 20-002 for Multifamily Housing Revenue Bonds Regarding Authorization for Filing Applications for Private Activity Bond Authority

**RECOMMENDED ACTION**

**WHEREAS**, four bond pre-applications, as further detailed below, were submitted to the Department for consideration of an inducement resolution;

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

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

**NOW, therefore, it is hereby**

**RESOLVED**, that based on the foregoing, Inducement Resolution No. 20-002 to proceed with the application submission to the BRB for possible receipt of State Volume Cap issuance authority under the Private Activity Bond Program for the pre-applications listed herein, is hereby approved in the form presented to this meeting.

**BACKGROUND**

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

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

presented to the Board for a decision on the issuance of bonds as well as a determination on the amount of housing tax credits anticipated to be allocated to the development. This inducement resolution would reserve approximately \$108 million in private activity bond volume cap.

**19611 – Granada Terrace**

Granada Terrace is located at 1301 Avenue A, South Houston, Harris County, and proposes the acquisition and rehabilitation of 156 units serving the general population. This transaction is proposed to be Priority 3 with 125 of the units rent and income restricted at 60% of the Area Median Family Income (AMFI), 18 units rent and income restricted at 50% AMFI, and the remaining 13 units rent and income restricted at 30% AMFI. A Section 8 HAP contract is expected to continue for all of the units. The Department has not received any letters of support or opposition for this development.

Bond Inducement Amount: \$16,000,000

**19613 – THF 333 Holly Court**

Acquisition and rehabilitation is proposed for 332 units at 333 Holly Court, a multifamily development located in The Woodlands, Montgomery County. This transaction is proposed to be Priority 3 and will serve the general population. The project will include 95 units rent and income restricted at 80% of AMFI, 98 units rent and income restricted at 60% AMFI, 53 units rent and income restricted at 50% AMFI, and 86 units rent and income restricted at 40% AMFI. Moreover, two Section 8 HAP contracts are expected to continue for 139 of the units. The Department has not received any letters of support or opposition for this development.

Bond Inducement Amount: \$50,000,000

**19614 – THF The Pines**

The Pines is located at 3451 Tangle Brush Drive in The Woodlands, Montgomery County, and proposes the acquisition and rehabilitation of 152 units. This transaction is proposed to be Priority 3 and will serve the general population. All of the units will be rent and income restricted at 60% AMFI, and a Section 8 HAP contract is expected to continue for all of the units. The Department has not received any letters of support or opposition for this development.

Bond Inducement Amount: \$30,000,000

**Oaks on Clark (19615)**

The Oaks on Clark is the acquisition and rehabilitation of 80 units located at 4622 Clark Avenue, San Antonio, Bexar County. This transaction is proposed to be Priority 3 and will serve the general population. All of the units will be rent and income restricted at 60% AMFI, and a Section 8 HAP contract is expected to continue for all of the units. The Department has not received any letters of support or opposition for this development.

Bond Inducement Amount: \$12,000,000

## RESOLUTION NO. 20-002

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

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

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

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

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

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

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

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

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

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

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

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

## ARTICLE 1

### OFFICIAL INTENT; APPROVAL OF CERTAIN ACTIONS

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

(v) satisfaction of the Board that the respective Development meets the Department's public policy criteria; and (vi) the ability of the Department to issue such Bonds in compliance with all federal and State laws applicable to the issuance of such Bonds.

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

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

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

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

Section 1.6. The Developments. Substantially all of the proceeds of the Bonds shall be used to finance the Developments, which are to be occupied entirely by Eligible Tenants, as



determined by the Department, and which are to be occupied partially by persons and families of low income such that the requirements of Section 142(d) of the Code are met for the period required by the Code.

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

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

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

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

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

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

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

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

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

## ARTICLE 2

### CERTAIN FINDINGS AND DETERMINATIONS

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

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

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

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

## ARTICLE 3

### GENERAL PROVISIONS

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

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

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

*[Execution page follows]*

PASSED AND APPROVED this 10<sup>th</sup> day of October, 2019

[SEAL]

By: \_\_\_\_\_  
J.B. Goodwin  
Chair, Governing Board

ATTEST:

\_\_\_\_\_  
James B. "Beau" Eccles  
Secretary to the Governing Board

*Signature Page to Inducement Resolution*

**EXHIBIT "A"**

Descriptions of the Owners and the Developments

Project Name	Owner	Principals	Amount Not to Exceed
333 Holly	THF 333 Holly, LP, a Texas limited partnership, or other affiliate of The Related Companies, L.P.	General Partner/Member: THF 333 Holly GP, LLC, a Texas limited liability company, or other affiliate of The Related Companies, L.P.	\$50,000,000
<p>Costs: Acquisition/rehabilitation of a 332-unit affordable, multifamily housing development to be known as 333 Holly, to be located at 333 Holly Court, The Woodlands, Montgomery County, TX 77381.</p>			

Project Name	Owner	Principals	Amount Not to Exceed
The Pines	THF The Pines, LP, a Texas limited partnership, or other affiliate of The Related Companies, L.P.	General Partner/Member: THF The Pines GP, LLC, a Texas limited liability company, or other affiliate of The Related Companies, L.P.	\$30,000,000
<p>Costs: Acquisition/rehabilitation of a 152-unit affordable, multifamily housing development to be known as The Pines, to be located at 3451 Tangle Brush Drive, The Woodlands, Montgomery County, TX 77381.</p>			

Project Name	Owner	Principals	Amount Not to Exceed
Oaks on Clark	THF Oaks on Clark, LP, a Texas limited partnership, or other affiliate of The Related Companies, L.P.	General Partner/Member: THF Oaks on Clark GP, LLC, a Texas limited liability company, or other affiliate of The Related Companies, L.P.	\$12,000,000
Costs: Acquisition/rehabilitation of a 80-unit affordable, multifamily housing development to be known as Oaks on Clark, to be located at 4622 Clark Avenue, San Antonio, Bexar County, TX 78223.			

Project Name	Owner	Principals	Amount Not to Exceed
Granada Terrace Apartments	Granada Terrace Apartments, LP, a Texas limited partnership	General Partner/Member: Granada Terrace Apartments GP, LLC, a Texas limited liability company	\$16,000,000
Costs: Acquisition/rehabilitation of a 156-unit affordable, multifamily housing development to be known as Granada Terrace Apartments, to be located at 1301 Avenue A, South Houston, Harris County, TX 77587.			

1k



**BOARD ACTION REQUEST**

**BOND FINANCE DIVISION**

**OCTOBER 10, 2019**

Presentation, discussion, and possible action on Resolution No. 20-003 Authorizing the Execution of an Irrevocable Instructions and Agreement relating to the Multifamily Housing Mortgage Revenue Bonds for Churchill at Pinnacle Park Series 2004

**RECOMMENDED ACTION**

**WHEREAS**, the Department issued Series 2004 Multifamily Housing Mortgage Revenue Bonds in the aggregate principal amount of \$10,750,000 to the Churchill at Pinnacle Park development in Dallas to construct 200 units of affordable multifamily rental housing;

**WHEREAS**, the Borrower is requesting the Department's approval to enter into an Irrevocable Instructions and Agreement (Escrow Agreement) among the Department as Bond Issuer, the Owner and U.S. Bank, National Association as Trustee;

**WHEREAS**, the Escrow Agreement would provide for the defeasance, payment and discharge of all the outstanding Series 2004 Multifamily Housing Mortgage Revenue Bonds; and

**WHEREAS**, the Escrow Agreement will provide for the purchase of escrowed securities and funds to be used to pay required debt service on the defeased bonds, until the scheduled maturity on September 1, 2021;

**NOW, therefore, it is hereby**

**RESOLVED**, that Resolution No. 20-003 relating to the Escrow Agreement for Churchill at Pinnacle Park is hereby approved as presented to this meeting; and

**FURTHER RESOLVED**, that staff is authorized, empowered and directed for and on behalf of the Department to execute and deliver such documents, instruments, and writings and perform such acts and deeds as may be necessary to effectuate the foregoing.

**BACKGROUND**

The bonds for Churchill at Pinnacle Park were originally issued through the Department in July 2004 in the amount of \$10,750,000. The original financing structure included privately placed bonds with MuniMae and as such were unrated with no credit enhancement. As part of the current proposal, the borrower has requested the Department enter into an Escrow

Agreement that would provide for the bonds to be defeased in accordance with the terms of the Trust Indenture, dated July 2004. The tax-exempt bonds would be defeased until the first call date of September 1, 2021, and funds will be provided that will pay the required debt service on the defeased bonds. The proceeds to fund the escrow will come from the sale of the property, which is contemplated to occur on October 17, 2019.

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**IRREVOCABLE INSTRUCTIONS AND AGREEMENT**

**Relating To**

**\$10,750,000**

**Texas Department of Housing and Community Affairs Multifamily Housing Revenue  
Bonds (Churchill at Pinnacle Park) Series 2004**

**Dated October [ ], 2019**

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## IRREVOCABLE INSTRUCTIONS AND AGREEMENT

THIS IRREVOCABLE INSTRUCTIONS AND AGREEMENT, dated October \_\_, 2019 (this "Agreement"), by and among TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS (the "Issuer"), a public and official agency of the State of Texas, U.S. BANK NATIONAL ASSOCIATION, a national banking association, as successor to The Bank of New York Trust Company, N.A., not in its individual capacity but solely as trustee (the "Trustee"), and CHURCHILL AT PINNACLE PARK, L.P., a Texas limited partnership (the "Borrower").

### WITNESSETH:

WHEREAS, pursuant to the Indenture (as defined below), the "Issuer" issued its \$10,750,000 Multifamily Housing Revenue Bonds (Churchill at Pinnacle Park) Series 2004 (the "Bonds"); and

WHEREAS, the Trustee is the trustee under a Trust Indenture, dated as of July 1, 2004 (the "Indenture"), between it (as successor to The Bank of New York Trust Company, N.A.) and the Issuer, relating to the Bonds; and

WHEREAS, the Borrower has provided to the Trustee, the Issuer, and MuniMae Portfolio Services, LLC, as the Servicing Agent for the Bonds, a certificate executed as of the date hereof pursuant to the requirements of Section 12.1(b) of the Indenture and Section 3.2(d) of the Financing Agreement (as defined in the Indenture); and

WHEREAS, the parties hereto desire to take all action required by the Indenture in order to defease all of the Bonds, which Bonds are currently Outstanding (as defined in the Indenture) in the principal amount of [\$\_\_\_\_\_] (the "Defeased Bonds"), discharge the lien of the Indenture and release all of the Trustee's right, title and interest in and to the rights and property assigned and pledged to the Trustee under the terms of the Indenture, and this Agreement is being entered into pursuant to Article XII of the Indenture and constitutes irrevocable instructions and directions delivered to the Trustee pursuant to Section 12.1 of the Indenture.

NOW, THEREFORE, in consideration of the promises and in order to provide for the coordination of the aforesaid arrangements, the parties hereby agree as follows:

**Section 1.** There is hereby created and established with the Trustee a special and irrevocable trust fund designated the "Redemption Trust Fund" (the "Redemption Fund") to be held in the custody of the Trustee as a trust fund separate and apart from all other funds of the Borrower or the Trustee.

### **Section 2.**

(a) The Borrower has irrevocably caused to be delivered to the Trustee the sum of [\$\_\_\_\_\_], which is inclusive of funds that were in the possession of the Trustee under the Indenture prior to the date hereof in the amount of [\$\_\_\_\_\_] and funds remitted to the Trustee on behalf of the Borrower by First American Title Insurance Company (800 Boylston Street, Suite

2820, Boston, Massachusetts 02199, Attention: Mark Anderson, Phone: 617.772.9228, Email: [mwanderson@firstam.com](mailto:mwanderson@firstam.com)) concurrently herewith in the amount of [ \$\_\_\_\_\_ ] (collectively, the “Borrower Deposit”). The Trustee is irrevocably instructed to deposit the Borrower Deposit in the Redemption Fund. The Trustee shall use the cash on deposit in the Redemption Fund and the proceeds from the investment of the Government Obligations (as defined herein), if any (collectively, the “Defeasance Funds”) solely to pay the principal of and redemption premium and accrued interest on the Defeased Bonds that will become due and payable and to pay the following fees that will become due between the date of this Agreement and the hereinafter defined Redemption Date, as and when due and payable: \$11,000 representing monthly fees of the Servicing Agent in the amount of \$500 to be paid monthly in advance (the “Ongoing Fees”). The Defeasance Funds shall not be withdrawn or used for any purpose other than, and shall be held in trust for, such purposes. The Trustee’s obligations under this Agreement are contingent upon the payment by the Borrower of the Trustee’s fees and expenses, which fees and expenses are set forth on a fee schedule previously delivered by the Trustee to the Borrower.

(b) In the event that the Defeasance Funds are not sufficient to pay the principal of and interest on and redemption price of the Defeased Bonds or are not sufficient to pay all Ongoing Fees, the Borrower shall immediately cause the amount of such deficiency to be wired to the Trustee. If it shall be determined that there exists a Rebate Amount (as defined in the Indenture), the Borrower shall provide to the Trustee funds sufficient to pay the same.

**Section 3.** The Trustee is hereby directed to apply Defeasance Funds (i) on the first day of each calendar month commencing November 1, 2019 through September 1, 2021, to pay principal and interest due on such date with respect to the Defeased Bonds in accordance with the Indenture, (ii) as and when due, to pay the Ongoing Fees, and (iii) on September 1, 2021 (the “Redemption Date”), to the redemption of the balance of the Defeased Bonds pursuant to Section 3.3(a) of the Indenture at a redemption price equal to 100% of the principal amount of each Defeased Bond to be redeemed plus accrued interest to the Redemption Date. Exhibit A hereto contains a schedule setting forth such payments.

**Section 4.** The Trustee is hereby given irrevocable instructions to mail, as soon as practicable, in the manner prescribed by Article III of the Indenture, a notice to the Holders of the Defeased Bonds, of the deposit of funds with it pursuant to this Agreement and that the Defeased Bonds are deemed to be paid in accordance with Article XII of the Indenture and stating the redemption dates upon which moneys are to be available for the payment of the redemption price of the Defeased Bonds.

The Trustee is hereby given irrevocable instructions to mail, as provided in Article III of the Indenture, notice of the redemption of the Defeased Bonds when required.

**Section 5.** The Trustee has been advised that, upon receipt of the Borrower Deposit pursuant to Section 2(a) above, it will be in possession of moneys and securities that are sufficient to fully defease the Defeased Bonds and to discharge the Trustee’s liens of the Indenture in accordance with the requirements of the Indenture and to pay all fees and expenses as provided in Section 2(a) above. In connection with such defeasance and discharge, the Trustee will receive from Causey Demgen & Moore P.C. (the “Verification Agent”), a report (the “Verification Report”) concluding that the Borrower Deposit is sufficient without any further investment to pay

(x) interest and principal of the Defeased Bonds as they become due, (y) the Ongoing Fees, and (z) the redemption price of the Defeased Bonds on the Redemption Date. Accordingly, the Trustee agrees, pursuant to the provisions of the Indenture, to execute and deliver on the date of execution and delivery hereof (the “Defeasance Date”) as directed by the Borrower all required documents to evidence the full defeasance of the Defeased Bonds and the discharge of the lien of the Indenture. The Trustee shall, and is hereby instructed to, execute and deliver such other documents, and take such further actions, reasonably required by the Indenture in order to carry out the purposes of this paragraph or to release the Trust Estate to the Borrower, provided, however, that the Trustee shall not be obligated to expend any of its own funds in connection with the execution of such documents or the undertaking of such actions.

**Section 6.** Subject to the conditions and limitations set forth herein and in the Indenture, the Trustee shall, at the request of the Issuer upon the written direction and at the sole expense of the Borrower, apply the amounts deposited in the Redemption Fund to the purchase of noncallable direct obligations of, or obligations the timely payment of the principal of and interest on which is fully and unconditionally guaranteed by, the United States of America (the “Government Obligations”). Such purchase of Government Obligations may be effected only if (a) the Government Obligations to be purchased will mature in such principal amounts and at such times and bear interest in such amounts and at such times as shall be sufficient, together with uninvested cash that will continue to be held in the Redemption Fund, without any further reinvestment to provide moneys to pay when due the redemption price of and interest on the Defeased Bonds not previously paid, as independently verified by a certified public accountant, and (b) the Trustee and the Issuer shall receive the unqualified opinion of Bracewell LLP as bond counsel, or any law firm of nationally recognized standing in the field of municipal finance law whose opinions are generally accepted by purchasers of tax-exempt obligations and who is appointed by the Issuer (“Bond Counsel”) to the effect that such purchase of Government Obligations will not impair the exclusion of interest on the Defeased Bonds from gross income for purposes of federal income taxation (subject to the inclusion of such customary exceptions as are acceptable to the recipient thereof). In connection with the purchase of Government Obligations, the Trustee shall receive from the Verification Agent a report concluding that (1) the Government Obligations to be purchased mature in such amounts and at such times and bear interest payable in such amounts and at such times (without regard to any earnings upon reinvestment of the principal of or investment earnings on such Government Obligations) as are necessary and sufficient, together with the uninvested cash, if any, to pay to the extent not previously paid (x) interest and principal of the Defeased Bonds as they become due, (y) the Ongoing Fees and (z) the redemption price of the Defeased Bonds on the Redemption Date, and (2) the yield on the Government Obligations does not exceed the yield on the Defeased Bonds. Immediately following the purchase and settlement of such Government Obligations, any amount of cash thereafter remaining uninvested in the Redemption Fund, and not necessary for the payment of (i) the debt service requirements of the Defeased Bonds, (ii) the Ongoing Fees and (iii) all fees and expenses in connection with the purchase of the Governmental Obligations (including but not limited to fees of the Verification Agent and any fees or expenses of Bond Counsel, Trustee, or other related costs), all as shall have been reflected in the Verification Report, will be promptly wired by the Trustee to the Borrower pursuant to the written direction of the Borrower.

All Government Obligations deposited or to be deposited in the Redemption Fund are and

shall be noncallable direct obligations of, or obligations the timely payment of the principal of and interest on which is fully and unconditionally guaranteed by, the United States of America. For purposes of this Agreement, investment funds that invest in direct obligations of the United States of America do not constitute such direct obligations.

**Section 7.** The Trustee shall not be liable or responsible because of the failure of any other party to this Agreement to perform any act required of it hereunder or because of the loss of any moneys arising through the insolvency or the act or default or omission of any depository, other than itself, in which such moneys shall have been deposited. The liability of the Trustee hereunder to make payments due and payable with respect to the Defeased Bonds as provided herein is limited to the availability of the Defeasance Funds and shall not extend to any funds or other assets of the Trustee. Without limiting the applicability of the foregoing, the Trustee shall not be liable for any of the following (a) any loss resulting from any investment made pursuant to this Agreement; (b) the accuracy of the calculations as to sufficiency of the Defeasance Funds to pay the principal, premium, if any and interest on the Defeased Bonds; or (c) any action of inaction of any party hereto in connection with this Agreement.

**Section 8.** The Issuer shall not be liable for the following (a) any loss resulting from any investment made pursuant to this Agreement; (b) the accuracy of the calculations as to the sufficiency of the Defeasance Funds to pay the principal, premium, if any, and interest on the Defeased Bonds; (c) any action or inaction of the Trustee or the Borrower in connection with this Agreement; or (d) any costs, fees, and expenses of the Trustee hereunder.

**Section 9.** Certain duties, rights, and obligations provided for in the Indenture (including but not limited to replacement of lost, mutilated, stolen, or destroyed bonds, the payment of interest and principal on the due dates thereof, the transfer and exchange and registration of bonds from time to time, the administration of any moneys remaining on deposit in any funds under the Indenture, the indemnification rights of the Trustee, and all immunities and protections of the Trustee) must, by their nature, be performed after the defeasance of the Defeased Bonds or must continue to benefit the Trustee until payment in full of the Defeased Bonds and, accordingly, the Trustee, Issuer and Borrower agree to be bound by and to comply with those provisions of the Indenture.

**Section 10.** The indemnification covenants and other obligations of Borrower and Key Principal that expressly survive the repayment of the loan (the "Loan") as provided for in that certain Loan and Financing Agreement dated as of July 1, 2004 by and between Issuer and Borrower (the "Financing Agreement") inure to the benefit of the Trustee and the Issuer and survive the following events: the repayment of the Loan, the repayment, redemption or defeasance of the Defeased Bonds, and the termination of the Financing Agreement or the Indenture or any other agreement entered into in connection therewith.

**Section 11.** In entering into this Agreement, the Trustee shall be entitled to the privileges, immunities and indemnities afforded to it under the Indenture and the documents related thereto. The Trustee undertakes to perform only such duties as are expressly set forth in this Agreement and no implied duties, covenants or obligations shall be read into this Agreement against the Trustee. The Trustee shall not be liable for any loss from any investment made by it in accordance with the terms of this Agreement, the Trustee may consult with legal counsel of its

own choice, and the Trustee shall not be liable for any action taken or not taken by it in good faith in reliance upon the opinion or advice of such counsel. The Trustee shall not be responsible for the validity of this Agreement or for the sufficiency of the Defeasance Funds. The Trustee may conclusively rely as to the truth and accuracy of the statements and correctness of any opinions or calculations provided to it in connection with this Agreement and shall be protected in acting, or refraining from acting, upon any notice, instruction, request, certificate, document, opinion or other writing furnished to the Trustee in connection with this Agreement and believed by the Trustee to be signed by the proper party, and it need not investigate any fact or matter stated therein. The Trustee shall not be obligated to expend any of its own funds in connection with the execution of such documents or the undertaking of any actions required of it under this Agreement.

**Section 12.** Upon payment in full of the interest on and redemption price of the Defeased Bonds as provided for in Section 3 hereof, and all the Ongoing Fees and any Rebate Amount (or a determination that there is no Rebate Requirement), all obligations of the Trustee under this Agreement and the Indenture shall cease and terminate.

Any amounts held by the Trustee on September 1, 2021 and not required to pay or provide for the payment of the redemption price of and interest on the Defeased Bonds shall be paid over to the Borrower upon written request.

**Section 13.** This Agreement is made pursuant to and in furtherance of the Indenture for the benefit of the Holders from time to time of the Defeased Bonds. This Agreement shall not be repealed, revoked, altered or amended without the written consent of all such Holders; provided, however, that the Borrower, the Issuer and the Trustee may, without the consent of, or notice to, such Holders, enter into such agreements supplemental to this Agreement as shall not adversely affect the rights of such Holders and as shall not be inconsistent with the terms and provisions of this Agreement, for any one or more of the following purposes:

- (a) to cure any ambiguity or formal defect or omission in this Agreement;
- (b) to grant to, or confer upon, the Trustee for the benefit of such Holders any additional rights, remedies, powers or authority that may lawfully be granted to, or conferred upon, such Holders or the Trustee;
- (c) to subject to this Agreement additional funds, securities or properties.

The Trustee shall be entitled to rely exclusively upon an unqualified opinion of Bond Counsel with respect to compliance with this Section, including (i) the extent, if any, to which any change, modification or addition affects the rights of the Holders of the Defeased Bonds, and (ii) the extent, if any, to which any instrument executed hereunder complies with the conditions and provisions of this Section.

**Section 14.** The parties acknowledge that certain obligations of the Borrower (or its assignee) under the Regulatory Agreement will remain in effect notwithstanding the defeasance of the Defeased Bonds, and shall be assumed by Dallas Acquisitions XII, LLC pursuant to the terms of an Assignment, Assumption and Consent Agreement executed as of the date hereof.



**Section 15.** The Trustee acknowledges and agrees that the Note and Security Instrument (as such capitalized terms are defined in the Indenture) may be terminated and released upon the deposit of funds with the Trustee pursuant to Section 2(a) hereof, together with the other documentation described in Section 5 hereof. The Trustee will cooperate with the Borrower at the expense of the Borrower in the actions required to effect such termination and release.

**Section 16.** Each of the Borrower and the Trustee hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and will not boycott Israel during the term of this Escrow Agreement. The foregoing verification is made solely to comply with Section 2270.002, Texas Government Code, and to the extent such Section does not contravene applicable Federal law. As used in the foregoing verification, 'boycott Israel' means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. Each of the Borrower and the Trustee understands 'affiliate' to mean an entity that controls, is controlled by, or is under common control with such entity and exists to make a profit.

To the extent this Escrow Agreement is a contract for goods or services, each of the Borrower and the Trustee represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer's internet website:

<https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf>,  
<https://comptroller.texas.gov/purchasing/docs/iran-list.pdf>,  
<https://comptroller.texas.gov/purchasing/docs/fto-list.pdf>.

The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable Federal law and excludes each of the Borrower and the Trustee and such entity's respective parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. Each of the Borrower and the Trustee understands 'affiliate' to mean an entity that controls, is controlled by, or is under common control with such entity and exists to make a profit.

**Section 17.** Capitalized terms used but not defined herein have the meanings assigned in the Indenture.

**Section 18.** This Agreement may be executed in any number of counterparts, each of which shall constitute but one and the same instrument.

**Section 19.** This Agreement shall be construed, interpreted and enforced in accordance with, and the respective rights and obligations of the parties shall be governed by, the laws of the State of Texas without reference to the conflict of laws or principles thereof.

IN WITNESS WHEREOF, the parties hereto have caused this Irrevocable Instructions and Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date hereof.

[Signature Pages Follow]

DRAFT

[Issuer's signature page to the Irrevocable Instructions and Agreement]

**TEXAS DEPARTMENT OF HOUSING AND  
COMMUNITY AFFAIRS, as Issuer**

By: \_\_\_\_\_  
Name: Teresa Morales  
Title: Director of Multifamily Bonds

DRAFT

[Trustee's signature page to the Irrevocable Instructions and Agreement]

**U.S. BANK NATIONAL ASSOCIATION,**  
not in its individual capacity but solely as trustee

By: \_\_\_\_\_  
Authorized Signatory

DRAFT

[Borrower's signature page to the Irrevocable Instructions and Agreement]

**CHURCHILL AT PINNACLE PARK, L.P.,**  
a Texas limited partnership

By: Lifenet-Pinnacle Park GP, LLC, a Texas limited liability company, its general partner

By: Lifenet Community Behavioral Healthcare, a Texas non-profit corporation, its sole member

By: \_\_\_\_\_  
\_\_\_\_\_

DRAFT

**EXHIBIT A**

**Schedule of Debt Service Payments**

Payment Date	Rate	Payment For			Total Payment	Principal Balance
		Principal	Interest	Servicing Fee		
17-Oct-19						\$8,887,375.23
01-Nov-19	6.550%	\$12,017.82	\$48,510.26	\$500.00	\$61,028.08	8,875,357.41
01-Dec-19	6.550%	12,083.42	48,444.66	500.00	61,028.08	8,863,273.99
01-Jan-20	6.550%	12,149.38	48,378.70	500.00	61,028.08	8,851,124.61
01-Feb-20	6.550%	12,215.69	48,312.39	500.00	61,028.08	8,838,908.92
01-Mar-20	6.550%	12,282.37	48,245.71	500.00	61,028.08	8,826,626.55
01-Apr-20	6.550%	12,349.41	48,178.67	500.00	61,028.08	8,814,277.14
01-May-20	6.550%	12,416.82	48,111.26	500.00	61,028.08	8,801,860.32
01-Jun-20	6.550%	12,484.59	48,043.49	500.00	61,028.08	8,789,375.73
01-Jul-20	6.550%	12,552.74	47,975.34	500.00	61,028.08	8,776,822.99
01-Aug-20	6.550%	12,621.25	47,906.83	500.00	61,028.08	8,764,201.74
01-Sep-20	6.550%	12,690.15	47,837.93	500.00	61,028.08	8,751,511.59
01-Oct-20	6.550%	12,759.41	47,768.67	500.00	61,028.08	8,738,752.18
01-Nov-20	6.550%	12,829.06	47,699.02	500.00	61,028.08	8,725,923.12
01-Dec-20	6.550%	12,899.08	47,629.00	500.00	61,028.08	8,713,024.04
01-Jan-21	6.550%	12,969.49	47,558.59	500.00	61,028.08	8,700,054.55
01-Feb-21	6.550%	13,040.28	47,487.80	500.00	61,028.08	8,687,014.27
01-Mar-21	6.550%	13,111.46	47,416.62	500.00	61,028.08	8,673,902.81
01-Apr-21	6.550%	13,183.03	47,345.05	500.00	61,028.08	8,660,719.78
01-May-21	6.550%	13,254.98	47,273.10	500.00	61,028.08	8,647,464.80
01-Jun-21	6.550%	13,327.33	47,200.75	500.00	61,028.08	8,634,137.47
01-Jul-21	6.550%	13,400.08	47,128.00	500.00	61,028.08	8,620,737.39
01-Aug-21	6.550%	13,473.22	47,054.86	500.00	61,028.08	8,607,264.17
01-Sep-21	6.550%	13,546.76	46,981.32	0.00	\$8,593,717.41	8,654,245.49
		<u>\$293,657.82</u>	<u>\$1,098,488.02</u>	<u>\$11,000.00</u>	<u>\$8,593,717.41</u>	<u>\$9,996,863.25</u>

Exhibit A-1

## RESOLUTION NO. 20-003

RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF AN IRREVOCABLE INSTRUCTIONS AND AGREEMENT IN CONNECTION WITH MULTIFAMILY HOUSING MORTGAGE REVENUE BONDS (CHURCHILL AT PINNACLE PARK APARTMENTS) SERIES 2004; 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 persons and families of low, very low and extremely low income and families of moderate income (all as defined in the Act); and

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

WHEREAS, the Department has previously issued its Multifamily Housing Mortgage Revenue Bonds (Churchill at Pinnacle Park Apartments) Series 2004 in the original principal amount of \$10,750,000 (the "Bonds") pursuant to the terms and provisions of that certain Trust Indenture, dated as of July 1, 2004 (the "Indenture"), between the Department and U.S. Bank, National Association, as successor trustee to The Bank of New York Trust Company, N.A. (the "Trustee"); and

WHEREAS, the proceeds of the Bonds were loaned to Churchill at Pinnacle Park, LP., a limited partnership organized and existing under the laws of the State of Texas (the "Borrower") for the purpose of financing a portion of the costs of a multifamily housing development known as Churchill at Pinnacle Park Apartments, pursuant to that certain Financing and Loan Agreement dated as of July 1, 2004 (the "Loan Agreement") between the Department and the Borrower; and

WHEREAS, pursuant to the Loan Agreement and the Indenture, the Borrower has requested and the Department has determined to take certain actions to provide for defeasance of the Bonds and discharge of the Indenture; and

WHEREAS, to effectuate the defeasance of the Bonds, the Department has determined to enter into an Irrevocable Instructions and Agreement relating to the Bonds (the “Escrow Agreement”) among the Department, the Borrower and the Trustee; and

WHEREAS, pursuant to the Escrow Agreement, the Borrower will deposit in trust with the Trustee funds sufficient to provide for the payment of the principal, redemption price, if any, and interest due or to become due on the Bonds at the times and in the manner specified in the Indenture; and

WHEREAS, the Board has examined the proposed form of the Escrow Agreement (which is attached to and comprises a part of this Resolution); has found the form and substance of such document to be satisfactory and proper and the recitals contained therein to be true, correct and complete; and has determined, subject to the conditions set forth in Article 1, to authorize the execution and delivery of the Escrow Agreement 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 THAT:

## ARTICLE 1

### APPROVAL OF DOCUMENTS AND CERTAIN ACTIONS

Section 1.1 Approval, Execution and Delivery of Escrow Agreement. The Escrow Agreement, in substantially the form presented at this meeting, is hereby approved and adopted by the Department, and the Authorized Representatives of the Department named in this Resolution are each hereby authorized and empowered to execute and deliver the Escrow Agreement on behalf of the Department, with such changes as may be approved by the Authorized Representative executing the same, such approval to be evidenced by such Authorized Representative’s execution thereof.

Section 1.2 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 1.3 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 1.4 Exhibits Incorporated Herein. That all of the terms and provisions of each of the documents listed below as an exhibit shall be and are hereby incorporated into and made a part of this Resolution for all purposes:

Exhibit A - Escrow Agreement

Section 1.5 Authorized Representatives. The following persons are hereby named as authorized representatives of the Department for purposes of executing, attesting, affixing the Department's seal to, and delivering the documents and instruments and taking the other actions referred to in this Article 1: the Chair or Vice Chair of the Board, the Executive Director of the Department, the Director of Administration of the Department, the Director of Financial Administration of the Department, the Director of Bond Finance and Chief Investment Officer of the Department, the Director of Multifamily Bonds of the Department, the Director of Texas Homeownership of the Department, and the Secretary or Assistant Secretary to the Board. Such persons are referred to herein collectively as the "Authorized Representatives." Any one of the Authorized Representatives is authorized to act individually as set forth in this Resolution.

Section 1.6 Ratifying Other Actions. That all other actions taken by the Executive Director of the Department and the Department staff in connection with the execution of the Escrow Agreement and the redemption and defeasance of the Bonds are hereby ratified and confirmed.

## ARTICLE 2

### GENERAL PROVISIONS

Section 2.1 Books and Records. The Board hereby directs this Resolution to be made a part of the Department's books and records that are available for inspection by the general public.

Section 2.2 Certification of the Minutes and Records. That the Secretary or Assistant Secretary to the Board hereby is authorized to certify and authenticate minutes and other records on behalf of the Department for the Bonds and all other Department activities.

Section 2.3 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 2.4 Effective Date. This resolution shall be in full force and effect from and upon its adoption.

PASSED AND APPROVED this 10th day of October, 2019.

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Chair, Governing Board

ATTEST:

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Secretary to the Governing Board

(SEAL)

11

BOARD ACTION REQUEST  
BOND FINANCE DIVISION  
OCTOBER 10, 2019

Presentation, discussion, and possible action on Resolution No. 20-004 authorizing request to the Texas Bond Review Board for annual waiver of Single Family Mortgage Revenue Bond set-aside requirements; authorizing the execution of documents and instruments relating thereto; making certain findings and determinations in connection therewith; and containing other provisions relating to the subject

RECOMMENDED ACTION

Adopt attached resolution.

BACKGROUND

Tex. Gov't Code §2306.142(l) requires that, beginning on September 1, 2002, and in each subsequent State fiscal year, the Department allocate, through set-aside or reservation of funds, not less than 40% of the total single-family mortgage revenue bond loan volume for mortgage loans, including subprime mortgage loans, to be originated in underserved economic and geographic submarkets in the state. Pursuant to Tex. Gov't Code §2306.142(m), the Department has requested and the Texas Bond Review Board (BRB) has granted, a waiver of the requirements of Tex. Gov't Code §2306.142(l) (the Waiver) for all single family revenue bonds issued by the Department since 2002. While previously requested and received on an issue-by-issue basis, since July 20, 2017, BRB has granted Waivers to the Department on a calendar year basis. With each Waiver request, the Department includes a report (the Report) prepared by the Department's Financial Advisor, George K. Baum & Company (GKB).

Exhibit A to the attached resolution is the Report prepared by GKB dated September 26, 2019, which concludes that compliance with the requirements of Tex. Gov't Code §2306.142(l) remains unfeasible and could damage the financial condition of the Department. Staff requests that the Board accept this Report and authorize the submission of a request to BRB for a Waiver for all single family revenue bonds issued by the Department in calendar year 2020.

The annual Waiver allows single family revenue bonds issued by the Department to qualify as exempt from formal approval by BRB, as these bonds are self-supporting revenue security issues that have no general revenue impact to the state. Exemption from formal approval may result in faster approval, but pursuant to 34 TAC §181.9(d), one or more members of the BRB can, within six business days of receipt of an issue for approval, provide a written request that the proposed issuance adhere to the formal approval process.

## RESOLUTION NO. 20-004

RESOLUTION AUTHORIZING REQUEST TO TEXAS BOND REVIEW BOARD FOR ANNUAL WAIVER OF SINGLE-FAMILY MORTGAGE REVENUE BOND SET-ASIDE REQUIREMENTS; AUTHORIZING THE EXECUTION OF DOCUMENTS AND INSTRUMENTS RELATING THERETO; MAKING CERTAIN FINDINGS AND DETERMINATIONS IN CONNECTION THEREWITH; AND CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT

WHEREAS, the Texas Department of Housing and Community Affairs (the "Department") has been duly created and organized pursuant to and in accordance with the provisions of Chapter 2306, Texas Government Code (the "Act"), as amended from time to time, for the purpose of providing a means of financing the costs of residential ownership, development and rehabilitation that will provide decent, safe and sanitary housing for individuals and families of low and very low income and families of moderate income (as described in the Act as determined by the Governing Board of the Department (the "Board") from time to time) at prices they can afford; and

WHEREAS, 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; and

WHEREAS, Section 2306.142 of the Act requires the Department to evaluate the feasibility of a single-family mortgage revenue bond program designed to meet the credit needs of the underserved economic and geographic submarkets of the State, including those submarkets served disproportionately by subprime lenders; and

WHEREAS, Section 2306.142(l) of the Act requires that, beginning on September 1, 2002, and in each subsequent State fiscal year, the Department allocate, through set-aside or reservation of funds, not less than 40 percent of the total single-family mortgage revenue bond loan volume for mortgage loans, including subprime mortgage loans, to be originated in underserved economic and geographic submarkets in the State (the "Section 2306.142(l) Requirements"); and

WHEREAS, Section 2306.142(m) of the Act provides that if the Board determines in any year that bonds intended to be issued to achieve the purposes of Section 2306.142 of the Act are unfeasible or would damage the financial condition of the Department, the Board may formally appeal to and request a waiver from the Texas Bond Review Board (the "Bond Review Board") of the Section 2306.142(l) Requirements; and

WHEREAS, at the February 28, 2017 meeting, the Board was presented with a report of its financial advisor, George K. Baum & Company ("GKB") that addresses the feasibility and potential economic impact to the Department of fulfilling the Section 2306.142(l) Requirements (the "Initial Report"), which Report has been submitted to the Bond Review Board; and

WHEREAS, in reliance upon the Initial Report and by resolution No. 17-019 approved on May 25, 2017, the Board authorized submission of a request to the Bond Review Board for a waiver of the Section 2306.142(l) Requirements for all single-family revenue bonds issued by the Department in calendar year 2017, and such request was granted on July 20, 2017; and

WHEREAS, in reliance on an updated report of GKB dated December 14, 2017 and by resolution No. 18-011 approved on December 14, 2017, the Board authorized submission of a request to the Bond Review Board for a waiver of the Section 2306.142(l) Requirements for all single-family revenue bonds issued by the Department in calendar year 2018, and such request was granted on January 18, 2018; and

WHEREAS, in reliance on an updated report of GKB dated October 11, 2018 and by resolution No. 19-005 approved on October 11, 2018, the Board authorized submission of a request to the Bond Review Board for a waiver of the Section 2306.142(l) Requirements for all single-family revenue bonds issued by the Department in calendar year 2019, and such request was granted on November 15, 2018; and

WHEREAS, the Board desires to accept and rely on the updated report of GKB dated September 26, 2019 (the "Updated Report"), regarding the Section 2306.142(l) Requirements attached hereto as Exhibit A; and

WHEREAS, in reliance on the Updated Report, the Board now desires to authorize submission to the Bond Review Board of a request for a waiver of the Section 2306.142(l) Requirements for all single-family revenue bonds issued by the Department in calendar year 2020;

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 Acceptance of Updated Report. The Board hereby accepts the Updated Report.

Section 1.2 Request for Waiver of Section 2306.142(l) Requirements. The submission of a request for a waiver of the Section 2306.142(l) Requirements for all single-family revenue bonds issued by the Department in calendar year 2020 is hereby authorized and approved.

Section 1.3 Execution and Delivery of Documents. The Authorized Representatives are each hereby authorized to execute and deliver all agreements, certificates, contracts, documents, instruments, releases, financing statements, letters of instruction, notices, written requests and other papers, whether or not mentioned herein, as may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution.

Section 1.4 Authorized Representatives. The following persons are hereby named as authorized representatives of the Department for purposes of executing, attesting, affixing the Department's seal to, and delivering the documents and instruments and taking the other actions referred to in this Article 1: the Chair or Vice Chair of the Board, the Executive Director of the Department, the Director of Administration of the Department, the Director of Financial Administration of the Department, the Director of Bond Finance and Chief Investment Officer of the Department, the Director of Multifamily Bonds of the Department, the Director of Texas Homeownership of the Department, and the Secretary or Assistant Secretary to the Board. Such persons are referred to herein collectively as the "Authorized Representatives." Any one of the Authorized Representatives is authorized to act individually as set forth in this Resolution.

Section 1.5 Ratifying Other Actions. All other actions taken or to be taken by the Executive Director and the Department's staff in connection in carrying out the purposes of this Resolution are hereby ratified and confirmed.

ARTICLE 2

GENERAL PROVISIONS

Section 2.1 Notice of Meeting. This Resolution was considered and adopted at a meeting of the Board that was noticed, convened, and conducted in full compliance with the Texas Open Meetings Act, Chapter 551 of the Texas Government Code, and with Section 2306.032 of the Texas Government Code, regarding meetings of the 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 10th day of October, 2019.

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Chair, Governing Board

ATTEST:

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Secretary to the Governing Board

(SEAL)



Exhibit A



September 26, 2019

Executive Director and Board of Directors  
Texas Department of Housing and Community Affairs  
221 East 11th Street  
Austin, Texas 78701

At the request of Department staff, George K. Baum & Company prepared this report to address certain provisions of the Texas Government Code, Title 10, Subtitle G, Chapter 2306, specifically the feasibility and potential economic impact to the Department of complying with Section 2306.142(l). As noted below, we are not providing the Department with any legal advice. We are retained by the Department in an expert financial capacity only. For legal analysis of Texas Government Code, Title 10, Subtitle G, Chapter 2306, or any other applicable law or regulation, please contact your legal counsel.

This report updates and reiterates our reports to the Board dated February 28, 2017, December 14, 2017, and October 11, 2018 (the “Prior Reports”) and provides our analysis of feasibility and economic impact, as well as a summary of how the Department serves the credit needs of borrowers in underserved economic and geographic submarkets. We understand that the Department completed the market study required under Section 2306.142(c) in 2002. This report reconfirms the findings of our Prior Reports and concludes that compliance with the requirements of Section 2306.142(l) remains unfeasible and could damage the financial condition of the Department. This is consistent with the conclusion reached by the Bond Review Board (“BRB”) in granting waivers to the Department since 2002.

## Background

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Section 2306.142(l) of the Texas Government Code requires that single family mortgage revenue bonds issued by the Department contain specific set-asides or reservations of funds for mortgage loans, including subprime mortgage loans<sup>(1)</sup>, to be originated in underserved economic and geographic submarkets in the state. Specifically, Section 2306.142(l) states:

*In the state fiscal year beginning on September 1, 2002, and in each subsequent state fiscal year, the department shall allocate not less than 40 percent of the total single-family mortgage revenue bond loan volume to meet the credit needs of borrowers in underserved economic and geographic submarkets in the state, subject to the identification of a satisfactory market volume demand through the market study.*

As permitted under Section 2306.142(m) and prior to the first annual waiver granted by the BRB on July 20, 2017, the Department requested and received from the BRB a waiver of this provision for every new origination single family mortgage revenue bond issue closed by the Department since 2002. The BRB

<sup>(1)</sup> Section 2306.142 contains multiple references to the inclusion of subprime borrowers as part of underserved economic and geographic submarkets. The complete text of Section 2306.142 is attached.

began issuing annual waivers based, in part, on the Board's acceptance, approval and submission to the BRB of George K. Baum's report. These waivers were granted on the basis that compliance with Section 2306.142(l) is unfeasible and could damage the financial condition of the Department.

### **Feasibility and Economic Impact**

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Under current market conditions, fulfilling the requirements of Section 2306.142(l) (specifically allocating or reserving any portion of the bond proceeds) is not feasible, not economically viable, would not be "consistent with the reasonable financial operation of the Department", and could damage the financial condition of the Department. Further, it is anticipated and assumed that, due to the financing structures implemented by the Department, the Department will continue to request an annual waiver from BRB of the requirements of Section 2306.142(l).

Compliance with the 40% set aside requirement of Section 2306.142(l), which includes the subprime requirement of Section 2306.142(f), is not feasible and could damage the financial condition of the Department for the following reasons:

- 1) Single family indentures require "MBS eligible" loans. The Department has not used "whole loan" collateral to support its indentures since 1988. Since then, the Department pools its mortgage loans into mortgage-backed securities ("MBS") that are backed by Ginnie Mae, Fannie Mae, or Freddie Mac, which effectively guarantee the timely receipt of underlying mortgage loan payments to meet the debt service requirements of the Department's indentures. This financing structure results in a higher rating on the bonds and a lower cost of debt, while the Department pledges fewer assets to the bond indenture than otherwise would be required. In addition, the MBS structure eliminates (i) the cost of overcollateralization, (ii) the need to fund debt service reserves, and (iii) the costs, expenses, and losses typically associated with whole loans.

Each agency (Ginnie Mae, Fannie Mae, and Freddie Mac) has specific mortgagor eligibility requirements for mortgage loans that are securitized into an MBS. While the definition of subprime has changed over time (particularly since the events of 2008), subprime loans generally are not eligible for securitization. As such, the Department would have to maintain those loans as whole loans. As detailed in the previous paragraph, there are significant economic reasons for the Department to maintain its MBS financing structure as it allows the Department to assist the maximum amount of low and moderate income homebuyers in the most efficient manner without incurring unnecessary credit risk. The cost of foregoing these efficiencies to accommodate the introduction of a significant number of low rated whole loans would be impractical and could damage the financial condition of the Department.

- 2) Master Servicers have minimum credit requirements. The Department uses a Master Servicer to purchase, pool, and service mortgage loans originated through its single family mortgage programs. The Master Servicer typically has minimum credit requirements for eligible borrowers.

The Department's Master Servicer, Idaho Housing and Finance Authority ("IHFA"), has a minimum FICO score requirement of 620. Therefore, the Department cannot originate loans for credits below 620 FICO due to the Master Servicer's credit requirements.

- 3) The 40% set-aside requirement creates significant interest rate risk in the form of rate buy-down and/or unexpended proceeds call risk. Because the bond rate is set at closing, the Department is subject to interest rate risk on set-aside amounts. If the market interest rate for mortgage loans drops, the Department's mortgage rate may be unattractive. For short periods of time or for relatively small amounts, this is manageable; however, a 40% set-aside could be quite costly. The Department would be faced with a choice: a) contribute its own funds to "buy down" the mortgage rate, or b) invoke a non-origination call on the bonds, potentially damaging the Department's reputation among bond purchasers and possibly increasing its borrowing cost in the future. Once again, compliance with Section 2306.142(l) is not feasible and could damage the financial condition of the Department.
  
- 4) Excessive cost of negative arbitrage to meet the 40% set aside requirement. Negative arbitrage is the cost that results when the interest rate paid on the bonds exceeds the interest rate earned on bond proceeds. When bond proceeds are required to be set aside, the required amount is deposited and invested until used; concurrently, the bonds accrue and pay interest at a higher rate than that earned on the set-aside amounts. For the last ten years or so, interest rates on 30-year housing bonds have greatly exceeded the short-term investment rates at which bond proceeds can be invested.

However, a financing structure with no set-aside requirements can, and has been, implemented by the Department resulting in significant savings related to negative arbitrage. When the requirements of Section 2306.142(l) are waived, the Department is able to originate and pool mortgage loans in advance of the bond issuance and can purchase the resulting MBS using bond proceeds at the closing of the bond issue. This eliminates negative arbitrage associated with that portion of loans purchased when the bonds are issued.

While a small amount of negative arbitrage might be absorbed by a financing structure, the amount of negative arbitrage associated with setting aside 40% of the bond proceeds would be cost prohibitive. The Department could be forced to make an outright donation to the structure (as opposed to a contribution that could be recouped). For example, the Department would need to set-aside more than \$180 million in loans annually to fulfill a 40% set aside requirement on \$450 million total loan volume. The cost of "negative arbitrage" associated with reserving \$180 million of loans annually (40% of \$450 million) could exceed \$3.6 million per year in the current market. The negative arbitrage cost would be significantly higher if the Department issued taxable bonds. Historically, the vast majority of funds set aside for targeted areas (required by

the IRS to meet tax law) and similar requirements are not used, remain idle, and incur negative arbitrage for the entire one-year set-aside period.

If the Department chose to fund the negative arbitrage by increasing the rate charged to the homebuyers, the resulting rate would be (i) too high to be attractive, making origination unlikely and exacerbating the cost of the negative arbitrage, and (ii) too high to comply with Internal Revenue Service requirements related to the permissible spread between bond yield and mortgage yield for tax exempt bond issues.

### **Serving the Needs of Borrowers in Underserved Economic and Geographic Submarkets**

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The Department regularly serves borrowers in underserved economic and geographic submarkets. Through its “to-be-announced” (or TBA) program, also known as the Taxable Mortgage Program (“TMP-79”), the Department offers daily financing options to homebuyers throughout the State. TMP-79, which began in October 2012, is a continuous funding program that currently serves as the Department’s primary mortgage loan origination mechanism for single family programs. Summary highlights of TMP-79 include the following:

- TMP-79 is currently the only statewide down payment assistance program that offers financing to borrowers with FICO scores as low as 620 without charging a penalty at loan closing.
- Since October 2012, the Department has financed and purchased over \$3.8 billion in first lien mortgage loans and provided over \$160 million in associated down payment and closing cost assistance (in the form of a 30 year term, 0% interest, due on sale or refinance, second mortgage loans).
- Approximately 70% of program borrowers earn less than 80% of Area Median Income (“AMI”).
- The Department offers free online Homebuyer Education training. Since the launch in March 2016 there have been 33,400 individuals that have completed the online training and 10,900 of those individuals fulfilled the training in 2019. This tool educates first-time homebuyers regarding the complex process of purchasing a home and is one of the requirements for participation in one of the Department’s single family loan programs.
- The Department is responsible for the Texas Statewide Homebuyer Education Program, which is offered through third party providers. This program provides training to housing counselors with respect to the content and techniques for providing comprehensive pre- and post-purchase homebuyer education that is used to provide quality homebuyer education throughout the state.

## Conclusion

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Based on the costs and risks described above, and consistent with the conclusion reached by the Bond Review Board (“BRB”) in granting waivers to the Department since 2002, we believe that meeting the requirements of Section 2306.142(l) remains unfeasible.


The Department, however, continues to achieve its objectives by adapting and innovatively structuring its programs to serve an ever-expanding borrower base of Texas homebuyers in underserved markets – economic, credit, geographic, or otherwise. The Department’s use of MBS to secure its bonds programs significantly reduces the Department’s risk and borrowing cost. Therefore, the Department expects to continue to request an annual waiver of Section 2306.142(l) from BRB each calendar year. The Department will continue to monitor its ability to meet these requirements as it looks for ways to better serve its borrower base, which is composed primarily of low, very low, and moderate income first-time homebuyers. The Department also will maintain the integrity of its bond indentures and operate in a manner that is “consistent with the reasonable financial operation of the Department”.

## Use of the Report

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It is expressly understood and agreed that (a) this report is provided solely for the information of and assistance to the Texas Department of Housing and Community Affairs and the Texas Bond Review Board and is not to be used, circulated, quoted or otherwise referred to without our written consent, and (b) this report is not intended, and is not under any circumstances to be construed, as legal advice or as requiring us to perform services which may constitute the practice of law. We are retained and engaged by the Department in an expert financial capacity only. Our statements and conclusions are based in part on information provided to us by Department staff, and we assume that information to be materially complete, accurate and true. We have not undertaken any responsibility or duty to independently verify that information, and this report is not intended to and does not attest that such information is materially complete, accurate or true.

Sincerely,



Barton Withrow  
Senior Vice President  
George K. Baum & Company

## GOVERNMENT CODE

### CHAPTER 2306. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Sec. 2306.142. AUTHORIZATION OF BONDS. (a) Subject to the requirements of this section, the board shall authorize all bonds issued by the department.

(b) If the issuance is authorized by the board, the department shall issue single-family mortgage revenue bonds to make home mortgage credit available for the purchase of newly constructed or previously owned single-family homes to economic and geographic submarkets of borrowers who are not served or who are substantially underserved by the conventional, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, or Federal Housing Administration home mortgage lending industry or by housing finance corporations organized under Chapter 394, Local Government Code.

(c) The board by rule shall adopt a methodology for determining through a market study the home mortgage credit needs in underserved economic and geographic submarkets in the state. In conducting the market study required by this subsection, the department or its designee shall analyze for the underserved economic and geographic submarkets, at a minimum, the following factors:

- (1) home ownership rates;
- (2) loan volume;
- (3) loan approval ratios;
- (4) loan interest rates;
- (5) loan terms;
- (6) loan availability;
- (7) type and number of dwelling units; and

(8) use of subprime mortgage loan products, comparing the volume amount of subprime loans and interest rates to "A" paper mortgage loans as defined by Standard and Poor's credit underwriting criteria.

(d) The department or its designee shall analyze the potential market demand, loan availability, and private sector home mortgage lending rates available to extremely low, very low, low, and moderate income borrowers in the rural counties of the state, in census tracts in which the median family income is less than 80 percent of the median family income for the county in which the census tract is located, and in the region of the state adjacent to the international border of the state. The department or its designee shall establish a process for serving those counties, census tracts, and regions through the single-family mortgage revenue bond program in a manner proportionate to the credit needs of those areas as determined through the department's market study.

(e) Using the market study and the analysis required by this section, the board shall evaluate the feasibility of a single-family mortgage revenue bond program with loan marketing, eligibility, underwriting, structuring, collection, and foreclosure criteria and with loan services practices that are designed to meet the

credit needs of the underserved economic and geographic submarkets of the state, including those submarkets served disproportionately by subprime lenders.

(f) In evaluating a proposed bond program under this section, the board shall consider, consistent with the reasonable financial operation of the department, specific set-asides or reservations of mortgage loans for underserved economic and geographic submarkets in the state, including the reservation of funds to serve borrowers who have "A-" to "B-" credit according to Standard and Poor's credit underwriting criteria.

(g) The department may use any source of funds or subsidy available to the department to provide credit enhancement, down payment assistance, pre-homebuyer and post-homebuyer counseling, interest rate reduction, and payment of incentive lender points to accomplish the purposes of this section in a manner considered by the board to be consistent with the reasonable financial operation of the department.

(h) In allocating funds under Subsection (g), the department's highest priority is to provide assistance to borrowers in underserved economic and geographic submarkets in the state. If the board determines that sufficient funds are available after fully meeting the credit needs of borrowers in those submarkets, the department may provide assistance to other borrowers.

(i) The board shall certify that each single-family mortgage revenue bond issued by the department under this section is structured in a manner that serves the credit needs of borrowers in underserved economic and geographic submarkets in the state.

(j) After any board approval and certification of a single-family mortgage revenue bond issuance, the department shall submit the proposed bond issuance to the Bond Review Board for review.

(k) In the state fiscal year beginning on September 1, 2001, the department shall:

(1) adopt by rule a market study methodology as required by Subsection (c);

(2) conduct the market study;

(3) propose for board review a single-family mortgage revenue bond program, including loan feature details, a program for borrower subsidies as provided by Subsections (g) and (h), and origination and servicing infrastructure;

(4) identify reasonable capital markets financing;

(5) conduct a public hearing on the market study results and the proposed bond program;

and

(6) submit for review by the Bond Review Board the market study results and, if approved and certified by the board, the proposed bond program.

(l) In the state fiscal year beginning on September 1, 2002, and in each subsequent state fiscal year, the department shall allocate not less than 40 percent of the total single-family mortgage revenue bond loan volume to meet the credit needs of borrowers in underserved economic and geographic submarkets in the state, subject to the identification of a satisfactory market volume demand through the market study.

(m) On completion of the market study, if the board determines in any year that bonds intended to be issued to achieve the purposes of this section are unfeasible or would damage the financial condition of the department, the board may formally appeal to the Bond Review Board the requirements of Subsection (k)



or (l), as applicable. The Bond Review Board has sole authority to modify or waive the required allocation levels.

(n) In addition to any other loan originators selected by the department, the department shall authorize colonia self-help centers and any other community-based, nonprofit institutions considered appropriate by the board to originate loans on behalf of the department. All non-financial institutions acting as loan originators under this subsection must undergo adequate training, as prescribed by the department, to participate in the bond program. The department may require lenders to participate in ongoing training and underwriting compliance audits to maintain good standing to participate in the bond program. The department may require that lenders meet appropriate eligibility standards as prescribed by the department.

(o) The department shall structure all single-family mortgage revenue bond issuances in a manner designed to recover the full costs associated with conducting the activities required by this section.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 980, Sec. 24, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1367, Sec. 2.02, eff. Sept. 1, 2001.

2a

### TDHCA Outreach Activities, September-October

A compilation of outreach and educational activities designed to enhance the awareness of TDHCA programs and services among key stakeholder groups and the general public.

Activity	Event	Date	Location	Division
Training	Housing Tax Credit training (in coordination with Texas Apartment Association)	Sept. 10	Austin	Compliance
Training	Section 811 Project Rental Assistance Program Training (in coordination with Texas Apartment Association)	Sept. 11	Austin	Compliance
Training	Texas Association of Regional Councils Economic Development Conference (Amy Young Barrier Removal, Texas Bootstrap Program, HOME Single Family)	Sept. 11	Austin	Program Services
Webinar	2019 Overview of Davis-Bacon Compliance Principles; US Department of Labor Webinar	Sept. 12	N/A	Program Services
Meeting	Disability Advisory Workgroup meeting	Sept. 18	Austin	Housing Resource Center
Public Hearing	Public hearing for Ventura at Hickory Tree Apartments	Sept. 18	Balch Springs	Multifamily Finance
Grand Opening	The Bridge at Harris Ridge apartment complex grand opening	Sept. 24	Austin	Executive, Multifamily Finance
Training	Section 811 Project Rental Assistance Program Training (in coordination with Texas Apartment Association)	Sept. 24	Irving	Compliance
Webinar	#1: Overview of TDHCA and ESG #2: Contract Highlights	Sept. 24	N/A	HOME and Homeless Programs

Presentation	Austin Housing Coalition	Sept. 25	Austin	Policy and Public Affairs
Webinar	#1: Documentation for ESG #2: Eligible Activities for Persons Experiencing Homelessness	Sept. 25	N/A	HOME and Homeless Programs
Training	Section 811 Project Rental Assistance Program Training (in coordination with Texas Apartment Association)	Sept. 26	Houston	Compliance
Webinar	#1: Eligible Activities for Persons At-Risk of Homelessness #2: Reporting	Sept. 26	N/A	HOME and Homeless Programs
Training	Income Determination Training	October 3	Austin	Compliance
Meeting	Quarterly meeting for Texas Interagency Council for the Homeless (TICH)	October 8	Houston	Housing Resource Center
Conference	Texas Municipal League Annual Conference	October 9-11	San Antonio	Policy and Public Affairs (other program areas participating)

### Internet Postings of Note

*A list of new or noteworthy postings to the Department's website.*

#### **Amy Young Barrier Removal**

- Posted updated Program Manual 2019

#### **Asset Management**

- Posted Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Application (#18235, Memorial Apartments)
- Posted Presentation, discussion, and possible action regarding Material Amendment to the Housing Tax Credit Land Use Restriction Agreement (#01150, Limestone Ridge Apartments)

#### **Bond Finance**

- Added Single Family bond indentures 2019A official statement
- Posted Withdrawal of Municipal Advisor IRMA Notice

#### **Communications:**

- Posted homeownership mortgage rate artwork (replaced 3.60% with 3.50%)

- Replaced homepage article and news release (TDHCA awards \$4.9 million for housing and services to assist homeless)
- Replaced homepage article for October (observing National Energy Awareness Month)

### **Community Affairs**

- Posted 2020 CEAP Service Delivery Plan Instructions and Excel Form
- Posted CEAP/CSBG/WAP topic information Applicant/Client Disruptive Behaviors Guidance
- Added 2020 CAP-CIS Form for CSBG
- Added CSBG Organizational Standards materials (Board Matrix, Personnel Matrix, OS 4.3 Implementation Checklist)
- Posted updated Master List of CA Subrecipients
- Posted video and plan for 2020 Service Delivery Plan Guidance for CEAP

### **Executive**

- Posted Administrative Penalty Orders (Sparrow Assisted Living, Northwood Apartments, Fountains at Chimney Rock, Homes of Persimmons)
- Posted updated Organizational Chart

### **Fair Housing**

- Posted final 2019 State of Texas Analysis of Impediments to Fair Housing Choice

### **HOME and Homeless:**

- Updated ESG video library (Application Guidance, Basics, Match Guidance, Procurement Guidance and related handouts)
- Posted updated Indirect Cost Rate Worksheet

### **Homeownership:**

- Posted updated Texas Homeownership Program Handbook
- Posted updated Texas Statewide Homebuyer Education Program provider list
- Posted updated Income and Purchase Price Limits table
- Posted Texas Mortgage Credit Certificate reduced-fee information

### **Housing Trust Fund**

- Posted 2020-2021 HTF Plan

### **Internal Audit**

- Posted 2019 Internal Audit Follow up Review of Migrant Labor Housing Facilities
- Posted 2019 Internal Audit Report on the Implementation Status of Prior Audit Recommendations
- 2019 Internal Audit of Complaint Resolution Process

### **Multifamily:**

- Posted updated 2019-1 Multifamily Direct Loan NOFA Application Log (as of Sept. 9)
- Posted updated 2019 4% HTC Bond Status Log (as of Sept. 5)
- Posted 2019 9% HTC Carryover Allocation Manual and Submission Package
- Posted updated HTC Property Inventory List (as of Sept. 5)
- Posted online forum for Multifamily Direct Loan Rule – 2020 Preliminary Staff Draft

### **Neighborhood Stabilization Program**

- Added NSP1 and NSP3 quarterly reports for 2019 (2<sup>nd</sup> Quarter)

### **NOFA**

- Updated Amended 2019-1 Multifamily Direct Loan Annual NOFA (as of Sept. 5)
- Posted 2019 HOME Single Family CFD Set-aside

- Posted 2019 HOME Single Family Persons With Disabilities Set-aside
- Posted 2019 HOME Single Family Persons HANC Set-aside

### **Public Comment**

- Posted period for public comment for Proposed Rule Changes to 10 TAC Chapter 6 Community Affairs Programs
- Posted period for public comment for Public Notice of Demolition/Reconstruction of Casa de Manana Apartments
- Posted period for public comment Proposed Repeal and New of 10 TAC Section 1.7, Appeals Process
- Posted period for public comment Proposed Repeal and New of 10 TAC Section 1.10, Public Comment Procedures
- Posted period for public comment DRAFT 2020 QAP 10 TAC Chapter 11 Blackline version
- Posted period for public comment DRAFT 2020 QAP 10 TAC Chapter 11
- Posted period for public comment DRAFT 2020 QAP 10 TAC Chapter 12
- Posted period for public comment Proposed Rule Changes to 10 TAC 25, Colonia Self-Help Center Program Rule

### **Purchasing**

- Updated list of No-Bid contracts as required by state

### **Real Estate Analysis**

- Posted updated List of Approved Market Analysts

### **Section 811 PRA Program**

- Posted updated 811 HUD Model Lease (added Microsoft Word version)

### **Frequently Used Acronyms**

AMFI	Area Median Family Income	LURA	Land Use Restriction Agreement
AYBR	Amy Young Barrier Removal Program	MF	Multifamily
CEAP	Comprehensive Energy Assistance Program	MFTH	My First Texas Home Program
CFD	Contract for Deed Program	MRB	Mortgage Revenue Bond Program
CFDC	Contract for Deed Conversion Assistance Grants	NHTF	National Housing Trust Fund
CHDO	Community Housing Development Organization	NOFA	Notice of Funding Availability
CMTS	Compliance Monitoring and Tracking System	NSP	Neighborhood Stabilization Program
CSBG	Community Services Block Grant Program	OIG	Office of Inspector General
ESG	Emergency Solutions Grants Program	QAP	Qualified Allocation Plan
FAQ	Frequently Asked Questions	QCP	Quantifiable Community Participation
HBA	Homebuyer Assistance Program	REA	Real Estate Analysis
HHSCC	Housing and Health Services Coordination Council	RFA	Request for Applications
HHSP	Homeless Housing and Services	RFO	Request for Offer
		RFP	Request for Proposals
		RFQ	Request for Qualifications
		ROFR	Right of First Refusal
		SLIHP	State of Texas Low Income Housing Plan
		TA	Technical Assistance

	Program	TBRA	Tenant Based Rental Assistance Program
HRA	Homeowner Rehabilitation Assistance Program	TICH	Texas Interagency Council for the Homeless
HRC	Housing Resource Center	TSHEP	Texas Statewide Homebuyer Education Program
HTC	Housing Tax Credit	TXMCC	Texas Mortgage Credit Certificate
HTF	Housing Trust Fund	VAWA	Violence Against Women Act
HUD	U.S. Department of Housing and Urban Development	WAP	Weatherization Assistance Program
IFB	Invitation for Bid		

2b



BOARD REPORT ITEM  
BOND FINANCE DIVISION  
OCTOBER 10, 2019

Report on the closing of the Department's 2019 Series A Single Family Mortgage Revenue Bonds

BACKGROUND

On June 27, 2019, the Board approved the issuance of the Department's 2019 Series A Single Family Mortgage Revenue Bonds (the Bonds). Bond Review Board approval was received July 8, 2019, the Preliminary Official Statement was published July 9, 2019, and the Bonds were priced July 16, 2019. The Bond Purchase Agreement was executed July 17, 2019, the Official Statement was published July 25, 2019, and the Bonds closed August 27, 2019.

The financing team included Bracewell LLP, Bond Counsel; McCall, Parkhurst & Horton, L.L.P., and Mahomes Bolden PC, Disclosure Counsel; George K. Baum & Company, Financial Advisor; and an underwriting team led by J.P. Morgan as Senior Manager, with Jefferies, Piper Jaffray & Co., Ramirez & Co., Inc., and RBC Capital Markets serving as Co-Managers for the transaction.

The Bonds were structured to maximize premium received while keeping mortgage rates as low as possible. Fixed rate and tax-exempt, the Bond structure included par serial bonds, par and premium term bonds, and a high premium PAC (Planned Amortization Class) bond. The par amount of Bonds sold was \$165,325,000, and the premium received was \$9,670,870, for total Bond proceeds of \$174,995,871. The premium fully funded the down payment and closing cost assistance and lender compensation for the related loans. As a result, the issuer contribution, funded with amounts on deposit in the Single Family Mortgage Revenue Bond Indenture, was just \$2.2 million, which is low for a transaction of this size.

Concurrent with the pricing of the Bonds, the Department bid a Guaranteed Investment Contract (GIC) for the investment of \$174,913,850 of Bond proceeds. The winning bidder was The Toronto-Dominion Bank. The GIC pays interest at an annual rate of 2.023%, and matures June 30, 2020.

This issuance made approximately \$40 million in funds available for Low Rate Loans, which provide no down payment or closing cost assistance, and approximately \$124 million for Assisted Loans, which provide four points of down payment and closing cost assistance in the form of 30-year, non-amortizing, 0% interest second loans that are due on sale or refinance of the first mortgage. Eligible loan types are FHA, VA, and USDA-RD loans. The Low

Rate loans are currently offered at a mortgage rate of 3.50%, and the Assisted Loans have a mortgage rate of 4.40%; these rates have been reduced from their initial rates of 3.60% and 4.55%, respectively, due to changes in market interest rates since the Bonds priced. Over 90% of funds made available through this program have been reserved, and we expect the program to be fully committed by the end of October.

Attached is a detailed summary of the pricing that was prepared by J.P. Morgan.



# TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

**\$165,325,000**

**SINGLE FAMILY MORTGAGE REVENUE BONDS**

**2019 SERIES A (NON-AMT)**

Closing Date: August 27, 2019

Pricing Book Date: August 26, 2019

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**J.P.Morgan**

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Program 93

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## 2. Financing Summary

**NEW ISSUE - BOOK-ENTRY ONLY**

**RATINGS:**  
**S & P: "AA+"**  
**Moody's: "Aaa"**  
**(See "RATINGS" herein)**

*Bracewell LLP, Bond Counsel, is of the opinion that, subject to certain conditions described herein and under existing law, (i) interest on the Series 2019A Bonds is excludable from gross income for federal income tax purposes and (ii) interest on the Series 2019A Bonds is not a specific preference item subject to the alternative minimum tax.*

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**

**\$165,325,000**

**Single Family Mortgage Revenue Bonds  
2019 Series A**

**Dated Date:** Date of Delivery

**Due:** As shown on inside cover page

The Texas Department of Housing and Community Affairs Single Family Mortgage Revenue Bonds, 2019 Series A (the "Series 2019A Bonds") are issuable by the Texas Department of Housing and Community Affairs (the "Department") only as fully registered bonds, without coupons, and will be registered in the name of Cede & Co., as registered owner and nominee for The Depository Trust Company, New York, New York ("DTC"). DTC will act as securities depository for the Series 2019A Bonds. The Series 2019A Bonds will be available to purchasers only in book-entry form in denominations of \$5,000 or any integral multiple thereof. For as long as Cede & Co. is the exclusive registered owner of the Series 2019A Bonds, the principal or redemption price of, and interest on, the Series 2019A Bonds will be payable by The Bank of New York Mellon Trust Company, N.A., as Trustee, to DTC, which will be responsible for making such payments to DTC Participants (as defined herein), for subsequent remittance to the owners of beneficial interests in the Series 2019A Bonds. The purchasers of the Series 2019A Bonds will not receive certificates representing their beneficial ownership interest. See "APPENDIX F – SUMMARY OF INFORMATION REGARDING THE PROGRAM AND MORTGAGE LOANS, PRIOR SWAP AGREEMENTS, PRIOR LIQUIDITY FACILITIES AND OTHER MATTERS – DTC and Book-Entry."

The Series 2019A Bonds will accrue interest from the date of delivery until their maturity or prior redemption at the per annum rate of interest set forth on the inside cover page hereof. Interest on the Series 2019A Bonds will be payable to DTC commencing on March 1, 2020, and semi-annually thereafter on each September 1 and March 1 until maturity or prior redemption thereof, all as more fully described on the inside cover page hereof.

**THE SERIES 2019A BONDS ARE SUBJECT TO REDEMPTION ON THE DATES AND AT THE REDEMPTION PRICES WHICH ARE MORE FULLY DESCRIBED HEREIN.** See "THE SERIES 2019A BONDS - Redemption Provisions."

The Series 2019A Bonds are being issued for the primary purpose of providing funds for the purchase of mortgage-backed, pass-through certificates (the "Mortgage Certificates"). The Mortgage Certificates purchased with the proceeds of the Series 2019A Bonds will be guaranteed as to timely payment of principal and interest by the Government National Mortgage Association ("Ginnie Mae") ("Ginnie Mae Certificates" or "GNMA Certificates"). See "APPENDIX B-1 – GNMA AND THE GNMA CERTIFICATES." The Series 2019A Bonds, the Prior Bonds (as defined herein), and, unless subordinated, all Bonds subsequently issued under the Trust Indenture are equally and ratably secured by the Trust Estate (as defined herein) held by the Trustee under the Trust Indenture (as defined herein). See "SECURITY FOR THE BONDS" and "APPENDIX E – SUMMARY OF INFORMATION REGARDING THE TRUST INDENTURE."

**THE SERIES 2019A BONDS ARE LIMITED OBLIGATIONS OF THE DEPARTMENT AND ARE PAYABLE SOLELY FROM THE REVENUES AND FUNDS PLEDGED FOR THE PAYMENT THEREOF AS MORE FULLY DESCRIBED HEREIN. NEITHER THE STATE OF TEXAS (THE "STATE") NOR ANY AGENCY OF THE STATE, OTHER THAN THE DEPARTMENT, NOR THE UNITED STATES OF AMERICA OR ANY AGENCY, DEPARTMENT OR OTHER INSTRUMENTALITY THEREOF, INCLUDING GINNIE MAE, FREDDIE MAC, AND FANNIE MAE, IS OBLIGATED TO PAY THE PRINCIPAL OR REDEMPTION PRICE OF OR INTEREST ON THE SERIES 2019A BONDS. NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OR THE UNITED STATES OF AMERICA IS PLEDGED, GIVEN OR LOANED TO SUCH PAYMENT. THE DEPARTMENT HAS NO TAXING POWER. GINNIE MAE, FREDDIE MAC, AND FANNIE MAE GUARANTEE ONLY THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE GINNIE MAE CERTIFICATES, FREDDIE MAC CERTIFICATES, AND FANNIE MAE CERTIFICATES, RESPECTIVELY, WHEN DUE AND DO NOT GUARANTEE THE PAYMENT OF THE SERIES 2019A BONDS OR ANY OTHER OBLIGATIONS ISSUED BY THE DEPARTMENT.**

The Series 2019A Bonds are offered when, as, and if issued by the Department. Delivery of the Series 2019A Bonds is subject to approval of the legality thereof by Bracewell LLP, Bond Counsel, and certain other conditions. Delivery of the Series 2019A Bonds is also subject to the approval of the legality thereof by the Attorney General of the State. Certain legal matters will be passed upon for the Department by its General Counsel, James "Beau" Eccles, Esq., and by its Co-Disclosure Counsel, McCall, Parkhurst & Horton L.L.P and Mahomes Bolden PC. Certain legal matters will be passed upon for the Underwriters by their Counsel, Chapman and Cutler LLP. Certain financial advisory services have been provided to the Department by George K. Baum & Company. It is expected that the Series 2019A Bonds will be available for delivery to DTC in book-entry only form on or about August 27, 2019.

**J.P. Morgan**

**Jefferies**

**Piper Jaffray & Co.**

**Ramirez & Co., Inc.**

**RBC Capital Markets**

## MATURITY SCHEDULE

### \$20,245,000 Series 2019A Serial Bonds

Maturity Date	Principal Amount	Interest Rate	Price	CUSIP
9/1/2020	\$ 1,000,000	1.25%	100%	88275FQD4
3/1/2022	975,000	1.45	100	88275FQF9
9/1/2022	985,000	1.50	100	88275FQG7
3/1/2023	995,000	1.55	100	88275FQH5
9/1/2023	1,005,000	1.60	100	88275FQJ1
3/1/2024	1,015,000	1.60	100	88275FQK8
9/1/2024	1,025,000	1.65	100	88275FQL6
3/1/2025	1,040,000	1.70	100	88275FQM4
9/1/2025	1,055,000	1.75	100	88275FQN2
3/1/2026	1,065,000	1.85	100	88275FQP7
9/1/2026	1,070,000	1.95	100	88275FQQ5
3/1/2027	1,080,000	2.00	100	88275FQR3
9/1/2027	1,085,000	2.05	100	88275FQS1
3/1/2028	1,095,000	2.15	100	88275FQT9
9/1/2028	1,115,000	2.20	100	88275FQU6
3/1/2029	1,135,000	2.25	100	88275FQV4
9/1/2029	1,150,000	2.30	100	88275FQW2
3/1/2030	1,170,000	2.35	100	88275FQX0
9/1/2030	1,185,000	2.40	100	88275FQY8

\$1,795,000 1.40% Term Bonds due September 1, 2021 Price 100% CUSIP 88275FQE2  
 \$10,285,000 2.70% Term Bonds due September 1, 2034 Price 100% CUSIP 88275FQZ5  
 \$15,165,000 3.375% Term Bonds due September 1, 2039 Price 102.464% CUSIP 88275FRA9  
 \$18,570,000 3.625% Term Bonds due September 1, 2044 Price 102.436% CUSIP 88275FRB7  
 \$26,530,000 3.75% Term Bonds due September 1, 2049 Price 102.696% CUSIP 88275FRC5  
 \$72,735,000 4.00% Premium PAC Term Bonds due March 1, 2050 Price 111.177% CUSIP 88275FRD3

(Interest Accrues from Date of Delivery)

## Financing Summary

**\$165,325,000**

**Texas Department of Housing and Community Affairs  
Single Family Mortgage Revenue Bonds  
2019 Series A (Non-AMT)**

### *Plan of Finance*

- The 2019 Series A Bonds are being issued to finance mortgage loans under the Department's Single Family Mortgage Revenue Bond Program. The 2019 Series A Bonds have been designated as the Department's Bond Program No. 93.
- The 2019 Series A Bonds are being issued for the primary purpose of providing funds for the purchase of the Mortgage Certificates guaranteed by Ginnie Mae.
- Proceeds from the 2019 Series A Bonds will also be used to pay costs of issuance, including underwriters' compensation, for the Bonds as well as provide funds attributed to down payment assistance, lender compensation, and servicing fees for second mortgage loans.

### *Bond Structure*

- The 2019 Series A Bonds were sold as fixed rate bonds.
- The 2019 Series A Bonds were structured as:
  - \$20.245 million serial bonds maturing semi-annually from 9/1/2020 to 9/1/2030
  - \$72.345 million term bonds maturing on 9/1/2021, 9/1/2034, 9/1/2039, 9/1/2044 and 9/1/2049
  - \$72.735 million premium Planned Amortization Class (PAC) term bonds maturing on 3/1/2050 with a weighted average life of 5.9 years from 100 to 400% SIFMA
- The Department's objectives for the 2019 Series A bond issue included raising significant premium for DPA loans and costs of issuance at an attractive cost of funds and minimal cash flow stress in the indenture. The bond structure was designed to meet these objectives.
  - The PAC bond coupon was maximized for market conditions and a 5.9 year average life increased the size of the PAC bond to maximize premium and reduce the cost of funds.
  - The longest term bonds (9/1/2039, 9/1/2044 and 9/1/2049) were sold with coupons to generate premium prices.
  - The shortest term bond (9/1/2034) was sold as a supersinker and offered prepayment protection to the investors of the premium term bonds to make the premium term bonds more attractive to investors.

### *Pricing Results*

- The 2019 Series A Bonds priced on July 16, 2019 with a retail order period on Tuesday morning and a planned institutional order period on Wednesday July 17, 2019. Due to the strong market, the retail order period was terminated early and the institutional order period was also held on July 16.
- The bond market was volatile leading up to pricing due to dovish foments from Fed Chair Powell and the anticipated Fed rate cut in July, the first rate cut in 10 years. Uncertainty surrounding the strength of the U.S. economy swirled from the trade wars and recent jobs report. In the municipal market, MMD was outperforming UST largely due to manageable supply and continued inflows into bond funds for a record-breaking 27<sup>th</sup> consecutive week

and \$48.8 billion YTD. The UST market ended the day with gains (i.e., lower yields), setting a solid tone for pricing next morning.

- On the morning of July 16, 2019, slight Treasury weakness resulted from positive retail sales data, erasing the UST gains from the prior day. J.P. Morgan entered the market with the 2019 Series A Bonds for the retail order period by offering all serial bonds, a portion of the 9/1/2034 term bond and a portion of each of the premium term bonds.
- The retail order was strong with \$42.8 million in total orders (\$25.6 million useable of the \$47.78 million of bonds offered with 70% of orders coming from Texas investors). Most of the serial bonds were completely subscribed for allowing for 5 bps tighter spreads in 3/1/2024 to 9/1/2027, and decent subscription in the 9/1/2044 and 9/1/2049 premium term bonds left a balance of the term bonds that positioned TDHCA well to begin offering the bonds to institutions. Notwithstanding the lack of institutional reads for the 9/1/2034 and 9/1/2039 term bonds, J.P. Morgan recommended to the Department to accelerate to institutional pricing given the strong order book and several reads from institutional investors on the other bonds.
- During the institutional order period, the 2019 Series A Bonds continued to receive strong investor interest which resulted in an incremental \$528 million of orders (excluding stock orders) concentrated in the premium term bonds and the PAC bond.
  - 25 different institutional and professional retail accounts participated.
  - The premium term bonds all gained significant incremental orders during the institutional order period, allowing for lower yield adjustments at the reprice – 9/1/2039, 3.3x subscribed for was lowered by 4 bps to a 3.06% yield; 9/1/2044, 3.6x subscribed for was lowered by 4 bps to a 3.31% yield; and 9/1/2049, 4.94x subscribed for was lowered by 5 bps to a 3.40% yield.
  - Subscription was also strong for the PAC Bond at 3.8x, allowing for a 4 bps yield reduction to a 1.96% yield at a +67 final spread to MMD.
  - Notwithstanding the strong order period, balances remained in the serial bonds across four maturities (9/1/2020, 3/1/2021, 9/1/2021 and 9/1/2022) totaled \$5.3 million; J.P. Morgan offered to underwrite the 9/1/2020 and 9/1/2022 bonds at unchanged yields, but the 2021 serial bonds had no investor interest, indicating a yield increase was appropriate. J.P. Morgan offered to create a “mini” term combining the 3/1/2021 sinker into the 9/1/2021 maturity at the then-current 9/1/2021 yield, effectively increasing the yield by 5 bps only on the amount in 3/1/2021 and keeping the 9/1/2021 yield the same.
  - The 9/1/2034 at the 2.70% offered rate struggled due to extremely low yields, but J.P. Morgan offered to underwrite slightly more than half of the maturity at an unchanged yield.

## Pricing Progression

### Pricing Progression (basis points spread to AAA MMD)

Date	Principal (\$000s)	Retail Order Period	Institutional Order Period	Final	Change (Retail to Final in bps)	Total Orders <sup>2</sup> (\$000s)	Subscription <sup>2,3</sup> (x)
9/1/2020	\$1,000	11	11	11	--	\$0	0.00x
3/1/2021	830	19	19	--	--	--	--
9/1/2021 <sup>4</sup>	965	24	24	24	--	80	0.04x
3/1/2022	975	28	28	28	--	975	1.00x
9/1/2022	985	33	33	33	--	515	0.52x
3/1/2023	995	37	37	37	--	995	1.00x
9/1/2023	1,005	42	42	42	--	1,005	1.00x
3/1/2024	1,015	45	40	40	(5)	3,355	3.31x
9/1/2024	1,025	49	44	44	(5)	2,125	2.07x
3/1/2025	1,040	48	43	43	(5)	1,040	1.00x
9/1/2025	1,055	51	46	46	(5)	2,785	2.64x
3/1/2026	1,065	55	50	50	(5)	2,130	2.00x
9/1/2026	1,070	63	58	58	(5)	3,170	2.96x
3/1/2027	1,080	64	59	59	(5)	3,245	3.00x
9/1/2027	1,085	66	61	61	(5)	4,330	3.99x
3/1/2028	1,095	66	66	66	--	1,105	1.01x
9/1/2028	1,115	68	68	68	--	1,705	1.53x
3/1/2029	1,135	69	69	69	--	1,140	1.00x
9/1/2029	1,150	71	71	71	--	2,305	2.00x
3/1/2030	1,170	72	72	72	--	1,175	1.00x
9/1/2030	1,185	74	74	74	--	1,460	1.23x
9/1/2034	10,285	83	83	83	--	5,000	0.49x
9/1/2039	15,165	102	102	98	(4)	50,695	3.34x
9/1/2044	18,570	112	112	108	(4)	66,215	3.57x
9/1/2049	26,530	117	117	112	(5)	131,190	4.94x
3/1/2050	72,735	71	71	67	(4)	283,205	3.89x
<b>Total</b>	<b>\$165,325</b>					<b>\$570,945</b>	<b>3.45x</b>

<sup>1</sup>Spreads based on interpolated MMD as of July 15, 2019

<sup>2</sup>Does not include stock orders

<sup>3</sup>Defined as total orders divided by par amount

<sup>4</sup>9/1/2021 term bond totaling \$1,795,000 created at reprice from combining the 3/1/2021 and 9/1/2021 serial maturities

**Pricing Progression (yields)**

Date	Principal (\$000s)	Retail Order Period	Institutional Order Period	Final	Change (Retail to Final in bps)	Total Orders <sup>2</sup> (\$000s)	Subscription <sup>2,3</sup> (x)
9/1/2020	\$1,000	1.25%	1.25%	1.25%	--	\$0	0.00x
3/1/2021	830	1.35%	1.35%	--	--	--	--
9/1/2021 <sup>4</sup>	965	1.40%	1.40%	1.40%	--	80	0.04x
3/1/2022	975	1.45%	1.45%	1.45%	--	975	1.00x
9/1/2022	985	1.50%	1.50%	1.50%	--	515	0.52x
3/1/2023	995	1.55%	1.55%	1.55%	--	995	1.00x
9/1/2023	1,005	1.60%	1.60%	1.60%	--	1,005	1.00x
3/1/2024	1,015	1.65%	1.60%	1.60%	(5)	3,355	3.31x
9/1/2024	1,025	1.70%	1.65%	1.65%	(5)	2,125	2.07x
3/1/2025	1,040	1.75%	1.70%	1.70%	(5)	1,040	1.00x
9/1/2025	1,055	1.80%	1.75%	1.75%	(5)	2,785	2.64x
3/1/2026	1,065	1.90%	1.85%	1.85%	(5)	2,130	2.00x
9/1/2026	1,070	2.00%	1.95%	1.95%	(5)	3,170	2.96x
3/1/2027	1,080	2.05%	2.00%	2.00%	(5)	3,245	3.00x
9/1/2027	1,085	2.10%	2.05%	2.05%	(5)	4,330	3.99x
3/1/2028	1,095	2.15%	2.15%	2.15%	--	1,105	1.01x
9/1/2028	1,115	2.20%	2.20%	2.20%	--	1,705	1.53x
3/1/2029	1,135	2.25%	2.25%	2.25%	--	1,140	1.00x
9/1/2029	1,150	2.30%	2.30%	2.30%	--	2,305	2.00x
3/1/2030	1,170	2.35%	2.35%	2.35%	--	1,175	1.00x
9/1/2030	1,185	2.40%	2.40%	2.40%	--	1,460	1.23x
9/1/2034	10,285	2.70%	2.70%	2.70%	--	5,000	0.49x
9/1/2039	15,165	3.10%	3.10%	3.06%	(4)	50,695	3.34x
9/1/2044	18,570	3.35%	3.35%	3.31%	(4)	66,215	3.57x
9/1/2049	26,530	3.45%	3.45%	3.40%	(5)	131,190	4.94x
3/1/2050	72,735	2.00%	2.00%	1.96%	(4)	283,205	3.89x
<b>Total</b>	<b>\$165,325</b>					<b>\$570,945</b>	<b>3.45x</b>

<sup>1</sup>Spreads based on interpolated MMD as of July 15, 2019

<sup>2</sup>Does not include stock orders

<sup>3</sup>Defined as total orders divided by par amount

<sup>4</sup>9/1/2021 term bond totaling \$1,795,000 created at reprice from combining the 3/1/2021 and 9/1/2021 serial maturities



### 3. Orders and Allotments

## Orders and Allotments – Total

(Orders and Allotments \$000s)

Total Orders and Allotments: Senior Manager									
	<u>Retail</u>		<u>Member</u>		<u>Priority</u>		<u>Total Sales</u>		
	Orders	Allotments	Orders	Allotments	Orders	Allotments	Orders	Allotments	
<b>J.P. Morgan</b>	40,400	24,755	8,470	8,470	528,000	131,255	576,870	164,480	

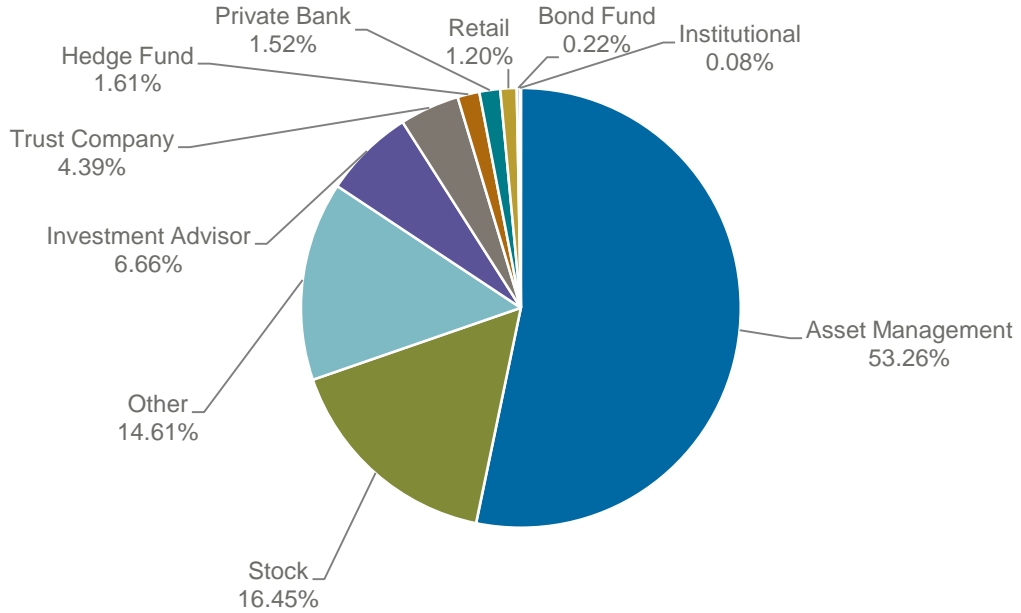
Total Orders and Allotments: Co-Managers									
	<u>Retail</u>		<u>Member</u>		<u>Priority</u>		<u>Total Sales</u>		
	Orders	Allotments	Orders	Allotments	Orders	Allotments	Orders	Allotments	
Jefferies LLC	-	-	30,000	-	-	-	30,000	-	
Piper Jaffray & Co.	1,015	-	6,465	-	-	-	7,480	-	
RBC Capital Markets	375	300	37,500	-	100	45	37,975	345	
Ramirez & Co., Inc.	1,055	500	30,000	-	-	-	31,055	500	
<b>Total Managers:</b>	<b>2,445</b>	<b>800</b>	<b>103,965</b>	<b>-</b>	<b>100</b>	<b>45</b>	<b>106,510</b>	<b>845</b>	

Total Orders and Allotments: Senior Manager									
	<u>Retail</u>		<u>Member</u>		<u>Priority</u>		<u>Total Sales</u>		
	Orders	Allotments	Orders	Allotments	Orders	Allotments	Orders	Allotments	
<b>Total</b>	<b>42,845</b>	<b>25,555</b>	<b>112,435</b>	<b>8,470</b>	<b>528,100</b>	<b>131,300</b>	<b>683,380</b>	<b>165,325</b>	

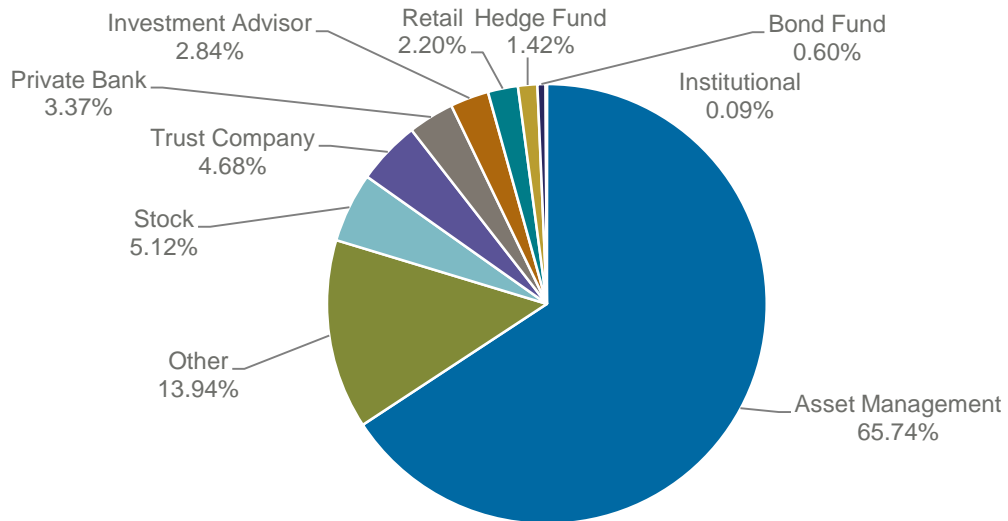
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## Orders and Allotments by Investor Type

### Orders by Investor Type



### Allotments by Investor Type

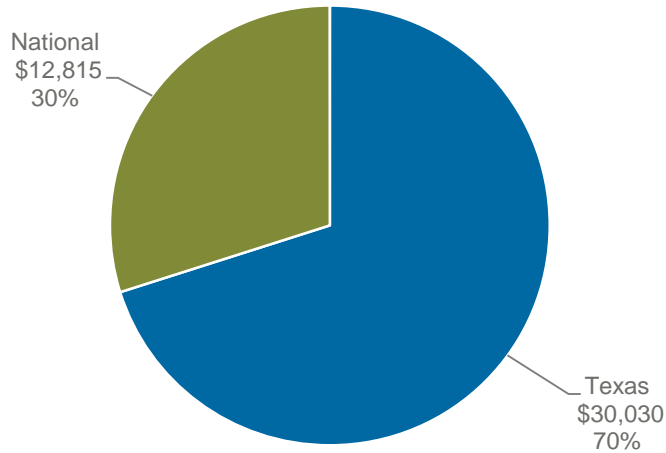


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## Retail Orders and Allotments – National and Texas

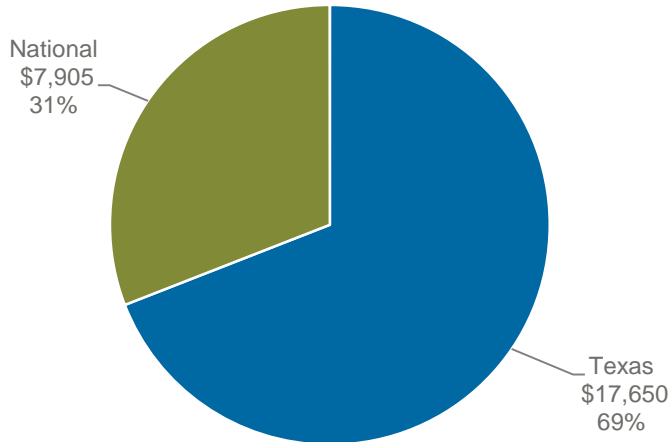
### Retail Orders – National and Texas

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### Retail Allotments – National and Texas

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## Pricing Wires

\*\*\*\*\*

Tuesday, July 16, 2019 9:30AM =====  
MSS Wire #129790 == RETAIL ORDER PERIOD ==  
MSS Master Message #4505092 =====  
TO: J.P. Morgan Securities LLC  
(Manager)

RE: \$ 165,660,000\*  
TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
Single Family Mortgage Revenue Bonds  
2019 Series A

WE HAVE A RELEASE FOR THE RETAIL ORDER PERIOD. ORDERS UNTIL 4:00PM ET.

POST LINK: <http://www.munios.com/i/PDK3QPM8GaL3>

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A "RETAIL" ORDER IS DEFINED AS AN ORDER PLACED FOR THE ACCOUNT OF AN INDIVIDUAL, BANK  
TRUST, OR INVESTMENT ADVISOR ACTING ON BEHALF OF AN INDIVIDUAL. RETAIL ORDERS DO NOT  
INCLUDE BANK PORTFOLIOS, INSURANCE COMPANIES, BOND FUNDS OR MUNICIPALITIES.

ZIP CODES ARE REQUIRED WITH ALL RETAIL ORDERS.

\*\*\*\*\*

MOODY'S: Aaa S&P: AA+ FITCH: NR

DATED:08/27/2019 FIRST COUPON:03/01/2020

DUE: 03/01 & 09/01

ADD'L

TAKEDOWN

MATURITY	OFFERED	AMOUNT*	COUPON	PRICE	( Pts )
09/01/2020	880M	880M	1.25%	100.00	1/4
03/01/2021	950M	950M	1.35%	100.00	3/8
09/01/2021	965M	965M	1.40%	100.00	3/8
03/01/2022	975M	975M	1.45%	100.00	3/8
09/01/2022	985M	985M	1.50%	100.00	3/8
03/01/2023	995M	995M	1.55%	100.00	1/2
09/01/2023	1,005M	1,005M	1.60%	100.00	1/2
03/01/2024	1,015M	1,015M	1.65%	100.00	1/2
09/01/2024	1,025M	1,025M	1.70%	100.00	1/2

03/01/2025	1,040M	1,040M	1.75%	100.00	1/2
09/01/2025	1,055M	1,055M	1.80%	100.00	1/2
03/01/2026	1,065M	1,065M	1.90%	100.00	5/8
09/01/2026	1,075M	1,075M	2.00%	100.00	5/8
03/01/2027	1,085M	1,085M	2.05%	100.00	5/8
09/01/2027	1,090M	1,090M	2.10%	100.00	5/8
03/01/2028	1,105M	1,105M	2.15%	100.00	5/8
09/01/2028	1,120M	1,120M	2.20%	100.00	5/8
03/01/2029	1,140M	1,140M	2.25%	100.00	5/8
09/01/2029	1,155M	1,155M	2.30%	100.00	5/8
03/01/2030	1,175M	1,175M	2.35%	100.00	5/8
09/01/2030	1,185M	1,185M	2.40%	100.00	5/8

09/01/2034	5,305M	10,305M	2.70%	100.00	5/8
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09/01/2039	5,195M	15,195M	3.375%	3.10	5/8
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(Approx. \$ Price PTC 09/01/2028 102.147 Approx. YTM 3.228)

09/01/2044	8,610M	18,610M	3.625%	3.35	5/8
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(Approx. \$ Price PTC 09/01/2028 102.123 Approx. YTM 3.497)

09/01/2049	6,585M	26,585M	3.75%	3.45	5/8
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(Approx. \$ Price PTC 09/01/2028 102.306 Approx. YTM 3.623)

03/01/2050	NO RETAIL	72,880M	4.00%	2.00	0.575
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(Approx. \$ Price 110.974)

(PAC) Average Life: 5.9 years from 100%-400% WAL (Optional Call Not Exercised)

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CALL FEATURES: Optional call in 09/01/2028 @ 100.00

EXCEPT OPTIONAL REDEMPTION OF THE PREMIUM PAC BONDS DUE 9/1/2049. The Premium PAC Term Bonds are subject to redemption prior to maturity, in whole or in part at any time and from time to time, on and after September 1, 2028, at the option of the Department after giving notice as provided in the Trust Indenture, at the Redemption Prices set forth below

(expressed as a percentage of the principal amount to be redeemed), in each case together with interest accrued thereon to the redemption date:

Redemption Date	Redemption Price
September 1, 2028	103.357%

March 1, 2029	103.055%
September 1, 2029	102.724%
March 1, 2030	102.356%
September 1, 2030	101.942%
March 1, 2031	101.538%
September 1, 2031	101.105%
March 1, 2032	100.639%
October 1, 2032 and thereafter	100.000%

See pages 12-13 of the POS.

If the Premium PAC Term Bonds are redeemed on a date other than a redemption date listed above, the Redemption Price, as of such redemption date, will be determined by straight-line interpolation between the Redemption Prices for the redemption dates listed above immediately preceding and succeeding such redemption date. See page 12-13 of the POS.

SPECIAL REDEMPTION: The Series 2019A Bonds are subject to special redemption from unexpended proceeds of the Series 2019A Bonds, Mortgage Loan Principal Prepayments and Excess Revenues as described on pages 4-12 of the POS.

Projected Weighted Average Life (in Years)

Premium PAC      Premium PAC  
Term Bonds      Term Bonds

Due	Due				03/01/2050	03/01/2050
SIFMA	Term Bonds	Term Bonds	Term Bonds	Term Bonds	(Opt. Call	(Opt. Call
Prepayment	Due	Due	Due	Due	Not Exercised)	Exercised)
Model	09/01/2034	09/01/2039	09/01/2044	09/01/2049		
0%	13.3	17.8	22.8	27.9	17.3	8.3
50%	13.3	17.8	22.3	24.9	8.6	6.8
75%	13.0	17.3	20.4	21.7	6.7	6.1
100%	8.9	16.4	18.6	19.3	5.9	5.6
125%	3.6	15.3	16.9	17.3	5.9	5.6
150%	2.6	13.7	14.9	15.0	5.9	5.6
175%	2.2	12.3	13.0	13.1	5.9	5.6
200%	1.9	11.0	11.5	11.5	5.9	5.6
300%	1.5	7.2	7.2	7.2	5.9	5.6
400%	1.3	4.8	4.8	4.8	5.9	5.6
500%	1.2	4.7	4.7	4.7	4.4	4.3



By Lot Sinking Fund Schedule

2034 Term Bond

03/01/2031 1,220M

09/01/2031 1,240M

03/01/2032 1,265M

09/01/2032 1,280M

03/01/2033 1,290M

09/01/2033 1,315M

03/01/2034 1,335M

09/01/2034 1,360M

By Lot Sinking Fund Schedule

2039 Term Bond

03/01/2035 1,395M

09/01/2035 1,420M

03/01/2036 1,455M

09/01/2036 1,475M

03/01/2037 1,505M

09/01/2037 1,530M

03/01/2038 1,555M

09/01/2038 1,585M

03/01/2039 1,620M

09/01/2039 1,655M

By Lot Sinking Fund Schedule

2044 Term Bond

03/01/2040 1,700M

09/01/2040 1,735M

03/01/2041 1,765M

09/01/2041 1,800M

03/01/2042 1,835M

09/01/2042 1,875M

03/01/2043 1,910M

09/01/2043 1,955M

03/01/2044 1,995M

09/01/2044 2,040M

By Lot Sinking Fund Schedule

2049 Term Bond

03/01/2045	2,090M
09/01/2045	2,135M
03/01/2046	2,180M
09/01/2046	2,225M
03/01/2047	2,275M
09/01/2047	2,320M
03/01/2048	2,375M
09/01/2048	2,425M
03/01/2049	2,480M
09/01/2049	6,080M

By Lot Sinking Fund Schedule

2050 Term Bond

09/01/2020	540M
03/01/2021	610M
09/01/2021	620M
03/01/2022	635M
09/01/2022	650M
03/01/2023	665M
09/01/2023	680M
03/01/2024	695M
09/01/2024	715M
03/01/2025	730M
09/01/2025	745M
03/01/2026	765M
09/01/2026	780M
03/01/2027	800M
09/01/2027	820M
03/01/2028	835M
09/01/2028	855M
03/01/2029	875M
09/01/2029	895M
03/01/2030	915M
09/01/2030	940M
03/01/2031	960M
09/01/2031	985M
03/01/2032	1,005M
09/01/2032	1,030M
03/01/2033	1,055M
09/01/2033	1,075M
03/01/2034	1,095M
09/01/2034	1,120M

03/01/2035	1,150M
09/01/2035	1,175M
03/01/2036	1,200M
09/01/2036	1,230M
03/01/2037	1,260M
09/01/2037	1,285M
03/01/2038	1,315M
09/01/2038	1,345M
03/01/2039	1,375M
09/01/2039	1,395M
03/01/2040	1,435M
09/01/2040	1,470M
03/01/2041	1,505M
09/01/2041	1,540M
03/01/2042	1,575M
09/01/2042	1,610M
03/01/2043	1,650M
09/01/2043	1,685M
03/01/2044	1,725M
09/01/2044	1,765M
03/01/2045	1,810M
09/01/2045	1,850M
03/01/2046	1,895M
09/01/2046	1,935M
03/01/2047	1,980M
09/01/2047	2,030M
03/01/2048	2,075M
09/01/2048	2,125M
03/01/2049	2,175M
09/01/2049	1,225M
03/01/2050	1,000M

\* - APPROXIMATE SUBJECT TO CHANGE

TABLE OF PROJECTED WEIGHTED AVERAGE LIFE DATA AT VARIOUS PREPAYMENT SPEEDS\*

(POS Appendix G)

Premium PAC Premium PAC

Term Bonds Term Bond

Due Due

SPD of MTG	Term Bonds	Term Bonds	Term Bonds	Term Bonds	3/1/2050	3/1/2050
LOANS (SIFMA)	Due 9/1/2034	Due 9/1/2039	Due 9/1/2044	De 9/1/2049 (Opt. Call	(Opt. Call	

Not Exercised) Exercised)

0% Avg Life	13.3	17.8	22.8	27.9	17.3	8.3
Avg Mty Date	12/15/2032	6/28/2037	6/30/2042	8/5/2047	12/26/2036	11/28/2027
1st Redemption	3/1/2031	3/1/2035	3/1/2040	3/1/2045	1/1/2020	1/1/2020
Last Redemption	9/1/2034	9/1/2039	9/1/2044	5/1/2049	3/1/2048	9/1/2028

50% Avg Life	13.3	17.8	22.3	24.9	8.6	6.8
Avg Mty Date	12/15/2032	6/23/2037	11/28/2041	7/4/2044	4/9/2028	6/12/2026
1st Redemption	3/1/2031	3/1/2035	10/1/2037	10/1/2037	1/1/2020	1/1/2020
Last Redemption	9/1/2034	9/1/2039	9/1/2044	2/1/2048	10/1/2037	9/1/2028

75% Avg Life	13.0	17.3	20.4	21.7	6.7	6.1
Avg Mty Date	9/10/2032	12/11/2036	1/26/2040	5/26/2041	4/27/2026	9/29/2025
1st Redemption	3/1/2031	10/1/2033	10/1/2033	10/1/2033	1/1/2020	1/1/2020
Last Redemption	10/1/2033	9/1/2039	9/1/2044	2/1/2047	2/1/2033	9/1/2028

100% Avg Life	8.9	16.4	18.6	19.3	5.9	5.6
Avg Mty Date	7/13/2028	1/26/2036	4/8/2038	12/17/2038	8/3/2025	4/12/2025
1st Redemption	1/1/2020	8/1/2031	8/1/2031	8/1/2031	1/1/2020	1/1/2020
Last Redemption	8/1/2031	9/1/2039	9/1/2044	4/1/2046	11/1/2032	9/1/2028

125% Avg Life	3.6	15.3	16.9	17.3	5.9	5.6
Avg Mty Date	4/19/2023	12/18/2034	7/11/2036	12/6/2036	8/2/2025	4/12/2025
1st Redemption	1/1/2020	4/1/2026	4/1/2026	4/1/2026	1/1/2020	1/1/2020
Last Redemption	4/1/2026	9/1/2039	9/1/2044	9/1/2045	11/1/2032	9/1/2028

150% Avg Life	2.6	13.7	14.9	15.0	5.9	5.6
Avg Mty Date	3/17/2022	5/14/2033	7/8/2034	8/28/2034	8/2/2025	4/12/2025
1st Redemption	1/1/2020	7/1/2023	7/1/2023	7/1/2023	1/1/2020	1/1/2020
Last Redemption	7/1/2023	9/1/2039	9/1/2044	11/1/2044	11/1/2032	9/1/2028

175% Avg Life	2.2	12.3	13.0	13.1	5.9	5.6
Avg Mty Date	10/27/2021	12/20/2031	9/13/2032	9/15/2032	8/2/2025	4/12/2025
1st Redemption	1/1/2020	11/1/2022	11/1/2022	11/1/2022	1/1/2020	1/1/2020
Last Redemption	11/1/2022	9/1/2039	1/1/2044	1/1/2044	11/1/2032	9/1/2028

200% Avg Life	1.9	11.0	11.5	11.5	5.9	5.6
Avg Mty Date	8/7/2021	8/30/2030	2/26/2031	2/13/2031	8/2/2025	4/12/2025
1st Redemption	1/1/2020	5/1/2022	5/1/2022	5/1/2022	1/1/2020	1/1/2020
Last Redemption	5/1/2022	9/1/2039	3/1/2043	3/1/2043	11/1/2032	9/1/2028

300% Avg Life	1.5	7.2	7.2	7.2	5.9	5.6
Avg Mty Date	3/3/2021	11/1/2026	11/20/2026	11/14/2026	8/2/2025	4/12/2025
1st Redemption	1/1/2020	9/1/2021	9/1/2021	9/1/2021	1/1/2020	1/1/2020
Last Redemption	9/1/2021	9/1/2039	4/1/2040	4/1/2040	11/1/2032	9/1/2028

400% Avg Life	1.3	4.8	4.8	4.8	5.9	5.6
Avg Mty Date	12/25/2020	6/12/2024	6/11/2024	6/6/2024	8/2/2025	4/12/2025
1st Redemption	1/1/2020	6/1/2021	6/1/2021	6/1/2021	1/1/2020	1/1/2020
Last Redemption	6/1/2021	7/1/2038	8/1/2038	7/1/2038	11/1/2032	9/1/2028

500% Avg Life	1.2	4.7	4.7	4.7	4.4	4.3
Avg Mty Date	11/11/2020	5/18/2024	5/10/2024	5/9/2024	1/9/2024	11/28/2023
1st Redemption	1/1/2020	4/1/2021	4/1/2021	4/1/2021	1/1/2020	1/1/2020
Last Redemption	4/1/2021	8/1/2034	8/1/2034	8/1/2034	3/1/2033	9/1/2028

Order period until today 4:00 PM, Eastern, Tuesday, 07/16/19.

Please use Electronic Order Entry to enter orders or call (212) 834-7155.

The managers reserve the right to terminate or extend the order period prior to or later than the above-mentioned time and date and to confirm bonds at their discretion.

PRIORITY OF ORDERS AS FOLLOWS:

1. Texas Retail
2. National Retail

The compliance addendum MSRB Rule G-11 will apply.

\*\*\*\*\*

A Preliminary Blue Sky Survey or Memorandum is available upon request.

\*\*\*\*\*

Pursuant to MSRB Rule G-11, all syndicate members must inform J.P. Morgan Securities LLC if they are submitting an order for their own account, an affiliated account or a related account to themselves or to any other syndicate member.

\*\*\*\*\*

Delivery is firm for Tuesday, August 27, 2019.

This issue is book entry only. This issue is clearing through DTC.

J.P. Morgan Securities LLC

Jefferies LLC

Piper Jaffray & Co

Ramirez & Co., Inc.

RBC Capital Markets

By: J.P. Morgan Securities LLC New York, NY

Tuesday, July 16, 2019 9:30AM

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Tuesday, July 16, 2019 1:40PM =====

MSS Wire #129837 == Preliminary Pricing Wire ==

MSS Master Message #4505629 =====

TO: J.P. Morgan Securities LLC  
(Manager)

RE: \$ 165,660,000\*

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
Single Family Mortgage Revenue Bonds  
2019 Series A

WE HAVE A RELEASE. ORDERS UNTIL 3:00PM ET.

POS LINK: <http://www.munios.com/i/PDK3QPM8GaL3>

MOODY'S: Aaa S&P: AA+ FITCH: NR

DATED:08/27/2019 FIRST COUPON:03/01/2020

DUE: 03/01 & 09/01

ADD'L

TAKEDOWN

MATURITY	BALANCE	AMOUNT*	COUPON	PRICE	( Pts )
09/01/2020	880M	880M	1.25%	100.00	1/4
03/01/2021	950M	950M	1.35%	100.00	3/8
09/01/2021	885M	965M	1.40%	100.00	3/8
03/01/2022	NMO	975M	1.45%	100.00	3/8
09/01/2022	470M	985M	1.50%	100.00	3/8
03/01/2023	995M	995M	1.55%	100.00	1/2
09/01/2023	NMO	1,005M	1.60%	100.00	1/2
03/01/2024	NMO	1,015M	1.60%	100.00	1/2
09/01/2024	NMO	1,025M	1.65%	100.00	1/2
03/01/2025	NMO	1,040M	1.70%	100.00	1/2
09/01/2025	NMO	1,055M	1.75%	100.00	1/2
03/01/2026	NMO	1,065M	1.85%	100.00	5/8
09/01/2026	NMO	1,075M	1.95%	100.00	5/8
03/01/2027	NMO	1,085M	2.00%	100.00	5/8
09/01/2027	NMO	1,090M	2.05%	100.00	5/8
03/01/2028	NMO	1,105M	2.15%	100.00	5/8
09/01/2028	NMO	1,120M	2.20%	100.00	5/8

03/01/2029	NMO	1,140M	2.25%	100.00	5/8
09/01/2029	NMO	1,155M	2.30%	100.00	5/8
03/01/2030	NMO	1,175M	2.35%	100.00	5/8
09/01/2030	NMO	1,185M	2.40%	100.00	5/8

09/01/2034	10,305M	10,305M	2.70%	100.00	5/8
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09/01/2039	15,160M	15,195M	3.375%	3.10	5/8
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(Approx. \$ Price PTC 09/01/2028 102.147 Approx. YTM 3.228)

09/01/2044	15,535M	18,610M	3.625%	3.35	5/8
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(Approx. \$ Price PTC 09/01/2028 102.123 Approx. YTM 3.497)

09/01/2049	20,000M	26,585M	3.75%	3.45	5/8
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(Approx. \$ Price PTC 09/01/2028 102.306 Approx. YTM 3.623)

03/01/2050	72,880M	72,880M	4.00%	2.00	0.575
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(Approx. \$ Price 110.974)  
(PAC) Average Life: 5.9 years from 100%-400% WAL (Optional Call Not Exercised)

-----

CALL FEATURES: Optional call in 09/01/2028 @ 100.00

EXCEPT OPTIONAL REDEMPTION OF THE PREMIUM PAC BONDS DUE 3/1/2050. The Premium PAC Term Bonds are subject to redemption prior to maturity, in whole or in part at any time and from time to time, on and after September 1, 2028, at the option of the Department after giving notice as provided in the Trust Indenture, at the Redemption Prices set forth below (expressed as a percentage of the principal amount to be redeemed), in each case together with interest accrued thereon to the redemption date:

Redemption Date	Redemption Price
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September 1, 2030	101.942%
March 1, 2031	101.538%
September 1, 2031	101.105%
March 1, 2032	100.639%
October 1, 2032 and thereafter	100.000%



See pages 12-13 of the POS.

If the Premium PAC Term Bonds are redeemed on a date other than a redemption date listed above, the Redemption Price, as of such redemption date, will be determined by straight-line interpolation between the Redemption Prices for the redemption dates listed above immediately preceding and succeeding such redemption date. See page 12-13 of the POS.

SPECIAL REDEMPTION: The Series 2019A Bonds are subject to special redemption from unexpended proceeds of the Series 2019A Bonds, Mortgage Loan Principal Prepayments and Excess Revenues as described on pages 4-12 of the POS.

Projected Weighted Average Life (in Years)

Premium PAC      Premium PAC  
 Term Bonds      Term Bonds  
 Due                      Due

SIFMA	Term Bonds	Term Bonds	Term Bonds	Term Bonds	03/01/2050	03/01/2050
Prepayment	Due	Due	Due	Due	(Opt. Call	(Opt. Call
Model	09/01/2034	09/01/2039	09/01/2044	09/01/2049	Not Exercised)	Exercised)
0%	13.3	17.8	22.8	27.8	17.3	8.3
50%	13.3	17.8	22.3	24.9	8.6	6.8
75%	13.0	17.3	20.4	21.8	6.7	6.1
100%	8.9	16.4	18.6	19.3	5.9	5.6
125%	3.6	15.3	16.9	17.3	5.9	5.6
150%	2.6	13.7	14.9	15.0	5.9	5.6
175%	2.2	12.3	13.0	13.1	5.9	5.6
200%	1.9	11.0	11.5	11.5	5.9	5.6
300%	1.5	7.2	7.2	7.2	5.9	5.6
400%	1.3	4.8	4.8	4.8	5.9	5.6
500%	1.2	4.7	4.7	4.7	4.4	4.3

-----  
 By Lot Sinking Fund Schedule

2034 Term Bond

03/01/2031	1,220M
09/01/2031	1,240M
03/01/2032	1,265M
09/01/2032	1,280M

03/01/2033	1,290M
09/01/2033	1,315M
03/01/2034	1,335M
09/01/2034	1,360M

By Lot Sinking Fund Schedule

2039 Term Bond

03/01/2035	1,395M
09/01/2035	1,420M
03/01/2036	1,455M
09/01/2036	1,475M
03/01/2037	1,505M
09/01/2037	1,530M
03/01/2038	1,555M
09/01/2038	1,585M
03/01/2039	1,620M
09/01/2039	1,655M

By Lot Sinking Fund Schedule

2044 Term Bond

03/01/2040	1,700M
09/01/2040	1,735M
03/01/2041	1,765M
09/01/2041	1,800M
03/01/2042	1,835M
09/01/2042	1,875M
03/01/2043	1,910M
09/01/2043	1,955M
03/01/2044	1,995M
09/01/2044	2,040M

By Lot Sinking Fund Schedule

2049 Term Bond

03/01/2045	2,350M
09/01/2045	2,395M
03/01/2046	2,440M
09/01/2046	2,485M
03/01/2047	2,535M
09/01/2047	2,580M
03/01/2048	2,635M

09/01/2048	2,685M
03/01/2049	2,740M
09/01/2049	3,740M

By Lot Sinking Fund Schedule

2050 Term Bond

09/01/2020	540M
03/01/2021	610M
09/01/2021	620M
03/01/2022	635M
09/01/2022	650M
03/01/2023	665M
09/01/2023	680M
03/01/2024	695M
09/01/2024	715M
03/01/2025	730M
09/01/2025	745M
03/01/2026	765M
09/01/2026	780M
03/01/2027	800M
09/01/2027	820M
03/01/2028	835M
09/01/2028	855M
03/01/2029	875M
09/01/2029	895M
03/01/2030	915M
09/01/2030	940M
03/01/2031	960M
09/01/2031	985M
03/01/2032	1,005M
09/01/2032	1,030M
03/01/2033	1,055M
09/01/2033	1,075M
03/01/2034	1,095M
09/01/2034	1,120M
03/01/2035	1,150M
09/01/2035	1,175M
03/01/2036	1,200M
09/01/2036	1,230M
03/01/2037	1,260M
09/01/2037	1,285M
03/01/2038	1,315M
09/01/2038	1,345M
03/01/2039	1,375M

09/01/2039	1,395M
03/01/2040	1,435M
09/01/2040	1,470M
03/01/2041	1,505M
09/01/2041	1,540M
03/01/2042	1,575M
09/01/2042	1,610M
03/01/2043	1,650M
09/01/2043	1,685M
03/01/2044	1,725M
09/01/2044	1,765M
03/01/2045	1,810M
09/01/2045	1,850M
03/01/2046	1,895M
09/01/2046	1,935M
03/01/2047	1,980M
09/01/2047	2,030M
03/01/2048	2,075M
09/01/2048	2,125M
03/01/2049	2,175M
09/01/2049	1,225M
03/01/2050	1,000M

\* - APPROXIMATE SUBJECT TO CHANGE

TABLE OF PROJECTED WEIGHTED AVERAGE LIFE DATA AT VARIOUS PREPAYMENT SPEEDS\*  
(POS Appendix G)

Premium PAC    Premium PAC  
Term Bonds    Term Bond

Due	Due					
SPD of MTG	Term Bonds	Term Bonds	Term Bonds	Term Bonds	3/1/2050	3/1/2050
LOANS (SIFMA)	Due 9/1/2034	Due 9/1/2039	Due 9/1/2044	De 9/1/2049	(Opt. Call	(Opt. Call
Not Exercised)	Exercised)					
0% Avg Life	13.3	17.8	22.8	27.8	17.3	8.3
Avg Mty Date	12/15/2032	6/28/2037	6/30/2042	6/26/2047	12/26/2036	11/28/2027
1st Redemption	3/1/2031	3/1/2035	3/1/2040	3/1/2045	1/1/2020	1/1/2020
Last Redemption	9/1/2034	9/1/2039	9/1/2044	5/1/2049	3/1/2048	9/1/2028
50% Avg Life	13.3	17.8	22.3	24.9	8.6	6.8

Avg Mty Date	12/15/2032	6/23/2037	11/28/2041	7/7/2044	4/9/2028	6/12/2026
1st Redemption	3/1/2031	3/1/2035	10/1/2037	10/1/2037	1/1/2020	1/1/2020
Last Redemption	9/1/2034	9/1/2039	9/1/2044	2/1/2048	10/1/2037	9/1/2028

75% Avg Life	13.0	17.3	20.4	21.8	6.7	6.1
Avg Mty Date	9/10/2032	12/11/2036	1/26/2040	5/27/2041	4/27/2026	9/29/2025
1st Redemption	3/1/2031	10/1/2033	10/1/2033	10/1/2033	1/1/2020	1/1/2020
Last Redemption	10/1/2033	9/1/2039	9/1/2044	2/1/2047	2/1/2033	9/1/2028

100% Avg Life	8.9	16.4	18.6	19.3	5.9	5.6
Avg Mty Date	7/13/2028	1/26/2036	4/8/2038	12/18/2038	8/3/2025	4/12/2025
1st Redemption	1/1/2020	8/1/2031	8/1/2031	8/1/2031	1/1/2020	1/1/2020
Last Redemption	8/1/2031	9/1/2039	9/1/2044	4/1/2046	11/1/2032	9/1/2028

125% Avg Life	3.6	15.3	16.9	17.3	5.9	5.6
Avg Mty Date	4/19/2023	12/18/2034	7/11/2036	12/5/2036	8/2/2025	4/12/2025
1st Redemption	1/1/2020	4/1/2026	4/1/2026	4/1/2026	1/1/2020	1/1/2020
Last Redemption	4/1/2026	9/1/2039	9/1/2044	9/1/2045	11/1/2032	9/1/2028

150% Avg Life	2.6	13.7	14.9	15.0	5.9	5.6
Avg Mty Date	3/17/2022	5/14/2033	7/8/2034	8/28/2034	8/2/2025	4/12/2025
1st Redemption	1/1/2020	7/1/2023	7/1/2023	7/1/2023	1/1/2020	1/1/2020
Last Redemption	7/1/2023	9/1/2039	9/1/2044	11/1/2044	11/1/2032	9/1/2028

175% Avg Life	2.2	12.3	13.0	13.1	5.9	5.6
Avg Mty Date	10/27/2021	12/20/2031	9/13/2032	9/15/2032	8/2/2025	4/12/2025
1st Redemption	1/1/2020	11/1/2022	11/1/2022	11/1/2022	1/1/2020	1/1/2020
Last Redemption	11/1/2022	9/1/2039	1/1/2044	1/1/2044	11/1/2032	9/1/2028

200% Avg Life	1.9	11.0	11.5	11.5	5.9	5.6
Avg Mty Date	8/7/2021	8/30/2030	2/26/2031	2/13/2031	8/2/2025	4/12/2025
1st Redemption	1/1/2020	5/1/2022	5/1/2022	5/1/2022	1/1/2020	1/1/2020
Last Redemption	5/1/2022	9/1/2039	3/1/2043	3/1/2043	11/1/2032	9/1/2028

300% Avg Life	1.5	7.2	7.2	7.2	5.9	5.6
Avg Mty Date	3/3/2021	11/1/2026	11/20/2026	11/14/2026	8/2/2025	4/12/2025

1st Redemption	1/1/2020	9/1/2021	9/1/2021	9/1/2021	1/1/2020	1/1/2020
Last Redemption	9/1/2021	9/1/2039	4/1/2040	4/1/2040	11/1/2032	9/1/2028

400% Avg Life	1.3	4.8	4.8	4.8	5.9	5.6
Avg Mty Date	12/25/2020	6/12/2024	6/11/2024	6/6/2024	8/2/2025	4/12/2025
1st Redemption	1/1/2020	6/1/2021	6/1/2021	6/1/2021	1/1/2020	1/1/2020
Last Redemption	6/1/2021	7/1/2038	8/1/2038	7/1/2038	11/1/2032	9/1/2028

500% Avg Life	1.2	4.7	4.7	4.7	4.4	4.3
Avg Mty Date	11/11/2020	5/18/2024	5/10/2024	5/9/2024	1/9/2024	11/28/2023
1st Redemption	1/1/2020	4/1/2021	4/1/2021	4/1/2021	1/1/2020	1/1/2020
Last Redemption	4/1/2021	8/1/2034	8/1/2034	8/1/2034	3/1/2033	9/1/2028

Order period until today 3:00 PM, Eastern, Tuesday, 07/16/19.

Please use Electronic Order Entry to enter orders or call (212) 834-7155.

The managers reserve the right to terminate or extend the order period prior to or later than the above-mentioned time and date and to confirm bonds at their discretion.

PRIORITY OF ORDERS AS FOLLOWS:

1. Net Designated

(Exception: If an investor is affiliated with a syndicate member and that syndicate member may not be compensated for the investor's order, the investor will not be required to designate that syndicate member.)

2. Member

PRIORITY POLICY:

At least 3 firm(s) must be designated.

No firm may receive more than 60.00% of any designation.

Each designee must receive a minimum of 10.00% for each priority order.

The Senior Manager will pay out all designations.

The Senior Manager requests the identification of all priority orders at the time the orders are entered.

There are to be no soft-dollar designations.

The compliance addendum MSRB Rule G-11 will apply.

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A Preliminary Blue Sky Survey or Memorandum is available upon request.

\*\*\*\*\*

Pursuant to MSRB Rule G-11, all syndicate members must inform J.P. Morgan Securities LLC if they are submitting an order for their own account, an affiliated account or a related account to themselves or to any other syndicate member.

\*\*\*\*\*

Delivery is firm for Tuesday, August 27, 2019.

This issue is book entry only. This issue is clearing through DTC.

J.P. Morgan Securities LLC

Jefferies LLC

Piper Jaffray & Co

Ramirez & Co., Inc.

RBC Capital Markets

By: J.P. Morgan Securities LLC New York, NY

Tuesday, July 16, 2019 1:40PM

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Tuesday, July 16, 2019 4:35PM =====  
MSS Wire #129872 == Repricing Wire ==  
MSS Master Message #4505982 =====  
TO: J.P. Morgan Securities LLC  
(Manager)

RE: \$ 165,660,000\*  
TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
Single Family Mortgage Revenue Bonds  
2019 Series A

WE HAVE RECEIVED THE VERBAL AWARD.

PLEASE NOTE CHANGES BELOW.

ALL ORDERS WILL BE CONSIDERED GOOD UNLESS WE HEAR FROM YOU BY 5:00PM ET.

POS LINK: <http://www.munios.com/i/PDK3QPM8GaL3>

MOODY'S: Aaa S&P: AA+ FITCH: NR

DATED:08/27/2019 FIRST COUPON:03/01/2020

DUE: 03/01 & 09/01

ADD'L

TAKEDOWN

MATURITY	AMOUNT*	COUPON	PRICE	( Pts )
09/01/2020	880M	1.25%	100.00	1/4
09/01/2021	1,915M	1.40%	100.00	3/8
03/01/2022	975M	1.45%	100.00	3/8
09/01/2022	985M	1.50%	100.00	3/8
03/01/2023	995M	1.55%	100.00	1/2
09/01/2023	1,005M	1.60%	100.00	1/2
03/01/2024	1,015M	1.60%	100.00	1/2
09/01/2024	1,025M	1.65%	100.00	1/2
03/01/2025	1,040M	1.70%	100.00	1/2
09/01/2025	1,055M	1.75%	100.00	1/2
03/01/2026	1,065M	1.85%	100.00	5/8
09/01/2026	1,075M	1.95%	100.00	5/8



03/01/2027	1,085M	2.00%	100.00	5/8
09/01/2027	1,090M	2.05%	100.00	5/8
03/01/2028	1,105M	2.15%	100.00	5/8
09/01/2028	1,120M	2.20%	100.00	5/8
03/01/2029	1,140M	2.25%	100.00	5/8
09/01/2029	1,155M	2.30%	100.00	5/8
03/01/2030	1,175M	2.35%	100.00	5/8
09/01/2030	1,185M	2.40%	100.00	5/8

09/01/2034	10,305M	2.70%	100.00	5/8
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09/01/2039	15,195M	3.375%	3.06	5/8
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(Approx. \$ Price PTC 09/01/2028 102.464 Approx. YTM 3.207)

09/01/2044	18,610M	3.625%	3.31	5/8
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(Approx. \$ Price PTC 09/01/2028 102.436 Approx. YTM 3.478)

09/01/2049	26,585M	3.75%	3.40	5/8
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(Approx. \$ Price PTC 09/01/2028 102.696 Approx. YTM 3.602)

03/01/2050	72,880M	4.00%	1.96	0.575
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(Approx. \$ Price 111.210)

(PAC) Average Life: 5.9 years from 100%-400% WAL (Optional Call Not Exercised)

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CALL FEATURES: Optional call in 09/01/2028 @ 100.00

EXCEPT OPTIONAL REDEMPTION OF THE PREMIUM PAC BONDS DUE 3/1/2050. The Premium PAC Term

Bonds are subject to redemption prior to maturity, in whole or in part at any time and from time to time, on and after September 1, 2028, at the option of the Department after giving notice as provided in the Trust Indenture, at the Redemption Prices set forth below (expressed as a percentage of the principal amount to be redeemed), in each case together with interest accrued thereon to the redemption date:

Redemption Date	Redemption Price
September 1, 2028	103.357%
March 1, 2029	103.055%
September 1, 2029	102.724%
March 1, 2030	102.356%
September 1, 2030	101.942%

March 1, 2031	101.538%
September 1, 2031	101.105%
March 1, 2032	100.639%
October 1, 2032 and thereafter	100.000%

See pages 12-13 of the POS.

If the Premium PAC Term Bonds are redeemed on a date other than a redemption date listed above, the Redemption Price, as of such redemption date, will be determined by straight-line interpolation between the Redemption Prices for the redemption dates listed above immediately preceding and succeeding such redemption date. See page 12-13 of the POS.

SPECIAL REDEMPTION: The Series 2019A Bonds are subject to special redemption from unexpended proceeds of the Series 2019A Bonds, Mortgage Loan Principal Prepayments and Excess Revenues as described on pages 4-12 of the POS.

Projected Weighted Average Life (in Years)

	Premium PAC Term Bonds Due	Premium PAC Term Bonds Due				
SIFMA Prepayment	Term Bonds Due	Term Bonds Due	Term Bonds Due	Term Bonds Due	03/01/2050 (Opt. Call	03/01/2050 (Opt. Call
Model	09/01/2034	09/01/2039	09/01/2044	09/01/2049	Not Exercised)	Exercised)
0%	13.3	17.8	22.8	27.8	17.3	8.3
50%	13.3	17.8	22.3	24.9	8.6	6.8
75%	13.0	17.3	20.4	21.8	6.7	6.1
100%	8.9	16.4	18.6	19.3	5.9	5.6
125%	3.6	15.3	16.9	17.3	5.9	5.6
150%	2.6	13.7	14.9	15.0	5.9	5.6
175%	2.2	12.3	13.0	13.1	5.9	5.6
200%	1.9	11.0	11.5	11.5	5.9	5.6
300%	1.5	7.2	7.2	7.2	5.9	5.6
400%	1.3	4.8	4.8	4.8	5.9	5.6
500%	1.2	4.7	4.7	4.7	4.4	4.3

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Sinking Fund Schedule

2021 Term Bond

03/01/2021 950M

09/01/2021 965M

By Lot Sinking Fund Schedule

2034 Term Bond

03/01/2031 1,220M

09/01/2031 1,240M

03/01/2032 1,265M

09/01/2032 1,280M

03/01/2033 1,290M

09/01/2033 1,315M

03/01/2034 1,335M

09/01/2034 1,360M

By Lot Sinking Fund Schedule

2039 Term Bond

03/01/2035 1,395M

09/01/2035 1,420M

03/01/2036 1,455M

09/01/2036 1,475M

03/01/2037 1,505M

09/01/2037 1,530M

03/01/2038 1,555M

09/01/2038 1,585M

03/01/2039 1,620M

09/01/2039 1,655M

By Lot Sinking Fund Schedule

2044 Term Bond

03/01/2040 1,700M

09/01/2040 1,735M

03/01/2041 1,765M

09/01/2041 1,800M

03/01/2042 1,835M

09/01/2042 1,875M

03/01/2043 1,910M

09/01/2043 1,955M

03/01/2044 1,995M

09/01/2044 2,040M

By Lot Sinking Fund Schedule

2049 Term Bond

03/01/2045	2,350M
09/01/2045	2,395M
03/01/2046	2,440M
09/01/2046	2,485M
03/01/2047	2,535M
09/01/2047	2,580M
03/01/2048	2,635M
09/01/2048	2,685M
03/01/2049	2,740M
09/01/2049	3,740M

By Lot Sinking Fund Schedule

2050 Term Bond

09/01/2020	540M
03/01/2021	610M
09/01/2021	620M
03/01/2022	635M
09/01/2022	650M
03/01/2023	665M
09/01/2023	680M
03/01/2024	695M
09/01/2024	715M
03/01/2025	730M
09/01/2025	745M
03/01/2026	765M
09/01/2026	780M
03/01/2027	800M
09/01/2027	820M
03/01/2028	835M
09/01/2028	855M
03/01/2029	875M
09/01/2029	895M
03/01/2030	915M
09/01/2030	940M
03/01/2031	960M
09/01/2031	985M
03/01/2032	1,005M
09/01/2032	1,030M
03/01/2033	1,055M

09/01/2033	1,075M
03/01/2034	1,095M
09/01/2034	1,120M
03/01/2035	1,150M
09/01/2035	1,175M
03/01/2036	1,200M
09/01/2036	1,230M
03/01/2037	1,260M
09/01/2037	1,285M
03/01/2038	1,315M
09/01/2038	1,345M
03/01/2039	1,375M
09/01/2039	1,395M
03/01/2040	1,435M
09/01/2040	1,470M
03/01/2041	1,505M
09/01/2041	1,540M
03/01/2042	1,575M
09/01/2042	1,610M
03/01/2043	1,650M
09/01/2043	1,685M
03/01/2044	1,725M
09/01/2044	1,765M
03/01/2045	1,810M
09/01/2045	1,850M
03/01/2046	1,895M
09/01/2046	1,935M
03/01/2047	1,980M
09/01/2047	2,030M
03/01/2048	2,075M
09/01/2048	2,125M
03/01/2049	2,175M
09/01/2049	1,225M
03/01/2050	1,000M

\* - APPROXIMATE SUBJECT TO CHANGE

TABLE OF PROJECTED WEIGHTED AVERAGE LIFE DATA AT VARIOUS PREPAYMENT SPEEDS\*

(POS Appendix G)

Premium PAC Premium PAC

Term Bonds Term Bond

Due	Due					
SPD of MTG	Term Bonds	Term Bonds	Term Bonds	Term Bonds	3/1/2050	3/1/2050
LOANS (SIFMA)	Due 9/1/2034	Due 9/1/2039	Due 9/1/2044	De 9/1/2049	(Opt. Call	(Opt. Call
	Not Exercised)	Exercised)				
0% Avg Life	13.3	17.8	22.8	27.8	17.3	8.3
Avg Mty Date	12/15/2032	6/28/2037	6/30/2042	6/26/2047	12/26/2036	11/28/2027
1st Redemption	3/1/2031	3/1/2035	3/1/2040	3/1/2045	1/1/2020	1/1/2020
Last Redemption	9/1/2034	9/1/2039	9/1/2044	5/1/2049	3/1/2048	9/1/2028
50% Avg Life	13.3	17.8	22.3	24.9	8.6	6.8
Avg Mty Date	12/15/2032	6/23/2037	11/28/2041	7/7/2044	4/9/2028	6/12/2026
1st Redemption	3/1/2031	3/1/2035	10/1/2037	10/1/2037	1/1/2020	1/1/2020
Last Redemption	9/1/2034	9/1/2039	9/1/2044	2/1/2048	10/1/2037	9/1/2028
75% Avg Life	13.0	17.3	20.4	21.8	6.7	6.1
Avg Mty Date	9/10/2032	12/11/2036	1/26/2040	5/27/2041	4/27/2026	9/29/2025
1st Redemption	3/1/2031	10/1/2033	10/1/2033	10/1/2033	1/1/2020	1/1/2020
Last Redemption	10/1/2033	9/1/2039	9/1/2044	2/1/2047	2/1/2033	9/1/2028
100% Avg Life	8.9	16.4	18.6	19.3	5.9	5.6
Avg Mty Date	7/13/2028	1/26/2036	4/8/2038	12/18/2038	8/3/2025	4/12/2025
1st Redemption	1/1/2020	8/1/2031	8/1/2031	8/1/2031	1/1/2020	1/1/2020
Last Redemption	8/1/2031	9/1/2039	9/1/2044	4/1/2046	11/1/2032	9/1/2028
125% Avg Life	3.6	15.3	16.9	17.3	5.9	5.6
Avg Mty Date	4/19/2023	12/18/2034	7/11/2036	12/5/2036	8/2/2025	4/12/2025
1st Redemption	1/1/2020	4/1/2026	4/1/2026	4/1/2026	1/1/2020	1/1/2020
Last Redemption	4/1/2026	9/1/2039	9/1/2044	9/1/2045	11/1/2032	9/1/2028
150% Avg Life	2.6	13.7	14.9	15.0	5.9	5.6
Avg Mty Date	3/17/2022	5/14/2033	7/8/2034	8/28/2034	8/2/2025	4/12/2025
1st Redemption	1/1/2020	7/1/2023	7/1/2023	7/1/2023	1/1/2020	1/1/2020
Last Redemption	7/1/2023	9/1/2039	9/1/2044	11/1/2044	11/1/2032	9/1/2028
175% Avg Life	2.2	12.3	13.0	13.1	5.9	5.6
Avg Mty Date	10/27/2021	12/20/2031	9/13/2032	9/15/2032	8/2/2025	4/12/2025

1st Redemption	1/1/2020	11/1/2022	11/1/2022	11/1/2022	1/1/2020	1/1/2020
Last Redemption	11/1/2022	9/1/2039	1/1/2044	1/1/2044	11/1/2032	9/1/2028

200% Avg Life	1.9	11.0	11.5	11.5	5.9	5.6
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Avg Mty Date	8/7/2021	8/30/2030	2/26/2031	2/13/2031	8/2/2025	4/12/2025
1st Redemption	1/1/2020	5/1/2022	5/1/2022	5/1/2022	1/1/2020	1/1/2020
Last Redemption	5/1/2022	9/1/2039	3/1/2043	3/1/2043	11/1/2032	9/1/2028

300% Avg Life	1.5	7.2	7.2	7.2	5.9	5.6
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Avg Mty Date	3/3/2021	11/1/2026	11/20/2026	11/14/2026	8/2/2025	4/12/2025
1st Redemption	1/1/2020	9/1/2021	9/1/2021	9/1/2021	1/1/2020	1/1/2020
Last Redemption	9/1/2021	9/1/2039	4/1/2040	4/1/2040	11/1/2032	9/1/2028

400% Avg Life	1.3	4.8	4.8	4.8	5.9	5.6
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Avg Mty Date	12/25/2020	6/12/2024	6/11/2024	6/6/2024	8/2/2025	4/12/2025
1st Redemption	1/1/2020	6/1/2021	6/1/2021	6/1/2021	1/1/2020	1/1/2020
Last Redemption	6/1/2021	7/1/2038	8/1/2038	7/1/2038	11/1/2032	9/1/2028

500% Avg Life	1.2	4.7	4.7	4.7	4.4	4.3
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Avg Mty Date	11/11/2020	5/18/2024	5/10/2024	5/9/2024	1/9/2024	11/28/2023
1st Redemption	1/1/2020	4/1/2021	4/1/2021	4/1/2021	1/1/2020	1/1/2020
Last Redemption	4/1/2021	8/1/2034	8/1/2034	8/1/2034	3/1/2033	9/1/2028

PRIORITY OF ORDERS AS FOLLOWS:

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(Exception: If an investor is affiliated with a syndicate member and that syndicate

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if they are submitting an order for their own account, an affiliated account or a related account to themselves or to any other syndicate member.

\*\*\*\*\*

Delivery is firm for Tuesday, August 27, 2019.

This issue is book entry only. This issue is clearing through DTC.

J.P. Morgan Securities LLC

Jefferies LLC

Piper Jaffray & Co

Ramirez & Co., Inc.

RBC Capital Markets

By: J.P. Morgan Securities LLC New York, NY

Tuesday, July 16, 2019 4:35PM

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Wednesday, July 17, 2019 12:39PM =====

MSS Wire #129930 == Final Pricing Wire ==

MSS Master Message #4506740 =====

TO: J.P. Morgan Securities LLC  
(Manager)

RE: \$ 165,325,000

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
Single Family Mortgage Revenue Bonds  
2019 Series A

PLEASE NOTE UPDATED AWARD TIME.

WE HAVE RECEIVED THE WRITTEN AWARD. TRADE TIME IS SET FOR 1:15PM ET.

POS LINK: <http://www.munios.com/i/PDK3QPM8GaL3>

MOODY'S: Aaa S&P: AA+ FITCH: NR

DATED:08/27/2019 FIRST COUPON:03/01/2020

DUE: 03/01 & 09/01

INITIAL TRADE DATE: 07/17/2019 @ 1:15PM Eastern

ADD'L

TAKEDOWN

MATURITY	AMOUNT	COUPON	PRICE ( Pts )		CUSIP
09/01/2020	1,000M	1.25%	100.00	1/4	88275FQD4
09/01/2021	1,795M	1.40%	100.00	3/8	88275FQE2
03/01/2022	975M	1.45%	100.00	3/8	88275FQF9
09/01/2022	985M	1.50%	100.00	3/8	88275FQG7
03/01/2023	995M	1.55%	100.00	1/2	88275FQH5
09/01/2023	1,005M	1.60%	100.00	1/2	88275FQJ1
03/01/2024	1,015M	1.60%	100.00	1/2	88275FQK8
09/01/2024	1,025M	1.65%	100.00	1/2	88275FQL6
03/01/2025	1,040M	1.70%	100.00	1/2	88275FQM4
09/01/2025	1,055M	1.75%	100.00	1/2	88275FQN2
03/01/2026	1,065M	1.85%	100.00	5/8	88275FQP7

09/01/2026	1,070M	1.95%	100.00	5/8	88275FQQ5
03/01/2027	1,080M	2.00%	100.00	5/8	88275FQR3
09/01/2027	1,085M	2.05%	100.00	5/8	88275FQS1
03/01/2028	1,095M	2.15%	100.00	5/8	88275FQT9
09/01/2028	1,115M	2.20%	100.00	5/8	88275FQU6
03/01/2029	1,135M	2.25%	100.00	5/8	88275FQV4
09/01/2029	1,150M	2.30%	100.00	5/8	88275FQW2
03/01/2030	1,170M	2.35%	100.00	5/8	88275FQX0
09/01/2030	1,185M	2.40%	100.00	5/8	88275FQY8
09/01/2034	10,285M	2.70%	100.00	5/8	88275FQZ5

09/01/2039 15,165M 3.375% 3.06 5/8 88275FRA9

(Approx. \$ Price PTC 09/01/2028 102.464 Approx.  
YTM 3.207)

09/01/2044 18,570M 3.625% 3.31 5/8 88275FRB7

(Approx. \$ Price PTC 09/01/2028 102.436 Approx.  
YTM 3.478)

09/01/2049 26,530M 3.75% 3.40 5/8 88275FRC5

(Approx. \$ Price PTC 09/01/2028 102.696 Approx.  
YTM 3.602)

03/01/2050 72,735M 4.00% 1.96 0.575 88275FRD3

(Approx. \$ Price 111.177)

(PAC) Average Life: 5.9 years from 100%-400% WAL (Optional Call Not Exercised)

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CALL FEATURES: Optional call in 09/01/2028 @ 100.00

EXCEPT OPTIONAL REDEMPTION OF THE PREMIUM PAC BONDS DUE 3/1/2050. The Premium PAC Term Bonds are subject to redemption prior to maturity, in whole or in part at any time and

from time to time, on and after September 1, 2028, at the option of the Department after giving notice as provided in the Trust Indenture, at the Redemption Prices set forth below (expressed as a percentage of the principal amount to be redeemed), in each case together with interest accrued thereon to the redemption date:

Redemption Date	Redemption Price
September 1, 2028	103.368%
March 1, 2029	103.056%

September 1, 2029	102.712%
March 1, 2030	102.332%
September 1, 2030	101.906%
March 1, 2031	101.486%
September 1, 2031	101.033%
March 1, 2032	100.533%
September 1, 2032 and thereafter	100.000%

See pages 12-13 of the POS.

If the Premium PAC Term Bonds are redeemed on a date other than a redemption date listed above, the Redemption Price, as of such redemption date, will be determined by straight-line interpolation between the Redemption Prices for the redemption dates listed above immediately preceding and succeeding such redemption date. See page 12-13 of the POS.

SPECIAL REDEMPTION: The Series 2019A Bonds are subject to special redemption from unexpended proceeds of the Series 2019A Bonds, Mortgage Loan Principal Prepayments and Excess Revenues as described on pages 4-12 of the POS.

Projected Weighted Average Life (in Years)

Premium PAC Term Bonds Due	Premium PAC Term Bonds Due	SIFMA Prepayment	Term Bonds Due	Term Bonds Due	Term Bonds Due	Term Bonds Due	03/01/2050 (Opt. Call	03/01/2050 (Opt. Call
Model	09/01/2034	09/01/2039	09/01/2044	09/01/2049	Not Exercised)	Exercised)		
0%	13.3	17.8	22.8	27.9	17.6	8.3		
50%	13.3	17.8	22.3	25.1	8.7	6.8		
75%	13.1	17.3	20.5	22.0	6.7	6.1		
100%	9.1	16.5	18.7	19.5	5.9	5.6		
125%	3.7	15.3	17.0	17.5	5.9	5.6		
150%	2.6	13.8	15.0	15.2	5.9	5.6		
175%	2.2	12.4	13.2	13.2	5.9	5.6		
200%	2.0	11.1	11.6	11.6	5.9	5.6		
300%	1.5	7.2	7.3	7.3	5.9	5.6		
400%	1.3	4.8	4.8	4.8	5.9	5.6		
500%	1.2	4.7	4.7	4.7	4.4	4.3		

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Sinking Fund Schedule

2021 Term Bond

03/01/2021 830M  
09/01/2021 965M

By Lot Sinking Fund Schedule

2034 Term Bond

03/01/2031 1,220M  
09/01/2031 1,240M  
03/01/2032 1,265M  
09/01/2032 1,280M  
03/01/2033 1,285M  
09/01/2033 1,310M  
03/01/2034 1,330M  
09/01/2034 1,355M

By Lot Sinking Fund Schedule

2039 Term Bond

03/01/2035 1,395M  
09/01/2035 1,425M  
03/01/2036 1,455M  
09/01/2036 1,470M  
03/01/2037 1,500M  
09/01/2037 1,525M  
03/01/2038 1,550M  
09/01/2038 1,580M  
03/01/2039 1,615M  
09/01/2039 1,650M

By Lot Sinking Fund Schedule

2044 Term Bond

03/01/2040 1,700M  
09/01/2040 1,735M  
03/01/2041 1,760M  
09/01/2041 1,795M  
03/01/2042 1,830M  
09/01/2042 1,870M  
03/01/2043 1,905M

09/01/2043	1,950M
03/01/2044	1,990M
09/01/2044	2,035M

By Lot Sinking Fund Schedule

2049 Term Bond

03/01/2045	2,345M
09/01/2045	2,390M
03/01/2046	2,435M
09/01/2046	2,480M
03/01/2047	2,530M
09/01/2047	2,575M
03/01/2048	2,630M
09/01/2048	2,680M
03/01/2049	2,735M
09/01/2049	3,730M

By Lot Sinking Fund Schedule

2050 Term Bond

09/01/2020	540M
03/01/2021	610M
09/01/2021	620M
03/01/2022	635M
09/01/2022	650M
03/01/2023	665M
09/01/2023	680M
03/01/2024	695M
09/01/2024	715M
03/01/2025	730M
09/01/2025	745M
03/01/2026	765M
09/01/2026	780M
03/01/2027	800M
09/01/2027	820M
03/01/2028	835M
09/01/2028	855M
03/01/2029	875M
09/01/2029	895M
03/01/2030	915M
09/01/2030	940M
03/01/2031	960M
09/01/2031	985M

03/01/2032	1,005M
09/01/2032	1,030M
03/01/2033	1,055M
09/01/2033	1,075M
03/01/2034	1,095M
09/01/2034	1,115M
03/01/2035	1,140M
09/01/2035	1,170M
03/01/2036	1,195M
09/01/2036	1,225M
03/01/2037	1,255M
09/01/2037	1,280M
03/01/2038	1,310M
09/01/2038	1,340M
03/01/2039	1,370M
09/01/2039	1,390M
03/01/2040	1,430M
09/01/2040	1,465M
03/01/2041	1,500M
09/01/2041	1,535M
03/01/2042	1,570M
09/01/2042	1,605M
03/01/2043	1,645M
09/01/2043	1,680M
03/01/2044	1,720M
09/01/2044	1,760M
03/01/2045	1,805M
09/01/2045	1,845M
03/01/2046	1,890M
09/01/2046	1,930M
03/01/2047	1,975M
09/01/2047	2,025M
03/01/2048	2,070M
09/01/2048	2,120M
03/01/2049	2,170M
09/01/2049	1,220M
03/01/2050	1,015M

TABLE OF PROJECTED WEIGHTED AVERAGE LIFE DATA AT VARIOUS PREPAYMENT SPEEDS  
(POS Appendix G)

Term Bonds Term Bond

Due Due

SPD of MTG Term Bonds Term Bonds Term Bonds Term Bonds 3/1/2050 3/1/2050  
 LOANS (SIFMA) Due 9/1/2034 Due 9/1/2039 Due 9/1/2044 De 9/1/2049 (Opt. Call (Opt. Call  
 Not Exercised) Exercised)

0% Avg Life 13.3 17.8 22.8 27.9 17.6 8.3  
 Avg Mty Date 12/14/2032 6/27/2037 6/30/2042 7/12/2047 3/26/2037 12/3/2027  
 1st Redemption 3/1/2031 3/1/2035 3/1/2040 3/1/2045 1/1/2020 1/1/2020  
 Last Redemption 9/1/2034 9/1/2039 9/1/2044 8/1/2049 2/1/2049 9/1/2028

50% Avg Life 13.3 17.8 22.3 25.1 8.7 6.8  
 Avg Mty Date 12/14/2032 6/24/2037 12/19/2041 10/8/2044 4/30/2028 6/16/2026  
 1st Redemption 3/1/2031 3/1/2035 2/1/2038 2/1/2038 1/1/2020 1/1/2020  
 Last Redemption 9/1/2034 9/1/2039 9/1/2044 4/1/2048 2/1/2038 9/1/2028

75% Avg Life 13.1 17.3 20.5 22.0 6.7 6.1  
 Avg Mty Date 9/20/2032 12/20/2036 2/29/2040 8/18/2041 5/7/2026 10/3/2025  
 1st Redemption 3/1/2031 11/1/2033 11/1/2033 11/1/2033 1/1/2020 1/1/2020  
 Last Redemption 11/1/2033 9/1/2039 9/1/2044 4/1/2047 3/1/2033 9/1/2028

100% Avg Life 9.1 16.5 18.7 19.5 5.9 5.6  
 Avg Mty Date 10/17/2028 2/9/2036 5/15/2038 2/17/2039 7/26/2025 4/8/2025  
 1st Redemption 10/1/2020 9/1/2031 9/1/2031 9/1/2031 1/1/2020 1/1/2020  
 Last Redemption 9/1/2031 9/1/2039 9/1/2044 6/1/2046 9/1/2032 9/1/2028

125% Avg Life 3.7 15.3 17.0 17.5 5.9 5.6  
 Avg Mty Date 5/19/2023 12/30/2034 9/5/2036 2/12/2037 7/26/2025 4/8/2025  
 1st Redemption 2/1/2020 7/1/2026 7/1/2026 7/1/2026 1/1/2020 1/1/2020  
 Last Redemption 6/1/2026 9/1/2039 9/1/2044 1/1/2046 9/1/2032 9/1/2028

150% Avg Life 2.6 13.8 15.0 15.2 5.9 5.6  
 Avg Mty Date 3/25/2022 6/22/2033 8/11/2034 10/29/2034 7/25/2025 4/8/2025  
 1st Redemption 2/1/2020 8/1/2023 8/1/2023 8/1/2023 1/1/2020 1/1/2020  
 Last Redemption 8/1/2023 9/1/2039 9/1/2044 4/1/2045 9/1/2032 9/1/2028

175% Avg Life 2.2 12.4 13.2 13.2 5.9 5.6

Avg Mty Date	11/2/2021	1/7/2032	10/21/2032	11/15/2032	7/25/2025	4/8/2025
1st Redemption	2/1/2020	11/1/2022	11/1/2022	11/1/2022	1/1/2020	1/1/2020
Last Redemption	11/1/2022	9/1/2039	6/1/2044	6/1/2044	9/1/2032	9/1/2028

200% Avg Life	2.0	11.1	11.6	11.6	5.9	5.6
Avg Mty Date	8/10/2021	9/20/2030	3/27/2031	4/8/2031	7/25/2025	4/8/2025
1st Redemption	2/1/2020	6/1/2022	6/1/2022	6/1/2022	1/1/2020	1/1/2020
Last Redemption	6/1/2022	9/1/2039	9/1/2043	8/1/2043	9/1/2032	9/1/2028

300% Avg Life	1.5	7.2	7.3	7.3	5.9	5.6
Avg Mty Date	3/4/2021	11/26/2026	12/25/2026	12/7/2026	7/25/2025	4/8/2025
1st Redemption	1/1/2020	10/1/2021	9/1/2021	9/1/2021	1/1/2020	1/1/2020
Last Redemption	9/1/2021	9/1/2039	11/1/2040	11/1/2040	9/1/2032	9/1/2028

400% Avg Life	1.3	4.8	4.8	4.8	5.9	5.6
Avg Mty Date	12/26/2020	6/28/2024	6/30/2024	6/24/2024	7/25/2025	4/8/2025
1st Redemption	1/1/2020	6/1/2021	6/1/2021	6/1/2021	1/1/2020	1/1/2020
Last Redemption	6/1/2021	1/1/2039	4/1/2039	4/1/2039	9/1/2032	9/1/2028

500% Avg Life	1.2	4.7	4.7	4.7	4.4	4.3
Avg Mty Date	11/11/2020	5/22/2024	5/16/2024	5/18/2024	1/11/2024	11/29/2023
1st Redemption	1/1/2020	4/1/2021	4/1/2021	4/1/2021	1/1/2020	1/1/2020
Last Redemption	4/1/2021	2/1/2035	1/1/2035	2/1/2035	3/1/2033	9/1/2028

PRIORITY OF ORDERS AS FOLLOWS:

1. Net Designated

(Exception: If an investor is affiliated with a syndicate member and that syndicate member may not be compensated for the investor's order, the investor will not be

required to designate that syndicate member.)

2. Member

PRIORITY POLICY:



At least 3 firm(s) must be designated.

No firm may receive more than 60.00% of any designation.

Each designee must receive a minimum of 10.00% for each priority order.

The Senior Manager will pay out all designations.

The Senior Manager requests the identification of all priority orders at the time the orders are entered.

There are to be no soft-dollar designations.

The compliance addendum MSRB Rule G-11 will apply.

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A Preliminary Blue Sky Survey or Memorandum is available upon request.

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Pursuant to MSRB Rule G-11, all syndicate members must inform J.P. Morgan Securities LLC if they are submitting an order for their own account, an affiliated account or a related account to themselves or to any other syndicate member.

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The Award is final for Wednesday, July 17, 2019 at 10:57AM Eastern .

Delivery is firm for Tuesday, August 27, 2019.

This issue is book entry only. This issue is clearing through DTC.

Award: 07/17/2019  
Award Time: 10:57AM Eastern  
Delivery: 08/27/2019 (Firm)  
Initial trade: 07/17/2019  
Date of Execution: 07/17/2019

Time of Execution: 1:15PM Eastern

J.P. Morgan Securities LLC

Jefferies LLC

Piper Jaffray & Co

Ramirez & Co., Inc.

RBC Capital Markets

By: J.P. Morgan Securities LLC New York, NY

Wednesday, July 17, 2019 12:39PM

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## 4. Market Data and Interest Rates

## Bloomberg Calendar

Total weekly issuance (negotiated): \$6.59 billion

Showing housing and Texas issues below

Date	Issuer Description	State	Amount (\$ mil)
07/15/2019	CHELFORD ONE MUD - A-REF	TX	3.205
07/15/2019	CT HSG FIN AUTH -D-1 -REF	CT	65.395
07/15/2019	CT HSG FIN AUTH -D-2 -AMT	CT	5.59
07/15/2019	CT HSG FIN AUTH -D-4-TXBL	CT	15
07/15/2019	DENTON ISD -B	TX	67.925
07/15/2019	EAGLE MOUNTAIN SAGINAW	TX	53.165
07/15/2019	FLORENCE ISD	TX	6.92
07/15/2019	FLOWER MOUND -CTFS OBLIG	TX	26.5
07/15/2019	FORT BEND CO MUD #158-REF	TX	2.62
07/15/2019	FREDDIE MAC-M-033	OT	31.56
07/15/2019	GOOSE CREEK CONSOL ISD-A	TX	60.21
07/15/2019	HAYS CO	TX	97.035
07/15/2019	HEARNE	TX	7.985
07/15/2019	KINGS MANOR MUNI UTIL DT	TX	11.38
07/15/2019	MARION ISD	TX	20.295
07/15/2019	MIDLOTHIAN ISD - C- REF	TX	45.685
07/15/2019	MN HSG FIN AGY -F -TXBL	MN	59.851
07/15/2019	MOULTON ISD	TX	12.86
07/15/2019	NORTH TEXAS TOLLWAY -A	TX	429.87
07/15/2019	NORTH TEXAS TOLLWAY -B	TX	222.51
07/15/2019	NORTHSIDE ISD -REF	TX	145
07/15/2019	NORTHWEST GEORGIA HSG	GA	8
07/15/2019	NORTHWEST GEORGIA HSG	GA	7.4
07/15/2019	OH HSG FIN AGY -A	OH	6.25
07/15/2019	SOUTH DAKOTA HSG DEV AUTH	SD	7.5
07/15/2019	TEXAS DEPT HSG & CMNTY- A	TX	165.325
07/15/2019	UNITED ISD	TX	75.36
07/15/2019	UNITED ISD -REF	TX	3.595
07/15/2019	UTAH HSG CORP	UT	9.5
07/15/2019	WA ST HSG FIN ETC -A-6	WA	4.415
07/16/2019	BRAZORIA CO INDL DEV CORP	TX	25
07/16/2019	WA ST HSG FIN ETC -C-6	WA	4.41

## U.S. Economic Calendar

Monday	Tuesday	Wednesday	Thursday	Friday
<b>1 Jul</b> Manufacturing PMI (9:45am) Jun final ISM manufacturing (10:00am) Jun Construction spending (10:00am) May	<b>2 Jul</b> Light vehicle sales Jun	<b>3 Jul</b> ADP employment (8:15am) Jun Initial claims (8:30am) w/e Jun 29 International trade (8:30am) May Services PMI (9:45am) Jun final ISM nonmanufacturing (10:00am) Jun Factory orders (10:00am) May Announce 10-year note (r) <u>\$24bn</u> Announce 30-year bond (r) <u>\$16bn</u> Announce 3-year note <u>\$38bn</u>	<b>4 Jul</b> Independence Day, markets closed	<b>5 Jul</b> Employment (8:30am) Jun
<b>8 Jul</b> Consumer credit (3:00pm) May	<b>9 Jul</b> NFIB survey (6:00am) Jun JOLTS (10:00am) May Auction 3-year note <u>\$38bn</u>	<b>10 Jul</b> Wholesale trade (10:00am) May Auction 10-year note (r) <u>\$24bn</u> FOMC minutes	<b>11 Jul</b> Initial claims (8:30am) w/e Jul 6 CPI (8:30am) Jun Federal budget (2:00pm) Jun Announce 10-year TIPS <u>\$14bn</u> Auction 30-year bond (r) <u>\$16bn</u>	<b>12 Jul</b> PPI (8:30am) Jun
<b>15 Jul</b> Empire State survey(8:30am) Jul	<b>16 Jul</b> Retail sales(8:30am) Jun Import prices(8:30am) Jun Business leaders survey (8:30am) Jun Industrial production(9:15am) Jun Business inventories(10:00am) May NAHB survey(10:00am) Jul TIC data (4:00pm) May Atlanta Fed President Bostic speaks (8:15am) Chicago Fed President Evans speaks (3:30pm)	<b>17 Jul</b> Housing starts(8:30am) Jun Beige book(2:00pm)	<b>18 Jul</b> Initial claims(8:30am) w/e Jul 13 Philadelphia Fed manufacturing(8:30am) Jul Leading indicators(10:00am) Jun Announce 2-year FRN (r) \$20bn Announce 2-year note \$40bn Announce 5-year note \$41bn Announce 7-year note \$32bn Auction 10-year TIPS \$14bn Atlanta Fed President Bostic speaks (9:30am)	<b>19 Jul</b> Consumer sentiment(10:00am) Jul prelim St. Louis Fed President Bullard speaks (11:05am) Boston Fed President Rosengren speaks (4:30pm)
<b>22 Jul</b>	<b>23 Jul</b> Philadelphia Fed nonmanufacturing(8:30am) Jul FHFA HPI(9:00am), May Existing home sales (10:00am), Jun Richmond Fed survey (10:00am), Jul Auction 2-year note \$40bn	<b>24 Jul</b> Manufacturing PMI (9:45am) Jul flash Services PMI(9:45am) Jul flash New home sales (10:00am) Jun Auction 2-year FRN (r) \$20bn Auction 5-year note \$41bn	<b>25 Jul</b> Initial claims(8:30am) w/e Jul 20 Durable goods(8:30am) Jun Advance economic indicators(8:30am) Jun Housing vacancies(10:00am) 2Q KC Fed survey(11:00am) Jul Auction 7-year note \$32bn	<b>26 Jul</b> Real GDP(8:30am) 2Q advance
<b>29 Jul</b> Dallas Fed manufacturing(10:30am) Jul	<b>30 Jul</b> Personal income(8:30am)Jun S&P/Case-Shiller HPI (9:00am), May Consumer confidence(10:00am), Jul Pending home sales (10:00am), Jun Dallas Fed services(10:30am)Jul FOMC meeting	<b>31 Jul</b> ADP employment(8:15am), Jun Employment cost index(8:30am), 2Q ADP employment(9:45am) Jul Announce 10-year note \$27bn Announce 30-year bond \$19bn Announce 3-year note \$38bn FOMC statement (2:00pm) and press conference (2:30pm)	<b>1 Aug</b> Initial claims(8:30am), w/e Jul 27 Manufacturing PMI (9:45am), Jul final ISM manufacturing(10:00am), Jul Construction spending(10:00am), Jun Light vehicle sales, Jul	<b>2 Aug</b> Employment(8:30am), Jul International trade (8:30am), Jun Consumer sentiment(10:00am), Aug preliminary Factory orders(10:00am), Jun

## A. Recent Long-Term Fixed Rate Housing Revenue Bond Transactions

### Traditional Structure

ISSUER	AWARD DATE	USE	SIZE (\$MM)	TAX STATUS	RATING	10-YR SPREAD (BPS)	10-YR YIELD	30-YR SPREAD (BPS)	30-YR YIELD
Michigan State Housing Development Authority	11-July	MF	202.5	Non-AMT	NR/AA	66/67	2.25/2.30%	107	3.35%
New Mexico Mortgage Finance Authority	10 July	SF	100.0	Non-AMT	Aaa/NR	61/63	2.20/2.25%	106	3.35%
Nevada Housing Division	10-July	SF	75.0	Non-AMT	NR/AA+	65/66	2.25/2.30%	106	3.35%
Montana Board of Housing	27-Jun	SF	30.0	Non-AMT	Aa1/AA+	65/58	2.25/2.25%	104	3.35%
Missouri Housing Development Commission	26-Jun	SF	80.0	Non-AMT	NR/AA+	62/64	2.25/2.30%	104	3.35%
Idaho Housing and Finance Association	26-Jun	SF	1.9	Taxable	Aa1/NR	--	--	--	--

### Pass-Through Structure

ISSUER	AWARD DATE	USE	SIZE (\$MM)	TAX STATUS	RATING	LOAN COMPOSITION	FINAL YIELD	WARM*
Minnesota Housing Finance Agency	13-Jun	SF	45.9	Taxable	Aaa/NR	GN / FN / FR	3.25%	359
Minnesota Housing Finance Agency	14-May	SF	30.6	Taxable	Aaa/NR	GN / FN / FR	3.55%	359
Minnesota Housing Finance Agency	14-May	SF	13.7	Non-AMT	Aaa/NR	GN / FN / FR	3.15%	359

Source: Thomson Reuters and Bloomberg. \*Reflects the Weighted Average Remaining Maturity of Loans (in months)

## B. Market Commentary

- UST curve steepened last week amid Federal Reserve Chairman Powell's testimony and stronger than expected inflation data; week-over-week UST yields decreased in the 2-year spot by 3 bps, and increased in the 5-, 10-, and 30-year spots by 2, 6, and 8 bps, respectively<sup>1</sup>
  - Powell testified to Congress for the Fed's semi-annual monetary policy testimony and continued to reiterate dovish sentiment, saying "trade tensions and concerns about the strength of the global economy continue to weigh on the U.S. economic outlook"<sup>2</sup>
    - Powell highlighted business sentiment, a global slowdown in manufacturing, and persistently low inflation as factors weighing on the U.S. outlook
  - Minutes released from the June Fed meeting last week reinforced Powell's statements at the testimony, citing motivations for a rate cut such as insurance against downside risks, continued inflation shortfalls, and a lower estimate of the natural rate of unemployment<sup>3</sup>
    - J.P. Morgan Research continues to expect a 25 bps cut at both the July and September Fed meetings
  - On Thursday, the June Consumer Price Index (CPI) beat expectations of 0% with an increase of 0.1% last month and core CPI increased 0.3% versus market expectations of 0.2%; core inflation is at +2.3% YoY<sup>3</sup>
    - June Producer Price Index (PPI) also beat expectations, increasing by 0.1% versus market expectations of unchanged
  - Initial Jobless Claims also beat market expectations of +221,000, reporting an increase of +209,000<sup>3</sup>
- In the municipal market, the MMD curve also steepened but yields moved inversely to UST yields, decreasing in the 2-, 5-, 10-, 30-year spots by 8, 10, 4, and 1 bp (s), respectively<sup>4</sup>
  - July reinvestment capital and persistent record inflows have led demand to outpace supply, contributing to the decrease in MMD yields over the past week despite primary municipal supply of \$8.3 billion<sup>3,5</sup>
    - Lipper reported combined monthly and weekly inflows of \$3.1 billion last week; high-yield, intermediate, long-term, and California funds continue to hit new record inflows, with larger fund complexes attracting the higher inflows<sup>6</sup>
    - YTD net investment of \$48.8 billion is a record high for this time of year, ranking second amongst full year net inflows since the data began in 1992
  - MMD/UST ratios continue to decline given heightened investor demand: 10-year and 30-year ratios declined to 75.05% and 86.65%, respectively<sup>3</sup>
- In the short-term market, SIFMA reset at 1.18%, a decrease of 31 bps, as long-term investors put cash to work in the short-term market as they await a pickup in supply<sup>3,5</sup>
- Looking ahead, \$8.9 billion is expected to price in the primary municipal market this week<sup>5</sup>

<sup>1</sup>J.P. Morgan Research, US Fixed Income Markets Weekly, 7/12/2019, [jpm.com](http://jpm.com)

<sup>2</sup>The Federal Reserve Board, Press Release 7/10/2019, [federalreserve.gov](http://federalreserve.gov)

<sup>3</sup>J.P. Morgan Research, US Fixed Income Markets Weekly – Municipals, 7/12/2019

<sup>4</sup>Thomson Reuters Municipal Market Data

<sup>5</sup>Bloomberg

<sup>6</sup>Lipper, iMoneyNet for the period ending 7/10/2019

For additional market information and commentary, please go to J.P. Morgan Markets at [jpm.com](http://jpm.com)

## C. Interest Rate Forecast

MMD YIELDS	7/12/2019	1m Ahead	3Q19	4Q19	1Q20	2Q20
2-Year	1.16%	1.15%	1.10%	0.90%	0.85%	0.95%
5-Year	1.20%	1.20%	1.10%	0.90%	0.85%	1.00%
10-Year	1.58%	1.55%	1.50%	1.40%	1.30%	1.40%
30-Year	2.28%	2.30%	2.20%	2.20%	2.10%	2.25%
TAXABLE YIELDS	7/12/2019	1m Ahead	3Q19	4Q19	1Q20	2Q20
Fed Funds	2.38%	2.15%	1.90%	1.90%	1.90%	1.90%
3-Month LIBOR	2.32%	2.20%	2.05%	2.15%	2.05%	2.05%
2-Year T Note	1.84%	1.80%	1.70%	1.40%	1.30%	1.50%
5-Year T Note	1.86%	1.80%	1.70%	1.45%	1.35%	1.55%
10-Year T Note	2.11%	2.10%	1.90%	1.75%	1.65%	1.80%
30-Year T Bond	2.63%	2.65%	2.50%	2.45%	2.40%	2.50%

Source: J.P. Morgan Research, *US Fixed Income Markets Weekly*, 7/12/2019, [jpm.com](http://jpm.com), Thomson Reuters Municipal Market Data, Bloomberg as of 7/12/2019, current rates as of 7/12/2019

## D. Market Monitor

SHORT TERM MUNICIPAL MARKET	7/12/2019	1-WEEK Δ	10Y AVERAGE
SIFMA Index	1.18%	-31 bps	0.44%
1-Month LIBOR	2.33%	-3 bps	0.63%
SOFR*	2.36%	-23 bps	0.81%
SIFMA/1-Month LIBOR Ratio	50.60%	-12.36%	70.04%
Tax-exempt MMF Flows 4-week Avg. <sup>1,2</sup>	\$907mm	\$761mm	--
LONG TERM MUNICIPAL MARKET	7/12/2019	1-WEEK Δ	10Y AVERAGE
AAA MMD (30-Year)	2.28%	-1 bps	3.32%
AAA MMD (30 – 2 Year)	1.12%	7 bps	2.59%
30-Year SIFMA Swap Rate <sup>3</sup>	1.81%	2 bps	2.70%
30-Year 3M LIBOR Swap Rate <sup>3</sup>	2.28%	5 bps	3.06%
30-Year J.P. Morgan Housing Bond Indication**	3.40%	0 bps	101 bps***
All Muni Fund Flows 4-week Avg. <sup>2</sup>	\$1,895mm	\$1,786mm	--

Source: J.P. Morgan, Bloomberg, Thomson Reuters Municipal Market Data, The Bond Buyer; Lipper FMI, iMoneyNet, \*Federal Reserve Bank of New York historical indicative SOFR available starting 8/22/2014, \*\*Indicative rates, \*\*\* Reflects 10-year average spread

## E. Yield Curve Rates and Ratios

BENCHMARK/MATURITY	2-YEAR	5-YEAR	10-YEAR	30-YEAR
MMD	1.16%	1.20%	1.58%	2.28%
UST	1.84%	1.86%	2.11%	2.63%
MMD/UST Ratio	63.15%	64.57%	75.05%	86.65%

Source: J.P. Morgan, Thomson Reuters Municipal Market Data as of 7/12/2019

<sup>1</sup>MMF: Money Market Fund, 1-week Δ represents the actual figure reported for the previous week

<sup>2</sup>Reflects all tax-exempt mutual funds reporting on a weekly or monthly basis, excluding tax-exempt money market funds

<sup>3</sup>Swap rates are provided for informational purposes only. Please note that J.P. Morgan no longer enters into interest rate derivative transactions with municipal or public entities, and therefore will not serve as swap counterparty to public entities on any new interest rate derivative transactions

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## F. TBA/MBS Market Monitor

TBA PRICING				SEASONING PAYUPS (32NDS OF 1%)						SPECIFIED POOL PAYUPS				
7/12/2019				GN 30		UMBS 30		UMBS 30		UMBS 30		UMBS 30		
Price	1-week Δ			4	4.5	4	4.5	5		3.5	4	4.5	5	
UMBS 30	3.5	102-04+	-0-03+	TBA	104-05	104-31+	103-12+	104-19+	105-28+	TBA	102-04+	103-12+	104-19+	105-28+
UMBS 30	4.0	103-12+	-0-00	2016	0	0	37	0	0	LLB	70	117	159	188
UMBS 30	4.5	104-19+	0-03+	2015	0	0	48	0	0	MLB	62	100	128	151
UMBS 30	5.0	105-28+	0-06+	2014	41	0	60	69	0	HLB	51	82	97	110
GN 30	3.5	103-05	-0-02	2013	51.5	0	64	0	0	M175	39	61	76	76
GN 30	4.0	104-05	0-03	2012	72.5	0	70.5	0	0	Jumbo	-32	-38	-55	-66
GN 30	4.5	104-31+	0-01	2011	76	100	74.5	93.5	103.5					
GN 30	5.0	105-07+	0-06	2010	0	100	78	99.5	115					
G2 30	3.5	103-01+	-0-05											
G2 30	4.0	103-21	-0-00+											
G2 30	4.5	104-05+	-0-00											
G2 30	5.0	104-19+	0-01+											

Source: J.P. Morgan as of 7/12/2019

Specified Pool Payups: LLB: \$85K max loan size, MLB: \$110K max loan size, HLB: \$150K max loan size, M175: \$175K max loan size, Jumbo: \$424K/636K max loan size

## G. Rate (TIC) Comparisons

STRUCTURE	7/15/2019	7/8/2019	1-WEEK Δ	RATING
Traditional – SF*	2.70%	2.73%	-0.03%	Aaa/AA+
Pass-through – SF	3.15%	3.20%	-0.05%	Aaa/AA+
Traditional – MF**	3.29%	3.29%	--	Aaa/AA+
Balloon – MF**	2.91%	2.92%	-0.01%	Aaa/AA+

Source: Indicative market rates

\*30-year fixed rate serial, term, and PAC bonds (100% SIFMA), \*\* 40-year fixed rate serial and term bonds; balloon structure assumes same term with a 17-year balloon

## H. Long-Term Fixed Rate Housing Revenue Bond Forward Calendar

ISSUER	PRICING DATE	USE	SIZE (\$MM)	TAX STATUS	RATING
Texas Department of Housing and Community Affairs	16-July	SF	165.995	Non-AMT	Aaa/AA+/NR
Connecticut Housing Finance Authority	16-July	SF	86.250	Tax-Exempt/Taxable	Aaa/AAA/NR
Minnesota Housing Finance Authority	16-July	SF-PT	50.241	Taxable	Aaa/NR/NR
Maine State Housing Authority	16-July	SF	44.145	Non-AMT/Taxable	Aa1/AA+/NR

Source: J.P. Morgan, Bloomberg, Ipreo, Thomson Reuters Municipal Market Monitor, Bond Buyer \*earliest to latest

For additional market information and commentary, please go to J.P. Morgan Markets at [jpm.com](http://jpm.com)



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# J.P. Morgan Municipal Market Update

## A. Recent J.P. Morgan Transactions

ISSUER	AWARD DATE	SIZE (\$MM)	UNDERLYING RATING	FINAL COUPON	FINAL SPREAD	FINAL YIELD	FINAL MTY
Nevada Housing Division – Series 2019B (NV)	10-July	75.00	NR/AA+/NR	3.350%	106	3.350%	2049
Wylie Independent School District – Series 2019A (TX)	10-July	158.80	Aa2/AAA/NR	3.125%	90	3.180%	2050
Wylie Independent School District – Series 2019B <sup>1</sup> (TX)	10-July	27.54	Aa2/AAA/NR	2.250%	8	2.250%	2041
The Metropolitan Water District of Southern California – Series C/D (CA) (FRN) <sup>2,3,4</sup>	3-July	175.63	NR/NR/AA+	-	SIFMA -6	-	2020
Novant Health - Series 2019A (NC)	26-June	306.99	Aa3/AA-/AA-	4.000%	85	3.160%	2052
Michigan Finance Authority - LGLP Rev Ref Bonds, Series 2019A (MI)	26-June	6.475	NR/AA-/NR	5.000%	78	2.610%	2032
Michigan Finance Authority - LGLP Rev Ref Bonds, Series 2019B (MI) <sup>5</sup>	26-June	6.795	NR/AA-/NR	3.560%	103	3.560%	2035
Ohio Housing Finance Agency - RMRB 2019B (OH) <sup>6</sup>	25-June	150.00	Aaa/NR/NR	4.500%	64	1.950%	2050

Source: Thomson Reuters and Bloomberg, <sup>1</sup>Step coupon, <sup>2</sup>Final maturity indicates put date, <sup>3</sup>Remarketing, <sup>4</sup>Combined Series, <sup>5</sup>Taxable, <sup>6</sup>PAC bond, priced to average life

## B. Market Commentary

- The UST curve steepened last week amid Federal Reserve Chairman Powell's testimony and stronger than expected inflation data; week-over-week UST yields decreased in the 2-year spot by 3 bps, and increased in the 5-, 10-, and 30-year spots by 2, 6, and 8 bps, respectively<sup>1</sup>
  - Powell testified to Congress for the Fed's semi-annual monetary policy testimony and continued to reiterate dovish sentiment, saying "trade tensions and concerns about the strength of the global economy continue to weigh on the U.S. economic outlook"<sup>2</sup>
    - Powell highlighted business sentiment, a global slowdown in manufacturing, and persistently low inflation as factors weighing on the U.S. outlook
  - Minutes released from the June Fed meeting last week reinforced Powell's statements at the testimony, citing motivations for a rate cut such as insurance against downside risks, continued inflation shortfalls, and a lower estimate of the natural rate of unemployment<sup>3</sup>
    - J.P. Morgan Research continues to expect a 25 bps cut at both the July and September Fed meetings
  - On Thursday, the June Consumer Price Index (CPI) beat expectations of 0% with an increase of 0.1% last month and core CPI increased 0.3% versus market expectations of 0.2%; core inflation is at +2.3% YoY<sup>3</sup>
    - June Producer Price Index (PPI) also beat expectations, increasing by 0.1% versus market expectations of unchanged
  - Initial Jobless Claims also beat market expectations of +221,000, reporting an increase of +209,000<sup>3</sup>
- In the municipal market, the MMD curve also steepened but yields moved inversely to UST yields, decreasing in the 2-, 5-, 10-, 30-year spots by 8, 10, 4, and 1 bp (s), respectively<sup>4</sup>
  - July reinvestment capital and persistent record inflows have led demand to outpace supply, contributing to the decrease in MMD yields over the past week despite primary municipal supply of \$8.3 billion<sup>3,5</sup>
    - Lipper reported combined monthly and weekly inflows of \$3.1 billion last week; high-yield, intermediate, long-term, and California funds continue to hit new record inflows, with larger fund complexes attracting the higher inflows<sup>6</sup>
    - YTD net investment of \$48.8 billion is a record high for this time of year, ranking second amongst full year net inflows since the data began in 1992
  - MMD/UST ratios continue to decline given heightened investor demand: 10-year and 30-year ratios declined to 75.05% and 86.65%, respectively<sup>3</sup>
- In the short-term market, SIFMA reset at 1.18%, a decrease of 31 bps, as long-term investors put cash to work in the short-term market as they await a pickup in supply<sup>3,5</sup>
- Looking ahead, \$8.9 billion is expected to price in the primary municipal market this week<sup>5</sup>

<sup>1</sup>J.P. Morgan Research, US Fixed Income Markets Weekly, 7/12/2019, [jpmm.com](http://jpmm.com)

<sup>2</sup>The Federal Reserve Board, Press Release 7/10/2019, [federalreserve.gov](http://federalreserve.gov)

<sup>3</sup>J.P. Morgan Research, US Fixed Income Markets Weekly – Municipals, 7/12/2019

<sup>4</sup>Thomson Reuters Municipal Market Data

<sup>5</sup>Bloomberg

<sup>6</sup>Lipper, iMoneyNet for the period ending 7/10/2019

## C. Interest Rate Forecast

MMD YIELDS	7/12/2019	1m Ahead	3Q19	4Q19	1Q20	2Q20
2-Year	1.16%	1.15%	1.10%	0.90%	0.85%	0.95%
5-Year	1.20%	1.20%	1.10%	0.90%	0.85%	1.00%
10-Year	1.58%	1.55%	1.50%	1.40%	1.30%	1.40%
30-Year	2.28%	2.30%	2.20%	2.20%	2.10%	2.25%
TAXABLE YIELDS	7/12/2019	1m Ahead	3Q19	4Q19	1Q20	2Q20
Fed Funds	2.38%	2.15%	1.90%	1.90%	1.90%	1.90%
3-Month LIBOR	2.32%	2.20%	2.05%	2.15%	2.05%	2.05%
2-Year T Note	1.84%	1.80%	1.70%	1.40%	1.30%	1.50%
5-Year T Note	1.86%	1.80%	1.70%	1.45%	1.35%	1.55%
10-Year T Note	2.11%	2.10%	1.90%	1.75%	1.65%	1.80%
30-Year T Bond	2.63%	2.65%	2.50%	2.45%	2.40%	2.50%

Source: J.P. Morgan Research, *US Fixed Income Markets Weekly*, 7/12/2019, jpmm.com, Thomson Reuters Municipal Market Data, Bloomberg as of 7/12/2019, current rates as of 7/12/2019

## D. Market Monitor

SHORT TERM MUNICIPAL MARKET	7/12/2019	1-WEEK Δ	10Y AVERAGE
SIFMA Index	1.18%	-31 bps	0.44%
1-Month LIBOR	2.33%	-3 bps	0.63%
SOFR*	2.36%	-23 bps	0.81%
SIFMA/1-Month LIBOR Ratio	50.60%	-12.36%	70.04%
Tax-exempt MMF Flows 4-week Avg. <sup>1,2</sup>	\$907mm	\$761mm	--
LONG TERM MUNICIPAL MARKET	7/12/2019	1-WEEK Δ	10Y AVERAGE
AAA MMD (30-Year)	2.28%	-1 bps	3.32%
AAA MMD (30 – 2 Year)	1.12%	7 bps	2.59%
30-Year SIFMA Swap Rate <sup>3</sup>	1.81%	2 bps	2.70%
30-Year 3M LIBOR Swap Rate <sup>3</sup>	2.28%	5 bps	3.06%
All Muni Fund Flows 4-week Avg. <sup>2</sup>	\$1,895mm	\$1,786mm	--
CORPORATE SPREADS TO UST (BPS)	7/12/2019	1-WEEK Δ	10Y AVERAGE
J.P. Morgan JULI Index	140	1 bps	168
J.P. Morgan Domestic HY Index	454	6 bps	557
EQUITIES AND ENERGY (\$)	7/12/2019	1-WEEK Δ	YTD Δ
S&P 500	3,014	0.78%	20.22%
DJIA	27,332	1.52%	17.17%
NASDAQ 100	7,943	1.30%	25.49%
WTI Crude Oil (per bbl.)	60.21	4.69%	13.67

Source: J.P. Morgan, Bloomberg, Thomson Reuters Municipal Market Data, The Bond Buyer; Lipper FMI, iMoneyNet, \*Average dating back to 8/22/2014 using historical indicative SOFR, Federal Reserve Bank of New York

## E. Yield Curve Rates and Ratios

BENCHMARK/MATURITY	2-YEAR	5-YEAR	10-YEAR	30-YEAR
MMD	1.16%	1.20%	1.58%	2.28%
UST	1.84%	1.86%	2.11%	2.63%
MMD/UST Ratio	63.15%	64.57%	75.05%	86.65%

Source: J.P. Morgan, Thomson Reuters Municipal Market Data as of 7/12/2019

<sup>1</sup>MMF: Money Market Fund, 1-week Δ represents the actual figure reported for the previous week

<sup>2</sup>Reflects all tax-exempt mutual funds reporting on a weekly or monthly basis, excluding tax-exempt money market funds

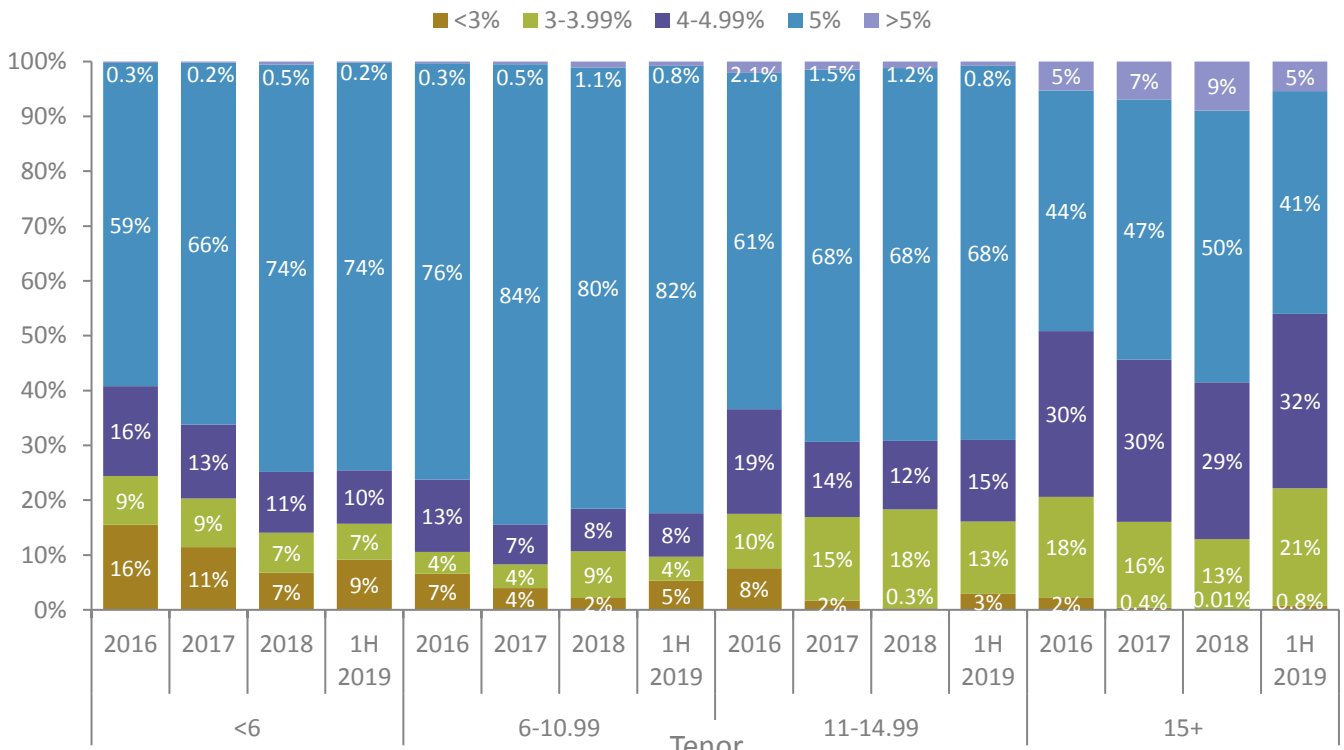
<sup>3</sup>Swap rates are provided for informational purposes only. Please note that J.P. Morgan no longer enters into interest rate derivative transactions with municipal or public entities, and therefore will not serve as swap counterparty to public entities on any new interest rate derivative transactions

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**F. Coupon diversity increased in the long-end of the curve in 1H19, with only 41% of bonds issued with 5% coupons YTD compared to 50% in 2018**

- YTD in 2019, the municipal market has incorporated a greater portion of sub-5% coupon bonds into tax-exempt new issuance as compared to “standard” 5% coupon bonds in recent years
  - Sub-5% coupon bonds made up 54% of issuance in 1H2019, up from 42% in 2018
  - Coupon diversity has been most prominent in the longer end of the curve where only 41% of bonds with a tenor 15 years or longer have had 5% coupons and 54% of issuance has had coupons less than 5%
- Following the elimination of tax-exempt advance refunding through the Tax Cuts and Jobs Act of 2017, issuers have turned to sub-5% coupon bonds to lower all-in TIC and meet growing demand from investors
  - With light supply and low rates, investors are increasingly searching for yield; lower coupon structures allow investors to receive a higher yield-to-call without sacrificing credit
  - Historically, some investors have been hesitant to invest in sub-5% coupon bonds when rates are higher or there is an expectation of rising rates, as there was a greater chance of being exposed to de-minimis, thereby decreasing the liquidity of the bonds
  - However, the decrease in MMD yields YTD has reduced the risk of de-minimis tax implications and extension risk for investors in lower coupon structures as it lowers the likelihood that bonds trade at a discount in the secondary market
- Continued record-breaking YTD municipal bond fund inflows and net negative supply of -\$35 billion from July-August may act as a tailwind, as investors seek to deploy capital allowing issuers greater structuring flexibility overall

**Sub-5% coupon municipal bond issuance increased in 1H19 as issuers look for structure optionality**



Source: Bloomberg LEAG as of 7/1/2019, Bloomberg, *A Staple of Muni-Bond Market Is Going Away as Rates Keep Falling*, 7/10/2019, Bloomberg.com

Note: Includes only tax-exempt fixed-rate bonds

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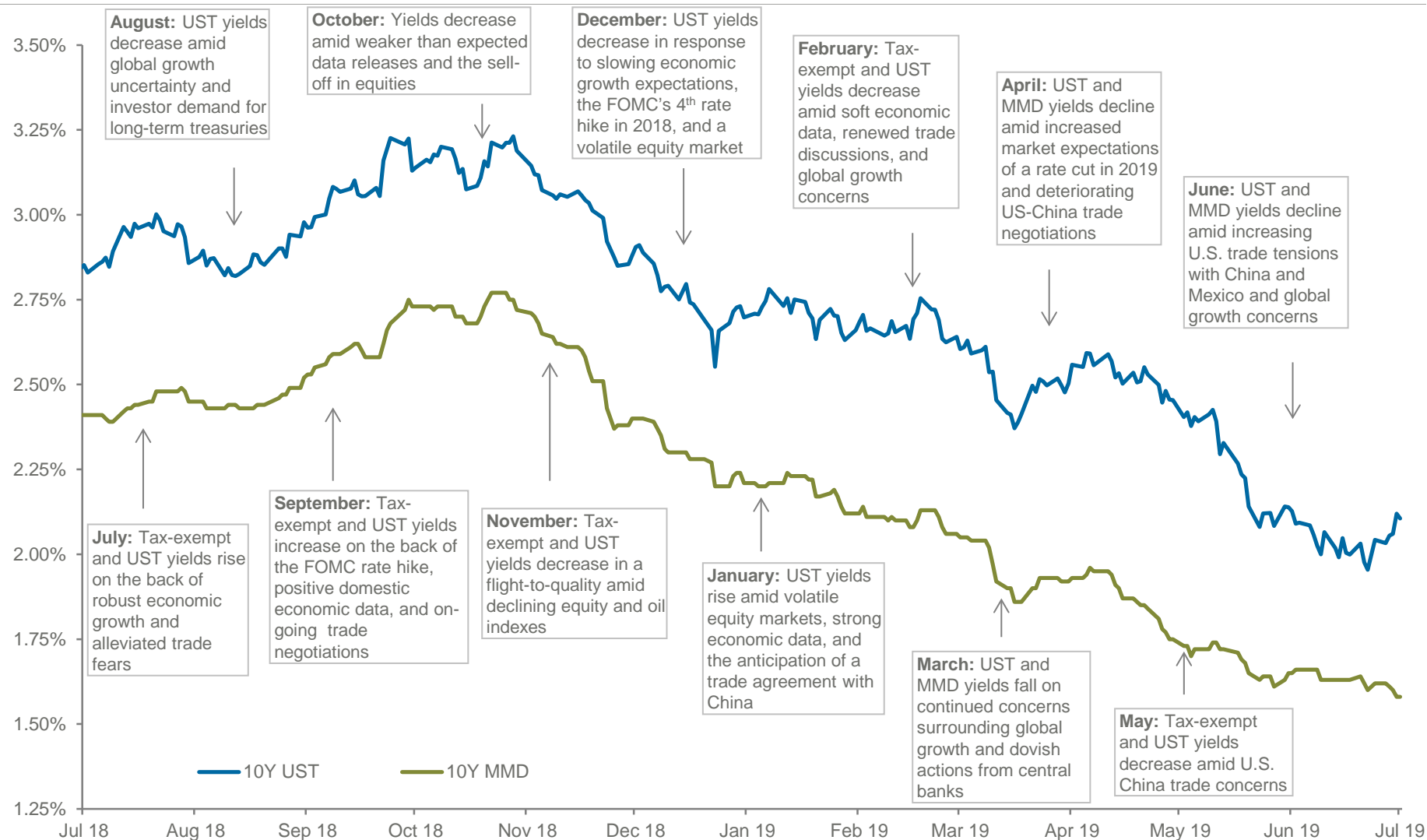
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## Market Interest Rates

## Tax-exempt and taxable yields are sensitive to growth expectations and geopolitical news

Week-over-week, the 10-year UST yield increased by 6 bps while the 10-year MMD yield decreased by 4 bps

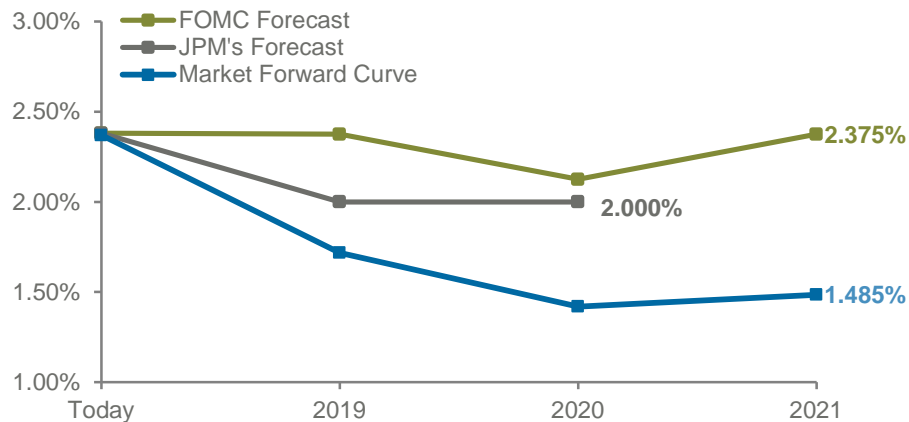


Source: Thomson Reuters Municipal Market Data, J.P. Morgan; as of 7/12/2019

J.P.Morgan

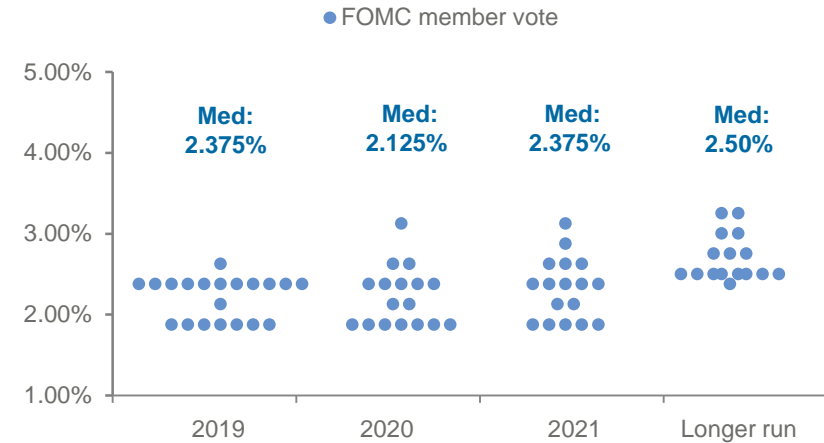
# J.P. Morgan Research expects the Fed to cut rates at both the July and September meetings, amid escalating trade tensions and concerns over a slowdown in global growth

## FOMC dots vs. market expectations



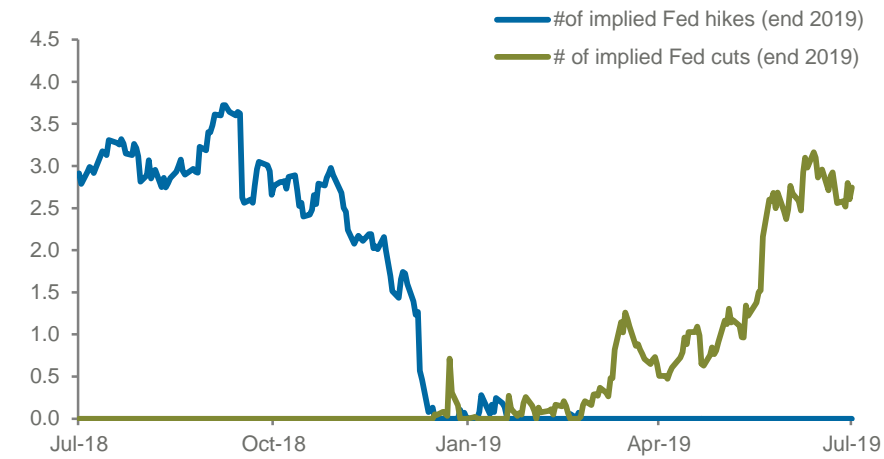
Source: FOMC year-end Fed Funds Rate projections, 6/19/2019. Market forward curve, 7/15/2019; J.P. Morgan Research, *US Fixed Income Markets Weekly*, 7/12/2019, jpmm.com; Forecasts as of 7/12/2019

## FOMC year-end Fed Funds Target Rate projections



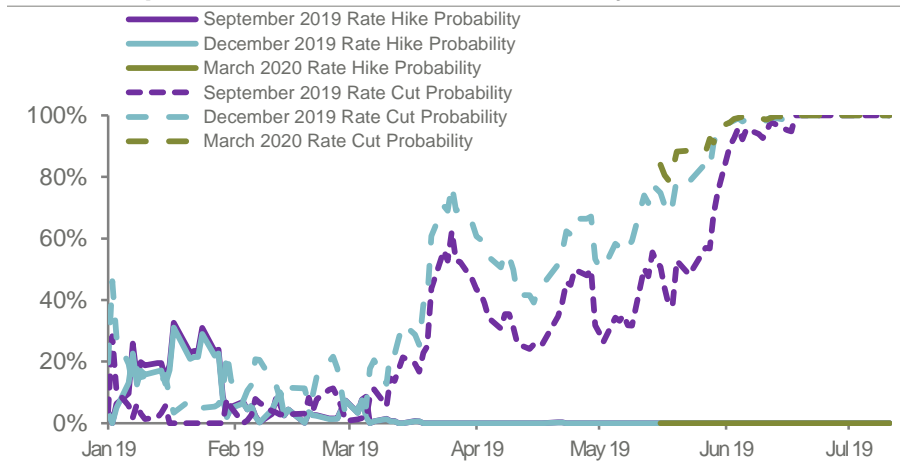
Source: Federal Reserve Board, 6/19/2019, www.federalreserve.gov  
\*One participant did not submit a longer run projection

## Number of Fed hikes/cuts implied by OIS rates



Source: J.P. Morgan, Bloomberg, as of 7/12/2019

## Market Implied Fed Rate Hike/Cut Probability

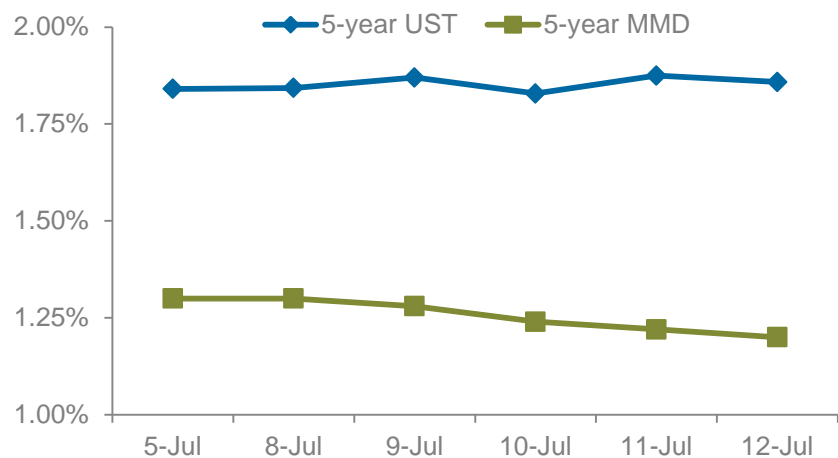


Source: Bloomberg, World Interest Rate Probability – Fed Effective, as of 7/5/2019



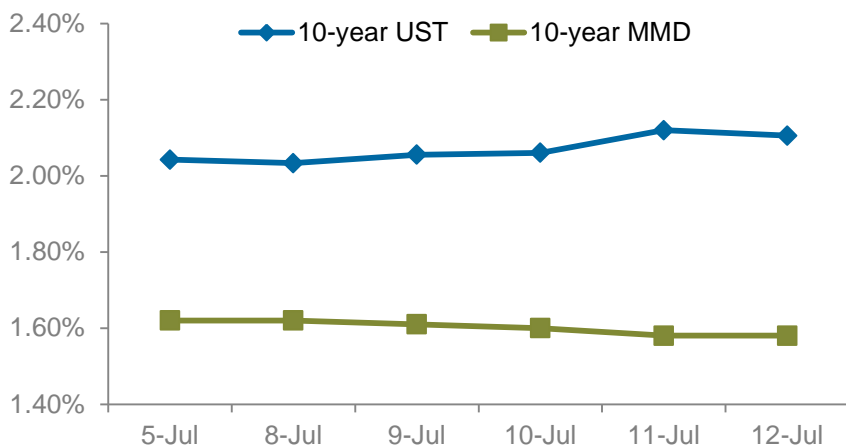
# UST volatile last week amid Fed Chair Powell's testimony and stronger than expected inflation data, while MMD yields decreased amid strong market technicals

## 5Y MMD and UST yields for the week ending July 12



Source: Thomson Reuters Municipal Market Data, J.P. Morgan; as of 7/12/2019

## 10Y MMD and UST yields for the week ending July 12



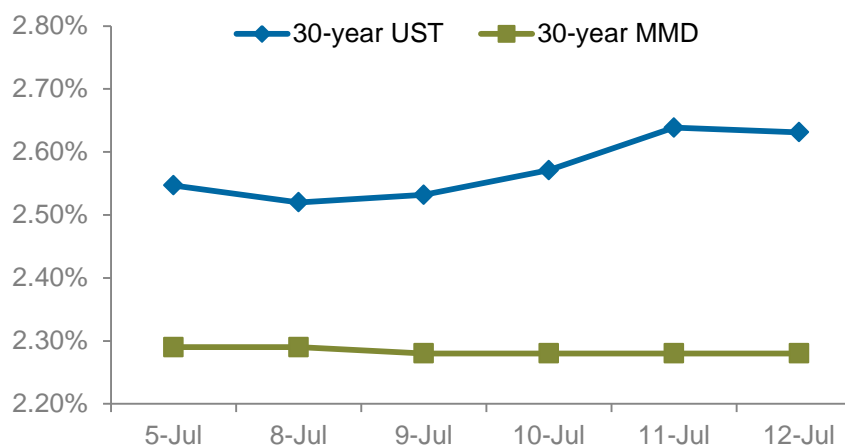
Source: Thomson Reuters Municipal Market Data, J.P. Morgan; as of 7/12/2019

## Market Moves

	7/12/2019	7/05-7/12	6/12-7/12	1/02-7/12
	Current	Change Over the Last Week	Change Over the Past Month	Change YTD
5-year UST	1.86%	+2 bps	-2 bps	-64 bps
10-year UST	2.11%	+6 bps	-2 bps	-55 bps
30-year UST	2.63%	+8 bps	+1 bps	-35 bps
5-year MMD	1.20%	-10 bps	-16 bps	-72 bps
10-year MMD	1.58%	-4 bps	-7 bps	-69 bps
30-year MMD	2.28%	-1 bps	-7 bps	-71 bps
5-year MMD / UST	64.57%	-6.05%	-7.77%	-12.20%
10-year MMD / UST	75.05%	-4.27%	-2.54%	-10.29%
30-year MMD / UST	86.65%	-3.26%	-2.92%	-13.65%
S&P 500	3,014	+23 pts	+134 pts	+504 pts
Dow Jones	27,332	+410 pts	+1,327 pts	+3,986 pts

Source: Thomson Reuters Municipal Market Data, J.P. Morgan; as of 7/12/2019

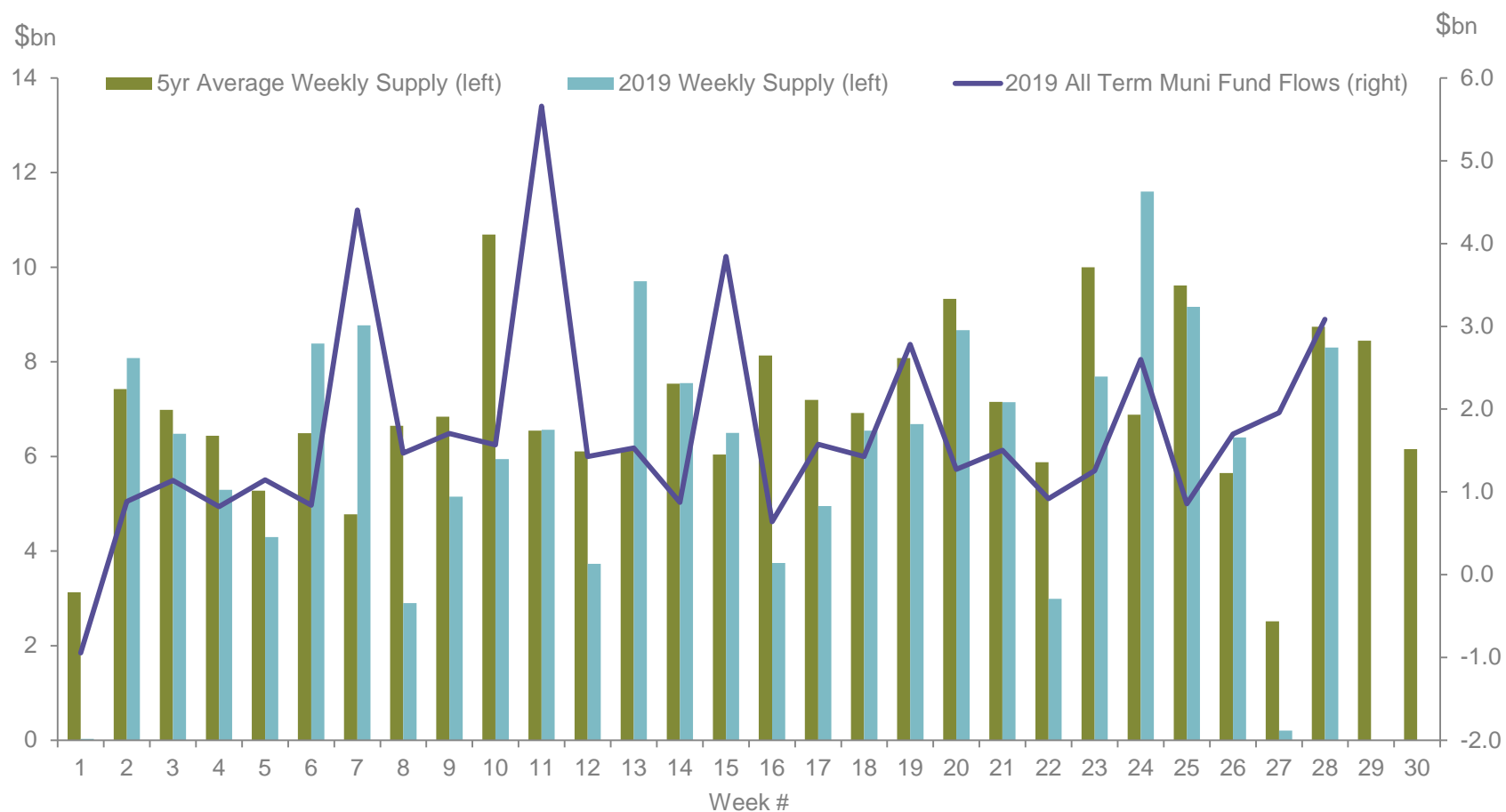
## 30Y MMD and UST yields for the week ending July 12



Source: Thomson Reuters Municipal Market Data, J.P. Morgan; as of 7/12/2019

## Record inflows and light supply support the municipal market in 2019

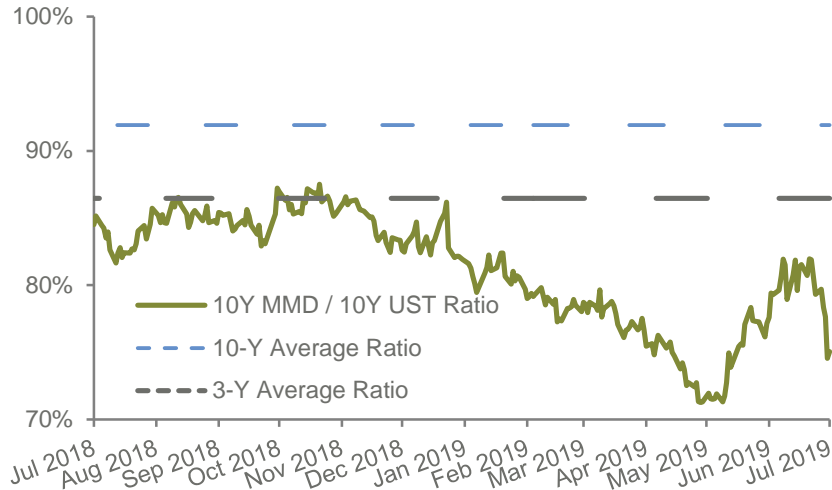
- Tax-reform continues to have an impact on the municipal market; however, strong demand and low supply has driven market dynamics in 2019
- Municipal bond funds have received 27 consecutive weeks of inflows of \$48.8 billion YTD, the best start to the year since Lipper started recording the data series in 1992



Source: J.P. Morgan Research, *US Fixed Income Markets Weekly*, 7/12/2019, jpm.com; Lipper iMoneyNet as of 7/10/2019, Bloomberg as of 7/12/2019  
 Note: excludes short-term issuance

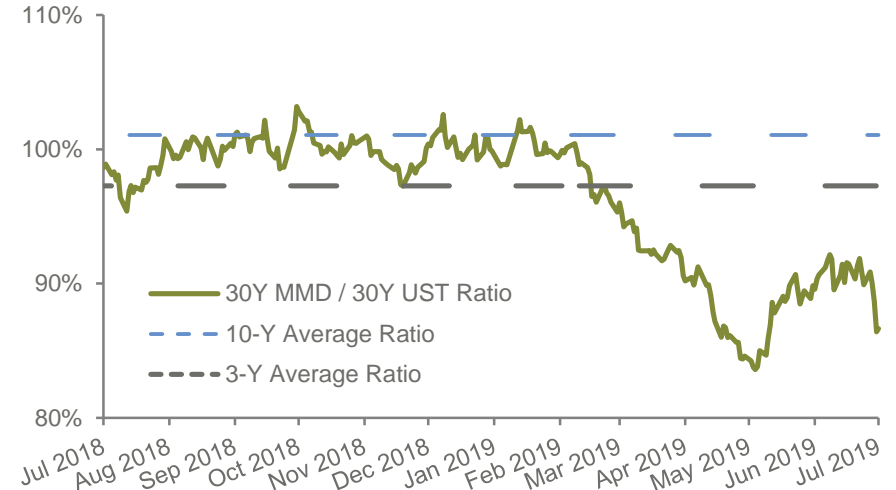
# Ratios between MMD and UST yields remain low amidst strong investor demand for tax-exempt paper

**10-Year AAA Tax-Exempt / Treasury Yield (Ratio)**



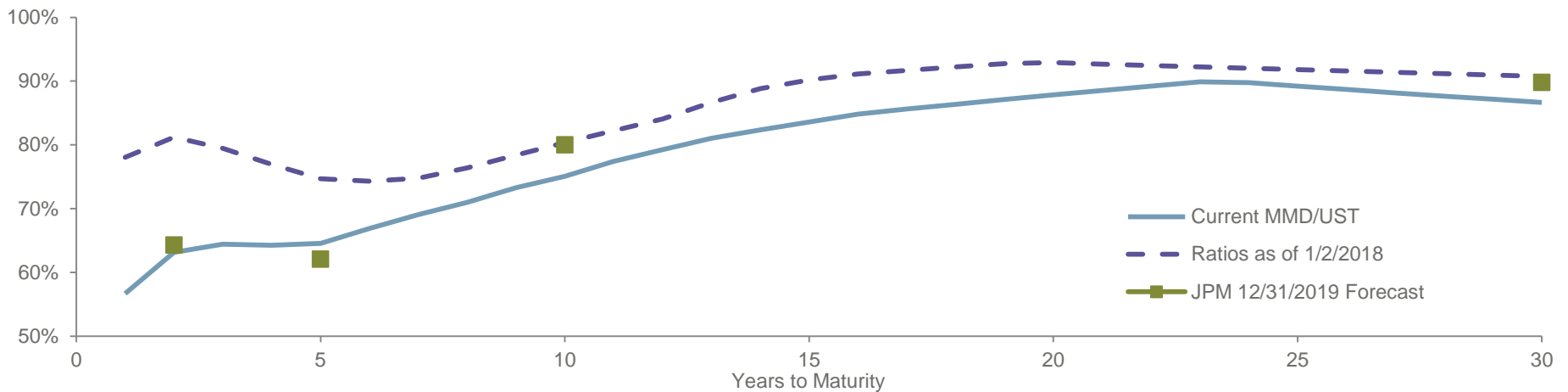
Source: Thomson Reuters Municipal Market Data, J.P. Morgan; as of 7/12/2019

**30-Year AAA Tax-Exempt / Treasury Yield (Ratio)**



Source: Thomson Reuters Municipal Market Data, J.P. Morgan; as of 7/12/2019

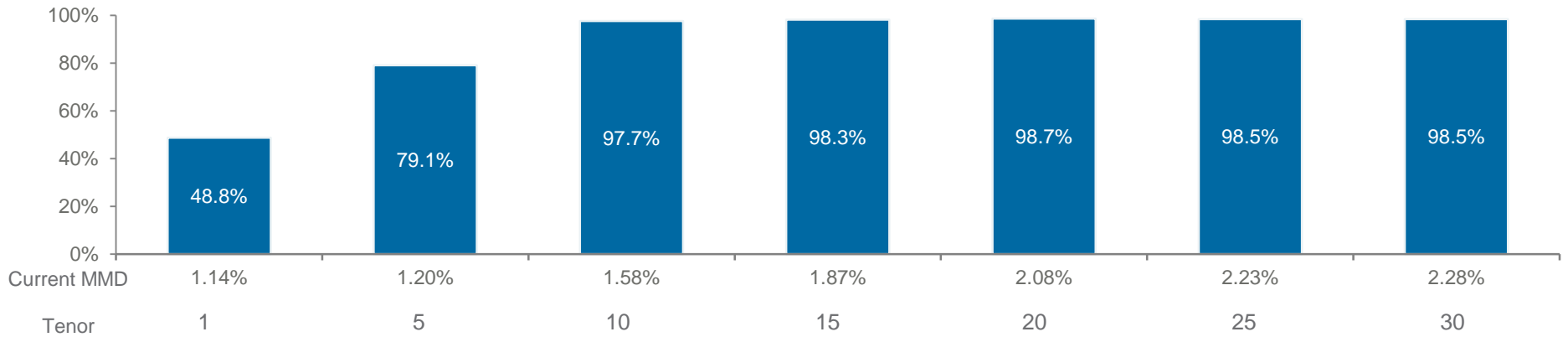
**AAA Tax-Exempt / Treasury Yield (Ratio)**



Source: Thomson Reuters Municipal Market Data, J.P. Morgan; as of 7/12/2019; Note: Only the 2-, 5-, 10-, and 30-year ratios are J.P. Morgan forecasts, J.P. Morgan Research, *US Fixed Income Markets Weekly - Municipals*, 7/12/2019, [jpmm.com](http://jpmm.com)

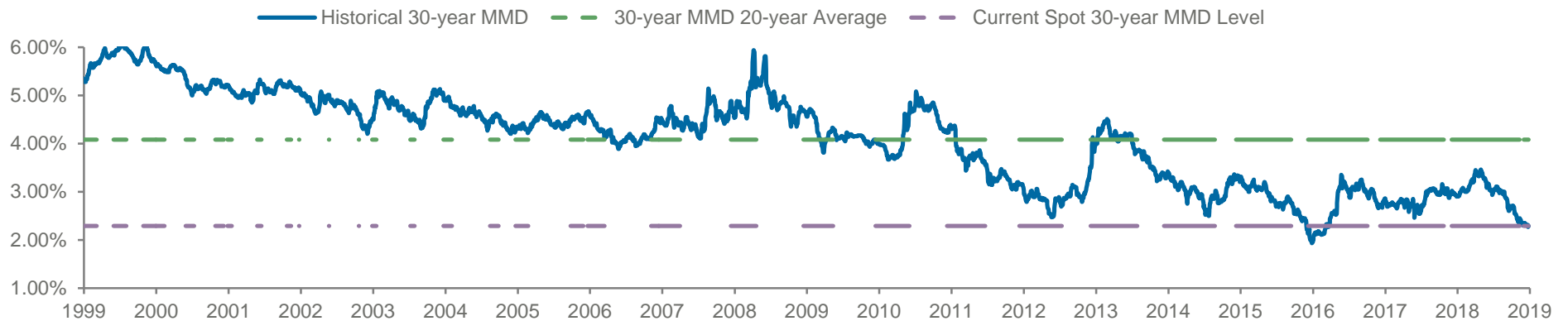
Over the past twenty years, the 30-year tax-exempt yield has been higher than current levels 98.5% of the time

**Percentage of time over the past twenty years that MMD has been greater than current levels**



Source: J.P. Morgan, Thomson Reuters Municipal Market Data; as of 7/12/2019; 25-year MMD reported beginning 1/1/1999

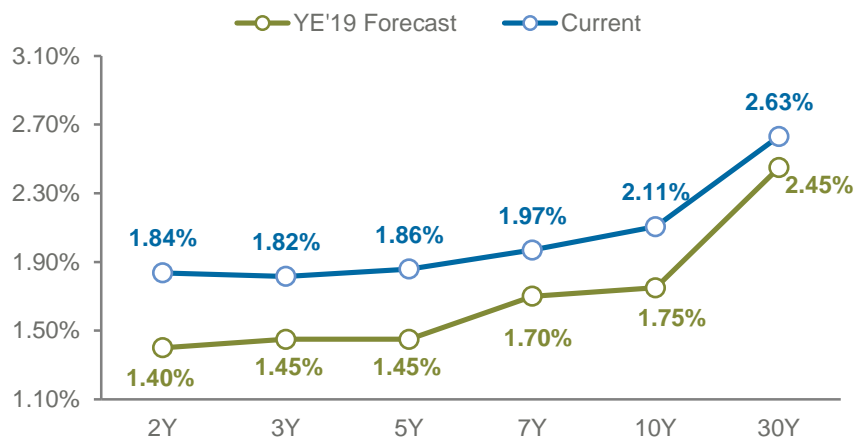
**Historical 30-Year AAA MMD**



Source: J.P. Morgan, Thomson Reuters Municipal Market Data; as of 7/12/2019

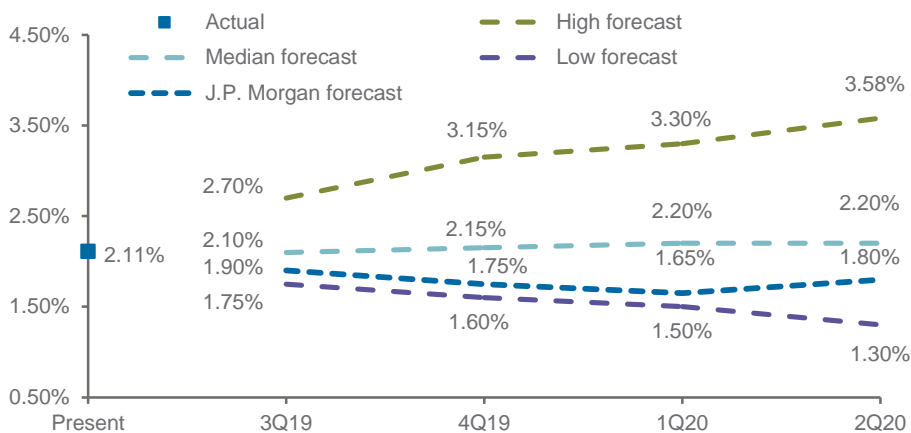
# J.P. Morgan Research expects 10-year UST yields to reach 1.75% by 4Q19

## J.P. Morgan now foresees an inverted yield curve throughout 2019



Source: J.P. Morgan Research, *US Treasury Market Daily*, 7/12/2019, jpmm.com, Rates as of 7/12/2019

## Range of 10-year UST forecasts



Source: J.P. Morgan Research, *US Fixed Income Markets Weekly*, 7/12/2019, jpmm.com, Rates as of 7/12/2019

## JPM U.S. Treasury Interest Rate Forecast (%)

	7/12/2019	9/30/19	12/31/19	3/31/2020	6/30/2020
	Current	3Q19 Forecast	4Q19 Forecast	1Q20 Forecast	2Q20 Forecast
Fed Funds	2.38%	1.90%	1.90%	1.90%	1.90%
3M LIBOR	2.32%	2.05%	2.15%	2.05%	2.05%
2Y UST	1.84%	1.70%	1.40%	1.30%	1.50%
5Y UST	1.86%	1.70%	1.45%	1.35%	1.55%
10Y UST	2.11%	1.90%	1.75%	1.65%	1.80%
30Y UST	2.63%	2.50%	2.45%	2.40%	2.50%

Source: J.P. Morgan Research, *US Fixed Income Markets Weekly*, 7/12/2019, jpmm.com; Rates as of 7/12/2019

## JPM Tax-Exempt Yield Forecast (%)

	7/12/2019	9/30/19	12/31/19	3/31/20	6/30/20
	Current	3Q19 Forecast	4Q19 Forecast	1Q20 Forecast	2Q20 Forecast
2Y MMD	1.16%	1.10%	0.90%	0.85%	0.95%
5Y MMD	1.20%	1.10%	0.90%	0.85%	1.00%
10Y MMD	1.58%	1.50%	1.40%	1.30%	1.40%
30Y MMD	2.28%	2.20%	2.20%	2.10%	2.25%
10Y MMD/UST Ratio	74.88%	78.95%	80.00%	78.79%	77.78%
30Y MMD/UST Ratio	86.69%	88.00%	89.80%	87.50%	90.00%

Source: J.P. Morgan Research, *US Fixed Income Markets Weekly*, - Municipals 7/12/2019, jpmm.com, Rates as of 7/12/2019

2c

BOARD REPORT ITEM  
BOND FINANCE DIVISION  
OCTOBER 10, 2019

Report regarding a Request for Proposal for Underwriters issued by the Texas Department of Housing and Community Affairs

BACKGROUND

The Texas Department of Housing and Community Affairs (the Department) issues single family mortgage revenue bonds (SFMRBs) to provide financing opportunities to low, very low, and moderate income homebuyers, and to refund existing debt for savings or other benefits.

While the Taxable Mortgage Program is the primary financing mechanism for the Department's homeownership programs, SFMRBs often result in lower mortgage rates. In addition, premium realized on the sale of SFMRBs has been significant, funding down payment and closing cost assistance and most, if not all, of the lender compensation for the related mortgage loans. This allows the Department to manage its liquidity position, ensuring the long-term viability of the single family program. In fiscal year 2019, the Department issued over \$475 million in SFMRBs.

On July 24, 2019, the Department issued a Request for Proposals (RFP) for Underwriters interested in serving as Senior Manager and/or Co-Manager for one or more SFMRB issues beginning in fiscal year 2020. Nineteen responses were received, of which two were disqualified for non-conformance with RFP requirements. A review team of Department staff evaluated the eligible responses, and selected the following firms to serve as the Department's Underwriters (the Underwriting Team):

Firm	Eligible Role
Barclays	Senior or Co-Manager
Jefferies	Senior or Co-Manager
J.P. Morgan	Senior or Co-Manager
Morgan Stanley	Co-Manager
Piper Jaffray & Co.	Co-Manager
Ramirez & Co., Inc.	Co-Manager
RBC Capital Markets	Senior or Co-Manager

Firms initially selected to serve as Co-Manager may, depending on the circumstances, be elevated to serve as Senior Manager for the Department.

Staff, in consultation with the Department's financial advisor, will select firms on the Underwriting Team to serve as Senior Manager and Co-Managers for each bond issue on a transaction-by-transaction basis. Underwriter roles for each transaction will be based on a combination of factors, including past performance, creative and viable recommendations for structures that meet the Department's financing needs, specific experience or expertise with the proposed financing structure, and other relevant considerations.

The term of the award is one year, with the ability to renew and extend for one year per renewal, for a maximum of three consecutive renewal years.



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BOARD REPORT ITEM  
BOND FINANCE DIVISION  
OCTOBER 10, 2019

Report regarding a Request for Proposal for TBA Program Administrator issued by the Texas Department of Housing and Community Affairs

BACKGROUND

In October 2012, following several years of unfavorable market conditions for the issuance of tax-exempt single family mortgage revenue bonds, the Texas Department of Housing and Community Affairs (the Department) implemented its Taxable Mortgage Program (TMP) as a way to provide financing opportunities to low, very low, and moderate income homebuyers. The TMP financing mechanism is commonly referred to as TBA, which stands for To Be Announced, because mortgage rates and loan pricing are established daily for an unspecified par amount of mortgage loans to be reserved, closed, pooled into mortgage-backed securities, and delivered to the TBA Program Administrator in the future. The TBA Program Administrator hedges the TMP loan pipeline, bearing the financial risks and costs associated with changes in market conditions and pipeline fallout. TMP is currently the Department's primary financing mechanism, funding over \$1.1 billion in mortgage loans in fiscal year 2019. The Department's current contract for TBA Program Administrator, evidenced by a Master Trade Confirmation, expires December 1, 2019.

On August 12, 2019, the Department issued a Request for Proposals (RFP) for firms interested in serving as TBA Program Administrator. The RFP had a submission deadline of September 9, 2019. One proposal was received. A review team of Department staff evaluated the response, and selected Hilltop Securities to serve as TBA Administrator to the Department. Hilltop Securities, formerly First Southwest Company, has served as TBA Program Administrator for the Department since October 2012.

The term of the award is two years, with the ability to renew and extend for one year per renewal, for a maximum of three consecutive renewal years.

The Master Trade Confirmation for this contact is anticipated to be presented at the Board meeting to be held November 7, 2019, for consideration and possible approval.

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BOARD REPORT ITEM  
BOND FINANCE DIVISION  
OCTOBER 10, 2019

Report regarding a Request for Proposal for Mortgage Warehouse Facility issued by the Texas Department of Housing and Community Affairs

BACKGROUND

The Texas Department of Housing and Community Affairs (the Department) has maintained a Mortgage Warehouse Facility (the Facility) since 2010. The Facility is a financing tool available to the Department for use when it is economically or operationally beneficial to do so, and is primarily used to reduce the cost of negative arbitrage associated with the issuance of single family mortgage revenue bonds. Negative arbitrage is the cost that results when the interest paid on the bonds exceeds the interest earned on the investment of bond proceeds. Bond proceeds are invested short-term, typically in a guaranteed interest contract, until used to purchase mortgage-backed securities (MBS). Under current market conditions, short-term investment rates are less than the overall interest rate on the bonds. The resulting shortfall is negative arbitrage.

The Facility reduces negative arbitrage by allowing the Department to originate and pool mortgage loans prior to bond closing. The resulting MBS are purchased and held by the Facility until the bond issue closes, at which time bond proceeds are used to purchase the MBS into the trust estate that has been pledged as security for the bonds. The earlier MBS are delivered to the trust estate, the lower the cost of negative arbitrage. While the MBS are held by the Facility, the Facility receives and retains the payments received on the MBS, and the Department receives a fee against the par amount of MBS held in the Facility. The Department's current Facility expires on December 1, 2019.

On August 12, 2019, the Department issued a Request for Proposals (RFP) for firms wishing to provide the Facility. The RFP had a submission deadline of September 9, 2019. One proposal was received. A review team of Department staff evaluated the response and selected Hilltop Securities to provide these services. Hilltop Securities, formerly First Southwest Company, has provided a Facility for the Department since 2010.

The term of the award is two years, with the ability to renew and extend for one year per renewal, for a maximum of three consecutive renewal years.

The contract for the Facility is a Warehousing Agreement, which is anticipated to be presented at the Board meeting to be held November 7, 2019, for consideration and possible approval.

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**BOARD ACTION REQUEST**

**COMPLIANCE DIVISION**

**OCTOBER 10, 2019**

Presentation, discussion, and possible action on a Dispute of the Compliance Division's assessment of the Applicant's compliance history to be reported to the Executive Award Review Advisory Committee regarding Estates at Shiloh (19439)

**RECOMMENDED ACTION**

**WHEREAS**, Tex. Gov't Code §2306.057 requires a compliance assessment to be completed and reported to the Board prior to approving a project for funding;

**WHEREAS**, 10 TAC, Chapter 1, Subchapter C, related to Previous Participation and Executive Award Review Advisory Committee (EARAC) is the Department's rule and process for making the required assessment and report;

**WHEREAS**, 10 TAC §1.301(e)(3)(A) classifies a portfolio as a Category 3 if the number of Events of Noncompliance that were not corrected during the Corrective Action Period equals or exceeds 50% of the number of properties in the Combined Portfolio, with a minimum of three events of non-compliance within the last three years;

**WHEREAS**, there are three sponsors for Estates at Shiloh (19439), Generation Housing Partners, Hill Tide Partners and the City of Dallas Housing Finance Corporation. The combined portfolio of these three sponsors results in a portfolio of 12 properties with eight Events of Noncompliance that were not corrected during the Corrective Action Period, therefore classifying them as a Category 3;

**WHEREAS**, 10 TAC §1.301(f)(3)(B) requires the Compliance Division to recommend denial of the award for any applicant with a portfolio classified as a Category 3;

**WHEREAS**, the Department notified the Applicant of the determination of their Category 3 status, and the Applicant then timely requested to have this matter presented to the Board;

**WHEREAS**, Generation Housing Partners and Hill Tide Partners are Category 2 applicants and the City of Dallas Housing Finance Corporation has taken measures to remedy the underlying cause for past noncompliance and ensure compliance in the future;

**WHEREAS**, Tex. Gov't Code §2306.057(c) provides the Board discretion to approve a project application despite noncompliance; however, the Board must fully document and

disclose any instances in which the Board approves a project application despite any noncompliance; and

**WHEREAS**, Staff requests the Board determine that EARAC may provide a positive award recommendation to the Board with or without conditions;

**NOW, therefore, it is hereby**

**RESOLVED**, that the Board has considered the compliance history of the Applicant, and determines, for application Estates at Shiloh (19439), that the Applicant's compliance history as documented and disclosed herein should not preclude a positive recommendation from EARAC; and

**FURTHER RESOLVED**, that the Application is authorized to proceed through its remaining evaluation and proceed to EARAC for review and consideration of recommendation and possible conditions, without being precluded from a positive recommendation by EARAC because of its compliance history.

### **BACKGROUND**

The Compliance Division monitors each property at least once every three years. After a monitoring visit, a report is sent to the owner identifying the Events of Noncompliance (if applicable). A 90-day corrective action period is provided, which can be extended for good cause if a request is made during the corrective action period. Tex. Gov't Code §2306.6719 provides that events of noncompliance that are corrected during the applicable corrective action period are disregarded for the purposes of assessing an applicant's compliance history when applying for funding. All correspondence between the Compliance Division and the Development is conducted through the Department's web-based Compliance Monitoring and Tracking System (CMTS). All the events of noncompliance discussed in this agenda item are now corrected, but were not corrected during their allowable corrective action period.

The City of Dallas Housing Finance Corporation Events of Noncompliance include:

- Failure to resolve final construction inspection deficiencies (cited at one property)
- Noncompliance with Affirmative Marketing requirements (cited at two properties)
- Violations of the Uniform Physical Condition Standards (cited at two properties)
- Noncompliance with tenant selection criteria (cited at one property)
- Household Income above income limit upon initial occupancy (cited at one property)

The assessment of compliance history is performed by the Compliance Division in accordance with the rules set out at 10 TAC §1.301, which define the level or "category" of compliance an applicant or affiliate has achieved. Under 10 TAC §1.301(e)(3), Category 3 is defined. Under 10 TAC §1.301(f)(3), following a process of how an Applicant may provide evidence or comment regarding the accuracy of the categorization, "if the Application is still considered a Category 3, the Compliance Division will recommend to EARAC denial of the award."



Under the EARAC rule found at 10 TAC §1.303(c):

(1) A positive recommendation by EARAC represents a determination that, at the time of the recommendation and based on available information, each of the applicable and required members has not identified a rule or statutory-based impediment (within their area of expertise) that would prohibit the Board from making an award. . . .

(4) A negative recommendation by EARAC will result if one of the applicable required members has determined that an Applicant has not satisfied a material requirement of TDHCA rule or federal or state statute relevant to the award sought and the material requirement cannot be cured through one of the conditions proposed by the Applicant or listed in Subsection (e) of this section. . . .

Accordingly, by rule, if an applicant or affiliate is determined by rule to be a Category 3, and evidence and comment submitted do not change that designation, then the Compliance Division must recommend to EARAC denial of the award. In turn, EARAC cannot make a positive recommendation, and must recommend against the award because of the negative recommendation of the Compliance Division (as a required member of EARAC) if “the material requirement cannot be cured through one of the conditions . . . listed in Subsection (e).”

This is the third previous participation review the City of Dallas Housing Finance Corporation has been through since April 2019. Each time they partnered with different organizations. Based on those combinations, they have been approved each time. This particular application when combined with these particular applicants creates the Category 3 designation. Nonetheless, the underlying issues themselves are unchanged and have been accepted by EARAC and the Board, as recently as the September 5, 2019, meeting in association with application 19419 Palladium Redbird.

The applicant in this matter has provided an explanation for why its issues of non-compliance were not corrected during the corrective action period, and has indicated that they have taken measures to ensure the issues will not be repeated. Specifically, the applicant has contracted with a third party to provide oversight for compliance with Affirmative Marketing requirements and tenant files, replaced the property manager and established a new process to vet contractors. However, as detailed, above, the current Previous Participation Rule requires the Compliance Division to recommend denial of the award as the Combined Portfolio is classified as a Category 3.

Friday, September 27, 2019

Via Email to [bobby.wilkinson@tdhca.state.tx.us](mailto:bobby.wilkinson@tdhca.state.tx.us)

Bobby Wilkinson, Executive Director  
Texas Department of Housing and Community Affairs  
PO Box 13941  
Austin, Texas 78701

**RE: Previous Participation Review for Application 19439**

Dear Mr. Wilkinson,

The purpose of this letter is to provide a response to events of noncompliance (“**Events**”) identified as a result of the Previous Participation Review (“**PPR**”) related to the application for 4% housing tax credits to the Texas Department of Housing and Community Affairs (“**TDHCA**”) for the Estates at Shiloh development, Application No. **19439**, to be located at 2649 Centerville Road, Dallas, Texas 75228 (“**Development**”). The applicant is TX Casa View 2018, Ltd. and the City of Dallas Housing Finance Corporation (“**DHFC**”) will be the sole member of the general partner entity, TX Casa View 2018 GP, LLC. As a result of the DHFC’s participation, it is understood that a PPR was conducted on developments in the DHFC’s portfolio.

Particularly, this response is to address Events related to two developments which were built on land owned by the DHFC and where the DHFC serves as the sole member of the general partner of the entity that owns the improvements. These developments are known as Providence Mockingbird Apartments, TDHCA ID No. **4225**, and Park at Cliff Creek, TDHCA ID No. **1312**. DHFC has implemented changes at both developments since these Events in order to ensure that such events do not occur again.

**Providence Mockingbird Apartments Events:**

In 2012, the DHFC ProvidenceatMockingbird, LLC was admitted as the general partner in Hines 68, LP. The DHFC, as the sole member of the limited liability company, has supervisory oversight of the property manager under the limited partnership agreement. The current property management team is CF Real Estate Services LLC (“**CFRES**”). The DHFC Board closely

monitors the operations of CFRES and requires the management team to provide quarterly reports on the operations, finances, and condition of the property. Recognizing the seriousness of the Events, CFRES engaged an outside company, Windsor Compliance (“**Windsor**”), a division of RealPage, Inc., to provide compliance monitoring in order to curtail future Events from occurring as outlined below. This measure was taken in direct response to, and following the Events. Since Windsor’s engagement there has been no recurrence of the cited Events.

**Event 1: Noncompliance related to Affirmative Marketing requirements in §10.617 –** To prevent future Events, CFRES submits monthly marketing reports to Windsor to ensure staff is adhering to the affirmative fair housing market plan (AFHMP).

**Event 2: Household income above limit upon occupancy/Unit not leased to Low Income Household -** Additionally, Windsor reviews move-in and recertification files. CFRES staff also reviews recertifications monthly to ensure they are completed in a timely manner to limit future Events.

**Event 3: Noncompliance with tenant selection requirements in §10.610 –** To mitigate against future Events, CFRES staff has all applicants sign the resident selection criteria.

**Event 4: Violations of the Uniform Physical Condition Standards (‘18) –** The Regional Service Director for CFRES conducts quarterly inspections of the physical asset to avoid violations of the Uniform Physical Condition Standards or future Events.

All the Events identified for Providence Mockingbird Apartments have been corrected. Furthermore, since the Events have occurred there has been **no recurrence of uncured Events**.

As previously stated, the DHFC Board has a vested interest to ensure the physical asset is operating in compliance with all applicable requirements in addition to providing a high quality of life for its residents and maintaining a positive cash flow. Since February 2018, there has been increased oversight on the performance of CFRES. The DHFC Board has not been satisfied with the level of response by CFRES in certain instances. Recently, the on-site property manager was replaced. Since the replacement of the property manager, there has been an improvement in the level of service. The DHFC Board continues to closely monitor CFRES and is committed to the continuous improvement of compliance with all requirements. Especially, with respect to providing corrective actions to any future Events in a timely manner.

#### **Park at Cliff Creek Events:**

In partnership with the Cesar Chavez Foundation (“**CCF**”), the DHFC, as the sole member of PCC280 LLC, the general partner of the ownership entity, owns and manages the Park at Cliff Creek Apartments. Unfortunately, the property experienced construction challenges due to inexperience on the part of the architect engaged. A suit was filed, and damages awarded from the architect as a result. This architect has not been used on any other DHFC properties. In the future, the DHFC and the CCF will thoroughly vet contractors to ensure they are qualified and have a thorough knowledge of all applicable laws, codes, and requirements so future Events do not occur.

**Event 1: Failure to resolve final construction deficiencies** – A response was provided to TDHCA to address the deficiencies on September 15, 2017, by PCC’s property management division. TDHCA provided a closeout response stating the response was sufficient to close the issues identified at the inspection conducted on November 6, 2016.

**Event 2: Violations of the Uniform Physical Condition Standards** – On March 21, 2017, PCC property management staff submitted a response to TDHCA regarding deficiencies discovered during an inspection on September 12, 2016. On April 20, 2017, TDHCA provided a letter stating all repairs and corrections were made and that they were sufficient to close the issues.

To date, all of the deficiencies have been corrected for the Park at Cliff Creek Apartments and there have been no **further uncured Events**.

It is important to note that as it relates to the Estates at Shiloh, the applicant has engaged an architect experienced in tax credit developments in Texas; this ensures that the Events experienced at Park at Cliff Creek will not be repeated. Additionally, the applicant will use Alpha Barnes as the management company for Estates at Shiloh. Alpha Barnes currently manages DHFC’s Martha’s Vineyard development, which has had no such Events. The use of a management company with a history of strong compliance will ensure Events experienced at Providence Mockingbird Apartments will not occur at Estates at Shiloh.

Based on the response provided in this letter, we humbly request TDHCA’s Board approval of the PPR for the application for the Development. This Development fulfills a desperate need to provide affordable units for seniors in the City of Dallas (“**City**”). The City adopted a Comprehensive Housing Policy (“**Policy**”) which outlines a strategy to address a shortage of **20,000** affordable housing units in three years. This Development impacts this shortage and is located in one of the fifteen Reinvestment Strategy Areas identified in the Policy. Additionally, for the last three years, the City has suffered a severe disadvantage when it comes to directing the primary source of equity, **9%** housing tax credits, for the production of affordable multifamily residential units due to the disaster declaration point boost for other counties in Region 3. Without participation in the **4%** housing tax credit program, it is difficult to meet or address the housing shortage in the City.

We appreciate the TDHCA Board’s consideration in this matter.

Sincerely,



Marcy C. Helfand

President, City of Dallas Housing Finance Corporation

CC: **Texas Department of Housing and Community Affairs:**

Marni Holloway, Director of Multifamily Finance

Teresa Morales, Program Administrator 4% Tax Credit and Bonds  
Patricia Murphy, Director of Compliance  
Beau Eccles, General Counsel and Board Secretary

**City of Dallas Housing Finance Corporation:**

Avis Chaisson, Assistant General Manager  
Kyle Hines, Area Redevelopment Manager

**Generation Housing Development:**

Adrian Iglesias, President  
Chris Applequist, Vice President - Partner

**Hill Tide Partners:**

Bob Long, Managing Partner

**Purple Martin Real Estate:**

Audrey Martin

**Shackelford, Bowen, McKinley & Norton, LLP:**

John Shackelford, Esq.





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jshack@shackelford.law

September 27, 2019

*Via Email to bobby.wilkinson@tdhca.state.tx.us*

Bobby Wilkinson, Executive Director  
Texas Department of Housing and Community Affairs  
211 E. 11th Street  
Austin, Texas 78701

RE: Estates at Shiloh  
TDHCA No. 19439

Dear Mr. Wilkinson,

This law firm represents TX Casa View 2018, LTD. (“Applicant”), which submitted an application for an award of 4% housing tax credits (the “Application”). We understand that, as a result of TDHCA’s previous participation review (“PPR”), several issues of noncompliance have been identified affecting the several parties involved in Applicant’s organizational structure, which parties include (i) Generation Housing Partners, LLC (“GHP”), (ii) Hill Tide Partners, LLC (“Hill Tide”), and (iii) City of Dallas Housing Finance Corporation (“DHFC”). Under 10 TAC §1.301(f)(3)(B), the Executive Award Review Advisory Committee (“EARAC”) is obligated to recommend to the TDHCA governing board (the “Board”) that the Application be denied. By this letter, Applicant respectfully requests that the Board, pursuant to its discretionary powers authorized in Texas Gov’t Code §2306.057(c), authorize the TDHCA staff to proceed through its remaining evaluation and scoring of the Application notwithstanding the issues of noncompliance.

By separate letter, DHFC is addressing its respective noncompliance issues that contributed to the classification of this Application as a Category 3 and, most importantly, remedial measures that have been taken. Because this Firm also represents GHP, this letter details the instances of noncompliance associated with the GHP portfolio. As you consider Applicant’s request, please bear in mind that this issue before you is primarily because of the multiple parties involved. Of the eight (8) noncompliance events, six (6) are in the DHFC portfolio and two (2) are in the GHP portfolio. It is important to note however, that both DHFC and GHP have recently received awards from the TDHCA.

Waiver of Rule:

Texas Gov't Code §2306.057(c) grants the Board discretion to approve a project application despite noncompliance, provided that the Board fully documents and discloses such approval. We therefore request that the Board approve the Application despite the issues of noncompliance based on the Applicant's remedial efforts.

Basis for Request:

Applicant has engaged Alpha Barnes, a well-respected LIHTC management company, to be the management company for the Estates at Shiloh. Alpha Barnes has been in business for nearly twenty years and its principals have been in the real estate industry developing and managing multifamily properties since the mid 1970's. Alpha Barnes currently manages more than 200 tax credit properties. Notably, Alpha Barnes is the property management agent for another project in the DHFC portfolio and the project it manages has no outstanding issues of noncompliance. The affordable projects in which DHFC has an interest and which have compliance issues are not managed by Alpha Barnes. Thus, the Board should approve the Application despite the noncompliance issues in the DHFC portfolio because the management company will be the one that manages other affordable projects without noncompliance issues.

GHP Violations:

Generation Housing Development, LLC ("GHD"), the majority owner of GHP, is the HUB member of the general partner that owns Windy Ridge Apartments (TDHCA 13071) ("Windy Ridge"). Although it GHD materially participates in the review of operations, it has very little independent authority to affect changes because its voting interest is 20% and it has only one of five seats on the governing board of, the general partner.

The Windy Ridge noncompliance issues were the result of a change in the property management company and, within the transition period, the new management agent, Dominion, missed a deadline (despite GHD's emails reminding them of the impending deadline) but corrected this noncompliance quickly and took steps to put better procedures in place to ensure that these issues are avoided completely in the future.

Additionally, the noncompliance issue at Emma Finke Villas (TDCHA 15341/1002050) was resolved when the Final Construction Inspection Report was submitted within the corrective action period. The deficiencies were resolved as soon as GHP was aware of them and GHP has taken note of this process and implemented changes so it will not have any issues moving forward.

In conclusion, these events of noncompliance were addressed quickly and resulted in improved and more efficient procedures. Thus, the events will have no effect on the Estates at Shiloh and support the fact that the Board should use its discretion to approve the Application.



Request:

We respectfully request that based on Applicant's relationship with Alpha Barnes, GHP's quick response to any issues and focus on improvement, and Applicant's assurance that these events of noncompliance will not occur in the future, the Board authorize Staff to proceed through its remaining evaluation, scoring and processing of the Application despite the Category 3 noncompliance finding during PPR.

If you have any questions or concerns or if I can be of further assistance on this matter, please do not hesitate to let me know. Thank you in advance for your careful review of this response.

Sincerely,

A handwritten signature in blue ink that reads "John C. Shackelford / JCS". The signature is fluid and cursive.

John C. Shackelford

cc: Beau Eccles (*Via E-Mail to beau.eccles@tdhca.state.tx.us*)  
Patricia Murphy (*Via E-Mail to patricia.murphy@tdhca.state.tx.us*)  
Marnie Holloway (*Via E-Mail to Marni.Holloway@tdhca.state.tx.us*)  
Sharon Gamble (*Via E-Mail to sharon.gamble@tdhca.state.tx.us*)  
Avis Chaisson (*Via E-Mail to avis.chaisson@dallascityhall.com*)  
Kyle Hines (*Via E-Mail to kyle.hines@dallascityhall.com*)  
Adrian Iglesias (*Via E-Mail to aiglesias@ghdevelopment.com*)  
Chris Applequist (*Via E-Mail to chris.applequist@ghdevelopment.com*)  
Bob Long (*Via E-Mail to bob.long@hilltidepartners.com*)  
Audrey Martin (*Via E-Mail to audrey@purplemartinre.com*)

5a

**BOARD ACTION REQUEST**

**HOME AND HOMELESSNESS PROGRAMS DIVISION**

**OCTOBER 10, 2019**

Presentation, discussion, and possible action on 2020 Ending Homelessness Fund Awards

**RECOMMENDED ACTION**

**WHEREAS**, the Ending Homelessness Fund (EH Fund) was authorized through the 85<sup>th</sup> Texas Legislature to allow registrants of a motor vehicle in Texas to elect to contribute any amount of funds to be used to provide grants to counties and municipalities to combat homelessness;

**WHEREAS**, pursuant to Tex. Transp. Code §502.415(g), the Department shall adopt rules governing applications for grants from the EH Fund and the issuance of those grants;

**WHEREAS**, on December 30, 2018, the Department adopted a rule to make the EH Fund available to eligible Emergency Solutions Grants (ESG) Program and Homeless Housing and Services Program (HHSP) Subrecipients, provided the donations to the EH Fund did not exceed \$500,000 per state fiscal year; and

**WHEREAS**, the EH Fund was made available to cities and counties that were also ESG or HHSP Subrecipients, and six municipalities applied for a portion of the EH Fund for a total of \$210,810;

**NOW, therefore, it is hereby**

**RESOLVED**, that the Executive Director, his designees, and each of them be and they hereby are authorized, empowered, and directed, for and on behalf of the Department, to take any and all such actions as they or any of them may deem necessary or advisable to effectuate awards totaling \$210,810 in the EH Fund recommended as detailed in Attachment A as recommended by EARAC.

**BACKGROUND**

The 85th Texas Legislature passed H.B. 4102, which was enacted to be effective on September 1, 2017. The act amended Subchapter H, Chapter 502, Transportation Code to add §502.415, Voluntary Contribution to the EH Fund. This section allows registrants of a motor vehicle in Texas to elect to contribute any amount of funds to the EH Fund. Funds are sent by the local county assessor-collector to the Comptroller, and held in trust to be administered by the Department as trustee. The funds must be utilized to provide grants to counties and municipalities to combat homelessness.

The Department adopted a rule governing the administration of the EH Fund which allows the fund to be administered by cities and counties with an existing award of ESG or HHSP so long as the balance of the funds does not exceed \$500,000 at the end of the state fiscal year. The EH fund may be utilized for any eligible activity under the ESG Program or HHSP.

The EH fund began accepting donations through the vehicle registration program of the Texas Department of Motor Vehicles in January 2018. A total of \$210,810 in donations was made through May 31, 2019. Shortly thereafter, the Department announced that these funds were made available for distribution to eligible entities with existing HHSP or ESG contracts as outlined in rule on June 5, 2019. The total balance of the EH Fund as of the last report available – July 31, 2019 – was \$231,468.58, which continues to be less than the \$500,000 threshold. Once these awards are made, the balance of the fund will be reduced by the awarded amount; the fund will then begin to grow again, and funding will be made available in accordance with the provisions in rule governing EH fund distribution.

This proposed allocation of EH Fund was made available through the selection process outlined in 10 TAC §7.64. To be eligible for EH funds an entity had to be a city or county that had a current ESG or HHSP award with the Department. Eligible entities that chose to participate were required to submit a proposed budget, proposed performance statement, and activity descriptions. The funds were available utilizing an equal distribution among EH Fund eligible entities. Six EH Fund eligible Applicants submitted an Application for an award of \$35,135 each, and one entity, the City of Houston, declined to participate.

Eligible EH Fund Applicants that are HHSP Subrecipients have proposed to use the funds for Homeless Assistance, Homeless Prevention, Emergency Shelter Operations, Essential Services, Case Management, and Administration, per 10 TAC Homeless Programs, Subchapter B, Homeless Housing and Services Programs, Section §7.27, Eligible Costs. The eligible EH Fund Applicant that is an ESG Subrecipient, the City of Texarkana, has proposed to use the funds for Emergency Shelter to support the Randy Sams' Outreach Center, per 10 TAC Homeless Programs, Subchapter C, Emergency Solutions Grants, §7.32, Use of ESG Funds.

The Previous Participation Rule (10 TAC §1.302) includes a review of applicants prior to Board recommendation. This review was completed for all proposed Subrecipients and all awards are being recommended without condition.

The results of the EH Fund distribution, including funding recommendations, are included for approval as Attachment A.

Attachment A: Ending Homelessness Fund Award Recommendations

Application #	Eligible Entity	Other Homelessness Program Participation	Total awarded
30206010001	City of Arlington	Homeless Housing and Services Program	\$35,135.00
30205030002	City of Austin	Homeless Housing and Services Program	\$35,135.00
30206000003	City of Dallas	Homeless Housing and Services Program	\$35,135.00
30206030004	City of El Paso	Homeless Housing and Services Program	\$35,135.00
30206000005	City of Plano	Homeless Housing and Services Program	\$35,135.00
30206070006	City of Texarkana	Emergency Solutions Grants Program	\$35,135.00
		Total	\$210,810.00

5b

**BOARD ACTION REQUEST**

**HOME AND HOMELESSNESS PROGRAMS DIVISION**

**OCTOBER 10, 2019**

Presentation, discussion, and possible action on an amendment to the 2018 Emergency Solutions Grants Program Contract for Youth and Family Alliance, dba LifeWorks

**RECOMMENDED ACTION**

**WHEREAS**, the Emergency Solutions Grants (ESG) Program is funded by the U.S. Department of Housing and Urban Development (HUD);

**WHEREAS**, the Board approved \$8,449,611 in 2018 ESG awards through the Department during the fall of 2018, including an award of \$415,763 to Youth and Family Alliance (LifeWorks) of which \$233,007 was awarded for emergency shelter activities;

**WHEREAS**, the ESG funds have a two-year expenditure period through HUD, which ends on September 11, 2020;

**WHEREAS**, the Department resolved its monitoring finding identified by HUD for its ESG Program in August 2019, which included a finding for LifeWorks related to the definition of homelessness;

**WHEREAS**, LifeWorks has requested a six-month extension from October 31, 2019, to April 30, 2020, and a budget amendment to move \$118,572 from emergency shelter to rapid re-housing and Homeless Management Information System (HMIS) as part of the effort to address the monitoring finding; and

**WHEREAS**, per 10 TAC §7.41(b)(3), extension requests of more than three months, but less than six months require authorization by the Board;

**NOW, therefore, it is hereby**

**RESOLVED**, that the extension request is approved, and the Executive Director, his designees, and each of them be and they hereby are authorized, empowered, and directed, for and on behalf of the Department, to take any and all such actions as they or any of them may deem necessary or advisable to effectuate the Contract amendment of a six-month extension with Lifeworks.

## **BACKGROUND**

The ESG Program is a HUD-funded program designed to assist people experiencing homelessness or at-risk of homelessness to regain stability in permanent housing quickly after experiencing a housing crisis and/or homelessness. The program components under ESG include street outreach, emergency shelter, rapid re-housing, homelessness prevention, HMIS, and administration. Rapid re-housing and homelessness prevention may be used for housing relocation and stabilization services and short-term and medium-term rental assistance.

The Board approved an award for LifeWorks of \$415,763 in 2018 ESG funds on October 11, 2018. Since the fall of 2018, the Department has been working with HUD to resolve a monitoring finding of non-compliance that involved LifeWorks' emergency shelter processes. The Community Planning and Development (CPD) HUD field office found that LifeWorks had been assisting persons in their emergency shelter who were in foster care or extended foster care and did not meet HUD's definition of homelessness under 24 CFR §576.2.

LifeWorks submitted a plan for corrective action, which included a transition plan for all non-ESG eligible clients currently receiving services through the emergency shelter provided by LifeWorks. However, LifeWorks also requested a review of the validity of HUD's determination that persons in foster care or extended foster care do not meet the definition of homelessness. In August 2019, the Special Needs Assistance Office (a division of CPD in DC) of HUD upheld the original finding of noncompliance.

In order to continue to resolve the HUD finding, LifeWorks has requested to move a portion of emergency shelter funds within their ESG contract to the categories of rapid re-housing and HMIS, and has requested a six-month extension to April 30, 2020. The HOME and Homelessness Programs Division Director has approved the budget amendment. Per 10 TAC §7.41(b)(3), the six-month extension requires approval from the Board. The six-month extension does not extend past the expiration date of the 2018 ESG funds with HUD.

Staff recommends approval of the six-month extension.



**From:** [Kate Bennett](#)  
**To:** [Naomi Cantu](#); [Kali Adams](#); [ESG Program](#)  
**Cc:** [Susan McDowell](#); [Erin Whelan](#)  
**Subject:** LifeWorks TDHCA ESG Contract Amendment and Extension request  
**Date:** Thursday, August 22, 2019 4:42:57 PM  
**Attachments:** [image003.png](#)  
[082219 LifeWorks ESG budget-amdmt.pdf](#)  
**Importance:** High

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Dear TDHCA,

Attached you will find LifeWorks budget amendment request for our current ESG contract, #42185030007. LifeWorks would also like to request a 6 month extension for a new contract end date of 4/30/2020. This amendment and extension was discussed over the phone with Naomi and Kali on 8/16/19.

LifeWorks has had a monitoring finding from TDHCA for our Emergency Shelter since August 2018 regarding serving youth in extended foster care. This finding has been elevated to HUD's Office of General Council and is still pending a resolution. Due to the pending resolution, LifeWorks has underspent our Emergency Shelter budget this contract year. Since it is now August 2019 and the resolution is still pending, we would like to amend our contract to move our remaining unspent Emergency Shelter funds (\$118,572) into our Rapid Rehousing and HMIS services. LifeWorks' current ESG contract ends on 10/31/19. In order to spend our full contract down, we are requesting a 6 month extension.

LifeWorks is grateful for TDHCA's partnership as we have navigated this unknown together over the past year. LifeWorks will continue to support TDHCA in answering any questions you may have, as well as supporting HUD's Office of General Council as they continue to look into extended foster care in Texas and nationally. We believe the delayed resolution of the finding is a highly unusual and extenuating circumstance that supports a 6 month contract extension.

If more information is needed for our amendment or extension request, please do not hesitate to reach out to me, Susan McDowell, or Erin Whelan. If our extension request needs to go before the TDHCA board, please let us know which board meeting to attend.

Thank you for your continued partnership and support.  
Kate

**Kate Bennett, MPH | Director of Grants and Contracts Compliance**

Pronouns: she/her/hers

**LifeWorks, Empowering Self-Sufficiency**

3700 S. 1<sup>st</sup> Street | Austin, TX 78704

O – 512-735-2147 | C – 347-623-7865



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**From:** Kate Bennett

**Sent:** Friday, August 16, 2019 4:32 PM

**To:** Naomi Cantu <naomi.cantu@tdhca.state.tx.us>; Kali Adams <kali.adams@tdhca.state.tx.us>

**Subject:** Thank you and follow-up

Hi Naomi and Kali,

Thank you for speaking with LifeWorks this morning!

Here's my notes and questions:

- For our current contract, we will submit an amendment to move remaining shelter budget to RRH and request an extension.
  - **Naomi, can you please confirm that we will do not need to adjust our performance measures.**
- For our future contract, **Naomi, can you confirm it will be an option to move our shelter budget into RRH?** We hope this will not be necessary, but we want to have a plan for all scenarios.

Thanks!

Kate

**Kate Bennett, MPH | Director of Grants and Contracts Compliance**

Pronouns: she/her/hers

**LifeWorks, Empowering Self-Sufficiency**

3700 S. 1<sup>st</sup> Street | Austin, TX 78704

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**BOARD ACTION REQUEST**  
**ASSET MANAGEMENT DIVISION**  
**OCTOBER 10, 2019**

Presentation, discussion, and possible action regarding a request for a Material Amendment to the Housing Tax Credit Application for Memorial Apartments (HTC# 18235)

**RECOMMENDED ACTION**

**WHEREAS**, Memorial Apartments (the Development) received an award of Housing Tax Credits (HTCs) in 2018 under the USDA Set-Aside for the acquisition and rehabilitation of 246 units of multifamily housing in McAllen, Hidalgo County;

**WHEREAS**, the Development currently has a Housing Assistance Payment (HAP) contract attached to 64 units and a USDA rental assistance contract on 142 units;

**WHEREAS**, TX McAllen Memorial Apartments II, LP (the Development Owner or Owner) is requesting an amendment to the Application to prepay the USDA 514 loan and remove the corresponding USDA rental subsidy from the Development;

**WHEREAS**, during the underwriting review at application, staff asked the Applicant if USDA would accept the ground lease structure with the Owner, and the Applicant assured staff the ground lease would be accepted by USDA, which ultimately was not accepted by USDA;

**WHEREAS**, the prepayment structure was presented to staff after the 2018 HTC award when USDA did not accept the ground lease structure;

**WHEREAS**, pursuant to 10 TAC §11.5(2)(A) of the 2018 Qualified Allocation Plan (QAP), a proposed or Existing Residential Development that, before September 1, 2013, has been awarded or has received federal financial assistance provided under Section 514, 515, or 516 of the Housing Act of 1949 (42 U.S.C. Section 1484, 1485, or 1486) may be attributed to and come from the At-Risk Development Set-aside or the Uniform State Service Region in which the Development is located, regardless of whether the Development is located in a Rural area;

**WHEREAS**, pursuant to 10 TAC §11.5(3)(B)(i) and (ii) of the 2018 QAP, Applications participating in the At-Risk Set-Aside must include evidence of the qualifying subsidy, and any stipulation to maintain affordability in the contract granting the subsidy or any HUD-insured or HUD-held mortgage will be considered to be nearing expiration or nearing the end of its term if expiration will occur or the term will end within two years of July 31 of the year the Application is submitted;

**WHEREAS**, neither the HAP or USDA subsidies for the Development are due to expire within two years of July 31 of the year the Application was submitted;

**WHEREAS**, if the Application had indicated the USDA 514 loan would be prepaid, this Development would not qualify under the USDA Set-Aside and the Application would not be eligible under the At-Risk Set-Aside;

**WHEREAS**, pursuant to 10 TAC §11.5(2)(B) of the 2018 QAP, if a property receiving USDA financing is unable to score under the USDA Set-Aside and is located in an Urban subregion, it will be scored as Urban;

**WHEREAS**, if the property had been scored in Region 11 Urban, it would not have scored high enough to be competitive to receive a Tax Credit Award;

**WHEREAS**, this request falls under 10 TAC §10.405(a)(4)(I), as a modification considered material by the staff and therefore required to be presented to the Board as such; and

**WHEREAS**, in accordance with 10 TAC §10.405(a)(5), amendment requests will be denied if the Department finds that the request would have changed the scoring of an Application in the competitive process such that the Application would not have received a funding award or if the need for the proposed modification was reasonably foreseeable or preventable by the Applicant at the time the Application was submitted, unless good cause is found for the approval of the amendment;

**NOW, therefore, it is hereby**

**RESOLVED**, that the requested Material Amendment for Memorial Apartments to remove the USDA funding is hereby denied, and the Executive Director and his designees are each authorized, directed, and empowered to take all necessary action to effectuate the foregoing.

### **BACKGROUND**

Memorial Apartments received an award of \$1,883,683 of annual Housing Tax Credits in 2018 under the USDA At-Risk Set-Aside for the acquisition and rehabilitation of 246 units of multifamily housing in McAllen, Hidalgo County, of which 142 units receive USDA rental assistance, 64 units receive project based vouchers, and the remaining 40 units do not have rental assistance, but are restricted to USDA approved rents. This Development previously received an HTC award in 2012, but was unable to get USDA approval post-award and the Housing Tax Credits were returned to the Department.

In a letter dated June 11, 2019, Melissa Fisher, the representative for the Development Owner, requested approval to remove the USDA funding from the Development but still remain in the At-Risk

Set-Aside. According to the Owner, the Development is not eligible for USDA funding because USDA does not consider the property eligible under the 514 financing structure due to the ground lease structure for the ad valorem tax exemption and the handling of the existing USDA grants. In addition, USDA has questioned whether the property is meeting its purpose of serving farm labor workers, as less than 25% of the units receiving USDA rental assistance are occupied by farm labor qualified households. Furthermore, the Owner has indicated that the property currently relies on an annual waiver from USDA to occupy a majority of the RD units with non-farm labor qualified residents in need of affordable housing.

The Owner further contends the Development should still be considered At-Risk, as USDA has confirmed that the Owner can prepay the existing debt, which would eliminate the RD rental subsidy. With the elimination of the rental subsidy, the Owner has indicated the property will clearly be at risk. The Owner asserts, even though they could not qualify for the USDA financing, the Development should still be considered At-Risk since the 2018 At-Risk Set-Aside was under subscribed. The Owner believes the good cause for this request to remove the USDA funding and remain in the At-Risk Set-Aside is USDA's agreement for prepayment of the current USDA loan., which was not reasonably foreseeable and outside of the control of the Owner. However, it must be pointed out the retirement of the USDA debt was not considered a possibility during the underwriting review of the Application. During the underwriting review, staff on multiple occasions questioned if USDA would accept the ground lease structure with the Owner. The Owner assured staff multiple times the ground lease would be accepted by USDA. The prepayment structure was presented to staff after the 2018 HTC award when USDA did not accept the ground lease structure as expected by staff.

Staff has reviewed the Owner representative's assertions and has come to the following conclusions: Pursuant to 10 TAC §11.5(2)(A) of the 2018 Qualified Allocation Plan, a proposed or Existing Residential Development that, before September 1, 2013, has been awarded or has received federal financial assistance provided under Section 514, 515, or 516 of the Housing Act of 1949 (42 U.S.C. Section 1484, 1485, or 1486) may be attributed to and come from the At-Risk Development Set-aside or the Uniform State Service Region in which the Development is located, regardless of whether the Development is located in a Rural area. At the time of Application, the Owner met this requirement, as the Development was receiving federal financial assistance provided under Section 514. However, by prepaying the USDA 514 loan as proposed by the Owner, the Development would no longer qualify under the USDA Set-Aside, and does not qualify under the At-Risk Set-Aside. Furthermore, if the Application had indicated the USDA 514 loan would be prepaid, this Development would not have been considered as an At-Risk Development, and would have not been recommended for tax credits under the 2018 Qualified Allocation Plan.

Pursuant to 10 TAC §11.5(3)(B)(i) and (ii) of the 2018 QAP, Applications participating in the At-Risk Set-Aside must include evidence of the qualifying subsidy, and any stipulation to maintain affordability in the contract granting the subsidy or any HUD-insured or HUD-held mortgage will be considered to be nearing expiration or nearing the end of its term if expiration will occur or the term will end within two years of July 31 of the year the Application is submitted. Absent of the Owner's election to prepay the loan, the USDA loan and associated subsidy do not expire until January 26, 2040, and the HAP contract does not expire until May 1, 2033. Therefore, because the qualifying subsidy and the stipulation to

maintain affordability in the contract granting the subsidy is not expiring within two years, the Development is not At-Risk. On the contrary, on March 12, 2019, USDA issued a letter to the Owner outlining over 30 items that required resolution in order to move forward with the transfer application. To the Department's knowledge, no response was submitted to USDA to resolve these items.

Furthermore, the Owner has indicated that a Restrictive Use Covenant (RUC) will be placed on the Development to assure existing USDA residents are not displaced as a result of the prepayment of the current 514 loan and corresponding loss of the rental subsidy, and an adequate tenant protection reserve account is required as a condition of the loan payoff in order to protect the existing tenants. According to the Owner representative, the lender and investor are requiring a \$2.7 million reserve for rental subsidy. The Owner explained this reserve requirement was determined to be sufficient to insure compliance with the RUC for a minimum of 15 years and was calculated by taking the last 12 months of rental assistance from USDA of \$300K and allowing for the impact of the new vouchers and normal turnover of the USDA units. The amount of this reserve is subject to USDA approval, and therefore, staff assumes the approved amount will be sufficient to maintain feasibility throughout the tenure of existing tenants. According to the Owner, if the RUC reserve is not used in full prior to the release of the RUC by USDA, those funds will be used exclusively by the housing authority as rental subsidy on the Development, serving only very low income households. At no time will the funds be released for any purpose other than rental subsidy. Staff believes that, even though the Owner is electing to prepay the USDA loan and exit the USDA RD Farm Labor program, given the required tenant protection reserve, the stipulation to maintain affordability in the contract granting the USDA subsidy is not nearing expiration. In addition, the affordability restrictions (due to the HAP contract) would remain. Therefore, the Development does not meet 10 TAC §11.5(3)(B)(ii) of the 2018 QAP to qualify under the At-Risk Set-Aside.

The Owner indicated that there are no material changes being made in the budget related to rehabilitation of the property, nor are there any changes to the scope of work. However, the Owner provided an updated market study, financing letter, and financial exhibits from the Application for staff to evaluate other financial changes. The Owner has indicated the unit mix and targeting did not change, but the Housing Authority of the County of Hidalgo has allocated 28 additional project-based vouchers to the Development in lieu of the USDA rental subsidy. With the additional Section 8 income and without the USDA rent restrictions, Effective Gross Income has increased from \$1,268,774 to \$1,680,185. Annual operating expenses increased from \$944,727 to \$1,026,997, while Net Operating Income has more than doubled from \$273,407 to \$653,187. The proposed development costs increased from \$24,022,393 to \$26,884,393, mainly due to changes in the proposed property transfer price (a \$750K increase) for this related-party transfer, and due to the addition of the \$2.7 million RUC reserve. The first lien debt amount increased from \$4,540,000 to \$9,900,000, while the \$3 million seller note was eliminated. The updated financial information has been analyzed by the Real Estate Analysis (REA) Division, and the REA analysis indicates, aside from the question as to whether the Development meets the requirements for the At-Risk Set-Aside with the proposed changes, the Development remains feasible and continues to support the previously awarded HTC amount.

However, staff also evaluated the proposed amendment for scoring purposes and determined the Application was not eligible for an award if not in the At-Risk Set-Aside. The Development scored 129



points, but the lowest scoring application that received an award in Region 11 Urban scored 153 points.

Therefore, in accordance with 10 TAC §10.405(a)(5), because the proposed amendment would have resulted in the Development not receiving a funding award, staff recommends denial of the amendment request to prepay the USDA loan, and exit the USDA Farm Labor program.



**Addendum to Underwriting Report**

TDHCA Application #: **18235** Program(s): **9% HTC**

**McAllen Memorial Apartments II**

Address/Location: 501 E. Jasmine

City: McAllen County: Hidalgo Zip: 78501

APPLICATION HISTORY	
Report Date	PURPOSE
09/24/19	Amendment
07/23/18	Initial Underwriting

**ALLOCATION**

	Previous Allocation	RECOMMENDATION
LIHTC (0% Credit)	\$1,883,683	\$1,883,683

**SET-ASIDES**

TDHCA SET-ASIDES for HTC LURA		
Income Limit	Rent Limit	Number of Units
30% of AMI	30% of AMI	53
40% of AMI	40% of AMI	0
50% of AMI	50% of AMI	105
60% of AMI	60% of AMI	88

The original underwriting report incorrectly indicated a unit mix consisting of 53 units at 30% AMI, 107 units at 50% AMI, and 86 units at 60% AMI. The current report reflects the correct unit mix, consisting of 53 units at 30% AMI, 105 units at 50% AMI, and 88 units at 60% AMI.

**ANALYSIS**

The Development received a Tax Credit allocation in the 2018 9% Tax Credit cycle in the USDA / At-Risk Set-Aside. Subsequently, the transaction has been restructured. The Owner has submitted a request to amend the application. The Owner proposes to pay off all existing USDA financing. As a result, the Development would no longer qualify for the USDA Set-Aside. Whether the Development qualifies for the At-Risk Set-Aside is a question to be addressed by the Board.

Irrespective of eligibility for the At-Risk Set-Aside, this report assesses the feasibility of the Development under the currently proposed financial structure.

**Operating Pro Forma**

Of the 246 total units, 142 currently receive USDA rental assistance; 64 receive Section 8 rental assistance; the remaining 40 units do not receive rental assistance, but are restricted to USDA-approved rents. With the proposed payoff of all USDA financing, USDA rental assistance will no longer be provided, and the USDA restrictions on rent for un-assisted units will no longer be in place. The Housing Authority of the County of Hidalgo (the 95% member of the GP) has committed to increase the number of Section 8 units to 92. The 154 non-Section 8 units would then be subject to HTC Program Rents ranging from 30% AMI to 60% AMI.

With the additional Section 8 income and without the USDA rent restrictions, Effective Gross Income has increased from \$1,268,774 to \$1,680,185. Net Operating Income has more than doubled from \$273,407 to \$653,187.

**Development Cost**

The transaction was originally proposed with a \$3,000,000 identity of interest acquisition cost, and was underwritten with no building value included in eligible basis. The current cost schedule includes a \$3,750,000 acquisition cost supported by a revised appraisal that had been submitted to USDA. Hard costs remain unchanged. Financing costs increased \$110K due to the increased debt.

The cost schedule also includes a \$2.7M Restrictive Use Covenant Reserve. USDA has stated that "an adequate tenant protection reserve account is required as a condition of the payoff [of the USDA financing] in order to protect the existing tenants". The Owner states that "the amount was determined by taking the last 12 months of rental assistance (RA) from USDA ... of \$300K. Allowing for the impact of the new vouchers and normal turnover of the USDA units the reserve of \$2.7MM is determined to be sufficient to insure compliance with the RUC for a minimum of 15 years." The amount of the reserve is subject to USDA approval. The Underwriter assumes the stated amount is sufficient to maintain feasibility throughout the tenure of existing tenants.

**Sources of Funds**

At initial underwriting, sources of funds included a \$4.54M 538 loan from IBC Bank, \$2,500 from the City of McAllen, and a \$3.0M Seller Note from the Housing Authority of the County of Hidalgo (the 95% member of the GP) to finance the acquisition cost for the Development.

The proposed capital structure no longer includes a Seller Note. The increased NOI allows the Development to support more hard debt, which has doubled. IBC Bank will now provide a \$9.9M conventional loan at 4.50%. The term sheet from IBC is inconsistent, stating there will be 479 monthly payments; but also stating the payment is based on a 35-year amortization schedule (420 months); and specifying a payment amount that is actually equal to a 411-month amortization. Underwriting assumes a 35-year amortization.

The original application made no mention of the existing USDA financing. When asked about it, the Applicant indicated it would be paid down to zero or "cash collateralized" in some way.

USDA has confirmed \$4.3M as the required payoff amount (\$690K balance due on Section 514 debt and \$3.6M to satisfy outstanding Section 516 grants). The identity of interest Seller will receive \$3.75M in cash for the sale of the Development to the HTC Partnership, which can be applied toward the USDA payoff. The \$605K remainder will be paid from existing Housing Authority cash reserves.

**Conclusion**

At initial underwriting, with more than 50% of the units receiving rental assistance, the Development was exempt from feasibility limits on expense-to-income ratio, debt coverage, and long-term cash flow. With the proposed financing structure, as a result of the increased income, exceptions are not necessary: expense ratio is 61%, debt coverage on the increased permanent debt is 1.16 times, and cumulative cash flow after 15 years is \$1.3M. The Development remains feasible.

The analysis continues to support the previous tax credit allocation of \$1,883,683.

Manager of Real Estate Analysis: Thomas Cavanagh

Director of Real Estate Analysis: Brent Stewart

**UNIT MIX/RENT SCHEDULE**

*McAllen Memorial Apartments II, McAllen, 9% HTC #18235*

**LOCATION DATA**

CITY:	McAllen
COUNTY:	Hidalgo
Area Median Income	\$41,900
PROGRAM REGION:	11

**UNIT DISTRIBUTION**

# Beds	# Units	% Total	Assisted	MDL	Income	# Units	% Total
Eff	-	0.0%	0	0	30%	53	21.5%
1	-	0.0%	0	0	40%	-	0.0%
2	82	33.3%	36	0	50%	105	42.7%
3	164	66.7%	56	0	60%	88	35.8%
4	-	0.0%	0	0	MR	-	0.0%
<b>TOTAL</b>	<b>246</b>	<b>100.0%</b>	<b>92</b>	<b>-</b>	<b>TOTAL</b>	<b>246</b>	<b>100.0%</b>

**Pro Forma ASSUMPTIONS**

Revenue Growth	2.00%
Expense Growth	3.00%
Basis Adjust	130%
Applicable Fraction	100%
APP % Acquisition	3.39%
APP % Construction	9.00%
Average Unit Size	815 sf

**UNIT MIX / MONTHLY RENT SCHEDULE**

HTC		RENT ASSISTED UNIT		UNIT MIX				APPLICABLE PROGRAM RENT			APPLICANT'S PRO FORMA RENTS				TDHCA PRO FORMA RENTS				MARKET RENTS			
Type	Gross Rent	Type	Gross Rent	# Units	# Beds	# Baths	NRA	Gross Rent	Utility Allow	Max Net Program Rent	Delta to Max	Rent psf	Net Rent per Unit	Total Monthly Rent	Total Monthly Rent	Rent per Unit	Rent psf	Delta to Max	Underwritten	Mrkt Analyst		
TC 30%	\$396	SEC 8	\$557	14	2	1	689	\$557	\$89	\$468	\$0	\$0.68	\$468	\$6,552	\$6,552	\$468	\$0.68	\$0	\$780	\$1.13	\$780	
TC 30%	\$396			6	2	1	689	\$396	\$89	\$307	\$0	\$0.45	\$307	\$1,842	\$1,842	\$307	\$0.45	\$0	\$780	\$1.13	\$780	
TC 50%	\$661			15	2	1	689	\$661	\$89	\$572	\$0	\$0.83	\$572	\$8,580	\$8,580	\$572	\$0.83	\$0	\$780	\$1.13	\$780	
TC 60%	\$793	SEC 8	\$557	6	2	1	689	\$557	\$89	\$468	\$0	\$0.68	\$468	\$2,808	\$2,808	\$468	\$0.68	\$0	\$780	\$1.13	\$780	
TC 60%	\$793	SEC 8	\$557	16	2	1	689	\$557	\$89	\$468	\$0	\$0.68	\$468	\$7,488	\$7,488	\$468	\$0.68	\$0	\$780	\$1.13	\$780	
TC 60%	\$793			14	2	1	689	\$793	\$89	\$704	\$0	\$1.02	\$704	\$9,856	\$9,856	\$704	\$1.02	\$0	\$780	\$1.13	\$780	
TC 50%	\$661			3	2	1	725	\$661	\$89	\$572	\$0	\$0.79	\$572	\$1,716	\$1,716	\$572	\$0.79	\$0	\$780	\$1.08	\$780	
TC 50%	\$661			8	2	1	725	\$661	\$89	\$572	\$0	\$0.79	\$572	\$4,576	\$4,576	\$572	\$0.79	\$0	\$780	\$1.08	\$780	
TC 30%	\$457	SEC 8	\$726	14	3	1	865	\$726	\$104	\$622	\$0	\$0.72	\$622	\$8,708	\$8,708	\$622	\$0.72	\$0	\$1,000	\$1.16	\$1,000	
TC 30%	\$457			19	3	1	865	\$457	\$104	\$353	\$0	\$0.41	\$353	\$6,707	\$6,707	\$353	\$0.41	\$0	\$1,000	\$1.16	\$1,000	
TC 50%	\$763			37	3	1	865	\$763	\$104	\$659	\$0	\$0.76	\$659	\$24,383	\$24,383	\$659	\$0.76	\$0	\$1,000	\$1.16	\$1,000	
TC 50%	\$763			28	3	1	880	\$763	\$104	\$659	\$0	\$0.75	\$659	\$18,452	\$18,452	\$659	\$0.75	\$0	\$1,000	\$1.14	\$1,000	
TC 50%	\$763			3	3	1	880	\$763	\$104	\$659	\$30	\$0.78	\$689	\$2,067	\$1,977	\$659	\$0.75	\$0	\$1,000	\$1.14	\$1,000	
TC 50%	\$763			6	3	1	880	\$763	\$104	\$659	\$0	\$0.75	\$659	\$3,954	\$3,954	\$659	\$0.75	\$0	\$1,000	\$1.14	\$1,000	
TC 60%	\$915	SEC 8	\$726	42	3	1	880	\$726	\$104	\$622	\$0	\$0.71	\$622	\$26,124	\$26,124	\$622	\$0.71	\$0	\$1,000	\$1.14	\$1,000	
TC 60%	\$915			3	3	1	880	\$915	\$104	\$811	\$0	\$0.92	\$811	\$2,433	\$2,433	\$811	\$0.92	\$0	\$1,000	\$1.14	\$1,000	
TC 50%	\$763			5	3	1	902	\$763	\$104	\$659	\$0	\$0.73	\$659	\$3,295	\$3,295	\$659	\$0.73	\$0	\$1,000	\$1.11	\$1,000	
TC 60%	\$915			7	3	1	902	\$915	\$104	\$811	\$0	\$0.90	\$811	\$5,677	\$5,677	\$811	\$0.90	\$0	\$1,000	\$1.11	\$1,000	
<b>TOTALS/AVERAGES:</b>				<b>246</b>				<b>200,428</b>				<b>\$0</b>	<b>\$0.72</b>	<b>\$590</b>	<b>\$145,218</b>	<b>\$145,128</b>	<b>\$590</b>	<b>\$0.72</b>	<b>\$0</b>	<b>\$927</b>	<b>\$1.14</b>	<b>\$927</b>

<b>ANNUAL POTENTIAL GROSS RENT:</b>	\$1,742,616	\$1,741,536
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**STABILIZED PRO FORMA**

*McAllen Memorial Apartments II, McAllen, 9% HTC #18235*

STABILIZED FIRST YEAR PRO FORMA														
COMPARABLES			APPLICANT				PRIOR REPORT 7/23/18		TDHCA				VARIANCE	
Database	2017 Income Statement		% EGI	Per SF	Per Unit	Amount	Applicant	TDHCA	Amount	Per Unit	Per SF	% EGI	%	\$
<b>POTENTIAL GROSS RENT</b>	\$1,434,181			\$0.72	\$590	\$1,742,616	\$1,232,496	\$1,312,608	\$1,741,536	\$590	\$0.72		0.1%	\$1,080
DAMAGES AND NSF	\$3,360			\$2,460	\$10.00	\$29,520	29,520							
PET FEES, LATE FEES	\$8,105			\$1,230	\$5.00	\$14,760	14,760							
VENDING AND FOREFIETS	\$18,053			\$2,460	\$10.00	\$29,520	29,520							
Total Secondary Income	\$29,518				\$25.00			59,040	\$59,040	\$20.00			25.0%	\$14,760
<b>POTENTIAL GROSS INCOME</b>						\$1,816,416	\$1,306,296	\$1,371,648	\$1,800,576				0.9%	\$15,840
Vacancy & Collection Loss						7.5% PGI (136,231)	(97,972)	(102,874)	(135,043)	7.5% PGI			0.9%	(1,188)
<b>EFFECTIVE GROSS INCOME</b>						\$1,680,185	\$1,208,324	\$1,268,774	\$1,665,533				0.9%	\$14,652

General & Administrative	\$79,194	\$322/Unit	\$65,001	\$264	3.37%	\$0.28	\$230	\$56,700	\$50,700	\$65,001	\$65,001	\$264	\$0.32	3.90%	-12.8%	(8,301)
Management	\$84,636	5.0% EGI	\$0	\$0	4.00%	\$0.34	\$273	\$67,207	\$51,587	\$63,439	\$66,621	\$271	\$0.33	4.00%	0.9%	586
Payroll & Payroll Tax	\$264,957	\$1,077/Unit	\$671,839	\$2,731	22.66%	\$1.90	\$1,548	\$380,750	\$350,750	\$350,750	\$380,750	\$1,548	\$1.90	22.86%	0.0%	-
Repairs & Maintenance	\$135,911	\$552/Unit	\$66,053	\$269	7.32%	\$0.61	\$500	\$123,000	\$99,500	\$159,900	\$159,900	\$650	\$0.80	9.60%	-23.1%	(36,900)
Electric/Gas	\$58,232	\$237/Unit	\$37,401	\$152	2.38%	\$0.20	\$163	\$40,000	\$40,000	\$37,401	\$37,401	\$152	\$0.19	2.25%	6.9%	2,599
Water, Sewer, & Trash	\$143,317	\$583/Unit	\$158,155	\$643	10.18%	\$0.85	\$695	\$171,000	\$170,000	\$158,155	\$158,155	\$643	\$0.79	9.50%	8.1%	12,845
Property Insurance	\$93,849	\$0.47 /sf	\$68,531	\$279	5.36%	\$0.45	\$366	\$90,000	\$90,000	\$68,531	\$68,531	\$279	\$0.34	4.11%	31.3%	21,469
Property Tax (@ 0%)	\$127,179	\$517/Unit		\$0	0.00%	\$0.00	\$0	\$0	\$0	\$0	\$0	\$0	\$0.00	0.00%	0.0%	-
Reserve for Replacements	\$75,865	\$308/Unit		\$0	5.12%	\$0.43	\$350	\$86,100	\$79,950	\$79,950	\$86,100	\$350	\$0.43	5.17%	0.0%	-
Cable TV			-	\$0	0.14%	\$0.01	\$10	\$2,400	\$2,400	\$2,400	\$2,400	\$10	\$0.01	0.14%	0.0%	-
TDHCA LIHTC/HOME Compliance Fees			-	\$0	0.59%	\$0.05	\$40	\$9,840	\$9,840	\$9,840	\$9,840	\$40	\$0.05	0.59%	0.0%	-
<b>TOTAL EXPENSES</b>					<b>61.12%</b>	<b>\$5.12</b>	<b>\$4,175</b>	<b>\$ 1,026,997</b>	<b>\$944,727</b>	<b>\$995,367</b>	<b>\$1,034,700</b>	<b>\$4,206</b>	<b>\$5.16</b>	<b>62.12%</b>	<b>-0.7%</b>	<b>\$ (7,702)</b>
<b>NET OPERATING INCOME ("NOI")</b>					<b>38.88%</b>	<b>\$3.26</b>	<b>\$2,655</b>	<b>\$653,187</b>	<b>\$263,597</b>	<b>\$273,407</b>	<b>\$630,833</b>	<b>\$2,564</b>	<b>\$3.15</b>	<b>37.88%</b>	<b>3.5%</b>	<b>\$ 22,354</b>

CONTROLLABLE EXPENSES		\$3,136/Unit		\$3,257/Unit	
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**CAPITALIZATION / TOTAL DEVELOPMENT BUDGET / ITEMIZED BASIS**

**McAllen Memorial Apartments II, McAllen, 9% HTC #18235**

DEBT / GRANT SOURCES																	
APPLICANT'S PROPOSED DEBT/GRANT STRUCTURE									Prior Underwriting 7/23/18		AS UNDERWRITTEN DEBT/GRANT STRUCTURE						
DEBT (Must Pay)	Fee	Cumulative DCR		Pmt	Rate	Amort	Term	Principal	Applicant	TDHCA	Principal	Term	Amort	Rate	Pmt	Cumulative	
		UW	App													DCR	LTC
IBC Bank Brownsville-FHLB		1.11	1.15	566,977	4.50%	35	35	\$9,900,000	\$4,540,000	\$4,540,000	\$9,900,000	35	35	4.50%	\$562,229	1.16	37.2%
<b>CASH FLOW DEBT / GRANTS</b>																	
Seller Note		1.11	1.15		3.00%	35	35	\$0	\$3,000,000	\$3,000,000	\$0	35	0	0.00%		1.16	0.0%
City of McAllen		1.11	1.15		0.00%	0	0	\$2,500	\$2,500	\$2,500	\$2,500	0	0	0.00%		1.16	0.0%
				<b>\$566,977</b>	<b>TOTAL DEBT / GRANT SOURCES</b>			<b>\$9,902,500</b>			<b>\$9,902,500</b>	<b>TOTAL DEBT SERVICE</b>			<b>\$562,229</b>	<b>1.16</b>	<b>37.3%</b>

<b>NET CASH FLOW</b>	\$63,856	\$86,210	<b>APPLICANT</b>				<b>NET OPERATING INCOME</b>				\$653,187	\$90,958	<b>NET CASH FLOW</b>
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EQUITY SOURCES														
APPLICANT'S PROPOSED EQUITY STRUCTURE						Prior Underwriting		AS UNDERWRITTEN EQUITY STRUCTURE						
EQUITY / DEFERRED FEES	DESCRIPTION	% Cost	Annual Credit	Credit Price	Amount	Applicant	TDHCA	Amount	Credit Price	Annual Credit	% Cost	Annual Credits per Unit	Allocation Method	
														Applicant
42 Equity or other investor	LIHTC Equity	61.7%	\$1,883,683	0.87	\$16,388,042	\$16,469,000	\$16,174,340	\$16,388,000	\$0.8700	\$1,883,683	61.7%	\$7,657	Previous Allocation	
DDF loan from RISE	Deferred Developer Fees	2.2%	(22% Deferred)		\$593,851	\$234,893		\$288,340	(12% Deferred)		1.1%		<b>Total Developer Fee:</b>	
Additional (Excess) Funds Req'd		0.0%						\$0			0.0%		<b>\$2,393,946</b>	
<b>TOTAL EQUITY SOURCES</b>		<b>63.9%</b>			<b>\$16,981,893</b>	<b>\$16,703,893</b>	<b>\$16,174,340</b>	<b>\$16,676,340</b>			<b>62.7%</b>			
<b>TOTAL CAPITALIZATION</b>					<b>\$26,884,393</b>	\$24,246,393	\$23,716,840	<b>\$26,578,840</b>	15-Yr Cash Flow after Deferred Fee:					<b>\$1,321,065</b>

DEVELOPMENT COST / ITEMIZED BASIS													
APPLICANT COST / BASIS ITEMS					Prior Underwriting		TDHCA COST / BASIS ITEMS					COST VARIANCE	
Eligible Basis	Acquisition	New Const. Rehab	Total Costs	Total Costs	Applicant	TDHCA	Total Costs	Total Costs	New Const. Rehab	Acquisition	%	\$	
													Acquisition
Land Acquisition			\$4,065 / Unit	\$1,000,000	\$1,000,000	\$3,000,000	\$3,750,000	\$15,244 / Unit			-73.3%	(\$2,750,000)	
Building Acquisition	\$2,750,000		\$11,179 / Unit	\$2,750,000	\$2,000,000	\$0	\$0	\$ / Unit		\$0	0.0%	\$2,750,000	
RUC reserve from RD termination				\$2,700,000	\$0	\$0	\$2,700,000					\$0	
Off-Sites			\$ / Unit	\$0	\$0	\$0	\$0	\$ / Unit			0.0%	\$0	
Site Work		\$1,230,000	\$5,000 / Unit	\$1,230,000	\$1,230,000	\$1,230,000	\$1,230,000	\$5,000 / Unit	\$1,230,000		0.0%	\$0	
Site Amenities		\$1,050,000	\$4,268 / Unit	\$1,050,000	\$1,050,000	\$1,050,000	\$1,050,000	\$4,268 / Unit	\$1,050,000		0.0%	\$0	
Building Cost		\$8,630,800	\$44.31 /sf	\$36,101/Unit	\$8,880,800	\$8,880,800	\$8,880,800	\$36,101/Unit	\$44.31 /sf	\$8,630,800		\$0	
Contingency		\$1,116,080	10.23%	10.00%	\$1,116,080	\$1,116,080	\$1,116,080	10.00%	10.00%	\$1,091,080		\$0	
Contractor Fees		\$1,718,763	14.29%	14.00%	\$1,718,763	\$1,718,763	\$1,718,763	14.00%	14.00%	\$1,680,263		\$0	
Soft Costs	0	\$1,172,500	\$7,734 / Unit	\$1,902,500	\$1,902,500	\$1,902,500	\$1,902,500	\$7,734 / Unit	\$1,172,500	\$0	0.0%	\$0	
Financing	0	\$830,000	\$7,050 / Unit	\$1,734,250	\$1,622,250	\$1,622,250	\$1,734,250	\$7,050 / Unit	\$830,000	\$0	0.0%	\$0	
Developer Fee	\$0	\$2,699,500	17.14%	16.87%	\$2,699,500	\$2,699,500	\$2,393,946	15.00%	15.00%	\$2,352,696	\$0	\$305,554	
Reserves			\$417 / Unit	\$102,500	\$802,500	\$802,500	\$102,500	\$417 / Unit			0.0%	\$0	
<b>TOTAL HOUSING DEVELOPMENT COST (UNADJUSTED BA</b>	<b>\$2,750,000</b>	<b>\$18,447,643</b>		<b>\$109,286 / Unit</b>	<b>\$26,884,393</b>	<b>\$24,022,393</b>	<b>\$23,716,839</b>	<b>\$26,578,840</b>	<b>\$108,044 / Unit</b>	<b>\$18,037,340</b>	<b>\$0</b>	<b>1.1%</b>	<b>\$305,554</b>
Acquisition Cost	(\$2,750,000)				\$0								
Contingency		(\$25,000)			\$0								
Contractor's Fee		(\$38,500)			\$0								
Financing Cost		\$0											
Developer Fee	\$0	(\$346,804)			(\$305,554)	(\$305,554)							
Reserves					\$0								
<b>ADJUSTED BASIS / COST</b>	<b>\$0</b>	<b>\$18,037,340</b>		<b>\$108,044/unit</b>	<b>\$26,578,840</b>	<b>\$23,716,839</b>	<b>\$23,716,839</b>	<b>\$26,578,840</b>	<b>\$108,044/unit</b>	<b>\$18,037,340</b>	<b>\$0</b>	<b>0.0%</b>	<b>\$0</b>
<b>TOTAL HOUSING DEVELOPMENT COSTS BASED ON 3RD PARTY PCA/CNA</b>					<b>\$26,578,840</b>								

**CAPITALIZATION / DEVELOPMENT COST BUDGET / ITEMIZED BASIS ITEMS**

*McAllen Memorial Apartments II, McAllen, 9% HTC #18235*

CREDIT CALCULATION ON QUALIFIED BASIS				
	Applicant		TDHCA	
	Acquisition	Construction Rehabilitation	Acquisition	Construction Rehabilitation
<b>ADJUSTED BASIS</b>	\$0	\$18,037,340	\$0	\$18,037,340
Deduction of Federal Grants	\$0	\$0	\$0	\$0
<b>TOTAL ELIGIBLE BASIS</b>	\$0	\$18,037,340	\$0	\$18,037,340
High Cost Area Adjustment		130%		130%
<b>TOTAL ADJUSTED BASIS</b>	\$0	\$23,448,542	\$0	\$23,448,542
Applicable Fraction	100.00%	100.00%	100.00%	100.00%
<b>TOTAL QUALIFIED BASIS</b>	\$0	\$23,448,542	\$0	\$23,448,542
Applicable Percentage	3.39%	9.00%	3.39%	9.00%
<b>ANNUAL CREDIT ON BASIS</b>	\$0	\$2,110,369	\$0	\$2,110,369
<b>CREDITS ON QUALIFIED BASIS</b>	\$2,110,369		\$2,110,369	

Method	ANNUAL CREDIT CALCULATION BASED ON TDHCA BASIS		FINAL ANNUAL LIHTC ALLOCATION		
	Annual Credits	Proceeds	Credit Price \$0.8700	Variance to Request	
			Credit Allocation	Credits	Proceeds
<b>Eligible Basis</b>	\$2,110,369	\$18,360,161	----	----	----
<b>Needed to Fill Gap</b>	\$1,916,826	\$16,676,340	----	----	----
<b>Previous Allocation</b>	\$1,883,683	\$16,388,000	<b>\$1,883,683</b>	<b>\$0</b>	<b>\$0</b>

## Long-Term Pro Forma

*McAllen Memorial Apartments II, McAllen, 9% HTC #18235*

	Growth Rate	Year 1	Year 2	Year 3	Year 4	Year 5	Year 10	Year 15	Year 20	Year 25	Year 30	Year 35
EFFECTIVE GROSS INCOME	2.00%	\$1,680,185	\$1,713,788	\$1,748,064	\$1,783,026	\$1,818,686	\$2,007,976	\$2,216,968	\$2,447,712	\$2,702,472	\$2,983,747	\$3,294,298
TOTAL EXPENSES	3.00%	\$1,026,997	\$1,057,135	\$1,088,164	\$1,120,109	\$1,153,000	\$1,332,627	\$1,540,447	\$1,780,906	\$2,059,154	\$2,381,158	\$2,759,071
<b>NET OPERATING INCOME ("NOI")</b>		<b>\$653,187</b>	<b>\$656,653</b>	<b>\$659,900</b>	<b>\$662,916</b>	<b>\$665,687</b>	<b>\$675,349</b>	<b>\$676,521</b>	<b>\$666,806</b>	<b>\$643,317</b>	<b>\$602,589</b>	<b>\$535,227</b>
EXPENSE/INCOME RATIO		61.1%	61.7%	62.2%	62.8%	63.4%	66.4%	69.5%	72.8%	76.2%	79.8%	83.8%
<b>MUST -PAY DEBT SERVICE</b>												
IBC Bank Brownsville-FHLB		\$562,229	\$562,229	\$562,229	\$562,229	\$562,229	\$562,229	\$562,229	\$562,229	\$562,229	\$562,229	\$562,229
Adjustment to Debt Per §10.302(c)(2)												
TOTAL DEBT SERVICE		\$562,229	\$562,229	\$562,229	\$562,229	\$562,229	\$562,229	\$562,229	\$562,229	\$562,229	\$562,229	\$562,229
DEBT COVERAGE RATIO		1.16	1.17	1.17	1.18	1.18	1.20	1.20	1.19	1.14	1.07	0.95
<b>ANNUAL CASH FLOW</b>		<b>\$90,958</b>	<b>\$94,424</b>	<b>\$97,671</b>	<b>\$100,687</b>	<b>\$103,458</b>	<b>\$113,120</b>	<b>\$114,292</b>	<b>\$104,577</b>	<b>\$81,088</b>	<b>\$40,360</b>	<b>(\$27,002)</b>
<b>CUMULATIVE NET CASH FLOW</b>		<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$95,402</b>	<b>\$198,859</b>	<b>\$748,106</b>	<b>\$1,321,065</b>	<b>\$1,868,272</b>	<b>\$2,326,848</b>	<b>\$2,617,777</b>	<b>\$2,629,913</b>





## Asset Management Division

### Amendment Request Form

Completed forms and supporting materials can be emailed to [asset.management@tdhca.state.tx.us](mailto:asset.management@tdhca.state.tx.us)

#### TYPE OF AMENDMENT REQUESTED

Date Submitted: 6/7/19

Amendment Requested: *Non-Material Application Amendment,*

Has the change been implemented? *No*

Award Stage: *Carryover (Prior to Construction/10% Test)*

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

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

#### DEVELOPMENT INFORMATION

Dev. Name: Memorial Apartments II

File No. / CMTS No.: 18235 /

#### CONTACT INFORMATION

Request Submitted By: Bill Fisher

Phone #/Email: (214) 608-7201

[/Bill.Fisher@SonomaAdvisors.com](mailto:Bill.Fisher@SonomaAdvisors.com)

#### SECTION 1: COVER LETTER

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

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

#### SECTION 2: REQUIRED DOCUMENTATION

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

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

### SECTION 3A: MATERIAL APPLICATION AMENDMENT ITEMS

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

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

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

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

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

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

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

### SECTION 3B: MATERIAL LURA AMENDMENT ITEMS

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

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

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

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

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

### SECTION 4A: NON-MATERIAL APPLICATION AMENDMENT SUMMARY

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

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

### SECTION 4B: NON-MATERIAL LURA AMENDMENT SUMMARY

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

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

#### SECTION 4C: NOTIFICATION ITEM SUMMARY

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

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

**RISE Residential Construction, L.P.**

**Attn: Melissa R. Fisher**

**16812 Dallas Parkway**

**Dallas, TX 75248**

**214-632-9454**

**972-701-5558**

Mr. Kent Bedell  
Region 11  
Asset Manager  
TDHCA  
211 E. 11<sup>th</sup> Street  
Austin, TX 77011

June 11, 2019

RE: Request for material amendment regarding Memorial Townhomes awarded July 2018; TDHCA #18-235

Dear Kent:

In compliance with the rules regarding this request for amendment, the sponsor has delivered the \$2500 fee to TDHCA by FEDEX express on Thursday June 6, 2019.

The change requested involves the property, funded under the at risk set aside, prepaying the USDA 514 loan and exiting the USDA RD Farm Labor program. The RD rental subsidy on a portion of the units will be lost to the property with prepayment. It converts the RD units to standard HTC restricted units as presented and approved at the time of the award. As a result of this termination of USDA RD participation, the developments financing structure must be updated to reflect this change. This includes but is not limited to the costs of prepaying the RD loan and exiting the USDA Farm Labor program.

The change is necessary for the following reasons:

1. RD does not consider the property eligible for the financing structure presented to them in the Transfer application, specifically as it deals with, at a minimum, the ground lease structure for the ad valorem tax exemption and the handling of the existing USDA grants.
2. Due to the property being 514, USDA has questioned whether the property is meeting its purpose and the USDA mission by serving farm labor workers. Less than 25% of the +-180 RD units are occupied by farm labor qualified households. Nearly all those households are retired farm workers, not actively employed in the workforce.
3. The property today relies on an annual waiver from USDA to occupy a majority of the RD units, with non-farm labor qualified residents in need of affordable housing.

4. RD believes the property loan is callable, at this time, and is agreeable (subject to all final documentation and USDA approvals) to call the 514 loan and eliminate the rental subsidy. The property is clearly at risk if this loan will be called at this time. The award was based upon both an AT-RISK set aside and an RD set aside. The 2018 AT-RISK allocation was under subscribed.
5. A RUC will be placed on the property to assure existing RD residents are not displaced as a result of the pay-off of the 514 loan and loss of rental subsidy.

The good cause is the agreement for repayment coming from RD which is out of the control of the sponsors. It does lead to an updated financing structure that completes the intended purpose of the 2018 HTC award. No material change is being made in the budget related to rehabilitation of the property as approved. No material changes are being made nor requested to the Scope of Work as approved with the original REA underwriting report and award. This need for repayment of the 514 loan and settlement of the existing grants identified in the processing of the transfer package, could not be reasonable foreseen.

The property owner has met the required carryover allocation conditions and 10% test. The requirements for a transfer package approval from RD is eliminated with the repayment of the 514 loan as allowed and noted in the original application. The 10% test materials will be submitted timely in June 2019 as this amendment is considered by Staff. RD will be requested to confirm this in writing to the department prior to the June 30, 2019 deadline. A transfer package is no longer required with this amended structure.

Submitted with this letter requesting review and approval of this amendment, is an updated market study, financing letters, sources and uses. The units mix and targeting did not change but additional project based vouchers (PBV) are allocated to the property in lieu of the RD rental subsidy. This USDA RD 514 loan payoff coupled with an increase in income from the application of housing tax credit rents net of the utility allowance, for the RD units is reflected in this material amendment filing. The property financing as proposed and approved previously by REA is improved by this change both short and long term in the sponsors opinion.

I respectfully request the TDHCA Board with staff support to grant the material amendment as requested. If approved in July 2019, the sponsor plans to close the final debt and equity financing no later than 9/30/19. The applicant reserves the right to supplement with additional relevant information to the maximum extent allowed by the rules, QAP or Texas law. The applicant's response includes the submission made related to the financing uploaded to the department's server under this award #18-235.

Your consideration of the request is appreciated.

Sincerely,



Melissa Fisher

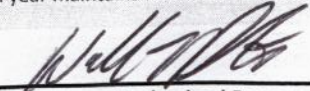
For Memorial Townhomes #18-235

## 15 Year Rental Housing Operating Pro Forma (All Programs)

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	\$1,742,616	\$1,777,468	\$1,813,018	\$1,849,278	\$1,886,264	\$2,082,587	\$2,299,345
Secondary Income	\$ 73,800	\$ 75,276	\$ 76,782	\$ 78,317	\$ 79,883	\$ 88,198	\$ 97,378
POTENTIAL GROSS ANNUAL INCOME	\$1,816,416	\$1,852,744	\$1,889,799	\$1,927,595	\$1,966,147	\$2,170,785	\$2,396,722
Provision for Vacancy & Collection Loss	(\$136,231)	(\$138,956)	(\$141,735)	(\$144,570)	(\$147,461)	(\$162,809)	(\$179,754)
Rental Concessions	\$0						
EFFECTIVE GROSS ANNUAL INCOME	\$1,680,185	\$1,713,788	\$1,748,064	\$1,783,026	\$1,818,686	\$2,007,976	\$2,216,968
EXPENSES							
General & Administrative Expenses	\$56,700	\$58,401	\$60,153	\$61,958	\$63,816	\$73,981	\$85,764
Management Fee	\$ 67,207	\$ 68,552	\$ 69,923	\$ 71,321	\$ 72,747	\$ 80,319	\$ 88,679
Payroll, Payroll Tax & Employee Benefits	\$ 380,750	\$ 392,173	\$ 403,938	\$ 416,056	\$ 428,537	\$ 496,792	\$ 575,919
Repairs & Maintenance	\$ 123,000	\$ 126,690	\$ 130,491	\$ 134,405	\$ 138,438	\$ 160,487	\$ 186,049
Electric & Gas Utilities	\$ 40,000	\$ 41,200	\$ 42,436	\$ 43,709	\$ 45,020	\$ 52,191	\$ 60,504
Water, Sewer & Trash Utilities	\$ 171,000	\$ 176,130	\$ 181,414	\$ 186,856	\$ 192,462	\$ 223,116	\$ 258,653
Annual Property Insurance Premiums	\$ 90,000	\$ 92,700	\$ 95,481	\$ 98,345	\$ 101,296	\$ 117,430	\$ 136,133
Property Tax	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Reserve for Replacements	\$ 86,100	\$ 88,683	\$ 91,343	\$ 94,084	\$ 96,906	\$ 112,341	\$ 130,234
Other Expenses	\$ 12,240	\$ 12,607	\$ 12,985	\$ 13,375	\$ 13,776	\$ 15,970	\$ 18,514
TOTAL ANNUAL EXPENSES	\$1,026,997	\$1,057,135	\$1,088,164	\$1,120,109	\$1,153,000	\$1,332,627	\$1,540,447
NET OPERATING INCOME	\$653,187	\$656,653	\$659,900	\$662,916	\$665,687	\$675,349	\$676,521
DEBT SERVICE							
First Deed of Trust Annual Loan Payment	\$566,977	\$566,977	\$566,977	\$566,977	\$566,977	\$566,977	\$566,977
Second Deed of Trust Annual Loan Payment							
Third Deed of Trust Annual Loan Payment	0						
Other Annual Required Payment							
Other Annual Required Payment							
ANNUAL NET CASH FLOW	\$86,210	\$89,676	\$92,923	\$95,939	\$98,709	\$108,372	\$109,544
CUMULATIVE NET CASH FLOW	\$86,210	\$175,886	\$268,809	\$364,747	\$463,457	\$981,158	\$1,525,946
Debt Coverage Ratio	1.15	1.16	1.16	1.17	1.17	1.19	1.19
Other (Describe)							
Other (Describe)							

By signing below I (we) are certifying that the above 15 Year pro forma, is consistent with the unit rental rate assumptions, total operating expenses, net operating income, and debt service coverage based on the bank's current underwriting parameters and consistent with the loan terms indicated in the term sheet and preliminarily considered feasible pending further diligence review. The debt service for each year maintains no less than a 1.15 debt coverage ratio. (Signature only required if using this pro forma for points under §11.9(e)(1) relating to Financial Feasibility)

  
 Signature, Authorized Representative, Construction or  
 Permanent Lender

W. Lee Reed IV  
 Printed Name  
 5-Jun-19  
 Date  
 Mike Haynes  
 Printed Name

Phone: 956-547-1019  
 Email: lreed@ibr.com  
 5-Jun-19  
 Date

Signature, Authorized Representative, Syndicator

If a revised form is submitted, date of submission: 6/5/2019

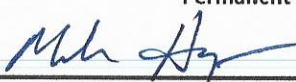
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Annual Property Insurance Premiums	\$ 90,000	\$ 92,700	\$ 95,481	\$ 98,345	\$ 101,296	\$ 117,430	\$ 136,133
Property Tax	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Reserve for Replacements	\$ 86,100	\$ 88,683	\$ 91,343	\$ 94,084	\$ 96,906	\$ 112,341	\$ 130,234
Other Expenses	\$ 12,240	\$ 12,607	\$ 12,985	\$ 13,375	\$ 13,776	\$ 15,970	\$ 18,514
TOTAL ANNUAL EXPENSES	\$1,026,997	\$1,057,135	\$1,088,164	\$1,120,109	\$1,153,000	\$1,332,627	\$1,540,447
NET OPERATING INCOME	\$653,187	\$656,653	\$659,900	\$662,916	\$665,687	\$675,349	\$676,521
DEBT SERVICE							
First Deed of Trust Annual Loan Payment	\$566,977	\$566,977	\$566,977	\$566,977	\$566,977	\$566,977	\$566,977
Second Deed of Trust Annual Loan Payment							
Third Deed of Trust Annual Loan Payment							
Other Annual Required Payment							
Other Annual Required Payment							
ANNUAL NET CASH FLOW	\$86,210	\$89,676	\$92,923	\$95,939	\$98,709	\$108,372	\$109,544
CUMULATIVE NET CASH FLOW	\$86,210	\$175,886	\$268,809	\$364,747	\$463,457	\$981,158	\$1,525,946
Debt Coverage Ratio	1.15	1.16	1.16	1.17	1.17	1.19	1.19
Other (Describe)							
Other (Describe)							

By signing below I (we) are certifying that the above 15 Year pro forma, is consistent with the unit rental rate assumptions, total operating expenses, net operating income, and debt service coverage based on the bank's current underwriting parameters and consistent with the loan terms indicated in the term sheet and preliminarily considered feasible pending further diligence review. The debt service for each year maintains no less than a 1.15 debt coverage ratio. (Signature only required if using this pro forma for points under §11.9(e)(1) relating to Financial Feasibility)

\_\_\_\_\_  
 Signature, Authorized Representative, Construction or  
 Permanent Lender

  
 Signature, Authorized Representative, Syndicator

W. Lee Reed IV  
 Printed Name

5-Jun-19  
 Date

Mike Haynes  
 Printed Name

Phone: 956-547-1019

Email: lreed@ibc.com

5-Jun-19  
 Date

If a revised form is submitted, date of submission: 6/5/2019

## 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	
<b>Debt</b>										
TDHCA	<u>MF Direct Loan Const. to Perm. (Repayable)</u>	\$0	0.00%		\$ -	0.00%	30	0		
TDHCA	<u>MF Direct Loan Const. Only (Repayable)</u>	\$0	0.00%							
TDHCA	<u>Multifamily Direct Loan (Soft Repayable)</u>	\$0	0.00%		\$ -	0.00%		0		
TDHCA	<u>Mortgage Revenue Bond</u>	\$0	0.00%		\$ -	0.00%	0	0		
IBC Bank Brownsville	Conventional Loan	\$0			\$ 9,900,000	4.50%	35	35		1st
IBC Bank Brownsville	Conventional Loan	\$14,000,000	6.00%	1st						
<b>Third Party Equity</b>										
42 Equity or other investor	<u>HTC</u> \$ 1,883,683	\$ 8,194,021			\$ 16,388,042				0.87	
<b>Grant</b>										
Fee waiver from City of McAllen		\$ 2,500			\$ 2,500					
<b>Deferred Developer Fee</b>										
DDF loan from RISE		\$ 1,987,872			\$ 593,851					
					\$ -					
<b>Other</b>										
	<u>Direct Loan Match</u>									
PHA Seller financing of Property		\$ -	3.00%	3	\$ -	3.00%	Balloon	35		
Cost not incurred during construction		\$ 2,700,000								
	<b>Total Sources of Funds</b>	\$ 26,884,393			\$ 26,884,393					
	<b>Total Uses of Funds</b>				\$ 26,884,393					



**INSTRUCTIONS:** Describe the sources of funds that will finance Development. The description must include construction, permanent, and bridge loans, and all other types of funds to be used for development. The information must be consistent with all other documentation in this section. Provide sufficient detail to identify the source and explain the use (in terms of the timing and any specific uses) of each type of funds to be contributed. In addition, describe/explain replacement reserves. Finally, describe/explain operating items. The narrative must include rents, operating subsidies, project based assistance, and all other sources of funds for operations. In the foregoing discussion of both development and operating funds, specify the status (dates and deadlines) for applications, approvals and closings, etc., associated with the commitments.

**Describe the sources and uses of funds (specify the status (dates and deadlines) for applications, approvals and closings, etc., associated with the commitments). For Direct Loan or Tax-Exempt Bond Applications that contemplate an FHA-insured loan, this includes the anticipated date that FHA application will be submitted to HUD (if not already submitted).**

The project is a modernization\rehabilitation of a FORMER USDA RD and CURRENT HUD HAP project based rental community in McAllen, TX. The 246 units property was built in the 1980's. The financing plan includes an interim construction and equity bridge loan from IBC Bank for \$14.0MM and a new IBC FHLB perm loan for \$9.9MM. The HTC investor is buying the housing tax credits at \$.87 per dollar of credit or \$16.35MM of which 50% is being invested during construction. The balance of the equity at conversion with a small amount held for 8609's. The property is owned by the Hidalgo County Housing authority. The housing authority is buying the property from USDA RD for appraised value of \$3.7MM. This \$3.7MM repays the current 514 loan plus settlement of the \$12MM in grants used to develop the maintain the property. The housing authority is entering into a ground lease for a minimum of 55 year or more as required by the tax credit investor and tax counsel. The final source of funds is

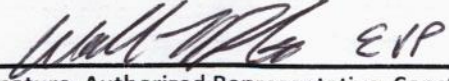
**Describe the replacement reserves:**

IBC is providing an FHLB perm loan for 15 years at 4.50% using a 35 year amortization. IBC allows this sponsor to refinance the perm commitment using a current loan execution with FNMA or Freddie Mac if rates remain comparable or better at conversion. They require \$350 per unit per year for a rehab. Consistent with current FNMA and Freddie Mac Standards.

**Describe the operating items (rents, operating subsidies, project based assistance, etc., and specify the status (dates and deadlines) for applications, approvals and closings, etc., associated with the commitments:**

The USDA RD rental subsidy on 142 units will terminate at the closing of this financing. The HUD HAP contract covers 92 units and increase of 28 units from original application and REA UW. The 64 unit HUD HAP subsidies is in place and will continue after the rehab is completed. The new 28 units of project based vouchers are approved by the Housing authority at this time. The HAP has 15 years remaining.

By signing below I acknowledge that the amounts and terms of all anticipated sources of funds as stated above are consistent with the assumptions of my institution as one of the providers of funds.

 EIV  
Signature, Authorized Representative, Construction or Permanent Lender

WALLACE LEE REED III 6/5/19  
Printed Name Date

Telephone: 956-547-1019

Email address: lee.reed@IBC.com

If a revised form is submitted, date of submission: 6/5/2019

# Rent Schedule

Self Score Total: **113**

Unit types must be entered from smallest to largest based on “# of Bedrooms” and “Unit Size”, then within the same “# of Bedrooms” and “Unit Size” from lowest to highest “Rent Collected/Unit”.

**Private Activity Bond Priority (For Tax-Exempt Bond Developments ONLY):**

Rent Designations (select from Drop down menu)					# of Units	# of Bedrooms	# of Baths	Unit Size (Net Rentable Sq. Ft.)	Total Net Rentable Sq. Ft.	Program Rent Limit	Tenant Paid Utility Allow.	Rent Collected /Unit	Total Monthly Rent
HTC Units	MF Direct Loan Units (HOME Rent/Inc)	National HTF Units	TDHCA MRB Units	Other/ Subsidy	(A)			(B)	(A) x (B)			(E)	(A) x (E)
TC 30%				SEC 8	14	2	1.0	689	9,646	396	89	468	6,552
TC 50%					15	2	1.0	689	10,335	661	89	572	8,580
TC 60%				SEC 8	6	2	1.0	689	4,134	793	96	468	2,808
TC 60%				SEC 8	16	2	1.0	689	11,024	793	96	468	7,488
TC 30%				SEC 8	14	3	1.0	865	12,110	457	115	622	8,708
TC 50%					37	3	1.0	865	32,005	763	104	659	24,383
TC 50%					28	3	1.0	880	24,640	763	104	659	18,452
TC 60%				SEC 8	42	3	1.0	880	36,960	915	115	622	26,124
TC 60%					7	3	1.0	902	6,314	915	104	811	5,677
TC 60%					3	3	1.0	880	2,640	915	104	811	2,433
TC 50%					3	2	1.0	725	2,175	661	89	572	1,716
TC 60%					14	2	1.0	689	9,646	793	89	704	9,856
TC 50%					3	3	1.0	880	2,640	793	104	689	2,067
TC 50%					8	2	1.0	725	5,800	661	89	572	4,576
TC 50%					6	3	1.0	880	5,280	763	104	659	3,954
TC 50%					5	3	1.0	902	4,510	763	104	659	3,295
TC 30%					19	3	1.0	865	16,435	457	104	353	6,707
TC 30%					6	2	1.0	689	4,134	396	89	307	1,842
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<b>TOTAL</b>					246				200,428				145,218
Non Rental Income							\$10.00	per unit/month for:				<i>DAMAGES AND NSF</i>	2,460
Non Rental Income							5.00	per unit/month for:				<i>PET FEES, LATE FEES</i>	1,230
Non Rental Income							10.00	per unit/month for:				<i>VENDING AND FOREFIETS</i>	2,460
<b>+ TOTAL NONRENTAL INCOME</b>							\$25.00	per unit/month					6,150
<b>= POTENTIAL GROSS MONTHLY INCOME</b>													151,368
- Provision for Vacancy & Collection Loss									% of Potential Gross Income:	7.50%			(11,353)
- Rental Concessions (enter as a negative number)											Enter as a negative value		
<b>= EFFECTIVE GROSS MONTHLY INCOME</b>													140,015
<b>x 12 = EFFECTIVE GROSS ANNUAL INCOME</b>													1,680,185

## Rent Schedule (Continued)

		% of LI	% of Total	
<b>HOUSING TAX CREDITS</b>	TC30%	22%	22%	53
	TC40%			0
	TC50%	43%	43%	105
	TC60%	36%	36%	88
	<b>HTC LI Total</b>			<b>246</b>
	EO			0
	MR			0
	<b>MR Total</b>			<b>0</b>
	<b>Total Units</b>			<b>246</b>
<b>MORTGAGE REVENUE BOND</b>	MRB30%			0
	MRB40%			0
	MRB50%			0
	MRB60%			0
	<b>MRB LI Total</b>			<b>0</b>
	MRBMR			0
	<b>MRBMR Total</b>			<b>0</b>
	<b>MRB Total</b>			<b>0</b>

		% of LI	% of Total	
<b>NATIONAL HOUSING TRUST FUND</b>	HTF30%			0
	HTF40%			0
	HTF50%			0
	HTF60%			0
	HTF80%			0
	<b>HTF LI Total</b>			<b>0</b>
	MR			0
	<b>MR Total</b>			<b>0</b>
	<b>HTF Total</b>			<b>0</b>
<b>DIRECT LOAN</b>	30%			0
	LH/50%			0
	HH/60%			0
	HH/80%			0
	<b>Direct Loan LI Total</b>			<b>0</b>
	EO			0
	MR			0
	<b>MR Total</b>			<b>0</b>
	<b>Direct Loan Total</b>			<b>0</b>
<b>OTHER</b>	<b>Total OT Units</b>			<b>92</b>

<b>BEDROOMS</b>	0			0
	1			0
	2			82
	3			164
	4			0
	5			0

<b>ACQUISITION + HARD</b>		DO NOT USE THIS CALCULATION TO
<b>Cost Per Sq Ft</b>	\$ 82.30	SCORE POINTS UNDER 11.9(e)(2). At the
<b>HARD</b>		end of the Development Cost Schedule,
<b>Cost Per Sq Ft</b>	\$ 68.58	you will have the ability to adjust your
<b>BUILDING</b>		eligible costs to qualify. Points will be
<b>Cost Per Sq Ft</b>	\$ 43.06	entered there.

## Utility Allowances [§10.614]

**Applicant must attach to this form as documentation to support the "Utility Allowance" estimate used in completing the Rent Schedule provided in the Application. Where the Applicant uses any method that requires Department review, such review must have been requested prior to submission of the Application. Please see 10 TAC §10.614. This exhibit must clearly indicate which utility costs are included in the estimate.**

*If tenants will be required to pay any other mandatory fees (e.g. renter's insurance) please provide an estimate, description and documentation of those as well.*

Utility	Who Pays	Energy Source	0BR	1BR	2BR	3BR	4BR	Source of Utility Allowance & Effective Date
Heating	Tenant	Electric			\$ 6	\$ 7		Housing Authority of Hidalgo Co.
Cooking	Tenant	Electric			\$ 9	\$ 11		7/1/2017
Other Electric	Tenant				\$ 23	\$ 25		Housing Authority of Hidalgo Co.
Air Conditioning	Tenant	Electric			\$ 24	\$ 31		7/1/2017
Water Heater	Tenant	Electric			\$ 12	\$ 15		Housing Authority of Hidalgo Co.
Water								7/1/2017
Sewer								
Trash								Housing Authority of Hidalgo Co.
Flat Fee	Tenant	Electric			\$ 15	\$ 15		7/1/2017
Other								
<b>Total Paid by Tenant</b>			\$ -	\$ -	\$ 89	\$ 104	\$ -	



Other (Describe)

Two UA's apply, one for USDA RD units and one for the HUD HAP contract per communication
from USDA and the PHA
See attached from USDA 6/22/2017
USDA is \$89 and \$104
HUD HAP is \$96 and \$115

If a revised form is submitted, date of submission:

6/5/2019

## ANNUAL OPERATING EXPENSES

<b>General &amp; Administrative Expenses</b>			
Accounting	\$	12,500	
Advertising	\$	18,000	
Legal fees	\$	5,000	
Leased equipment	\$	4,000	
Postage & office supplies	\$	4,000	
Telephone	\$	3,600	
Other	\$	6,000	
Other	\$	3,600	
Total General & Administrative Expenses:			\$ 56,700
Management Fee:	Percent of Effective Gross Income:	4.00%	\$ 67,207
<b>Payroll, Payroll Tax &amp; Employee Benefits</b>			
Management	\$	150,000	
Maintenance	\$	150,000	
Other	\$	20,750	
Other	\$	60,000	
Total Payroll, Payroll Tax & Employee Benefits:			\$ 380,750
<b>Repairs &amp; Maintenance</b>			
Elevator	\$		
Exterminating	\$	11,000	
Grounds	\$	24,000	
Make-ready	\$	40,000	
Repairs	\$	36,000	
Pool	\$	12,000	
Other	\$	0	
Other	\$	0	
Total Repairs & Maintenance:			\$ 123,000
<b>Utilities (Enter Only Property Paid Expense)</b>			
Electric	\$	40,000	
Natural gas	\$	0	
Trash	\$	37,500	
Water/Sewer	\$	133,500	
Other	\$		
Other	\$	0	
Total Utilities:			\$ 211,000
Annual Property Insurance:	Rate per net rentable square foot:	\$ 0.45	\$ 90,000
<b>Property Taxes:</b>			
Published Capitalization Rate:		Source: exempt	
Annual Property Taxes	\$		
Payments in Lieu of Taxes	\$		
Total Property Taxes:			\$ -
Reserve for Replacements:	Annual reserves per unit:	\$ 350	\$ 86,100
<b>Other Expenses</b>			
Cable TV	\$	2,400	
Supportive Services (Staffing/Contracted Services)	\$	0	
TDHCA Compliance fees	\$	9,840	
TDHCA Bond Administration Fees (TDHCA as Bond Issuer Only)	\$		
Security	\$		
Other	\$		
Other	\$		
Total Other Expenses:			\$ 12,240
<b>TOTAL ANNUAL EXPENSES</b>			
		Expense per unit: \$	4175
		Expense to Income Ratio:	61.12%
<b>NET OPERATING INCOME (before debt service)</b>			\$ 653,187
<b>Annual Debt Service</b>			
	\$	566,977	
	\$	0	
	\$	0	
	\$		
<b>TOTAL ANNUAL DEBT SERVICE</b>			\$ 566,977
		Debt Coverage Ratio:	1.15
<b>NET CASH FLOW</b>			\$ 86,210

If a revised form is submitted, date of submission: 5-Jun-19

## 15 Year Rental Housing Operating Pro Forma (All Programs)

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	\$1,742,616	\$1,777,468	\$1,813,018	\$1,849,278	\$1,886,264	\$2,082,587	\$2,299,345
Secondary Income	\$ 73,800	\$ 75,276	\$ 76,782	\$ 78,317	\$ 79,883	\$ 88,198	\$ 97,378
POTENTIAL GROSS ANNUAL INCOME	\$1,816,416	\$1,852,744	\$1,889,799	\$1,927,595	\$1,966,147	\$2,170,785	\$2,396,722
Provision for Vacancy & Collection Loss	(\$136,231)	(\$138,956)	(\$141,735)	(\$144,570)	(\$147,461)	(\$162,809)	(\$179,754)
Rental Concessions	\$0						
EFFECTIVE GROSS ANNUAL INCOME	\$1,680,185	\$1,713,788	\$1,748,064	\$1,783,026	\$1,818,686	\$2,007,976	\$2,216,968
EXPENSES							
General & Administrative Expenses	\$56,700	\$58,401	\$60,153	\$61,958	\$63,816	\$73,981	\$85,764
Management Fee	\$ 67,207	\$ 68,552	\$ 69,923	\$ 71,321	\$ 72,747	\$ 80,319	\$ 88,679
Payroll, Payroll Tax & Employee Benefits	\$ 380,750	\$ 392,173	\$ 403,938	\$ 416,056	\$ 428,537	\$ 496,792	\$ 575,919
Repairs & Maintenance	\$ 123,000	\$ 126,690	\$ 130,491	\$ 134,405	\$ 138,438	\$ 160,487	\$ 186,049
Electric & Gas Utilities	\$ 40,000	\$ 41,200	\$ 42,436	\$ 43,709	\$ 45,020	\$ 52,191	\$ 60,504
Water, Sewer & Trash Utilities	\$ 171,000	\$ 176,130	\$ 181,414	\$ 186,856	\$ 192,462	\$ 223,116	\$ 258,653
Annual Property Insurance Premiums	\$ 90,000	\$ 92,700	\$ 95,481	\$ 98,345	\$ 101,296	\$ 117,430	\$ 136,133
Property Tax	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Reserve for Replacements	\$ 86,100	\$ 88,683	\$ 91,343	\$ 94,084	\$ 96,906	\$ 112,341	\$ 130,234
Other Expenses	\$ 12,240	\$ 12,607	\$ 12,985	\$ 13,375	\$ 13,776	\$ 15,970	\$ 18,514
TOTAL ANNUAL EXPENSES	\$1,026,997	\$1,057,135	\$1,088,164	\$1,120,109	\$1,153,000	\$1,332,627	\$1,540,447
NET OPERATING INCOME	\$653,187	\$656,653	\$659,900	\$662,916	\$665,687	\$675,349	\$676,521
DEBT SERVICE							
First Deed of Trust Annual Loan Payment	\$566,977	\$566,977	\$566,977	\$566,977	\$566,977	\$566,977	\$566,977
Second Deed of Trust Annual Loan Payment							
Third Deed of Trust Annual Loan Payment	0						
Other Annual Required Payment							
Other Annual Required Payment							
<b>ANNUAL NET CASH FLOW</b>	\$86,210	\$89,676	\$92,923	\$95,939	\$98,709	\$108,372	\$109,544
<b>CUMULATIVE NET CASH FLOW</b>	\$86,210	\$175,886	\$268,809	\$364,747	\$463,457	\$981,158	\$1,525,946
Debt Coverage Ratio	1.15	1.16	1.16	1.17	1.17	1.19	1.19
Other (Describe)							
Other (Describe)							

By signing below I (we) are certifying that the above 15 Year pro forma, is consistent with the unit rental rate assumptions, total operating expenses, net operating income, and debt service coverage based on the bank's current underwriting parameters and consistent with the loan terms indicated in the term sheet and preliminarily considered feasible pending further diligence review. The debt service for each year maintains no less than a 1.15 debt coverage ratio. (Signature only required if using this pro forma for points under §11.9(e)(1) relating to Financial Feasibility)

	W. Lee Reed IV	Phone: 956-547-1019	
Signature, Authorized Representative, Construction or Permanent Lender	Printed Name	Email: lreed@ibc.com	
	5-Jun-19		
	Date		
	Mike Haynes	5-Jun-19	
Signature, Authorized Representative, Syndicator	Printed Name	Date	

If a revised form is submitted, date of submission: 6/5/2019

# Off-Site Cost Breakdown

This form must be submitted with the Development Cost Schedule if the development has offsite costs, whether those costs are included in the budget as a line item, embedded in the acquisition costs, or referenced in utility provider letters. Therefore, the total costs listed on this worksheet may or may not exactly correspond with those off-site costs indicated on the Development Costs Schedule. However, all costs listed here should be able to be justified in another place in the application.

**Column A:** The offsite activity reflected here should correspond to the offsite activity reflected in the Development Cost Schedule or other supporting documentation.

**Columns B and C:** In determining actual construction cost, two different methods may be used:

**Column D:** To arrive at total construction costs in Column D:

**Column E:** Any proposed activity involving the acquisition of real property, easements, rights-of-way, etc., must have the projected costs of this acquisition for the activity.

**Column F:** Engineering/architectural costs must be broken out by the offsite work activity.

**Column G:** Figures for Column G, Total Activity Cost, are obtained by adding together Columns D, E, and F to get the total costs.

**\*\*ALL contingency must be included in the Contingency line item on the Development Cost Schedule and NOT on this form\*\***

**\*\*This form must be completed by a professional engineer licensed to practice in the State of Texas. His or her signature and registration seal must be on the form.\*\***

A.	B.	C.	D.	E.	F.	G.
Activity	Labor or Unit Price	Materials or # of Units	Total Construction Costs	Acquisition Costs	Engineering / Architectural Costs	Total Activity Costs
Lines 35-37 Hidden						
<b>Total</b>						\$ -

\_\_\_\_\_  
Signature of Registered Engineer responsible for Budget Justification

\_\_\_\_\_  
Printed Name

Seal

---

Date

If a revised form is submitted, date of submission:





## Site Work Cost Breakdown

*This form must be submitted with the Development Cost Schedule as justification of Site Work costs.*

**Column A:** The Site Work activity reflected here must match the Site Work activity reflected in the Development Cost Schedule.

**Columns B and C:** In determining actual construction cost, two different methods may be used:

The construction costs may be broken into labor (Column B) and materials (Column C) for the activity; **OR**

The use of unit price (Column B) and the number of units (Column C) data for the activity.

**Column D:** To arrive at total construction costs in Column D:

If based on labor and materials, add Column B and Column C together to arrive at total construction costs.

If based on unit price measures, Column B is multiplied by Column C to arrive at total construction costs.

**Column E:** Any proposed activity involving the acquisition of real property, easements, rights-of-way, etc., must have the projected costs of this acquisition for the activity.

**Column F:** Engineering/architectural costs must be broken out by the Site Work activity.

**Column G:** Figures for Column G, Total Activity Cost, are obtained by adding together Columns D, E, and F to get the total costs.

**\*\*This form must be completed by a Third-Party engineer licensed to practice in the State of Texas. His or her signature and registration seal must be on the form.\*\***

**For Site Work costs that exceed \$15,000 per Unit and are included in Eligible Basis, a CPA letter allocating which portions of those site costs should be included in Eligible Basis and which ones may be ineligible must be submitted behind this tab.**

A. Activity	B. Labor or Unit Price	C. Materials or # of Units	D. Total Construction Costs	E. Acquisition Costs	F. Engineering / Architectural Costs	G. Total Activity Costs
Detention		One	\$ 140,000			\$ 140,000
Rough Grading	\$ 3,000.00	25	\$ 75,000			\$ 75,000
Fine Grading	\$ 3,000.00	25	\$ 75,000			\$ 75,000
On site concrete	\$ 12,121.21	16.5	\$ 200,000			\$ 200,000
On site electrical	\$ 240.74	810	\$ 195,000			\$ 195,000
On site utilities	\$ 16,540.00	21.2	\$ 350,000			\$ 350,000
On site paving	\$ 25,000.00	\$ 5.00	\$ 125,000			\$ 125,000
Decorative manorary	\$ 210.00	\$ 238.10	\$ 50,000			\$ 50,000
Bumper stops striping and signs	\$ 1,000.00	20	\$ 20,000			\$ 20,000
				NOT APPLICABLE	BUDGETED Seperately	
<b>Total</b>						<b>\$ 1,230,000</b>

Signature of Registered Engineer

4-Jun-18

Printed Name

*Seal*

---

Date

If a revised form is submitted, date of submission:

6/4/2018



**BUILDING COSTS\*:**

Concrete	600,000		600,000
Masonry	925,800		925,800
Metals	250,000		250,000
Woods and Plastics	225,000		225,000
Thermal and Moisture Protection	200,000		200,000
Roof Covering	500,000		500,000
Doors and Windows	295,000		295,000
Finishes	700,000		700,000
Specialties	365,000		115,000
Equipment	650,000		650,000
Furnishings	350,000		350,000
Special Construction	250,000		250,000
Conveying Systems (Elevators)	0		0
Mechanical (HVAC; Plumbing)	950,000		950,000
Electrical	1,250,000		1,250,000

Corrected per notice 7/3/2018

Not applicable to the design

**Individually itemize costs below:**

Detached Community Facilities/Building	500,000		500,000
Carports and/or Garages	0		0
Lead-Based Paint Abatement	0		0
Asbestos Abatement (Rehabilitation Only)	700,000		700,000
Structured Parking	0		0
Commercial Space Costs	0		
Builders Risk insurance	170,000		170,000
<b>Subtotal Building Costs Before 11.9(e)(2)</b>	<b>\$8,880,800</b>	<b>\$0</b>	<b>\$8,630,800</b>

Corrected per notice 7/3/2018

<b>Voluntary Eligible Building Costs (After 11.9(e)(2))*</b> Enter amount to be used to achieve desired score.	\$56.87 psf	\$8,880,800
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Corrected per notice due 7/3/2018

<b>TOTAL BUILDING COSTS &amp; SITE WORK (including site amenities)</b>	\$11,160,800	\$0	\$10,910,800
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Contingency	10.00%	\$1,116,080		1,116,080
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<b>TOTAL HARD COSTS</b>	\$12,276,880	\$0	\$12,026,880
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OTHER CONSTRUCTION COSTS	%THC			%EHC
General requirements (<6%)	6.00%	736,613		6.12%
Field supervision (within GR limit)				
Contractor overhead (<2%)	2.00%	245,538		2.04%
G & A Field (within overhead limit)				
Contractor profit (<6%)	6.00%	736,613		6.12%
<b>TOTAL CONTRACTOR FEES</b>		\$1,718,763	\$0	\$1,718,763

<b>TOTAL CONSTRUCTION CONTRACT Before 11.9(e)(2)</b>	\$13,995,643	\$0	\$13,745,643
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<b>Voluntary Eligible "Hard Costs" (After 11.9(e)(2))*</b> Enter amount to be used to achieve desired score.	\$81.87 psf	\$13,995,643
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Corrected per notice due 7/3/18

\*To score points under §11.9(e)(2) related to Cost of Development per Square Foot, the Voluntary Eligible Building Costs OR the Voluntary Eligible Hard Costs indicated above must fall within the required thresholds. If voluntary costs are not entered, staff will consider the Subtotal Building Cost or the Total Construction Contract costs, as applicable. Enter score for Building OR Hard Costs at end of form.

**SOFT COSTS<sup>3</sup>**

Architectural - Design fees	200,000		200,000
Architectural - Supervision fees	24,000		24,000
Engineering fees	65,000		65,000
Real estate attorney/other legal fees	75,000		75,000
Accounting fees	17,500		17,500
Impact Fees	77,500		77,500
Building permits & related costs	150,000		150,000
Appraisal	10,500		10,500
Market analysis	7,500		7,500
Environmental assessment	10,500		10,500
Soils report	20,000		20,000
Survey	15,000		15,000
Marketing	80,000		0
Hazard & liability insurance	250,000		250,000
Real property taxes			
Personal property taxes			
Relocation expense	650,000		0
FF&E	250,000		250,000
prestabilization costs	0		0
<b>Subtotal Soft Cost</b>	<b>\$1,902,500</b>	<b>\$0</b>	<b>\$1,172,500</b>

Correct detailed per def notice 5-18

**FINANCING:**

**CONSTRUCTION LOAN(S)<sup>3</sup>**

Interest	843,750		350,000
Loan origination fees	250,000		250,000
Title & recording fees	105,000		105,000
Closing costs & legal fees	75,000		75,000
Inspection fees			
Credit Report			
Discount Points			
Other (specify) - see footnote 1			
Other (specify) - see footnote 1			

**PERMANENT LOAN(S)**

Loan origination fees	198,000		
Title & recording fees	35,000		
Closing costs & legal	35,000		
Bond premium			
Credit report			
Discount points			
Credit enhancement fees			
Prepaid MIP			
Lender studies+related due diligence	45,000		
Other (specify) - see footnote 1			

Correct w New Perm loan amount

**BRIDGE LOAN(S)**

Interest	0		0
Loan origination fees			
Title & recording fees			
Closing costs & legal fees			
Other (specify) - see footnote 1			
Other (specify) - see footnote 1			

**OTHER FINANCING COSTS<sup>3</sup>**

Tax credit fees	97,500		
Tax and/or bond counsel	50,000		50,000
Payment bonds			
Performance bonds			
Credit enhancement fees			
Mortgage insurance premiums			
Cost of underwriting & issuance			
Syndication organizational cost			
Tax opinion			
Other (specify) - see footnote 1			
Other (specify) - see footnote 1			
<b>Subtotal Financing Cost</b>	\$1,734,250	\$0	\$830,000

**DEVELOPER FEES<sup>3</sup>**

Housing consultant fees <sup>4</sup>	149,500		149,500
General & administrative	500,000		500,000
Profit or fee	2,050,000	0	2,050,000
<b>Subtotal Developer Fees</b> 14.40%	\$2,699,500	\$0	\$2,699,500 14.59%

**RESERVES**

Rent-up	102,500		
Operating	2,700,000		
Replacement			
Escrows			
<b>Subtotal Reserves</b>	\$2,802,500	\$0	\$0

**TOTAL HOUSING DEVELOPMENT COSTS<sup>5</sup>**

	\$26,884,393	\$2,750,000	\$18,447,643
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*The following calculations are for HTC Applications only.*

**Deduct From Basis:**

Federal grants used to finance costs in Eligible Basis			
Non-qualified non-recourse financing			
Non-qualified portion of higher quality units §42(d)(5)			
Historic Credits (residential portion only)			
<b>Total Eligible Basis</b>		\$2,750,000	\$18,447,643
**High Cost Area Adjustment (100% or 130%)			130%
<b>Total Adjusted Basis</b>		\$2,750,000	\$23,981,936
Applicable Fraction		3.26%	9%
<b>Total Qualified Basis</b>	\$2,248,024	\$89,650	\$2,158,374
Applicable Percentage <sup>6</sup>		90.00%	90.00%
<b>Credits Supported by Eligible Basis</b> (May be greater than actual request)	\$2,023,222	\$80,685	\$1,942,537

RUC reserve from RD termination

Request cap@\$1.88MM from Award as required for the scoring requested

\*11.9(c)(2) Cost Per Square Foot: DO NOT ROUND! Applicants are advised to ensure that figure is not rounding down to the maximum dollar figure to support the elected points.

**Requested Score for 11.9(e)(2)**

12

Name of contact for Cost Estimate:

Stephen Sulli

Phone Number for Contact:

(972) 701-5552

If a revised form is submitted, date of submission:

6/5/2019

## 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	
<b>Debt</b>										
TDHCA	<a href="#">MF Direct Loan Const. to Perm. (Repayable)</a>	\$0	0.00%		\$ -	0.00%	30	0		
TDHCA	<a href="#">MF Direct Loan Const. Only (Repayable)</a>	\$0	0.00%							
TDHCA	<a href="#">Multifamily Direct Loan (Soft Repayable)</a>	\$0	0.00%		\$ -	0.00%		0		
TDHCA	<a href="#">Mortgage Revenue Bond</a>	\$0	0.00%		\$ -	0.00%	0	0		
IBC Bank Brownsville	Conventional Loan	\$0			\$ 9,900,000	4.50%	35	35		1st
IBC Bank Brownsville	Conventional Loan	\$14,000,000	6.00%	1st						
<b>Third Party Equity</b>										
42 Equity or other investor	<a href="#">HTC</a>	\$ 1,883,683	\$ 8,194,021		\$ 16,388,042				0.87	
<b>Grant</b>										
Fee waiver from City of McAllen		\$ 2,500			\$ 2,500					
<b>Deferred Developer Fee</b>										
DDF loan from RISE		\$ 1,987,872			\$ 593,851					
					\$ -					
<b>Other</b>										
	<a href="#">Direct Loan Match</a>									
PHA Seller financing of Property		\$ -	3.00%	3	\$ -	3.00%	Balloon	35		
Cost not incurred during construction		\$ 2,700,000								
<b>Total Sources of Funds</b>		\$ 26,884,393			\$ 26,884,393					
<b>Total Uses of Funds</b>					\$ 26,884,393					



**INSTRUCTIONS:** Describe the sources of funds that will finance Development. The description must include construction, permanent, and bridge loans, and all other types of funds to be used for development. The information must be consistent with all other documentation in this section. Provide sufficient detail to identify the source and explain the use (in terms of the timing and any specific uses) of each type of funds to be contributed. In addition, describe/explain replacement reserves. Finally, describe/explain operating items. The narrative must include rents, operating subsidies, project based assistance, and all other sources of funds for operations. In the foregoing discussion of both development and operating funds, specify the status (dates and deadlines) for applications, approvals and closings, etc., associated with the commitments.

**Describe the sources and uses of funds (specify the status (dates and deadlines) for applications, approvals and closings, etc., associated with the commitments). For Direct Loan or Tax-Exempt Bond Applications that contemplate an FHA-insured loan, this includes the anticipated date that FHA application will be submitted to HUD (if not already submitted).**

The project is a modernization\rehabilitation of a FORMER USDA RD and CURRENT HUD HAP project based rental community in McAllen, TX. The 246 units property was built in the 1980's. The financing plan includes an interim construction and equity bridge loan from IBC Bank for \$14.0MM and a new IBC FHLB perm loan for \$9.9MM. The HTC investor is buying the housing tax credits at \$.87 per dollar of credit or \$16.35MM of which 50% is being invested during construction. The balance of the equity at conversion with a small amount held for 8609's. The property is owned by the Hidalgo County Housing authority. The housing authority is buying the property from USDA RD for appraised value of \$3.7MM. This \$3.7MM repays the current 514 loan plus settlement of the \$12MM in grants used to develop the maintain the property. The housing authority is entering into a ground lease for a minimum of 55 year or more as required by the tax credit investor and tax counsel.

**Describe the replacement reserves:**

IBC is providing an FHLB perm loan for 15 years at 4.50% using a 35 year amortization. IBC allows this sponsor to refinance the perm commitment using a current loan execution with FNMA or Freddie Mac if rates remain comparable or better at conversion. They require \$350 per unit per year for a rehab. Consistent with current FNMA and Freddie Mac Standards.

**Describe the operating items (rents, operating subsidies, project based assistance, etc., and specify the status (dates and deadlines) for applications, approvals and closings, etc., associated with the commitments:**

The USDA RD rental subsidy on 142 units will terminate at the closing of this financing. The HUD HAP contract covers 92 units and increase of 28 units from original application and REA UW. The 64 unit HUD HAP subsidies is in place and will continue after the rehab is completed. The new 28 units of project based vouchers are approved by the Housing authority at this time. The HAP has 15 years remaining.

By signing below I acknowledge that the amounts and terms of all anticipated sources of funds as stated above are consistent with the assumptions of my institution as one of the providers of funds.

\_\_\_\_\_  
Signature, Authorized Representative, Construction or Permanent Lender

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

Telephone: \_\_\_\_\_

Email address: \_\_\_\_\_

If a revised form is submitted, date of submission: 6/5/2019

**From:** [Bill Fisher](#)  
**To:** [Kent Bedell](#)  
**Cc:** [Melissa R Fisher](#)  
**Subject:** FW: Memorial McAllen--Exiting the program and pre paying the 514 loan+  
**Date:** Monday, July 29, 2019 9:33:30 AM  
**Attachments:** [CFR.pdf](#)

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Provided by USDA to the partnership and housing authority. See below. It confirms the payoff and the agreed amount. The partnership has an agreement with RD documented below to pay off the existing loans and advances subject to TDHCA approval of the material amendment.

There is little doubt the deal complies with at risk.

Thanks

Bill

James R. (Bill) Fisher  
Sonoma Housing Advisors, LLC  
16800 Dallas Parkway  
Suite 215  
Dallas, TX 75248  
972-701-5551  
214-608-7201 Cell  
[Bill.fisher@sonomaadvisors.com](mailto:Bill.fisher@sonomaadvisors.com)  
[Bfisher8@airmail.net](mailto:Bfisher8@airmail.net)

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**From:** Bell, Jonathan - RD, Temple, TX <[jonathan.bell@usda.gov](mailto:jonathan.bell@usda.gov)>  
**Sent:** Thursday, May 30, 2019 2:59 PM  
**To:** Price, Richard <[RPRICE@nixonpeabody.com](mailto:RPRICE@nixonpeabody.com)>  
**Cc:** Bill Fisher <[Bill.Fisher@sonomaadvisors.com](mailto:Bill.Fisher@sonomaadvisors.com)>; Resnik, Michael - RD, Washington, DC <[michael.resnik@usda.gov](mailto:michael.resnik@usda.gov)>; Ayers, Amanda - RD, Temple, TX <[amanda.ayers@usda.gov](mailto:amanda.ayers@usda.gov)>  
**Subject:** RE: Memorial McAllen--Exiting the program and pre paying the 514 loan+

Richard,

The RUC will apply to all of the current residents at the time of acceptance of the payment.

In regards to the rent increase questions, please see 3560.662 and 3560.663, "Post-payment responsibilities for loans subject to continued restrictive-use provisions."

These regulations should answer your questions. I have also attached them for your convenience.  
Thanks.

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**From:** Price, Richard <[RPRICE@nixonpeabody.com](mailto:RPRICE@nixonpeabody.com)>

**Sent:** Tuesday, May 28, 2019 2:48 PM

**To:** Bell, Jonathan - RD, Temple, TX <[jonathan.bell@usda.gov](mailto:jonathan.bell@usda.gov)>

**Cc:** Bill Fisher <[Bill.Fisher@sonomaadvisors.com](mailto:Bill.Fisher@sonomaadvisors.com)>; Resnik, Michael - RD, Washington, DC <[michael.resnik@usda.gov](mailto:michael.resnik@usda.gov)>; Ayers, Amanda - RD, Temple, TX <[amanda.ayers@usda.gov](mailto:amanda.ayers@usda.gov)>

**Subject:** Re: Memorial McAllen--Exiting the program and pre paying the 514 loan+

Thanks. The only additional questions relate to the RUC, just so we are completely clear— the RUC applies to all current residents at time of acceptance of payment?

—assuming the residents will be there for many years, how will rent increases be handled for the Section 8 units/residents? How for the non-section 8 units/residents?

Please note there are no plans other than preserve and protect these residents but we just want to be able to identify all procedures to the Board.

Richard Michael Price  
Nixon Peabody, LLP

On May 28, 2019, at 3:36 PM, Bell, Jonathan - RD, Temple, TX <[jonathan.bell@usda.gov](mailto:jonathan.bell@usda.gov)> wrote:

Good Afternoon,

Thank you for your emails. For everyone's information and for the record, there are currently 142 units of RA and 64 HUD vouchers at Memorial Apartments. The total number of units is 246. As of 5/1/2019, there are 18 units of unused RA.

So that it is clear to all parties, please confirm the following:

1. The housing authority agrees to execute Attachment 15-E-2, "RESTRICTIVE USE COVENANT - THE LAST EXISTING TENANT" as a condition of the payoff.
2. The housing authority will re-direct 28 additional HUD vouchers to Memorial Apartments which will be added to the existing 64 HUD vouchers for a total of 92 HUD vouchers at Memorial Apartments. The housing authority has applied and will continue to apply for HUD relocation vouchers, which the residents can use to replace lost RD subsidy.
  - a. By what date will the 28 HUD vouchers be available at Memorial Apartments?
3. Memorial Apartments will establish an additional tenant protection reserve account to protect the existing tenants from rent increases.
  - a. Please provide additional information on how you will compute the amount of funds that will need to be deposited into this account and what the total amount will be.
4. The housing authority agrees to pay the total outstanding Section 514 loan in full plus \$3,665,000 towards the outstanding grants as part of a compromise offer.

The total outstanding balance of the Section 514 loan as of today is:  
\$690,263.31.

5. The housing authority will provide the Agency with a copy of the amendment that will be filed with TDHCA to amend their tax credit application.
  - a. When will the amendment be filed by and when with the housing authority receive confirmation from TDHCA that the amendment is acceptable?

The Agency confirms that if the payoff of the loans and grants do occur, Memorial Apartments will no longer be in our program and no transfer application package would need to be resubmitted.

From the appraisal that you provided as part of your application, the As-Is Market Value, Subject to Restricted Rents is \$3,665,000. I see no value on the appraisal that has \$3,300,000.

Once the Agency receives an adequate response to our email above, we will issue an acceleration notice to the owner. Once the acceleration notice has been issued, the owner will need to submit a formal request outlining exactly what they are proposing and an executed 3560-1, requesting consent from the Agency.

Please let us know if you have any questions. After we receive a response to our email above, we can schedule another call to discuss the final details if you think it is needed. Thanks.

---

**From:** Bill Fisher <[Bill.Fisher@sonomaadvisors.com](mailto:Bill.Fisher@sonomaadvisors.com)>

**Sent:** Sunday, May 26, 2019 10:46 AM

**To:** Bell, Jonathan - RD, Temple, TX <[jonathan.bell@usda.gov](mailto:jonathan.bell@usda.gov)>

**Cc:** 'Price, Richard' <[RPRICE@nixonpeabody.com](mailto:RPRICE@nixonpeabody.com)>; Resnik, Michael - RD, Washington, DC <[michael.resnik@usda.gov](mailto:michael.resnik@usda.gov)>; Ayers, Amanda - RD, Temple, TX <[amanda.ayers@usda.gov](mailto:amanda.ayers@usda.gov)>

**Subject:** RE: Memorial McAllen--Exiting the program and pre paying the 514 loan+

RD,

I am advised that the prior offer discussed with RD was to repay the 514 loan with interest PLUS the value of the property. The current appraisal you have it \$3.3MM not \$3.6MM. But I can make it work financially at the previously discussed numbers. So the current proposal is amended to the amount of the 514 loan with accrued and unpaid interest in full (Presume to be \$740K) PLUS the value of the property previously discussed to pay on the grants for \$3.6MM. New 2019 tax credit rents and lower market interest rates allow for the extra above the AS IS AS Restricted appraisal.

I was not looking to change what had been discussed previously. I hope this corrects

that issue. Sorry for the mistake.

Thank you

Bill

---

**From:** Bill Fisher

**Sent:** Friday, May 24, 2019 7:25 PM

**To:** 'Bell, Jonathan - RD, Temple, TX' <[jonathan.bell@usda.gov](mailto:jonathan.bell@usda.gov)>

**Cc:** Price, Richard <[RPRICE@nixonpeabody.com](mailto:RPRICE@nixonpeabody.com)>; Resnik, Michael - RD, Washington, DC <[michael.resnik@usda.gov](mailto:michael.resnik@usda.gov)>; Ayers, Amanda - RD, Temple, TX <[amanda.ayers@usda.gov](mailto:amanda.ayers@usda.gov)>

**Subject:** RE: Memorial McAllen--Exiting the program and pre paying the 514 loan+

USDA RD,

Regarding the restrictive covenant recorded on the land. I understand it is tied to the existing residents at the time of the pay off and remains until the last resident vacates or is provided a HUD voucher. It will only be released when RD verifies full and complete compliance with the agreement subject to a written request from the Housing Authority.

In follow up to the housing authority process. They have 64 project based vouchers they are deploying on the property now. As those HUD units vacant the voucher will be assigned to the RD units to insure the most needy households have a subsidy replacement from HUD. In addition the HCHA has up to 28 discretionary vouchers they will request HUD allows them allocate for this same purpose. So over a reasonable time period 92 project based section vouchers will be deployed to meet the no displacement obligation to RD and the residents at the time of the payoff.

In addition, the partnership and HCHA financing plan will set aside additional reserves to be used to support residents until the units turn through move outs initiated solely by the residents. We based our reserve off of the current monthly subsidy if it stayed the same for up to 10 full years. The plan is to apply and continue to apply even post payoff for "HUD relocation vouchers" the residents can use to replace lost RD subsidy as soon as possible. We understand in the interim the RD residents cannot be displaced nor rent burdens changed except as called for in the RD rules at the normal income recertifications under your rules, as amended.

I have been instructed to prepare and submit by June, a material amendment to TDHCA to address this change in the financing plan. Once that is submitted, I will provide your office a copy. We will also file with you to repay the loan and the grants to an agreed amount.

I will need you to confirm for TDHCA that there is no longer a requirement for a

transfer package because we are only pursuing exiting the program under a note acceleration. We do understand everything we do is subject to USDA RD approval which you are not guaranteeing but may support. TDHCA will be looking for the no transfer package confirmation by close in June 2019.

I am not asking you to do anything with them until you have all the required paperwork and it is being processed. We understand from our calls, a transfer package as we have structured the transaction originally, is not approvable under current regulations and statute in your view.

The housing authority is offering to pay of the existing 514 loan and all interest due with the acceleration of the loan. With the fair market value of the property per the AS IS AS Restricted valuation appraisal as the pay-off of the grants; +-\$3.3MM.

The loan prepayment and the grant payment in total will all be based upon this appraised value of +-\$3.3MM. I am using this in the submission to TDHCA until RD advises otherwise. Again, we understand this value is going to be subject to review and approval by RD in their discretion.

I want be clear that the Board of the Housing authority, their staff and the Executive Director understand how important it is to protect the RD residents in place until they leave of their volition. HCHA understands the covenant they are entering into and intend to honor it fully back with verifiable resources.

I will get with Richard Price next week to get the RD paperwork you need to move this process forward. Your consideration is appreciated.

Have a nice holiday. Thank you

Bill

James R. (Bill) Fisher  
Sonoma Housing Advisors, LLC  
16800 Dallas Parkway  
Suite 215  
Dallas, TX 75248  
972-701-5551  
214-608-7201 Cell  
[Bill.fisher@sonomaadvisors.com](mailto:Bill.fisher@sonomaadvisors.com)  
[Bfisher8@airmail.net](mailto:Bfisher8@airmail.net)

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**From:** Bell, Jonathan - RD, Temple, TX <[jonathan.bell@usda.gov](mailto:jonathan.bell@usda.gov)>  
**Sent:** Friday, May 24, 2019 8:30 AM  
**To:** Bill Fisher <[Bill.Fisher@sonomaadvisors.com](mailto:Bill.Fisher@sonomaadvisors.com)>  
**Cc:** Price, Richard <[RPRICE@nixonpeabody.com](mailto:RPRICE@nixonpeabody.com)>; Resnik, Michael - RD, Washington, DC <[michael.resnik@usda.gov](mailto:michael.resnik@usda.gov)>; Ayers, Amanda - RD, Temple, TX <[amanda.ayers@usda.gov](mailto:amanda.ayers@usda.gov)>  
**Subject:** RE: Memorial McAllen--Exiting the program and pre paying the 514 loan+

Attached is the RUC that we discussed during our phone call that will need be executed as part of the payoff.

---

**From:** Bill Fisher <[Bill.Fisher@sonomaadvisors.com](mailto:Bill.Fisher@sonomaadvisors.com)>  
**Sent:** Thursday, May 23, 2019 4:43 PM  
**To:** Bell, Jonathan - RD, Temple, TX <[jonathan.bell@usda.gov](mailto:jonathan.bell@usda.gov)>  
**Cc:** Price, Richard <[RPRICE@nixonpeabody.com](mailto:RPRICE@nixonpeabody.com)>; Resnik, Michael - RD, Washington, DC <[michael.resnik@usda.gov](mailto:michael.resnik@usda.gov)>; Ayers, Amanda - RD, Temple, TX <[amanda.ayers@usda.gov](mailto:amanda.ayers@usda.gov)>  
**Subject:** Re: Memorial McAllen--Exiting the program and pre paying the 514 loan+

You will be updated in writing tomorrow. It is everyone's intent to execute as discussed specifically including protect of the residents in place. You mentioned 20 years. The HTC primary period is 15. Is 20 all USDA can consider? Or just make a usda proposal on that protection timeline?

Thanks

Bill

Sent from my iPhone

On May 23, 2019, at 3:39 PM, Bell, Jonathan - RD, Temple, TX <[jonathan.bell@usda.gov](mailto:jonathan.bell@usda.gov)> wrote:

I am following up on this again regarding our phone call on 5/10/19. We discussed that you would have a response back to us by the middle of last week. Thank you.

---

**From:** Price, Richard <[RPRICE@nixonpeabody.com](mailto:RPRICE@nixonpeabody.com)>  
**Sent:** Friday, May 17, 2019 9:26 AM  
**To:** Bell, Jonathan - RD, Temple, TX <[jonathan.bell@usda.gov](mailto:jonathan.bell@usda.gov)>  
**Cc:** Bill Fisher <[Bill.Fisher@sonomaadvisors.com](mailto:Bill.Fisher@sonomaadvisors.com)>; Resnik, Michael - RD, Washington, DC <[michael.resnik@usda.gov](mailto:michael.resnik@usda.gov)>; Ayers, Amanda - RD, Temple, TX <[amanda.ayers@usda.gov](mailto:amanda.ayers@usda.gov)>  
**Subject:** Re: Memorial McAllen--Exiting the program and pre paying the 514 loan+

Thank you, will defer to Bill but will say had a good call this week with client and they were getting approval from the board.

Sent from my iPhone

On May 16, 2019, at 4:40 PM, Bell, Jonathan - RD, Temple, TX <[jonathan.bell@usda.gov](mailto:jonathan.bell@usda.gov)> wrote:

I wanted to follow up with you regarding our phone call on 5/10/19. We discussed that you would have a response back to us by the middle of this week. Thank you.

---

**From:** Price, Richard <[RPRICE@nixonpeabody.com](mailto:RPRICE@nixonpeabody.com)>  
**Sent:** Monday, May 6, 2019 1:36 PM  
**To:** Bell, Jonathan - RD, Temple, TX <[jonathan.bell@usda.gov](mailto:jonathan.bell@usda.gov)>  
**Cc:** 'doram@hidalgocha.org' <[doram@hidalgocha.org](mailto:doram@hidalgocha.org)>; 'Melissa R Fisher' <[mfisher@rise-residential.com](mailto:mfisher@rise-residential.com)>; Resnik, Michael - RD, Washington, DC <[michael.resnik@usda.gov](mailto:michael.resnik@usda.gov)>; Bill Fisher <[Bill.Fisher@sonomaadvisors.com](mailto:Bill.Fisher@sonomaadvisors.com)>; Ayers, Amanda - RD, Temple, TX <[amanda.ayers@usda.gov](mailto:amanda.ayers@usda.gov)>  
**Subject:** RE: Memorial McAllen--Exiting the program and pre paying the 514 loan+

Thanks much, yes that works.

<[image003.jpg](#)>

**Richard Michael Price**  
Partner  
[rprice@nixonpeabody.com](mailto:rprice@nixonpeabody.com)  
T 202-585-8716 | C 202-288-6137 | F  
866-947-3798  
Nixon Peabody LLP | 799 9th Street NW  
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5327  
[nixonpeabody.com](http://nixonpeabody.com) |  
[@NixonPeabodyLLP](#)

<[image004.jpg](#)>

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dynamic industry, from Nixon  
Peabody's leading Affordable  
Housing team.

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---

**From:** Bell, Jonathan - RD, Temple, TX  
<[jonathan.bell@usda.gov](mailto:jonathan.bell@usda.gov)>  
**Sent:** Monday, May 6, 2019 2:30 PM  
**To:** Price, Richard <[RPRICE@nixonpeabody.com](mailto:RPRICE@nixonpeabody.com)>  
**Cc:** 'doram@hidalgocha.org' <[doram@hidalgocha.org](mailto:doram@hidalgocha.org)>;  
'Melissa R Fisher' <[mfisher@rise-residential.com](mailto:mfisher@rise-residential.com)>; Resnik,  
Michael - RD, Washington, DC <[michael.resnik@usda.gov](mailto:michael.resnik@usda.gov)>;  
Bill Fisher <[Bill.Fisher@sonomaadvisors.com](mailto:Bill.Fisher@sonomaadvisors.com)>; Ayers,  
Amanda - RD, Temple, TX <[amanda.ayers@usda.gov](mailto:amanda.ayers@usda.gov)>  
**Subject:** RE: Memorial McAllen--Exiting the program and pre  
paying the 514 loan+

Ok, does 10 am CST on Friday (5/10) work for you?

---

**From:** Price, Richard <[RPRICE@nixonpeabody.com](mailto:RPRICE@nixonpeabody.com)>  
**Sent:** Monday, May 6, 2019 10:57 AM  
**To:** Bell, Jonathan - RD, Temple, TX  
<[jonathan.bell@usda.gov](mailto:jonathan.bell@usda.gov)>  
**Cc:** 'doram@hidalgocha.org' <[doram@hidalgocha.org](mailto:doram@hidalgocha.org)>;  
'Melissa R Fisher' <[mfisher@rise-residential.com](mailto:mfisher@rise-residential.com)>; Resnik,  
Michael - RD, Washington, DC <[michael.resnik@usda.gov](mailto:michael.resnik@usda.gov)>;  
Bill Fisher <[Bill.Fisher@sonomaadvisors.com](mailto:Bill.Fisher@sonomaadvisors.com)>; Ayers,  
Amanda - RD, Temple, TX <[amanda.ayers@usda.gov](mailto:amanda.ayers@usda.gov)>  
**Subject:** RE: Memorial McAllen--Exiting the program and pre  
paying the 514 loan+

Thanks but unfortunately, I have a matter all day Thursday  
10-12 central. Is it possible to move to Friday morning?

<[image005.jpg](#)>

**Richard Michael Price**  
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[rprice@nixonpeabody.com](mailto:rprice@nixonpeabody.com)  
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[@NixonPeabodyLLP](#)

<[image006.jpg](#)>

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**Housing team.**

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---

**From:** Bell, Jonathan - RD, Temple, TX  
<[jonathan.bell@usda.gov](mailto:jonathan.bell@usda.gov)>  
**Sent:** Monday, May 6, 2019 11:53 AM  
**To:** Price, Richard <[RPRICE@nixonpeabody.com](mailto:RPRICE@nixonpeabody.com)>  
**Cc:** 'doram@hidalgocha.org' <[doram@hidalgocha.org](mailto:doram@hidalgocha.org)>;  
'Melissa R Fisher' <[mfisher@rise-residential.com](mailto:mfisher@rise-residential.com)>; Resnik,  
Michael - RD, Washington, DC <[michael.resnik@usda.gov](mailto:michael.resnik@usda.gov)>;  
Bill Fisher <[Bill.Fisher@sonomaadvisors.com](mailto:Bill.Fisher@sonomaadvisors.com)>; Ayers,  
Amanda - RD, Temple, TX <[amanda.ayers@usda.gov](mailto:amanda.ayers@usda.gov)>  
**Subject:** RE: Memorial McAllen--Exiting the program and pre  
paying the 514 loan+

Good Morning,

We would like to schedule a phone call with you to discuss the proposal below. We are available on Thursday, May 9<sup>th</sup> from 1 pm to 3:30 pm CST. Please let me know what time works be for you and I will send a calendar invite with call-in information. Thanks.

---

**From:** Price, Richard <[RPRICE@nixonpeabody.com](mailto:RPRICE@nixonpeabody.com)>  
**Sent:** Thursday, May 2, 2019 1:34 PM  
**To:** Bell, Jonathan - RD, Temple, TX  
<[jonathan.bell@usda.gov](mailto:jonathan.bell@usda.gov)>; Bill Fisher  
<[Bill.Fisher@sonomaadvisors.com](mailto:Bill.Fisher@sonomaadvisors.com)>; Ayers, Amanda - RD,  
Temple, TX <[amanda.ayers@usda.gov](mailto:amanda.ayers@usda.gov)>  
**Cc:** 'doram@hidalgocha.org' <[doram@hidalgocha.org](mailto:doram@hidalgocha.org)>;  
'Melissa R Fisher' <[mfisher@rise-residential.com](mailto:mfisher@rise-residential.com)>; Resnik,  
Michael - RD, Washington, DC <[michael.resnik@usda.gov](mailto:michael.resnik@usda.gov)>  
**Subject:** RE: Memorial McAllen--Exiting the program and pre  
paying the 514 loan+

Thank you.

 <[image005.jpg](#)>

**Richard Michael Price**

Partner  
[rprice@nixonpeabody.com](mailto:rprice@nixonpeabody.com)  
T 202-585-8716 | C 202-288-6137 | F  
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5327  
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[@NixonPeabodyLLP](#)

[<image006.jpg>](#)

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---

**From:** Bell, Jonathan - RD, Temple, TX

[<jonathan.bell@usda.gov>](mailto:jonathan.bell@usda.gov)

**Sent:** Thursday, May 2, 2019 12:02 PM

**To:** Bill Fisher <[Bill.Fisher@sonomaadvisors.com](mailto:Bill.Fisher@sonomaadvisors.com)>; Ayers,  
Amanda - RD, Temple, TX <[amanda.ayers@usda.gov](mailto:amanda.ayers@usda.gov)>

**Cc:** 'doram@hidalgocha.org' <[doram@hidalgocha.org](mailto:doram@hidalgocha.org)>;  
'Melissa R Fisher' <[mfisher@rise-residential.com](mailto:mfisher@rise-residential.com)>; Price,  
Richard <[RPRICE@nixonpeabody.com](mailto:RPRICE@nixonpeabody.com)>; Resnik, Michael -  
RD, Washington, DC <[michael.resnik@usda.gov](mailto:michael.resnik@usda.gov)>

**Subject:** RE: Memorial McAllen--Exiting the program and pre  
paying the 514 loan+

[EXTERNAL E-MAIL]

Good Morning,

Thank you for your email. I also received a voicemail from Richard today. We are currently reviewing the proposal you have submitted and should be able to respond by early next week. We anticipate scheduling a phone call with you to discuss the proposal in more detail and get clarification on a few items. After our phone call, we should have a well defined path for moving forward that will be acceptable to all parties. We will get in touch with you early next week to schedule the call. Thanks.

---

**From:** Bill Fisher <[Bill.Fisher@sonomaadvisors.com](mailto:Bill.Fisher@sonomaadvisors.com)>  
**Sent:** Wednesday, April 24, 2019 7:46 PM  
**To:** Bell, Jonathan - RD, Temple, TX  
<[jonathan.bell@usda.gov](mailto:jonathan.bell@usda.gov)>; Ayers, Amanda - RD, Temple, TX  
<[amanda.ayers@usda.gov](mailto:amanda.ayers@usda.gov)>  
**Cc:** 'doram@hidalgocha.org' <[doram@hidalgocha.org](mailto:doram@hidalgocha.org)>;  
'Melissa R Fisher' <[mfisher@rise-residential.com](mailto:mfisher@rise-residential.com)>; 'Price,  
Richard' <[RPRICE@nixonpeabody.com](mailto:RPRICE@nixonpeabody.com)>  
**Subject:** FW: Memorial McAllen--Exiting the program and  
pre paying the 514 loan+  
**Importance:** High

Amanda and Jonathan,

I am the development and tax credit consultant to the partnership. There appears to be a path to a financially feasible transaction using the current allocation of housing tax credits from TDHCA award in July 2018. It requires approval of TDHCA to a material amendment to the award considering the issues discussed below. Staff at TDHCA has been advised in writing of the need for an extension of the June 30, 2019 deadline for USDA approval to August 30, 2019. We are eligible for at least a 6 weeks extension related to the government shutdown that happen in late 2018 and early 2019 outside everyone's control.

To accomplish this timely will require a prepayment of the existing 514 loan. The property would then exit the USDA Farm Labor program. No additional subsidy would be required from RD post-closing. In addition, a significant payment on the prior grants will be made to USDA. That payment is based upon the payoff in full of the existing 514 loan balance with interest. Plus a payment for the appraised value of the property and improvement net of depreciation plus wear and tear. The 514 loan balance I last noted was +/- \$700K and the appraised value is \$3.6MM. I understand USDA has authority to accept an offer considering these factors including appraised value, depreciation plus current wear and tear conditions. Current Reserves would remain with the property.

An application to prepay the 514 loan and exit the program is subject to, including but not limited to, the following:

1. Approval of the Board of the Housing Authority

2. Approval of USDA on or before the new deadline, presumed to be 8-30-19
3. Closing of the financing to complete the 514 pay off and exit from the USDA program by 11/30/19. (I personally think we can close and fund within 30 days following final approvals from USDA and TDHCA.)
4. No displacement of current households served under the farm labor guidelines. A replacement, as needed, of any rental subsidy required to replace RD rental assistance for those households only. This is +/-30 of the households. The other using RD subsidy are relying on the annual waiver not because they meet the farm labor standards. The housing authority would be responsible to insure resources and or relocation for other affected households.
5. An agreement that due to current regulations and policies, the property no longer meets the mission and requirements of the Farm Labor program due to changes in the market and location of the property. Current RD policy encourages\allows a property with these fact and circumstances to exit the program. I need this regulatory policy agreement for other issues in processing the changes with TDHCA under their QAP and rules. Same issue you raised in the letter of March 12, 2019.
6. Any other requirements reasonably required by RD rules and regulations to exit the program.
7. Termination of the farm labor restrictions from the property; along with termination of all USDA rental assistance.
8. A discounted pay off of outstanding grant balances based upon the appraised value of the property net of depreciation plus wear and tear.
9. Existing reserves to remain with the property or property owner.
10. Approval of a material amendment to the tax credit award by the TDHCA Governing Board as allowed by the rules and QAP.

This approach is a result of consideration by the Owner and sponsor of your Item 29 in your letter of March 12, 2019 to TX McAllen Memorial Apartments II, LP.

Richard Price, Nixon Peabody, has been tasked with discussing the financial consideration required by USDA to allow prepayment and exiting from the program.

Please direct me to the filing requirements to submit a formal request to your office for processing.

Your help in processing a submission timely would be appreciated. Your guidance will be required to get to a successful conclusion.

Respectfully,

Bill

James R. (Bill) Fisher  
Sonoma Housing Advisors, LLC  
16812 Dallas Parkway  
Dallas, TX 75248 or

5430 LBJ Freeway, Suite 1200  
Dallas, TX 75240

972-663-9368 Office  
972-663-9301 Fax  
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[Bill.Fisher@sonomaadvisors.com](mailto:Bill.Fisher@sonomaadvisors.com)

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Rural Development

August 13, 2019

Texas State Office

101 S. Main Street  
Suite 102  
Temple, TX  
76501

Mr. Bill Fisher  
TX McAllen Memorial Apartments II, LP.  
501 E. Jasmine Street  
McAllen, TX 78521

Voice 254.742.9770  
Fax 844.496.8122

RE: TX McAllen Memorial Apartments II, LP.  
Memorial Apartments

Dear Mr. Fisher:

The e-mail attached hereto dated May 28, 2019, at 3:36 pm was sent from our office and is accurate.

The e-mail confirms the Section 514 loan payoff amount and the Section 516 grant payoff amount agreed to with the Housing Authority subject to all the conditions outlined in the e-mail. The regulations related to restrictive-use provisions and agreements and post-payment responsibilities for loans subject to continued restrictive-use provisions was also included with the e-mail. When the Housing Authority pays the Agency in full, they will no longer receive rental assistance or any other Agency benefit as the property will have exited the program. As a result of the loss of rental assistance, the restrictive use covenant is required to be recorded and an adequate tenant protection reserve account is required as a condition of the payoff in order to protect the existing tenants.

All aspects of this transaction are subject to the final financing plan and approval from the Agency and TDHCA.

If you have any questions regarding this letter, please contact Jonathan Bell, Multi-Family Housing Program Director, at (254) 742-9764.

Sincerely,

JONATHAN D. BELL  
Multi-Family Housing Program Director

Attachment to  
USDA letter

The RUC will apply to all of the current residents at the time of acceptance of the payment.

In regards to the rent increase questions, please see 3560.662 and 3560.663, "Post-payment responsibilities for loans subject to continued restrictive-use provisions."

These regulations should answer your questions. I have also attached them for your convenience. Thanks.

**From:** Price, Richard <[RPRICE@nixonpeabody.com](mailto:RPRICE@nixonpeabody.com)>

**Sent:** Tuesday, May 28, 2019 2:48 PM

**To:** Bell, Jonathan - RD, Temple, TX <[jonathan.bell@usda.gov](mailto:jonathan.bell@usda.gov)>

**Cc:** Bill Fisher <[Bill.Fisher@sonomaadvisors.com](mailto:Bill.Fisher@sonomaadvisors.com)>; Resnik, Michael - RD, Washington, DC <[michael.resnik@usda.gov](mailto:michael.resnik@usda.gov)>; Ayers, Amanda - RD, Temple, TX <[amanda.ayers@usda.gov](mailto:amanda.ayers@usda.gov)>

**Subject:** Re: Memorial McAllen--Exiting the program and pre paying the 514 loan+

Thanks. The only additional questions relate to the RUC, just so we are completely clear— the RUC applies to all current residents at time of acceptance of payment?

—assuming the residents will be there for many years, how will rent increases be handled for the Section 8 units/residents? How for the non-section 8 units/residents?

Please note there are no plans other than preserve and protect these residents but we just want to be able to identify all procedures to the Board.

Richard Michael Price  
Nixon Peabody, LLP

On May 28, 2019, at 3:36 PM, Bell, Jonathan - RD, Temple, TX <[jonathan.bell@usda.gov](mailto:jonathan.bell@usda.gov)> wrote:

Good Afternoon,

Thank you for your emails. For everyone's information and for the record, there are currently 142 units of RA and 64 HUD vouchers at Memorial Apartments. The total number of units is 246. As of 5/1/2019, there are 18 units of unused RA.

So that it is clear to all parties, please confirm the following:

1. The housing authority agrees to execute Attachment 15-E-2, "RESTRICTIVE USE COVENANT - THE LAST EXISTING TENANT" as a condition of the payoff.
2. The housing authority will re-direct 28 additional HUD vouchers to Memorial Apartments which will be added to the existing 64 HUD vouchers for a total of 92 HUD vouchers at Memorial Apartments. The housing authority has applied and will continue to apply for HUD relocation vouchers, which the residents can use to replace lost RD subsidy.



Attachment to USAH  
Letter

- a. By what date will the 28 HUD vouchers be available at Memorial Apartments?
- 3. Memorial Apartments will establish an additional tenant protection reserve account to protect the existing tenants from rent increases.
  - a. Please provide additional information on how you will compute the amount of funds that will need to be deposited into this account and what the total amount will be.
- 4. The housing authority agrees to pay the total outstanding Section 514 loan in full plus \$3,665,000 towards the outstanding grants as part of a compromise offer. The total outstanding balance of the Section 514 loan as of today is: \$690,263.31.
- 5. The housing authority will provide the Agency with a copy of the amendment that will be filed with TDHCA to amend their tax credit application.
  - a. When will the amendment be filed by and when with the housing authority receive confirmation from TDHCA that the amendment is acceptable?

The Agency confirms that if the payoff of the loans and grants do occur, Memorial Apartments will no longer be in our program and no transfer application package would need to be resubmitted.

From the appraisal that you provided as part of your application, the As-Is Market Value, Subject to Restricted Rents is \$3,665,000. I see no value on the appraisal that has \$3,300,000.

Once the Agency receives an adequate response to our email above, we will issue an acceleration notice to the owner. Once the acceleration notice has been issued, the owner will need to submit a formal request outlining exactly what they are proposing and an executed 3560-1, requesting consent from the Agency.

Please let us know if you have any questions. After we receive a response to our email above, we can schedule another call to discuss the final details if you think it is needed. Thanks.

---

**From:** Bill Fisher <[Bill.Fisher@sonomaadvisors.com](mailto:Bill.Fisher@sonomaadvisors.com)>  
**Sent:** Sunday, May 26, 2019 10:46 AM  
**To:** Bell, Jonathan - RD, Temple, TX <[jonathan.bell@usda.gov](mailto:jonathan.bell@usda.gov)>  
**Cc:** 'Price, Richard' <[RPRICE@nixonpeabody.com](mailto:RPRICE@nixonpeabody.com)>; Resnik, Michael - RD, Washington, DC <[michael.resnik@usda.gov](mailto:michael.resnik@usda.gov)>; Ayers, Amanda - RD, Temple, TX <[amanda.ayers@usda.gov](mailto:amanda.ayers@usda.gov)>  
**Subject:** RE: Memorial McAllen--Exiting the program and pre paying the 514 loan+

RD,

I am advised that the prior offer discussed with RD was to repay the 514 loan with interest PLUS the value of the property. The current appraisal you have it \$3.3MM not \$3.6MM. But I can make it work financially at the previously discussed numbers. So the current proposal is amended to the amount of the 514 loan with accrued and unpaid interest in full (Presume to be \$740K) PLUS the value of the property previously discussed



## TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

[www.tdhca.state.tx.us](http://www.tdhca.state.tx.us)

Greg Abbott  
GOVERNOR

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Leo Vasquez, *Member*

October 3, 2019

*Writer's direct dial: 512.475.3296*  
*Email: [bobby.wilkinson@tdhca.state.tx.us](mailto:bobby.wilkinson@tdhca.state.tx.us)*

John C. Shackelford, Esq.  
Shackelford, Bowen, McKinley & Norton, LLP  
9201 N. Central Expressway, Fourth Floor  
Dallas, TX 75231  
Via Email Transmission: [jshack@shackelford.law](mailto:jshack@shackelford.law)

RE: MEMORIAL APARTMENTS (THE PROJECT)  
HTC #18235

Dear Mr. Shackelford:

The Texas Department of Housing and Community Affairs (the Department) received your letters as of August 21, 2019, September 24, 2019, and October 1, 2019, setting forth the position of TX McAllen Memorial Apartments II, LP (the Partnership) with regard to whether the Project satisfies requirements of being an "at-risk" development pursuant to Tex. Gov't Code §2306.6702(a)(5)(A).

In your letter of September 24, 2019, you ask the Department to clarify "what caused the Department to change the Department's position in 2018 that the Project satisfied" the requirements of being an "at-risk" development. The short answer is that it was never the Department's conclusion that the Application (<https://www.tdhca.state.tx.us/multifamily/docs/imaged/2018challenges/18235.pdf>) satisfied the statutory and rule requirements of being an "at-risk" development.

Tex. Gov't Code §2306.111(d-2) describes the USDA set aside addressed by this Application, which sought an award to rehabilitate an existing development with a USDA loan and ongoing affordability restrictions. As is stated in this subsection, "[a]ny funds allocated to developments under this subsection that involve rehabilitation must come from the funds set aside for at-risk developments under Section 2306.6714." (Emphasis added). Accordingly, the statute requires that credit awards for this USDA set aside application would "come from" the amounts in the at-risk set aside, but that doesn't mean that applications for rehabilitation submitted under the USDA set aside would be evaluated under the different rule and statutory criteria for at-risk developments.



Indeed, there are check boxes on the Application that are under both the USDA and At-Risk set asides, wherein the Applicant confirms that it is "applying for the above-stated Set-Aside(s) and Allocations." For the reason stated, above, this is not unusual as this Application was seeking an award in the USDA set aside that would "come from" (i.e. be allocated from) the at-risk set aside. More relevant is that the Application contained no information or statement that the stipulation to maintain affordability was nearing expiration (under 10 TAC §11.5(3)(B)(ii): expiration would occur within 2 calendar years of July 31, 2018); and no evidence of a HUD mortgage that was eligible for pre-payment, and no evidence of an impending loss of affordability. The Application at p.218 clearly shows that the Applicant selected neither of these required elements to fulfill the at-risk definition elements. Yet, there are a number of other references in the Application that clearly illustrate that the award being sought was under the USDA set aside, and was expected to continue as a USDA property, including, most pointedly, on p. 219 of the Application, that the existing Property will have and continue to have USDA rental assistance.

Additionally, your October 1<sup>st</sup> letter points to a claimed inaccuracy in the Board Action Request drafted by the Department with respect to the Department's awareness, prior to the 2018 HTC award, of the anticipated prepayment of the 514 loan. Your letter indicates the Application Summary prepared by the Department is replete with several instances in which it was fully known by the Department prior to the 2018 HTC award that the owner intended to obtain new financing and for the 514 loan to be prepaid. It is the Department's position that, while prepayment of the 514 loan was considered by the Applicant prior to the 2018 HTC award, there was no indication in the Application that prepayment of the 514 loan would be approved by USDA or that all USDA assistance was anticipated to be removed from the transaction, and there was no indication in the Application as to how the Project would qualify as "at-risk" without being in the USDA Set-Aside.

I hope this clears up any confusion on the subject. Your August 21<sup>st</sup>, September 24<sup>th</sup>, and October 1<sup>st</sup> letters, and related materials including this letter, will be placed in the board materials for the October 10<sup>th</sup> meeting.

Sincerely,



Bobby Wilkinson  
Executive Director

BW/rb

cc: Beau Eccles, Esq. (via email)  
Marni Holloway (via email)  
Sharon Gamble (via email)  
Homero Cabello, Jr. (via email)  
Brent Stewart (via email)  
Kent Bedell (via email)  
Rosario Banuelos (via email)  
Melissa Fisher (via email)  
Bill Fisher (via email)  
Michelle Snedden, Esq. (via email)



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(214) 780-1401 (Fax)  
jshack@shackelford.law

October 1, 2019

**Via Email: bobby.wilkinson@tdhca.state.tx.us**

Bobby Wilkinson, Executive Director  
Texas Department of Housing and Community Affairs  
221 East 11th Street  
Austin, Texas 78701-2410

RE: Memorial Apartments, McAllen, Texas (the "Project");  
Your File No. 18235  
Our File No. 51718.2

Dear Mr. Wilkinson:

This letter is to further supplement the letter I sent to Marni Holloway on August 21, 2019 (the "Prior Letter") setting forth the position of TX McAllen Memorial Apartments II, LP (the "Partnership"), with regard to whether the Project satisfies requirements of being an "at-risk" development pursuant to Texas Government Code §2306.6702(a)(5)(A) (the "Statute"). I respectfully request that this letter be a part of the Board materials for the Board meeting scheduled on Thursday, October 10, 2019. The focus of this letter is to point out the inaccuracy in the Board Action Request drafted by the Department with respect to this matter.

For instance, in the fifth recital under the heading Recommended Action, it states, "WHEREAS, the prepayment structure was presented to staff after the 2018 HTC award when USDA did not accept the ground lease structure." As provided to you and the Department in my letter to you dated September 24, 2019, I attached as Exhibit "B" the Application Summary prepared by the Department. It is replete with several instances in which it was fully known by the Department prior to the 2018 HTC award that the owner intended to obtain new financing and for the 514 Loan (as defined in the Prior Letter) to be prepaid. One of many instances where it is noted in the Application Summary is on page 14 where it states the following: "The Applicant states that at closing the debt 'would be repaid to zero for a minimum amount necessary to insure they have maturing debt under the at-risk rules.' It is unclear why the Applicant would choose to use market rate debt to pay off existing debt with an interest rate subsidy. It is also unclear that USDA will permit the existing 514 debt to be retired." It is inexplicable why the Department is taking the position that the prepayment of the 514 Loan was not discussed and was not made known to the Department when the Application Summary clearly makes reference to the payment of the 514 Loan.

I could point out several other places in the Application Summary, but they would be merely duplicative of what I've already pointed out. I will leave it to you to look back through the

Bobby Wilkinson  
October 1, 2019  
Page 2

Application Summary where I highlighted in each instance where the applicant filed the Application (as defined in the Prior Letter) under both the USDA and At-Risk set aside and where the applicant contemplated obtaining a new loan from IBC to replace the current 514 Loan. It should also be noted that the same concept is discussed in the 9<sup>th</sup> recital where it says, "WHEREAS, if the Application had indicated the USDA 514 loan would be prepaid, this Development would not qualify under the USDA set-aside and the Application would not be eligible under the At-Risk Set Aside." For the reason stated above, this statement is incorrect.

The same type of language is also found in the Background section of the Board Action Request and for the reasons stated above such language is also incorrect.

In response to the Board Action Request, it is, again, our position that the Project (1) currently is encumbered with a 514 Loan with rental subsidy and subject to affordability restrictions filed against the Project; (2) the rental subsidy will continue until 2040 if the owner of the Project does not prepay the 514 Loan prior to that time; (3) the USDA has advised owner that it has right to prepay the 514 Loan; (4) if the 514 Loan may be prepaid, then the 514 Loan and the attendant rental subsidy is nearing expiration; (5) the expiration of the 514 Loan and the rental subsidy would occur within two years from when the 2018 HTC award was made; and (6) the Project therefore qualifies as an At-Risk set aside development pursuant to the Statute.

Thank you for your attention to this matter and if you should have questions, please feel free to contact me.

Very truly yours,

A handwritten signature in black ink that reads "John C. Shackelford" followed by a stylized flourish or initials "Ker".

John C. Shackelford

JCS/klm

cc: Beau Eccles, Esq (via email)  
Marni Holloway (via email)  
Sharon Gamble (via email)  
Homero Cabello, Jr. (via email)  
Brent Stewart (via email)  
Kent Bedell (via email)  
Rosalio Banuelos (via email)  
Melissa Fisher (via email)  
Bill Fisher (via email)  
Michelle Snedden, Esq. (of the Firm)



A LIMITED LIABILITY PARTNERSHIP  
ATTORNEYS & COUNSELORS

**John C. Shackelford**  
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Fourth Floor  
Dallas, Texas 75231  
(214) 780-1400 (Main)  
(214) 780-1414 (Direct)  
(214) 780-1401 (Fax)  
jshack@shackelford.law

September 24, 2019

**Via Email: bobby.wilkinson@tdhca.state.tx.us**

Bobby Wilkinson, Executive Director  
Texas Department of Housing and Community Affairs  
221 East 11th Street  
Austin, Texas 78701-2410

RE: Memorial Apartments, McAllen, Texas (the "Project");  
Your File No. 18235  
Our File No. 51718.2

Dear Mr. Wilkinson:

This letter is to supplement the letter I sent to Marni Holloway on August 21, 2019 (the "Prior Letter") setting forth the position of TX McAllen Memorial II Apartments, LP (the "Partnership"), with regard to whether the Project satisfies the requirements of being an "at-risk" development pursuant to Texas Gov't Code §2306.6702(a)(5)(A) (the "Statute"). I respectfully request that this letter and the materials included with this letter be a part of the Board materials for the Board meeting scheduled on Thursday, October 10, 2019.

As you know, the Prior Letter sets forth the legal basis upon which the Partnership claims the Project satisfies the at-risk requirements of the Statute. In addition to the legal argument, the purpose of this letter is to provide additional background information and to request a response for clarification regarding what caused the Department to change the Department's position in 2018 that the Project satisfied the Statute to now questioning that decision.

For instance, when Melissa Fisher, Manager of TX McAllen Memorial Apartments II GP, LLC, the general partner of the Partnership, filed the application (the "Application") in 2018 for the Project to receive an allocation of tax credits, the Application included a page which clearly states the applicant was applying under both the USDA and At-Risk set asides. This page is included as Exhibit "A." I also submit the internal Application Summary for the Project prepared by the Department which also clearly shows that the Department was indeed aware of the Application applying under the At-Risk set aside and that the Partnership intended to prepay in full the current United States Department of Agriculture below-market interest rate loan (the "514 Loan") with rental subsidy under §514 of the Housing Act of 1949. The relevant information in the Application Summary is highlighted for your convenience, and the Application Summary is included as Exhibit "B."

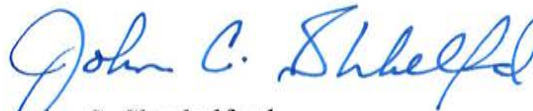
In addition, there is email communication between Ms. Fisher and Sharon Gamble on Monday, July 2, 2018, regarding the Project scoring well enough to receive an allocation in the At-Risk set aside. A copy of such email communication is included herein as Exhibit "C". Lastly, there is an email exchange between Bill Fisher and Brent Stewart on Wednesday, July 25, 2018, in which Mr. Fisher advised Mr. Stewart that the 514 Loan is prepayable. This email communication between Mr. Fisher and Mr. Stewart is included herein as Exhibit "D".

The intent behind providing you and the Board with this material is to show that neither Ms. Fisher nor Mr. Fisher misled the Department about the Application seeking an allocation of tax credits under either the USDA or the At-Risk set aside and that the Department was very aware of the Partnership's plan to fully prepay the 514 Loan. At no time prior to the allocation of the tax credits in July, 2018 did anyone from the Department raise their hand and say the Project fails to qualify under the at-risk rules of the Statute because the 514 Loan is not expiring under the Statute. Note: To reiterate, our position is that the 514 Loan is expiring due to the right to prepay it. See the Prior Letter.

The evidence fully supports the proposition that the Department knew of the proposed prepayment of the 514 Loan, knew the Partnership applied under the At-Risk set aside, ostensibly determined the Project qualifies as an at-risk development under the Statute, and approved the Application for an allocation of tax credits to the Project under the At-Risk set-aside. We are perplexed that now over a year later this issue is coming to a head because of an inexplicable revision of the Department's position post-award. Please help us understand why there is an issue at this time.

I look forward to your response.

Very truly yours,



John C. Shackelford

JCS/klm

cc: Beau Eccles, Esq (via email)  
Marni Holloway (via email)  
Sharon Gamble (via email)  
Homero Cabello, Jr. (via email)  
Brent Stewart (via email)  
Kent Bedell (via email)  
Rosalio Banuelos (via email)  
Melissa Fisher (via email)  
Bill Fisher (via email)  
Michelle Snedden, Esq. (of the Firm)

**5. Funding Request:**

Complete the table below to describe this Application's funding request. If applying for Multifamily Direct Loan funds, please select only one type of loan.

Department Funds applying for with this Application	Requested Amount	If funds will be in the form of a Direct Loan by the Department or for Private Activity Bonds, the terms will be:		
		Interest Rate (%)	Amortization (Years)	Permanent Term (Years)
<a href="#">Multifamily Direct Loan: Const. to Perm. (Repayable)</a>			30	
<a href="#">Multifamily Direct Loan: Construction Only (Repayable)</a>				
<a href="#">Multifamily Direct Loan: Const. to Perm. (Soft Repayable)</a>		0.00%		
CHDO Operating Expenses Grant				
<a href="#">Housing Tax Credits</a>	\$ 1,915,000			
<a href="#">Private Activity Mortgage Revenue</a>				

**6. §11.5 - Set-Aside (For Competitive HTC & Multifamily Direct Loan Applications Only)**

Identify any and all set-asides the application will be applying under with an "x".  
Set-Asides can not be added or dropped from pre-application to full Application for Competitive HTC Applications.

Competitive HTC Only				Multifamily Direct Loan Only			
At-Risk	Nonprofit	USDA		CHDO	SH/SR		
x		x					

By selecting the set-aside above, I, individually or as the general partner(s) or officers of the Applicant entity, confirm that I (we) are applying for the above-stated Set-Aside(s) and Allocations. To the best of my (our) knowledge and belief, the Applicant entity has met the requirements that make this Application eligible for this (these) Set-Aside(s) and Allocations and will adhere to all requirements and eligibility standards for the selected Set-Aside(s) and Allocations.

**7. Previously Awarded State and Federal Funding**

Has this site/activity previously applied for TDHCA funds? Yes

Has this site/activity previously received TDHCA funds? No

If "Yes" Enter Project Number: \_\_\_\_\_ and TDHCA funding source: \_\_\_\_\_

Has this site/activity previously received non-TDHCA federal funding? Yes

If yes, source: USDA, SECTION 8

Will this site/activity receive non-TDHCA federal funding for costs described in this Application? No

**8. Qualified Low Income Housing Development Election (HTC Applications only)**

Pursuant to §42(g)(1)(A) & (B), the term "qualified low income housing development" means any project or residential rental property, if the Development meets one of the requirements below, whichever is elected by the taxpayer." Once an election is made, it is irrevocable. Select only one:

- At least 20% or more of the residential units in such development are both rent restricted and occupied by individuals whose income is 50% or less of the area median gross income, adjusted for family size.
- At least 40% or more of the residential units in such development are both rent restricted and occupied by individuals whose income is 60% or less of the median gross income, adjusted for family size.

If a revised form is submitted, date of submission: \_\_\_\_\_

# EXHIBIT A




DEBT (Must Pay)					CASH FLOW DEBT / GRANT FUNDS					EQUITY / DEFERRED FEES	
Source	Term	Rate	Amount	DCR	Source	Term	Rate	Amount	DCR	Source	Amount
IBC-USDA 538 Perm Loan	10/40	4.50%	\$4,540,000	1.02				\$3,000,000		42 Equity or other investor	\$16,174,340
					City of McAllen	0/0	0.00%	\$2,500	1.02	<b>TOTAL EQUITY SOURCES</b>	<b>\$16,174,340</b>
<b>TOTAL DEBT (Must Pay)</b>			<b>\$4,540,000</b>		<b>CASH FLOW DEBT / GRANTS</b>			<b>\$3,002,500</b>		<b>TOTAL DEBT SOURCES</b>	<b>\$7,542,500</b>
<b>TOTAL CAPITALIZATION</b>											<b>\$23,716,840</b>

**CONDITIONS**

- 1 Receipt and acceptance by Commitment
  - a: Pursuant to §10.402(d)(7), a letter from Applicant's Attorney, "...identifying the statutory basis for the [property tax] exemption and indicating that the exemption is reasonably achievable, subject to appraisal district review" and USDA's preliminary review.
- 2 Receipt and acceptance by Carryover:
  - a: Term sheet for permanent debt with updated amount, rate, terms and conditions, and specifying a minimum 15-year maturity
  - b: Confirmation from USDA that the existing USDA 514 debt can be retired; or, confirmation from USDA that the existing USDA 514 debt can be cash-collateralized in the way indicated by the Applicant; or, revised application exhibits that present a feasible project including debt service on the existing USDA 514 debt.
  - c: Commitment for Seller Note clearly stating amount and all terms and conditions.
  - d: Revised site plan that clearly delineates the size & location of pool, playgrounds, and sports courts.
- 3 Receipt and acceptance by 10% test:
  - a: USDA formal Letter of Approval with Conditions of Approval and Closing, including:
    - i. USDA approval of ground lease ownership structure, and
    - ii. Approved rents sufficient to produce 1.00x first-year debt coverage, and
    - iii. USDA reserve requirements, and
    - iv. Confirmation that all existing debt against the property will be retired, or
    - v. Rates and terms of the proposed transfer of existing debt, and
    - vi. Loan Agreement that documents assumed debt balance
  - b: Settlement Statement that documents actual transfer price
  - c: Substantially final draft of limited partnership agreement.
  - d: Substantially final construction contract with Schedule of Values.
  - e: Most current annual operating statement
- 4 Receipt and acceptance by Cost Certification:
  - a: Certification of comprehensive testing for asbestos; that any appropriate abatement procedures were implemented by a qualified abatement company; and that any remaining asbestos-containing materials are being managed in accordance with an acceptable Operations and Maintenance (O&M) program.
  - b: Certification from Appraisal District that the property qualifies for property tax exemption.

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

<b>RISK PROFILE</b>	
<b>STRENGTHS/MITIGATING FACTORS</b>	
▪	Rental Assistance covers 206 out of 246 units
▪	All HTC projects within the PMA reported waiting lists, including subject property.
▪	HAP Contract valid until at least May, 2033
▪	Adjacent to 9 acre public park on same block
<b>WEAKNESSES/RISKS</b>	
▪	Feasibility indicators (Debt Coverage Ratio < 1.15, Expense Ratio > 65%, negative cash-flow)
▪	Feasibility is dependent on property tax exemption which depends on a ground lease ownership structure that, historically, USDA has not approved.
▪	Permanent Loan is callable starting Year 10.
<b>AREA MAP</b>	
	



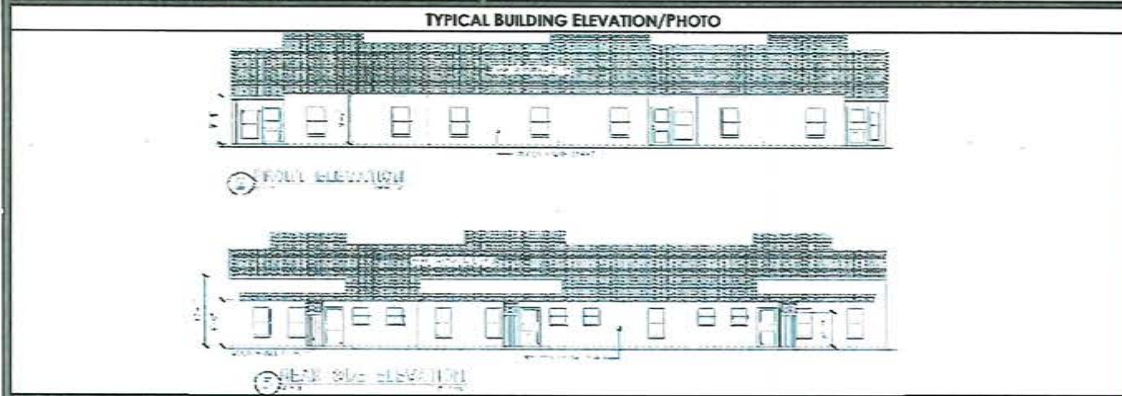
# 18235 McAllen Memorial Apartments II - Application Summary

REAL ESTATE ANALYSIS DIVISION  
July 23, 2018

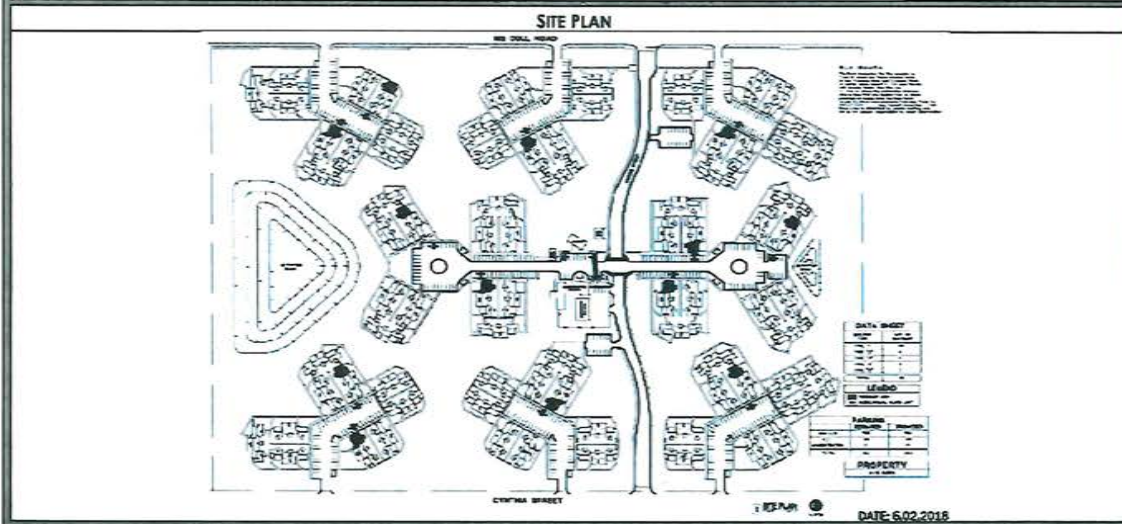
PROPERTY IDENTIFICATION	
Application #	18235
Development	McAllen Memorial Apartments II
City / County	McAllen / Hidalgo
Region/Area	11 / Urban
Population	General
Set-Aside	USDA/A1-Risk
Activity	Acquisition/Rehab (Built in 1975)

RECOMMENDATION			
TDHCA Program	Request	Recommended	
LIHTC (9% Credit)	\$1,915,000	\$1,883,683	\$7,657/Unit \$0.86

KEY PRINCIPAL / SPONSOR		
Sonoma Housing Advisors - Bill Fisher & Rise Residential - Melissa Fisher		
Related Parties	Contractor - Yes	Seller - Yes



UNIT DISTRIBUTION			INCOME DISTRIBUTION		
# Beds	# Units	% Total	Income	# Units	% Total
Eff	-	0%	30%	53	22%
1	-	0%	40%	-	0%
2	82	33%	50%	107	43%
3	164	67%	60%	86	35%
4	-	0%	MR	-	0%
<b>TOTAL</b>	<b>246</b>	<b>100%</b>	<b>TOTAL</b>	<b>246</b>	<b>100%</b>



PRO FORMA FEASIBILITY INDICATORS			
Pro Forma Underwritten		TDHCA's Pro Forma	
Debt Coverage	1.02	Expense Ratio	78.5%
Breakeven Occ.	92.1%	Breakeven Rent	\$443
Average Rent	\$445	B/E Rent Margin	\$2
Property Taxes	Exempt	Exemption/PILOT	100%
Total Expense	\$4,046/unit	Controllable	\$3,135/unit

MARKET FEASIBILITY INDICATORS			
Gross Capture Rate (10% Maximum)	3.5%		
Highest Unit Capture Rate	17%	3 BR/50%	131
Dominant Unit Cap. Rate	17%	3 BR/50%	131
Premiums (+60% Rents)	#DIV/0!	#DIV/0!	
Rent Assisted Units	206	84% Total Units	

DEVELOPMENT COST SUMMARY			
Costs Underwritten	TDHCA's Costs - Based on PCA		
Avg. Unit Size	815 SF	Density	5.2/acre
Acquisition		\$12K/unit	\$3,000K
Building Cost	\$44.31/SF	\$36K/unit	\$8,881K
Hard Cost		\$50K/unit	\$12,277K
Total Cost		\$96K/unit	\$23,717K
Developer Fee	\$2,394K	(0% Deferred)	Paid Year: 1
Contractor Fee	\$1,719K	30% Boost	Yes

REHABILITATION COSTS / UNIT			
Site Work	\$9K	19%	Finishes/Fixtures \$2K 3%
Building Shell	\$27K	55%	Amenities \$2K 4%
HVAC	\$4K	8%	Total Exterior \$39K 85%
Appliances	\$1K	2%	Total Interior \$7K 15%

EXHIBIT B



**DEVELOPMENT IDENTIFICATION**

TDHCA Application #: 18235 Program(s): 9% HTC

**McAllen Memorial Apartments II**

Address/Location: 501 E. Jasmine

City: McAllen County: Hidalgo Zip: 78501

Population: General Program Set-Aside: USDA/At-Risk Area: Urban

Activity: Acquisition/Rehab Building Type: Garden/Townhome Region: 11

Analysis Purpose: New Application - Initial Underwriting

**ALLOCATION**

TDHCA Program	REQUEST				RECOMMENDATION				
	Amount	Interest Rate	Amort	Term	Amount	Interest Rate	Amort	Term	Lien
LIHTC (9% Credit)	\$1,915,000				\$1,883,683				

**CONDITIONS**

- 1 Receipt and acceptance by Commitment
  - a: Pursuant to §10.402(d)(7), a letter from Applicant's Attorney, "...identifying the statutory basis for the [property tax] exemption and indicating that the exemption is reasonably achievable, subject to appraisal district review" and USDA's preliminary review.
- 2 Receipt and acceptance by Carryover:
  - a: Term sheet for permanent debt with updated amount, rate, terms and conditions, and specifying a minimum 15-year maturity
  - b: Confirmation from USDA that the existing USDA 514 debt can be retired; or, confirmation from USDA that the existing USDA 514 debt can be cash-collateralized in the way indicated by the Applicant; or, revised application exhibits that present a feasible project including debt service on the existing USDA 514 debt.
  - c: Commitment for Seller Note clearly stating amount and all terms and conditions.
  - d: Revised site plan that clearly delineates the size & location of pool, playgrounds, and sports courts.

3 Receipt and acceptance by 10% test:

a: USDA formal Letter of Approval with Conditions of Approval and Closing, including:

- i. USDA approval of ground lease ownership structure, and
- ii. Approved rents sufficient to produce 1.00x first-year debt coverage, and
- iii. USDA reserve requirements, and
- iv. Confirmation that all existing debt against the property will be retired, or
- v. Rates and terms of the proposed transfer of existing debt, and
- vi. Loan Agreement that documents assumed debt balance

b: Settlement Statement that documents actual transfer price

c: Substantially final draft of limited partnership agreement.

d: Substantially final construction contract with Schedule of Values.

e: Most current annual operating statement

4 Receipt and acceptance by Cost Certification:

a: Certification of comprehensive testing for asbestos; that any appropriate abatement procedures were implemented by a qualified abatement company; and that any remaining asbestos-containing materials are being managed in accordance with an acceptable Operations and Maintenance (O&M) program.

b: Certification from Appraisal District that the property qualifies for property tax exemption.

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

**SET-ASIDES**

TDHCA SET-ASIDES for HTC LURA		
Income Limit	Rent Limit	Number of Units
30% of AMI	30% of AMI	53
50% of AMI	50% of AMI	107
60% of AMI	60% of AMI	86

**DEVELOPMENT SUMMARY**

The Housing Authority of Hidalgo County has proposed the rehabilitation of Memorial Apartments, a 246-unit multifamily development in McAllen built in approximately 1975 and financed by USDA/RD. There are 82 residential buildings on a 47 acre site plan (60 gross acreage). The full rehabilitation will benefit both the existing residents as well as the neighboring communities. The property currently has a HAP contract attached to 64 of the units, and a USDA contract on 142 of the units, benefitting Farm Workers of America.

The proposed rehab will completely modernize the property by taking the units down to the studs, removing asbestos, modernizing insulation and roofing, installing energy star appliances and building supplies, and using energy efficient materials to shrink energy bills for the residents. There will also be repaving and upgrading the common spaces, installation of a resort style pool for the residents, adding playgrounds and sports courts for the smallest community members, new fencing, etc.

The new Memorial Apartments II will be a brand new energy efficient luxury community. The property won credits in 2012, but the developer was unable to secure approval from USDA post-award. Today, they have already discussed the project with USDA and HUD and have a plan in place that will allow the credits to close and move forward with the plan presented in this application.

## RISK PROFILE

STRENGTHS/MITIGATING FACTORS	
▪	Rental Assistance covers 206 out of 246 units
▪	All HTC projects within the PMA reported waiting lists, including subject property.
▪	HAP Contract valid until at least May, 2033
▪	Adjacent to 9 acre public park on same block

WEAKNESSES/RISKS	
▪	Feasibility indicators (Debt Coverage Ratio < 1.15, Expense Ratio > 65%, negative cash-flow)
▪	Feasibility is dependent on property tax exemption which depends on a ground lease ownership structure that, historically, USDA has not approved.
▪	Permanent Loan is callable starting Year 10.
▪	

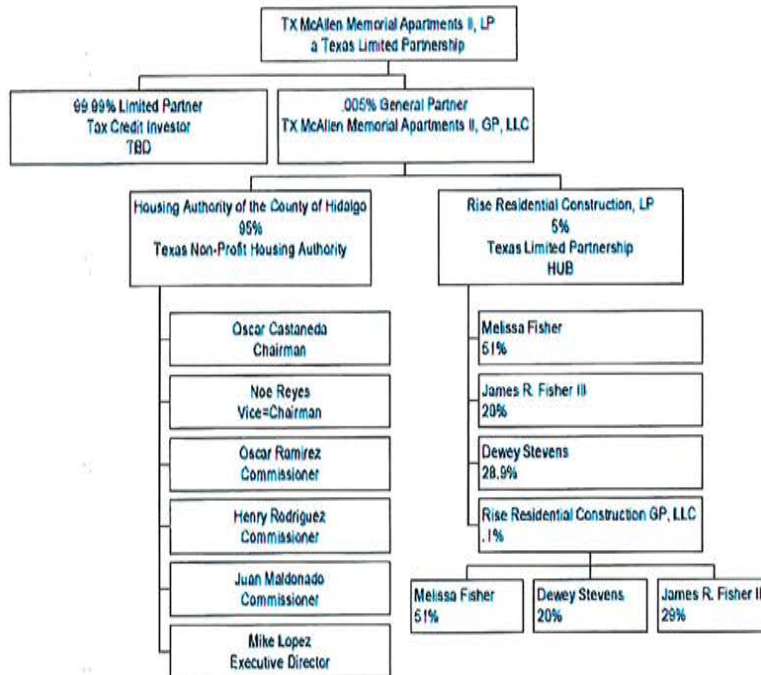
## DEVELOPMENT TEAM

### PRIMARY CONTACTS

Name: Melissa Fisher  
 Phone: (972) 701-5558  
 Relationship: \_\_\_\_\_

Name: Mike Lopez  
 Phone: (956) 968-8669  
 Relationship: Hidalgo County HA - Executive

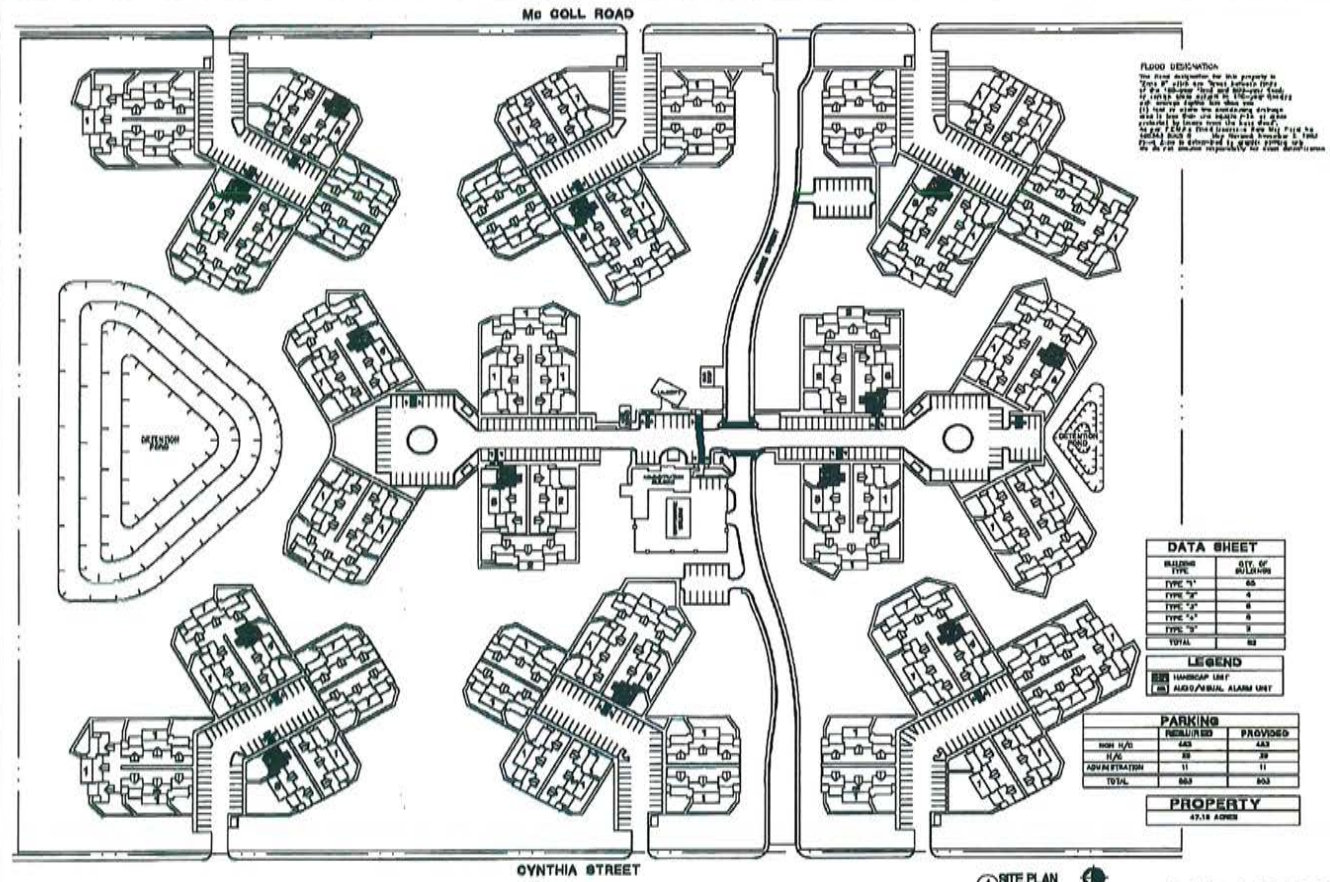
## OWNERSHIP STRUCTURE



- Rise Residential Construction, LP has successfully completed 13 HTC developments since 2010.

# DEVELOPMENT SUMMARY

## SITE PLAN



**FLOOD VULNERABILITY**  
 The flood vulnerability for this property is Type II, which is based on the fact that it is not a flood-prone area and is not located in a flood-prone area. The flood vulnerability for this property is based on the fact that it is not a flood-prone area and is not located in a flood-prone area.

NUMBER	SQ. FT.
TYPE "1"	85
TYPE "2"	0
TYPE "3"	0
TYPE "4"	0
TYPE "5"	0
TOTAL	85

**LEGEND**  
 (S) HARMLESS UNIT  
 (A) ALARM/ALARM UNIT

NO. OF UNITS	REQUIRED	PROVIDED
NO. 1/2	443	443
1/4	20	20
ADJUTANT	11	11
TOTAL	473	473

**PROPERTY**  
 473.00 ACRES

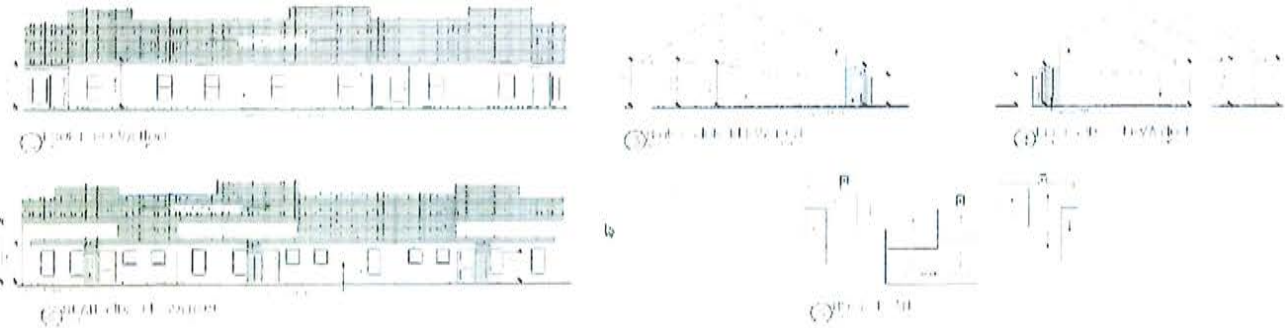


DATE: 6.02.2018

Parking	No Fee		Tenant-Paid		Total	
	Count	Cost/unit	Count	Cost/unit	Count	Cost/unit
Open Surface	0	--	0	--	0	--
Carport	403	1.6/unit	50	0.2/unit	453	1.8/unit
Garage	0	--	20	0.1/unit	20	0.1/unit
<b>Total Parking</b>	<b>403</b>	<b>1.6/unit</b>	<b>70</b>	<b>0.3/unit</b>	<b>473</b>	<b>1.9/unit</b>

Comments:  
 \$250K cost for covered parking has been excluded from eligible basis.

**BUILDING ELEVATION**



**BUILDING CONFIGURATION**

Building Type	1	2	3	4	5	6	6a	6b	7	8	9		<b>Total Buildings</b>	
Floors/Stories	1	1	1	1	1	1	1	1	1	1	1			
Number of Bldgs	36	2	4	4	2	24	3	2	2	2	1		<b>82</b>	
Units per Bldg	3	3	3	3	3	3	3	3	3	3	3			
<b>Total Units</b>	108	6	12	12	6	72	9	6	6	6	3		<b>246</b>	
<b>Avg. Unit Size (SF)</b>	<b>815 sf</b>		<b>Total NRA (SF)</b>				<b>200,427</b>		<b>Common Area (SF)</b>				<b>4,105</b>	

**SITE AND ACQUISITION**

**Site Acreage:** Development Site: 47.16 acres      Density: 5.2 units/acre  
 Site Control: 60.02      Site Plan: 40      Appraisal: 60.02      ESA: 60.02

Control Type: Land Lease Agreement      Agreement Date: 2/28/2018  
 Lease Term: 11/1/2018 - 10/31/2073

Total Acquisition: 60.02 acres  
 Development Site: 47.16 acres      Cost: \$3,000,000      \$12,195 per unit

Landlord: The Housing Authority of the County of Hidalgo  
 Tenant: TX McAllen Memorial Apartments II, L.P.

Related-Party Seller/Identity of Interest: Yes

**Comments:**

Applicant will enter into a ground lease with the Housing Authority of the County of Hidalgo (the managing member of the GP) for 47.12 acres of the 60.02-acre site. The remaining 12.86 acres will be dedicated as a park.

The lease agreement states: "The land lease is part of the property tax exempt structure in accordance with State Law. The Landlord owns the land and the improvements. The property improvements are being conveyed by Seller with Seller financing for the full term of the ground lease in the amount of \$3MM (or the final value as determined by USDA) at zero percent interest with a final balloon payment due at the expiration of the lease agreement."

The ground lease structure is subject to USDA approval. Historically, USDA has not known to have approved such an ownership structure for other HTC developments. The property is currently exempt from ad valorem taxation due to ownership by the Housing Authority. But without the ground lease structure, the property would be subject to taxation if owned directly by the HTC Partnership. Such an outcome would have severe financial impact and threaten the feasibility of the project.

**GENERAL INFORMATION**

Flood Zone:	<u>B</u>	Scattered Site?	<u>No</u>
Zoning:	<u>R-3A</u>	Within 100-yr floodplain?	<u>No</u>
Re-Zoning Required?	<u>No</u>	Utilities at Site?	<u>Yes</u>
Year Constructed:	<u>1975</u>	Title Issues?	<u>No</u>

**Surrounding Uses:**

Public High School & a Middle School, strip retail, park land, a mobile home park, and some office uses.

**Other Observations:**

Survey indicates the flood designation is "Zone B" which are "Areas between limits of 100-year flood and 500-year flood".

**PROPERTY VALUE**

Appraiser: Affordable Housing Analysts Date: 2/20/2018

<b>Land as Vacant:</b>	<b>47.16 acres</b>	<b>\$5,187,600</b>	<b>Per Unit:</b>	<b>\$21,088</b>
<b>Existing Buildings: (as-is)</b>		<b>\$0</b>	<b>Per Unit:</b>	<b>\$0</b>
<b>Capitalized Value of Property:</b>		<b>\$3,280,000</b>	<b>Per Unit:</b>	<b>\$13,333</b>

**Comments:**

The Appraiser determined the value of the existing development to be \$3.28M based on the direct capitalization method. But the as-vacant value of the land based on comparable sales was determined to be \$5.19M. As a result, there is no building value eligible for acquisition tax credits.

**HIGHLIGHTS of ENVIRONMENTAL REPORTS**

Provider: MAS-D Environmental and Associates, Inc Date: 2/16/2018

**Recognized Environmental Conditions (RECs) and Other Concerns:**

- Aesbestos remediation required

**Comments:**

No other REC's



## MARKET ANALYSIS

Provider: Affordable Housing Analysts

Date: 3/15/2018

Contact: Bob Coe

Phone: 281-387-7552

Primary Market Area (PMA): 21 sq. miles 3 mile equivalent radius

The PMA consists of 15 census tracts located in McAllen, north of I-2, stretching east to I-69C.

ELIGIBLE HOUSEHOLDS BY INCOME								
Hidalgo County Income Limits								
HH size	30% of AMI		40% of AMI		50% of AMI		60% of AMI	
	min	max	min	max	min	max	min	max
1	\$1	\$11,400	---	---	\$1	\$19,000	---	---
2	\$1	\$13,020	---	---	\$1	\$21,700	---	---
3	\$1	\$14,640	---	---	\$1	\$24,400	---	---
4	\$1	\$16,260	---	---	\$1	\$27,100	---	---
5	\$1	\$17,580	---	---	\$1	\$29,300	---	---
6	\$1	\$18,870	---	---	\$1	\$31,450	---	---

AFFORDABLE HOUSING INVENTORY						
Competitive Supply (Proposed, Under Construction, and Unstabilized)						
File #	Development	In PMA?	Type	Target Population	Comp Units	Total Units
	None				0	
Other Affordable Developments in PMA since 2014						
	None				n/a	
Stabilized Affordable Developments in PMA ( pre-2014 )					Total Units	
					Total Developments	

OVERALL DEMAND ANALYSIS			
	Market Analyst	Underwriter	
Total Households in the Primary Market Area	28,815		28,671
Potential Demand from the Primary Market Area	6,141		6,348
10% External Demand	614		635
Potential Demand from Other Sources	0		0
<b>GROSS DEMAND</b>	<b>6,755</b>		<b>6,983</b>
Subject Affordable Units	246		246
Unstabilized Comparable Units	0		0
<b>RELEVANT SUPPLY</b>	<b>246</b>		<b>246</b>
<b>Relevant Supply ÷ Gross Demand = GROSS CAPTURE RATE</b>	<b>3.6%</b>		<b>3.5%</b>

<b>Population:</b>	<b>General</b>	<b>Market Area:</b>	<b>Urban</b>	<b>Maximum Gross Capture Rate:</b>	<b>10%</b>
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UNDERWRITING ANALYSIS of PMA DEMAND by AMGI BAND

\* N/A due to all units qualifying from \$1 up.

**Demand Analysis:**

64 units are covered by a Housing Assistance Program contract, 142 are covered by a USDA rental assistance contract, and the remaining 40 USDA units do not include rental assistance, but are restricted to USDA rents/regulatory agreement. All households below the maximum income level are eligible and incomes are limited to 50% AMI and below.

Capture rate limits do not apply to existing affordable housing that is at least 50% occupied and that provides a leasing preference to existing tenants. The property is 98% occupied.

UNDERWRITING ANALYSIS of PMA DEMAND by UNIT TYPE										
Unit Type	Market Analyst					Underwriter				
	Demand	10% Ext	Subject Units	Comp Units	Unit Capture Rate	Demand	10% Ext	Subject Units	Comp Units	Unit Capture Rate
2 BR/30%	2,273	227	10	0	0.4%	1,067	107	20	0	2%
2 BR/50%	697	70	72	0	9%	794	79	62	0	7%
3 BR/30%	1,401	140	18	0	1%	732	73	33	0	4%
3 BR/50%	892	89	146	0	15%	685	68	131	0	17%

**Market Analyst Comments:**

The average physical occupancy in the subject's market area was reported at 97.6%. (p. 12)

The McAllen-Edinburg-Mission MSA was one of the fastest growing areas in the nation. The population increase of 36.05% from 2000 to 2010 places it as the 11th fastest growing metropolitan statistical area. (p. 25)

±54.17% of the households living in the primary market area earn less than \$50,000 per year, with ±42.91% earning less than \$35,000 per year, and ±31.85% earning less than \$25,000 per year. Approximately 18.66% of the primary market area households earn less than \$15,000 per year. (p. 37)

**Underwriter Comments:**

Average occupancy of affordable properties in the PMA is 99%.

## OPERATING PRO FORMA

### SUMMARY- AS UNDERWRITTEN (TDHCA Pro Forma)

NOI:	\$273,408	Avg. Rent:	\$445	Expense Ratio:	78.5%
Debt Service:	\$267,622	B/E Rent:	\$443	Controllable Expenses:	\$3,135
Net Cash Flow:	\$5,786	UW Occupancy:	92.5%	Property Taxes/Unit:	\$0
Aggregate DCR:	1.02	B/E Occupancy:	92.1%	Program Rent Year:	2017

At the current Contract Rents debt coverage is 0.94 and the application would be considered infeasible. Post-transfer rents that will be approved by USDA are unknown at this time. Underwriting assumes a 6.5% increase in both USDA and HAP Contract Rents to provide the minimum 1.00x debt coverage for USDA developments. To maintain feasibility post-transfer approved rents must satisfy debt coverage minimum.

Operating statement for the existing development indicates an extraordinarily high \$2,731 per unit in payroll and payroll tax expense. But the statement also reflects no management fee. Applicant's pro forma indicates significantly lower \$1,426 per unit payroll and a 4.2% management fee. Underwriter's pro forma uses Applicant's projected payroll and 5% management fee. When re-underwritten with approved rents, Applicant must document in detail the intended payroll and management plan for the development.

Remainder of Underwriter's expenses based on actual operating statement with standard \$650 per unit repairs and maintenance expense for rehabs. Underwritten expense ratio is 78%, exceeding the 65% limit. But the limit is not applied for developments with more than 50% of the units covered by rental assistance.

Property tax expense is zero because property is currently owned by the Housing Authority, and under the proposed ownership structure the Housing Authority will retain ownership of the site and ground lease it to the Applicant. Historically, USDA is not believed to have approved an ownership structure for a tax credit property requiring a ground lease. If tax exemption is not achieved, it will require significantly higher rent increases than considered in the analysis to be feasibly possible.

As underwritten with 1.02 times debt coverage, which is only permitted for USDA developments, cash flow turns negative in year 3; cumulative cash flow after 15 years is negative (\$476K).

Application was submitted with a term sheet from IBC Bank for a USDA 538 loan at 4.08%. Interest rates are known to have increased since then and continue to rise. TDHCA has seen similar recent quotes as high as 4.75%. Pursuant to § 10.302(d)(4)(A), the project is being underwritten at 4.50%.

Related-Party Property Management Company:           yes          

Revisions to Rent Schedule:	4
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Revisions to Annual Operating Expenses:	2
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## DEVELOPMENT COST EVALUATION

### SUMMARY- AS UNDERWRITTEN (TDHCA's Costs- Based on PCA)

Acquisition	\$63,613/ac	\$12,195/unit	\$3,000,000	Contractor Fee	\$1,718,763
Off-site + Site Work		\$9,268/unit	\$2,280,000	Soft Cost + Financing	\$3,524,750
Building Cost	\$44.31/sf	\$36,101/unit	\$8,880,800	Developer Fee	\$2,393,946
Contingency	10.00%	\$4,537/unit	\$1,116,080	Reserves	\$802,500
<b>Total Development Cost</b>	<b>\$96,410/unit</b>	<b>\$23,716,840</b>		<b>Rehabilitation Cost</b>	<b>\$45,369/unit</b>
<b>Qualified for 30% Basis Boost?</b>		Add'l 10% of units restricted at or below 30% AMI			

**Acquisition:**

The property improvements are being conveyed by Seller with Seller financing for the full term of the ground lease in the amount of \$3M (or the final value as determined by USDA).

Applicant allocated \$1M to the land and \$2M as building value eligible for acquisition tax credits.

Appraisal indicates the as-is as-vacant value of the land exceeds the capitalized value of the existing property. As a result, there is no eligible building value.

**Site Work:**

Site work scope includes replacing water and sewer underground lines (but not under the slab), repair and replace sidewalks and entryways in an accessible manner, install BBQ grills and picnic tables, grading and filling and installation of trees, repair and replace driveways and parking areas, install new monument signs and flag pole(s), landscaping to improve drive up appeal.

Nearly half of site work costs are attributed to site amenities, including \$400K for landscaping, \$100K for playgrounds/sport courts, and \$300K for the installation of a resort-style pool (although the sport courts and pool are not shown on the site plan).

**Building Cost:**

Scope of work includes upgrade to 30-year asphalt roof with radiant barriers, replace siding with hardi board, patch and seal brick walls, equip community laundry room and common area bathrooms, upgrade and furnish management office, install 40 carports and 40 garages, install fire protection system.

Improvements to dwelling units include upgrade to energy efficient doors and windows, 18 SEER HVAC in all units, fully equip special needs units, new efficient bathroom and kitchen fixtures in all units, all new energy efficient appliances, install new flooring (combination of ceramic tile, faux wood and VCT).

\$700K budgeted for asbestos and lead-based paint abatement.

### REHABILITATION COSTS / UNIT / % HARD COST

Site Work	\$2,280,000	\$9,268/unit	19%	Finishes/Fixtures	\$414,200	\$1,684/unit	3%
Building Shell	\$6,729,350	\$27,355/unit	55%	HVAC	\$932,000	\$3,789/unit	8%
Amenities	\$500,000	\$2,033/unit	4%	Appliances	\$305,250	\$1,241/unit	2%
<b>Total Exterior</b>	<b>\$9,509,350</b>	<b>\$38,656/unit</b>	<b>85%</b>	<b>Total Interior</b>	<b>\$1,651,450</b>	<b>\$6,713/unit</b>	<b>15%</b>

Contingency:

Submitted Contingency over maximum allowed of Eligible Basis

Contractor Fee:

Submitted Contractor Fee over the maximum allowed of Eligible Basis

Ineligible Costs:

\$250K cost for covered parking excluded from eligible basis by Applicant.

Soft Costs:

\$650K cost budgeted for relocation excluded from eligible basis by Applicant.

Developer Fee:

Total Developer Fee is overstated by \$306K.

Comments:

Eligible cost would support an annual credit allocation of \$2.1M. But as a result of the adjustment of Developer Fee to the maximum permitted by rule, the project is oversourced, and the credit recommendation is limited by the need for funds.

Credit Allocation Supported by Costs:

Total Development Cost	Adjusted Eligible Cost	Credit Allocation Supported by Eligible Basis
\$23,716,840	\$18,037,340	\$2,110,369

Related-Party Contractor:

yes

Related-Party Cost Estimator:

0

Revisions to Development Cost Schedule:

0

## UNDERWRITTEN CAPITALIZATION

INTERIM SOURCES				
Funding Source	Description	Amount	Rate	LTC
IBC Bank or other lender	Conventional Loan	\$12,000,000	6.00%	48%
42 Equity or other investor	HTC	\$8,234,500	\$0.86	33%
DDF loan from RISE	deferred developer fee	\$1,809,393		7%
Hidalgo County Housing Authority	Seller Note	\$3,000,000	3.00%	12%
City of McAllen	fee waivers	\$2,500		0%
		<b>\$25,046,393</b>	<b>Total Sources</b>	

**Comments:**

Applicant indicates the property acquisition will be financed by a Seller Note from the Housing Authority of the County of Hidalgo for \$3,000,000. No commitment document was provided for this source. The schedule of sources indicates this note will be at 3.00% interest, but the Lease Agreement states it will be at zero percent.

Documentation of this source must be provided by Commitment, clearly stating the amount, rate and terms. The City of McAllen will provide \$2,500 in fee waivers. Applicant did not include this source.

### PERMANENT SOURCES

Debt Source	PROPOSED				UNDERWRITTEN				
	Amount	Interest Rate	Amort	Term	Amount	Interest Rate	Amort	Term	LTC
IBC-USDA 538 Perm Loan	\$4,540,000	4.08%	40	10	\$4,540,000	4.50%	40	10	19%
Seller Note	\$3,000,000	3.00%	40	35	\$3,000,000	0.00%	0	35	13%
City of McAllen	\$2,500				\$2,500				0%
<b>Total</b>	<b>\$7,542,500</b>				<b>\$7,542,500</b>				

**Comments:**

IBC USDA 538 loan underwritten at 4.50% as described in the Operating Pro Forma section.

IBC term sheet states loan payment is based on a 35-year amortization schedule, but it also specifies 479 monthly payments followed by a final balloon payment. Underwriter assumes the loan will amortize over 40 years.

IBC term sheet states "Bank reserves all rights to use their own funds and not source any funds from FHLB nor USDA. Any permanent loan from IBC Bank funds is callable in year 10 through year 15 at their sole and absolute discretion." This provision does not conform to TDHCA Rules, which require a minimum 15-year term for all permanent debt.

Applicant must provide, by Commitment, a revised term sheet for permanent debt with updated rates and terms and consistent with program Rules.

The Housing Authority of the County of Hidalgo (Memorial Apartments) currently has USDA Section 514 debt with an outstanding balance of \$756,336, and annual debt service of \$86,786. The Applicant states that at closing the debt "would be repaid to zero or the minimum amount necessary to insure they had maturing debt under the at-risk rules." It is unclear why the Applicant would choose to use market rate debt to pay off existing debt with an interest-rate subsidy. It is also unclear that USDA will permit the existing 514 debt to be retired.

Applicant must provide, by Commitment, confirmation that USDA will allow the existing debt to be repaid.

Equity & Deferred Fees	PROPOSED			UNDERWRITTEN			
	Amount	Rate	% Def	Amount	Rate	% TC	% Def
42 Equity or other investor	\$16,469,000	\$0.86		\$16,174,340	\$0.86	68%	
DDF loan from RISE	\$234,893		10%	\$0		0%	0%
<b>Total</b>	<b>\$16,703,893</b>			<b>\$16,174,340</b>			
				<b>\$23,716,840</b>	<b>Total Sources</b>		

Credit Price Sensitivity based on current capital structure	
<b>\$0.845</b>	Maximum Credit Price before the Development is oversourced and allocation is limited
<b>\$0.869</b>	Minimum Credit Price below which the Development would be characterized as infeasible

Comments:  
Property won Housing Tax Credits in 2012, but the developer was unable to get USDA approval post-award.

Revisions to Sources Schedule:	0
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### CONCLUSIONS

**Recommended Financing Structure:**

Gap Analysis:	
Total Development Cost	\$23,716,840
Permanent Sources	\$7,542,500
Gap in Permanent Financing	\$16,174,340

Possible Tax Credit Allocations:	Equity Proceeds	Annual Credits
Determined by Eligible Basis	\$18,120,784	\$2,110,369
Needed to Balance Sources & Uses	\$16,174,340	\$1,883,683
Requested by Applicant	\$16,443,240	\$1,915,000

	RECOMMENDATION	
	Equity Proceeds	Annual Credits
<b>Tax Credit Allocation</b>	<b>\$16,174,340</b>	<b>\$1,883,683</b>

Comments:  
Credit recommendation is limited to \$1,883,683 based on the funds needed to balance sources and uses.

Underwriter:	<u>Greg Stoll</u>
Manager of Real Estate Analysis:	<u>Thomas Cavanagh</u>
Director of Real Estate Analysis:	<u>Brent Stewart</u>

**UNIT MIX/RENT SCHEDULE**

*McAllen Memorial Apartments II, McAllen, 9% HTC #18235*

LOCATION DATA	
CITY:	McAllen
COUNTY:	Hidalgo
Area Median Income	\$40,300
PROGRAM REGION:	11

UNIT DISTRIBUTION							
# Beds	# Units	% Total	Assisted	MDL	Income	# Units	% Total
Eff	-	0.0%	0	0	30%	53	21.5%
1	-	0.0%	0	0	40%	-	0.0%
2	82	33.3%	65	0	50%	107	43.5%
3	164	66.7%	141	0	60%	86	35.0%
4	-	0.0%	0	0	MR	-	0.0%
<b>TOTAL</b>	<b>246</b>	<b>100.0%</b>	<b>206</b>	<b>-</b>	<b>TOTAL</b>	<b>246</b>	<b>100.0%</b>

Pro Forma ASSUMPTIONS	
Revenue Growth	2.00%
Expense Growth	3.00%
Basis Adjust	130%
Applicable Fraction	100%
APP % Acquisition	3.39%
APP % Construction	9.00%
Average Unit Size	815 sf

UNIT MIX / MONTHLY RENT SCHEDULE																						
HTC		RENT ASSISTED UNIT		UNIT MIX				APPLICABLE PROGRAM RENT			APPLICANT'S PRO FORMA RENTS				TDHCA PRO FORMA RENTS				MARKET RENTS			
Type	Gross Rent	Type	Gross Rent	# Units	# Beds	# Baths	NRA	Gross Rent	Utility Allow	Max Net Program Rent	Delta to Max	Rent psf	Net Rent per Unit	Total Monthly Rent	Total Monthly Rent	Rent per Unit	Rent psf	Delta to Max	Underwritten	Mrkt Analyst		
TC 30%	\$366	RA-USDA	\$434	20	2	1	689	\$434	\$89	\$345	(\$21)	\$0.47	\$324	\$6,480	\$6,901	\$345	\$0.50	\$0	\$780	\$1.13	\$780	
TC 50%	\$610	RA-USDA	\$434	15	2	1	689	\$434	\$89	\$345	(\$21)	\$0.47	\$324	\$4,860	\$5,176	\$345	\$0.50	\$0	\$780	\$1.13	\$780	
TC 60%	\$732	SEC 8	\$594	6	2	1	689	\$594	\$96	\$498	(\$30)	\$0.68	\$468	\$2,808	\$2,991	\$498	\$0.72	\$0	\$780	\$1.13	\$780	
TC 60%	\$732	SEC 8	\$594	16	2	1	689	\$594	\$96	\$498	(\$30)	\$0.68	\$468	\$7,488	\$7,975	\$498	\$0.72	\$0	\$780	\$1.13	\$780	
TC 30%	\$423	RA-USDA	\$513	33	3	1	865	\$513	\$104	\$409	(\$25)	\$0.44	\$384	\$12,672	\$13,496	\$409	\$0.47	\$0	\$1,000	\$1.16	\$1,000	
TC 50%	\$705	RA-USDA	\$513	38	3	1	865	\$513	\$104	\$409	(\$25)	\$0.44	\$384	\$14,592	\$15,540	\$409	\$0.47	\$0	\$1,000	\$1.16	\$1,000	
TC 50%	\$705	RA-USDA	\$513	28	3	1	880	\$513	\$104	\$409	(\$25)	\$0.44	\$384	\$10,752	\$11,451	\$409	\$0.46	\$0	\$1,000	\$1.14	\$1,000	
TC 60%	\$846	SEC 8	\$777	42	3	1	880	\$777	\$115	\$662	(\$40)	\$0.71	\$622	\$26,124	\$27,822	\$662	\$0.75	\$0	\$1,000	\$1.14	\$1,000	
TC 60%	\$846	USDA	\$515	6	3	1	902	\$515	\$106	\$409	(\$25)	\$0.43	\$384	\$2,304	\$2,454	\$409	\$0.45	\$0	\$1,000	\$1.11	\$1,000	
TC 60%	\$846	USDA	\$515	3	3	1	880	\$515	\$106	\$409	(\$25)	\$0.44	\$384	\$1,152	\$1,227	\$409	\$0.46	\$0	\$1,000	\$1.14	\$1,000	
TC 50%	\$610	USDA	\$431	4	2	1	725	\$431	\$86	\$345	(\$21)	\$0.45	\$324	\$1,296	\$1,380	\$345	\$0.48	\$0	\$800	\$1.10	\$800	
TC 60%	\$732	USDA	\$431	13	2	1	689	\$431	\$86	\$345	(\$21)	\$0.47	\$324	\$4,212	\$4,486	\$345	\$0.50	\$0	\$780	\$1.13	\$780	
TC 50%	\$705	USDA	\$515	3	3	1	880	\$515	\$106	\$409	(\$25)	\$0.44	\$384	\$1,152	\$1,227	\$409	\$0.46	\$0	\$1,000	\$1.14	\$1,000	
TC 50%	\$610	RA-USDA	\$434	8	2	1	725	\$434	\$89	\$345	(\$21)	\$0.45	\$324	\$2,592	\$2,760	\$345	\$0.48	\$0	\$800	\$1.10	\$800	
TC 50%	\$705	USDA	\$515	6	3	1	880	\$515	\$106	\$409	(\$25)	\$0.44	\$384	\$2,304	\$2,454	\$409	\$0.46	\$0	\$1,000	\$1.14	\$1,000	
TC 50%	\$705	USDA	\$515	5	3	1	902	\$515	\$106	\$409	(\$25)	\$0.43	\$384	\$1,920	\$2,045	\$409	\$0.45	\$0	\$1,000	\$1.11	\$1,000	
<b>TOTALS/AVERAGES:</b>				<b>246</b>				<b>200,427</b>				<b>(\$27)</b>	<b>\$0.51</b>	<b>\$418</b>	<b>\$102,708</b>	<b>\$109,384</b>	<b>\$445</b>	<b>\$0.55</b>	<b>\$0</b>	<b>\$928</b>	<b>\$1.14</b>	<b>\$928</b>

<b>ANNUAL POTENTIAL GROSS RENT:</b>	\$1,232,496	\$1,312,808
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**STABILIZED PRO FORMA**

**McAllen Memorial Apartments II, McAllen, 9% HTC #18235**

**STABILIZED FIRST YEAR PRO FORMA**

	COMPARABLES		APPLICANT				TDHCA				VARIANCE	
	Database	2017 Income Statement	% EGI	Per SF	Per Unit	Amount	Amount	Per Unit	Per SF	% EGI	%	\$
POTENTIAL GROSS RENT		\$1,434,181		\$0.51	\$418	\$1,232,496	\$1,312,608	\$445	\$0.55		-6.1%	(\$80,112)
DAMAGES AND NSF		\$3,360		\$2,460	\$10.00	\$29,520						
PET FEES, LATE FEES		\$8,105		\$1,230	\$5.00	\$14,760						
VENDING AND FOREFIETS		\$18,053		\$2,460	\$10.00	\$29,520						
Total Secondary Income		\$29,518					\$59,040	\$20.00			25.0%	\$14,760
POTENTIAL GROSS INCOME						\$1,306,296	\$1,371,648				-4.8%	(\$65,352)
Vacancy & Collection Loss					7.5% PGI	(97,972)	(102,874)	7.5% PGI			-4.8%	4,901
EFFECTIVE GROSS INCOME						\$1,208,324	\$1,268,775				-4.8%	(\$60,451)

General & Administrative	\$79,194	\$322/Unit	\$65,001	\$264	4.20%	\$0.25	\$206	\$50,700	\$65,001	\$264	\$0.32	5.12%	-22.0%	(14,301)
Management	\$84,636	5.0% EGI	\$0	\$0	4.27%	\$0.26	\$210	\$51,587	\$63,439	\$258	\$0.32	5.00%	-18.7%	(11,852)
Payroll & Payroll Tax	\$264,957	\$1,077/Unit	\$671,839	\$2,731	29.03%	\$1.75	\$1,426	\$350,750	\$350,750	\$1,426	\$1.75	27.64%	0.0%	-
Repairs & Maintenance	\$135,911	\$552/Unit	\$66,053	\$269	8.23%	\$0.50	\$404	\$99,500	\$159,900	\$650	\$0.80	12.60%	-37.8%	(60,400)
Electric/Gas	\$58,232	\$237/Unit	\$37,401	\$152	3.31%	\$0.20	\$163	\$40,000	\$37,401	\$152	\$0.19	2.95%	6.9%	2,599
Water, Sewer, & Trash	\$143,317	\$583/Unit	\$158,155	\$643	14.07%	\$0.85	\$691	\$170,000	\$158,155	\$643	\$0.79	12.47%	7.5%	11,845
Property Insurance	\$93,849	\$0.47 /sf	\$68,531	\$279	7.45%	\$0.45	\$366	\$90,000	\$68,531	\$279	\$0.34	5.40%	31.3%	21,469
Property Tax (@ 0%)	\$127,178	\$517/Unit		\$0	0.00%	\$0.00	\$0	\$0	\$0	\$0	\$0.00	0.00%	0.0%	-
Reserve for Replacements	\$75,865	\$308/Unit		\$0	6.62%	\$0.40	\$325	\$79,950	\$79,950	\$325	\$0.40	6.30%	0.0%	-
Cable TV			-	\$0	0.20%	\$0.01	\$10	\$2,400	\$2,400	\$10	\$0.01	0.19%	0.0%	-
TDHCA LIHTC/HOME Compliance Fees			-	\$0	0.81%	\$0.05	\$40	\$9,840	\$9,840	\$40	\$0.05	0.78%	0.0%	-
<b>TOTAL EXPENSES</b>					<b>78.18%</b>	<b>\$4.71</b>	<b>\$3,840</b>	<b>\$ 944,727</b>	<b>\$995,367</b>	<b>\$4,046</b>	<b>\$4.97</b>	<b>78.45%</b>	<b>-5.1%</b>	<b>\$ (50,640)</b>
<b>NET OPERATING INCOME ("NOI")</b>					<b>21.82%</b>	<b>\$1.32</b>	<b>\$1,072</b>	<b>\$263,597</b>	<b>\$273,408</b>	<b>\$1,111</b>	<b>\$1.36</b>	<b>21.55%</b>	<b>-3.6%</b>	<b>\$ (9,811)</b>

CONTROLLABLE EXPENSES							\$2,890/Unit							\$3,135/Unit
-----------------------	--	--	--	--	--	--	--------------	--	--	--	--	--	--	--------------

**CAPITALIZATION / TOTAL DEVELOPMENT BUDGET / ITEMIZED BASIS**

*McAllen Memorial Apartments II, McAllen, 9% HTC #18235*

DEBT / GRANT SOURCES																
APPLICANT'S PROPOSED DEBT/GRANT STRUCTURE										AS UNDERWRITTEN DEBT/GRANT STRUCTURE						
DEBT (Must Pay)	Fee	Cumulative DCR		Pmt	Rate	Amort	Term	Principal	Principal	Term	Amort	Rate	Pmt	Cumulative		
		UW	App											DCR	LTC	
IBC-USDA 538 Perm Loan	0.50%	1.11	1.07	245,890	4.08%	40	10	\$4,540,000	\$4,540,000	10	40	4.50%	\$267,622	1.02	19.1%	
Adjustment to Debt Per §10.302(c)(2)									\$0	10	40	4.50%		1.02	0.0%	
<b>CASH FLOW DEBT / GRANTS</b>																
Seller Note		1.11	1.07		3.00%	40	35	\$3,000,000	\$3,000,000	35	0	0.00%		1.02	12.6%	
City of McAllen		1.11	1.07		0.00%	0	0	\$2,500	\$2,500	0	0	0.00%		1.02	0.0%	
				\$245,890				<b>TOTAL DEBT / GRANT SOURCES</b>	\$7,542,500	\$7,542,500			<b>TOTAL DEBT SERVICE</b>	\$267,622	1.02	31.8%
<b>NET CASH FLOW</b>	\$27,518	\$17,707								<b>TDHCA NET OPERATING INCOME</b>	\$273,408	\$5,786	<b>NET CASH FLOW</b>			

EQUITY SOURCES											
APPLICANT'S PROPOSED EQUITY STRUCTURE						AS UNDERWRITTEN EQUITY STRUCTURE					
EQUITY / DEFERRED FEES	DESCRIPTION	% Cost	Annual Credit	Credit Price	Amount	Amount	Credit Price	Annual Credit	% Cost	Annual Credits per Unit	Allocation Method
DDF loan from RISE	Deferred Developer Fees	1.0%	(9% Deferred)		\$234,893		(0% Deferred)		0.0%		Total Developer Fee: \$2,393,946
Additional (Excess) Funds Req'd		0.0%				\$0			0.0%		
<b>TOTAL EQUITY SOURCES</b>		<b>70.4%</b>			<b>\$16,703,893</b>	<b>\$16,174,340</b>			<b>68.2%</b>		
<b>TOTAL CAPITALIZATION</b>					<b>\$24,246,393</b>	<b>\$23,716,840</b>				15-Yr Cash Flow after Deferred Fee:	<b>(\$476,037)</b>

DEVELOPMENT COST / ITEMIZED BASIS													
APPLICANT COST / BASIS ITEMS						TDHCA COST / BASIS ITEMS						COST VARIANCE	
	Eligible Basis		Total Costs	Total Costs	Eligible Basis		Total Costs	Total Costs	%	\$			
	Acquisition	New Const. Rehab			New Const. Rehab	Acquisition							
Land Acquisition			\$4,065 / Unit	\$1,000,000	\$3,000,000	\$12,195 / Unit			-66.7%	(\$2,000,000)			
Building Acquisition	\$2,000,000		\$8,130 / Unit	\$2,000,000	\$0	\$ / Unit		\$0	0.0%	\$2,000,000			
Off-Sites			\$ / Unit	\$0	\$0	\$ / Unit			0.0%	\$0			
Site Work		\$1,230,000	\$5,000 / Unit	\$1,230,000	\$1,230,000	\$5,000 / Unit	\$1,230,000		0.0%	\$0			
Site Amenities		\$1,050,000	\$4,268 / Unit	\$1,050,000	\$1,050,000	\$4,268 / Unit	\$1,050,000		0.0%	\$0			
Building Cost		\$8,630,800	\$44.31 /sf	\$36,101/Unit	\$8,880,800	\$8,880,800	\$36,101/Unit	\$44.31 /sf	\$8,630,800	0.0%	\$0		
Contingency		\$1,116,080	10.23%	10.00%	\$1,116,080	\$1,116,080	10.00%	10.00%	\$1,091,080	0.0%	\$0		
Contractor Fees		\$1,718,763	14.29%	14.00%	\$1,718,763	\$1,718,763	14.00%	14.00%	\$1,680,263	0.0%	\$0		
Soft Costs	0	\$1,172,500	\$7.734 / Unit	\$1,902,500	\$1,902,500	\$7.734 / Unit	\$1,172,500	\$0	0.0%	\$0			
Financing	0	\$830,000	\$6.595 / Unit	\$1,622,250	\$1,622,250	\$6.595 / Unit	\$830,000	\$0	0.0%	\$0			
Developer Fee	\$0	\$2,699,500	17.14%	16.87%	\$2,699,500	\$2,393,946	15.00%	15.00%	\$2,352,696	12.8%	\$305,554		
Reserves			\$3,262 / Unit	\$802,500	\$802,500	\$3,262 / Unit			0.0%	\$0			
<b>TOTAL HOUSING DEVELOPMENT COST (UNADJUSTED BA</b>	<b>\$2,000,000</b>	<b>\$18,447,643</b>	<b>\$97,852 / Unit</b>	<b>\$24,022,393</b>	<b>\$23,716,840</b>	<b>\$96,410 / Unit</b>	<b>\$18,037,340</b>	<b>\$0</b>	<b>1.3%</b>	<b>\$305,554</b>			
Acquisition Cost	(\$2,000,000)			\$0									
Contingency		(\$25,000)		\$0									
Contractor's Fee		(\$38,500)		\$0									
Financing Cost		\$0											
Developer Fee	\$0	(\$346,804)		(\$305,554)									
Reserves				\$0									
<b>ADJUSTED BASIS / COST</b>	<b>\$0</b>	<b>\$18,037,340</b>	<b>\$96,410/unit</b>	<b>\$23,716,840</b>	<b>\$23,716,840</b>	<b>\$96,410/unit</b>	<b>\$18,037,340</b>	<b>\$0</b>	<b>0.0%</b>	<b>\$0</b>			
<b>TOTAL HOUSING DEVELOPMENT COSTS BASED ON 3RD PARTY PCA/CNA</b>				<b>\$23,716,840</b>									

**CAPITALIZATION / DEVELOPMENT COST BUDGET / ITEMIZED BASIS ITEMS**

*McAllen Memorial Apartments II, McAllen, 9% HTC #18235*

**CREDIT CALCULATION ON QUALIFIED BASIS**

	Applicant		TDHCA	
	Acquisition	Construction Rehabilitation	Acquisition	Construction Rehabilitation
	ADJUSTED BASIS	\$0	\$18,037,340	\$0
Deduction of Federal Grants	\$0	\$0	\$0	\$0
<b>TOTAL ELIGIBLE BASIS</b>	\$0	\$18,037,340	\$0	\$18,037,340
High Cost Area Adjustment		130%		130%
<b>TOTAL ADJUSTED BASIS</b>	\$0	\$23,448,542	\$0	\$23,448,542
Applicable Fraction	100.00%	100.00%	100.00%	100.00%
<b>TOTAL QUALIFIED BASIS</b>	\$0	\$23,448,542	\$0	\$23,448,542
Applicable Percentage	3.39%	9.00%	3.39%	9.00%
<b>ANNUAL CREDIT ON BASIS</b>	\$0	\$2,110,369	\$0	\$2,110,369
<b>CREDITS ON QUALIFIED BASIS</b>	\$2,110,369		\$2,110,369	

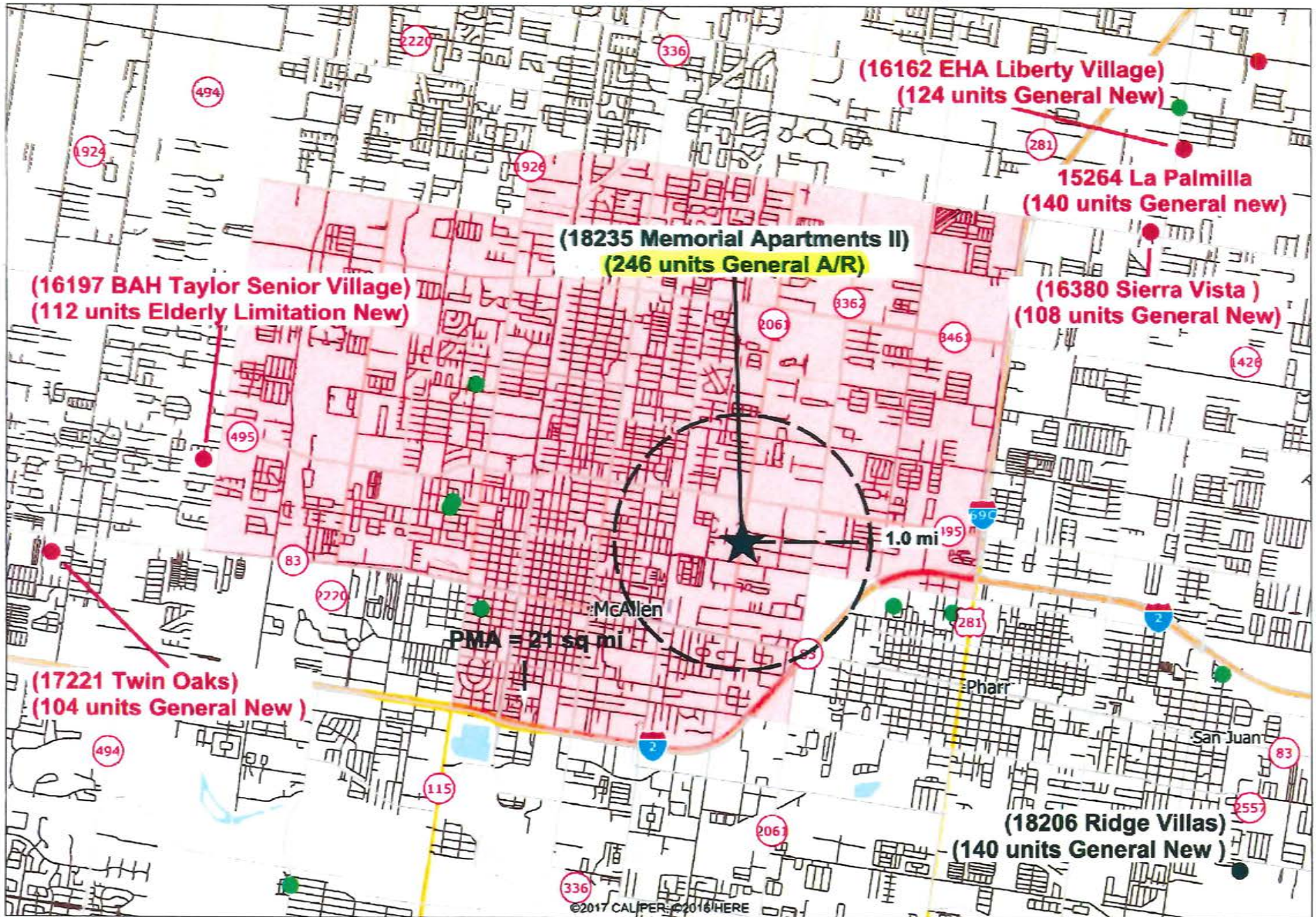
Method	ANNUAL CREDIT CALCULATION BASED ON TDHCA BASIS		FINAL ANNUAL LIHTC ALLOCATION		
	Annual Credits	Proceeds	Credit Price \$0.8587	Variance to Request	
Eligible Basis	\$2,110,369	\$18,120,784	---	---	---
<b>Needed to Fill Gap</b>	\$1,883,683	\$16,174,340	<b>\$1,883,683</b>	<b>(\$31,317)</b>	<b>(\$268,901)</b>
Applicant Request	\$1,915,000	\$16,443,240	---	---	---

## Long-Term Pro Forma

*McAllen Memorial Apartments II, McAllen, 9% HTC #18235*

	Growth Rate	Year 1	Year 2	Year 3	Year 4	Year 5	Year 10	Year 15	Year 20	Year 25	Year 30	Year 35	Year 40
EFFECTIVE GROSS INCOME	2.00%	\$1,268,775	\$1,294,150	\$1,320,033	\$1,346,434	\$1,373,362	\$1,516,303	\$1,674,121	\$1,848,365	\$2,040,744	\$2,253,147	\$2,487,656	\$2,746,573
TOTAL EXPENSES	3.00%	\$995,367	\$1,024,594	\$1,054,684	\$1,085,665	\$1,117,562	\$1,291,770	\$1,493,331	\$1,726,560	\$1,996,456	\$2,308,807	\$2,675,273	\$3,101,374
NET OPERATING INCOME ("NOI")		\$273,408	\$269,556	\$265,349	\$260,769	\$255,801	\$224,533	\$180,790	\$121,805	\$44,289	(\$55,661)	(\$187,617)	(\$354,801)
EXPENSE/INCOME RATIO		78.5%	79.2%	79.9%	80.6%	81.4%	85.2%	89.2%	93.4%	97.8%	102.5%	107.5%	112.9%
<b>MUST -PAY DEBT SERVICE</b>													
IBC-USDA 538 Perm Loan		\$267,622	\$267,414	\$267,198	\$266,971	\$266,734	\$265,373	\$263,671	\$261,539	\$258,871	\$255,531	\$251,351	\$246,117
Adjustment to Debt Per §10.302(c)(2)													
TOTAL DEBT SERVICE		\$267,622	\$267,414	\$267,198	\$266,971	\$266,734	\$265,373	\$263,671	\$261,539	\$258,871	\$255,531	\$251,351	\$246,117
DEBT COVERAGE RATIO		1.02	1.01	0.99	0.98	0.96	0.85	0.69	0.47	0.17	-0.22	-0.75	-1.44
ANNUAL CASH FLOW		\$5,786	\$2,142	(\$1,849)	(\$6,202)	(\$10,933)	(\$40,840)	(\$82,881)	(\$139,734)	(\$214,583)	(\$311,192)	(\$438,967)	(\$600,918)
CUMULATIVE NET CASH FLOW		\$5,786	\$7,928	\$6,079	(\$123)	(\$11,056)	(\$151,069)	(\$476,037)	(\$1,054,481)	(\$1,969,792)	(\$3,322,993)	(\$5,248,033)	(\$7,914,263)

# 18235 Memorial Apartments PMA Map



Disclaimer: This map is not a survey. Boundaries, distance and scale are approximate only.

## Kim Meredith

---

**From:** John Shackelford  
**Sent:** Monday, September 23, 2019 11:42 AM  
**To:** Kim Meredith  
**Subject:** Fwd: TDHCA#18235 Scoring Notice

**From:** Sharon Gamble <[sharon.gamble@tdhca.state.tx.us](mailto:sharon.gamble@tdhca.state.tx.us)>  
**Sent:** Monday, July 2, 2018 2:50 PM  
**To:** Melissa R Fisher <[mfisher@rise-residential.com](mailto:mfisher@rise-residential.com)>  
**Cc:** Bill Fisher <[Bill.Fisher@sonomaadvisors.com](mailto:Bill.Fisher@sonomaadvisors.com)>  
**Subject:** RE: TDHCA#18235 Scoring Notice

There is no minimum score to win an award.

Regards,

Sharon D. Gamble MSW, PMP  
Competitive Housing Tax Credit Program Administrator  
Texas Department of Housing and Community Affairs  
(512) 936-7834

Any person receiving guidance from TDHCA staff should be mindful that, as set forth in 10 TAC Section 11.1(b) there are important limitations and caveats (Also see 10 TAC §10.2(a)).

[About TDHCA](#)

# EXHIBIT C

The Texas Department of Housing and Community Affairs administers a number of state and federal programs through for-profit, nonprofit, and local government partnerships to strengthen communities through affordable housing development, home ownership opportunities, weatherization, and community-based services for Texans in need. For more information, including current funding opportunities and information on local providers, please visit [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us)

**From:** Melissa R Fisher [<mailto:mfisher@rise-residential.com>]  
**Sent:** Monday, July 02, 2018 2:06 PM  
**To:** Sharon Gamble  
**Cc:** Bill Fisher (Sonoma Advisors)  
**Subject:** RE: TDHCA#18235 Scoring Notice

Hi Sharon, Based on the At Risk scoring stack, it appears that we will win an allocation at the present score.  
However, being that the score is so low relatively, we have to confirm - is there a minimum score to win an allocation?

---

Melissa R. Fisher  
RISE RESIDENTIAL CONSTRUCTION, LP  
972.701.5558

**From:** Sharon Gamble [<mailto:sharon.gamble@tdhca.state.tx.us>]  
**Sent:** Monday, July 02, 2018 1:33 PM  
**To:** Melissa R Fisher <[mfisher@rise-residential.com](mailto:mfisher@rise-residential.com)>  
**Cc:** [doram@hidalgocha.org](mailto:doram@hidalgocha.org)  
**Subject:** RE: TDHCA#18235 Scoring Notice  
**Importance:** High

Hi Melissa:

We will have to do a three-day posting on July 9 in order to get this in front of the Board on July 12. The agenda for the meeting will post on July 3 (tomorrow!). I need to know if you intend to appeal so I know whether to list the appeal on the agenda. If you can let me know by noon tomorrow, that would be great.

Also, I noticed that the scoring notice said that your appeal is due on July 6. This date does not take into account the holiday this week, so the date should be July 9. If you do appeal, it will be a massive help if you can get your appeal to me by Friday. If not, I need it on Monday by noon so it can be reviewed by the Executive Director and a response can be provided to you.

Regards,

Sharon D. Gamble MSW, PMP  
Competitive Housing Tax Credit Program Administrator  
Texas Department of Housing and Community Affairs  
(512) 936-7834

Any person receiving guidance from TDHCA staff should be mindful that, as set forth in 10 TAC Section 11.1(b) there are important limitations and caveats (Also see 10 TAC §10.2(a)).

About TDHCA

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**From:** Jason Burr  
**Sent:** Friday, June 29, 2018 3:59 PM  
**To:** [Mfisher@rise-residential.com](mailto:Mfisher@rise-residential.com); [doram@hidalgocha.org](mailto:doram@hidalgocha.org)  
**Cc:** Sharon Gamble  
**Subject:** TDHCA#18235 Scoring Notice

Scoring notice attached; no response needed if an appeal is not being filed.

Thanks,

**Jason Burr**  
Multifamily Finance Database Administrator  
Texas Department of Housing and Community Affairs  
221 E. 11th Street | Austin, TX 78701  
Office: 512.475.3986  
Fax: 512.475.1895

**About TDHCA**

The Texas Department of Housing and Community Affairs administers a number of state and federal programs through for-profit, nonprofit, and local government partnerships to strengthen communities through affordable housing development, home ownership opportunities, weatherization, and community-based services for Texans in need. For more information, including current funding opportunities and information on local providers, please visit [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us).

*Any person receiving guidance from TDHCA staff should be mindful that, as set forth in 10 TAC Section 11.1(b) there are important limitations and caveats (Also see 10 TAC §10.2(b)).*



**Kim Meredith**

---

**From:** John Shackelford  
**Sent:** Monday, September 23, 2019 10:56 AM  
**To:** Bill Fisher  
**Cc:** Kim Meredith  
**Subject:** Re: UW conditions 18235 memorial

> -----Original Message-----

> From: Bill Fisher

> Sent: Wednesday, July 25, 2018 9:30 AM

> To: brent.stewart@tdhca.state.tx.us; tom.cavanagh@tdhca.state.tx.us; mfisher@rise-residential.com;  
doram@hidalgocha.org; greg.stoll@tdhca.state.tx.us

> Subject: UW conditions 18235 memorial

>

> Can we do a call today or tomorrow on the commitment notice requirements?

>

> The lender IBC is the one who has to agree to a second lien on the property subject to a cash collateralized first. They are fine with that.

>

> USDA regulation allows for prepayment subject to an application. Legal will confirm this too.

>

> The sponsor needs more options to meet concerns raised by this condition by commitment notice.

>

> Thanks

>

> Bill

>

> Sent from my iPhone

**EXHIBIT D**



A LIMITED LIABILITY PARTNERSHIP  
ATTORNEYS & COUNSELORS

**John C. Shackelford**  
9201 N. Central Expressway  
Dallas, Texas 75231  
Fourth Floor  
(214) 780-1400 (Main)  
(214) 780-1414 (Direct)  
(214) 780-1401 (Fax)  
jshack@shackelford.law

August 21, 2019

**Via Email: marni.holloway@tdhca.state.tx.us**

Marni Holloway  
Multifamily Finance Director  
Texas Department of Housing and Community Affairs  
221 East 11th Street  
Austin, Texas 78701-2410

RE: Memorial Apartments, McAllen, Texas (the "Project");  
Our File No. 51718.2

Dear Marni:

This letter is to discuss and set forth the position of TX McAllen Memorial II Apartments, LP (the "Partnership") with regard to whether the Project satisfies the requirements of being an "at-risk" development. I have been requested to write you by Melissa Fisher, Manager of TX McAllen Memorial Apartments II GP, LLC, concerning the Department's position that the Project fails to satisfy the at-risk requirements under TX Gov't. Code §2306.6702(a)(5)(A) (the "Statute"). A copy of the Statute is attached hereto as Exhibit "A" and incorporated herein by reference for all purposes.

As I think you know, Bill Fisher has talked to Kent Bedell about this issue and I have spoken to Rosalio Banuelos about this issue as well. Both have been very helpful in understanding the Department's position. Based upon further research done by Mr. Fisher and me, it is the Partnership's position that the Project most certainly qualifies as being at-risk and satisfies the requirements of the Statute.

This position is based upon the following facts:

1. The Project received a United States Department of Agriculture (the "USDA") below-market interest rate loan (the "514 Loan") with rental subsidy under Section 514 of the Housing Act of 1949.
2. The Project is subject to affordable restrictions required by the USDA under the Farm Labor Program attendant with the 514 Loan.
3. Pursuant to 10 TAC 11.5(2) of the 2018 Qualified Action Plan (the "QAP"), an application under the USDA Set Aside involving rehabilitation must satisfy the at-risk requirements of the Statute.

4. Pursuant to Subsection (g) of the Statute, a development which has received a rental subsidy in the form of a loan under Section 514 of the Housing Act of 1949 constitutes an “at-risk” development.
5. The USDA has approved or has advised Ms. Fisher and Mr. Fisher that the 514 Loan may be prepaid by the Partnership.
6. Upon payment of the 514 Loan, the contract granting the rental subsidy and the affordability restrictions shall expire within two (2) years of July 31, 2018, which is the year the Partnership submitted its application for tax credits for the Project, all as required by TX Gov’t Code 2306.6702(a)(5)(A)(ii)(a).

It is my understanding Mr. Fisher provided to Mr. Bedell several weeks ago evidence of the Partnership’s ability to prepay the 514 Loan which therefore would result in the expiration of the 514 Loan, the rental subsidy, and the affordability restrictions.

From my conversations with Mr. Banuelos and from the email Mr. Banuelos sent to Mr. Fisher on Wednesday, August 14, 2019, the issue the Department has is whether the prepayment of the 514 Loan constitutes an “expiration” under Subsection (ii)(a) of the Statute. I don’t think there is any question that it does. First, the word “expiration” is not defined. When I looked up its definition, one definition is the ending of a period for which a contract is valid. A loan with a prepayment right has a maximum period of time between the effective date of the loan and its maturity date, and it has a shorter period of time which can be as short as the time between the effective date of the loan and the date it is prepaid. For this reason, the prepayment of the 514 Loan constitutes an “expiration” as required by Subsection (ii)(a) of the Statute.

Second, although Subsection (ii)(b) of the Statute specifically states a HUD-insured or HUD-held mortgage eligible for prepayment or nearing the end of its term satisfies the requirement of an “at-risk” development and similar language regarding a prepayment is not stated in Subsection (ii)(a) of the Statute, it must also be noted that Subsection (ii)(b) of the Statute does not use the word “expiration” as it is used in Subsection (ii)(a) of the Statute. Instead, Subsection (ii)(b) of the Statute states “or is nearing the end of its term”. This is significant because it is my position such difference in language between Subsections (ii)(a) and (ii)(b) of the Statute bolsters and reinforces the argument that the word “expiration” was intentionally used by the Legislature and was intended to be broader than limited to a definite period of time, which is what I presume is the Department’s current position. Reading Subsection (ii)(a) of the Statute in such a narrow way is the opposite of how, in my opinion, the Legislature intended it to be interpreted. To me, the Legislature intended Subsection (ii)(a) of the Statute to permit any subsidy, other than a HUD-insured or HUD-held mortgage, expiring at any time under any circumstances, howsoever the expiration is caused, to satisfy the Statute. For this reason, the prepayment of the 514 Loan constitutes an “expiration” as required by Subsection (ii)(a) of the Statute.

Marni Holloway  
August 21, 2019  
Page 3

After your review of this letter, please let me know if a telephone conference or a meeting would be constructive to resolving this issue.

I look forward to your response.

Very truly yours,



John C. Shackelford

JCS/klm

cc: Bobby Wilkinson, Executive Director (via email)  
Homero Cabello, Jr. (via email)  
Brent Stewart (via email)  
Kent Bedell (via email)  
Rosalio Banuelos (via email)  
Melissa Fisher (via email)  
Bill Fisher (via email)  
Michelle Snedden, Esq. (of the Firm)



## Texas Government Code

# § 2306.6702

## Definitions

(a) In this subchapter:

- (1) "Applicant" means any person or affiliate of a person who files an application with the department requesting a housing tax credit allocation.
- (2) "Application" means an application filed with the department by an applicant and includes any exhibits or other supporting materials.
- (3) "Application log" means a form containing at least the information required by Section 2306.6709.
- (4) "Application round" means the period beginning on the date the department begins accepting applications and continuing until all available housing tax credits are allocated, but not extending past the last day of the calendar year.

(5) "At-risk development" means:

(A) a development that:

(i) has received the benefit of a subsidy in the form of a below-market interest rate loan, interest rate reduction, rental subsidy, Section 8 housing assistance payment, rental supplement payment, rental assistance payment, or equity incentive under the following federal laws, as applicable:

(a) Sections 221(d)(3) and (5), National Housing Act (12 U.S.C. Section 1715l);

(b) Section 236, National Housing Act (12 U.S.C. Section 1715z-1);

(c) Section 202, Housing Act of 1959 (12 U.S.C. Section 1701q);

(d) Section 101, Housing and Urban Development Act of 1965 (12 U.S.C. Section 1701s);

(e) the Section 8 Additional Assistance Program for housing developments with HUD-Insured and HUD-Held Mortgages administered by the United States Department of Housing and Urban Development as specified by 24 C.F.R. Part 886, Subpart A;

(f) the Section 8 Housing Assistance Program for the Disposition of HUD-Owned Projects administered by the United States Department of Housing and Urban Development as specified by 24 C.F.R. Part 886, Subpart C;

(g) Sections 514, 515, and 516, Housing Act of 1949 (42 U.S.C. Sections 1484, 1485, and 1486); or

**(h)** Section 42, Internal Revenue Code of 1986; and

**(ii)** is subject to the following conditions:

**(a)** the stipulation to maintain affordability in the contract granting the subsidy is nearing expiration; or

**(b)** the HUD-insured or HUD-held mortgage on the development is eligible for prepayment or is nearing the end of its term; or

**(B)** a development that proposes to rehabilitate or reconstruct housing units that:

**(i)** receive assistance under Section 9, United States Housing Act of 1937 (42 U.S.C. Section 1437g) and are owned by:

**(a)** a public housing authority; or

**(b)** a public facility corporation created by a public housing authority under Chapter 303, Local Government Code;

**(ii)** received assistance under Section 9, United States Housing Act of 1937 (42 U.S.C. Section 1437g) and:

**(a)** are proposed to be disposed of or demolished by a public housing authority or a public facility corporation created by a public housing authority under Chapter 303, Local Government Code; or

**(b)** have been disposed of or demolished by a public housing authority or a public facility corporation created by a public housing authority under Chapter 303, Local Government Code, in the two-year period preceding the application for housing tax credits; or

**(iii)** receive assistance or will receive assistance through the Rental Assistance Demonstration program administered by the United States Department of Housing and Urban Development as specified by the Consolidated and Further Continuing Appropriations Act, 2012 (Pub. L. No. 112-55) and its subsequent amendments, if the application for assistance through the Rental Assistance Demonstration program is included in the applicable public housing plan that was most recently approved by the United States Department of Housing and Urban Development as specified by 24 C.F.R. Section 903.23.

**(6)** "Development" means a proposed qualified low income housing project, as defined by Section 42(g), Internal Revenue Code of 1986 (26 U.S.C. Section 42(g)), that consists of one or more buildings containing multiple units, that is financed under a common plan, and that is owned by the same person for federal tax purposes, including a project consisting of multiple buildings that:

**(A)** are located on scattered sites; and

**(B)** contain only rent-restricted units.

**(7)** "Development owner" means any person or affiliate of a person who owns or proposes a development or expects to acquire control of a development under a purchase contract approved by the department.

**(8)** "Housing tax credit" means a tax credit allocated under the low income housing tax credit program.



Rural Development

**MAR 12 2019**

OFFICE OF THE  
STATE DIRECTOR

101 S. Main Street  
Suite 102  
Temple, TX  
76501

Voice 254.742.9770  
Fax 844.496.8122

Mr. Bill Fisher  
TX McAllen Memorial Apartments II, LP.  
501 E. Jasmine Street  
McAllen, TX 78521

RE: Housing Authority of the County of Hidalgo – Transferor  
TX McAllen Memorial Apartments II, LP. – Transferee  
Memorial Apartments

Dear Mr. Fisher:

We have completed our review of the transfer application that was received on February 12, 2019, and the supplemental information that was received on February 19, 2019, for the above referenced property. The application was reviewed for completeness in accordance with HB-3-3560, Chapter 7, and Attachment 7-B-1. The application is incomplete. The following information must be submitted and/or corrected in order to have a complete application:

1. Executive Summary:

- a. Item G of the submitted document indicates that “RTO is not applicable to this transfer package.” This is not accurate, as the new entity is a limited-profit entity and would be eligible for a Return to Owner. This must be addressed.
- b. Item I must be updated as all submitted commitments for all third-party funding have expired.
- c. Item K indicates that there are no proposed or anticipated bridge loans or interim financing. This is contradictory to other documentation in the Executive Summary and the overall application. This must be corrected.

2. Required Written Statements:

- a. *Purchaser Statement Concerning Transfer.* The submitted statement is a qualified statement and contradictory in nature, with the applicant certifying that they will “assume the borrower responsibilities and obligations specified in Rural Development requirements, including requirements in a promissory note, loan agreement or other documents related to Rural Development Loans held by the borrower entity,” and then also stating that the current borrower will remain the responsible party for existing loans and grants. The written statement, as shown in HB-3-3650, Attachment 7-B-1, is required by 7 CFR 3560 § 3560.406 (C)(4).

- b. *Joint Statement Concerning No Reversionary Interest:* The submitted statement is a qualified statement and is contradictory in nature. The seller and the purchaser cannot swear and affirm that there is no reversionary interest, when the next sentence indicates that the transaction is based on a reversionary interest in the project. The written statement, as shown in HB-3-3560, Attachment 7-B-1, is required by 7 CFR 3560 § 3560.406 (C)(5).
  - c. *Purchaser's Statement Regarding Appraisal:* The submitted statement is qualified and must be corrected.
- 3. HB-3-3560, Attachment 7-B-2, "MFH Transfer & Assumption Application Supplement" was not submitted in its entirety with only page 8 included in the application.
- 4. Form RD 3560-1, "Application for Partial Release, Subordination, or Consent," is not complete. The type of loan, action required, state, county, case number, and project name were left blank. Also, required items 1-5 were not completed.
- 5. Evidence of site control. Submit all applicable documents, executed by the purchaser and seller, in its entirety, including all attachments and amendments. Include any side agreements. The document must clearly recite all consideration to be paid to the seller.
- 6. A copy of the proposed ground lease and an attorney opinion regarding the legality of the lease as well as an opinion of how the ground lease is acceptable within Agency regulations.
- 7. A copy of the proposed Seller's Note.
- 8. The submitted Preliminary Title Report is not current, as it is more than 12 months old.
- 9. A Legal Services Agreement must be submitted, as required by 7 CFR 3560 § 3560.62(a)
- 10. A current Self Evaluation/Transition Plan, which is less than three years old, must be submitted.
- 11. A Repair Agreement must be completed and signed by the seller and purchaser. It must include all items listed in HB-3-3560, Attachment 7-B-1, Item 10, as required by 7 CFR 3560 § 3560.406(d)(7).
- 12. Form RD 1924-13, "Estimate and Certificate of Actual Cost," must be submitted.
- 13. Form SF-424, "Application for Federal Assistance:"
  - a. Item 8, Applicant Information, lists the applicant as Housing Authority of Hidalgo County, which is contradictory to the transfer package.



- b. Item 9, Type of Applicant, lists the applicant as Special District Government. If the Housing Authority of the County of Hidalgo is indeed the applicant, this is correct; however, if the applicant is TX McAllen Memorial Apartments II, LP., then this must be corrected to show that the applicant is a for-profit organization.
  - c. Item 14, Areas Affected by Project, was left blank.
  - d. The application is executed by Mike Lopez, as Executive Director of the Housing Authority of the County of Hidalgo. If the housing authority is not the applicant, then this application must be executed by an authorized member of TX McAllen Memorial Apartments II, LP.
  - e. Form SF-424C, "Budget-Construction Programs," was not submitted.
  - f. Form SF-424D, "Assurances-Construction Programs," was not submitted.
14. The purchaser's proposed project operating budget covering the first year of operation following the transfer must be submitted on Form RD 3560-7, "Multiple Family Housing Project Budget/Utility Allowance," and include a narrative justification of changes in the budget.
15. Commitment Letters for the equity investor and proposed 538 lender are expired.
16. Interim financing details and descriptions must be submitted in accordance with HB-3-3560, Attachment 7-B-1, Item 24.
17. The purchaser's resume must be submitted and include the following information:
- a. Proposed organizational structure
  - b. Resume for each principal of the purchaser who has no previous participation with Rural Development, with sufficient detail for Rural Development to understand the new principal's real estate experience.
  - c. Disclosure of any proposed roles in the ownership or management of the project by affiliates of the purchaser or affiliates of the seller.
18. Financial Statements for the purchaser must be submitted, including current financial statements for:
- a. The applicant. If the applicant is an entity that has not yet been formed, the financials should be pro forma.
  - b. Each proposed principal.
  - c. Non-profit principals must submit IRS Form 990, with Schedules A and B.
  - d. Attachment 7-B-4, "MFH Transfer & Assumption Certification for Financial Statements," must be included with all statements.

19. For each proposed principal, documents establishing citizenship must be submitted. This includes social security or tax identification numbers.
  20. Credit report fees. The exact amount of funds needed in order to request credit reports is unclear at this time until we fully understand the organizational structure.
  21. The following items were omitted regarding the Management Plan:
    - a. A narrative description of the proposed record-keeping system.
    - b. A copy of the proposed lease.
    - c. A copy of the proposed occupancy rules.
  22. Attorney opinion of the proposed lease, if the project will not continue to use the Rural Development approved lease. No proposed lease was included with the management plan to determine if this is needed.
  23. Form RD 3560-13, "Management Certification," was not submitted.
  24. The organizational documents submitted are not sufficient and the ownership structure of the entity is unclear. The Agency has only received a draft partnership agreement for TX McAllen Memorial Apartments II, LP., and still need the following:
    - a. Organizational documents for the general partner TX McAllen Memorial Apartments II GP, LLC.
    - b. Organizational documents for the sole member of the general partner, Housing Authority of the County of Hidalgo.
- Also, it is noted that the application package shows a branch of the ownership structure, which includes Rise Residential Construction, LP., marked as "no longer included in the ownership." However, other documents sent via email by Bill Fisher still show this entity as in the structure. Additionally, the Application Summary completed by the Texas Department of Housing and Community Affairs (TDHCA) indicates the branch of ownership which includes Rise Residential Construction, LP., as a part of the ownership structure. Clarification is required, and if they are indeed still in the ownership structure, the following is also needed:
- a. Organizational documents for Rise Residential Construction, LP.
  - b. Organizational documents for Rise Residential Construction GP, LLC.
25. The applicant's attorney must provide a letter certifying the legal sufficiency of the organization documents. The attorney must certify:
    - a. The transferee's legal capacity to successfully assume and operate the project for the life of the Rural Development loan.

- b. That the organizational documents comply with the requirements of HB-1-3560, 4.16(B) and 7 CFR 3560 § 3560.55.
  - c. For partnership purchasers, that the term of the partnership extends at least through the latest maturity of all existing and proposed Rural Development debt.
  - d. For partnership purchasers, that the partnership agreement requires the General Partners to maintain a five percent financial interest in the residual or refinancing proceeds of the partnership.
  - e. That the organizational documents require prior written Rural Development approval for any of the following:
    - i. Withdrawal of a general partner/managing member
    - ii. Admission of a general partner/managing member
    - iii. Amending the organizational documents
    - iv. Selling all or substantially all of the assets of the purchaser
26. A letter from HUD indicating HUD's approval of the transfer of the Section 8 HAP contract to the new owner.
27. Form RD 3560-25, "Request for Rental Assistance," must be submitted.
28. The organizational structure as presented does not meet Agency regulations. The eligibility requirements for off-farm labor housing loans and grants are found in 7 CFR 3560.555 of which subsection (a) (2) states a limited partnership with a non-profit general partner which meets the requirements of 7 CFR 3560.55 (d) is eligible. However, TX McAllen Memorial Apartments II GP, LLC., the general partner of the proposed limited partner, TX McAllen Memorial Apartments II, LP., is a for-profit entity. Therefore, the limited partnership is not eligible under subsection (a) (2) and a transfer and assumption under the applicable servicing regulations is not permissible. Additionally, it is unclear if Rise Residential Construction, LP., a for-profit entity, is a managing member of TX McAllen Memorial Apartments II GP, LLC., along with the Housing Authority of the County of Hidalgo. Regardless, as stated above, the organizational structure as presented does not meet Agency regulations.
29. Memorial Apartments was constructed and subsequently rehabbed with Section 514 loan and Section 516 grant funds to provide housing to eligible farm workers. Memorial Apartments has been unable to rent to eligible farm workers; therefore, they requested and received a Diminished Needs Waiver in order to rent to income eligible, non-farm workers. Consequently, the property is not being used for its intended purpose and in accordance with 514(i) of the Housing Act, it does not allow for a property itself to be converted to a Section 515 property, regardless if waivers have been granted. This needs to be addressed by the applicant.

30. In the Executive Summary, the applicant states, "The Hidalgo County Housing Authority is only transferring ownership of the leasehold improvements to the tax credit partnership. At all times it will remain the fee simple owner of the land to which current RD grants, loans and restrictions run. They remain responsible for compliance with each and all of these. They remain the "Equitable Owner" of the leasehold improvements under Texas law. A legal structure and legal opinion are included in this transfer package."

This proposed transaction cannot be approved under the existing regulations. The sale, transfer or other disposition of all or a part of the security property for a Section 514 loan is governed by 7 C.F.R. §§ 3560.406 and 3560.407.

Section 3560.407 applies to general sales of all or a part of the security property and it provides that the borrower must obtain the agency's approval prior to any sale. There are certain conditions which must be met including the condition that the "borrower's ability to repay the Agency debt will not be impaired" and the "transaction will not interfere with the successful operation of the housing project or prevent the borrower from carrying out the purpose for which the loan was made." § 3560.407(b)(1) and (2). Based upon a review of the conditions to be satisfied, it appears that this section applies to a transaction which concerns a sale of just a part of the security property (or an interest in the security property) and where the existing borrower retains ownership and the remaining property continues to serve as security property. This section would not seem to apply to the proposed transaction.

Section 3560.406 applies to an ownership transfer or sale but it only addresses those situations where the existing loans are being assumed by the buyer as a part of that transfer or sale. Therefore, this section would not apply here because the proposed closing process makes no mention of the existing Section 514 loan being assumed by TX McAllen Memorial Apartments II, LP., which is the initial transferee/buyer.

The Agency has experience with this type of request in the past and also on a recent transaction and has historically not been able to approve this leasehold interest/ground lease structure as the governing regulations do not allow it.

31. In an email from Bill Fisher dated February 13, 2019, he stated, "The existing 515 debt and the existing grants are not being transferred in this structure. The land remains with Hidalgo County along with the compliance obligation and 515 loan that run with the land. The Housing will remain the borrower and they are responsible for the grants and existing RD loans." This further clarified the proposal as described in the Executive Summary.

For clarification, the existing loans on Memorial Apartments are not Section 515 loans, they are Section 514 loans. This proposal, in effect, would not constitute a transfer and assumption of ownership in accordance with HB-3-3560, Chapter 7, Section 7.4, as the transaction will not place title to the property in the hands of a new owner, the new owner will not assume all liability for the debt, and there will be no change in the legal entity owning the property.

This proposal, which includes the current owner retaining ownership of the land and not transferring the Section 514 loan, is not acceptable to the Agency and does not meet Agency regulations.

Furthermore, the Rental Assistance on this property is secured with the Section 514 loan, therefore, if the loan is not transferred and assumed by the new owner, the new owner would not have access to or be able to utilize the Rental Assistance as it would remain with the current owner.

32. As of the date of this letter, we have received a Post-Rehab Capital Needs Assessment (CNA), however, we have been unable to review it until we receive a detailed scope of work, which was first requested on November 19, 2018.

The Application Summary produced by TDHCA states the following, "Nearly half of site work costs are attributed to site amenities, including \$400K for landscaping, \$100K for playgrounds/sport courts, and \$300K for the installation of a resort-style pool (although the sport courts and pool are not shown on the site plan)." The Application Summary also states the scope of work includes the installation of 40 carports and 40 garages.

This proposed scope of work is not consistent with Agency standards of constructing and rehabbing modest housing for very-low and low income tenants and would not be permissible. The Agency encourages the use of features that minimize maintenance costs over the life of the project. Designs must be economical and avoid unnecessary or elaborate features. HB-1-3560, Chapter 3, Section 3.17 and 7 CFR 3560 § 3560.60

33. The Executive Summary states the following, "HCHA gets a construction management fee equal to \$350K for acting as the primary GC to facilitate the state allowed sales tax exemption during construction only. It compensates them for construction oversight of the RISE Constructions who is the prime subcontractor responsible for 100% of the work."

This proposed structure where the Housing Authority of the County of Hidalgo is the General Contractor in order to receive a sales tax exemption on materials and then have a prime subcontractor is not acceptable to the Agency. The Housing Authority of the County of Hidalgo has no contractor experience. This type of proposal has been presented to the Agency in the past and also on a recent transaction and has historically not been acceptable as the governing regulations do not allow it. RD Instruction 1924-A, § 1924.6

34. The Executive Summary states the following, "The developers, RISE and HCHA, will carry notes payable exclusively from cash flow or refinancing proceeds for any developer fee not paid at perm loan conversion. These notes can never default the project or related financing." This is not allowed by the Agency or its governing regulations. 7 CFR 3560 § 3560.409

35. The Executive Summary states the following, "The property will be managed jointly by the current owner, Hidalgo County Housing Authority, for all things related to RD compliance. RISE Residential Management will manage the day to day caring for the property and the residents. Both sponsors are responsible for compliance with the requirements of the housing tax credit program which funded the development. The Housing Authority will exclusively administer the RD Farm Labor rental subsidy." This is not allowed by the Agency or its governing regulations. 7 CFR 3560 § 3560.102
36. The Total Development Cost as indicated by the PAT is \$23,716,840 with a \$2,393,496 developer fee and with only \$11,410,800 in Hard Costs. The As-Is appraised value of Memorial Apartments is \$3,665,000. The Prospective Market Value after rehab is only \$3,975,000. The value of the property will only increase by \$310,000 after the rehab is complete.

The Executive Summary states in part, "The complete and comprehensive modernization and revitalization of the property for the benefit of the residents and for the benefit of US taxpayers. The housing tax credit allocation of over \$18MM is enough to complete and pay for the proposed modernization, revitalization and rehabilitation in a financially feasible manner."

Given the figures that have been presented above, it is difficult to agree that this proposed rehab will benefit the US taxpayers or that it is financially feasible. This needs to be addressed by the applicant.

37. Memorial Apartments was originally constructed in 1975 as an off-farm labor housing facility using Section 514 loan and Section 516 grant funds. Over the course of the property's existence, it has received \$5,072,599 in Section 514 loan funds and \$9,238,342 in Section 516 grants funds for a total of \$14,310,941. The most recent awarded Section 514 loan was in 2007 in the amount of \$524,889 and the most recent awarded Section 516 grant was in 2007 in the amount of \$4,853,042. Overall, Memorial Apartments has received 5 loans and 5 grants over its lifespan up to this point.

Five years after receiving \$5,377,931 in loan and grants funds from the Agency, Memorial Apartments applied for and received tax credits from TDHCA in Fiscal Year 2012 with a proposed total development cost of \$11,756,776. The owner subsequently submitted a transfer and assumption application to the Agency. The application request did not meet Agency regulations; therefore, it was denied and the application was ultimately withdrawn. Many of the reasons why the Agency was unable to move forward with this application are the same or similar to the issues we have presented above on the most recent application submission.

Two years later in Fiscal Year 2014, Memorial Apartments applied for additional funds through the Multi-Family Housing Preservation and Revitalization Restructuring (MPR) Demonstration Program. The owner proposed \$7,844,046.68 in total project costs, however, the cost was not supported by the approved CNA. This application was ultimately withdrawn.

In FY 2019, the owner submitted a reserve request to the Agency to repair the interior ceilings of every unit on the property, which totaled \$1,170,495.33. This expenditure would use the majority of the funds in the reserve account leaving little funds for other unexpected capital needs. The Agency authorized the owner to use a maximum of \$250,000 to repair the units that are in the most need and pose a health of safety risk to the tenants.

From the information provided above, there is a representation that after receiving large amounts of funds and completing substantial rehabs, the owner continues to apply for additional funds in succeeding years to rehab the property again. It appears there is a lack of ongoing and continuous upkeep and maintenance of the property. With the replacement reserve account funded to about \$1,300,000, funds are available to preserve the property on an ongoing and continuous basis as needed. Therefore, it is unclear to the Agency why multiple substantial rehabs have been completed and yet another rehab has been requested and may be needed. This needs to be addressed by the applicant.

An initial teleconference was conducted between the Agency, the owner, and all interested parties regarding this transaction on February 22, 2018. During the call we discussed the proposal you presented to us and we made you aware of the many concerns we had with the proposal and indicated to you that if many of the aspects of the transaction did not change, the Agency would more than likely not be able to move forward with the deal. We advised you to submit your application to us as quickly as possible so that we could work through any issues there may be. On November 6, 2018, we conducted another teleconference between the Agency, the owner, and all interested parties to again discuss your proposal and this transaction. The Agency had many of the same concerns we discussed during our first call and were concerned that we had not received an application at that point. The owner indicated they would submit a complete application by November 30, 2018.

We received the application on February 12, 2019, and supplemental information was submitted on February 19, 2019. After we completed our review of the application, we found that many of the issues that we discussed during our calls referenced above were still being proposed and little to no changes were made as a result of our advising to the contrary. It is difficult to understand why, after discussing our many concerns regarding your proposal and transaction, that nothing was amended or changed and the very transaction that we stated would not be acceptable was submitted to us.

Please provide all the required documents requested above within thirty (30) days from the date of this letter. Your response must also address each issue that has been presented and how you propose the transaction could move forward given the questions and obstacles. If we do not receive a response within the required 30 days, this application will be withdrawn. If the application is withdrawn, you may reapply at any time. Please see the enclosed Attachment 1-B, Appeal Rights.

If you have any questions regarding this letter, please contact Amanda Ayers, Loan Specialist, at (254) 742-9778 or email [amanda.ayers@tx.usda.gov](mailto:amanda.ayers@tx.usda.gov).

Sincerely,



EDD HARGETT  
State Director

Enclosure: Attachment 1-B, Appeal Rights

cc: Area Director Roel Gomez, Edinburg Area office  
Edinburg Area office



## ATTACHMENT 1-B

### ATTACHMENT TO LETTER NOTIFYING CUSTOMERS OF AN ADVERSE DECISION THAT IS APPEALABLE

The decision described in the attached letter did not grant you the assistance you requested or will terminate or reduce the assistance you are currently receiving. If you believe this decision or the facts used in this case are in error, you may pursue any or all of the following three options.

#### **Option 1 - Informal Review**

If you have questions concerning this decision or the facts used making it and desire further explanation, you may write this office to request an informal review. *There is no cost for an informal review.* This written request must be received no later than 15 calendar days from the date of the attached letter. You must present any new information, evidence, and possible alternatives along with your request. You may also have a representative or legal counsel participate in the process, at your cost. The informal review may be conducted by telephone or in person, at the discretion of the Agency. Please include a daytime phone number in your request to arrange for the review. You may skip this step in the informal process and select one of the following two options. If you do, you will automatically waive your right to an informal review.

#### **Option 2 - Mediation or ADR**

You have the right to request mediation or other forms of ADR for the issues that are available for mediation. *You will have to pay for at least 50 percent of the cost of mediation or ADR.* Rural Development will pay for the other 50 percent of the cost, provided the Agency has sufficient resources from its appropriated funds. If the Agency does not have sufficient resources, you will be advised how much, if any, the Agency can contribute to the cost of mediation or ADR. If you need the information to assist you in deciding whether to seek mediation or ADR, you may contact the Rural Development State Director listed below.

Edd Hargett  
101 South Main Street, Suite 102  
Temple, TX 76501  
254-742-9700

If you elect to seek mediation or ADR, your written request for this service must be sent to the Rural Development State Director listed below and must be postmarked no later than 30 days from the date of the attached letter. The Rural Development State Director will advise you of the estimated cost of mediation or ADR, the extent to which the Agency can contribute to the cost, and the process and procedures for this service.

In states with a USDA-sponsored mediation program, you will generally be referred to such service. In states without a USDA-sponsored mediation program, you will be provided with the name or names of mediators. You will be advised directly by the mediation or ADR source if they can mediate your case. Once you request mediation or ADR, it stops the running of the 30-day period in which you may request an appeal (described in Option 3). If mediation or ADR does not result in resolution of these issues, you have the right to continue with a request for an appeal hearing as set forth in Option 3.

When mediation or ADR is concluded, you will be notified of the result and the number of days remaining to request an appeal, if applicable. If you request mediation or ADR prior to filing for an appeal, the number of days you will have to request an appeal will be 30 days from the adverse decision minus the number of days you took to request mediation. Mediation or ADR does not take the place of, or limit your rights to, an appeal to the NAD; however, an NAD appeal hearing would take place after mediation or ADR. You may skip mediation or ADR and request an appeal hearing. However, in doing so, you will automatically waive your rights to an informal meeting, mediation, or ADR.

Rural Development State Director address: 101 South Main Street, Suite 102  
Temple, TX 76501

### **Option 3 - Request an Appeal**

You may request an appeal hearing by the NAD rather than an informal review, mediation, or ADR. *There is no cost for an appeal.* Your request for an appeal must be made no later than 30 days from the date you receive the attached letter. You must write the Assistant Director, NAD, for your region at the following address:

NAD Assistant Director address: NAD Western Regional Office  
755 Parfet Street, Suite 494  
Lakewood, CO 80215-5599

Your request for an NAD hearing must state the reasons why you believe the decision is wrong, be personally signed by you, and must include a copy of the attached letter. A copy of your request must also be sent to the Rural Development State Director at the address listed under Option 2.

You have the right to an appeal hearing within 45 days of the receipt of your request. You or your representative or counsel may contact this office anytime during regular office hours in the 10 days following the receipt of your request for a hearing to examine or copy relevant nonconfidential material in your file. Photocopies will be provided to you. Your representative or counsel should have your written authorization to represent you and review your file.

The NAD Hearing Officer will contact you regarding a time and place for the hearing. You may also request a teleconference hearing in lieu of the face-to-face hearing. At any time before the scheduled hearing you may also request that the Hearing Officer make a decision without a hearing. If you do, the Hearing Officer's decision will be based on the Rural Development file, any written statements or evidence you may provide and any additional information the Hearing Officer thinks necessary.

The Federal ECOA prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law concerning this creditor is the Federal Trade Commission. If a person believes he or she was denied assistance in violation of this law, they should contact the Federal Trade Commission, Washington, D.C. 20580

The Fair Housing Act prohibits discrimination in real estate related transactions, or in the terms of conditions of such a transaction, because of race, color, religion, sex, disability, familial status, or national origin. The federal agency that is responsible for enforcing this law is the U. S. Department of Housing and Urban Development. If a person believes that they have been discriminated against in violation of this law, they should contact the U. S. Department of Housing and Urban Development, Washington, D.C. 20410 or call (800) 669-9777.

7a

**BOARD ACTION REQUEST**  
**ASSET MANAGEMENT DIVISION**  
**OCTOBER 10, 2019**

Presentation, discussion, and possible action on an order proposing the repeal of 10 TAC Chapter 10 Subchapter E, Post Award and Asset Management Requirements, and an order proposing new 10 TAC Chapter 10 Subchapter E, Post Award and Asset Management Requirements, and directing their publication for public comment in the *Texas Register*

**RECOMMENDED ACTION**

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

**WHEREAS**, pursuant to Tex. Gov't Code §2001.039, state agencies are required to review a rule every four years to assess whether the reasons for initially adopting the rule continue to exist;

**WHEREAS**, staff recommends to the Board that there is a continuing need for the Asset Management rules to exist, which is to ensure compliance with applicable sections of Tex. Gov't Code Chapter 2306, Internal Revenue Code §42, and applicable sections of 24 CFR §92.252 (and as adopted for the Texas Neighborhood Stabilization Program), 24 CFR §92.219, and 24 CFR §93.302;

**WHEREAS**, changes are now needed to correct rule references, clarify language or processes, include requirements for federal programs, reduce stakeholder reporting burdens of duplicative materials at 10% Test and cost certification submission, implement recommendations made by the Department's Internal Auditor for the cost certification process, create more efficiency in the creation of Special Reserve Account Agreements and the release of Special Reserve funds, reduce the number of notification and non-material amendments related to changes in guarantors, revise requirements for annual rent reviews and Community Housing Development Organization (CHDO) certifications to clarify current Department practice and meet federal requirements, add additional notification requirements to Right of First Refusal documentation based on previous public comment and stakeholder input at roundtables, and remove requirements regulating broker fees and Department approvals of brokers under Qualified Contract requirements; and

**WHEREAS**, such proposed rulemaking will be published in the *Texas Register* for public comment from October 25, 2019, through November 8, 2019, and subsequently returned to the Board for final adoption;

**NOW, therefore, it is hereby**

**RESOLVED**, that the proposed repeal of 10 TAC Chapter 10 Subchapter E, Post Award and Asset Management Requirements, and proposed new 10 TAC Chapter 10 Subchapter E, Post Award and Asset Management Requirements, together with the preambles presented to this meeting, are hereby approved for publication in the *Texas Register* for public comment; and

**FURTHER RESOLVED**, that the Executive Director and his designees be and each of them are hereby authorized, empowered, and directed, for and on behalf of the Department, to cause the proposed repeal of 10 TAC Chapter 10 Subchapter E, Post Award and Asset Management Requirements, and proposed new 10 TAC Chapter 10 Subchapter E, Post Award and Asset Management Requirements, together with the preambles in the form presented to this meeting, to be published in the *Texas Register* for public comment and, in connection therewith, make such non-substantive technical corrections, or preamble-related corrections, as they may deem necessary to effectuate the foregoing, including the preparation and requested revisions to the subchapter specific preambles.

## **BACKGROUND**

Tex. Gov't Code §2306.053 provides for the Department to administer federal housing, community affairs, or community development programs, including the low income housing tax credit program. The Asset Management Division and its Rules, as a whole, are an integral part of administering the Department's federal housing programs, assisting in reviewing and ensuring the long-term affordability and safety of multifamily rental housing Developments in the Department's portfolio as required under Tex. Gov't Code §§2306.185 and 2306.186, performing the functions of processing amendments and ownership transfers as required under §§2306.6712 and 2306.6713, and performing essential functions required under various federal program (HOME, NSP, NHTF, Exchange, TCAP) rules and under Section 42 of the Internal Revenue Code.

Staff recommends that these rules be retained and that this be accomplished through repeal of the existing rules and proposal of new rules. The new proposed rules further clarify language and requirements on which questions are often received, correct references to processes, other rules and forms that have been updated, reduce stakeholder reporting burdens of duplicative materials at 10% Test and cost certification submission, implement internal audit recommendations and federal requirements for the cost certification process, create more efficiency in the creation of Special Reserve Account Agreements and release of Special Reserve funds, and reduce the number of notification and non-material amendments related to changes in guarantors, revise requirements for annual rent reviews and Community Housing Development Organization (CHDO) certifications to clarify current Department practice and meet federal requirements, add additional notification requirements to Right of First Refusal documentation based on previous public comment, roundtable discussions, and stakeholder input, and remove requirements regulating broker fees and Department approvals of brokers under Qualified Contract requirements.

Behind the proposed preamble for the proposed new action a draft of the rule is shown in its blackline form reflecting changes to the rule that is proposed for repeal.

The proposed draft of the 2020 Post Award and Asset Management Requirements reflects staff's recommendations for the Board's consideration. The more significant changes to specific sections are summarized below. Changes made only for purposes of correcting previous grammatical errors or spacing, re-numbering, re-aligning requirements with updated references to sections elsewhere in rule, removing redundancies, or updating rules to reflect current Department processes that do not signal a change in policy or practice are not specifically discussed.

Upon Board approval, the proposed 2020 Asset Management Rules will be posted to the Department's website and published in the *Texas Register*. Public comment will be accepted between October 25, 2019, and November 8, 2019. The Asset Management Rules, after consideration of public comment, will be

brought before the Board on December 12, 2019, for final approval and subsequently published in the *Texas Register* for adoption.

*Summary of Proposed Changes:* Most of the changes proposed by staff are clarifying in nature; however, this section outlines the more significant recommendations made by staff.

1. §10.402(e) Post Bond Closing Documentation Requirements. Staff has proposed a clarification of requirements for Fair Housing trainings under §10.402(e)(1)&(2) at the request of the Manager of Fair Housing, Data Management and Reporting. The clarifications include a statement that attendees must pass such trainings for the certificate to be considered valid, and that duplicate certificates for the same training course taken on separate dates cannot be submitted to meet the required number of minimum training hours. This proposed change is related to the same language that appears under the 10% Test requirements, which is consistent with guidance given out by Fair Housing and Asset Management staff during a review of 10% Tests for the 9% Competitive awards. The change has been proposed in this section for purposes of consistency.
2. §10.402(g) 10% Test (Competitive HTC Only). Staff has proposed the same Fair Housing training clarifications to echo changes in the above §10.402(e).

Staff also proposes the removal of the requirement in §10.402(g)(8) for 9% HTC Awardees to submit a Development Owner's preliminary construction schedule or statement showing the prospective construction loan closing date, construction start and end dates, prospective placed in service date for each building, and planned first year of the credit period. The Asset Management Division was previously using this information to request LURAs and cost certifications and to track construction status reports; however, Carryover Allocation Agreements and Determination Notices have been updated to request the prospective first year of the credit period and the construction status report requirements have been revised in prior years to create better firm deadlines for construction status report submission. As such, this item appears to be redundant and staff proposes its deletion.

3. §10.402(j) Cost Certification (Competitive and Non-Competitive HTC, and related activities only). Under §10.402(j)(3)(B)(i), staff has proposed revised language to reflect changes made to the Owner's Certification Exhibit in the Cost Certification package as recommended by the Department's Internal Auditor during their review of the cost certification process. The recommendation discussed receiving verification from the Development Owner that the Certified Public Accountant (CPA) hired to furnish the Independent Auditor's Report required under Internal Revenue Code Section 42 and by Department Rule is licensed to practice public accountancy, is in good standing, and has satisfied any restrictions that may have been placed upon the CPA firm's practice by any licensing board. The changes in rule language reflect this revised certification, which should satisfy the Internal Audit recommendation.

Under §10.402(j)(3)(B)(xxviii), staff proposes removal of the requirement for a Financing Narrative, which previously accompanied the Summary of Sources & Uses exhibit in the cost certification package. Since most of the information supplied is gathered through discussions with the Owner representative and other submission items within the cost certification package, staff considers the item to be redundant and proposes its deletion.

Under 10.402(j)(3)(B)(xxxiv), staff proposes an additional requirement for HTC deals layered with National Housing Trust Fund (NHTF) funding in accordance with Federal requirements under the NHTF program, which requires an additional cost certification be completed by an independent, licensed, certified public accountant to certify all Development costs (including project costs) subject to the conditions and limitations under the program's current Federal requirements. Little

guidance has been released under the NHTF Interim Rule at the current time regarding requirements of this cost certification; however, in order to meet the Federal rule, staff is planning to issue a Department promulgated form that a CPA can use to certify to Development costs. This requirement is also currently included in the Multifamily Direct Loan Rule for Developments layered with HTCs.

Under §10.402(j)(3)(B)(xxxxv), staff proposes removal of the requirement for a Completion Certificate for TDHCA Issued Bond Developments. Based on discussions with the Director of Multifamily Bonds, the Completion Certificate is currently received with other deliverables, making the necessity of its collection at cost certification redundant. Staff has proposed deletion of this item.

Under §10.402(j)(3)(F) based on input received from multiple stakeholders, staff proposes removing language that allows 8609 issuance to be delayed before a monitoring report is available and the Owner has the ability to correct any events of noncompliance. The section still maintains the requirement for Owners to correct any noncompliance within or outside of the corrective action period prior to issuance of forms 8609, but will allow issuance of 8609s timely when a monitoring letter or report has not yet been issued for Owner review, action, and response.

4. §10.403 Review of Annual HOME/NSP, and National Housing Trust Fund Rents. While staff had not previously included the non-federally sourced TCAP-RF program in the requirement for annual rent reviews, the section states that “The Department is also required by 24 CFR §92.219 and §92.252(d)(4) to approve rents where Multifamily Direct Loan funds are used as HOME match.” After discussions with Legal and Multifamily Direct Loan staff, it has become apparent that nearly all TCAP-RF loans are used as TDHCA HOME match. In order to avoid noncompliance with Federal requirements and to remove the complication of external stakeholders having to determine whether loan funds were used internally by the Department as HOME match, staff proposes the updating of this section to explicitly include TCAP-RF by name as one of the programs for which annual review of rents will be required.
5. §10.404 Reserve Accounts. Staff has proposed the removal of the requirement for review and approval of the Special Reserve Plan under §10.404(d)(4). The section requires that a Department approved plan be established at the time a Special Reserve account is created and that disbursements from the fund will only be approved by the Department if they are in accordance with the current approved plan. The Special Reserve Account is defined in the Exchange Subaward Agreements as resident expenses that may include “application costs, security deposits or utilities for any unit leased to residents with incomes at or below 50% of the area median family income, or other purposes as approved by the Department.” Since staff reviews all of the disbursement requests, items that are not approvable under the Subaward Agreement are either accepted or denied by staff at the time of review, making an additional review and approval of a special reserve plan unnecessary. In addition, Special Reserves that are set up at the time of cost certification will be asked to sign Special Reserve Agreements that will also request that Owners designate the primary uses for which funds will be released, also making an additional review and approval of a special reserve plan seem unnecessary. Staff has also proposed the removal of the requirement for the Special Reserve Account Agreement to be executed by the financial institution representative, as this signature was mainly for acknowledgment purposes and can delay the full execution of the Agreements.
6. §10.405 Amendments and Extensions. Staff has proposed the removal of notifications and non-material amendments in §10.405(a)(2)(E) and §10.405(a)(3)(C) for General Contractors or guarantors providing guaranties only during the construction period. Staff often re-reviews



guarantors at the time of cost certification and can be asked to process amendments or notifications for parties that have already departed the transaction and were only providing guarantees during the construction period. The removal of this requirement should result in fewer notifications and non-material amendments being submitted for external stakeholders and staff. The new §10.405(a)(3)(D) does not reflect a new rule or requirement, but was merely moved from Subchapter F, §10.607(i) and into this section given its references to the §10.405 non-material amendment process.

Staff has also proposed the removal from §10.405(b)(2)(B) of the reference to requests to implement a revised election under §42(g) of the Code, as this type of material LURA amendment request must be considered by the Department and the Board under both §§10.405(b)(2)(B) and 10.405(b)(2)(F). Since a change in a recorded LURA affecting a Development's set aside election may affect rights enforceable by a tenant or other third party under the LURA such that the material request may not be recommended by the Department or approved Board, the additional reference next to §10.405(b)(2)(B) appears to misrepresent how such a request will be evaluated.

7. §10.406 Ownership Transfers. Staff has proposed the addition of clarifying language for transferees who have been certified as a CHDO by TDHCA prior to 2016 or have not yet been certified as a CHDO for purposes of assisting transferees wishing to qualify for CHDO status or satisfy Right of First Refusal requirements under a seller's LURA. While a self-certification form declaring that the CHDO still meets the requirements under the HOME Final Rule can be accepted for entities that were certified after 2016, which will make this process significantly more efficient for these entities (provided federal guidance and rules have not changed at the time the certification is reviewed), the CHDO package prior to 2016 did not include all items required to determine CHDO status under the revised HOME Final Rule and therefore cannot be accepted for re-certification or current certification processes. Though this is an addition to the rule, this practice is currently being followed by the Department in order to comply with federal rules and guidance.
8. §10.407 Right of First Refusal (ROFR). Based on public comment received during an Asset Management and Qualified Allocation Plan roundtable on May 22, 2019, and recent additional input received by the Department on July 25, 2019, for consideration prior to the staff draft of the proposed rule, staff has proposed substantial changes to the required documentation to be submitted to the Department as part of the notice of intent requirement. Previously, only tenants and potential buyers on a Department listserv were notified of a Development's notice of intent to sell when trying to exercise the Right of First Refusal under its LURA. After receipt of stakeholder comment, staff has proposed widening the notice of intent to include notice to tenant organizations, mayors or governing bodies of the municipality in which the Development is located (whichever is applicable), presiding officers of the governing body of the county in which the Development is located, and the local housing authority. In addition, staff has also proposed adding minimum requirements to the notice letters, to include the Development's name, address, city, and county, the Development Owner's name, address, individual contact name, phone number, and email address, information about tenants' rights to purchase the Development through ROFR, the date that the ROFR notice period expires, the ROFR offer price, a physical description of the Development that includes the total number of units and low income units, and contact information for the Department staff overseeing the Development's ROFR application.
9. §10.408 Qualified Contract Request. Staff has proposed under §10.408(c)(2)(D) that the copy of the Physical Needs Assessment (PNA) submitted with the preliminary Qualified Contract request be no more than 12 months older than the date of the request. The change is proposed as a result of having received Qualified Contract requests providing old PNAs that have not given an accurate

picture of critical repairs needed. Because critical repairs and replacements must be resolved to the satisfaction of the Department before the Development will be considered eligible to submit a Qualified Contract request by rule, staff must have current accurate information regarding these repairs and replacements to make such a determination. This approach is also consistent with the Department's responsibility to ensure that Developers and Development Owners of low-income Developments that are financed or otherwise funded through the Department maintain safe, decent and affordable housing throughout the term of the affordability period and that they must correct any uncorrected issues of noncompliance before requesting action on a post award activity.

Staff has also proposed, under §§10.408(d)(2) and 10.408(g), the elimination of the requirement that the Department approve any broker that will market and sell the property under Qualified Contract and of the limit on the fee paid to the broker by the seller to less than 6% of the Qualified Contract price. The Department does not currently approve or maintain a selected list of brokers, and there is not a clear state or federal provision that authorizes the Department to restrict a brokerage fee between a seller and a broker hired to market and sell a property.

**Attachment 1: Preamble, including required analysis, for proposed repeal of 10 TAC Chapter 10, Subchapter E, §§10.400-10.408, Post Award and Asset Management Requirements**

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC Chapter 10, Subchapter E, §§10.400 – 10.408, Post Award and Asset Management Requirements. The purpose of the proposed repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

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

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

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

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed repeal would be in effect, the proposed repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous re-adoption making changes to an existing activity, concerning the post award activities of Low Income Housing Tax Credit (LIHTC) and other Department-funded multifamily Developments.

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

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

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

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

6. The proposed action will repeal an existing regulation but is associated with the simultaneous re-adoption making changes to an existing activity, Post Award and Asset Management Requirements.

7. The proposed repeal will not increase or decrease the number of individuals subject to the rule's applicability.

8. The proposed repeal will not negatively or positively affect this state's economy.

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

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

2. This rule relates to the procedures for the handling of post award and asset management activities of multifamily developments awarded funds through various Department programs. Other than in the case of a small or micro-business that is an owner or a party to one of the Department's properties, no small or micro-businesses are subject to the rule. If a small or micro-business is such an owner or participant, the new rule provides for a more clear, transparent process for doing so and do not result in a negative impact for those small or micro-businesses. There are not likely to be any rural communities subject to the proposed rule because this rule is applicable only to the owners or operators of properties in the Department's portfolio, not municipalities.

3. The Department has determined that because this rule relates only to the process in use for the post award and asset management activities of the Department's portfolio, there will be no economic effect on small or micro-businesses or rural communities.

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

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

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

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that no impact is expected on a statewide basis, there are also no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the proposed repeal of this rule is in effect, the public benefit anticipated as a result of the repealed sections will be unaffected as the repealed rule will be replaced with a similar rule. There will not be economic costs to individuals required to comply with the repealed section.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held October 25, 2019, to November 8, 2019, to receive input on the proposed repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Laura DeBellas, Asset Management Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email to [laura.debellas@tdhca.state.tx.us](mailto:laura.debellas@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin local time November 8, 2019.

STATUTORY AUTHORITY. The proposed repeal is made pursuant to TEX. GOV'T CODE, §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed repealed sections affect no other code, article, or statute.

§10.400 Purpose

§10.401 General Commitment or Determination Notice Requirements and Documentation

§10.402 Housing Tax Credit and Tax Exempt Bond Developments

§10.403 Review of Annual HOME/NSP and National Housing Trust Fund Rents

§10.404 Reserve Accounts

§10.405 Amendments and Extensions

§10.406 Ownership Transfers (§2306.6713)

§10.407 Right of First Refusal

§10.408 Qualified Contract Requirements

## **Attachment 2: Preamble, including required analysis, for proposed new 10 TAC Chapter 10, Subchapter E, §§10.400-10.408, Post Award and Asset Management Requirements**

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 10, Subchapter E, §§10.400 – 10.408, Post Award and Asset Management Requirements. The purpose of the proposed new section is to assist in reviewing and ensuring the long-term affordability and safety of multifamily rental housing Developments in the Department's portfolio as required under Tex. Gov't Code §§2306.185 and 2306.186, perform the functions of processing amendments and ownership transfers as required under §§2306.6712 and 2306.6713, and perform essential functions required under various federal program (HOME, NSP, NHTF, Exchange, TCAP) rules and under Section 42 of the Internal Revenue Code.

The updating of the rule through the proposed new section will further clarify language and requirements on which questions are often received, correct references to processes, other rules, forms, or attachments that have been updated, reduce stakeholder reporting burdens of duplicative materials at 10% Test and cost certification submission, implement internal audit recommendations and federal requirements for the cost certification process, create more efficiency in the creation of Special Reserve Account Agreements and release of Special Reserve funds, reduce the number of notification and non-material amendments related to changes in guarantors, revise requirements for annual rent reviews and Community Housing Development Organization (CHDO) certifications to clarify current Department practice and meet federal requirements, add additional notification requirements to Right of First Refusal documentation based on previous public comment and stakeholder input at roundtables, and remove requirements regulating broker fees and Department approvals of brokers under Qualified Contract requirements.

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

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

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

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed rulemaking would be in effect, the proposed rule does not create or eliminate a government program, but relates to the re-adoption making changes to an existing activity, concerning the post award activities of Low Income Housing Tax Credit (LIHTC) and other Department-funded multifamily Developments.
2. The proposed new rule does not require a change in work that would require the creation of new employee positions. While some additional work by the Department will be required associated with the additional annual rent reviews of TCAP-RF funded Developments, review of CHDO packages for any new CHDO or CHDO certified prior to 2016, review of NHTF cost certification forms, and review of additional documentation requested as part of ROFR notification requirements, the Department anticipates handling this additional work with existing staff resources. The rule changes do not reduce work load such that any existing employee positions could be eliminated.
3. The proposed rule changes do not require additional future legislative appropriations.
4. The proposed rule changes do not result in an increase in fees paid to the Department. However, the Department does anticipate a nominal decrease in fees paid to the Department through the reduction of requests for non-material amendments to add guarantors where guarantors are also the General Contractors or are only providing guaranties during the construction period.
5. The proposed rule is not creating a new regulation, but is replacing a rule being repealed simultaneously to provide for revisions. The proposed rule can be considered to "expand" certain existing regulations

related to Cost Certifications in §10.402(j)(3)(B), Review of Annual Rent Approvals in §10.403, Ownership Transfers in §10.406(f)(2), Right of First Refusal documentation in §10.407(c)(3), and Preliminary Qualified Contract Requests in §10.408(c)(2)(D). All of these additions, other than those made in the Right of First Refusal documentation, are necessary in order to observe and clarify requirements from the Department's Internal Auditor, certain federal programs, and Tex. Gov't Code. In the case of the additional items added to required documentation under Right of First Refusal, the Department is responding to external comment and input requesting that these items be added in order to further the Department's directive under Tex. Gov't Code §2306.256 of developing policies and implementing a program to preserve affordable housing in the state of Texas. Specifically, external comment was received during the 2019 rules cycle that communicated the concern that ROFR was not being successfully applied and that without robust notification and advertising, TDHCA's notifications of ROFR postings were not adequately reaching prospective, qualified buyers interested in preserving affordable housing that might otherwise terminate its affordability through the Qualified Contract process.

6. The proposed rule is not repealing an existing regulation but will limit notifications to the Department and the submission of non-amendments for guarantors where guarantors are not long-term parties to the transaction, will remove certain requirements related to broker approvals and fees under Qualified Contract rules, and will revise and update processes and required documentation to remove unnecessary redundancies and promote efficiency for stakeholders and internal staff related to Special Reserve, 10% Test, and Cost Certification requirements.

7. The proposed rule will not increase or decrease the number of individuals subject to the rule's applicability. Though the proposed rule in §10.403, Review of Annual HOME/NSP and National Housing Trust Fund Rents, has been revised to specifically include TCAP-RF recipients, TCAP recipients were already previously included in the rule's applicability through the reference to Multifamily Direct Loan funds used as HOME match.

8. The proposed rule will not negatively or positively affect this state's economy.

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

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

2. This rule relates to the procedures for the handling of post award and asset management activities of multifamily Developments awarded funds through various Department programs. Other than in the case of a small or micro-business that is an owner or a party to one of the Department's properties, no small or micro-businesses are subject to the rule. If a small or micro-business is such an owner or participant, the new rule provides for a more clear, transparent process for doing so and do not result in a negative impact for those small or micro-businesses. There are not likely to be any rural communities subject to the proposed rule because this rule is applicable only to the owners or operators of properties in the Department's portfolio, not municipalities.

3. The Department has determined that because this rule relates only to the process in use for the post award and asset management activities of the Department's portfolio, there will be no economic effect on small or micro-businesses or rural communities.

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

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

The Department has evaluated the proposed rule as to its possible effects on local economies and has determined that for the first five years the proposed rule will be in effect there will be no economic effect on local employment; therefore no local employment impact statement is required to be prepared for the rule. Additionally, because this rule only provides for administrative processes required of properties in the Department's portfolio, no activities under this rule would support additional local employment opportunities. Alternatively, the rule would also not cause any negative impact on employment.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that no impact is expected on a statewide basis, there are also no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the proposed rule sections will be increased efficiency and clarity in post award requirements as well as more robust notifications to local governments, housing authorities, and tenant associations when Owners of Developments with a LURA including a Right of First Refusal requirement submit a notice of intent to sell and post for ROFR. The possible economic cost to individuals required to comply with the proposed section will be the nominal difference in the cost of materials and/or staff time between providing a letter or emailed notice of intent to tenants at the Development and the Department (along with its list of qualified buyers) and providing additional letters or emailed notices of intent under the proposed rule to additional tenant organizations, mayors or elected members of the governing body of the municipalities in which the Development is located as applicable, the presiding officer of the governing body of the county in which the Development is located, and the local housing authority.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new section is in effect, enforcing or administering the proposed rule does not have any foreseeable implications related to costs or revenues of the state or local government, as the costs to administer any additional proposed requirements will potentially be offset by efficiency gains in other revised processes and will otherwise be absorbed by current Department resources.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held October 25, 2019 to November 8, 2019 to receive input on the proposed repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Laura DeBellas, Asset Management Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email to [laura.debellas@tdhca.state.tx.us](mailto:laura.debellas@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin local time November 8, 2019.

STATUTORY AUTHORITY. The new sections are proposed pursuant to TEX. GOV'T CODE, §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed new sections affect no other code, article, or statute.

## Post Award and Asset Management Requirements

### **§10.400. Purpose.**

(a) The purpose of this subchapter is to establish the requirements governing the post award and asset management activities associated with awards of multifamily ~~D~~evelopment assistance pursuant to Tex. Gov't Code, Chapter 2306 and its regulation of multifamily funding provided through the Texas Department of Housing and Community Affairs (the "Department") as authorized by the legislature. This subchapter is designed to ensure that Developers and Development Owners of low-income Developments that are financed or otherwise funded through the Department maintain safe, decent and affordable housing for the term of the affordability period. Therefore, unless otherwise indicated in the specific section of this subchapter, any uncorrected issues of noncompliance outside of the corrective action period or outstanding fees (related to the Development subject to the request) owed to the Department, must be resolved to the satisfaction of the Department ~~, or waived by the Board,~~ before a request for any post award activity described in this subchapter will be acted upon.

(b) The capitalized terms in this subchapter shall have the meaning as defined in this title in Chapter 1 relating to Administration, Chapter 2 relating to Enforcement, Chapter 10 relating to Uniform Multifamily Rules, Chapter 11 relating to the Qualified Action Plan, Chapter 12 relating to the Multifamily Housing Revenue Bond Rules, Chapter 13 relating to the Multifamily Direct Loan Rule, Tex. Gov't Code Chapter 2306, Internal Revenue Code (the Code) §42, the HOME Final Rule, the NHTF Interim Rule, and other federal or Department rules, as applicable.

### **§10.401. General Commitment or Determination Notice Requirements and Documentation.**

(a) A Commitment or Determination Notice shall not be issued with respect to any Development for an unnecessary amount in accordance with §42(m)(2)(A) or where the cost for the total development, acquisition, construction or rehabilitation exceeds the limitations established ~~from time to time~~ by the Department and the Board.

(b) All Commitments or Determination Notices, whether reflected in the Commitment or Determination Notice or not, are made subject to full compliance with all applicable provisions of law and ~~rule, including but not limited to the Qualified Allocation Plan, the Uniform Multifamily Rules, the Multifamily Housing Revenue Bond Rules~~the Department's rules, all provisions of Commitment and Contract, satisfactory completion of underwriting, and satisfactory resolution of any conditions of underwriting, award, and administrative deficiencies.

(c) The Department shall notify, in writing, the mayor, county judge, or other appropriate official of the municipality or county, as applicable, in which the Development is located informing him/her of the Board's issuance of a Commitment ~~or Determination~~ Notice, as applicable.

(d) The Department may cancel a Commitment, Determination Notice or Carryover Allocation prior to the issuance of IRS Form(s) 8609 (for Housing Tax Credits) or completion of construction with respect to a Development and/or apply administrative penalties if:

(1) The Applicant, Development Owner, or the Development, as applicable, fails after written notice and a reasonable opportunity to cure, to meet any of the conditions of such Commitment, Determination Notice or Carryover Allocation or any of the undertakings and commitments made by the Development Owner in the Application process for the Development;

(2) Any material statement or representation made by the Development Owner or made with respect to the Development Owner or the Development is untrue or misleading;



(3) An event occurs with respect to the Applicant or the Development Owner which would have made the Application ineligible for funding pursuant to Subchapter C, ~~of -of this chapter~~ [Chapter 11 of this title](#) (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules) if such event had occurred prior to issuance of the Commitment, Determination Notice or Carryover Allocation; or

(4) The Applicant, Development Owner, or the Development, as applicable, fails after written notice and a reasonable opportunity to cure, to comply with this chapter or other applicable Department rules, procedures, or requirements of the Department.

#### **§10.402. Housing Tax Credit and Tax Exempt Bond Developments.**

**(a) Commitment.** For Competitive HTC Developments, the Department shall issue a Commitment to the Development Owner which shall confirm that the Board has approved the Application and state the Department's commitment to make a Housing Credit Allocation to the Development Owner in a specified amount, subject to the feasibility determination described in [Chapter 11, Subchapter D of this -title chapter-](#) (relating to Underwriting and Loan Policy) and the determination that the Development satisfies the requirements of this chapter and other applicable Department rules. The Commitment shall expire on the date specified therein, which shall be 30 calendar days from the effective date, unless the Development Owner indicates acceptance by executing the Commitment, pays the required fee specified in §11.901 of this [title chapter-](#) (relating to Fee Schedule, Appeals, and other Provisions), and satisfies any conditions set forth therein by the Department. The Commitment expiration date may not be extended.

**(b) Determination Notices.** For Tax Exempt Bond Developments, the Department shall issue a Determination Notice which shall confirm the Board's determination that the Development satisfies the requirements of this chapter as applicable and other applicable Department rules in accordance with the §42(m)(1)(D) of the Internal Revenue Code (the Code). The Determination Notice shall also state the Department's determination of a specific amount of housing tax credits that the Development may be eligible for, subject to the requirements set forth in the Department's rules, as applicable. The Determination Notice shall expire on the date specified therein, which shall be 30 calendar days from the effective date, unless the Development Owner indicates acceptance by executing the Determination Notice, pays the required fee specified in Chapter 11, Subchapter E of this title, and satisfies any conditions set forth therein by the Department. The Determination Notice expiration date may not be extended ~~without prior Board approval for good cause.~~ The Determination Notice will ~~terminate~~ [be rescinded](#) if the Tax Exempt Bonds are not closed within the timeframe provided for by the Board on its approval of the Determination Notice, by the expiration of the Certificate of Reservation associated with the Determination Notice, or if [there are material changes to](#) the financing or Development ~~changes significantly~~ as determined by the Department pursuant to its rules and any conditions of approval included in the Board approval or underwriting report.

**(c) Tax Credit Amount.** The amount of tax credits reflected in the IRS Form(s) 8609 may be greater or less than the amount set forth in the Determination Notice based upon the Department's ~~-and the bond issuer's-~~ determination as of each building's placement in service. Any increase of tax credits will only be permitted if it is determined necessary by the Department, as required by §42(m)(2)(D) of the Code through the submission of the Cost Certification package. Increases to the amount of tax credits that exceed 110% of the amount of credits reflected in the Determination Notice must be approved by the Board. Increases to the amount of tax credits that do not exceed 110% of the amount of credits reflected in the Determination Notice may be approved administratively by the Executive Director [or designee](#) and are subject to the Credit Increase Fee as described in Chapter 11, Subchapter E of this title [\(relating to Fee Schedule, Appeals, and other Provisions\)](#).

**(d) Documentation Submission Requirements at Commitment of Funds.** No later than the expiration date of the Commitment (or no later than December 31 for Competitive HTC Applications, whichever is earlier) or Determination Notice, the documentation described in paragraphs (1) - (6) of this subsection must be provided. Failure to provide these documents may cause the Commitment or Determination Notice to be rescinded:

(1) For entities formed outside the state of Texas, evidence that the entity filed a Certificate of Application for foreign qualification in Texas, a Franchise Tax Account Status from the Texas Comptroller of Public Accounts, and a Certificate of Fact from the Office of the Secretary of State. If the entity is newly registered in Texas and the Franchise Tax Account Status or Certificate of Fact are not available, a statement can be provided to that effect;

(2) For Texas entities, a copy of the Certificate of Filing for the Certificate of Formation from the Office of the Secretary of State; a Certificate of Fact from the Secretary of State, and a Franchise Tax Account Status from the Texas Comptroller of Public Accounts. If the entity is newly registered and the Certificate of Fact and the Franchise Tax Account Status are not available, a statement can be provided to that effect;

(3) Evidence that the signer(s) of the Commitment or Determination Notice have sufficient authority to sign on behalf of the Applicant in the form of a corporate resolution which indicates the sub-entity in Control consistent with the entity contemplated and described in the Application;

(4) Evidence of final zoning that was proposed or needed to be changed pursuant to the Development plan;

(5) Evidence of satisfaction of any conditions identified in the Credit Underwriting Analysis Report, ~~any conditions in the recommendations to the Board~~ from the Executive Award Review and Advisory Committee as provided for in 10 TAC Chapter 1, Subchapter C (relating to Previous Participation ~~and Executive Award Review and Advisory Committee~~), or any other conditions of the award required to be met at Commitment or Determination Notice; and

(6) Documentation of any changes to representations made in the Application subject to §10.405 of this subchapter (relating to Amendments and Extensions).

(7) For Applications underwritten with a property tax exemption, documentation must be submitted in the form of a letter from an attorney identifying the statutory basis for the exemption and indicating that the exemption is reasonably achievable, subject to appraisal district review. Additionally, any Development with a proposed Payment in Lieu of Taxes (<sup>"PILOT"</sup>) agreement must provide evidence regarding the statutory basis for the PILOT and its terms.

**(e) Post Bond Closing Documentation Requirements.** Regardless of the issuer of the bonds, no later than 60 calendar days following closing on the bonds, the Development Owner must submit the documentation in paragraphs (1) - (5) of this subsection.

(1) ~~TA~~-training certificate(s) from a Department approved "property owner and manager Fair Housing trainer" showing that the Development Owner and on-site or regional property manager has attended and passed at least five hours of Fair Housing training. The certificate(s) must not be older than two years from the date of submission and must verify that all parts or phases of the offered training have been completed; two certificates supplied for the same part or phase of

an offered training will not be counted towards the five hour required minimum, even if they were attended on different dates;

(2) A training certificate from a Department approved "architect and engineer Fair Housing trainer" showing that the lead architect or engineer responsible for certifying compliance with the Department's accessibility and construction standards has attended and passed at least five hours of Fair Housing training. The certificate must not be older than two years from the date of submission and must verify that all parts or phases of the offered training have been completed; two certificates supplied for the same part or phase of an offered training will not be counted towards the five hour required minimum, even if they were attended on different dates;

(3) Evidence that the financing has closed, such as an executed settlement statement;

(4) A confirmation ~~letter~~ from the Compliance Division evidencing receipt of the -CMTS Filing Agreement form pursuant to §10.607(a) of this chapter; and ~~Electronic Compliance Reporting Filing Agreement and the Owner's Designation of Administrator of Accounts forms pursuant to §10.607(a); and~~

(5) An initial construction status report consisting of items (1) – (5) ~~as outlined in~~ of §10.402(h) of this subchapter (relating to Construction Status Reports).

**(f) Carryover (Competitive HTC Only).** All Developments which received a Commitment, and will not be placed in service and receive IRS Form(s) 8609 in the year the Commitment was issued, must submit the Carryover documentation, in the form prescribed by the Department in the Carryover Manual, no later than the Carryover Documentation Delivery Date as identified in §11.2 of this title (relating to Program Calendar for Competitive Housing Tax Credits) of the year in which the Commitment is issued pursuant to §42(h)(1)(C) of the Code.

(1) Commitments for credits will be terminated if the Carryover documentation has not been received by this deadline, unless an extension has been approved. This termination is subject to right of appeal directly to the Board, and if so determined by the Board, immediately upon final termination by the Board, staff is directed to award the credits to other qualified Applicants on the approved waiting list.

(2) If the interim or permanent financing structure, syndication rate, amount of debt or syndication proceeds are finalized but different at the time of Carryover from what was proposed in the original Application, applicable documentation of such changes must be provided and the Development may be re-evaluated by the Department for a reduction of credit or change in conditions.

(3) All Carryover Allocations will be contingent upon the Development Owner providing evidence that they have and will maintain Site Control through the 10% Test or through the anticipated closing date, whichever is earlier. For purposes of this paragraph, any changes to the Development Site acreage between Application and Carryover must be addressed by written explanation or, as appropriate, in accordance with §10.405 of this subchapter (relating to Amendments and Extensions).

(4) Confirmation of the right to transact business in Texas, as evidenced by the Franchise Tax Account Status (the equivalent of the prior Certificate of Account Status) from the Texas Comptroller of Public Accounts and a Certificate of Fact from the Office of the Secretary of State must be submitted with the Carryover Allocation.

**(g) 10% Test (Competitive HTC Only).** No later than July 1 of the year following the submission of the Carryover Allocation Agreement or as otherwise specified in the applicable year's Qualified Allocation Plan, documentation must be submitted to the Department verifying that the Development Owner has expended more than 10% of the Development Owner's reasonably expected basis, pursuant to §42(h)(1)(E)(i) and (ii) of the Code ~~(as amended by The Housing and Economic Recovery Act of 2008)~~, and Treasury Regulations, [26 CFR §1.42-6](#). The Development Owner must submit, in the form prescribed by the Department, documentation evidencing paragraphs (1) - ~~(7)~~ of this subsection, along with all information outlined in the Post Award Activities Manual. Satisfaction of the 10% Test will be contingent upon the submission of the items described in paragraphs (1) - ~~(7)~~ of this subsection as well as all other conditions placed upon the Application in the Commitment. Requests for an extension will be reviewed on a case by case basis as addressed in §10.405(c) of this ~~subchapter~~ ~~Subchapter~~ and [§11.2](#) ~~10-TAC §13.12(1)~~ of this title, as applicable, and a point deduction evaluation will be completed in accordance with Tex. Gov't Code §2306.6710(b)(2) and §11.9(f) of this title. Documentation to be submitted for the 10% Test includes:

(1) An Independent Accountant's Report and Taxpayer's Basis Schedule form. The report must be prepared on the accounting firm's letterhead and addressed to the Development Owner or an Affiliate of the Development Owner. The Independent Accountant's Report and Taxpayers Basis Schedule form must be signed by the Development Owner. If, at the time the accountant is reviewing and preparing their report, the accountant has concluded that the taxpayer's reasonably expected basis is different from the amount reflected in the Carryover Allocation agreement, then the accountant's report should reflect the taxpayer's reasonably expected basis as of the time the report is being prepared;

(2) Any conditions of the Commitment or Real Estate Analysis underwriting report due at the time of 10% Test submission;

(3) Evidence that the Development Owner has purchased, transferred, leased, or otherwise has ownership of the Development Site. The Development Site must be identical to the Development Site that was submitted at the time of Application submission. For purposes of this paragraph, any changes to the Development Site acreage between Application and 10% Test must be addressed by written explanation or, as appropriate, in accordance with §10.405 of this subchapter [\(relating to Amendments and Extensions\)](#);

(4) A current survey or plat of the Development Site, prepared and certified by a duly licensed Texas Registered Professional Land Surveyor. The survey or plat must clearly delineate the flood plain boundary lines and show all easements and encroachments;

(5) For New Construction, Reconstruction, and Adaptive Reuse Developments, a certification from a Third Party civil engineer or architect stating that all necessary utilities will be available at the Development Site and that there are no easements, licenses, royalties, or other conditions on or affecting the Development that would materially or adversely impact the ability to acquire, develop, and operate as set forth in the Application. Copies of supporting documents may be required by the Department;

(6) For the Development Owner and on-site or regional property manager, ~~a~~ training certificate(s) from a Department approved "property owner and manager Fair Housing trainer" showing that the Development Owner and on-site or regional property manager attended [and passed](#) at least five hours of Fair Housing training. For architects and engineers, ~~a~~ training certificate(s) from a Department approved "architect and engineer Fair Housing trainer" showing that the lead

architect or engineers responsible for certifying compliance with the Department's accessibility and construction standards has attended [and passed](#) at least five hours of Fair Housing training. Certifications required under this paragraph must not be older than two years from the date of submission of the 10% Test Documentation, [and must verify that all parts or phases of the offered training have been completed; two certificates supplied for the same part or phase of an offered training will not be counted towards the five hour required minimum, even if they were attended on different dates; and](#)

(7) A Certification from the lender and syndicator identifying all known Guarantors. If identified Guarantors have changed from the Guarantors or Principals identified at the time of Application, a non-material amendment [may be required](#) ~~must be requested by the Applicant~~ in accordance with §10.405 of this subchapter [\(relating to Amendments and Extensions\)](#), and the new Guarantors or Principals must be reviewed in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation ~~and Executive Award Review and Advisory Committee~~); ~~and~~.

~~(8) A Development Owner's preliminary construction schedule or statement showing the prospective construction loan closing date, construction start and end dates, prospective placed in service date for each building, and planned first year of the credit period.~~

**(h) Construction Status Report (All Multifamily Developments).** All multifamily developments must submit a construction status report. Construction status reports shall be due by the tenth day of the month following each reporting quarter's end (January, April, July, and October) and continue on a quarterly basis until the entire [Development](#) is complete as evidenced by one of the following: [Certificates of occupancy for each building, the Architect's Certificate\(s\) of Substantial Completion \(AIA Document G704 or equivalent form\)](#) for the entire [Development](#), the final Application and Certificate for Payment (AIA Document G702 and G703), ~~or~~ an equivalent form approved for submission by the construction lender and/or investor. For Competitive Housing Tax Credit Developments, the initial report must be submitted no later ~~than~~ October 10<sup>th</sup> following the year of award (this includes Developments funded with HTC and TDHCA Multifamily Direct Loans), and for Developments awarded under the Department's Multifamily Direct Loan programs only, the initial report must be submitted 90 calendar days after loan closing. For Tax Exempt Bond Developments, the initial construction status report must be submitted as part of the Post Bond Closing Documentation due no later than 60 calendar days following closing on the bonds as described in §10.402(e) of this section [\(relating to Post Bond Closing Documentation Requirements\)](#). The initial report for all multifamily Developments shall consist of the items identified in paragraphs (1) – ~~(65)~~ of this subsection, unless stated otherwise. All subsequent reports shall contain items identified in subparagraphs ~~(43)~~ – ~~(65)~~ of this paragraph and must include any changes or amendments to items in subparagraphs (1) – ~~(32)~~ if applicable:

(1) The executed partnership agreement with the investor ~~(accompanied by identification of all Guarantors)~~ or, for Developments receiving an award only from the Department's Direct Loan Programs, other documents setting forth the legal structure and ownership. If identified Guarantors or Principals of a Guarantor entity were not already identified as a Principal of the Owner, Developer, or Guarantor at the time of Application, a non-material amendment must be requested in accordance with §10.405 of this subchapter, and the new Guarantors and all of its Principals, as applicable, must be reviewed in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation ~~and Executive Award Review and Advisory Committee~~);

(2) The executed construction contract for the General Contractor, prime subcontractor(s) and Affiliates or Related Party subcontractor(s);

~~(3)~~ -The ~~and~~-construction loan agreement. If the loan has not closed, the anticipated closing date must be provided and, upon closing, the agreement must be provided to the Department;

~~(4)~~ The most recent Application and Certificate for Payment (AIA Document G702 and G703) certified by the Architect of Record (or equivalent form approved for submission by the construction lender and/or investor) for the General Contractor, prime subcontractor(s) and Affiliates or Related Party subcontractor(s); and

~~(5)~~ All Third Party construction inspection reports not previously submitted. If the lender and/or investor does not require third party construction inspection reports, the Development Owner must hire a third party inspector to perform these inspections on a quarterly basis and submit the reports to the Department. Third Party construction inspection reports must include, at a minimum, a discussion of site conditions as of the date of the site visit, current photographs of the construction site and exterior and interior of buildings, an estimated percentage of construction completion as of the date of the site visit, identification of construction delays and other relevant progress issues, if any, and the anticipated construction completion date;

~~(6)~~ Minority Owned Business Report (HTC only) showing the attempt to ensure that at least 30% of the construction and management businesses with which the Applicant contracts in connection with the Development are Minority Owned Businesses as required and further described in Tex. Gov't Code §2306.6734.

**(i) LURA Origination.**

(1) The Development Owner must request ~~origination~~~~a copy~~ of the HTC LURA as directed in the Post Award Activities Manual. The Department will draft a LURA for the Development Owner that will impose the income and rent restrictions identified in the Development's final underwriting report and other representations made in the Application, including but not limited to specific commitments to provide tenant services, to lease to Persons with Disabilities, and/or to provide specific amenities. After origination, the Department executed LURA and all exhibits and addendums will be sent to the Development Owner to execute and record in the real property records for the county in which the Development is located. ~~The original or a~~ A copy of the fully executed, recorded LURA must be returned to the Department no later than the end of the first year of the Credit Period. In general, no Housing Tax Credits are allowed to be issued for a building unless there is a properly executed and recorded LURA in effect at the end of the first year of the Credit Period. Nothing in this section negates a Development Owner's responsibility for full compliance with §42(h)(6) of the Code. The Department will not issue IRS Form(s) 8609 until it receives ~~the original or~~ a copy of the fully executed, properly-recorded LURA, ~~or has alternative arrangements which are acceptable to the Department and approved by the Executive Director.~~

(2) LURAs for Direct Loan awardees will be prepared by the Department's Legal Division and executed at loan closing.

**(j) Cost Certification (Competitive and Non-Competitive HTC, and related activities only).** The Department conducts a feasibility analysis in accordance with §42(m)(2)(C)(i)(III) of the Code and Chapter 11, Subchapter D of this ~~chapter-title~~ (relating to Underwriting and Loan Policy) to make a final determination on the allocation of Housing Tax Credits. The requirements for cost certification include those identified in paragraphs (1) - (3) of this subsection.

(1) Development Owners must file cost certification documentation no later than January 15 following the first year of the Credit Period, as defined in §42(f)(1) of the Code.

(2) The Department will evaluate the cost certification documentation and notify the Development Owner of any additional required documentation needed to complete the review. The Department reserves the right to request additional documents or certifications as it deems necessary or useful in the determination of the Development's eligibility for a final Housing Tax Credit allocation amount. Any communication issued to the Development Owner pertaining to the cost certification documentation may also be sent to the syndicator.

(3) IRS Form(s) 8609 will not be issued until the conditions as stated in subparagraphs (A) - (G) of this paragraph have been met. The Development Owner has:

(A) ~~P~~rovided evidence that all buildings in the Development have been placed in service by:

(i) December 31 of the year the Commitment was issued;

(ii) December 31 of the second year following the year the Carryover Allocation Agreement was executed; or

(iii) the approved Placed in Service deadline;

(B) Provided a complete final cost certification package in the format prescribed by the Department. As used herein, a complete final cost certification package means a package that meets all of the Department's criteria with all required information and exhibits listed in clauses (i) - (xxxvii) of this subparagraph, and pursuant to the Post Award Activities Manual. If any item on this list is determined to be unclear, deficient, or inconsistent with the cost certification review completed by the Department, a Request for Information (RFI) will be sent to the Development Owner. ~~Failure to respond to the requested information within a 30 day period from the date of request may result in the termination of the cost certification review and request for 8609s and require a new request be submitted with a Cost Certification Extension Fee as described in Subchapter E of Chapter 11 (relating to Fee Schedule, Appeals, and other Provisions).~~

(i) Owner's signed and notarized Statement of Certification verifying the CPA firm's licenses and validity, including any restrictions;

(ii) Owner Summary & Organization Charts for the Owner, Developer, and Guarantors;

(iii) Evidence of Qualified Nonprofit or CHDO Participation;

(iv) Certification and evidence ~~Evidence~~ of Historically Underutilized Business (HUB) Participation;

(v) Development Team List;

(vi) Development Summary with Architect's Certification;

(vii) Development Change Documentation;

(viii) As Built Survey;

- (ix) [A copy of the fully executed Closing Statement for each parcel of land and/or buildings purchased and included in the Development;](#)
- (x) [Development Owner's Title Policy for the Development;](#)
- (xi) Title Policy Update;
- (xii) Placement in Service;
- (xiii) Evidence of Placement in Service;
- (xiv) Architect's Certification of Completion Date and Date Ready for Occupancy [\(for Developments located in areas where Certificates of Occupancy \(COs\) are not issued by a local government or rehabilitation Developments that cannot provide COs\);](#)
- (xv) Auditor's Certification of Acquisition/Rehabilitation Placement in Service Election;
- (xvi) Independent Auditor's Report;
- (xvii) Independent Auditor's Report of Bond Financing;
- (xviii) Development Cost Schedule;
- (xix) Contractor's Application for Final Payment (G702/G703) for the General Contractor, all prime subcontractors, Affiliated Contractors, and Related Party Contractors;
- (xx) Additional Documentation of Offsite Costs;
- (xxi) Rent Schedule;
- (xxii) Utility Allowances;
- (xxiii) Annual Operating Expenses;
- (xxiv) 30 Year Rental Housing Operating Pro Forma;
- (xxv) [C](#)urrent Operating Statement in the form of a trailing twelve month statement;
- (xxvi) [C](#)urrent Rent Roll;
- (xxvii) Summary of Sources and Uses of Funds;
- ~~(xxviii) Financing Narrative;~~
- (xxviii) Final Limited Partnership Agreement - with all amendments and exhibits;



~~(xxix)~~ All Loan Agreements and Promissory Notes (except for Agreements and Notes issued directly by the Department);

~~(xxxi)~~ Architect's Certification of ~~Fair Housing~~ Accessibility Requirements;

~~(xxxii)~~ Development Owner Assignment of Individual to Compliance Training;

~~(xxxiii)~~ TDHCA Compliance Training Certificate (not older than two years from the date of cost certification submission);

~~(xxxiiiiv)~~ TDHCA Final Inspection Clearance Letter or evidence of submitted final inspection request to the Compliance Division (IRS Form(s) 8609 will not be issued without a TDHCA Final Inspection Clearance Letter);

(xxxiv) As required by 24 CFR §93.406(b) and the Multifamily Direct Loan Rule §13.11 (relating to Post-Award Requirements), for NHTF Developments layered with HTCs, a separate, additional cost certification form completed by an independent, licensed, certified public accountant of all Development costs (including project costs), subject to the conditions and limitations set forth in the executed Direct Loan Contract; and

~~(xxxv) Completion Certificate (TDHCA Issued Bonds Only); and~~

~~(xxxvi)~~ Other Documentation as Required, including but not limited to conditions to be satisfied at cost certification as reflected in the Development's latest Underwriting Report;

(C) Informed the Department of and received written approval for all amendments, extensions, and changes in ownership relating to the Development in accordance with §10.405 of this subchapter (relating to Amendments and Extensions) and §10.406 of this subchapter (relating to Ownership Transfers (§2306.6713));

(D) Paid all applicable Department fees, including any past due fees;

(E) Met all conditions noted in the Department underwriting report, Determination Notice, and Commitment;

(F) Corrected all issues of noncompliance, including but not limited to noncompliance status with the LURA (or any other document containing an Extended Low-income Housing Commitment) or the program rules in effect for the subject Development, as described in this chapter. Developments in the corrective action period and/or with any uncorrected issues of noncompliance outside of the corrective action period ~~or that have had a monitoring review where noncompliance was identified,~~ will not be issued IRS Form(s) 8609s until all events of noncompliance are ~~assessed,~~ corrected or otherwise approved by the Executive Director or designee; ~~or otherwise approved by the Executive Award Review and Advisory Committee;~~

(G) Completed an updated underwriting evaluation in accordance with Chapter 11, Subchapter D of this title chapter based on the most current information at the time of the review.

#### **§10.403. Review of Annual HOME, ~~NSP~~, ~~TCAP-RF~~, and National Housing Trust Fund Rents.**

**(a) Applicability.** For participants of the Department's Multifamily HOME and NSP Direct Loan program, where Commitment of Funds occurred on or after August 23, 2013, the Department is required by 24 CFR §92.252(f) and for all [National Housing Trust Fund \(NHTF\)](#) participants by 24 CFR §93.302(c)(2), to review and approve or disapprove HOME/~~NSP~~/~~NHTF~~ rents on an annual basis. The Department is also required by 24 CFR §92.219 and §92.252(d)(4) to approve rents where Multifamily Direct Loan funds [\(including TCAP-RF\)](#) are used as HOME match. Development Owners must submit documentation for the review of HOME/~~NSP~~/~~NHTF~~/~~TCAP-RF~~ rents by no later than July 1st of each year as further described in the Post Award Activities Manual.

**(b) Documentation for Review.** The Department will furnish a rent approval request packet for this purpose that will include a request for Development information and an Owner's proposed rent schedule and will require submission of a current rent roll or unit status report, a copy of information used to determine gross Direct Loan rents, and utility allowance information. The Department may request additional documentation to perform a determination, as needed, including but not limited to annual operating statements, market surveys, or other information related to determining whether rents are sufficient to maintain the financial viability of a project or are in compliance with maximum rent limits.

**(c) Review Process.** Rents will be approved or disapproved within 30 days of receipt of all items required to be submitted by the Development Owner, and will be issued in the form of a signed letter from the Asset Management Division. Development Owners must keep copies of all approval letters on file at the Development site to be reviewed at the time of Compliance Monitoring reviews.

**(d) Compliance.** Development Owners for whom this section is applicable are subject to compliance under §10.622 of this chapter (relating to Special Rules [R](#)egarding Rents and Limit Violations) and may be subject to penalties under §10.625 of this chapter (relating to Events of Noncompliance). Approval of rents by the Asset Management Division will be limited to a review of the documentation submitted and will not guarantee compliance with the Department's rules ~~in Subchapter F (relating to Compliance Monitoring)~~ or otherwise absolve an Owner of any past, current, or future non-compliance related to Department rules, guidance, Compliance Monitoring visits, or any other rules or guidance to which the Development or its Owner may be subject.

#### **§10.404. Reserve Accounts.**

**(a) Replacement Reserve Account (§2306.186).** The Department will require Development Owners to provide regular maintenance to keep housing sanitary, safe and decent by establishing and maintaining a reserve for replacement account for the Development in accordance with Tex. Gov't Code, §2306.186. The reserve account must be established, in accordance with paragraphs (3), (4), (5), and (6) of this subsection, and maintained through annual or more frequent regularly scheduled deposits, for each Unit in a Development of 25 or more rental [U](#)nits regardless of the amount of rent charged for the Unit. If the Department is processing a request for loan modification or other request under this subchapter, and the Development does not have an existing replacement reserve account, or sufficient funds in the reserve to meet future capital expenditure needs of the Development as determined by a history of uncorrected UPCS violations, ongoing issues related to keeping housing sanitary, safe, and decent, an account balance below the annual reserve deposit amount as specified in this section, or as indicated by the number or cost of repairs included in a [third party Physical Needs Assessment \(PNA\)](#) ~~PCA~~, the Development Owner will be required to establish and maintain a replacement reserve account or review whether the amount of regular deposits to the replacement reserve account can be increased, regardless of the number of [U](#)nits at the Development. The Department shall, through cooperation of its divisions responsible for asset management and compliance, ensure compliance with this section. The duties of the Development Owner under this section cease on the date of a change in ownership of the Development; however, the subsequent Development Owner of the Development is subject to the requirements of this section and

any additional or revised requirements the Department may impose after reviewing a Development's compliance history, a [PNAPCA](#) submitted by the Owner, or the amount of reserves that will be transferred at the time of any property sale.

(1) The LURA requires the Development Owner to begin making annual deposits to the replacement reserve account on the later of the:

(A) Date that occupancy of the Development stabilizes as defined by the First Lien Lender or, in the absence of a First Lien Lender other than the Department, the date the Property is at least 90% occupied; or

(B) The date when the permanent loan is executed and funded.

(2) The Development Owner shall continue making deposits into the replacement reserve account until the earliest of the:

(A) Date on which the owner suffers a total casualty loss with respect to the Development or the date on which the Development becomes functionally obsolete, if the Development cannot be or is not restored;

(B) Date on which the Development is demolished;

(C) Date on which the Development ceases to be used as a multifamily rental property; or

(D) End of the Affordability Period specified by the LURA, or if an Affordability Period is not specified and the Department is the First Lien Lender, then when the Department's loan has been fully repaid or as otherwise agreed by the Owner and Department.

(3) If the Department is the First Lien Lender with respect to the Development or if the establishment of a Reserve Account for repairs has not been required by the First Lien Lender or Bank Trustee, each Development Owner receiving Department assistance for multifamily rental housing shall deposit annually into a separate, Development-specific Reserve Account through the date described in paragraph (2) of this subsection:

(A) For New Construction Developments, not less than \$250 per Unit. Withdrawals from such account will be restricted for up to five years following the date of award except in cases in which written approval from the Department is obtained relating to casualty loss, natural disaster, reasonable accommodations ~~(but not for the construction standards required by the NOFA or program regulations)~~, or demonstrated financial hardship [\(but not for the construction standards required by the NOFA or program regulations\)](#); or

(B) For Adaptive Reuse, Rehabilitation and Reconstruction Developments, the greater of the amount per Unit per year either established by the information presented in a [Scope and Cost Review](#) ~~Property Condition Assessment~~ in conformance with [Chapter 11](#), Subchapter D of this ~~title chapter~~ (relating to Underwriting and Loan Policy) or \$300 per Unit per year.

(4) For all Developments, a ~~Property Condition Assessment (PNCA)~~ must be conducted at intervals that are consistent with requirements of the First Lien Lender, other than the Department. If the Department is the First Lien Lender, or the First Lien Lender does not require a Third Party [PNCA](#), a [PNCA](#) must be conducted at least once during each five ~~(5)~~-year period beginning with the

~~eleventh~~ (11th) year after the awarding of any financial assistance from the Department. PCAs PNAs conducted by the Owner at any time or for any reason other than as required by the Department in the year beginning with the ~~eleventh~~ (11th) year of award must be submitted to the Department for review within 30 days of receipt by the Owner.

(5) Where there is a First Lien Lender other than the Department or a Bank Trustee as a result of a bond trust indenture or tax credit syndication, the Development Owner shall comply with the lesser of the replacement reserve requirements of the First Lien Lender or the requirements in paragraph (3) of this subsection. In addition, the Department should be listed as a party to receive notice under any replacement reserve agreement entered into by the Development Owner. The Development Owner shall submit on an annual basis, within the Department's required Development Owner's Financial Certification packet, requested information regarding:

(A) The reserve for replacement requirements under the first lien loan agreement (if applicable) referencing where those requirements are contained within the loan documents;

(B) Compliance with the first lien lender requirements outlined in subparagraph (A) of this paragraph;

(C) If the Owner is not in compliance with the lender requirements, the Development Owner's plan of action to bring the Development in compliance with all established reserve for replacement requirements; and

(D) Whether a PNCA has been ordered and the Owner's plans for any subsequent capital expenditures, renovations, repairs, or improvements.

(6) Where there is no First Lien Lender but the allocation of funds by the Department and Tex. Gov't Code, §2306.186 requires that the Department oversee a Reserve Account, the Development Owner shall provide at their sole expense an escrow agent acceptable to the Department to act as Bank Trustee as necessary under this section. The Department shall retain the right to replace the escrow agent with another Bank Trustee or act as escrow agent at a cost plus fee payable by the Development Owner due to breach of the escrow agent's responsibilities or otherwise with ~~thirty~~ (30) days prior notice of all parties to the escrow agreement.

(7) Penalties and Non-Compliance. If the Development Owner fails to comply with the replacement reserve account requirements stated herein, and request for extension or waiver of these requirements is not approved by the Department, then a penalty of up to \$200 per dwelling Unit in the Development and/or characterization of the Development as being in default with this requirement, may be imposed:

(A) A Reserve Account, as described in this section, has not been established for the Development;

(B) The Department is not a party to the escrow agreement for the Reserve Account, if required;

(C) Money in the Reserve Account:

(i) is used for expenses other than necessary repairs, including property taxes or insurance; or

(ii) falls below mandatory annual, monthly, or Department approved deposit levels;

(D) Development Owner fails to make any required deposits;

(E) Development Owner fails to obtain a Third-Party ~~PNA Property Condition Assessment~~ as required under this section or submit a copy of a ~~PCNA~~ to the Department within 30 days of receipt; or

(F) Development Owner fails to make necessary repairs in accordance with the Third Party ~~PNA Property Condition Assessment~~ or §10.621 of this chapter (relating to Property Condition Standards).

(8) Department-Initiated Repairs. The Department or its agent may make repairs to the Development within 30 calendar days of written notice from the Department if the Development Owner fails to complete necessary repairs indicated in the submitted ~~PNA Property Condition Assessment~~ or identified by Department physical inspection. Repairs may be deemed necessary if the Development Owner fails to comply with federal, state, and/or local health, safety, or building code requirements. Payment for necessary repairs must be made directly by the Development Owner or through a replacement Reserve Account established for the Development under this section. The Department or its agent will be allowed to produce a Request for Bids to hire a contractor to complete and oversee necessary repairs. On a case-by-case basis, the Department may determine that the money in the Reserve Account may be used for expenses other than necessary repairs, including property taxes or insurance, if:

(A) Development income before payment of return to Development Owner or deferred ~~D~~developer ~~F~~fee is insufficient to meet operating expense and debt service requirements; or

(B) Development income after payment of operating expenses, but before payment of return to Development Owner or deferred developer fee is insufficient to fund the mandatory deposit levels;

(C) In the event of subparagraph (A) or (B) of this paragraph, funds withdrawn must be replaced from Cash Flow after payment of Operating Expenses but before return to Development Owner or deferred ~~D~~developer ~~F~~fee until the mandatory deposit level is replenished. The Department reserves the right to re-evaluate payments to the reserve, increase such payments or require a lump sum deposit to the reserve, or require the Owner to enter into a separate Reserve Agreement if necessary to protect the long term feasibility of the Development.

(9) Exceptions to Replacement Reserve Account. This section does not apply to a Development for which the Development Owner is required to maintain a Reserve Account under any other provision of federal or state law.

(10) In the event of paragraph (7) or (8) of this subsection, the Department reserves the right to require by separate Reserve Agreement a revised annual deposit amount and/or require Department concurrence for withdrawals from the Reserve Account to bring the Development back into compliance. Establishment of a new Bank Trustee or transfer of reserve funds to a new, separate and distinct account may be required if necessary to meet the requirements of such

Agreement. The Agreement will be executed by the Department, Development Owner, and financial institution representative.

**(b) Lease-up Reserve Account.** A lease-up reserve funds start-up expenses in excess of the revenue produced by the Development prior to stabilization. The Department will consider a reasonable lease-up reserve account based on the documented requirements from a third-party lender, third-party syndicator, or the Department. During the underwriting at the point of the Cost Certification review, the lease-up reserve may be counted as a use of funds only to the extent that it represents operating shortfalls net of escrows for property taxes and property insurance. Funds from the lease-up reserve used to satisfy the funding requirements for other reserve accounts may not be included as a use of funds for the lease-up reserve. Funds from the lease-up reserve distributed or distributable as cash flow to the Development Owner will be considered and restricted as developer fee.

**(c) Operating Reserve Account.** At various stages during the application, award process, and during the operating life of a Development, the Department will conduct a financial analysis of the Development's total development costs and operating budgets, including the estimated operating reserve account deposit required. For example, this analysis typically occurs at application and cost certification review. The Department will consider a reasonable operating reserve account deposit in this analysis based on the needs of the Development and requirements of third-party lenders or investors. The amount used in the analysis will be the amount described in the project cost schedule or balance sheet, if it is within the range of two ~~(2)~~ to six ~~(6)~~ months of stabilized operating expenses plus debt service. The Department may consider a greater amount proposed or required by the Department, any superior lien lender, or syndicator, if the detail for such greater amount is reasonable and well documented. Reasonable operating reserves in this chapter do not include capitalized asset management fees, guaranty reserves, or other similar costs. In no instance will operating reserves exceed ~~twelve (12)~~ months of stabilized operating expenses plus debt service (exclusive of transferred replacement reserves for USDA or HUD financed rehabilitation transactions). Operating reserves are generally for the term of the permanent loan. In no instance will operating reserves released within five ~~(5)~~ years be included as a cost.

**(d) Special Reserve Account.** If the funding program requires or allows for the establishment and maintenance of a Special Reserve Account for the purpose of assisting residents at the Development with expenses associated with their tenancy, this will be established in accordance with a written agreement with the Development Owner.

(1) The Special Reserve Account is funded through a one-time payment or annually through an agreed upon percentage of net cash flow generated by the Development, excess development funds at completion as determined by the Department, or as otherwise set forth in the written agreement. For the purpose of this account, net cash flow is defined as funds available from operations after all expenses and debt service required to be paid have been considered. This does not include a deduction for depreciation and amortization expense, deferred developer fee payment, or other payments made to Related Parties or Affiliates, except as allowed by the Department for property management. Proceeds from any refinancing or other fund raising from the Development will be considered net cash flow for purposes of funding the Special Reserve Account. The account will be structured to require Department concurrence for withdrawals.

(2) All disbursements from the account must be approved by the Department.

(3) The Development Owner will be responsible for setting up a separate and distinct account with a financial institution acceptable to the Department. A Special Reserve Account Agreement will be drafted by the Department and executed by the Department, and the Development Owner, ~~and financial institution representative~~.

~~(4) Use of the funds in the Special Reserve Account is determined by a plan that is pre-approved by the Department. The Owner must create, update and maintain a plan for the disbursement of funds from the Special Reserve Account. The plan should be established at the time the account is created and updated and submitted for approval by the Department as needed. The plan should consider the needs of the tenants of the property and the existing and anticipated fund account balances such that all of the fund uses provide benefit to tenants. Disbursements from the fund will only be approved by the Department if they are in accordance with the current approved plan.~~

**(e) Other Reserve Accounts.** Additional reserve accounts may be recognized by the Department as necessary and required by the Department, superior lien lender, or syndicator.

#### **§10.405. Amendments and Extensions.**

**(a) Amendments to Housing Tax Credit (“HTC”) Application or Award Prior to Land Use Restriction Agreement (“LURA”) recording or amendments that do not result in a change to the LURA (§2306.6712).**

The Department expects the Development Owner to construct or rehabilitate, operate, and own the Development consistent with the representations in the Application. The Department must receive notification of any amendments to the Application. Regardless of development stage, the Board shall re-evaluate a Development that undergoes a material change, as identified in paragraph (3) of this subsection at any time after the initial Board approval of the Development (§2306.6731(b)). The Board may deny an amendment request and subsequently may rescind any Commitment or Determination Notice issued for an Application, and may reallocate the credits to other Applicants on the waiting list.

(1) Requesting an amendment. The Department shall require the Applicant to file a formal, written request for an amendment to the Application. Such request must include a detailed explanation of the amendment request and other information as determined to be necessary by the Department, and the applicable fee as identified in Chapter 11, Subchapter E of this title (relating to Fee Schedule) in order to be received and processed by the Department. Department staff will evaluate the amendment request to determine if the change would affect an allocation of Housing Tax Credits by changing any item that received points, by significantly affecting the most recent underwriting analysis, or by materially altering the Development as further described in this subsection.

(2) Notification Items. The Department must be notified of the changes described in subparagraphs (A) - (F) of this paragraph. The changes identified are subject to staff agreement based on a review of the amendment request and any additional information or documentation requested. Notification items will be considered satisfied when an acknowledgment of the specific change(s) is received from the Department.

(A) Changes to Development Site acreage required by the City or other local governmental authority, or changes resulting from survey discrepancies, as long as such change does not also result in a modification to the residential density of more than 5%;

(B) Minor modifications to the site plan that will not significantly impact development costs, including, but not limited to, relocation or rearrangement of buildings on the site (as long as the number of residential and non-residential buildings remains the same), and movement, addition, or deletion of ingress/egress to the site;

(C) Increases or decreases in net rentable square footage or common areas that do not result in a material amendment under §10.405(a)(4) of this section;

(D) Changes in amenities that do not require a change to the recorded LURA and do not negatively impact scoring, including changes to outdated amenities that could be replaced by an amenity with equal benefit to the resident community;

(E) Changes in Developers or Guarantors ([notifications for changes in Guarantors that are also the General Contractor or are only providing guaranties during the construction period are not required](#)) ~~or~~ with no new Principals (who were not previously checked by Previous Participation review that retain the natural person(s) used to meet the experience requirement in Chapter 11 of this title (relating to Required Documentation for Application Submission)); [and](#)

(F) Any other amendment not identified in paragraphs (3) and (4) of this subsection.

(3) Non-material amendments. The Executive Director or designee may administratively approve all non-material amendments, including, but not limited to:

(A) Any amendment that is determined by staff to exceed the scope of notification acknowledgement, as identified in paragraph (2) of this subsection but not to rise to a material alteration, as identified in paragraph (4) of this subsection;

(B) Changes in the natural person(s) used to meet the experience requirement in Chapter 11, [§11.204\(6\)](#) of this title provided that an appropriate substitute has been approved by the Multifamily Division prior to receipt of the amendment request (relating to Required Documentation for Application Submission);

(C) Changes in Developers or Guarantors ([excluding changes in Guarantors that are also the General Contractor or are only providing guaranties during the construction period](#)) ~~(to the extent Guarantors were identified in the Application)~~ not addressed in §10.405(a)(2)(E). Changes in Developers or Guarantors will be subject to Previous Participation requirements as further described in Chapter 11 of this title and the credit limitation described in §11.4(a) of this title; [and](#)

[\(D\) For Exchange Developments only, requests to change elections made on line 8\(b\) of the IRS Form\(s\) 8609 to group buildings together into one or more multiple building projects. The request must include an attached statement identifying the buildings in the project. -The change to the election may only be made once during the Compliance Period.](#)

(4) Material amendments. Amendments considered material pursuant to paragraph (4) of this subsection must be approved by the Board. When an amendment request requires Board approval, the Development Owner must submit the request and all required documentation necessary for staff's review of the request to the Department at least 45 calendar days prior to the Board meeting in which the amendment is anticipated to be considered. Before the 15th day preceding the date of Board action on the amendment, notice of an amendment and the recommendation of the Executive Director and Department staff regarding the amendment will be posted to the Department's website and the Applicant will be notified of the posting- (§2306.6717(a)(4)). Material Amendment requests may be denied if the Board determines that the modification proposed in the amendment would materially alter the Development in a negative manner or would have adversely affected the selection of the Application in the Application Round. Material alteration of a Development includes, but is not limited to:



- (A) A significant modification of the site plan;
- (B) A modification of the number of [U](#)units or bedroom mix of units;
- (C) A substantive modification of the scope of tenant services;
- (D) A reduction of 3% or more in the square footage of the [U](#)units or common areas;
- (E) A significant modification of the architectural design of the Development;
- (F) A modification of the residential density of at least 5%;
- (G) A request to implement a revised election under §42(g) of the Code prior to filing of IRS Form(s) 8609;
- (H) Exclusion of any requirements as identified in [Chapter 11](#), Subchapter B of this ~~chapter~~ [title](#) (relating to Site and Development Requirements and Restrictions) and [Chapter 11](#), Subchapter C of this ~~title chapter~~ (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules ~~or Pre-Clearance for Applications~~); or
- (I) Any other modification considered material by the staff and therefore required to be presented to the Board as such.

(5) Amendment requests will be denied if the Department finds that the request would have changed the scoring of an Application in the competitive process such that the Application would not have received a funding award or if the need for the proposed modification was reasonably foreseeable or preventable by the Applicant at the time the Application was submitted, unless good cause is found for the approval of the amendment.

(6) This section shall be administered in a manner that is consistent with §42 of the Code. If a Development has any uncorrected issues of noncompliance outside of the corrective action period (other than the provision being amended) or otherwise owes fees to the Department, such non-compliance or outstanding payment must be resolved to the satisfaction of the Department ~~, or waived by the Board,~~ before a request for amendment will be acted upon.

(7) In the event that an Applicant or Developer seeks to be released from the commitment to serve the income level of tenants identified in the Application and Credit Underwriting Analysis Report at the time of award and as approved by the Board, the procedure described in subparagraphs (A) and (B) of this paragraph will apply to the extent such request is not prohibited based on statutory and/or regulatory provisions:

(A) For amendments that involve a reduction in the total number of Low-Income Units, or a reduction in the number of Low-Income Units at any rent or income level, as approved by the Board, evidence noted in either clause (i) or (ii) of this subparagraph must be presented to the Department to support the amendment.

*(i)* In the event of a request to implement (rent to a household at an income or rent level that exceeds the approved AMI limits established by the minimum election within the Development's Application or LURA) a revised election under

§42(g) of the Code prior to an Owner's submission of IRS Forms 8609 to the IRS, Owners must submit updated information and exhibits to the Application as required by the Department and all lenders and the syndicator must submit written acknowledgement that they are aware of the changes being requested and confirm any changes in terms as a result of the new election; or

(ii) For all other requests for reductions in the total number of Low-Income Units or reductions in the number of Low-Income Units at any rent or income level, prior to issuance of IRS Forms 8609 by the Department, the lender and syndicator must submit written confirmation that the Development is infeasible without the adjustment in Units. The Board may or may not approve the amendment request; however, any affirmative recommendation to the Board is contingent upon concurrence from Department staff that the Unit adjustment is necessary for the continued financial feasibility of the Development; and

(B) If it is determined by the Department that the loss of low-income targeting points would have resulted in the Application not receiving an award in the year of allocation, and the amendment is approved by the Board, the approved amendment will carry a penalty that prohibits the Applicant and all Persons or entities with any ownership interest in the Application (excluding any tax credit purchaser/syndicator), from participation in the Housing Tax Credit Program (for both the Competitive Housing Tax Credit Developments and Tax-Exempt Bond Developments) for 24 months from the time that the amendment is approved.

**(b) Amendments to the LURA.** Department approval shall be required for any amendment to a LURA in accordance with this section. An amendment request shall be submitted in writing, containing a detailed explanation of the request, the reason the change is necessary, the good cause for the change, financial information related to any financial impact on the development, information related to whether the necessity of the amendment was reasonably foreseeable at the time of application, and other information as determined to be necessary by the Department, along with any applicable fee as identified in Chapter 11, Subchapter E of this title (relating to Fee Schedule, Appeals, and other Provisions). The Department may order or require the Development Owner to order a Market Study or appraisal at the Development Owner's expense. If a Development has any uncorrected issues of noncompliance outside of the corrective action period (other than the provision being amended) or otherwise owes fees to the Department, such non-compliance or outstanding payment must be resolved to the satisfaction of the Department, ~~waived by the Board~~, before a request for amendment will be acted upon. The Department will not approve changes that would violate state or federal laws including the requirements of §42 of the Code, 24 CFR Part 92 (HOME Final Rule), 24 CFR Part 93 (NHTF Interim Rule), Chapter 1 of this title (relating to Administrative Requirements), Chapter 11 of this title (relating to ~~Housing Tax Credit Program~~ Qualified Allocation Plan), Chapter 12 of this title (relating to Multifamily Housing Revenue Bond Rules), Chapter 13 of this title (relating to Multifamily Direct Loan Rule), Tex. Gov't Code, Chapter 2306, and the Fair Housing Act. For Tax-Exempt Bond Developments, compliance with their Regulatory Agreement and corresponding bond financing documents. Prior to staff taking a recommendation to the Board for consideration, the procedures described in paragraph (3) of this subsection must be followed.

(1) Non-Material LURA Amendments. The Executive Director or designee may administratively approve all LURA amendments not defined as Material LURA Amendments pursuant to paragraph (2) of this subsection. A non-material LURA amendment may include but is not limited to:

(A) HUB participation removal. Removal of a HUB participation requirement will only be processed as a non-material LURA amendment after the issuance of 8609s and requires that the ~~Executive Director~~ Department find that:

(i) the HUB is requesting removal of its own volition or is being removed as the result of a default under the organizational documents of the Development Owner;

(ii) the participation by the HUB has been substantive and meaningful, or would have been substantive or 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 operating of affordable housing; and

(iii) where the HUB will be replaced as a general partner or special limited partner that is not a HUB and will sell its ownership interest, an ownership transfer request must be submitted as described in §10.406 of this subchapter;

(B) A change resulting from a Department work out arrangement as recommended by the Department's Asset Management Division; or

(C) A correction of error.

(2) Material LURA Amendments. Development Owners seeking LURA amendment requests that require Board approval must submit the request and all required documentation necessary for staff's review of the request to the Department at least 45 calendar days prior to the Board meeting at which the amendment is anticipated to be considered. Before the 15th day preceding the date of Board action on the amendment, notice of an amendment and the recommendation of the Executive Director and Department staff regarding the amendment will be posted to the Department's website and the Applicant will be notified of the posting. (§2306.6717(a)(4)). The Board must consider ~~and approve~~ the following material LURA amendments:

(A) Reductions to the number of Low-Income Units;

(B) Changes to the income or rent restrictions ~~(including a request to implement a revised election under §42(g) of the Code)~~;

(C) Changes to the Target Population;

(D) The removal of material participation by a Nonprofit Organization as further described in §10.406 of this subchapter;

(E) A change in the Right of First Refusal period as described in amended §2306.67265 of the Tex. Gov't Code;

(F) Any amendment that affects a right enforceable by a tenant or other third party under the LURA; or

(G) Any LURA amendment deemed material by the Executive Director.

(3) Prior to staff taking a recommendation to the Board for consideration, the Development Owner must provide notice and hold a public hearing regarding the requested amendment(s) at least 15 business days prior to the scheduled Board meeting where the request will be considered. Development Owners will be required to submit a copy of the notification with the amendment request. If a LURA amendment is requested prior to issuance of IRS Forms 8609 by the Department, notification must be provided to the recipients described in subparagraphs (A) - (E) of this paragraph. If an amendment is requested after issuance of IRS Forms 8609 by the Department, notification must be provided to the recipients described in subparagraph (A) - (B) of this paragraph.

(A) Each tenant of the Development;

(B) The current lender(s) and investor(s);

(C) The State Senator and State Representative of the districts whose boundaries include the Development Site;

(D) The chief elected official for the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction); and

(E) The county commissioners of the county in which the Development Site is located (if the Development Site is located outside of a municipality).

(4) Contents of Notification. The notification must include, at a minimum, all of the information described in subparagraphs (A) - (D) of this paragraph.

(A) The Development Owner's name, address and an individual contact name and phone number;

(B) The Development's name, address, and city ~~and county~~;

(C) The change(s) requested; and

(D) The date, time and location of the public hearing where the change(s) will be discussed.

(5) Verification of public hearing. Minutes of the public hearing and attendance sheet must be submitted to the Department within three business days after the date of the public hearing.

(6) Approval. Once the LURA Amendment has been approved administratively or by the Board, as applicable, Department staff will provide the Development Owner with a LURA amendment for execution and recording in the county where the Development is located.

**(c) HTC Extensions.** Extensions must be requested if the original deadline associated with Carryover, the 10% Test (including submission and expenditure deadlines), construction status reports, or cost certification requirements will not be met. Extension requests submitted at least 30 calendar days in advance of the applicable deadline will not be required to submit an extension fee as described in §11.901 of this ~~chapter~~title. Any extension request submitted fewer than 30 days in advance of the applicable deadline or after the applicable deadline will not be processed unless accompanied by the applicable fee. Extension requests will be approved by the Executive Director or d~~D~~esignee, unless, at staff's discretion it warrants Board approval due to extenuating circumstances stated in the request. The extension request

must specify a requested extension date and the reason why such an extension is required. If the Development Owner is requesting an extension to the Carryover submission or 10% Test deadline(s), a point deduction evaluation will be completed in accordance with Tex. Gov't Code, §2306.6710(b)(2), and §11.9(f) of this title (relating to Factors Affecting Scoring and Eligibility in current and future Application Rounds). Therefore, the Development Owner must clearly describe in their request for an extension how the need for the extension was beyond the reasonable control of the Applicant/Development Owner and could not have been reasonably anticipated. Carryover extension requests will not be granted an extended deadline later than December 1st of the year the Commitment was issued.

**§10.406. Ownership Transfers (§2306.6713).**

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

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

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

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

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

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

**(c) General Requirements.**

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

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

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

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

**(d) Transfer Actions Warranting Debarment.** If the Department determines that the transfer, involuntary removal, or replacement was due to a default by the General Partner under the Limited Partnership Agreement, or other detrimental action that put the Development at risk of failure or the Department at risk for financial exposure as a result of non-compliance, staff [will refer the matter to the Enforcement Committee for debarment consideration pursuant to §2.401 of this title \(relating to Enforcement, Debarment from Participation in Programs Administered by the Department\)](#). ~~may make a recommendation to the Board for the debarment of the entity and/or its Principals and Affiliates pursuant to the Department's debarment rule.~~ In addition, a record of transfer involving Principals in new proposed awards will be reported and may be taken into consideration ~~by the Executive Award and Review Committee,~~ in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation ~~and Executive Award Review and Advisory Committee~~), prior to recommending any new financing or allocation of credits.

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

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

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

(2) If the LURA requires ownership or material participation in ownership by a nonprofit organization or CHDO, the Development Owner must show that the transferee is a nonprofit organization or CHDO, as applicable, that complies with the LURA. [If the transferee has been certified as a CHDO by TDHCA prior to 2016 or has not previously been certified as a CHDO by TDHCA, a new CHDO certification package must be submitted for review. If the transferee was certified as a CHDO by TDHCA after 2016, provided no new federal guidance or rules concerning CHDO have been released and the proposed ownership structure at the time of review meets the requirements in 24 CFR Part 92, the CHDO may instead submit a CHDO Self-Certification form with the Ownership Transfer package.](#)

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

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

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

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

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

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

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

(2) Ownership transfer information, including but not limited to the type of sale, [terms of any new financing introduced as a result of the transfer](#), amount of Development reserves to transfer in the event of a property sale, and the prospective closing date;

(3) Pre and post transfer organizational charts with TINs of each organization down to the level of natural persons in the ownership structure as described in §11.204(13)(A) of Subchapter C [of this title \(relating to Required Documentation for Application Submission\)](#);

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

(5) Previous Participation information for any new Principal as described in §11.204(13)(B) of ~~Subchapter C of this title~~ [\(relating to Required Documentation for Application Submission\)](#);

(6) Agreements among parties associated with the transfer;

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

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

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

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

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

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

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

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

**(k) Penalties, Past Due Fees and Underfunded Reserves.** The Development Owner must comply with any additional documentation requirements as stated in Subchapter F of this chapter (relating to Compliance Monitoring) and Subchapter G of this chapter (relating to Affirmative Marketing and Written Policies and Procedures). The Development Owner, ~~as~~ on record with the Department, ~~will~~ be liable for any penalties or fees imposed by the Department (even if such penalty can be attributable to the new Development Owner) unless an such-ownership transfer ~~is~~ has been approved by the Department. In the event a transferring Development has a history of uncorrected UPCS violations, ongoing issues related to keeping housing sanitary, safe, and decent, an account balance below the annual reserve deposit amount as specified in §10.404(a) (relating to Replacement Reserve Accounts), or that appears insufficient to meet capital expenditure needs as indicated by the number or cost of repairs included in a ~~PCA~~ PNA or SCR, the prospective Development Owner may be required to establish and maintain a replacement reserve account or increase the amount of regular deposits to the replacement reserve account by entering into a Reserve Agreement with the Department. The Department may also request a plan and timeline relating to needed repairs or renovations that will be completed by the departing and/or incoming Owner as a condition to approving the Transfer. A PNA or SCR may be requested if one has not already been received under §10.404 of this section (relating to Reserve Accounts).

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

#### **§10.407. Right of First Refusal.**

**(a) General.** This section applies to Development Owners that agreed to offer a Right of First Refusal ("~~ROFR~~") to a Qualified Entity or as applicable a Qualified Nonprofit Organization, as memorialized in the applicable LURA. For the purposes of this section a Qualified Nonprofit Organization also includes an entity



100% owned by a Qualified Nonprofit Organization pursuant to §42(h)(5)(C) of the Code and operated in a similar manner. The purpose of this section is to provide administrative procedures and guidance on the process and valuation of properties under the LURA. All requests for ROFR submitted to the Department, regardless of existing regulations, must adhere to this process.

(1) The Development Owner may market the Property for sale and sell the Property to a Qualified Entity, or as applicable a Qualified Nonprofit Organization without going through the ROFR process outlined in this section unless otherwise restricted or prohibited and only in the following circumstances:

(A) The LURA includes a 90-day ROFR and the Development Owner is selling to a Qualified Nonprofit Organization;

(B) The LURA includes a two year ROFR and the Development Owner is selling to a Qualified Nonprofit Organization that meets the definition of a Community Housing Development Organization ("CHDO") under 24 CFR Part 92, as approved by the Department; or

(C) The LURA includes a 180-day ROFR, and the Development Owner is selling to a Qualified Entity that meets the definition of a CHDO under 24 CFR Part 92, or that is controlled by a CHDO, as approved by the Department. Where the Development Owner is not required to go through the ROFR process, it must go through the ownership transfer process in accordance with §10.406 of this subchapter.

(2) A ROFR request must be made in accordance with the LURA for the Development. If there is a conflict between the Development's LURA and this subchapter, every effort will be made to harmonize the provisions. If the conflict cannot be resolved, requirements in the LURA will supersede this subchapter. If there is a conflict between the Development's LURA and Tex. Gov't Code Chapter 2306, every effort will be made to harmonize the provisions. A Development Owner may request a LURA amendment to make the ROFR provisions in the LURA consistent with Tex. Gov't Code Chapter 2306 at any time.

(3) If a LURA includes the ROFR provision, the Development Owner may not request a Preliminary Qualified Contract (if such opportunity is available under the applicable LURA and §10.408) until the requirements outlined in this section have been satisfied.

(4) The Department reviews and approves all ownership transfers pursuant to §10.406 of this subchapter. Thus, if a proposed purchaser is identified in the ROFR process, the Development Owner and proposed purchaser must complete the ownership transfer process. A Development Owner may not transfer a Development to a Qualified Nonprofit Organization or Qualified Entity that is considered an ineligible entity under the Department's rules. In addition, ownership transfers to a Qualified Entity or as applicable a Qualified Nonprofit Organization pursuant to the ROFR process are subject to Chapter 1, Subchapter C of this title (relating to Previous Participation ~~and Executive Award Review and Advisory Committee~~).

(5) Satisfying the ROFR requirement does not terminate the LURA or the ongoing application of the ROFR requirement to any subsequent Development Owner.

(6) If there are multiple buildings in the Development, the end of the 15<sup>th</sup> year of the Compliance Period will be based upon the date the last building(s) began their credit period(s). For example,

if five buildings in the Development began their credit periods in ~~1990~~2005 and one in ~~1991~~2006, the 15<sup>th</sup> year would be ~~20~~2005. The ROFR process is triggered upon:

(A) The Development Owner's determination to sell the Development to an entity other than as permitted in paragraph (1) of this subsection; or

(B) The simultaneous transfer or concurrent offering for sale of a General Partner's and limited partner's interest in the Development Owner's ownership structure.

(7) The ROFR process is not triggered if a Development Owner seeks to transfer the Development to a newly formed entity:

(A) That is under common control with the Development Owner; and

(B) The primary purpose of the formation of which is to facilitate the financing of the rehabilitation of the ~~D~~development using assistance administered through a state financing program.

(8) This section applies only to a Right of First Refusal memorialized in the Department's LURA. This section does not authorize a modification of any other agreement between the Development Owner and a Qualified Nonprofit Organization or Qualified Entity. The enforceability of a contractual agreement between the Development Owner and a Qualified Nonprofit Organization or Qualified Entity may be impacted by the Development Owner's commitments at Application and recorded LURA.

**(b) Right of First Refusal Offer Price.** There are two general expectations of the ROFR offer price identified in the outstanding LURAs. The descriptions in paragraphs (1) and (2) of this subsection do not alter the requirements or definitions included in the LURA but provide further clarification as applicable:

(1) Fair Market Value is established using either a current appraisal (completed within three months prior to the ROFR request and in accordance with §11.304 of this ~~chapter~~title (relating to Appraisal Rules and Guidelines)) of the Property or an executed purchase offer that the Development Owner would like to accept. In either case the documentation used to establish Fair Market Value will be part of the ROFR property listing on the Department's website. The purchase offer must contain specific language that the offer is conditioned upon satisfaction of the ROFR requirement. If a subsequent ROFR request is made within six months of the previously approved ROFR posting, the lesser of the prior ROFR posted value or new appraisal/purchase contract amount must be used in establishing Fair Market Value;

(2) Minimum Purchase Price, pursuant to §42(i)(7)(B) of the Code, is the sum of the categories listed in (A) and (B) of this paragraph:

(A) The principal amount of outstanding indebtedness secured by the project (other than indebtedness incurred within the five year period immediately preceding the date of said notice); and

(B) All federal, state, and local taxes incurred or payable by the Development Owner as a consequence of such sale. If the Property has a minimum Applicable Fraction of less than one, the offer must take this into account by multiplying the purchase price by the applicable fraction and the fair market value of the non-Low-Income Units.

Documentation submitted to verify the Minimum Purchase Price calculation will be part of the ROFR property listing on the Department's website.

**(c) Required Documentation.** Upon establishing the ROFR offer price, the ROFR process is the same for all types of LURAs. To proceed with the ROFR request, documentation must be submitted as directed in the Post Award Activities Manual, which includes:

(1) ROFR fee as identified in §11.901 of this ~~chapter~~ title (relating to Fee Schedule, Appeals, and other Provisions);

(2) A notice of intent to the Department ~~and to such other parties as the Department may direct at that time~~;

(3) ~~C~~ Evidence and certification that the- Development Owner has provided a notice of intent to all additional required persons and entities in subparagraph ~~section~~ (A) of this paragraph and that such notice includes, at a minimum the information in subparagraph ~~section~~ (B) of this paragraph;

(A) Copies of letters or emailed notices to ~~following~~ all persons and entities listed in clauses (i) to (vi) of this subparagraph must be attached to the Certification along with evidence of submission or receipt:

(i) All tenants and tenant organizations, if any, of the Development;

(ii) Mayor of the municipality (if the Development is within a municipality or its extraterritorial jurisdiction);

(iii) All elected members of the Governing Body of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);

(iv) Presiding officer of the Governing Body of the county in which the Development is located;

(v) The local housing authority, if any; and

(vi) All qualified buyers maintained on the Department's list of qualified buyers.;  
~~residents of the Development have been provided with a notice of intent;~~

(B) Letters must include, at a minimum, all of the information required in clauses (i) to (vii) of this subparagraph and must not contain any statement that violates Department rules, statute, ~~C~~code, or federal requirements:

(i) The Development's name, address, city, and county;

(ii) The Development Owner's name, address, individual contact name, phone number, and email address;

(iii) Information about tenants' rights to purchase the Development through the ROFR;

(iv) The date that the ROFR notice period expires;

(v) The ROFR offer price;

(vi) A physical description of the Development, including the total number of Units and total number of Low-Income Units; and

(vii) Contact information for the Department staff overseeing the Development's ROFR application.

(4) Documentation evidencing any contractual ROFR between the Development Owner and a Qualified Nonprofit Organization or Qualified Entity, along with evidence that such Qualified Nonprofit Organization or Qualified Entity is in good standing in the state of its organization;

(5) Documentation verifying the ROFR offer price of the Property:

(A) If the Development Owner receives an offer to purchase the Property from any buyer other than a Qualified Entity or Qualified Nonprofit Organization that the Development Owner would like to accept, the Development Owner may execute a sales contract, conditioned upon satisfaction of the ROFR requirement, and submit the executed sales contract to establish fair market value; or

(B) If the Development Owner of the Property chooses to establish fair market value using an appraisal, the Development Owner must submit an appraisal of the Property completed during the last three months prior to the date of submission of the ROFR request, establishing a value for the Property in compliance with [Chapter 11](#), Subchapter D of this ~~chapter~~ [title](#) (relating to Underwriting and Loan Policy) in effect at the time of the request. The appraisal should take into account the existing and continuing requirements to operate the Property under the LURA and any other restrictions that may exist. Department staff will review all materials within 30 calendar days of receipt. If, after the review, the Department does not agree with the fair market value proposed in the Development Owner's appraisal, the Department may order another appraisal at the Development Owner's expense; or

(C) If the LURA requires valuation through the Minimum Purchase Price calculation, submit documentation verifying the calculation of the Minimum Purchase Price as described in subsection (b)(2) of this section regardless of any existing offer or appraised value;

(6) Description of the Property, including all amenities and current zoning requirements;

(7) Copies of all documents imposing income, rental and other restrictions (non-TDHCA), if any, applicable to the operation of the Property;

(8) A current title commitment or policy not older than six months prior to the date of submission of the ROFR request;

(9) The most recent Physical Needs Assessment, pursuant to Tex. Gov't Code §2306.186(e) conducted by a Third-Party. If the PNA/~~SCR~~ [PCA](#) identifies the need for critical repairs that significantly impact habitability and tenant safety, the identified repairs and replacements must be resolved to the satisfaction of the Department before the Development will be considered eligible to proceed with a Right of First Refusal Request;

(10) Copy of the monthly operating statements, including income statements and balance sheets for the Property for the most recent 12 consecutive months (financial statements should identify amounts held in reserves);

(11) The three most recent consecutive ~~audited~~ annual operating statements (audited would be preferred), ~~if available~~;

(12) Detailed set of photographs of the Property, including interior and exterior of representative units and buildings, and the Property's grounds;

(13) Current and complete rent roll for the entire Property; and

(14) If any portion of the land or improvements is leased for other than residential purposes, copies of the commercial leases.

**(d) Posting and offers.** Within 30 business days of receipt of all required documentation, the Department will review the submitted documents and notify the Development Owner of any deficiencies. During that time, the Department will notify any Qualified Entity or as applicable any Qualified Nonprofit Organization identified by the Development Owner as having a contractual ROFR of the Development Owner's intent to sell. Once any deficiencies are resolved and the Development Owner and Department come to an agreement on the ROFR offer price of the Property, the Department will list the Property for sale on the Department's website and contact entities on the buyer list maintained by the Department to inform them of the availability of the Property at a price as determined under this section. The Department will notify the Development Owner when the Property has been listed. The ROFR posting period commences on the date the Property is posted for sale on the Department's website. During the ROFR posting period, a Qualified Nonprofit Organization or Qualified Entity can submit an offer to purchase as follows:

(1) if the LURA requires a 90 day ROFR posting period with no priority for any particular kind of Qualified Nonprofit Organization or tenant organization, any Qualified Nonprofit Organization or tenant organization may submit an offer to purchase the property.

(2) If the LURA requires a two year ROFR posting period, a Qualified Nonprofit Organization may submit an offer to purchase the Property as follows:

(A) During the first six months of the ROFR posting period, only a Qualified Nonprofit Organization that is a Community Housing Development Organization ("CHDO") under 24 CFR Part 92, or that is 100% owned by a CHDO, as approved by the Department, may submit an offer;

(B) During the next six months of the ROFR posting period, only a Qualified Nonprofit Organization as described by Tex. Gov't Code §2306.6706, or that is 100% owned by Qualified Nonprofit Organization as described by Tex.~~as~~ Gov'~~ernment~~ Code §2306.6706, or a tenant organization may submit an offer; and

(C) During the final 12 months of the ROFR posting period, any Qualified Nonprofit Organization may submit an offer.

(3) If the LURA requires a 180-day ROFR posting period a Qualified Entity may submit an offer to purchase the Property as follows:

(A) During the first 60 days of the ROFR posting period, only a Qualified Entity that is a CHDO under 24 CFR Part 92, or that is controlled by CHDO, as approved by the Department, may submit an offer;

(B) During the second 60 days of the ROFR posting period, only a Qualified Entity as described by Tex. Gov't Code §2306.6706, or that is controlled by Qualified Entity as described by Tex. Gov't Code §2306.6706, or a tenant organization such may submit an offer;

(C) During the final 60 days of the ROFR posting period, any Qualified Entity may submit an offer.

(4) If the LURA does not specify a required ROFR posting timeframe, or, is unclear on the required ROFR posting timeframe, and the required ROFR value is determined by the Minimum Purchase Price method, any Development that received a tax credit allocation prior to September 1, 1997, is required to post for a 90-day ROFR period and any Development that received a tax credit allocation on or after September 1, 1997, and until September 1, 2015, is required to post for a two year ROFR, unless the LURA is amended under §10.405(b), or after September 1, 2015 is required to post for a 180-day ROFR period as described in Tex. Gov't Code, §2306.6726.

**(e) Acceptance of offers.** A Development Owner may accept or reject any offer received during the ROFR posting period; provided however, that to the extent the LURA gives priority to certain classifications of Qualified Nonprofit Organizations or Qualified Entities to make offers during certain portions of the ROFR posting period, the Development Owner can only negotiate a purchase contract with such classifications of entities during their respective periods. For example, during the CHDO priority period, the Development Owner may only accept an offer from and enter into negotiations with a Qualified Nonprofit Organization or Qualified Entity in that classification. A property may not be transferred under the ROFR process for less than the Minimum Purchase Price, but if the sequential negotiation created by statute yields a higher price, the higher price is permitted.

**(f) Satisfaction of ROFR.**

(1) A Development Owner that has posted a Property under the ROFR process is deemed to have satisfied the ROFR requirements in the following circumstances:

(A) The Development Owner does not receive any bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the required ROFR posting period;

(B) A bona fide offer from a Qualified Nonprofit Organization or Qualified Entity is received at or above the posted ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation), the Development Owner accepts the offer, the Qualified Nonprofit Organization or Qualified Entity fails to close the purchase, the failure is determined to not be the fault of the Development Owner, and the Development Owner received no other bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the required ROFR posting period;

(C) A bona fide offer from a Qualified Nonprofit Organization or Qualified Entity is received at or above the posted ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation), the Qualified Nonprofit Organization or Qualified Entity is not approved by the Department during the ownership transfer review due to issues identified during the Previous Participation

Review process pursuant to Chapter 1, Subchapter C of this title (relating to Previous Participation ~~and Executive Award Review and Advisory Committee~~), and the Development Owner received no other bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the required ROFR posting period;

(D) An offer from a Qualified Nonprofit Organization or Qualified Entity is received at a price below the posted ROFR offer price, and the Development Owner received no other bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the required ROFR posting period at or above the posted ROFR offer price; or

(2) A Development Owner with a LURA that identifies a specific Qualified Nonprofit Organization or Qualified Entity to be the beneficiary of the ROFR will satisfy the ROFR if:

(A) The identified beneficiary is in existence and conducting business;

(B) The Development Owner offers the Development to the identified beneficiary pursuant to the terms of the ROFR;

(C) If the ROFR includes a priority for a certain type of Qualified Entity (such as a CHDO) to have the first opportunity make an offer to acquire the Development, the identified beneficiary meets such classification; and

(D) The identified entity declines to purchase the Development in writing, and such evidence is submitted to and approved by the Department.

**(g) Non-Satisfaction of ROFR.**

(1) A Development Owner that has posted a Property under the ROFR process does not satisfy the ROFR requirements in the following circumstances:

(A) A bona fide offer from a Qualified Nonprofit Organization or Qualified Entity is received at or above the posted ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation), and the Development Owner does not accept the offer;

(B) The LURA identifies a specific Qualified Nonprofit Organization or Qualified Entity to be the beneficiary of the ROFR, and such entity no longer exists or is no longer conducting business and the Development Owner received other bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the ROFR posting period and fails to accept any of such other offers;

(C) A bona fide offer from a Qualified Nonprofit Organization or Qualified Entity is received at or above the posted ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation), the Development Owner accepts the offer, the Qualified Nonprofit Organization or Qualified Entity fails to close the purchase, the failure is determined to not be the fault of the Development Owner, the Development Owner received other bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the ROFR posting period and then fails to accept any of such other offers;

(D) A bona fide offer from a Qualified Nonprofit Organization or Qualified Entity is received at or above the posted ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation), the Development Owner accepts the offer, the Qualified Nonprofit Organization or Qualified Entity fails to close the purchase, and such failure is determined to be the fault of the Development Owner;

(E) A bona fide offer from a Qualified Nonprofit Organization or Qualified Entity is received at or above the posted ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation), the Qualified Nonprofit Organization or Qualified Entity is not approved by the Department during the ownership transfer review due to issues identified during the Previous Participation Review process pursuant to Chapter 1, Subchapter C of this title (relating to Previous Participation ~~and Executive Award Review and Advisory Committee~~), the Development Owner received other bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the ROFR posting period and fails to accept any of such other offers; or

(F) An offer from a Qualified Nonprofit Organization or Qualified Entity is received at a price below the posted ROFR offer price, the Development Owner received other bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the ROFR posting period at or above the posted ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation in), and the Development Owner fails to accept any of such offers.

#### **(h) Activities Following ROFR.**

(1) If a Development Owner satisfies the ROFR requirement pursuant to subsection (f)(1) - (2) of this section, it may request a Preliminary Qualified Contract (if such opportunity is available under §10.408) or proceed with the sale to an entity that is not a Qualified Nonprofit Organization or Qualified Entity at or above the ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation).

(2) Following notice that the ROFR requirement has been met, if the Development Owner does not post the Property for Qualified Contract in accordance with §10.408 or sell the Property to an entity that is not a Qualified Nonprofit Organization or Qualified Entity within 24 months of the Department's written indication that the ROFR has been satisfied, the Development Owner must follow the ROFR process for any subsequent transfer.

(3) If the Department determines that the ROFR requirement has not been met during the ROFR posting period, the Owner may not re-post under this provision at a ROFR offer price that is higher than the originally posted ROFR offer price until 24 months has expired from the Department's written indication that the ROFR has not been satisfied. The Development Owner may market the Property for sale and sell the Property to a Qualified Nonprofit Organization or Qualified Entity during this 24 month period in accordance with subsection (a)(1) [of this section](#).

#### **(i) Sale and closing.**

(1) Prior to closing a sale of the Property, the Development Owner must obtain Department approval of the transfer through the ownership transfer process in accordance with §10.406 of



this chapter (relating to Ownership Transfers (§2306.6713)). The request should include, among other required transfer documents outlined in the Post Award Activities Manual, the final settlement statement and final sales contract with all amendments.

(2) If the closing price is materially less than the ROFR offering price or the terms and conditions of the sale change materially from what was submitted in the ROFR posting, in the Department's sole determination, the Development Owner must go through the ROFR process again with a revised ROFR offering price equal to the reduced closing price or adjusted terms and conditions based upon the revised terms, before disposing of the Property.

**(j) Appeals.** A Development Owner may appeal a staff decision in accordance with §11.902 of this ~~chapter~~ [title](#) (relating to ~~Fee Schedule, Appeals Process, and other Provisions (§2306.0321; §2306.6715)~~).

#### **§10.408. Qualified Contract Requirements.**

**(a) General.** Pursuant to §42(h)(6) of the Code, after the end of the 14th year of the Compliance Period, the Development Owner of a Development utilizing Housing Tax Credits can request that the allocating agency find a buyer at the Qualified Contract Price. If a buyer cannot be located within one year, the Extended Use Period will expire. This section provides the procedures for the submittal and review of a Qualified Contract Request.

**(b) Eligibility.** Development Owners who received an award of credits on or after January 1, 2002, are not eligible to request a Qualified Contract prior to the 30 year anniversary of the date the property was placed in service (§2306.185); if the property's LURA indicates a commitment to an Extended Use Period beyond 30 years, the Development Owner is not eligible to request a Qualified Contract until the expiration of the Extended Use Period. Development Owners awarded credits prior to 2002 may submit a Qualified Contract Request at any time after the end of the year ~~pre~~ceeding the last year of the Initial Affordability Period, provided it is not precluded by the terms of the LURA, following the Department's determination that the Development Owner is eligible. The Initial Affordability Period starts concurrently with the credit period, which begins at placement-in-service or is deferred until the beginning of the next tax year, if there is an election. Unless the Development Owner has elected an Initial Affordability Period longer than the Compliance Period, as described in the LURA, this can commence at any time after the end of the 14th year of the Compliance Period. References in this section to actions which can occur after the 14th year of the Compliance Period shall refer, as applicable, to the year preceding the last year of the Initial Affordability Period, if the Development Owner elected an Initial Affordability Period longer than the Compliance Period.

(1) If there are multiple buildings placed in service in different years, the end of the Initial Affordability Period will be based upon the date the last building placed in service. For example, if five buildings in the Development began their credit periods in ~~2005~~1990 and one began in ~~2006~~1991, the 15th year would be ~~2005~~2005.

(2) If a Development received an allocation in multiple years, the end of the Initial Affordability Period will be based upon the last year of a multiple allocation. For example, if a Development received its first allocation in ~~2004~~1990 and a subsequent allocation and began the credit period in ~~2006~~1992, the 15th year would be ~~2006~~2006.

**(c) Preliminary Qualified Contract Request.** All eligible Development Owners must file a Preliminary Qualified Contract Request.

(1) In addition to determining the basic eligibility described in subsection (b) of this section, the pre-request will be used to determine that:

(A) The Development does not have any uncorrected issues of noncompliance outside the corrective action period;

(B) There is a Right of First Refusal (ROFR) connected to the Development that has been satisfied;

(C) The Compliance Period ~~under the LURA has expired~~ ~~has not been extended in the LURA and, if it has, the Development Owner is eligible to file a pre-request as described in paragraph (2) of this subsection~~; and

(2) In order to assess the validity of the pre-request, the Development Owner must submit:

(A) Preliminary Request Form;

(B) Qualified Contract Pre-Request fee as outlined in §11.901 of this ~~chapter title~~ (relating to Fee Schedule, ~~Appeals, and other Provisions~~);

(C) Copy of all regulatory agreements or LURAs associated with the Property (non-TDHCA);

(D) Copy of ~~a the most recent~~ Physical Needs Assessment/~~Property Condition Assessment, pursuant to Tex. Gov't Code §2306.186(e)~~, conducted by a Third Party, ~~that is no more than 12 months older than the request date~~. If the PNA/~~PCA~~ identifies the need for critical repairs that significantly impact habitability and tenant safety, the identified repairs and replacements must be resolved to the satisfaction of the Department before the Development will be considered eligible to submit a Qualified Contract Request.

(3) The pre-request will not bind the Development Owner to submit a Request and does not start the One Year Period (“1YP”). A review of the pre-request will be conducted by the Department within 90 days of receipt of all documents and fees described in paragraph (2) of this subsection. If the Department determines that this stage is satisfied, a letter will be sent to the Development Owner stating that they are eligible to submit a Qualified Contract (QC) Request.

**(d) Qualified Contract Request.** A Development Owner may file a QC Request any time after written approval is received from the Department verifying that the Development Owner is eligible to submit the Request.

(1) Documentation that must be submitted with a Request is outlined in subparagraphs (A) - (P) of this paragraph:

(A) A completed application and certification;

(B) The Qualified Contract price calculation worksheets completed by a licensed Third-Party certified public accountant (CPA). The CPA shall certify that they have reviewed annual partnership tax returns for all years of operation, loan documents for all secured debt, and partnership agreements. They shall also certify that they are not being compensated for the assignment based upon a predetermined outcome;

(C) A thorough description of the Development, including all amenities;

(D) A description of all income, rental and other restrictions (non-TDHCA), if any, applicable to the operation of the Development;

(E) A current title report;

(F) A current appraisal with the effective date within six months of the date of the QC Request and consistent with [Chapter 11](#), Subchapter D of this ~~chapter title~~ (relating to Underwriting and Loan Policy);

(G) A current Phase I Environmental Site Assessment ([and](#) Phase II, if necessary) with the effective date within six months of the date of the QC Request and consistent with [Chapter 11](#), Subchapter D of this ~~chapter~~ (relating to Underwriting and Loan Policy);

(H) A copy of the most recent Physical Needs Assessment of the property conducted by a Third Party, if different from the assessment submitted during the preliminary qualified contract request, consistent with [Chapter 11](#), Subchapter D of this ~~chapter title and in accordance with the requirement described in Tex. Gov't Code, §2306.186(e)~~;

(I) A copy of the monthly operating statements for the Development for the most recent 12 consecutive months;

(J) The three most recent consecutive annual operating statements [\(audited would be preferred\) for the Development](#);

(K) A detailed set of photographs of the ~~D~~development, including interior and exterior of representative units and buildings, and the property's grounds;

(L) A current and complete rent roll for the entire Development;

(M) A certification that all tenants in the Development have been notified in writing of the request for a Qualified Contract. A copy of the letter used for the notification must also be included;

(N) If any portion of the land or improvements is leased, copies of the leases;

(O) The Qualified Contract Fee as identified in §11.901 of this ~~chapter title~~ (relating to Fee Schedule, ~~Appeals, and other Provisions~~); and

(P) Additional information deemed necessary by the Department.

(2) Unless otherwise directed by the Department pursuant to subsection (g) of this section, the Development Owner shall contract with a broker to market and sell the Property. ~~—The Department may, at its sole discretion, notify the Owner that the selected Broker is not approved by the Department.~~ The fee for this service will be paid by the seller, ~~not to exceed 6% of the QC Price.~~

(3) Within 90 days of the submission of a complete Request, the Department will notify the Development Owner in writing of the acceptance or rejection of the Development Owner's QC Price calculation. The Department will have one year from the date of the acceptance letter to

find a Qualified Purchaser and present a QC. The Department's rejection of the Development Owner's QC Price calculation will be processed in accordance with subsection (e) of this section and the 1YP will commence as provided therein.

**(e) Determination of Qualified Contract Price.** The QC Price calculation is not the same as the Minimum Purchase Price calculation for the ROFR. The CPA contracted by the Development Owner will determine the QC Price in accordance with §42(h)(6)(F) of the Code taking the following into account:

(1) Outstanding indebtedness secured by, or with respect to, the building;

~~(2)~~ Distributions to the Development Owner of any and all cash flow, including incentive management fees, capital contributions not reflected in outstanding indebtedness or adjusted investor equity, and reserve balance distributions or future anticipated distributions, but excluding payments of any eligible deferred developer fee. These distributions can only be confirmed by a review of all prior year tax returns for the Development;

~~(3)~~ All equity contributions will be adjusted based upon the lesser of the consumer price index or 5% for each year, from the end of the year of the contribution to the end of year fourteen or the end of the year of the request for a QC Price if requested at the end of the year or the year prior if the request is made earlier than the last year of the month; and

~~(4)~~ These guidelines are subject to change based upon future IRS Rulings and/or guidance on the determination of Development Owner distributions, equity contributions and/or any other element of the QC Price.

**(f) Appeal of Qualified Contract Price.** The Department reserves the right, at any time, to request additional information to document the QC Price calculation or other information submitted. If the documentation does not support the price indicated by the CPA hired by the Development Owner, the Department may engage its own CPA to perform a QC Price calculation and the cost of such service will be paid for by the Development Owner. If a Development Owner disagrees with the QC Price calculated by the Department, a Development Owner may appeal in writing in accordance with §11.901(5) of this title (relating to Fee Schedule). A meeting will be arranged with representatives of the Development Owner, the Department and the CPA contracted by the Department to attempt to resolve the discrepancy. The 1YP will not begin until the Department and Development Owner have agreed to the QC Price in writing. Further appeals can be submitted in accordance with §11.902 of this title (relating to Appeals Process (§2306.0321; §2306.6715)).

**(g) Marketing of Property.** By submitting a Request, the Development Owner grants the Department the authority to market the Development and provide Development information to interested parties. Development information will consist of pictures of the Development, location, amenities, number of Units, age of building, etc. Development Owner or broker contact information will also be provided to interested parties. The Development Owner is responsible for providing staff any requested information to assist with site visits and inspections. Marketing of the Development will continue until such time that a Qualified Contract is presented or the 1YP has expired. Notwithstanding subsection (d)(2) of this section, the Department reserves the right to contract directly with a Third Party in marketing the Development. Cost of such service, including a broker's fee, ~~not to exceed 6%~~, will be paid for by the existing Development Owner. The Department must have continuous cooperation from the Development Owner. Lack of cooperation will cause the process to cease and the Development Owner will be required to comply with requirements of the LURA for the remainder of the Extended Use Period. ~~A prospective purchaser must complete all requirements of an ownership transfer request and be approved by the~~

~~Department prior to closing on the purchase.~~ Responsibilities of the Development Owner include but are not limited to the items described in paragraphs (1) - (3) of this subsection. The Development Owner must:

- (1) Allow access to the Property and tenant files;
- (2) Keep the Department informed of potential purchasers; and
- (3) Notify the Department of any offers to purchase.

**(h) Presentation of a Qualified Contract.** If the Department finds a Qualified Purchaser willing to present an offer to purchase the property for an amount at or above the QC Price, the Development Owner may accept the offer and enter into a commercially reasonable form of earnest money agreement or other contract of sale for the property and provide a reasonable time for necessary due diligence and closing of the purchase. If the Development Owner chooses not to accept the QC offer that the Department presents, the QC request will be closed and the possibility of terminating the Extended Use Period through the Qualified Contract process is eliminated; the Property remains bound by the provisions of the LURA [for the remainder of the Extended Use Period](#). If the Development Owner decides to sell the development for the QC Price pursuant to a QC, [the purchaser must complete all requirements of an ownership transfer request and be approved by the Department prior to closing on the purchase, but](#) the consummation of such a sale is not required for the LURA to continue to bind the Development for the remainder of the Extended Use Period.

(1) The Department will attempt to procure a QC only once during the Extended Use Period. If the transaction closes under the contract, the new Development Owner will be required to fulfill the requirements of the LURA for the remainder of the Extended Use Period.

(2) If the Department fails to present a QC before the end of the 1YP, the Department will file a release of the LURA and the Development will no longer be restricted to low-income requirements and compliance. However, in accordance with §42(h)(6)(E)(ii) of the Code, for a three year period commencing on the termination of the Extended Use Period, the Development Owner may not evict or displace tenants of Low-Income Units for reasons other than good cause and will not be permitted to increase rents beyond the maximum tax credit rents. Additionally, the Development Owner should submit to the Department a request to terminate the LURA and evidence, in the form of a signed certification and a copy of the letter, to be approved by the Department, that the tenants in the Development have been notified in writing that the LURA will be terminated and have been informed of their protections during the three year time frame.

(3) Prior to the Department filing a release of the LURA, the Development Owner must correct all instances of noncompliance at the Development.

**(i) Compliance Monitoring during Extended Use Period.** For Developments that continue to be bound by the LURA and remain affordable after the end of the Compliance Period, the Department will monitor in accordance with the [applicable Extended Use Period Compliance Policy requirements](#) in Subchapters [F and G](#) of this [Chapter](#) (relating to [Compliance Monitoring Uniform Multifamily Rules](#)).

7b

**BOARD ACTION REQUEST**

**COMPLIANCE DIVISION**

**OCTOBER 10, 2019**

Presentation, discussion, and possible action on amendments to 10 TAC §10.602 Notice to Owners and Corrective Action Periods; §10.605 Elections under IRC §42(g); §10.607 Reporting Requirements; §10.609 Notices to the Department; §10.610 Written Policies and Procedures, §10.611 Determination, Documentation and Certification of Annual Income; §10.612 Tenant File Requirements; §10.613 Lease Requirements; §10.614 Utility Allowances; §10.615 Elections under IRC §42(g); Additional Income and Rent Restrictions for HTC, Exchange, and TCAP Developments; §10.616 Household Unit Transfer Requirements for All Programs; §10.617 Affirmative Marketing Requirements, §10.618 Onsite Monitoring; §10.622 Special Rules Regarding Rents and Rent Limit Violations; §10.623 Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period; §10.624 Compliance Requirements for Developments with 811 PRA Units; and Figure §10.625; and directing that they be published for public comment in the *Texas Register*

**RECOMMENDED ACTION**

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

**WHEREAS**, staff proposes amending the current Compliance rule to clarify, add and remove requirements for Developments monitored by the Department;

**WHEREAS**, oversight of the affirmative marketing requirements and the written policies and procedures (sometimes called tenant selection criteria), and the associated review process, are being moved organizationally within the Department from the Compliance Division to the Fair Housing, Data Management and Reporting unit, and as a result the text of those two sections of the Compliance rule that govern those processes (10 TAC §10.610 and §10.617) are proposed to be deleted and replaced with a reference to the new section of the TAC, while under separate action being proposed as new sections within chapter 10;

**WHEREAS**, staff recommends to the Board that there is a continuing need for these rule sections to exist, which is to ensure compliance with applicable sections of Tex. Gov't Code Chapter 2306, Internal Revenue Code §42, and applicable sections of 24 CFR §92.504 and 24 CFR §93.404; and

**WHEREAS**, such proposed rulemaking will be published in the *Texas Register* for public comment from October 25, 2019, through November 25, 2019, and subsequently returned to the Board for final adoption;

**NOW, therefore, it is hereby**

**RESOLVED**, that the proposed actions to the Compliance Rule together with the preambles presented at this meeting, are hereby approved for publication in the *Texas Register* for public comment; and

**FURTHER RESOLVED**, that the Executive Director and his designees be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department, to cause the proposed actions herein in the form presented to this meeting, to be published in the *Texas Register* for public comment, and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing including any requested revisions to the preambles.

### **BACKGROUND**

On January 17, 2019, the Board adopted the current Compliance Rules. The current rules added requirements regarding the average income minimum set aside available under IRC §42(g) and incorporated requirements for new Department programs, including National Housing Trust Fund and the Section 811 Project Rental Assistance Program. Staff has been monitoring under these current rules and has recognized the need for changes.

Non-substantive changes related to requirements for the Section 811 PRA program are proposed for 10 TAC §10.612 Tenant File Requirements, 10 TAC §10.613 Lease Requirements, 10 TAC §10.616 Household Unit Transfer Requirements for all Programs, and 10 TAC §10.624 Compliance Requirements for Developments with 811 PRA Units.

Only the sections noted in the recitals and proposed for action will be published in the *Texas Register* for public comment. Proposed substantive changes are explained below.

**§10.605(b)- Elections Under IRC §42(g)** Staff is proposing to delete from 10 TAC §10.605(b) an unnecessary requirement related to meeting the minimum set aside for developments that elect the average income minimum set aside. Specifically the following language is proposed to be deleted:

*“Developments in the first year of the credit period that elect the average income test should lease Units in a manner to ensure that at all times, the average income and rent of the occupied units at the project does not exceed 60%. Example 605(1): A 100 Unit project places in service in April. If by*



*October of that year, 50 of the Units are occupied and the other 50 have never been occupied, the designations of the 50 occupied Units must be equal to or less than 60% AMI and the percentage represented at application.”*

**§10.607(i)- Reporting Requirements** Staff is proposing to delete requirements related to Housing Tax Credit Exchange properties filing 8609s with the Department. All Exchange properties have met the requirement. The process for amending their elections is addressed in the Department’s Asset Management rule. Specifically the following language is proposed to be deleted:

*“(i) Exchange developments must submit IRS Form(s) 8609 with lines 7, 8(b), 9(b), 10(a), 10(c), and 10(d) completed 30 days after the Department issues the executed form(s). If an Owner elects to group buildings together into one or more multiple building projects, the owner must attach a statement identifying the buildings in the project. An owner may request to change the election made on line 8(b) only once during the Compliance Period. The request will be treated as a non-material amendment, subject to the fee described in §11.901 of this chapter (relating to Fee Schedule) and the process described in §10.405 of this chapter (relating to Amendments and Extensions).”*

**§10.610- Written Policies and Procedures** Written policies and procedures (sometimes called tenant selection criteria), and the associated review process, are being moved organizationally within the Department from the Compliance Division to the Fair Housing, Data Management and Reporting unit. As a result parts of the text of the sections that govern those processes (10 TAC §10.610 and §10.617) are proposed to be deleted and replaced with a reference to the new section of the TAC, while under separate action they are being proposed as new sections within a separate subchapter within chapter 10. Other parts of the text are incorporated into these rules.

**§10.611(c)- Determination, Documentation and Certification of Annual Income** Staff is proposing new language to address an Owner’s ability to change a household’s income designation from the time of move in. The rules adopted in January require owners to have a written policy regarding changes in tenant income. Most Owners did not adopt such a policy and had difficulty in incorporating the requirement into their written policies. The proposed repeal of 10 TAC §10.610 and some of the proposed amendments to 10 TAC §10.615 remove the requirement to have a written policy. Instead the proposed language in 10 TAC §10.611 identifies the times an Owner can change the income designation given to a household at the time of move in. The proposed language is shown below:

*(c) A household’s income designation at the time of move in cannot be changed unless:*

*(1) The household goes over income and they are replaced with another low income household;*

*(2) The Development has a written policy and procedure for changing household designations as household income changes;*

*(3) The household receives rental assistance, and due to changes in their income, their portion of*

*required rent exceeds the rent limit of their move in designation;*

*(4) The household is designated as Market Rate and a certification is performed that completely and clearly documents that the household is qualified as low income; or*

*(5) The household has been designated as low income and they become, or it is determined that they have been, an ineligible full time student household. If the Development has Units that do not have student restrictions, the household can continue occupancy, and their designation may be removed.*

**§10.614 (c)(3)(C) and 10 TAC §10.614(d)- Utility Allowances** Staff is proposing a new requirement for Owners that elect to use the HUD Utility Schedule Model to calculate their utility allowance. If adopted as proposed, the rule would require the use of an Electric Fact Label that has a term of at least 12 months. Although the “Power to Choose” website may show plans that have a lower price per kilowatt for electricity, if that price is not available for a 12-month period, staff believes that it should not be used to calculate a utility allowance which is valid for a 12-month period. This may result in higher utility allowances, which could decrease the amount of rent an Owner can charge. Staff analyzed some areas to determine the difference and impact. In a sample zip code in Houston, for plans available for less than 12 months, the most affordable plan offered an energy rate of 3.9 cents per kWh. For plans with a term of longer than 12 months, the most affordable plan offered an energy rate of 4.7 cents per kWh. Calculating the HUD Model with an Electric Fact Label that has a term of at least 12 months may result in an allowance that is approximately \$5.00 to \$10.00 more.

**§10.617- Affirmative Marketing Requirements** As noted above the text of this section is proposed to be deleted and replaced with a reference to the new section of the TAC, while under separate action it is being proposed as a new section within a separate subchapter within chapter 10.

**§10.618- Onsite Monitoring** Clarifying language is proposed to be added to notify Owners of HOME, TCAP RF and NHTF Developments that if their Land Use Restriction Agreement requires a specific Unit mix that staff will confirm compliance with the exact requirements. Failure to provide the exact Unit mix will result in a finding of noncompliance.

**§10.622- Special Rules Regarding Rents and Rent Limit Violations** The following language is being proposed:

*(j) Owners are not permitted to increase the tenant portion of rent during a period which is the lesser of 12 months or the lease term, even if there are increases in rent limits or decreases in utility allowances.*

Some Owners require households to sign a lease addendum that permits increases in rent during the lease term if rent limits increase, utility allowances decrease, or to end rent specials. If adopted, this language would prevent Owners from changing rent during the term of a lease that is one year or less. Increases in rents that do not exceed the program limit will be permitted at lease renewal.

**Attachment [1]: Preamble, including required analysis, for proposed amendments to 10 TAC §10.602 Notice to Owners and Corrective Action Periods; §10.605 Elections under IRC §42(g); §10.607 Reporting Requirements; §10.609 Notices to the Department; §10.610 Written Policies and Procedures; §10.611 Determination, Documentation and Certification of Annual Income; §10.612 Tenant File Requirements; §10.613 Lease Requirements; §10.614 Utility Allowances; §10.615 Elections under IRC §42(g) and Additional Income and Rent Restrictions for HTC, Exchange, and TCAP Developments; §10.616 Household Unit Transfer Requirements for All Programs; §10.618 Onsite Monitoring; §10.622 Special Rules Regarding Rents and Rent Limit Violations; §10.623 Monitoring Procedures for Housing Tax Credit Properties After the 10.617 Affirmative Marketing Requirements; Compliance Period; §10.624 Compliance Requirements for Developments with 811 PRA Units; and Figure §10.625**

The Texas Department of Housing and Community Affairs (the Department) proposes amendments to 10 TAC §10.602 Notice to Owners and Corrective Action Periods; §10.605 Elections under IRC §42(g); §10.607 Reporting Requirements; §10.609 Notices to the Department; §10.610 Written Policies and Procedures; §10.611 Determination, Documentation and Certification of Annual Income; §10.612 Tenant File Requirements; §10.613 Lease Requirements; §10.614 Utility Allowances; §10.615 Elections under IRC §42(g) and Additional Income and Rent Restrictions for HTC, Exchange, and TCAP Developments; §10.616 Household Unit Transfer Requirements for All Programs; §10.617 Affirmative Marketing Requirements; §10.618 Onsite Monitoring; §10.622 Special Rules Regarding Rents and Rent Limit Violations; §10.623 Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period; §10.624 Compliance Requirements for Developments with 811 PRA Units; and Figure §10.625. The amendments clarify the requirements of the Section 811 PRA program, delete unnecessary requirements, delete requirements related to written policies and procedures and refer readers to the new section of the TAC where that information is being relocated, define the circumstances under which an Owner may change the designation given a household at the time of move in, require a rate that is available for 12 months when using the HUD Utility Schedule Model to calculate a utility allowance, delete requirements related to affirmative marketing and refer readers to the new section of the TAC where that information is being relocated notify Owners of HOME, TCAP RF and NHTF that if their Land Use Restriction Agreement requires a specific Unit mix that staff will confirm compliance with the exact requirements, and prohibits rent increases during a lease term.

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

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

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed amendments would be in effect, the proposed amendments do not create or eliminate a government program, but relates to changes to an existing activity, compliance monitoring.
2. The proposed amendments do not require a change in work that would require the creation of new employee positions, nor is the proposed repeal significant enough to reduce workload to a degree that any existing employee positions are eliminated.

3. The proposed amendments do not require additional future legislative appropriations.
4. The proposed amendments do not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department.
5. The proposed amendments are not creating a new regulation.
6. The proposed amendments will not repeal an existing regulation.
7. The proposed amendments will not increase nor decrease the number of individuals subject to the rule's applicability.
8. The proposed amendments will not negatively nor positively affect this state's economy.

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

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

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

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

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

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

**f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4).** Mr. Wilkinson also has determined that for each year of the first five years the proposed 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.

**REQUEST FOR PUBLIC COMMENT.** The public comment period will be held October 25, 2019, to November 25, 2019, to receive input on the proposed amended sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Patricia Murphy, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email [patricia.murphy@tdhca.state.tx.us](mailto:patricia.murphy@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, NOVEMBER 25, 2019.

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

## Blacklined Sections of Rule Proposed for Amendment

### **§10.602 Notice to Owners and Corrective Action Periods**

(a) The Department will provide written notice to the Owner if the Department does not receive the Annual Owner Compliance Report (AOCR) timely or if the Department discovers through monitoring, audit, inspection, review, or any other manner that the Development is not in compliance with the provisions of the LURA, deed restrictions, application for funding, conditions imposed by the Department, this subchapter, or other program rules and regulations, including but not limited to §42 of the Internal Revenue Code.

(b) For a violation other than a violation that poses an imminent hazard or threat to health and safety, the notice will specify a 30 day Corrective Action Period for noncompliance related failure to file the AOCR, and a 90 day Corrective Action Period for other violations. During the Corrective Action Period, the Owner has the opportunity to show that either the Development was never in noncompliance or that the Event of Noncompliance has been corrected. Documentation of correction must be received during the Corrective Action Period for an event to be considered corrected during the Corrective Action Period. The Department may extend the Corrective Action Period for up to six months from the date of the notice to the Development Owner only if there is good cause for granting an extension and the Owner ~~owner~~ requests an extension during the original 90 day Corrective Action Period, and the request would not cause the Department or the Owner to miss a federal deadline. Requests for an extension may be submitted to: [compliance.extensionrequest@tdhca.state.tx.us](mailto:compliance.extensionrequest@tdhca.state.tx.us). If an Owner submits evidence of corrective action during the Corrective Action Period that addresses each finding, but does not fully address all findings, the Department will give the Owner written notice and an additional 10 calendar day period to submit evidence of full corrective action. References in this subchapter to the Corrective Action Period include this additional 10 calendar day period.

(c) If any communication to the Owner under this section is returned to the Department as refused, unclaimed, or undeliverable, the Development may be considered not in compliance without further notice to the Owner. The Owner is responsible for providing the Department with current contact information, including address(es) (physical and electronic) and phone number(s). The Owner must also provide current contact information to the Department as required by §1.22 of this title (relating to Providing Contact Information to the Department), and ensure that such information is at all times current and correct.

(d) Treasury Regulations require the Department to notify Housing Tax Credit Owners of upcoming reviews and instances of noncompliance. The Department will rely solely on the information supplied by the Owner in the Department's web-based Compliance Monitoring and Tracking System (CMTS) to meet this requirement. It is the Owner's sole responsibility to ensure at all times that such information is current, accurate, and complete. Correspondence sent to the email or physical address shown in CMTS will be deemed delivered to the Owner. Correspondence from the Department may be directly uploaded to the property's CMTS account using the secure electronic document attachment system. Once uploaded, notification of the attachment will be sent

electronically to the email address listed in CMTS. The Department is not required to send a paper copy, and if it does so it does as a voluntary and non-precedential courtesy only.

(e) Unless otherwise required by law or regulation, Events of Noncompliance will not be reported to the IRS, referred for enforcement action, considered as cause for possible debarment, or reported in an applicant's compliance history or Previous Participation Review~~previous participation review~~, until after the end of the Corrective Action Period described in this section.

(f) Upon receipt of facially valid complaints the Department may contact the Owner and request submission of documents or written explanations to address the issues raised by the complainant. The deadline to respond to the issue will be specific to the matter. Whenever possible and not otherwise prohibited or limited by law, regulation, or court order, the complaint received by the Department will be provided along with the request for documents or Owner response.

### **§10.605 Elections under IRC §42(g)**

(a) Under the Code, HTC Development Owners elect a minimum set-aside requirement of 20/50 (20% of the Units restricted at the 50% income and rent limits), 40/60 (40% of the Units restricted at the 60% income and rent limits), or the average income test.

(b) HTC projects must meet the required election under IRC §42(g) no later than the end of the first year of the Credit Period. ~~Developments in the first year of the credit period that elect the average income test should lease Units in a manner to ensure that at all times, the average income and rent of the occupied units at the project does not exceed 60%. Example 605(1): A 100 Unit project places in service in April. If by October of that year, 50 of the Units are occupied and the other 50 have never been occupied, the designations of the 50 occupied Units must be equal to or less than 60% AMI and the percentage represented at application.~~

(c) An Owners that elects the average income test under IRC §42(g) must disperse 20%, 30%, 40%, 50%, 60%, 70%, and 80% Unit designations across all Unit Types to the greatest extent feasible, and in a manner that does not violate fair housing laws.

(d) Until and unless the Internal Revenue Service or the Treasury Department issues conflicting or additional guidance, the Department will examine the actual gross rent and income of all households to determine if a ~~projects~~ that elected the average income test are at or below the federal minimum of 60% AMI.

### **§10.607 Reporting Requirements**

(a) The Department requires reports to be submitted electronically through CMTS~~the Department's web-based Compliance Monitoring and Tracking System (CMTS)~~ and in the format prescribed by the Department. The Electronic Compliance Reporting Filing Agreement and the Owner's Designation of Administrator of Accounts forms must be ~~filed~~ emailed to [cmts.requests@tdhca.state.tx.us](mailto:cmts.requests@tdhca.state.tx.us) for:

(1) 9% Housing Tax Credit Developments - no later than the date prescribed in §10.402(g) of this chapter (relating to the 10% Test);

(2) 4% Housing Tax Credit Developments - no later than the date prescribed in §10.402(e) of this chapter (relating to Post Bond Closing Documentation Requirements); or

(3) For all other multifamily rental Developments, no later than September 1st of the year following the award.

(b) Each Development is required to submit an Annual Owner's Compliance Report (AOCR). Depending on the Development, some or all of the Report must be submitted. The first AOCR is due the second year following the award in accordance with the deadlines set out in subsection (e) of this section. Example 607(1): A Development was allocated Housing Tax Credits in July 2015. The first report is due April 30, 2017, even if the Development has not yet commenced leasing activities.

(c) The AOCR is comprised of four parts:

(1) Part A "Owner's Certification of Program Compliance." All Owners must annually certify compliance with applicable program requirements. The AOCR Part A shall include answers to all questions required by the U. S. Department of the Treasury to be addressed, including those required by Treasury Regulation 1.42-5(b)(1) or the applicable program rules;

(2) Part B "Unit Status Report." All Developments must annually report and certify the information related to individual household income, rent, certification dates and other necessary data to ensure compliance with applicable program regulations. In addition, Owners are required to report on the race and ethnicity, family composition, age, use of rental assistance, disability status, and monthly rental payments of individuals and families applying for and receiving assistance or if the household elects not to disclose the information, such election;

(3) Part C "Housing for Persons with Disabilities." The Department is required to establish a system that requires Owners of state or federally assisted housing Developments with 20 or more housing Units to report information regarding housing Units designed for persons with disabilities. The certified answers to the questions on Part C satisfy this requirement; and

(4) Part D "Form 8703." Tax exempt bond properties must file Form 8703 each calendar year of the qualified project period. The form is due to the IRS by March 31 after the close of the calendar year for which the certification is made. The Department requires Tax Exempt Bond Development Owners to submit a copy of the filed Form 8703 for the preceding calendar year.

(d) The Owner is required to report certain financial information to the Department electronically through CMTS. If supplemental information is required, it must be uploaded to the Development's CMTS account.

(1) "Annual Owner's Financial Certification" (formerly Part D of the AOCR). Developments funded



by the Department must annually provide and certify to the data requested in the Annual Owner's Financial Certification (AOFC).

(2) Developments funded with Exchange or TCAP must also submit a "Quarterly Owner's Financial Certification" and these must be submitted in January, April, July, and October on the 15th business day of the month.

(e) Parts A, B, C, and D of the AOFC and the Annual Owner's Financial Certification must be provided to the Department no later than April 30th of each year, reporting data current as of December 31st of the previous year (the reporting year).

(f) Periodic Unit Status Reports. All Developments must submit a Quarterly Unit Status Report to the Department through the Compliance Monitoring and Tracking System. Quarterly reports are due in January, April, July, and October on the 10th day of the month. The report must report occupancy as of the last day of the previous month for the reporting period. For example, the report due October 10th should report occupancy as of September 30th of the preceding month. The first quarterly report is due on the first quarterly reporting date after leasing activity commences. Failure to report occupancy timely will result in a finding of noncompliance.

(g) Owners are encouraged to continuously maintain current resident data in the Department's CMTS. Under certain circumstances, such as in the event of a natural disaster, the Department may alter the reporting schedule and require all Developments to provide current occupancy data through CMTS.

(h) All rental Developments funded or administered by the Department will be required to submit a current Unit Status Report prior to an onsite monitoring visit.

~~(i) Exchange developments must submit IRS Form(s) 8609 with lines 7, 8(b), 9(b), 10(a), 10(c), and 10(d) completed 30 days after the Department issues the executed form(s). If an Owner elects to group buildings together into one or more multiple building projects, the owner must attach a statement identifying the buildings in the project. An owner may request to change the election made on line 8(b) only once during the Compliance Period. The request will be treated as a non-material amendment, subject to the fee described in §11.901 of this chapter (relating to Fee Schedule) and the process described in §10.405 of this chapter (relating to Amendments and Extensions).~~

### **§10.609 Notices to the Department**

If any of the events described in paragraphs (1) – ~~(7)(6)~~ of this section occur, written notice must be provided to the Department within the respective timeframes. Failure to do so will result in an ~~finding of noncompliance~~ Event of Noncompliance, and may be taken into consideration during ~~P~~previous ~~P~~participation ~~R~~reviews in accordance with Chapter 1 Subchapter C of this title, or in ~~E~~enforcement actions in accordance with Chapter 2 of this title.

(1) Written notice must be provided at least 30 days prior to any proposed sale, transfer, or exchange of the Development or any portion of the Development, and the Department must give its prior written approval to any such sale, transfer, or exchange, which will include a previous participation review on the proposed new ownership, requiring that they complete and provide a Previous Participation Review Form;

(2) Notification must be provided within 30 days following the event of any casualty loss, in whole or in part, to the Development, using the Department's Notice of Casualty Loss (for general casualty losses) or Notice of Disaster Casualty Loss (specific to loss as a result of a Presidentially Declared Disaster);

(3) Owners of Bond Developments shall notify the Department of the date on which 10% of the Units are occupied and the date on which 50% of the Units are occupied, and notice must occur within 90 days of each such date;

(4) Within 30 days after a foreclosure, the Department must be provided with documentation evidencing the foreclosure and a rent roll establishing occupancy on the day of the foreclosure; ~~and~~

(5) Within 10 days of a change in the contact information (including contact persons, physical addresses, mailing addresses, email addresses, phone numbers, and/or the name of the property as know by the public) for the Ownership entity, management company, and/or Development the Department's CMTS must be updated; ~~and~~

~~(6) Within 30 days of completion of the American Institute of Architects form G704- Certificate of Substantial Completion, or Form HUD-92485 for instances in which a federally insured HUD loan is utilized, an Owner must request a Final Construction Inspection; and~~

~~(7) Owners of Developments that participate in the Section 811 PRA program are required to notify the Department about the availability of Units as described in §10.624 of this subchapter.~~

### **§10.610 Written Policies and Procedures**

~~See §10.802 of this chapter.~~

~~(a) The purpose of this section is to outline policies and/or procedures that are required to have written documentation. If an owner fails to follow their written policies and procedures it will be cited as noncompliance with this section.~~

~~(1) Owners must inform applicants/tenants in writing, at the time of application or other action described in this section, that such policies/procedures are available, and that the Owner will provide copies upon request to applicants/tenants or their representatives.~~

~~(2) The Owner must have all policies and related documentation required by this section available in the leasing office and anywhere else where applications are taken. Developments that accept electronic applications must post to their website the tenant selection criteria and the TDHCA form~~

~~based on HUD form 5380 "Notice of Occupancy Rights under the Violence Against Women Act" and the HUD form 5382 "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation."~~

~~(3) All policies must have an effective date. Any changes require a new effective date.~~

~~(4) In general, policies cannot be applied retroactively. Tenants who already reside in the development or applicants on the wait list at the time new or revised tenant selection criteria are applied and who are otherwise in good standing under the lease or wait list, must not receive notices of termination or non-renewal based solely on their failure to meet the new or revised tenant selection criteria or be passed over on the wait list. However, criteria related to program eligibility may be applied retroactively when a market development receives a new award of tax credits, federal or state funds and a household is not eligible under the new program requirements, or when prior criteria violate federal or state law.~~

~~(b) Tenant Selection Criteria. Owners must maintain written Tenant Selection Criteria. The criteria under which an applicant was screened must be included in the household's file.~~

~~(1) The criteria must be reasonably related to the applicant's ability to perform under the lease and include:~~

~~(A) Requirements that determine an applicant's basic eligibility for the property, including any preferences, restrictions, and any other tenancy requirements. The tenant selection criteria must specifically list:~~

~~(i) The income and rent limits;~~

~~(ii) When applicable, restrictions on student occupancy and any exceptions to those restrictions; and~~

~~(iii) Fees and/or deposits required as part of the application process. Developments with HOME, NHTF, NSP, Section 811 and/or TCAP RF units cannot collect an application deposit for units designated under these programs. Owners of HTC, TCAP and Exchange Developments are discouraged from collecting an application deposit. If an application deposit is collected it must soon after be converted into a refundable security deposit. No fees or deposits may be collected to place a household or applicant on a waiting list.~~

~~(B) Applicant screening criteria, including what is screened and what scores or findings would result in ineligibility.~~

~~(C) Occupancy Standards. If fewer than two persons (over the age of six) per bedroom for each rental unit are required for reasons other than those directed by local building code or safety regulations, a written justification must be provided.~~

~~(D) The following statement: Screening criteria will be applied in a manner consistent with all~~

~~applicable laws, including the Texas and Federal Fair Housing Acts, the Federal Fair Credit Reporting Act, program guidelines, and the Department's rules.~~

~~(E) Specific age requirements if the Development is operating as an Elderly Property either under the Housing for Older Persons Act of 1995 as amended (HOPA), or the age related eligibility criteria required by its use of federal funds.~~

~~(2) The criteria must not:~~

~~(A) Include preferences for admission. A property may not have a preference unless it is either in a recorded LURA which has been approved by the Department or is required by a program in which the Owner is participating which requires the preference. Owners that include preferences in their leasing criteria due to other federal financing must provide either written approval from HUD, USDA, or VA for such preference or identify the statute, written agreement, or federal guidance documentation that permits the adoption of this preference;~~

~~(B) Exclude an individual or family from admission to the Development solely because the household participates in the HOME Tenant Based Rental Assistance Program, the housing choice voucher program under Section 8, United States Housing Act of 1937 (42 U.S.C. §1-437), or other federal, state, or local government rental assistance program. If an Owner adopts a minimum income standard for households participating in a voucher program, it is limited to the greater of a monthly income of 2.5 times the household's share of the total monthly rent amount or \$2,500 annually; or~~

~~(C) In accordance with VAWA, deny admission on the basis that the applicant has been a victim of domestic violence, dating violence, sexual assault, or stalking.~~

~~(3) If the Development is funded with HOME, TCAP RF, NHTF, or NSP funds, in accordance with 24 CFR §93.356 and 24 CFR §92.359, the criteria may have a preference for persons who have experienced domestic violence, dating violence, sexual assault, or stalking.~~

~~(c) Reasonable Accommodations Policy. Owners must maintain a written Reasonable Accommodations policy. The policy must be maintained at the Development. Owners are responsible for ensuring that their employees and contracted third party management companies are aware of and comply with the reasonable accommodation policy.~~

~~(1) The policy must provide:~~

~~(A) Information on how an applicant or current resident with a disability may request a reasonable accommodation; and~~

~~(B) A timeframe in which the Owner will respond to a request that is compliant with 10 TAC §1-204(b)(3) and (d) (relating to Reasonable Accommodations).~~

~~(2) The policy must not:~~

~~(A) Require a household to make a reasonable accommodation request in writing;~~

~~(B) Require a household whose need is readily apparent to provide third party documentation of a disability;~~

~~(C) Require a household to provide specific medical or disability information other than the disability verification that may be requested to verify eligibility for reasonable accommodation;~~

~~(D) Exclude a household with person(s) with disabilities from admission to the Development because an accessible unit is not currently available; or~~

~~(E) Require a household to rent a unit that has already been made accessible.~~

~~(d) Wait List Policy. Owners must maintain a written wait list policy, regardless of current unit availability. The policy must be maintained at the Development.~~

~~(1) The policy must include procedures the Development uses in:~~

~~(A) Opening, closing, and selecting applicants from the wait list;~~

~~(B) Determining how lawful preferences are applied; and~~

~~(C) Procedures for prioritizing applicants needing accessible units in accordance with 24 CFR §8.27 and Chapter 1, Subchapter B of this title.~~

~~(2) Developments with additional rent and occupancy restrictions must maintain a waiting list for their lower rent restricted units. The Development's wait list policy must inform applicants and current residents of the availability of lower rent units and the process for renting a lower rent unit. Unless otherwise approved at application, underwriting and cost certification, all unit sizes must be available at the lower rent limits. The wait list policy for Developments with lower rent restricted units must address how the waiting list for their lower rent restricted units will be managed and must include policies regarding changes in income that address the options available in §10.615 of this subchapter. The policy must not give a preference to prospective applicants over existing households. However, a Development may, but is not required to, prioritize existing households over prospective applicants.~~

~~(e) Developments that elect the income averaging test and all Developments with additional rent and occupancy restrictions must have written policies regarding changes in income that address the options available in §10.615 of this subchapter.~~

~~(f) Denied Application Policies. Owners must maintain a written policy regarding procedures for denying applications and notifying denied applicants of their rights.~~

~~(1) The policy must address the manner by which rejections of applications will be handled, including timeframes and appeal procedures, if any.~~

~~(2) Within seven days after the determination is made to deny an application, the owner must provide any rejected or ineligible applicant that completed the application process a written notification of the grounds for rejection. The written notification must include:~~

~~(A) The specific reason for the denial and reference the specific leasing criteria upon which the denial is based;~~

~~(B) Contact information for any third parties that provided the information on which the rejection was based and information on the appeals process, if one is used by the Development. An appeals procedure is required for HOME Developments that are owned by Community Housing Development Organizations, and units at Developments that lease units under the Department's Section 811-PRA program. The appeals process must provide a 14-day period for the applicant to contest the reason for the denial and comply with other requirements of the HUD Handbook 4350.3-4-9; and~~

~~(C) The TDHCA form based on HUD form 5380 "Notice of Occupancy Rights under the Violence Against Women Act" and the HUD form 5382 "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation."~~

~~(3) The Development must keep a log of all denied applicants that completed the application process to include:~~

~~(A) Basic household demographic and rental assistance information, if requested during any part of the application process;~~

~~(B) The specific reason for which an applicant was denied, the date the decision was made; and~~

~~(C) The date the denial notice was mailed or hand-delivered to the applicant.~~

~~(4) A file of all rejected applications must be maintained the length of time specified in the applicable program's recordkeeping requirements and include:~~

~~(A) A copy of the written notice of denial; and~~

~~(B) The Tenant Selection Criteria policy under which an applicant was screened.~~

~~(5) If an 811 applicant is being denied, within three calendar days the Department point of contact must be notified and provided with a copy of the written notice that was provided to the applicant.~~

~~(g) Non-renewal and/or Termination Notices. Owners must maintain a written policy regarding procedures for providing households non-renewal and termination notices.~~

~~(1) The owner must provide in any non-renewal or termination notice, a specific and lawful reason for the termination or non-renewal.~~

~~(2) The notification must:~~

~~(A) Be delivered as required under applicable program rules;~~

~~(B) Include the TDHCA form based on HUD form 5380 "Notice of Occupancy Rights under the Violence Against Women Act" and the HUD form 5382 "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation." To avoid providing applicants and residents with duplicate information, TDHCA administered Developments layered with other federal funds are permitted to amend the TDHCA VAWA forms to incorporate requirements of other funders. However, none of the information included in the TDHCA created form may be omitted;~~

~~(C) State how a person with a disability may request a reasonable accommodation in relation to such notice; and~~

~~(D) Include information on the appeals process if one is used by the property.~~

~~(h) Unit Transfer Policies. Owners must maintain a written policy regarding procedures for households to request a unit transfer. The policy must address the following:~~

~~(1) How security deposits will be handled for both the current unit and the new unit;~~

~~(2) How transfers related to a reasonable accommodation will be addressed; and~~

~~(3) For HTC Developments, how transfers will be handled with regard to the multiple building project election on IRS Form(s) 8609 line 8(b) and accompanying statements in accordance with §10.616 of this subchapter, concerning Household Unit Transfer Requirements for All Programs.~~

~~(i) At the time of application Owners must provide each adult in the household the TDHCA form based on HUD form 5380 "Notice of Occupancy Rights under the Violence Against Women Act" and the HUD form 5382 "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation." To avoid providing applicants and residents with duplicate information, TDHCA administered Developments layered with other federal funds are permitted to amend the TDHCA VAWA forms to incorporate requirements of other funders. However, none of the information included in the TDHCA created form may be omitted.~~

~~(j) HTC Developments that have elected average income test must describe in their leasing criteria how units will be leased and inform applicants of the set asides that the Development offers. Owners must disperse 20%, 30%, 40%, 50%, 60%, 70% and 80% units designations across all unit types in a manner that does not violate fair housing laws. HTC Developments that have elected the income averaging test must maintain separate waiting lists for each of the set asides offered by the Development. The waiting lists must be available to both existing households and prospective tenants. The Development cannot provide a preference for applicants over existing households. The Development is not required to place existing households that receive rental assistance on a waiting list for a lower rent unit. Owners are encouraged to designate households that receive rental~~

~~assistance at the level indicated by the contract rent for the unit.~~

~~(k) Developments that participate in the Section 811 program must have a written EIV policy that includes security practices and complies with the HUD Handbook 4350.3, Chapter 9. Owners are discouraged from adopting policies that exceed the minimum requirements established by HUD.~~

~~(l) Policies and procedures will be reviewed during monitoring visits, through resident complaints or through an owner initiated written policies and procedures review. Owners may request a review of the written policies and procedures for a portfolio of Developments by submitting a request to [wpp@tdhca.state.tx.us](mailto:wpp@tdhca.state.tx.us). After review by the Department, Owners may make non-substantive changes to their policies. Significant changes to reviewed policies without Department approval may result in findings of noncompliance.~~

~~(m) Development Owners must allow applicants to submit applications via mail and at the Development site or leasing office; if the Development is electronically equipped, the Development may also allow applications to be submitted via email, website form, or fax. The Development's tenant selection criteria must state available alternate means of submission and include address, email, or other necessary contact information on the form or its attached leasing criteria.~~

#### **§10.611 Determination, Documentation and Certification of Annual Income**

(a) For all rental programs administered by the Department, annual income shall be determined consistent with the Section 8 Program administered by HUD, using the definitions of annual income described in 24 CFR §5.609 as further described in the HUD Handbook 4350.3, as amended from time to time. For the Housing Tax Credit program, where there is a conflict between the HUD Handbook 4350.3 and the IRS Guide for Completing IRS Form 8823, the IRS guidance will be controlling. At the time of program designation as a low-income household, Owners must certify and document household income. In general, all low-income households must be certified prior to move in. Certification and documentation of household income is an Owner's responsibility, even if the Owner is using a manager's services to handle tenant intake and leasing. Accordingly, Owners should ensure that they hire competent and properly trained managers and that they exercise appropriate oversight of any manager's activities.

(b) For the initial certification of a household residing in a HOME, NHTF, NSP, or TCAP RF assisted unit ~~at a Development committed HOME funds after August 23, 2013,~~ Owners must examine at least two months of source documents evidencing annual income (e.g., wage statement, interest statement, unemployment compensation).

(c) A household's income designation at the time of move in cannot be changed unless:

(1) The household goes over income and they are replaced with another low income household;

(2) The Development has a written policy and procedure for changing household designations as household income changes;



(3) The household receives rental assistance, and due to changes in their income, their portion of required rent exceeds the rent limit of their move in designation;

(4) The household is designated as Market Rate and a certification is performed that completely and clearly documents that the household is qualified as low income; or

(5) The household has been designated as low income and they become, or it is determined that they have been, an ineligible full time student household. If the Development has Units that do not have student restrictions, the household can continue occupancy, and their designation may be removed.

### **§10.612 Tenant File Requirements**

(a) At the time of program designation as a ~~low income~~ low income household, typically at initial occupancy, Owners must create and maintain a file that at a minimum contains:

(1) A Department approved Income Certification form signed by all adults. At the time of program designation as a ~~low income~~ low income household, Owners must certify and document household income. In general, all low-income households must be certified prior to move in. The Department requires the use of the TDHCA Income Certification form, unless the ~~property Development~~ also participates in the Rural Development or a Project Based HUD Program, in which case, the other program's Income Certification form will be accepted;

(2) Documentation to support the Income Certification form including, but not limited to, applications, first hand or third party verification of income and assets, and documentation of student status (if applicable). The Department permits Owners to use check stubs or other firsthand documentation of income and assets provided by the applicant or household in lieu of third party verification forms. It is not necessary to first attempt to obtain a third party verification form. Owners should scrutinize these documents to identify and address any obvious attempts at forgery, alteration, or generation of falsified documents; and

(3) A lease with all necessary addendums to ensure that compliance with applicable federal regulations and §10.613 of this subchapter (relating to Lease Requirements).

(b) Annually thereafter on the anniversary date of the household's move in or initial designation:

(1) Throughout the Affordability Period, all Owners of Housing Tax Credit, TCAP, and Exchange Developments must collect and maintain current data on each household that includes the number of household members, age, ethnicity, race, disability status, and rental assistance (if any). This information can be collected on the Department's Annual Eligibility Certification form or the Income Certification form or HUD Income Certification form or USDA Income Certification form.

(2) During the Compliance Period for all Housing Tax Credit, TCAP, and Exchange Developments and

throughout the Affordability Period for all Bond developments and HOME, ~~NSP~~, and TCAP RF Developments ~~committed funds after August 23, 2013~~, Owners must collect and maintain current student status data for each low-income household. This information must be collected within 120 days before the anniversary of the effective date of the original student verification and can be collected on the Department's Annual Eligibility Certification or the Department's Certification of Student Eligibility form or the Department's Income Certification form. Throughout the Compliance Period for HTC, TCAP, and Exchange developments, low-income households comprised entirely of full-time students must qualify for a HTC program exception, and supporting documentation must be maintained in the household's file. For Bond Developments, if the household is not an eligible student household, it may be possible to re-designate the full-time student household to an Eligible Tenant (ET). For HOME, ~~NSP~~, and TCAP RF Developments ~~committed funds after August 23, 2013~~, an individual does not qualify as a low income low-income or ~~very low income family~~ very low income family if the individual is a student who is not eligible to receive Section 8 assistance under 24 CFR §5.612.

(3) The types of properties-Developments described in subparagraphs (A) - (D) of this paragraph are required to recertify annually the income of each low-income household using a Department approved Income Certification form and documentation to support the Income Certification (see subsection (a)(1) - (2) of this section):

(A) Mixed income Housing Tax Credit, TCAP and Exchange projects (as defined by line 8(b) of IRS Form(s) 8609 and accompanying statements, if any) that have not completed the 15 year Compliance Period.

(B) All Bond Developments with less than 100% of the units set aside for households with an income less than 50% or 60% of area median income.

(C) HTF Developments with Market Rate units. However, HTF Developments with other Department administered programs will comply with the requirements of the other program.

(D) HOME, TCAP RF, and NHTF Developments. Refer to subsection (c) of this section.

(c) Ongoing tenant file requirements for HOME, ~~and~~ TCAP RF, and NHTF Developments:

(1) HOME, TCAP RF, and NHTF Developments must complete a recertification with verifications of each ~~HOME~~-assisted Unit every sixth year of the Development's affordability period. The recertification is due on the anniversary of the household's move-in date. For purposes of this section the beginning of a HOME, TCAP RF and ~~Development~~ NHTF Development affordability period is the effective date ~~on the first page of in~~ the HOME, TCAP RF, and NHTF LURA. For example, a HOME Development with a LURA effective date of May 2011, will have the years of the affordability determined in Example 612(1):

(A) Year 1: May 15, 2011 - May 14, 2012;

- (B) Year 2: May 15, 2012 - May 14, 2013;
- (C) Year 3: May 15, 2013 - May 14, 2014;
- (D) Year 4: May 15, 2014 - May 14, 2015;
- (E) Year 5: May 15, 2015 - May 14, 2016;
- (F) Year 6: May 15, 2016 - May 14, 2017;
- (G) Year 7: May 15, 2017 - May 14, 2018;
- (H) Year 8: May 15, 2018 - May 14, 2019;
- (I) Year 9: May 15, 2019 - May 14, 2020;
- (J) Year 10: May 15, 2020 - May 14, 2021;
- (K) Year 11: May 15, 2021 - May 14, 2022; and
- (L) Year 12: May 15, 2022 - May 14, 2023.

(2) In the scenario described in paragraph (1) of this subsection, all households in HOME, TCAP RF, and NHTF Units must be recertified with source documentation during the sixth and twelfth years or between May 15, 2016, to May 14, 2017, and between May 15, 2022, and May 14, 2023.

(3) In the intervening years the Development must collect a self certification by the effective date of the original Income Certification from each household that is assisted with HOME, TCAP RF, and NHTF funds. The Development must use the Department's Income Certification form, unless the property also participates in the Rural Development or a project Based HUD program, in which case, the other program's Income Certification form will be accepted. If the household reports on their self certification that their annual income exceeds the current 80% applicable income limit or there is evidence that the household's written statement failed to completely and accurately provide information about the household's characteristics and/or income, then an annual income recertification with verifications is required.

(d) Tenant File requirements for Section 811 PRA U units. Files for households assisted under the Section 811 program must document the household's eligibility for the program, the deductions for which the household qualifies and the following HUD forms:

- (1) Section 811 Project Rental Assistance Application;
- (2) Verification of disability, HUD 90102;
- (3) House Rules;

- (4) Move in move out inspection form HUD 90106, or TDHCA Section 811 Waiver of Move-in;
- ~~(5) TDHCA Section 811 Waiver of Move-in inspection;~~
- ~~(6) Damages (Security deposit Deductions);~~
- ~~(75) Tenant acknowledgement of the Fact Sheet "How your rent is determined";~~
- ~~(86) Tenant acknowledgment of Resident Rights and Responsibilities;~~
- ~~(97) Tenant acknowledgement of EIV and You Brochure;~~
- (108) Verification of Age;
- (119) Verification of Social Security number;
- (1210) Screening for drug abuse and other criminal activity;
- (1311) 811 Tenant Selection Plan;
- (1412) Supplement to Application for Federally Assisted Housing: Form 92006;
- (1513) Annual Recertification Initial Notice;
- (1614) Annual Recertification First Reminder Notice;
- (1715) Annual Recertification Second Reminder Notice;
- (1816) Annual Recertification Third Reminder Notice;
- (1917) Race and Ethnic Data Reporting form: HUD 27061-H;
- (2018) HUD 9887 and HUD 9887-A;
- (2119) Annual Unit inspection;
- (2220) Owner's Certification of Compliance with HUD's Tenant Eligibility and Rent Procedures: HUD form 50059; and
- (2321) HUD Model lease 92336-PRA.

### **§10.613 Lease Requirements**

- (a) Eviction and/or termination of a lease. HTC, TCAP, and Exchange Developments must 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. To terminate tenancy, the Owner must serve written notice to the tenant specifying the grounds for the action.

(b) HOME, TCAP RF, NHTF, and NSP Developments are prohibited from evicting low income ~~low-income~~ residents or refusing to renew a lease except for serious or repeated violations of the terms and conditions of the lease, for violations of applicable federal, state or local law, for completion of the tenancy period for Transitional Housing (if applicable), or for other good cause. It must be specifically stated in the lease or in an addendum attached to the lease that evictions or non-renewal of leases for other than good cause are prohibited (24 CFR §92.253 and 24 CFR §93.303). Owners must also comply with all other lease requirements and prohibitions stated in 24 CFR §92.253 or 24 CFR §93.303, as applicable. To terminate or refuse to renew tenancy in HOME, TCAP RF, and NSP Developments, the Owner must serve written notice to the tenant specifying the grounds for the action at least 30 days before the termination of tenancy.

(c) In accordance with the Violence Against Women Act, an incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking against the documented victim of such actual or threatened domestic violence, dating violence, sexual assault, or stalking shall not be construed as a serious or repeated violation of a lease or good cause for termination of tenancy. The Department does not determine if an Owner has good cause or if a resident has violated the lease terms for other reasons. Challenges for evictions or terminations of tenancy must be made by a court of competent jurisdiction or an agreement of the parties (including an agreement made in arbitration), and the Department will rely on that determination.

(d) A Developments must use a lease or lease addendum that requires households to report changes in student status.

(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.

(f) For HOME, TCAP, TCAP RF, NHTF, 811 PRA, and NSP Developments, properties that were initially built for occupancy prior to 1978 must include in their lease or lease addendum a Lead Warning Statement. To demonstrate compliance, the Department will monitor that all households at HOME, TCAP, TCAP RF, NHTF, and NSP Developments have signed the Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards. (24 CFR §92.355, 24 CFR §93.361 and §570.487(c)). The addendum and disclosure are not required if all lead has been certified to have been cleared from the Development in accordance with 24 CFR §35.130, and the Owner has the required certification in its on-site records.

(g) All An Owners may bifurcate a lease to terminate the tenancy of an individual who is a tenant or lawful occupant and engages in criminal activity directly relating to domestic violence, dating

violence, sexual assault, or stalking against another lawful occupant living in the Unit or other affiliated individual as defined in the VAWA 2013.

(h) All NHTF, TCAP RF, NSP, ~~811-PRA~~, and HOME Developments for which the contract is executed on or after December 16, 2016, must use the Department created VAWA lease addendum which provides the ability for the tenant to terminate the lease without penalty if the Department determines that the tenant qualifies for an emergency transfer under 24 CFR §5.2005(e). 811 PRA Units are prohibited from using the expired 2005 VAWA lease addendum. After OMB approval of a VAWA lease addendum, all 811 PRA households must have a valid and executed VAWA lease addendum. For the 811 PRA program certain addenda for the HUD model lease may be required such as Lead Based Paint Disclosure form, house rules, and pet rules. No other attachments to the lease are permissible without approval from the Department's 811 PRA staff.

(i) Leasing of HOME, ~~NSP or TCAP RF, or NHTF U~~units to an organization that, in turn, rents those Uunits to individuals is not permissible for Developments with contracts dated on or after August 23, 2013. Leases must be between the Development and an eligible household. NSP Developments may only utilize Master Leases if specifically allowed in the Development's LURA.

(j) Housing Tax Credit Uunits leased to an organization through a supportive housing program where the Owner receives a rental payment for the unit regardless of physical occupancy will be found out of compliance if the Uunit remains vacant for over 60 days. The Uunit will be found out of compliance under the ~~finding~~ Event of Noncompliance "Violation of the Unit Vacancy Rule."

(k) It is a Development Owner's responsibility at all times to know what it has agreed to provide by way of common amenities, Uunit amenities, and services.

(l) A Development Owner shall post in a common area of the leasing office a ~~laminated~~ copy and provide each household, during the application process and upon a subsequent change to the items described in paragraph (2) of this subsection, the brochure made available by the Department, A Tenant Rights and Resources Guide, which includes:

(1) Information about Fair Housing and tenant choice;

(2) Information regarding common amenities, Uunit amenities, and services; and

(3) A certification that a representative of the household must sign prior to, but no more than 120 days prior to, the initial lease execution acknowledging receipt of this brochure.

(4) In the event this brochure is not provided timely or the household does not certify to receipt of the brochure, correction will be achieved by providing the household with the brochure and receiving a signed certification that it was received.

(m) For Section 811 PRA Uunits, Owners must use the HUD Model lease, HUD form 92236-PRA.

## **§10.614 Utility Allowances**

(a) Purpose. The purpose of this section is to provide the guidelines for calculating a Utility Allowance under the Department's multifamily programs. The Department will cite noncompliance and/or not approve a Utility Allowance if it is not calculated in accordance with this section. Owners are required to comply with the provisions of this section as well as any existing federal or state program guidance.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise. Other capitalized terms used in this section herein have the meanings assigned in Chapters 1, 2, 10, 11, and 12 of this title.

(1) Building Type. The HUD Office of Public and Indian Housing (PIH) characterizes building and Unit configurations for HUD programs. The Department will defer to the guidance provided by HUD found at: [http://portal.hud.gov/hudportal/documents/huddoc?id=DOC\\_11608.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_11608.pdf) (or successor Uniform Resource Locator (URL)) when making determinations regarding the appropriate building type(s) at a Development.

(2) Power to Choose. The Public Utility Commission of Texas database of retail electric providers in the areas of the state where the sale of electricity is open to retail competition: <http://www.powertochoose.org/> (or successor URL). In areas of the state where electric service is deregulated, the Department will verify the availability of residential service directly with the Utility Provider. If the Utility Provider is not listed as a provider of residential service in the Development's ZIP code for an area that is deregulated, the request will not be approved.

(3) Component Charges. The actual cost associated with the billing of a residential utility. Each Utility Provider may publish specific utility service information in varying formats depending on the service area. Such costs include, but are not limited to:

(A) Rate(s). The cost for the actual unit of measure for the utility (e.g., cost per kilowatt hour for electricity);

(B) Fees. The cost associated with a residential utility that is incurred regardless of the amount of the utility the household consumes (e.g., Customer Charge); and

(C) Taxes. Taxes for electricity and gas are regulated by the Texas Comptroller of Public Accounts and can be found <http://comptroller.texas.gov/> (or successor URL). Local Utility Providers have control of the tax structure related to water, sewer and trash. To identify if taxes are imposed for these utilities, obtain documentation directly from the Utility Provider.

(4) Multifamily Direct Loan (MFDL). Funds provided through the HOME Program (HOME), Neighborhood Stabilization Program (NSP), National Housing Trust Fund (NHTF), Repayments from the Tax Credit Assistance Program (TCAP RF), or other program available through the Department, local political subdivision, or administrating agency for multifamily development that require a Utility Allowance. MFDLs may also include deferred forgivable loans or other similar direct funding, regardless if it is required to be repaid. Housing Tax Credits, Tax Exempt Bonds, and Project Based

Vouchers are not MFDLs.

(5) Renewable Source. Energy produced from energy property described in IRC §48 or IRC §45(d)(1) through (4), (6), (9), or (11). The manner in which a resident is billed is limited to the rate at which the local Utility Provider would have charged the residents for the utility if that entity had provided it to them, and as may be further limited by the Texas Utilities Code or by regulation.

(6) Submetered Utility. A utility purchased from or through a local Utility Provider by the building Owner where the resident is billed directly by Owner of the building or to a third party billing company and the utility is:

(A) Based on the residents' actual consumption of that utility and not an allocation method or Ratio Utility Billing System (RUBS); and

(B) The rate at which the utility is billed does not exceed the rate incurred by the building Owner for that utility.

(7) Utility Allowance. An estimate of the expected monthly cost of any utility for which a resident is financially responsible, other than telephone, cable television, or internet.

(A) For HTC, TCAP, Exchange buildings, Bonds~~s~~, and SHTF include:

(i) Utilities paid by the resident directly to the Utility Provider;

(ii) Submetered Utilities; and

(iii) Renewable Source Utilities.

(B) For a Development with an MFDL, unless otherwise prescribed in the program's Regulatory Agreement, include all utilities regardless of how they are paid.

(8) Utility Provider. The company that provides residential utility service (e.g., electric, gas, water, wastewater, and/or trash) to the buildings.

(c) Methods. The following options are available to establish a Utility Allowance for all programs except Developments funded with MFDL funds, which are addressed in subsection (d) of this section.

(1) Rural Housing Services (RHS) buildings or buildings with RHS assisted residents. The applicable Utility Allowance for the Development will be determined under the method prescribed by the RHS (or successor agency). No other utility method described in this section can be used by RHS buildings or buildings with RHS assisted residents.



(2) HUD-Regulated buildings layered with any Department program. If neither the building nor any resident in the building receives RHS rental assistance payments, and the rents and the Utility Allowances of the building are regulated by HUD (HUD-regulated building), the applicable Utility Allowance for all rent restricted Units in the building is the applicable HUD Utility Allowance. No other utility method described in this section can be used by HUD-regulated buildings. Unless further guidance is received from the U.S. Department of Treasury or the Internal Revenue Service (IRS), the Department considers Developments awarded an MFDL (e.g., HOME) to be HUD-Regulated buildings.

(3) Other Buildings. For all other rent-restricted Units, Development Owners must use one of the methods described in subparagraphs (A) - (E) of this paragraph:

(A) Public Housing Authority (PHA). The Utility Allowance established by the applicable PHA for the Housing Choice Voucher Program. The Department will utilize the Texas Local Government Code, Chapter 392 to determine which PHA is the most applicable to the Development.

(i) If the PHA publishes different schedules based on Building Type, the Owner is responsible for implementing the correct schedule based on the Development's Building Type(s). Example 614(1): The applicable PHA publishes a separate Utility Allowance schedule for Apartments (5+ Units), one for Duplex/Townhomes and another for Single Family Homes. The Development consists of 20 buildings, 10 of which are Apartments (5+ Units) and the other 10 buildings are Duplexes. The Owner must use the correct schedule for each Building Type.

(ii) In the event the PHA publishes a Utility Allowance schedule specifically for energy efficient Units, and the Owner desires to use such a schedule, the Owner must demonstrate that the building(s) meet the housing authority's specifications for energy efficiency once every five years.

(iii) If the applicable PHA allowance lists flat fees for any utility, those flat fees must be included in the calculation of the Utility Allowance if the resident is responsible for that utility.

(iv) If the individual components of a Utility Allowance are not in whole number format, the correct way to calculate the total allowance is to add each amount and then round the total up to the next whole dollar. Example 614(2): Electric cooking is \$8.63, Electric Heating is \$5.27, Other Electric is \$24.39, Water and Sewer is \$15. The Utility Allowance in this example is \$54.00.

(v) If an Owner chooses to implement a methodology as described in subparagraph (B), (C), (D), or (E) of this paragraph, for Units occupied by Section 8 voucher holders, the Utility Allowance remains the applicable PHA Utility Allowance established by the PHA from which the household's voucher is received.

(vi) If the Development is located in an area that does not have a municipal, county, or regional housing authority that publishes a Utility Allowance schedule for the Housing Choice Voucher Program, Owners must select an alternative methodology, unless the building(s) is located in the published Housing Choice Voucher service area of:

(I) A Council of Government created under Texas Local Government Code, Chapter 303, that operates a Housing Choice Voucher Program;

(II) The Department's Housing Choice Voucher Program; or

(III) Another PHA which publishes a separate utility allowance schedule specific to the Development's location.

(B) Written Local Estimate. The estimate must come from the local Utility Provider, be signed by the Utility Provider representative, and specifically include all Component Charges for providing the utility service.

(C) HUD Utility Schedule Model. The HUD Utility Schedule Model and related resources can be found at <http://www.huduser.gov/portal/resources/utillallowance.html> (or successor URL). Each item on the schedule must be displayed out two decimal places. The total allowance must be rounded up to the next whole dollar amount. The Component Charges used can be no older than those in effect 60 days prior to the beginning of the 90 day period described in subsection (f)(3) of this section related to Effective Dates.

(i) The allowance must be calculated using the MS Excel version available at <http://www.huduser.org/portal/resources/utillmodel.html> (or successor URL), as updated from time to time, with no changes or adjustments made other than entry of the required information needed to complete the model.

(ii) In the event that the PHA code for the local PHA to the Development is not listed in "Location" tab of the workbook, the Department will use the PHA code for the PHA that is closest in distance to the Development using online mapping tools (e.g., MapQuest).

(iii) Green Discount. If the Owner elects any of the Green Discount options for a Development, documentation to evidence that the Units and the buildings meet the Green Discount standard as prescribed in the model is required for the initial approval and every subsequent annual review.

(I) In the event the allowance is being calculated for an application of Department funding (e.g., 9% Housing Tax Credits), upon request, the Department will provide both the Green Discount and the non-Green Discount results for application purposes.

(II) At lease up, the Owner may use the utility allowance taking into consideration the green discount if they obtain written documentation from a qualified professional (e.g., a qualified energy efficiency consultant) indicating that the Units and buildings will meet the qualifications for the Green Discount within six months of the placed in service date or for MFDL within six months of the construction completion date.

(iv) Do not take into consideration any costs (e.g., penalty) or credits that a consumer would incur because of their actual usage. Example 614(3): The Electric Fact Label for ABC Electric Utility Provider

provides a Credit Line of \$40 per billing cycle that is applied to the bill when the usage is greater than 999 kWh and less than 2000 kWh. Example 614(4): A monthly minimum usage fee of \$9.95 is applied when the usage is less than 1000 kWh in the billing cycle. When calculating the allowance, disregard these types costs or credits.

(v) The Electric Fact Label used to calculate the allowance must have a term of at least 12 months.

(D) Energy Consumption Model. The model must be calculated by a properly licensed mechanical engineer. The individual must not be related to the Owner within the meaning of §267(b) or §707(b) of the Code. The utility consumption estimate must, at minimum, take into consideration specific factors that include, but are not limited to, Unit size, building type and orientation, design and materials, mechanical systems, appliances, characteristics of building location, and available historical data. Component Charges used must be no older than in effect 60 days prior to the beginning of the 90 day period described in subsection (f)(3) of this section related to Effective Dates; and

(E) An allowance based upon an average of the actual use of similarly constructed and sized Units in the building using actual utility usage data and Component Charges, provided that the Development Owner has the written permission of the Department. This methodology is referred to as the "Actual Use Method." For a Development Owner to use the Actual Use Method they must:

(i) Provide a minimum sample size of usage data for at least five Continuously Occupied Units of each Unit Type or 20% of each Unit Type, whichever is greater. If there are less than five Units of any Unit Type, data for 100% of the Unit Type must be provided; and

(ii) Upload the information in subclauses (I) - (IV) of this clause to the Development's CMTS account no later than the beginning of the 90 day period after which the Owner intends to implement the allowance, reflecting data no older than 60 days prior to the 90 day implementation period described in subsection (f)(3) of this section related to Effective Dates.

(I) An Excel spreadsheet listing each Unit for which data was obtained to meet the minimum sample size requirement of a Unit Type, the number of bedrooms, bathrooms and square footage for each Unit, the household's move-in date, the utility usage (e.g., actual kilowatt usage for electricity) for each month of the 12 month period for each Unit for which data was obtained, and the Component Charges in place at the time of the submission;

(II) All documentation obtained from the Utility Provider (or billing entity for the utility provider) and/or copies of actual utility bills gathered from the residents, including all usage data not needed to meet the minimum sample size requirement and any written correspondence from the utility provider;

(III) The rent roll showing occupancy as of the end of the month for the month in which the data was requested from the utility provider; and

(IV) Documentation of the current Utility Allowance used by the Development.

(iii) Upon receipt of the required information, the Department will determine if the Development Owner has provided the minimum information necessary to calculate an allowance using the Actual Use Method. If so, the Department shall calculate the Utility Allowance for each bedroom size using the guidelines described in subclauses (I) - (V) of this clause;

(I) If data is obtained for more than the sample requirement for the Unit Type, all data will be used to calculate the allowance;

(II) If more than 12 months of data is provided for any Unit, only the data for the most current 12 will be averaged;

(III) The allowance will be calculated by multiplying the average units of measure for the applicable utility (i.e., kilowatts over the last 12 months by the current rate) for all Unit Types within that bedroom size. For example, if sufficient data is supplied for 18 two bedroom/one bath Units, and 12 two bedroom/two bath Units, the data for all 30 Units will be averaged to calculate the allowance for all two bedroom Units;

(IV) The allowance will be rounded up to the next whole dollar amount. If allowances are calculated for different utilities, each utility's allowance will be rounded up to the next whole dollar amount and then added together for the total allowance; and

(V) If the data submitted indicates zero usage for any month, the data for that Unit will not be used to calculate the Utility Allowance.

(iv) The Department will complete its evaluation and calculation within 45 days of receipt of all the information requested in clause (ii) of this subparagraph;

(d) In accordance with 24 CFR §§92.252 and 93.302, for an MFDL in which the Department is the funding source, the Utility Allowance will be established in the following manner:

(1) For Developments that, as a result of funding, must calculate the Utility Allowance under HUD Multifamily Notice H-2015-4, as revised from time to time, the applicable Utility Allowance for all rent restricted Units in the building is the applicable Utility Allowance calculated under that Notice. No other utility method described in this section can be used.

(2) Other Buildings. The Utility Allowance may be initiated by the Owner using the methodologies described in subsection (c)(3)(B), (C), (D), or (E) of this section related to Methods.

(3) If a request is not received by October 1st, the Department will calculate the Utility Allowance using the HUD Utility Schedule Model. For property specific data, the Department will use:

(A) The information submitted in the Annual Owner's Compliance Report;

(B) Entrance Interview Questionnaires submitted with prior onsite reviews; or

(C) The Owner may be contacted and required to complete the Utility Allowance Questionnaire. In such case, a five day period will be provided to return the completed questionnaire.

(D) Utilities will be evaluated in the following manner:

(i) For regulated utilities, the Department will contact the Utility Provider directly and apply the Component Charges in effect no later than 60 days before the allowance will be effective.

(ii) For deregulated utilities:

(I) The Department will use the Power to Choose website and search available Utility Providers by ZIP code;

(II) The plan chosen will be the median cost per kWh based on average price per kWh for the average monthly use of 1000 kWh of all available plans of at least 12 months; and

(III) The actual Component Charges from the plan chosen in effect no later than 60 days before the allowance will be effective will be entered into the Model.

(E) The Department will notify the Owner contact in CMTS of the new allowance and provide the backup for how the allowance was calculated. The Owner will be provided a five day period to review the Department's calculation and note any errors. Only errors related to the physical characteristics of the building(s) and utilities paid by the residents will be reconsidered; the utility plan and Utility Provider selected by the Department and Component Charges used in calculating the allowance will not be changed. During this five day period, the Owner also has the opportunity to submit documentation and request use of any of the available Green Discounts.

(F) The allowance must be implemented for rent due in all program Units thirty days after the Department notifies the Owner of the allowance.

(4) HTC Buildings in which there are Units under an MFDL program are considered HUD-Regulated buildings and the applicable Utility Allowance for all rent restricted Units in the building is the Utility Allowance calculated under the MFDL program. No other utility method described in this section can be used by HUD-regulated buildings. If the Department is not the awarding jurisdiction, Owners are required to obtain the Utility Allowance established by the awarding jurisdiction, and to document all efforts to obtain such allowance to evidence due diligence in the event that the jurisdiction is nonresponsive. In such an event, provided that, sufficient evidence of due diligence is demonstrated, the Department, in its sole discretion, may allow for the use of the methods described in subsection (c)(3)~~(A), (B), (C), or (D)~~, or (E) of this section related to Methods to calculate and establish its utility allowance.

(e) Acceptable Documentation. For the Methods where utility specific information is required to calculate the allowance (e.g., base charges, cost per unit of measure, taxes) Owners should obtain

documentation directly from the Utility Provider and/or Regulating State Agency. Any Component Charges related to the utility that are published by the Utility Provider and/or Regulating State Agency must be included. In the case where a utility is billed to the Owner of the building(s) and the Owner is billing residents through a third party billing company, the Component Charges published by the Utility Provider and not the third party billing company will be used.

(f) Changes in the Utility Allowance. An Owner may not change Utility Allowance methods, start or stop charging residents for a utility without prior written approval from the Department. Example 614(5): A Housing Tax Credit Development has been paying for water and sewer since the beginning of the Compliance Period. In year eight, the Owner decides to require residents to pay for water and sewer. Prior written approval from the Department is required. Any such request must include the Utility Allowance Questionnaire found on the Department's website and supporting documentation.

(1) The Department will review all requests, with the exception of the methodology prescribed in subsection (c)(3)(E) of this section related to Methods, within 90 days of the receipt of the request.

(2) If the Owner fails to post the notice to the residents and simultaneously submit the request to the Department by the beginning of the 90 day period, the Department's approval or denial will be delayed for up to 90 days after Department notification. Example 614(6): The Owner has chosen to calculate the electric portion of the Utility Allowance using the written local estimate. The annual letter is dated July 5, 2014, and the notice to the residents was posted in the leasing office on July 5, 2014. However, the Owner failed to submit the request to the Department for review until September 15, 2014. Although the Notice to the Residents was dated the date of the letter from the utility provider, the Department was not provided the full 90 days for review. As a result, the allowance cannot be implemented by the Owner until approved by the Department.

(3) Effective dates. If the Owner uses the methodologies as described in subsection (c)(3)(A) of this section related to Methods, any changes to the allowance can be implemented immediately, but must be implemented for rent due at least 90 days after the change. For methodologies as described in subsection (c)(3)(B), (C), (D) and (E) of this section related to Methods, the allowance cannot be implemented until the estimate is submitted to the Department and is made available to the residents by posting in a common area of the leasing office at the Development. This action must be taken by the beginning of the 90 day period in which the Owner intends to implement the Utility Allowance. Nothing in this section prohibits an Owner from reducing a resident's rent prior to the end of the 90 day period when the proposed allowance would result in a gross rent issue.

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(g) Requirements for Annual Review.

(1) RHS and HUD-Regulated Buildings. Owners must demonstrate that the utility allowance has been reviewed annually and in accordance with the RHS or HUD regulations.

(2) Buildings using the PHA Allowance. Owners are responsible for periodically determining if the

applicable PHA released an updated schedule to ensure timely implementation. When the allowance changes or a new allowance is made available by the PHA, it can be implemented immediately, but must be implemented for rent due 90 days after the PHA releases an updated scheduled.

(3) Written Local Estimate, HUD Utility Model Schedule and Energy Consumption Model. Owners must update the allowance once a calendar year. The update and all back up documentation required by the method must be submitted to the Department no later than October 1st of each year. However, Owners are encouraged to submit prior to the deadline to ensure the Department has time to review. At the same time the request is submitted to the Department, the Owner must post, at the Development, the Utility Allowance estimate in a common area of the leasing office where such notice is unobstructed and visible in plain sight. The Department will review the request for compliance with all applicable requirements and reasonableness. If, in comparison to other approved Utility Allowances for properties of similar size, construction and population in the same geographic area, the allowance does not appear reasonable or appears understated, the Department may require additional support and/or deny the request.

(4) Actual Use Method. Owners must update the allowance once a calendar year. The update and all back up documentation required by the method must be submitted to the Department no later than August 1st of each year. However, Owners are encouraged to submit prior to the deadline to ensure the Department has time to review.

(h) For Owners participating in the Department's Section 811 Project Rental Assistance (PRA) Program, the Department will establish the Utility Allowance for all 811 PRA Units. On an annual basis, the Department will calculate a Utility Allowance and provide the Owner with a property-specific rent schedule containing the approved Utility Allowance. The allowance listed on the rent schedule only applies to 811 PRA Units, not the entire building, and is the only allowance approved for use on 811 PRA Units.

(i) Combining Methods. In general, Owners may combine any methodology described in this section for each utility service type paid directly by the resident and not by or through the Owner of the building (e.g., electric, gas). For example, if residents are responsible for electricity and gas, an Owner may use the appropriate PHA allowance to determine the gas portion of the allowance and use the Actual Use Method to determine the electric portion of the allowance. RHS and certain HUD-Regulated buildings (e.g., buildings with HOME/ TCAP RF funds) are not allowed to combine methodologies.

(j) The Owner shall maintain and make available for inspection by the resident all documentation, including, but not limited to, the data, underlying assumptions and methodology that was used to calculate the allowance. Records shall be made available at the resident manager's office during reasonable business hours or, if there is no resident manager, at the dwelling Unit of the resident at the convenience of both the Owner and resident.

(k) Utility Allowances for Applications.

(1) If the application includes RHS assisted buildings or tenants, the utility allowance is prescribed by the RHS program. No other method is allowed.

(2) If the application includes HUD-Regulated buildings for HUD programs other than an MFDL program the applicable Utility Allowance for all rent restricted Units in the building is the applicable HUD Utility Allowance. No other utility method is allowed.

(3) If the application includes MFDL funds from the Department, Applicants may calculate the utility allowance in accordance with subsection (c)(3)(B), (C), (D), or (E) of this section related to Methods. Applicants must submit their utility allowance to the Compliance Division prior to full application submission. In the event that the application has an MFDL from the Department, and receives federal funds from a unit of local government, the Department will require the use of the allowance approved by the Department.

(4) If the application includes federal funds from a unit of local government but no MFDL from the Department, Applicants are required to request in writing the Utility Allowance from the awarding jurisdiction. If the awarding jurisdiction does not respond or requests the Department to calculate the allowance, the Department will establish the initial Utility Allowance in accordance with subsection (d)(3) of this section.

(5) For all other applications, Applicants may calculate the utility allowance in accordance with subsection (c)(3)(A), (B), (C), (D), or (E) of this section related to Methods.

(A) Upon request, the Compliance Division will calculate or review an allowance within 21 days but no earlier than 90 days from when the application is due.

(B) Example 614(8): An application for a 9% HTC is due March 1, 2017. The applicant would like Department approval to use an alternative method by February 15, 2017. The request must be submitted to the Compliance Division no later than January 25, 2017, three weeks before February 15, 2017.

(C) Example 614(9): An Applicant intends to submit an application for a 4% HTC with Tax Exempt Bonds on August 11, 2017, and would like to use an alternative method. Because approval is needed prior to application submission, the request can be submitted no earlier than May 13, 2017, (90 days prior to August 11, 2017) and no later than July 21, 2017, (21 days prior to August 11, 2017).

(6) All Utility Allowance requests related to applications of funding must:

(A) Be submitted directly to [ua\\_application@tdhca.state.tx.us](mailto:ua_application@tdhca.state.tx.us). Requests not submitted to this email address will not be recognized.

(B) Include the "Utility Allowance Questionnaire for Applications" along with all required back up based on the method.

(I) If Owners want to change to a utility allowance other than what was used for underwriting the



Owner must submit Utility Allowance documentation for Department approval, at minimum, 90 days prior to the commencement of leasing activities. The Owner is not required to review the utility allowances, or implement new utility allowances, until the building has achieved 90% occupancy for a period of 90 consecutive days or the end of the first year of the Credit Period (if applicable), whichever is earlier.

(m) The Department reserves the right to outsource to a third party the review and approval of all or any Utility Allowance requests to use the Energy Consumption Model or when review requires the use of expertise outside the resources of the Department. In accordance with Treasury Regulation §1.42-10(c) any costs associated with the review and approval shall be paid by the Owner.

(n) All requests described in this subsection must be complete and uploaded directly to the Development's CMTS account using the "Utility Allowance Documents" in the type field and "Utility Allowance" as the TDHCA Contact. The Department will not be able to approve requests that are incomplete and/or are not submitted correctly.

#### **§10.615 Elections under IRC §42(g) and Additional Income and Rent Restrictions for HTC, Exchange, and TCAP Developments**

(a) Under the Code, HTC Development Owners may elect 20% of the Units restricted at the 50% income and rent limits (20/50), 40% of the Units restricted at the 60% income and rent limits (40/60) or the average income averaging minimum set aside. Many Developments have additional income and rent requirements (e.g., 30%, 40% and 50%) that are lower than or in addition to the election requirement. This requirement is referred to as "additional occupancy restrictions" and is reflected in the Development's LURA.

(b) A Development with additional rent and occupancy restrictions must maintain a waiting list for their lower rent restricted Units. The Development's wait-list policy must inform applicants and current residents of the availability of lower rent Units and the process for renting a lower rent Unit. Unless otherwise approved at Application, underwriting, and cost certification, all Unit sizes must be available at the lower rent limits. The wait-list policy for Developments with lower rent restricted Units must address how the waiting list for their lower rent restricted Units will be managed. The policy must not give a preference to prospective applicants over existing households. However, a Development may, but is not required to, prioritize existing households over prospective applicants.

~~(c)~~ The Department will examine the actual gross rent and income levels of all households to determine if the additional income and rent requirements of the LURA are met. Until and unless the Internal Revenue Service or Treasury Department issue conflicting guidance, the Department will examine the actual gross rent and income of all households to determine if Developments that elected the average income averaging minimum set aside have met the federal requirements and any lower additional occupancy restriction reflected in the Development's LURA.

~~(c) One hundred percent HTC Developments (developments with no Market Rate units) with additional rent and occupancy restrictions are neither required nor prohibited from completing annual income recertifications. The Development's written policies and procedures must specify the Development's choice.~~

~~(1) If a 100% low income development that elects the 20/50 or 40/60 test under IRC §42(g) chooses to perform annual income recertifications, all households designated as meeting the additional rent and occupancy set aside must be recertified on an annual basis; failure to do so will be cited as noncompliance with written policies and procedures but not reported to the IRS on form 8823.~~

~~(2) If a 100% low income development elects the average income test and chooses to do annual income recertifications, all households must be recertified on an annual basis; failure to do so will be cited as noncompliance with written policies and procedures but not reported to the IRS on form 8823.~~

~~(3) If the income level of the household changes, the Owner may adjust the Unit's designation and rent (up or down) in accordance with all applicable lease terms. Owners that elect the average income test under IRC §42(g) must ensure that the project still has an average income equal to or less than 60% and the percentage represented at the time of Application.~~

~~(4) Owners that do not perform annual income recertifications may not increase the rent level of a household designated towards the Development's additional rent and occupancy restrictions. Example 615(1): A household was designated as a 50% household at the time of move in. The Development is not required to and does not perform annual income recertifications. New rent limits are released and they are higher. The Development may increase the household's rent in accordance with the lease, but not above the new 50% rent limit.~~

~~(d) Developments that elect the 20/50 or 40/60 test under IRC §42(g) and have Market Units will be monitored as described in this subsection:~~

~~(1) The HTC program requires Mixed Income projects to complete annual income recertifications and comply with the Available Unit Rule. When a household's income at recertification exceeds 140% of the applicable current income limit elected by the minimum set aside, the Owner must comply with the Available Unit Rule and lease the next available unit (same size or smaller) in the building to a low income household to maintain compliance.~~

~~(2) HTC Developments that elect the 20/50 or 40/60 test under IRC §42(g) with market rate units and additional rent and occupancy restrictions must have written policies and procedures that address changes in income at recertification. Owners may comply in the following ways:~~

~~(A) Households initially certified at the 30, 40, or 50% income and rent limits may maintain the designation they had at initial move in unless the household's income exceeds 140% of the highest income tier established by the minimum set aside. The Unit will continue to meet the designation from the initial certification provided that the Owner does not charge gross rent in excess of the~~

~~additional rent and occupancy rent limit;~~

~~(B) Owners may change the designation of a household at recertification and increase the rent accordingly provided that another household's rent is decreased to maintain the set aside requirement. Example 615(2): A 100 Unit development elected the 40/60 minimum set aside, and has an additional rent and occupancy restriction of 10 Units at 30% and 10 Units at 50%. A 30% household recertifies and their income exceeds the 30%. In accordance with the provisions of the lease, the owner may offer this household rent at a higher designation, and simultaneously lower the rent for another household that has been on the Development's waiting list for a 30% Unit; or~~

~~(C) If the household's income exceeds 140% of the highest income tier established by the minimum set aside, the household must be redesignated as over income and the Next Available Unit Rule must be followed.~~

~~(e) HTC Developments that elect income averaging test and have market rate units must have written policies and procedures that address changes in income at recertification.~~

~~(1) If the income tier of a household changes, Owners are permitted but not required to adjust the household's rent to their new designation (higher or lower) as long as the project still has an average rent of equal to or less than the federally required 60% average, or the additional occupancy restriction reflected in the LURA. If the household income increases, and re-designating the rent to the new AMI tier would cause the project average to exceed the required AMI average, the Owner will remain in compliance if the rent is restricted to the limit that maintains the required AMI average.~~

~~(2d) Until and unless the Internal Revenue Service or the Treasury Department issue conflicting or additional guidance, the Department will monitor the Available Unit Rule in the following manner for income averaging developments. Developments that elected the average income minimum set aside:~~

~~(1A) If the income of the household who, at the last certification, had an income and rent less than the 60% limits exceeds 140% of the 60% limit, the household must be redesignated as over income.~~

~~(2B) If the income of a household with an income or rent above the 60% level and less than or equal to the 70% limits exceeds 140% of the 70% limit, the household must be designated as over income.~~

~~(3C) If the income of a household with an income or rent above the 70% level and less than or equal to the 80% limits exceeds 140% of the 80% limit, the household must be designated as over income.~~

~~(4D) Owners are not required to terminate the tenancy of over income households. When the Unit occupied by an over income household is vacated, it must be reoccupied by a household with an income and rent level equal to or less than the rent level of the household that went over income. In addition, the Unit must be reoccupied by a household that restores the low income average of the project to 60% or less.~~

(ef) Units at 80% area median income and rent on HTC Ddevelopments. In certain years, the Department's Qualified Allocation Plan provided incentives to lease 10% of the Ddevelopment's Market Rate Units to households at 80% income and rents. This section provides guidance for implementation. If the LURA requires 10% of the Market Rate Units be leased to households at 80% income and rent limits, the Owner must certify the 80% households at the time of move in only. Recertifications will not be required. Student rules do not apply to Units occupied by 80% households. Noncompliance with the requirement to lease to 80% households is not reportable to the IRS on IRS Form 8823 but will be cited as noncompliance under the event "Development failed to meet additional state required rent and occupancy restrictions."

(fg) The Department does not require Developments to lease more Units under the additional occupancy restrictions than established in their LURA. However, if a Development inadvertently designates more households than required under the additional rent and occupancy restrictions, they may only decrease to the minimum number through attrition and new move ins, not by removing designations.

#### **§10.616 Household Unit Transfer Requirements for All Programs**

(a) The requirements and restrictions regarding household transfers for HTC, Exchange, and TCAP Developments are based on whether the tax credit project is 100% low-income or mixed income and if the Owner elected to treat buildings in the project as part of a multiple building project. To determine if a Development is a multiple building project, refer to the election on IRS Form(s) 8609 line 8(b) and accompanying statements (if any). If IRS Form(s) 8609 have not yet been issued by the Department and filed by the Owner, each building is its own project. The Department may allow Owners to indicate their intended 8(b) elections and will monitor accordingly. Failure to file the same elections with the IRS may result in noncompliance, additional monitoring, an additional monitoring fee and findings of noncompliance.

(1) 100% low-income multiple building projects: Households may transfer to any Unit in a 100% low-income multiple building project and retain their program designation. The household does not need to be and should not be certified at the time of transfer. The move in date remains the date the household was first designated under the program.

(2) Each building is its own project (100% low-income and mixed income projects). Developments that made the 20/50 or 40/60 election: at the time of transfer, the household must be certified and have a current annual income less than the income limit established by the minimum set aside the Owner selected. Developments that elected the average income test under IRC §42(g): the household must be certified and their current designation averaged together with the designations of the other households in the project must be equal to or less than the percentage represented at the time of Application.

(3) Mixed income multiple building projects: Low-income households retain their program designation when they transfer to any Unit in a multiple building project if at the last annual certification their income was less than 140% of area median income level set by the minimum set

aside.

(b) Household transfers for Bond, HTF, NHTF, HOME, TCAP RF, and NSP with floating Uunits. Households may transfer to any Unit within the Development. A certification is not required at the time of transfer. If the household transfers to a different Unit Type, the Development must maintain the Unit Type dispersion as reflected in its LURA, by re-leasing the vacated Uunit to a program eligible household. If the Development is required to perform annual income recertifications, the recertification is due on the anniversary date the household originally moved into the Development. If the Development is layered with Housing Tax Credits, use the transfer guidelines described in subsection (a) of this section (relating to Household Unit Transfer Requirements).

(c) Household transfers for NHTF, HOME, TCAP RF, and NSP with fixed Uunits. Households may transfer to any Unit and do not need to be certified at the time of the transfer. If the household transfers to a Unit that is not fixed, the Development must re-lease the vacated Unit to a program eligible household. If the Development is required to perform annual income recertifications, the recertification is due on the anniversary date the household originally moved into the Development. If the Development is layered with Housing Tax Credits, use the transfer guidelines described in subsection (a) of this section (relating to Household Unit Transfer Requirements).

(d) Household Transfers in the Same Building for the HTC Programs. A Household may transfer to a new Unit within the same building (for the HTC program within the meaning of IRS Notice 88-91). The Uunit designations will swap status.

~~(e) Household transfers for the Section 811 PRA must be approved by the Department in writing.~~

### **§10.617 Affirmative Marketing Requirements**

See §10.801 of this chapter.

~~(a) Applicability. Effective April 1, 2015, compliance with this section is required for all Developments with five or more total units to further the objectives of Title VIII of the Civil Rights Act of 1968 and Executive Order 13166.~~

~~(b) General. Owners of Developments with five or more total units must affirmatively market their units to promote equal housing choice for prospective tenants, regardless of race, color, religion, sex, national origin, familial status, or disability and must develop and carry out an Affirmative Fair Housing Marketing Plan (or Affirmative Marketing Plan) to provide for marketing strategies and documentation of outreach efforts to prospective applicants identified as "least likely to apply." In general, those populations that are least likely to apply may include: African Americans, Native Americans, Alaskan Natives, Asians, Native Hawaiians, Other Pacific Islanders, Caucasians (non-Hispanic), Hispanics or Latinos, and families with children. All Affirmative Marketing Plans must provide for affirmative marketing to persons with disabilities. Some Developments may be required by their LURAs to market units specifically to veterans or other populations.~~

~~(c) Plan format. Owners are encouraged to use any version of HUD Form 935.2A to meet Affirmative Marketing requirements. Owners participating in HUD funded programs administered by the Department must use the version required by the program.~~

~~(d) Marketing and Outreach.~~

~~(1) The plan must include special outreach efforts to the "least likely to apply" populations through specific media, organizations, or community contacts that work with least likely to apply populations or work in areas where least likely to apply populations live.~~

~~(2) Advertisements and/or marketing materials must contain:~~

~~(A) The Fair Housing logo and~~

~~(B) The contact information for the individual who can assist if reasonable accommodations are needed in order to complete the application process. The information about reasonable accommodations must be in both English and Spanish.~~

~~(e) Timeframes.~~

~~(1) An Owner must begin its affirmative marketing efforts for each of the identified populations at least six months prior to the anticipated date the first building is to be available for occupancy. As a condition of an award to a new Development, the Board may require affirmative marketing efforts to begin more than six months prior to the anticipated date the first building is to be placed in service; and~~

~~(2) An Owner must update its Affirmative Marketing Plan and populations that are least likely to apply every five years from the effective date of the current plan or, for HUD funded or USDA properties, as otherwise required by HUD or USDA.~~

~~(f) Record keeping. Owners must maintain records of each Affirmative Marketing Plan and specific outreach efforts completed for the greater of three years or the recordkeeping requirement identified in the LURA.~~

~~(g) Exception to Affirmative Marketing. If the Development has closed its waiting list, Affirmative Marketing is not required. Affirmative Marketing is required as long as the Owner is accepting applications, has an open waiting list, or is marketing prior to placement in service as required under subsection (e)(1) of this section.~~

### **§10.618 Onsite Monitoring**

(a) The Department may perform an onsite monitoring review, a mail in desk review and physical inspection of any Development, and review and photocopy all documents and records supporting compliance with Departmental programs through the end of the Compliance Period or the end of the period covered by the LURA, whichever is later. The Development Owner shall permit the

Department access to the Development premises and records.

(b) The Department will perform onsite monitoring reviews of each low-income Development. The Department will conduct:

(1) The first review of HTC Developments by the end of the second calendar year following the year the last building in the Development is placed in service;

(2) The first review of all Developments, other than those described in paragraph (1) of this subsection, as leasing commences;

(3) During the Federal Compliance Period subsequent reviews will be conducted at least once every three years;

(4) After the Federal Compliance Period, ~~developments~~Developments will be monitored in accordance with §10.623 of this chapter (relating to Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period);

(5) A physical inspection of the Development including the exterior of the Development, Development amenities, and an interior inspection of a sample of Units;

(6) Limited reviews of physical conditions, including follow-up inspections to verify completion of reported corrective action, may be conducted without prior notice (unless access to tenant units is required, in which case at least 48 hours notice will be provided); and

(7) Reviews, meetings, and other appropriate activity in response to complaints or investigations.

(c) The Department will perform onsite file reviews or a mail in desk review and monitor:

(1) Low-income resident files in each Development, and review the Income Certifications;

(2) The documentation the Development Owner has received to support the certifications;

(3) The rent records; and

(4) Any additional aspects of the Development or its operation that the Department deems necessary or appropriate.

(d) The LURA for most HOME, NSP, TCAP RF, and NHTF Developments specifies a required Unit Mix. During onsite monitoring visits it will be determined if the minimum number of affordable units and exact square footage has been provided. Failure to provide the exact square footage listed in the LURA will be cited as "Failure to provide correct square footage". Failure to provide the required number of Units required by the LURA will be cited as "Household income above income limit upon initial occupancy"

Example 612(2). A TCAP RF LURA requires eight low-income units with the following Unit mix:

(A) Three one bedroom, one bath units with a Net Rentable Area (NRA) of 770 sq ft;

(B) One two bedroom one bath units with a Net Rentable Area (NRA) of 900 sq ft; and

(C) Four three bedroom two bath units with a Net Rentable Area (NRA) of 1000 sq ft.

If during the onsite review the Development has eight units designated as TCAP RF, but is not exactly the Units and square footage mix shown above (even if the actual square footage provided is greater) the noncompliance “Failure to provide correct square footage” will be cited.

(ed) At times other than onsite reviews, the Department may request for review, in a format designated by the Department, information on tenant income and rent for each Low-Income Unit and may require a Development Owner to submit copies of the tenant files, including copies of the Income Certification, the documentation the Development Owner has received to support that certification, and the rent record for any low-income tenant.

(fe) The Department will select the Low-Income Units and tenant records that are to be inspected and reviewed. Original records are required for review. The Department will not give Development Owners advance notice that a particular Unit, tenant record, or a particular year will be inspected or reviewed. However, the Department will give reasonable notice, as defined in Treasury Regulation 1.42-5, to the Development Owner that an onsite inspection or a tenant record review will occur so the Development Owner may notify tenants of the inspection or assemble original tenant records for review. If a credible complaint of fraud or other egregious alleged or suspected noncompliance is received, the Department reserves the right to conduct unannounced onsite monitoring visits.

(gf) In order to prepare for monitoring reviews and physical inspections and to reduce the amount of time spent onsite, Department staff must review certain requested documentation described in the onsite notification announcement. Owners are required to submit documentation by the required deadline indicated in the onsite notification announcement. Failure to submit required documentation will result in a finding of noncompliance.

### **§10.622 Special Rules Regarding Rents and Rent Limit Violations**

(a) Rent or Utility Allowance Violations of the maximum allowable limit for the HTC program. Under the HTC program, the amount of rent paid by the household plus an allowance for utilities, plus any mandatory fees, cannot exceed the maximum applicable limit (as determined by the minimum set-aside elected by the Owner) published by the Department. If it is determined that an HTC Development, during the Compliance Period, collected rent in excess of the rent limit established by the minimum set-aside, the Owner must correct the violation by reducing the rent charged. The Department will report the violation as corrected on January 1st of the year following the violation. The refunding of overcharged rent does not avoid the disallowance of the credit by the IRS.



(b) Rent or Utility Allowance Violations of additional rent restrictions under the HTC program. ~~(for Developments that elected the 20/50 and 40/60 test under IRC §42(g) only).~~ If Owners agreed to additional rent and occupancy restrictions, the Department will monitor to confirm compliance. If noncompliance is discovered, the Department will require the Owner to restore compliance by refunding (not a credit to amounts owed the Development) any excess rents to a sufficient number of households to meet the set aside.

(c) Rent Violations of the maximum allowable limit due to application fees or application deposits not promptly converted into a security deposit under the HTC program. Under the HTC program, Owners may not charge tenants any overhead costs as part of the application fee. Owners must only charge the actual cost for application fees as supported by invoices from the screening company the Owner uses.

(1) The amount of time Development staff spends checking an applicant's income, credit history, and landlord references may be included in the Development's application fee. Development Owners may add up to \$5.50 per Unit for their other out of pocket costs for processing an application without providing documentation. Example 622(2): A Development's out of pocket cost for processing an application is \$17.00 per adult. The property may charge \$22.50 for the first adult and \$17.00 for each additional adult.

(2) Documentation of Development costs for application processing or screening fees must be made available during onsite visits or upon request. The Department will review application fee documentation during onsite monitoring visits. If the Development pays a flat monthly fee to a third party for credit or criminal background checks, Owners must calculate the appropriate fee to be charged applicants by using the total number of applications processed, not just approved applications. Developments that pay a flat monthly fee must determine the appropriate application fee at least annually based on the prior year's activity. If the Department determines from a review of the documentation that the Owner has overcharged residents an application fee or collected impermissible deposits, the noncompliance will be reported to the IRS on Form 8823 under the category "gross rent(s) exceeds tax credit limits." The noncompliance will be corrected on January 1st of the next year.

(3) Owners are not required to refund the overcharged fee amount. To correct the issue, Owners must reduce the application fee for prospective applicants. Once the fee is reduced for prospective applicants, the Department will report the affected Units back in compliance on January 1st of the year after they were overcharged the application fee or an impermissible deposit.

(4) Throughout the Affordability Period, Owners may not charge a deposit or any type of fee (other than an application fee) for a household to be placed on a waiting list.

(d) Rent or Utility Allowance Violations on Non-HTC Developments, HTC Developments after the Compliance Period, and foreclosed HTC properties for three years after foreclosure. If it is determined that the Development collected rent in excess of the allowable limit, the Department will require the Owner to refund (not a credit to amounts owed the Development) to the affected

residents the amount of rent that was overcharged.

(e) Trust Account to be established. If the Owner is required to refund rent under subsection (b) or (d) of this section and cannot locate the resident, the excess monies must be deposited into a trust account for the tenant. The account must remain open for the shorter of a four year period, or until all funds are claimed. If funds are not claimed after the four year period, the unclaimed funds must be remitted to the Texas Comptroller of Public Accounts Unclaimed Property Holder Reporting Section to be disbursed as required by Texas unclaimed property statutes.

(f) Rent Adjustments for HOME, and TCAP RF Developments:

(1) 100% HOME/TCAP-RF assisted ~~Developments~~ Developments. If a household's income exceeds 80% at recertification, the Owner must charge rent equal to 30% of the household's adjusted income;

(2) HOME/TCAP-RF Developments with any Market Rate units. If a household's income exceeds 80% at recertification, the Owner must charge rent equal to the lesser of 30% of the household's adjusted income or the comparable Market rent; and

(3) HOME/TCAP-RF Developments layered with other Department affordable housing programs. If a household's income exceeds 80% at recertification, the owner must charge rent equal to the lesser of 30% of the household's adjusted income or the rent allowable under the other Program.

(g) Special conditions for NSP Developments. To determine if a Unit is rent restricted, the amount of rent paid by the household, plus an allowance for utilities, plus any rental assistance payment must be less than the applicable limit.

(h) Employee Occupied Units (HTC and SHTF Developments). IRS Revenue Rulings 92-61, 2004-82 and Chief Counsel Advice Memorandum POSTN-111812-14 provide guidance on employee occupied units. In general, employee occupied units are considered facilities reasonably required for the project(s) and not residential rental units. Since the building's applicable fraction is calculated using the residential rental units/space in a building, employee occupied units are taken out of both the numerator and the denominator.

(i) Owners of HOME, NSP, TCAP-RF, and NHTF must comply with §10.403 of this chapter which requires annual rent review and approval by the Department's Asset Management Division. Failure to do so will result in an finding of noncompliance Event of Noncompliance.

(j) Owners are not permitted to increase the tenant portion of rent during a period which is the lesser of 12 months or the lease term, even if there are increases in rent limits or decreases in utility allowances.

### **§10.623 Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period**

(a) HTC properties allocated credit in 1990 and after are required under §42(h)(6) of the Code to record a LURA restricting the Development for at least 30 years. Various sections of the Code specify monitoring rules State Housing Finance Agencies must implement during the Compliance Period.

(b) After the Compliance Period, the Department will continue to monitor HTC Developments using the criteria detailed in paragraphs (1) - (14) of this subsection:

(1) The frequency and depth of monitoring household income, rents, social services and other requirements of the LURA will be determined based on risk. Factors will include changes in ownership or management, compliance history, timeliness of reports and timeliness of responses to Department requests;

(2) At least once every three years the property will be physically inspected including the exterior of the Development, all building systems and 10% of Low-Income Units. No less than five but no more than 35 of the Development's HTC Low-Income Units will be physically inspected to determine compliance with HUD's Uniform Physical Condition Standards;

(3) Each Development shall submit an annual report in the format prescribed by the Department;

(4) Reports to the Department must be submitted electronically as required in §10.607 of this subchapter (relating to Reporting Requirements);

(5) Compliance monitoring fees will continue to be submitted to the Department annually in the amount stated in the LURA;

(6) All HTC households must be income qualified upon initial occupancy of any Low-Income Unit. Proper verifications of income are required, and the Department's Income Certification form must be completed unless the Development participates in the Rural Rental Housing Program or a project-based HUD program, in which case the other program's certification form will be accepted;

(7) Rents will remain restricted for all HTC Low-Income Units. After the Compliance Period, utilities paid to the Owner are accounted for in the utility allowance. TCAP, Exchange, Bond, and SHTF Developments layered with Housing Tax Credits no longer within the Compliance Period also include utilities paid to the Owner as part of the utility allowance. The tenant paid portion of the rent plus the applicable utility allowance must not exceed the applicable limit. Any excess rent collected must be refunded;

(8) All additional income and rent restrictions defined in the LURA remain in effect;

(9) For Additional Use Restrictions, defined in the LURA (such as supportive services, nonprofit participation, elderly, etc.), refer to the Development's LURA to determine if compliance is required after the completion of the Compliance Period or if the Compliance Period was specifically extended beyond 15 years;

(10) The Owner shall not terminate the lease or evict low-income residents for other than good cause;

(11) The total number of required HTC Low-Income Units can be maintained Development wide;

(12) Owners may not charge fees for amenities that were included in the Development's Eligible Basis;

(13) Once a calendar year, Owners must continue to collect and maintain current data on each household that includes the number of household members, age, ethnicity, race, disability status, rental amounts and rental assistance (if any). This information can be collected on the Department's Annual Eligibility Certification form or the Income Certification form or HUD Income Certification form or USDA Income Certification form; and

(14) Employee occupied units will be treated in the manner prescribed in §10.622(h) of this chapter (relating to Special Rules Regarding Rents and Rent Limit Violations).

(c) After the first 15 years of the Extended Use Period, certain requirements will not be monitored as detailed in paragraphs (1) - (4) of this subsection.

(1) The student restrictions found in §42(i)(3)(D) of the Code. An income qualified household consisting entirely of full time students may occupy a Low-Income Unit. If a Development markets to students or leases more than 15% of the total number of units to student households, the property will be found in noncompliance unless the LURA is amended through the Material Amendments procedures found in §10.405 of this chapter (relating to Amendments);

(2) All households, regardless of income level or 8609 elections, will be allowed to transfer between buildings within the Development;

(3) The Department will not monitor the Development's application fee after the Compliance Period is over; and

(4) Mixed income Developments are not required to conduct annual income recertifications. However, Owners must continue to collect and report data in accordance with subsection (b)(13) of this section.

(d) While the requirements of the LURA may provide additional requirements, right and remedies to the Department or the tenants, the Department will monitor post year 15 in accordance with this section as amended.

(e) Unless specifically noted in this section, all requirements of this chapter, the LURA and §42 of the Code remain in effect for the Extended Use Period. These Post-Year 15 Monitoring Rules apply only to the HTC Developments administered by the Department. Participation in other programs administered by the Department may require additional monitoring to ensure compliance with the requirements of those programs.

## §10.624 Compliance Requirements for Developments with 811 PRA Units

(a) One hundred and eighty days prior to the date an Owner expects to begin leasing, Developments that have agreed to rent Units to households assisted by Section 811 PRA must contact Department staff and begin accepting referrals. Failure to reserve the agreed upon number of Units for 811 households will be cited as noncompliance, be referred for administrative penalties, and be considered possible grounds for debarment.

(b) Throughout the term of an 811 PRA Use Agreement, Owners must maintain the required number of 811 PRA households, and provide notice to the Department when an 811 PRA household is expected to vacate. Notice must be provided when the Development is notified that ~~30 days prior to the date~~ the household will vacate or in the event that the resident vacates without notice, upon discovery that the unit is vacant, whichever is earlier. Failure to notify the Department will be cited as noncompliance, be referred for administrative penalties, and be considered possible grounds for debarment.

(c) Compliance with 811 PRA requirements will be monitored at least once every three years, either through an onsite review or a desk review. During the review, Department staff will monitor for compliance with program eligibility which includes the following:

(1) The household must include at least one person with a disability and who is 18 years of age or older and less than 62 years of age at the time of admission into the Development; and the person with a disability must be part of one or more of the target populations for the 811 program.

(2) The household's income is less than the extremely low income limit at move in.

(3) The Owner must check the following criminal history related to drug use of the household. Participants-Households in the 811 PRA program must not include:

(A) Any member(s) who was evicted in the last three years from federally assisted housing for drug-related criminal activity;

(B) Any member that is currently engaged in illegal use of drugs or for which the Owner has reasonable cause to believe that a member's illegal use or pattern of illegal use of a drug may interfere with the health, safety, and right to peaceful enjoyment of the property by other residents; and

(C) Any ~~household~~ member who is subject to a State sex offender lifetime registration requirement.

(4) Student Status. If the household includes a student, the student must meet all of the criteria described in HUD handbook 4350.3 par. 3-13B, as modified by the September 21, 2016, Federal Register Notice 5969-N-01.

(d) Noncompliance will be cited if the Development:

(1) Unit Leases to a household that is not ~~eligible~~ qualified for the 811 PRA program in accordance with the requirements of subsection (c)(1) - (4) of this section;

(2) Fails to Use the Enterprise Income Verification system for documenting the household's income;

(3) Fails to properly document and calculate deductions in order to determine adjusted income (dependent, child care, disability assistance, elderly/disabled family, unreimbursed medical expenses);

(4) Fails to use the required HUD forms listed in §10.612(d) of this subchapter or the following forms when applicable:

(A) EIV summary report;

(B) EIV income report;

(C) EIV income discrepancy report;

(D) EIV No income reported;

(E) EIV no income report by health and human services or social security administration;

(F) EIV new hires report;

(G) Existing tenant search;

(H) Multiple Subsidy report;

(I) Failed EIV pre-screening report;

(J) Failed verification report;

(K) Deceased tenants report;

(L) Owner approval letter authorizing access to EIV for the EIV ~~EV~~ coordinators;

(M) EIV Coordinator Access Authorization form (CAAF);

(N) The rules of behavior for staff that use EIV reports/data to perform their job functions; and

(O) Cyber awareness challenge certificates of completion for anyone that uses EIV or has access to EIV data (annually);

(5) Accepts funding that limits the ability for the Department to place the agreed upon number of 811 Units at the Development;

(6) Violates §1.15 of this title (relating to Integrated Housing);

(7) Fails to properly calculate the tenant portion of rent;

(8) Fails to properly calculate the tenant security deposit;

(9) ~~(8)~~ Fails to use the HUD model lease;

(10) ~~(9)~~ Egregiously fails to disperse 811 PRA Units throughout the Development;

(11) ~~(10)~~ Fails to conduct required interim certifications; ~~or~~

(12) ~~(11)~~ Fails to conduct annual income recertification; or

(13) Fails to prominently display, as required by 24 CFR Part 110, Fair Housing Poster HUD-928.1 (English), HUD 928.1A (Spanish), and other language as required by Limited English Proficiency Requirements.

### §10.625 Events of Noncompliance

Figure: 10 TAC §10.625 lists events for which a multifamily rental Development may be found to be in noncompliance for compliance monitoring purposes. This list is not an exclusive list of events and issues for which an Owner may be subject to an administrative penalty, debarment, or other enforcement action. The first column of the chart identifies the noncompliance event. The second column indicates to which program(s) the noncompliance event applies. The last column indicates if the issue is reportable on IRS Form 8823 for HTC Developments.

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Figure: 10 TAC §10.614(f)(3)

Method	Beginning of 90 Day Notification Period
Written Local Estimate	Date of letter from the Utility Provider
HUD Utility Schedule Model	Date entered as "Form Date"
Energy Consumption Model	60 days after the end of the last month of the 12 month period for which data was used to compute the estimate
Actual Use Method	Date the allowance is approved by the Department

Figure: 10 TAC §10.625

Noncompliance Event	Program(s)	If HTC, on Form 8823?
Violations of the Uniform Physical Condition Standards	All Programs	Yes
Noncompliance related to Affirmative Marketing requirements <del>described in §10.617 of this</del>	All Programs	No
Development is not available to the general public because of leasing issues	HTC	Yes
TDHCA has received notice of possible Fair Housing Act Violation from HUD or DOJ and reported general public use violation in accordance with IRS 8823 Audit Guide Chapter 13	HTC	Yes
TDHCA has referred unresolved Fair Housing Design and Construction issue <u>or other Fair Housing noncompliance</u> to the Texas Workforce Commission	All programs	No
<u>Property Development</u> has gone through a foreclosure	All programs	Yes
<u>Property Development</u> is never expected to comply due to failure to report or allow monitoring	All programs	yes
Owner did not allow on-site monitoring or failed to notify residents resulting in inspection cancelation	All programs	Yes
LURA not in effect	All programs	Yes
Project failed to meet minimum set aside	HTC and Bonds	Yes
No evidence of, or failure to certify to material participation of a non-profit or HUB, if required by LURA	HTC	Yes, if non-profit issue, No, if HUB
Development failed to meet additional state required rent and occupancy restrictions	All programs	No
Noncompliance with social service requirements	HTC and Bond	No
Development failed to provide housing to the elderly as promised at application	All programs	No
Failure to provide special needs housing as required by LURA	All programs	No
Changes in Eligible Basis or Applicable percentage	HTC	Yes



Failure to submit all or parts of the Annual Owner's Compliance Report	All programs	Yes for part A, No for other parts
Failure to submit quarterly reports as required by §10.607	All programs	No
Noncompliance with utility allowance requirements described in §10.614 of this subchapter and/or Treasury Regulation §1.42-10	All programs	Yes if rent exceeds limit, no if related to noncompliance with other requirements, such as posting.
Noncompliance with lease requirements described in §10.613 of this subchapter	All programs	No
Asset Management Division has reported that Development has failed to establish and maintain a reserve account in accordance with §10.404 of this chapter	All programs	No
Failure to provide a notary public as promised at application	HTC	No
Violation of the Unit Vacancy Rule	HTC	Yes
Casualty Loss	All programs	Yes
Failure to provide pre-onsite documentation	All programs	No
Failure to provide amenity as required by LURA	HTC	No
Failure to pay asset management, compliance monitoring or other required fee	HTC, TCAP, Bond, NHTF, TCAP-RF, Exchange and HOME/NSP Developments committed funds	No
Change in ownership without department approval (other than removal of a general partner in accordance with §10.406 of this chapter)	All programs	No

Noncompliance with written policy and procedure requirements <del>described in §10.610 of this subchapter</del>	All programs	No, unless finding is because Owner refused to lease to
Program Unit not leased to Low-Income household/ Household income above income limit upon initial occupancy	All programs	Yes
Program unit occupied by nonqualified full-time students	HTC during the Compliance Period, Bond and HOME/NSP developments committed funds after August 23, 2013, NHTF, 811	Yes
Low-Income <u>U</u> nits used on a transient basis	HTC and Bond	Yes
Violation of the Available Unit Rule	All programs, but only during the Compliance Period for HTC, TCAP, and	Yes
Gross rent exceeds the highest rent allowed under the LURA or other deed restriction	All programs	Yes
Failure to provide Tenant Income Certification and documentation	All programs	Yes
Unit not available for rent	All programs	Yes
Failure to collect data required by §10.612(b)(1) and/or §10.612(b)(2)	HTC, TCAP, Exchange, and Bond	No
Development evicted or terminated the tenancy of a low-income tenant for other than good cause	HTC, HOME, TCAP-RF, NHTF, and NSP	Yes
Household income increased above 80 percent at recertification and Owner failed to properly determine rent	HOME	NA
Violation of the Integrated Housing Rule	All programs	No

Failure to resolve final construction deficiencies within corrective action period	All programs	No
Noncompliance with the required accessibility requirements such as §504 of the Rehabilitation Act of 1973, the 2010 ADA standards <u>as modified in the Department rules</u> , or other accessibility related requirements of a Department rule	HOME, NSP, TCAP-RE, NHTF, <u>SHTF</u> , and for HTC properties that were awarded after	No
Noncompliance with the notice to the Department requirements described in §10.609 of this	All programs	No
Failure to reserve <u>U</u> nits for Section 811 <u>PRA</u> participants	811 developments	NA
Failure to notify the Department of the availability of units	811 developments	NA
Owner failed <u>required criminal history to check criminal history and drug use of household</u>	811 Developments	NA
Failure to use Enterprise Income Verification System	811 developments	NA
Failure to properly document and calculate adjusted income	811 developments	NA
Failure to use required HUD forms	811 developments	NA
Accepted funding that limits 811 participation	811 developments	NA
Failure to properly calculate tenant portion of rent	811 developments	NA
Failure to use HUD model lease	811 developments	NA
Failure to disperse 811 units	811 developments	NA
Failure to conduct interim certifications	811 developments	NA
Failure to conduct annual income recertification	811 developments	NA

Asset Management Division has reported that Development has failed to review rents on an annual basis in accordance with §10.403 of this chapter	HOME, NSP, TCAP RF, and NHTF	NA
<u>Unit Leased to a household that is not qualified for the 811 PRA program</u>	<u>811 Developments</u>	<u>NA</u>

7c

**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**

**OCTOBER 10, 2019**

Presentation, discussion, and possible action on the proposed repeal of 10 TAC Chapter 13, the Multifamily Direct Loan Rule, the proposed new 10 TAC Chapter 13, Multifamily Direct Loan Rule, and directing their publication for public comment in the *Texas Register*.

**RECOMMENDED ACTION**

**WHEREAS**, the Texas Department of Housing and Community Affairs (the Department) is authorized to administer Direct Loan Program Funds pursuant to Tex. Gov't Code Ch. 2306, Subchapter I, Housing Finance Division;

**WHEREAS**, the Department plans to administer the varying fund sources used in making these awards of loans and grants in a specific manner that necessitates this Multifamily Direct Loan Rule;

**WHEREAS**, pursuant to Tex. Gov't Code §2306.053 the Department is authorized to adopt rules governing the administration of the Department and its programs;

**WHEREAS**, such proposed rulemaking will be published for public comment in compliance with the State Administrative Procedures Act in the *Texas Register* from October 25, 2019, through November 14, 2019, and subsequently returned to the Board for final adoption; and

**WHEREAS** public comment, in accordance with the Citizen Participation Plan requirements in 24 CFR §91.105, will be accepted between October 14, 2019, and November 14, 2019;

**NOW, therefore, it is hereby**

**RESOLVED**, that the proposed repeal of 10 TAC Chapter 13, and a proposed new 10 TAC Chapter 13, Multifamily Direct Loan Rule, together with the preambles presented to this meeting, are hereby approved for publication in the *Texas Register* for public comment; and

**FURTHER RESOLVED**, that the Executive Director and his designees be and each of them are hereby authorized, empowered, and directed, for and on behalf of the Department, to cause the proposed repeal and replacement Multifamily Direct Loan Rules, together with the changes, if any, made at this meeting and the preambles, in the form presented to this meeting, to be published in the *Texas Register* for public comment and, in connection

therewith, make such non-substantive technical corrections, including any required revisions to the preambles, as they may deem necessary to effectuate the foregoing.

## **BACKGROUND**

Attached to this Board Action Request is the staff draft of the 2020 Multifamily Direct Loan Rule (MFDL Rule), which reflects staff's recommendations for the Board's consideration. The attached MFDL Rule identifies the differences between the 2019 MFDL Rule and the proposed 2020 MFDL Rule in blackline format. The MFDL Rule submitted to the *Texas Register* will be a proposed new version of the 2020 MFDL Rule, and will not identify the changes between 2019 and 2020. The Department's Public Comment page will also include a blackline version of the proposed 2020 MFDL Rule as approved by the Board to facilitate stakeholders' engagement with the changes.

Since January 2019, staff have sought opportunities to discuss the 2020 Multifamily Direct Loan Rule with stakeholders. Direct Loan funding and policies were addressed in various contexts, including but not limited to: proposals for overlapping provisions in the 2020 Housing Tax Credit Qualified Allocation Plan (QAP), Tax-Exempt Bond policies, proposed changes to Supportive Housing Developments, and as a part of updates regarding statutory changes to expect upon session of the 86<sup>th</sup> Legislative Session. Generally, discussions tended to acknowledge the growing complexity and high demand for the uniquely beneficial financing qualities associated with MFDL Program funding. Additionally, prior to the posting in these Board materials a staff draft of the rule was released for five days; no comments on the staff draft were received.

This rule considers staff and stakeholder input in establishing more effective means of requesting, prioritizing, vetting, and potentially awarding MFDL funding. This rule specifically targets procedurally efficient and substantively proven means of improving application and award processing, loan closing, and the disbursement process throughout the development period. It provides explanatory types and timings of permitted requests to waive, amend, or otherwise change important terms of the deal.

Proposed 10 TAC Chapter 13 contains a Substantial Amendment to the state's method of distribution described in its 2019 Action Plan. Other proposed changes to this Chapter would be minor amendments to the Plan. The Multifamily Direct Loan Rule final adoption, and the Substantial Amendment will be brought before the Board in December for approval, and subsequently be published in the *Texas Register* for adoption and sent to HUD, as applicable.

Upon Board approval, the proposed 2020 MFDL Rule will be posted to the Department's website and published in the *Texas Register*. Public comment, in accordance with the Citizen Participation Plan requirements in 24 CFR §91.105, will be accepted between October 14, 2019, and November 14, 2019. In compliance with the State Administrative Procedures Act, public comment will be accepted upon the rule's publication in the *Texas Register* from October 25, 2019, through November 14, 2019.

Staff will consider and prepare reasoned responses to public comment as part of the final action on the MFDL Rule that will be brought before the Board on December 12, 2019, for approval, adoption, and subsequent publication in the *Texas Register*.



## **Attachment A: Preamble, including required analysis, for proposed repeal of 10 TAC Chapter 13, the Multifamily Direct Loan Rule**

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 13, Multifamily Direct Loan Rule. The purpose of the proposed repeal is to provide for clarification of the existing rule through new rulemaking action.

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

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

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed repeal would be in effect, the proposed repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, administration of the Multifamily Direct Loan Program.

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

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

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

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

6. The proposed action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, administration of the Multifamily Direct Loan Program.

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

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

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

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

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

### **d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6). The Department has evaluated the proposed repeal as to its possible effects on local economies**

and has determined that for the first five years the proposed repeal would be in effect there would be no economic effect on local employment; therefore no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of the repealed section would be increased clarity and improved access to the Multifamily Direct Loan funds. There will not be economic costs to individuals required to comply with the repealed section.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held October 25, 2019, to November 14, 2019, to receive input on the proposed repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Andrew Sinnott, Multifamily Direct Loan Administrator, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email [htc.public-comment@tdhca.state.tx.us](mailto:htc.public-comment@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin local time NOVEMBER 14, 2019.

STATUTORY AUTHORITY. The proposed repeal is made pursuant to TEX. GOV'T CODE, §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed repealed sections affect no other code, article, or statute.

## **10 TAC Chapter 13, Multifamily Direct Loan Rule**

§13.1 Purpose

§13.2 Definitions

§13.3 General Loan Requirements

§13.4 Set-Asides, Regional Allocation, and Priorities

§13.5 Award Process

§13.6 Scoring Criteria

§13.7 Maximum Funding Requests

§13.8 Loan Structure and Underwriting Requirements

§13.9 Construction Standards

§13.10 Development and Unit Requirements

§13.11 Post-Award Requirements

§13.12 Pre-Closing Amendments to Direct Loan Terms

§13.13 Post-Closing Amendments to Direct Loan Terms

## **Attachment B: Preamble, including required analysis, for proposed new 10 TAC Chapter 13, Multifamily Direct Loan Rule**

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 13, Multifamily Direct Loan Rule. The purpose of the proposed new sections is to provide compliance with Tex. Gov't Code §2306.111 and to update the rule to: clarify program requirements in multiple sections, codify in rule practices of the division, and change citations to align with changes to other multifamily rules. In general, most changes proposed are corrective in nature, intended to gain consistency with state or federal rules, delete duplicative language or provisions, correct or update rule references, and clarify language or processes to more adequately communicate the language or process. Changes that do not fall within these general categories are proposed in: §13.4(a)(1)(A), related to the Supportive Housing/Soft Repayment Set-Aside; §13.5(h), related to Eligibility Criteria (and Determinations); §13.6(6), related to Tenant Populations with Special Housing Needs; §13.8(c)(9), related to Criteria for Construction-to-Permanent Loans; §13.8(b), related to Closing Memo to Underwriting Report; §13.8(g), related to Pass-Through Loans; and §13.13(c), related to Executive Amendments.

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

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

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

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed new rule would be in effect:

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

8. The proposed rule will not negatively nor positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this proposed rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, §2306.111.

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

2. This rule relates to the procedures for multifamily direct loan applications and award through various Department fund sources. Other than in the case of a small or micro-business that is an applicant for such a loan product, no small or micro-businesses are subject to the rule. It is estimated that approximately 200 small or micro-businesses are such applicants; for those entities the new rule provides for a more clear, transparent process for applying for funds and does not result in a negative impact for those small or micro-businesses. There are not likely to be any rural communities subject to the proposed rule because this rule is applicable only to direct loan applicants for development of properties, which are not generally municipalities. The fee for applying for a Multifamily Direct Loan product is \$1,000, unless the Applicant is a nonprofit that provides supportive services or the Applicant is applying for Housing Tax Credits in conjunction with Multifamily Direct Loan funds, in which case the application fee may be waived. These fee costs are not inclusive of external costs required by the basic business necessities underlying any real estate transaction, from placing earnest money on land, conducting an Environmental Site Assessment, conducting a market study, potentially retaining counsel, hiring an architect and an engineer to construct basic site designs and elevations, and paying any other related, third-party fees for securing the necessary financing to construct multifamily housing.

There are 1,296 rural communities potentially subject to the proposed rule for which the economic impact of the rule is projected to be \$0. 10 TAC Chapter 13 places no financial burdens on rural communities, as the costs associated with submitting an Application are born entirely by private parties. In an average year the volume of applications for MFDL resources that are located in rural areas is approximately fifteen. In those cases, a rural community securing a loan will experience an economic benefit, including, potentially, increased property tax revenue from a multifamily Development.

3. The Department has determined that because there are rural MFDL awardees, this program helps promote construction activities and long term tax base in rural areas of Texas. Aside from the fees and costs associated with submitting an Application, there is a probable positive economic effect on small or micro-businesses or rural communities that receive MFDL awards and successfully use those awards to construct multifamily housing, although the specific impact is not able to be quantified in advance.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed rule

does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

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

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the proposed rule may provide a possible positive economic effect on local employment in association with this rule since MFDL Developments, layered with housing tax credits, often involve a typical minimum investment of \$10 million in capital, and more commonly an investment from \$20 million to \$30 million. Such a capital investment has direct, indirect, and induced effects on the local and regional economies and local employment. However, because the exact location of where program funds or developments are directed is not determined in rule, and is driven by real estate demand, there is no way to predict during rulemaking where these positive effects may occur. Furthermore, while the Department believes that any and all impacts are positive, that impact is not able to be quantified for any given community until MFDL awards and LIHTCs are actually awarded to a proposed Development, given the unique characteristics of each proposed multifamily Development.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that significant construction activity is associated with any MFDL Development layered with LIHTC and each apartment community significantly increases the property value of the land being developed, there are no probable negative effects of the new rule on particular geographic regions. If anything, positive effects will ensue in those communities where developers receive MFDL awards.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will be improved clarity of program requirements in multiple sections, codification in rule practices of the division, and change citations to align with changes to other multifamily rules. There will not be any economic cost to any individuals required to comply with the new sections because this rule does not have any new requirements that would cause additional costs to applicants.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new sections are in effect, enforcing or administering the new sections does not have any foreseeable implications related to costs or revenues of the state or local governments because it does not have any new requirements that would cause additional costs to applicants.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held October 25, 2019, to November 14, 2019, to receive input on the proposed new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Andrew Sinnott, Multifamily Direct Loan Administrator, Rule Comments, P.O. Box 13941, Austin, Texas 78711-

3941 or email [htc.public-comment@tdhca.state.tx.us](mailto:htc.public-comment@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin local time NOVEMBER 14, 2019.

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed new sections affect no other code, article, or statute.

## 2020 MULTIFAMILY DIRECT LOAN RULE

<u>§13.1</u>	<u>Purpose</u>
<u>§13.2</u>	<u>Definitions</u>
<u>§13.3</u>	<u>General Loan Requirements</u>
<u>§13.4</u>	<u>Set-Asides, Regional Allocation, and Priorities</u>
<u>§13.5</u>	<u>Award Process</u>
<u>§13.6</u>	<u>Scoring Criteria</u>
<u>§13.7</u>	<u>Maximum Funding Requests and Minimum Number of MFDL Units</u>
<u>§13.8</u>	<u>Loan Structure and Underwriting Requirements</u>
<u>§13.9</u>	<u>Construction Standards</u>
<u>§13.10</u>	<u>Development and Unit Requirements</u>
<u>§13.11</u>	<u>Post-Award Requirements</u>
<u>§13.12</u>	<u>Pre-Closing Amendments to Direct Loan Terms</u>
<u>§13.13</u>	<u>Post-Closing Amendments to Direct Loan Terms</u>

### §13.1. Purpose.

**(a) Authority.** The rules in this chapter apply to the funds provided to Multifamily Developments through the Multifamily Direct Loan Program (MFDL or Direct Loan Program) by the Texas Department of Housing and Community Affairs (the Department). Notwithstanding anything in this chapter to the contrary, loans and grants issued to finance the Development of multifamily rental housing are subject to the requirements of the laws of the State of Texas, including but not limited to Tex. Gov't Code, Chapter 2306 (sometimes referred to as the State Act), and federal law pursuant to the requirements of Title II of the Cranston-Gonzalez National Affordable Housing Act, Division B, Title III of the Housing and Economic Recovery Act (HERA) of 2008 - Emergency Assistance for the Redevelopment of Abandoned and Foreclosed Homes, Section 1497 of the Dodd-Frank Wall Street Reform and Consumer Protection Act: Additional Assistance for Neighborhood Stabilization Programs, Title I of the Housing and Economic Recovery Act of 2008, Section 1131 (Public Law 110-289), and the implementing regulations 24 CFR Part 91, Part 92, Part 93, and Part 570 as they may be applicable to a specific fund source. The Department is authorized to administer Direct Loan Program funds pursuant to Tex. Gov't Code, Chapter 2306, Subchapter I, Housing Finance Division.

**(b) General.** This chapter applies to an award of MFDL funds by the Department and establishes the general requirements associated with the application and award process for such funds. Applicants pursuing MFDL assistance from the Department are required to certify, among other things, that they have familiarized themselves with all applicable rules that govern that specific program including, but not limited to this chapter, Chapter 1 of this title (relating to Administration), Chapter 2 of this title (relating to Enforcement), [Chapter 8](#)

~~of this title (relating to Section 811 PRA Program),~~ and Chapter 10 of this title (relating to Uniform Multifamily Rules), Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan (QAP)) and Chapter 12 of this title (relating to Multifamily Housing Revenue Bond Rules) will apply if MFDL funds are layered with those other Department programs. The Applicant is also required to certify that it is familiar with any other federal, state, or local financing sources that it identifies in its Application. Any conflict with rules, regulations, or statutes will be resolved on a case by case basis that allows for compliance with all requirements. Conflicts that cannot be resolved may result in Application ineligibility, with the right to an Appeal as further provided in 10 TAC §1.7 of this title (relating to Appeals Process) or 10 TAC §11.902 of this title (relating to Appeals Process), as applicable.

**(c) Waivers.** Requests for waivers of any program rules or requirements must be made in accordance with 10 TAC §11.207 of this title (relating to Waiver of Rules), and as further limited by the rules in this chapter. In no instance will the Department consider a waiver request that would violate federal program requirements or state or federal statute, as further provided in paragraphs (1) through (3) of this subsection.

~~(d)(1)~~ Waivers for Layered Developments. For Direct Loan Developments contemporaneously layered with Competitive Housing Tax Credits, the Board may not waive any provision of the Notice of Funding Availability (NOFA). The Board may not waive rules that are federally required, or that have been incorporated as a required part of the Department's Consolidated or One Year Action Plan (OYAP) to the U.S. Department of Housing and Urban Development (HUD);

(2) Waivers for Non-Layered Developments. For Direct Loan Developments not contemporaneously layered with Competitive Housing Tax Credits, an Applicant may request that the Department amend its NOFA, amend its Consolidated or One Year Action Plan (OYAP), or ask HUD to grant a waiver of its regulations. If the Applicant's request is approved by the Department's Governing Board, the Application Acceptance Date will then be the date the Department completes the amendment process, or receives a waiver from HUD. If this date occurs after the NOFA closes, the Applicant will be required to apply, and the Direct Loan awardee (pre Loan closing) may be required to reapply under a new or otherwise open NOFA; and

(3) Waivers under Closed NOFAs. The Board may not waive any portion of a closed NOFA prior to Construction Completion. Thereafter, the Board may only waive any portion of a closed NOFA as part of an approved Asset Management Division work out. Allowable Post-Closing Amendments are described in 10 TAC §13.13.

**(d) Eligibility and Threshold Requirements.** Applications for Multifamily Direct Loan funds must meet all applicable eligibility and threshold requirements of Chapter 11 of this title (relating to the Qualified Allocation Plan) ~~-(QAP)),~~ unless otherwise excepted in this rule or NOFA.



## **§13.2. Definitions.**

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Any capitalized terms not specifically mentioned in this section shall have the meaning as defined in Tex. Gov't Code, Chapter 2306, §§141, 142, and 145 of the Internal Revenue Code, 24 CFR Part 91, Part 92, Part 93, and 2 CFR Part 200 ~~and 10 TAC Chapter 11, and 10 TAC Chapters 1 of this title regarding Administration, 2 of this title regarding Enforcement, 10 of this title regarding Uniform Multifamily Rules, and 11 of this title regarding~~ the Qualified Allocation Plan.

~~(1) Annual Income or Annual Incomes--"Annual income" as defined at 24 CFR §5.609, which includes but is not limited to the list of income in HUD Handbook 4350, and specifically excludes those items listed in HUD's Updated List of Federally Mandated Exclusions from Income.~~

~~(2) Choice Limiting Activity--Any transfer of title or similar action that occurs prior to a Development obtaining environmental clearance after an application for federal funds (HOME and NSP) has been submitted. Choice Limiting Activities also include closing on loans including loans for interim financing, signing of a contract, and commencing construction.~~

~~(3)(1) Application Acceptance Date--The date the MFDL Application is considered received by the Department as described in this chapter, chapter 11 of this title, or in the NOFA.~~

~~(2) Construction Completion--That necessary title transfer requirements and construction work have been performed and the following documents have been issued for the Development: certificate(s) of occupancy (if new construction), Certificate of Substantial Completion (AIA Form G704), or Form HUD-92485 for instances in which a federally insured HUD loan is being utilized, and a Final Construction Inspection Letter from Department staff. In addition, for Developments not layered with Housing Tax Credits, Construction Completion means all ~~modifications~~ corrections requested as a result of the Department's Final Construction Inspection were cleared as evidenced by receipt of the Closed Final Development Inspection Letter.~~

~~(43) Community Housing Development Organization (CHDO)--A private nonprofit organization that has experience developing and/or owning affordable rental housing and that meets the requirements in 24 CFR Part 92 for purposes of receiving HOME funds under the CHDO Set-Aside. In addition, a member of a CHDO's board cannot be a Principal of the Development beyond his/her/their role as a board member of the CHDO or be an employee of the development team, and may not receive financial benefit other than reimbursement of expenses from the CHDO (e.g., a voting board member cannot also be a paid executive).~~

~~(4) Deobligated Funds--The funds released by the Development Owner or recovered by the Department canceling a Contract or award involving some or all of a contractual financial obligation between the Department, and a Development Owner or Applicant.~~

**(5) Federal Affordability Period**--The period commencing on the date of Construction Completion and ending on the date which is the required number of years as defined by the federal program from the date of Construction Completion.

**(6) HOME Match-Eligible Unit**--A Unit in the Development that is not assisted with HOME Program funds, but would qualify as eligible for Match under 24 CFR Part 92. Unless otherwise identified by the provisions in the Notice of Funding Availability (NOFA), TCAP Repayment Funds (TCAP RF) ~~funds~~ and matching contribution on NSP and NHTF Developments must ~~be used~~ meet all criteria to be classified as HOME-Match Eligible Units.

~~(7)~~ **(7) Housing Contract System (HCS)**--The electronic information system established by the Department for tracking, funding, and reporting Department Contracts and Developments. The HCS is primarily used for Direct Loan Programs administered by the Department.

**(8) Land Use Restriction (LURA) Term**--The period commencing on the effective date of the LURA and ending on the date which, at a minimum, is the greater of the loan term or 30 years. The LURA may include ~~both the~~ Federal Affordability Period ~~and, in addition to the~~ State Affordability Period requirements and State restrictive criteria.

**(89) Matching contribution (Match)**--A contribution to a Development from nonfederal sources that may be in ~~the form of~~ one or more of the following forms provided in subparagraphs (A) through (E) of this paragraph:

(A) Cash contribution (grant), except for cash contributions made by investors in a limited partnership or other business entity subject to pass through tax benefits in a tax credit transaction or owner equity (including Deferred Developer Fee); and General Partner advances;

(B) Reduced fees or donated labor from certain eligible contractors, subcontractors, architects, attorneys, engineers, excluding any contributions from a party related to the Developer or Owner;

(C) Net present value of yield foregone from a below market interest rate loan as described in HUD Community Planning and Development (CPD) Notice 97-03;

(D) Waived or reduced fees or taxes from cities or counties not related to the Applicant in connection with the proposed Development; or

(E) Donated land or land sold by an unrelated third party at a price below market value, as evidenced by a third party appraisal.

**(910) Relocation Plan**--A residential anti-displacement and relocation assistance plan ~~which~~ for which subparagraphs (A) and (B) of this paragraph apply:

(A) Includes provisions consistent with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. §§4601-4655), implementing regulations at 49 CFR Part 24, and policy guidance in Real Estate Acquisition and Relocation Policy and Guidance (HUD Handbook 1378) and the TDHCA Relocation Handbook; and in some HOME and NSP funded Developments Section 104(d) of the Housing and Community Development Act of 1974, (as amended), and 24 CFR Part 42 (as modified for NSP); and

(B) Is in form and substance consistent with requirements of the Department.

~~(1011)~~ **Section 234 Condominium Housing Basic Mortgage Limits** (Section 234 Condo Limits)--The per-unit subsidy limits for all MFDL funding. These limits take into account whether or not a Development is elevator served and any local conditions that may make development of multifamily housing more or less expensive in a given metropolitan statistical area. If the high cost percentage adjustment applicable to the 234 Condo Limits for HUD's Fort Worth Multifamily Hub is applicable for all Developments that TDHCA finances through the MFDL Program, ~~and~~then confirmation of that applicability will be included in the applicable NOFA.

~~(1112)~~ **Site and Neighborhood Standards**--HUD requirements for new construction or reconstruction Developments funded by NHTF (24 CFR §93.150) or new construction Developments in HOME (24 CFR §92.202). Proposed Developments that are unable to comply with requirements in 24 CFR §983.57(e)(2) and (3) will not be eligible for HOME or NHTF.

**(13) State Affordability Period**--The LURA Term as described in the MFDL contract and loan documents and as required by the Department in accordance with the State Act which is usually an additional period after the Federal Affordability Period.

~~(1214)~~ **Surplus Cash**--Except when the first lien mortgage is a federally insured HUD ~~or FHA~~ mortgage; which shall be subject to HUD's surplus cash definition, Surplus Cash is any cash remaining:

(A) After the payment of:

- (i) All sums due or currently required to be paid under the terms of any superior lien;
- (ii) All amounts required to be deposited in the reserve funds for replacement;
- (iii) Operating expenses actually incurred by the borrower for the Development during the period with an appropriate adjustment for an allocable share of property taxes and insurance premiums;
- (iv) Recurring maintenance expenses actually incurred by the borrower for the Development during the period; and

- (v) All other obligations of the Development approved by the Department; and
- (B) After the segregation of an amount equal to the aggregate of all special funds required to be maintained for the Development; and
- (C) Excluding payment of:
  - (i) All sums due or currently required to be paid under the terms of any subordinate liens against the property;
  - (ii) Any development fees that are deferred including those in eligible basis; and
  - (iii) Any payments or obligations to the borrower, ownership entities of the borrower, related party entities; any payment to the management company exceeding 5% of the effective gross income; incentive management fee; asset management fees; or any other expenses or payments that shall be negotiated between the Department and borrower.

### **§13.3. General Loan Requirements.**

**(a) Funding Availability.** Direct Loan funds may be made available through a NOFA or other similar governing document that includes the basic Application and funding requirements.

**(b) Oversourced Developments.** Direct Loan funds may not be ~~awarded~~contracted if an underwriting report ~~that has been~~ issued by the Department's Real Estate Analysis Division ~~has become final and~~ concludes ~~that~~ the Development does not need all or part of the MDFL funding for which it has applied because it is ~~over sourced.~~ oversourced, and for which a timely appeal has been completed, as further provided in 10 TAC §1.7 of this title (relating to Appeals Process) or 10 TAC §11.902 of this title (relating to Appeals Process), as applicable.

**(c) Funding Sources.** Direct Loan funds are composed of annual HOME and National Housing Trust Fund (NHTF) allocations from HUD, repayment of TCAP or TCAP-RF loans, HOME Program Income, ~~NSP~~NSP1 Program Income, (NSP1 PI or NSP), and any other similarly encumbered funding that may become available by the Department's Governing ~~Boards~~Board's (Board) action, except as otherwise noted in this chapter. Similar funds include any funds that are ~~required~~identified by the Board to be loaned or granted for the development of multifamily property and are not governed by another chapter in this title, with the exception of State funds appropriated for a specific purpose.

### **(d) Eligible and Ineligible Activities.**

**(1) Eligible Activities.** Direct Loan funds may be used for the predevelopment, acquisition, new construction, reconstruction, rehabilitation, or preservation of affordable housing with suitable amenities, including real property acquisition, site improvements, conversion,

demolition, or operating cost reserves, all subject to applicable HUD guidance. Other expenses, such as financing costs, relocation expenses of any displaced persons, families, businesses, or organizations may be included. MFDL funds may be used to assist ~~distressed~~ Developments previously ~~funded~~awarded by the Department when approved by specific action of the Board. Eligible Activities may have fund source restrictions, or be restricted by a NOFA.

(2) Ineligible Activities. Direct Loan funds may not be used for Adaptive Reuse Developments. MFDL Developments layered with Housing Tax Credits that have elected the income averaging election under Section 42(g)(1)(C) of the Internal Revenue Code may not have more than 15% Market Rate Units.

**(e) ~~While~~Ineligible Costs.** All costs associated with the Development and known by the ~~sponsor~~Applicant must be disclosed as part of the Application. Costs ineligible for reimbursement with Direct Loan funds in accordance with 24 CFR Part 91, Part 92, Part 93, Part 570, and 2 CFR Part 200, as federally required or identified in the NOFA, include but are not limited to:

- (1) Offsite costs;
- (2) Stored Materials;
- (3) Site Amenities;
- (4) Detached Community Buildings;
- (5) Carports and/or garages;
- (6) Parking garages;
- (7) Swimming pools;
- (8) Commercial Space costs;
- (9) Reserve accounts not related to NHTF;
- (10) TDHCA fees;
- (11) Syndication and organizational costs;
- (12) Delinquent fees, taxes, or charges;
- (13) Costs incurred more than 24 months prior to the effective date of the Direct Loan Contract, unless the Application is awarded TCAP RF;

(14) Costs that have been allocated to or paid by another fund source, including but not limited to: Deferred Developer Fee, contingency, and general partner loans and advances;

(15) Deferred Developer Fee;

(16) Bond fees;

(17) Community Facility spaces that are not for the exclusive use of tenants and their guests;

~~(16)~~(18) The portion of soft costs that are allocated to support ineligible hard costs; and

(19) Other costs limited by Award or NOFA, or as established by the Board.

#### **§13.4. Set-Asides, Regional Allocation, and Priorities.**

**(a) Set-Asides.** Specific types of ~~Applications~~Activities or Developments for which a portion of MFDL funds may be reserved in a NOFA will be grouped in Set-Asides. The ~~Supportive Housing~~Soft Repayment Set-Aside, CHDO Set-Aside, and General Set-Aside, as described below, are fixed Set-Asides that will be included in the annual NOFA: (except if CHDO requirements are waived or reduced by HUD). The remaining Set-Asides described below are flexible Set-Asides and are applicable only ~~whenif~~ identified in ~~thea~~ NOFA: flexible Set-Asides are not required to be programmed on an annual basis. The amount of a single award may be credited to multiple Set-Asides, in which case the ~~depleted~~credited portion of funds may be repositioned into an oversubscribed Set-Aside prior to a defined collapse deadline. Applications under any and all Set-Asides may or may not be layered with other Department Multifamily programs except as provided in this section or as determined by the Board to address unique circumstances not addressed by these rules.

(1) Fixed Set-Asides:

(A) ~~Supportive Housing~~Soft Repayment Set-Aside. The ~~Supportive Housing~~Soft Repayment (SH/SR) Set-Aside will be ~~limited by the unencumbered interest revenue generated by multifamily loan payments and any amount under the~~funded primarily with NHTF allocation~~allocations~~ received by the Department ~~and not otherwise programmed.~~ ~~Supportive Housing and.~~ The Soft Repayment may be two independent set-asides in the NOFA, in order to accommodate fund source requirements. The SH/SR Set-Aside is reserved for developments that are not able to support amortizing debt due to higher costs for supportive serviceswith providing Supportive Housing, and/or extremely low-income and rent restrictions: that would not exist otherwise. Soft repayment loans may be structured as deferred payable, deferred forgivable, or Surplus Cash flow loans at an interest rate as low as zero percent. It is the responsibility of the Applicant to account for any Eligible Basis and/or taxable event implications when requesting any of the potential loan structures available in this set-aside. Applicants seeking to qualify under this set-aside must propose Developments that meet either the requirements of clause (i) or (ii)

of this subparagraph:

(i) The Supportive Housing requirements in 10 TAC §11.1(d)(121) including the ~~other~~ underwriting ~~consideration~~considerations for Supportive Housing Developments in 10 TAC §11.302(g)(3) of ~~the~~this title (relating to Underwriting and Loan Policy);; or

(ii) The requirements in subclauses (I) - ~~(III)~~(IV) of this clause, ~~funding exclusively units targeting 30% Area Median Income (AMI) households;~~

~~(I)~~for which all Units assisted with MFDL funds:

(I) Must be available for households earning 30% AMI or less and have rents no higher than the rent limits for extremely low-income tenants in 24 CFR §93.302(b);

(II) ~~Any Units assisted with MFDL funds~~ May not also be receiving any project-based subsidy;

(III) ~~May not be receiving~~ tenant-based voucher or tenant-based rental assistance, to the extent that there are other available Units within the Development that the voucher-holder may occupy; and

~~(III)~~ ~~Units assisted with MFDL~~(IV) May not be restricted to 30% AMI or less by ~~another Department program~~ Housing Tax Credits, or any other fund source.

(B) CHDO Set-Aside. Unless waived or reduced by HUD, a portion of the Department's annual HOME allocation, ~~equal to at least 15%,~~ will be set aside for eligible ~~Community Housing Development Organizations (CHDO)~~CHDOs meeting the requirements of the definition of Community Housing Development Organization ~~found~~ in 24 CFR §92.2 and §13.2(4-)of this chapter. Applicants under the CHDO Set-Aside must be proposing to develop housing ~~in on~~ Development Sites located outside Participating Jurisdictions (PJ), unless the award is made within a Persons with Disabilities (PWD) set-aside, ~~or unless~~ the requirement under Tex. Gov't Code §2306.111(c)(1) has been waived by the Governor as the result of a disaster declaration. CHDO funds are typically available as fully-repayable amortizing debt consistent with §13.8 of this chapter (relating to ~~Debt Loan~~ Structure Policy)and Underwriting Requirements). In instances where an application submitted under the CHDO Set-Aside also ~~qualifies~~would qualify under the ~~SH/SR~~Soft Repayment Set-Aside, ~~CHDO~~ funds under this Set-Aside may be structured in accordance with the ~~SH/SR~~Soft Repayment Set-Aside requirements. A grant for CHDO operating expenses ~~grant~~ may be awarded in conjunction with an award of MFDL funds under ~~the CHDO~~this Set-Aside in accordance with 24 CFR §92.208. Applications under the CHDO Set-Aside may not have a for profit special limited partner within the ownership organization chart.

(C) General Set-Aside. The General Set-Aside is for all other applications that do not meet the requirements of the ~~SH/SR~~Soft Repayment, ~~CHDO set-asides~~, or Flexible Set-Asides, if any. A portion of the General Set-Aside may be ~~repositioned~~reallocated into the CHDO

Set-Aside in order to fully fund a CHDO award that ~~meets or exceeds the set-aside~~remaining amount in the Set-Aside.

(2) Flexible Set-Asides:

(A) 4% HTC and Bond Layered Set-Aside. The 4% and Bond Layered Set-Aside is reserved for Applications ~~meeting all MFDL requirements that are~~ layered with 4% Housing Tax Credits and Private Bond funds ~~that do where the Development Owner does~~ not meet the definition of a CHDO, but that the Application does meet all other MFDL requirements.

(B) Persons with Disabilities (PWD)~~.)~~ Set-Aside. The PWD Set-Aside is reserved for Developments restricting Units for ~~tenants~~residents who meet the requirements of Tex. Gov't Code §2306.111(c)(2)~~.)~~ while not exceeding the number of Units limited by 10 TAC §1.15 of this title (relating to the Integrated Housing Rule). MFDL funds will be awarded in a NOFA for the PWD Set-Aside only ~~to the extent if~~ sufficient funds are available to award ~~to~~ at least one Application within a Participating Jurisdiction under Tex. Gov't Code §2306.111(c)(1).

(C) 9% HTC Layered Set-Aside. The 9% Layered Set-Aside is reserved for Applications ~~meeting all MFDL requirements that are~~ layered with 9% Housing Tax Credits, ~~and that~~ do not meet the definition of CHDO, but that do meet all other MFDL requirements. Awards under this set-aside are dependent on the concurrent award of a 9% HTC allocation; however, an allocation of 9% HTC does not ensure that a sufficient amount of MFDL funds will be available for award.

(D) Additional Set-Asides may be developed, subject to Board approval, to meet the requirements of specific funds sources, or ~~to~~ address Department priorities. To the extent such Set-Asides are developed, they will be reflected in a NOFA or other similar governing document.

**(b) Regional Allocation and Collapse.** All funds received directly from HUD in the annual NOFA will be ~~initially~~ allocated to regions and potentially subregions based on a Regional Allocation Formula (RAF) within the ~~set-asides applicable~~ Set-Asides (unless the funds have already been through a RAF). The RAF methodology may differ by fund source. HOME funds will be allocated in accordance with Tex. Gov't Code Chapter 2306. The end date for the RAF will be identified in the NOFA, but in no instance shall it be less than 30 days from the date a link to the Board approved NOFA or NOFA Amendment is published on the Department's website.

(1) After expiration of the RAF, remaining funds within each respective Set-Aside may collapse but may still be available within set-asides as on an end date identified in the NOFA. ~~Remaining funds within one or more set-asides may collapse in accordance with the NOFA.~~ All Applications received prior to these collapse period deadlines will continue to hold their priority unless they are withdrawn, terminated, suspended, or funded.



(2) Funds remaining after expiration of the ~~RAF~~Set-Asides on the end date identified in the NOFA, which have not been requested in the form of a complete Application, ~~will~~may be made available statewide on a first-come first-served basis to Applications submitted after the collapse dates, as further described in the NOFA.

(3) In instances where the RAF would result in regional or subregional allocations insufficient to fund an Application, the Department may use an alternative method of distribution, including an early collapse, revised formula or other methods as approved by the Board, and reflected in the NOFA.

**(c) Priorities for the Annual NOFA.** Complete Applications received during the period of the RAF will be prioritized for review and recommendation to the Board, ~~to the extent that~~ funds are available both in the region and in the Set-Aside under which the Application is received. If insufficient funds are available in a region to fund all Applications then the oversubscribed Applications will be evaluated only after the RAF and/or Set-Aside collapse and in accordance with the additional priority levels below, unless an Application received earlier is withdrawn or terminated. If insufficient funds are available within a region or Set-Aside, the Applicant may request to be considered under another Set-Aside if they qualify, prior to the collapse. Applications will be reviewed and recommended to the Board ~~to the extent~~ funds are available in accordance with the order of prioritization described in paragraphs (1) - (3) of this subsection.

(1) **Priority 1:** Applications not layered with current year 9% Housing Tax Credits (HTC) that are received prior to the Market Analysis Delivery Date as described in 10 TAC §11.2 of this title (relating to Program Calendar for Housing Tax Credits). Priority 1 Applications ~~will~~may be prioritized based on score within their respective Set-Aside ~~and subregion or region during the RAF for a certain time period to the extent that two or more Applications are received in the same set aside that request less than or equal to the amount available in the subregion or region. Once the RAF period has ended, Applications will be reviewed on a first come first served basis within their set aside, or, for certain populations, or for certain geographical areas, as reflected~~further described in the NOFA.

(2) **Priority 2:** Applications layered with current year 9% HTC will be prioritized based on their recommendation status and score for an HTC allocation: under the provisions of the Qualified Allocation Plan (QAP). All Priority 2 applications will be deemed received on the Market Analysis Delivery Date ~~as described identified in 10 TAC §Chapter 11.2 of this title (relating to Program Calendar for Housing Tax Credits). In order for an MFDL application layered with 9% HTC to be considered complete, Applications for both programs must be timely received.~~the QAP. Priority 2 applications will be recommended for approval of the MFDL award at the same meeting when the Board approves the 9% HTC allocations. Applications ~~that are on the wait list for a 9% HTC allocation~~allocations are not guaranteed the availability of MFDL funds. ~~If the applicable NOFA is over-subscribed for MFDL funds, the Applicant will be notified and may amend their Application to accommodate another fund source, as further provided in §13.5(f) of this chapter.~~

(3) **Priority 3**: Applications that are received after the Market Analysis Delivery Date ~~as described in 10 TAC §11.2 of this title (relating to Program Calendar for Housing Tax Credits) for 9% HTC Applications on~~ identified in the QAP will generally have a first come first served basis for any remaining funds, until the final deadline identified in the annual NOFA. However, the NOFA may describe an additional prioritization period for certain populations, or for certain geographical areas. Applications layered with 9% HTC that are on the waitlist after the late July Board meeting will be considered Priority 3 Applications; if the Applicant receives an allocation later in the year, the Application Acceptance date will be the date the Commitment Notice is issued, and MFDL funds are not guaranteed to be available.

(d) **Other Priorities.** The Board may set additional priorities for the annual NOFA, and for one time or special purpose NOFAs.

### **§13.5. Award Process.**

(a) **Notice of Funding Availability (NOFA).** All MFDL funds from the annual allocation will be distributed pursuant to the terms of a published NOFA that provides the specific collapse dates and deadlines as well as set-aside and RAF amounts applicable to the MFDL program, along with scoring criteria, priorities, award limits, and other Application information. Other funds may be distributed by NOFA or through other lawful methods approved by the Board. ~~Set-aside, RAFsides, RAFs,~~ and total funding amounts may increase or decrease in accordance with the provisions herein without further Board action as long as the NOFA itself did not require Board action.

(b) **Applications.** MFDL Applicants must follow the applicable requirements in 10 TAC Chapter 11 Subchapter C (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules).

(c) **Application Acceptance Date** ~~of Receipt~~. Applications will be considered received on the business day of receipt, unless a different time period is described in the Department's rules or NOFA. If an Application is received after 5:00 p.m., Austin local time, it will be determined to have been received on the following business day. Applications received on a non-business day will be considered received on the next day the Department is open. Applications will be considered complete at the time all Application materials, required third party reports and application fee(s); ~~in addition to the application,)~~ are received by the Department. Within certain Set-Asides or priorities, the date of receipt may be fixed, regardless of the earlier actual date a complete Application is received; if so specified in the Department's rules or NOFA. If multiple Applications ~~are received on~~ have the same Application Acceptance Date, in the same region; (as applicable), and within the same Set-Aside, then score and tiebreaker factors, as described in §13.6 of this chapter (relating to Selection Criteria) for MFDL or 10 TAC §11.7 and §11.9 of this title (relating to Tie Breaker Factors and Competitive HTC Selection Criteria, respectively) for Applications layered with 9% HTC, will be used to determine the Application's rank.

(e) **Applications.** ~~MFDL Applicants must follow the applicable requirements in 10 TAC Chapter~~

~~11 Subchapter C, (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules). Failure to timely respond to any notice of Deficiency will result in suspension of the Application and reestablishment of the date of receipt of the Application to the final date at which the cure to the notice was received by the Department. If the date of receipt of the Application is reestablished, an Application could be de-prioritized in favor of another Application received prior to the new submission date.~~

**(d) Market Analysis.** Applications proposing Rehabilitation that request MFDL as the only source of Department funding may be exempted from the Market Analysis requirement in 10 TAC §11.205(2) (relating to Required Third Party Reports) if the Development's rent rolls for the most recent six months reflect occupancy of at least 80% of all habitable Units.

**(e) Environmental Clearance.** ~~The Department shall use its best efforts to conclude the environmental review of the property expeditiously.~~ All Applicants for MFDL funds, ~~regardless of whether or not the Development Site is in a Participating Jurisdiction,~~ must include the following language in the purchase contract or site control agreement: ~~"(1) "~~Notwithstanding any other provision of this Contract, Purchaser shall have no obligation to purchase the Property, and no transfer of title to the Purchaser may occur, unless and until the Department has provided Purchaser and/or Seller with a written notification that: (A) It has completed a federally required environmental review and its request for release of federal funds has been approved and, subject to any other Contingencies in this Contract, (i) the purchase may proceed, or (ii) the purchase may proceed only if certain conditions to address issues in the environmental review shall be satisfied before or after the purchase of the property; or (B) It has determined that the purchase is exempt from federal environmental review and a request for release of funds is not required."

**(f) Oversubscribed Funds for 9% HTC-Layered Applications.** ~~Applications also requesting 9% HTC may have the ability to revise financing prior to award.~~ Should MFDL funds be oversubscribed in a Set-Aside or for a fund source that has geographic limitations within a Set-Aside, Applications concurrently requesting 9% HTC will be notified and may amend their Application to accommodate another fund source and make changes that still meet threshold requirements in 10 TAC Chapter 11 and 13 of this title, and do not impact scoring under 10 TAC Chapter 11 of this title. The Department will provide notice to all impacted Applicants in the case of over-subscription, which will include a deadline for response. If MFDL funds become available between the Market Analysis Delivery Date, and the last Board meeting in July, they will not be reserved for 9% HTC-layered Applications, unless the reservation is described in the NOFA.

**(g) Source of Direct Loan Funds.** When determining the source of funds that an Application will receive when recommended for an award ~~from a set-aside that has multiple sources of funds,~~ the Department will ~~prioritize~~select sources of funds for recommended Applications ~~in the order described, as provided~~ in paragraphs (1) ~~–(3–(4) of this subsection, which may be limited by the type of activity an Application is proposing and/or the Development Site of an Application. The funds may further be prioritized or assigned to an Application based on limiting repayment risk and other considerations:.~~

(1) Federal- The Department will generally select the recommended source of funds that have to award to an Application in the order described in subparagraphs (A) – (C) of this paragraph, which may be limited by the type of activity an Application is proposing or the proposed Development Site of an Application:

(A) Federal funds with commitment and expenditure deadlines; will be selected first;

(2B) Federal funds that do not have commitment and expenditure deadlines; will be selected next; and

(3C) Nonfederal funds that do not have commitment and expenditure deadlines; will be selected last; however,

(2) The Department may also consider repayment risk or ease of compliance with other fund sources when assigning the source of funds to recommend for award to an Application;

(3) The Department may move to the next fund source prior to exhausting another selection; and

(4) The Department will make the final decision regarding the fund source to be recommended for an award (within a Set-Aside that has multiple fund sources), and this recommendation may be not be appealed.

**(h) Eligibility Criteria- and Determinations.** The Department will evaluate ~~the Application Applications received under the Annual NOFA~~ for eligibility and threshold ~~at the time of full Application~~ pursuant to the requirements of this chapter and Chapter 11 of this title (relating to the Qualified Allocation Plan). The Department may terminate the Application if there are changes ~~to the Application~~ at any point prior to MFDL loan closing that would have had an adverse effect on the score and ranking order ~~and of the Application~~ that would have resulted in the Application being ranked below another Application ~~in received prior to the ranking, the Department may terminate the subject~~ Application.

(1) Applicants requesting MFDL as the only source of Department funds ~~may~~must meet the Experience Requirement ~~under 10 TAC §11.~~ as provided in either subparagraph (A) or (B) of this paragraph:

(A) The Experience Requirement as provided in §11.204(6) of this title (relating to Required Documentation for Application Submission); or

(B) Alternatively by providing evidence of the acceptable documentation listed in §11.204(6)(i)-(ix) of this title evidencing the successful development, and operation for at least five years, of the successful operation, of a project or projects with at least twice as many affordability restricted Units as requested in the Application.

~~(2)~~ (2) The Executive Director or authorized designee must make eligibility determinations for Applications for Developments previously given awards that meet the criteria in subparagraph (A) or (B) of this paragraph regardless of available fund sources:

(A) Received an award of funds for the Development from the Department, or where within 15 years preceding the Application Acceptance Date; or

(B) Started or completed construction has already started or been completed, regardless of fund source, and are not proposing acquisition and/or rehabilitation, must be found eligible by the Board. The Board may find other applicants eligible for good cause such as Developments assisted by the Department that have encountered adverse factors beyond their control that could materially impair their ability to provide the affordable housing.

(3) An Application that requires a finding of an eligibility by the Board determination must identify that fact prior to, or in their Application so that the staff may present the matter to the Board for an eligibility determination; may be made subject to the Applicant's appeal rights under 10 TAC §11.902 or 10 TAC §1.7 of this title, as applicable. A finding of eligibility under this section does not guarantee an award. In general, these applications Applications requiring eligibility determinations generally will not be funded with HOME, or NHTF/NSP funds.

(A) Requests for eligibility determinations under this paragraph must be received with the Application, so that staff may present the matter to the Board for an eligibility determination, and under this subsection will not be considered more than 3060 calendar days prior to the first Application Acceptance Date published in the NOFA, for the Set-Aside in which the Applicant plans to apply.

(B) Criteria for the Board to consider would consideration include clauses (i) - (iii) of this subparagraph:

(i) Evidence of circumstances beyond the Applicant's control which that could not have been prevented by timely start of construction with appropriate due diligence; or

(ii) Force Majeure events; (not including weather events); and

(iii) Evidence that no further exceptional conditions exist that will delay or cause further cost increases.

(C) Criteria for consideration shall not include weather events, typical construction or financing delays.

(D) Applications for Developments that previously given awards received an award from the Department that have not yet achieved Construction Completion, Applications in within 15 years preceding the Application Acceptance Date will be evaluated at no more than the amount of Developer Fee proposed in the original Application the last time that

the Department published an Underwriting Report. MFDL funds may not be used to fund increased Developer Fee, regardless of the allowability of the increase under other Department rules.

~~(i)~~ **Effective rules and contractual terms.** The contractual terms of an award will be governed by and reflect the rules in effect at the time of Application; ~~provided,~~ however, ~~that~~ any changes in federal requirements will be reflected in the contractual terms ~~and.~~ Further provided, that if, after award, but prior to execution of such Contract, there are new rules in effect, the ~~Applicant~~ Direct Loan awardee may elect to be governed by the new rules—, provided the Application would continue to have been eligible for award under the rules in effect at the time of Application.

### **§13.6. Scoring Criteria.**

The criteria identified in paragraphs (1) - (7) of this section will be used in the evaluation and ranking of Applications ~~to the extent that~~ if other Applications ~~were received on~~ have the same ~~date and Application Acceptance Date,~~ within the same Set-Aside, and having the same prioritization. There is no rounding of numbers in this section, unless rounding is explicitly indicated for that particular calculation or criteria. The scoring items used to calculate the score for a 9% HTC Layered Application will be utilized for scoring for an MFDL Application, and evaluated in the same manner, except as specified below. Scoring criteria in Chapter 11 of this title will always be superior to Scoring Criteria in this chapter ~~to the extent that~~ if an MFDL Application is also concurrently requesting 9% ~~housing tax credits~~ HTC:

**(1) Opportunity Index.** Applicants eligible for points under 10 TAC §11.9(c)(4) (relating to the Opportunity Index) (7 points).

**(2) Resident Services.** Applicants eligible for points under 10 TAC §11.9(c)(3)(A) (relating to Resident Services) (~~9~~10 points) and Applicants eligible for points under 10 TAC §11.9(c)(3)(B) (relating to Resident Services) (1 point).

**(3) Underserved Area.** Applicants eligible for points under 10 TAC §11.9(c)(5) (relating to Underserved Area) (up to 5 points).

**(4) Subsidy per Unit.** An Application that caps the per MFDL eligible cost per Unit subsidy limit below Section 234 Condo Limits or HUD 221(d)(4) statutory limits (as applicable) for all Direct Loan Units regardless of Unit size at:

(A) \$100,000 per MFDL eligible cost per Unit (4 points).

(B) \$80,000 per MFDL eligible cost per Unit (8 points).

(C) \$60,000 per MFDL eligible cost per Unit (10 points).

**(5) Rent Levels of ~~Tenants~~Residents.** Except for Applications submitted under the Soft Repayment Set-Aside, an Application may qualify to receive up to 13 points for placing the following rent and income restrictions on the proposed Development for the entire Federal and State Affordability Period.~~Periods.~~ These Units may~~must~~ not be restricted to 30% or less of AMGIAMI by another fund source.~~;~~ however, layering on other HTC Units may be considered for scoring purposes.

(A) At least 20% of all low-income Units at 30% or less of AMGIAMI (13 points);

(B) At least 10% of all low-income Units at 30% or less of AMGIAMI or, for a Development located in a Rural Area, 7.5% of all low-income Units at 30% or less of AMGIAMI (12 points); or

(C) At least 5% of all low-income Units at 30% or less of AMGIAMI (7 points).

~~(6) Tenant Populations with Special Housing Needs. An Application may qualify to receive two points by serving Tenants with Special Housing Needs. Points will be awarded as described in subparagraphs (A)–(B) of this paragraph. If pursuing these points, Applicants must try to score first with subparagraph (A) and then subparagraph (B), both of which pertain to the requirements of the Section 811 Project Rental Assistance Program (Section 811 PRA Program) (10 TAC Chapter 8).~~

~~(A) An Applicant or Affiliate that Owns or Controls an Existing Development that is eligible to participate in the Department's Section 811 PRA Program will do so in order to receive two points. In order to qualify for points, the Existing Development must commit to the Section 811 PRA Program at minimum 10 Section 811 PRA Program Units, unless the Integrated Housing Rule, 10 TAC §1.15, or the 811 Program Rental Assistance Rule (811 Rule), 10 TAC Chapter 8, limits the Development to fewer than 10 Section 811 PRA Program Units. The same Section 811 PRA Program Units cannot be used to qualify for points in more than one Application. The Applicant or Affiliate will comply with the requirements of 10 TAC Chapter 8.~~

~~(B) An Applicant or Affiliate that does not meet the Existing Development requirements of 10 TAC Chapter 8 but still meets the requirements of 10 TAC §8.3 (relating to Participation as a Proposed Development) is eligible to receive two points by committing Units in the proposed Development to participate in the Department's Section 811 PRA Program. In order to be eligible for points, Applicants must commit at least 10 Section 811 PRA Program Units in the proposed Development for participation in the Section 811 PRA Program unless the Integrated Housing Rule, 10 TAC §1.15, or the 811 Program Rental Assistance Rule (811 Rule), 10 TAC Chapter 8, limits the Development to fewer than 10 Section 811 PRA Program Units. The same Section 811 PRA Program Units cannot be used to qualify for points in more than one Application. The Applicant will comply with the requirements of 10 TAC Chapter 8.~~

~~(7) Tiebreaker. In the event that two or more Applications receives~~**(6) Tiebreaker.** In the event that two or more Applications receive the same number of points based on the scoring criteria above, staff will recommend for award the Application that proposes the greatest

percentage of 30% ~~AMGIAMI~~ MFDL Units within the Development that would convert to households at 15% ~~AMGIAMI~~ in the event of a tie as represented in the Tiebreaker Certification submitted at the time of Application.

### **§13.7. Maximum Funding Requests and Minimum Number of MFDL Units.**

(a) **Maximum Funding Request.** The maximum funding request for ~~all applications~~ an Application will be identified in the NOFA, and may vary by development type, set-aside, or fund source.

(b) **Maximum New Construction or Reconstruction Per-Unit Subsidy Limits.** While more restrictive per-Unit subsidy caps are allowable and incentivized as point scoring items in §13.6 of this chapter (relating to Scoring Criteria), the per-Unit subsidy limit for a Development will be determined by the Department as the 234 Condo limits with the applicable high cost percentage adjustment in effect at the time start date of ~~application~~ the NOFA, which are the maximum MFDL eligible cost per-Unit subsidy limits that an Applicant may use to determine the amount of MFDL funds ~~or combined with~~ other federal funds that may subsidize a Unit. ~~Stricter per unit subsidy~~

(c) **Maximum Rehabilitation Per-Unit Subsidy Limits.** The MFDL eligible cost per-Unit to rehabilitate a Development may not exceed the HUD 221(d)(4) statutory limits ~~are allowable and incentivized as point scoring items in §13.6 of this title (relating to Scoring Criteria), subject to high cost factors.~~

(d) **Minimum Number of MFDL Units.** The minimum required number of MFDL Units will be determined by the MFDL per-Unit subsidy limits as well as and the cost allocation analysis—ensuring that, which will ensure the amount of MFDL Units as a percentage of total Units is equal to or greater than the percentage of MFDL funds requested as a percentage of total eligible MFDL Development costs ~~will determine the amount of MFDL units required.~~

### **§13.8. Loan Structure and Underwriting Requirements.**

(a) **Loan Structures.** Except for awards made under the ~~SH/SR~~ Soft Repayment Set-Aside, all Multifamily Direct Loans awarded under the annual NOFA will be underwritten as fully repayable (must pay) at an interest rate specified in the NOFA and approved by the Board, and a 30 year amortization with a loan term that matches the term of any superior loans (within six months) at the time of Application. If the Department determines that the Development does not support this structure, the Department may recommend an alternative that makes the Development feasible under all applicable sections of this chapter and 10 TAC §11.302 (relating to Underwriting Rules and Guidelines), ~~and subsection (c) of this section~~ or may conclude the Development is infeasible and recommend denial. The interest rate, amortization period, and term for the loan will be fixed by the Board at the time of award, and can only be amended prior to loan closing by the process in 10 TAC §13.12 ~~of this title~~ (relating to Pre-Closing Amendments to Direct Loan Terms).

(b) **Closing Memo to Underwriting Report.** Any changes to the total development cost, expenses,



income, and/or other sources of funds from time of the publication of the initial Underwriting Report at the time of award to the time of loan closing, must be reevaluated by Real Estate Analysis staff, who will typically publish a Closing Memo to the Underwriting Report, and may recommend changes to the principal amount and/or the repayment structure for the Multifamily Direct Loan that will allow the Department to mitigate any increased risk: or to ensure that the Development is not oversubsidized. Where the Department determines such risk is not adequately mitigated, the award may be terminated or reconsidered by the Board. Increases in the principal amount or scheduled payment ~~amount~~amounts of any superior loans ~~after~~that cause the ~~initial~~total DCR to decrease by more than .05 require approval by the Board. If the changes cause the total DCR to no longer comply with §11.302 of this title (relating to Underwriting Report ~~must~~Rules and Guidelines), the award may be approved by the Boardsubject to termination.

**(c) Criteria for Construction-to-Permanent Loans.** Direct Loans awarded through the Department must adhere to the following criteria as identified in paragraphs (1) - (7~~9~~) of this subsection if being requested as construction-to-permanent loans: for which the interest rate will be specified in the NOFA and approved by the Board:

(1) The ~~term for permanent loans~~construction term for MFDL loans shall be coterminous with any superior construction loan(s), but no greater than 36 months. In the event the MFDL loan is the only loan with a construction term, the construction term shall be 24 months;

(2) No interest will accrue during the construction term;

(3) The permanent term for MFDL loans at the time of award shall be no less than 10 years and no greater than 40 years and the amortization schedule shall be 30 years. The Department's loan must mature at the same time or within six months of the shortest term of any senior debt so long as neither exceeds 40 years and six months;

(24) Amortized loans shall be structured with a regular monthly payment beginning on the first day of the 25th full month following the actual date of loan closing and continuing for the loan term;

(35) If the first lien mortgage is a federally insured HUD ~~or FHA~~ mortgage, the Department may approve a loan structure with annual payments beginning the following year after the end of the construction term payable from surplus cash flow as defined by HUD provided that the ~~debt coverage ratio~~DCR, inclusive of the loan, continues to meet the requirements in this ~~subchapter~~title;

(46) If the proposed first lien is a federally insured HUD ~~or FHA~~ mortgage that requires the Direct Loan to be subject to 75% of surplus cash flow as defined by HUD, staff will require the debt service coverage ratio on both the ~~federally~~HUD insured loan and the Department's loan - as restricted to 75% of Surplus Cash Flow - to continue to meet the minimum 1.15 DCR in accordance with 10 TAC §11.302(d)(4)(D) (relating to ~~Underwriting Rules~~Acceptable Debt Coverage Ratio Range), and ~~Guidelines~~);may require payment of the remaining 25% from

other sources;

(~~57~~) Loans shall be secured with a deed of trust with a permanent lien position that is superior to any other sources for financing including hard repayment debt that is in an amount less than or equal to the Direct Loan amount and superior to any other sources that have soft repayment structures, non-amortizing balloon notes, have deferred forgivable provisions, or in which the lender has an identity of interest with any member of the Development Team. Parity liens may only be considered with USDA Rural Development;

(~~68~~) If the Direct Loan amounts ~~to~~are more than 50% of the Total Housing Development Cost, except for Developments also financed through the USDA §515 program, the Application must include ~~the~~ documents ~~as~~ identified in either subparagraphs (A) ~~or~~ (B) of this paragraph:

(A) A letter from a Third Party CPA Certified Public Accountant verifying the capacity of the Applicant, Developer, or Development Owner to provide at least 10% of the Total Housing Development Cost as a short term loan for the Development; or

(B) Evidence of a line of credit or equivalent tool in the sole determination of the Department equal to at least 10% of the Total Housing Development Cost from a financial institution that is available for use during the proposed Development activities; and

(~~79~~) If the Direct Loan is the only source of permanent Department funding for the Development, the Development Owner must provide all items required in subparagraphs (A) and (B) of this paragraph:

(A) Equity in an amount not less than ~~20~~10% of Total Housing Development Costs; however,

(i) An Applicant for Direct Loan funds may request Board approval to have an equity requirement of less than ~~20%.~~10% that would not have to meet the waiver requirements in 10 TAC §11.207 of this title. The request must specify the proposed equity that will be provided and provide support for why that reduced level of equity will be sufficient to provide reasonable assurance that such owner will be able to complete construction and stabilization timely. ~~This support case will be reviewed by staff, and staff will provide their assessment and recommendation to the Board. The Applicant's support should include all mitigating or supporting factors including, by way of example, and not by way of limitation, performance bonds or collateral, lines of credit, or intercreditor agreements.~~; and

(ii) "Sweat equity" or other forms of equity that cannot be readily accessed will not be allowed to count toward the equity requirement.; and

~~(B) For Applicants proposing new construction, an "as completed" appraisal that reflects the prospective value of the completed property consistent with rent and income restrictions-~~

~~proposed in the Application pursuant to 10 TAC §11.304 (relating to Appraisal Rules and Guidelines) which results in total repayable loan to value of not greater than 80% must be provided.~~

~~(C) For Applicants proposing rehabilitation, the "as is" appraisal required by 10 TAC §11.205(4) (relating to Required Third Party Reports) may meet this requirement without needing an "as-completed" appraisal provided the loan to value is not greater than 80%.~~

(B) Evidence submitted through the Application Submission Process that shows the Direct Loan amount is not greater than 80% of the Total Housing Development Costs.

**(d) Evaluations.** All Direct Loan Applicants ~~where other~~ in which third-party financing entities are part of the sources of funding must ~~submit~~ include a pro forma and lender approval letter evidencing review of the Development and the Principals as described in 10 TAC §11.9(e)(1) of this title (relating to Competitive HTC Selection Criteria). Where no third-party financing exists, the Department reserves the right to procure a third-party evaluation which will be required to be prepaid by the Applicant.

~~(e)~~ **(e) Criteria for Construction Only Loans.** Direct Loans through the Department must adhere to the following criteria as identified in paragraphs (1) - (3) of this subsection if being requested as construction only loans:

(1) The term of the construction loan must be coterminous with any superior construction loan ~~(s)~~, but no greater than 36 months. In the event that the Direct Loan is the only construction loan, the term may not exceed 24 months;

(2) The interest rate will be specified in the NOFA and approved by the Board; and

(3) Up to 50% of the construction loan may be advanced at loan closing should there be sufficient costs to reimburse that amount.

**(f) Criteria for Permanent Refinance Loans.** If the Department's Loan will repay existing debt, the first payment will be due the month after the month of loan closing, unless the Board approves another date.

**(g) Pass-Through Loans.** Department funds may not be used as pass-through financing. The Department's Borrower must be the Development Owner.

### **§13.9\_ Construction Standards\_**

All Developments financed with Direct Loans will be required to meet at a minimum the applicable requirements in Chapter 11 of this title relating to the Qualified Allocation Plan. In addition, Developments must meet all applicable state and local codes, ordinances, and standards; the 2012 ~~2015~~ International Existing Building Code (IEBC) or International Building

Code (IBC)), as applicable. ~~Rehabilitation~~ Should IEBC be more restrictive than local codes, or should local codes not exist, then the Development must meet the requirements imposed by IEBC or IBC, as applicable. Developments must also meet the requirements in ~~paragraphs (1)–(6)~~subsections (a) - (e) of this section:

~~(1)~~(a) Third-Party Recommendations. Recommendations made in the Environmental Site Assessment (§11.305 of this title) and any ~~Physical Conditions Assessment~~Scope of Work and Cost Review (§11.306 of this title) with respect to health and safety issues, life expectancy of major systems (structural support; roofing; cladding and weatherproofing; plumbing; electrical; and heating, ventilation, and air conditioning) must be implemented;

~~(2)~~(b) Lead and Asbestos Testing. For properties originally constructed prior to 1978, the ~~Physical Conditions Assessment and rehabilitation~~Scope of Work and Cost Review and scope of work must be provided to the party conducting the lead-based paint and/or asbestos testing, and the ~~rehabilitation~~Development Owner must implement the mitigation recommendations of the testing report;

~~(3) All accessibility requirements pursuant to 10 TAC Chapter 1, Subchapter B must be met;~~

~~(4)~~(c) Broadband Infrastructure. The broadband infrastructure requirements described in 24 CFR §92.251(a)(2)(vi) or (b)(1)(x) for HOME, NSP, or TCAP RF; or 24 CFR §93.301(a)(2)(vi) or 24 CFR §93.301(b)(2)(vi) for NHTF, as applicable;

~~(5)~~(d) Properties in Catastrophe Areas. Developments located in the designated catastrophe areas specified in 28 TAC §5.4008 must comply with 28 TAC §5.4011 (relating to Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made On and After January 1, 2008); and

~~(6) Should IEBC be more restrictive than local codes, or should local codes not exist, then the Development must meet the requirements imposed by IEBC.~~

§13.10(e) Minimum Construction Standards. Rehabilitation Developments funded with federal sources may also be required to meet Minimum Rehabilitation Standards, as required by HUD.

### §13.10. Development and Unit Requirements.

(a) Proportionality. The bedroom/bathroom/amenities and square footages for Direct Loan Units must be comparable to the bedroom/bathroom/amenities and square footages for the total number of Units in the Development based on the amount of Direct Loan funds requested as a percentage of total ~~Direct Loan~~MFDL eligible costs. As a result of this requirement, the Department will ~~always~~ use the Proration Method as the Cost Allocation Method in accordance with CPD Notice 16-15, except as described in subsection (b) of this section. Additionally, the amount of Direct Loan funds requested cannot exceed the per-unit subsidy limit ~~included~~described in this chapter or in the applicable NOFA. Direct Loan Units must be provided

as a percentage of each Unit Type, in proportion to the percentage of total costs included in the Direct Loan.

**(b) Floating Units.** For HOME, NSP, and TCAP RF, Direct Loan Units must float throughout the Development unless the Development also contains public housing Units that will receive Operating Fund or Capital Fund assistance under Section 9 of the 1937 Act as defined in 24 CFR §5.100. For NHTF, Direct Loan Units must float throughout the Development, except as prohibited by 24 CFR §93.203. Floating Direct Loan Units may only float among the Units as described in the Direct Loan Contract and Direct Loan LURA, or as specifically approved in writing by the Department.

**(c) Unit Match Requirements.**

(1) For a Development funded with NSP and/or NHTF, a required matching contribution will result in at least one HOME Match-Eligible Unit, in addition to the NSP and/or NHTF Units.

(2) For a Development funded with HOME, a required matching contribution may or may not result in a HOME Match-Eligible Unit, beyond the Department's HOME assisted Units.

(3) For a Development funded with TCAP RF in the annual NOFA, a matching contribution in addition to the Match that the Department counts from the TCAP RF investment will result in some amount of TCAP RF assisted Units being considered HOME Match-Eligible Units.

**(d) Minimum Affordability Period.** The minimum affordability period for all Direct Loan Units awarded under a NOFA will match the greater of the term of the loan, or 30 years unless a lesser period is approved by the Board ~~and when assisting distressed developments.~~ The Department reserves the right to extend the Affordability Period for Developments that fail to meet Program requirements.

**(e) Restricted Units.** If the Department is the only source of permanent funding for the Development by virtue of equity from HTC and MFDL funding, all Units must be income and rent restricted— under a combination of HTC and Direct Loan LURAs, regardless of the amount of deferred Developer Fee as a permanent source. If the MFDL funding is the only source of permanent funding for the Development, all Units must be income and rent restricted by the Direct Loan LURA, and all costs must be MFDL eligible, regardless of the amount of deferred Developer Fee as a permanent source.

**(f) Income Levels Committed at Time of Application.** If the Direct Loan funds are ~~layered~~ used in a 9% or 4% HTC-Layered Development that is electing Income Averaging to qualify under IRC §42, the Direct Loan Units required by the LURA must continue to be provided at the income levels committed at the time of Application. Unit designations may not change to meet Income Averaging requirements.

### **§13.11. Post-Award Requirements.**

~~(a)~~ Direct Loan awardees must ~~execute an~~ satisfactorily complete the following Post-Award Letter and Loan Term Sheet provided by the Department within 30 calendar days ~~Requirements after receipt of the letter. The Award Letter and Loan Term Sheet will be conditional in nature and provide a basic outline of the terms and conditions approved by the Board.~~

~~(b)~~ approval date. If a Direct Loan award is declined by the Direct Loan awardee and returned after Board approval, or if the ~~Applicant~~ Direct Loan awardee or Affiliates fail to timely enter into the Contract, close the loan, begin and complete construction, or leave a portion of the Direct Loan award unexpended, penalties may apply under 10 TAC §11.9(f) (relating to Competitive HTC Selection Criteria)), and/or the Department may prohibit the Applicant and all Affiliates from applying for MFDL funds for a period of two years.

~~(c)~~ (b) Extensions to the benchmarks in paragraphs (1) - (4) and (7) of this subsection may only be approved by the Executive Director or authorized designee in accordance with 10 TAC §13.12 or 10 TAC §13.13 of this chapter, as applicable.

(1) Award Letter and Loan Term Sheet (ALLTS). If provided, Direct Loan awardees must execute and return to the Department an Award Letter and Loan Term Sheet provided by the Department within 15 calendar days after receipt. The ALLTS will be conditional in nature, and provide a basic outline of the terms and conditions approved by the Board.

(2) Environmental Clearance. In order to obtain environmental clearance, Direct Loan awardees must submit a fully completed environmental review (if applicable) including any applicable reports to the Department within 90 calendar days after ~~of~~ the Board approval date. If the awardee was contemporaneously awarded 9% HTC and selected Readiness to Proceed points under 10 TAC §11.9(c)(8), this period is 14 calendar days of the Board approval date. Applicants or Direct Loan awardees that commit any choice limiting activities as defined by HUD in 24 CFR Part 58 prior to obtaining environmental clearance may lead will be subject to termination of the Direct Loan award.

~~(d)~~ (3) Contract Execution. After a Development receives environmental clearance (if applicable), the Department will draft a Contract to be emailed to the Direct Loan awardee. Direct Loan awardees must execute and return a Contract to the Department within 60 days of environmental clearance being obtained, or, if environmental clearance is not required, within 60 30 calendar days after receipt of the Board approval date Contract.

~~(e)~~ (4) Loan Closing and Construction Commencement. Loan closing must occur and construction must begin no later than three on or before the date described in the Contract and ALLTS. If construction has not commenced within 12 months from the effective date of the Contract. Effective Date, the award may be terminated.

~~(f)~~ (5) Quarterly Construction Status Reports. The Development Owner is required to submit

quarterly Construction Status Reports to the Asset Management Division as described and by the deadlines specified in 10 TAC §10.402(h) of this title (relating to ~~Housing Tax Credit and Tax Exempt Bond Developments~~Construction Status Report).

~~(g)~~**6) Mid-Construction Development Inspection Letter.** In addition to any other ~~requirements~~obligations required as the result of any other Department funding sources, the Development Owner must submit a Mid-Construction Development Inspection Request once the Development has met 25% construction completion as indicated on the G703 Continuation Sheet: or HUD equivalent form. Department inspection staff will issue a Mid-Construction Development Inspection Letter that confirms ~~that~~ work is being done in accordance with the applicable codes, the construction contract, and construction documents. Regardless of how Direct Loan funds are allocated among acquisition, Hard, and Soft costs, up to 50% of the Direct Loan award ~~will~~may be released prior to issuance of the Mid-Construction Development Inspection Letter, with the remaining 50% available for distribution in accordance with the percentage of Construction Completion.

~~(h)~~**7) Construction Completion.** Construction must be completed, as reflected by the Development's certificate(s) of occupancy ~~and~~(if applicable), Certificate of Substantial Completion (AIA Form G704), and issuance of a final development inspection request must be submitted toClosed Final Development Inspection Letter by the Department within ~~18~~the construction term of any superior construction loan(s) or 24 months of the actual loan closing date if no superior construction loan(s) exist, with the repayment period beginning at the same time as the repayment on any superior permanent loan(s) or on the first day of the 25th month following the actual date of loan closing: if no superior permanent loan(s) exist, unless extended in accordance with applicable provisions in §13.12 or §13.13 of this chapter. ~~The final development inspection letter~~Closed Final Development Inspection Letter issued by the Department will verify committed amenities have been provided and confirm compliance with all applicable accessibility requirements:–

~~(i) Receipt of a Closed Final Development Inspection Letter, indicating that all deficiencies identified in the Final Inspection Letter have been corrected, must occur within 24 months of the actual date of loan closing;~~ this letter may include deficiencies that require resolution. The Final Development Inspection may be conducted concurrently with a Uniform Physical Condition Standards (UPCS) inspection. However, any letters associated with a UPCS inspection will not satisfy the Closed Final Development Inspection Letter ~~requirement.~~ required by this subsection.

~~(j) Extensions to the benchmarks in subsections (a)–(i) of this section may only be approved by the Executive Director or authorized designee in accordance with §13.12 or §13.13 of this chapter as applicable;~~

~~(k)~~**8) Initial Occupancy.** Initial occupancy of all MFDL assisted Units by eligible ~~tenants~~households shall occur within six months of the final Direct Loan draw. Requests to extend the initial occupancy period must be accompanied by documentation of marketing

efforts and a marketing plan. The marketing plan may be submitted to HUD for final approval, if required by the MFDL fund source;

~~(9)~~ **Per Unit Repayment.** Repayment will be required on a per Unit basis for Units that have not been rented to eligible households within 18 months of the final Direct Loan draw.

~~(10)~~ **Termination and Repayment for Failure to Complete.** Termination of the Direct Loan award and repayment of all disbursed funds will be required for any Development that is not completed within four years of the effective date of a Direct Loan Contract.

~~(11)~~ **Loan Closing.** In preparation for closing any Direct Loan, the Development Owner must submit the items described in ~~paragraphs (1)–(7) of this subsection;~~ subparagraphs (A) - (F) of this paragraph. Providing incomplete documents, or not responding timely to subsequent Department requests for materials needed to facilitate closing, may significantly inhibit the Department's ability to meet closing timelines.

~~(1A)~~ Documentation of the prior closing or concurrent closing with all sources of funds necessary for the long-term financial feasibility of the Development.

~~(2B)~~ Due diligence items determined by the Department to be prudent and necessary to meet the Department's rules and to secure the interests of the Department. ~~—, as requested by Staff.~~

~~(3) Where the Department will have a first lien position and the Applicant provides personal guarantees from all principals, as well as documentation that closing on other sources is reasonably expected to occur within three months, the Executive Director or authorized designee may approve a closing to move forward without the closing on other sources. The Executive Director or the authorized designee of the Department must require a personal guarantee, in form and substance acceptable to the Department, from a Principal of the Development Owner for the interim period.~~

~~(4C)~~ When Department funds have a first lien position during the construction period, assurance of completion of the Development in the form of payment and performance bonds in the full amount of the construction contract or equivalent guarantee in the sole determination of the Department is required. ~~Such assurance of completion will run to the Department as obligee.~~ Development Owners utilizing the USDA §515 program are exempt from this requirement but must meet the alternative requirements set forth by USDA.

~~(5D)~~ Documentation required for preparation of closing loan documents includes, but is not limited to:

~~(A)(i)~~ Substantially final information necessary for REA staff to reevaluate the transaction prior to loan closing, including but not limited to a final development cost



schedule, sources and uses, operating pro forma, annual operating expenses, rent schedule, updated written financial commitments or term sheets, and any additional financing exhibits that have changed since the time of Application.

(ii) Draft Owner/General Contractor agreement and draft Owner/Architect agreement prior to closing with final executed copies required by the day of closing;

(Biii) Survey of the Property that includes a certification to the Department, Development Owner, Title Company, and other lenders;

(Civ) Plans and specifications for review by the Department's inspection staff. Inspection staff will issue a plan review letter that is intended to assist in identifying early concerns associated with the Department's final construction requirements; and

(Dv) If layered with Housing Tax Credits, a fully executed limited partnership agreement between the General Partner and the tax credit investor entity (may be provided concurrent with closing);).

~~(E) Final Development information, including but not limited to a final development cost schedule, sources and uses, operating pro forma, annual operating expenses, cost categories for the Direct Loan funds, updated written financial commitments or term sheets and any additional financing exhibits that have changed since the time of application.~~

~~(E)~~ If required by the fund source, prior to Contract Execution unless an earlier period is described in ~~Chapter~~Chapters 10, 11, or 12 of this title, the Development Owner must provide verification of:

(Ai) Environmental clearance from the Department or HUD, as applicable;

(Bii) Site and Neighborhood clearance from the Department;

(Ciii) Documentation necessary to show compliance with the Uniform Relocation Assistance and Property Act and any other relocation requirements that may apply; and

(Div) Any other documentation that is necessary or prudent to meet program requirements or state or federal law in the sole determination of the Department.

(7E) The Direct Loan Contract as executed, which will be drafted by the Department's counsel or its designee for the Department. No changes proposed by the Developer or Developer's counsel will be accepted unless approved by the Department's Legal Division or its designee.

(12) **Loan Documents.** The Development Owner is required to execute all loan closing

documents required by and in the form and substance acceptable to the Department's Legal Division.

~~(1A)~~ Loan closing documents include but are not limited to a promissory note, deed of trust, construction loan agreement (if the proceeds of the loan are to be used for construction), LURA, Architect and/or licensed engineer certification of understanding to complete environmental mitigation if such mitigation is identified in HUD's environmental clearance or the Real Estate Analysis Division (REA) Underwriting Report and assignment and security instruments whereby the Developer, the Development Owner, and/or any Affiliates (if applicable) grants the Department their respective right, title, and interest in and to other collateral, including without limitation the Owner/Architect agreement and the Owner/General Contractor agreement, to secure the payment and performance of the Development Owner's obligations under the loan documents. ~~In the event the Development receives funding that requires the Department's funding to be in a subordinate position, the individual who is able to control the Development (all such individuals if more than one possess such power jointly and severally) will execute a personal guaranty in favor of the Department that in the event that the Development fails to fulfill its requirements of affordability for the required period, and as a result the Department is required to repay funds to the U.S. Department of Housing and Urban Development using non-federal funds and the net proceeds available to the Department after a foreclosure, deed in lieu of foreclosure, or similar disposition of the Development are insufficient to make such repayment, the guarantor(s) will jointly and severally guarantee repayment of that amount.~~

~~(2) Repayment provisions will require repayment on a per unit basis for units that have not been rented to eligible households within 18 months of the final Direct Loan draw; termination and repayment of the Direct Loan award in full will be required for any Development that is not completed within four years of the date of Direct Loan Contract execution.~~

~~(3B)~~ Loan terms and conditions may vary based on the type of Development, Real Estate Analysis Underwriting Report, and the Set-Aside under which the award was made.

**(p13) Disbursement of Funds.** The Borrower must comply with the requirements in ~~paragraphs (1) – (11)~~ subparagraphs (A) - (K) of this ~~subsection~~ paragraph in order to receive a disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the Borrower's compliance with these requirements ~~may be~~ is required with a request for disbursement:

~~(1A)~~ All requests for disbursement must be submitted through the Department's Housing Contract System, using the MFDL draw workbook or such other format as the Department may require;

~~(2B)~~ Documentation of the total construction costs incurred and costs incurred since the last disbursement of funds must be submitted. Such documentation must be signed by the General Contractor and certified by the Development architect and is generally in the form of an AIA Form G702/ G703 or ~~G703~~ HUD equivalent form;

(3C) Disbursement requests must include a down-date endorsement to the Direct Loan (mortgagee) title policy or Nothing Further Certificate that includes a title search through the date of the Architect's signature on AIA form G702- or HUD equivalent form. For release of retainage the down-date endorsement to the Direct Loan title policy or Nothing Further Certificate must be dated at least 30 calendar days after the date of the completion as certified on the Certificate of Substantial Completion (AIA Form G704) with \$0 as the work remaining to be completed. If AIA Form G704 or HUD equivalent form indicates an amount of work remaining to be completed, the Architect must provide confirmation that all work has been completed. Disbursement requests for acquisition and closing costs are exempt from this requirement;

(4D) At least 50% of ~~the~~Direct Loan funds will be withheld from the initial disbursement of loan funds to allow for periodic disbursements;

(5E) The initial draw request for the Development must be entered into the Department's Housing Contract System no later than ~~10 business~~15 calendar days prior to the one year anniversary of the effective date of the Direct Loan Contract;

(6E) Up to 75% of Direct Loan funds may be drawn before providing evidence of Match. Thereafter, the Borrower must provide evidence of Match being credited to the Development prior to release of the final 25% of funds;

(7G) Developer Fee disbursement shall be limited by subparagraph (H) of this paragraph ~~(9) of this subsection~~ and is further conditioned upon clauses (i) - (iii), as applicable:

(A*i*) For Developments in which the loan is secured by a first lien deed of trust against the Property, 75% shall be disbursed in accordance with percent of construction completed. 75% of the total allowable fee will be multiplied by the percent completion, as documented by the construction contract and as may be verified by an inspection by the Department. The remaining 25% shall be disbursed at the time of release of retainage; or

(B*ii*) For Developments in which the loan is not secured by a first lien deed of trust or the Development is also utilizing Housing Tax Credits, Developer Fees will not be reimbursed by the Department, except as follows. If all other lenders and syndicator in a Housing Tax Credit Development (if applicable) provide written confirmation that they do not have an existing or planned agreement to govern the disbursement of Developer Fees and expect that Department funds shall be used to fund Developer Fees, they shall be reimbursed in the same manner as described in subparagraph (A) of this paragraph; and

(C*iii*) The Department may reasonably withhold any disbursement in accordance with the Loan Documents and if it is determined that the Development is not progressing as reasonably necessary to meet the benchmarks for the timely completion of

construction of the Development as set forth in the loan documents, or that cost overruns have put the Development Owner's ability to repay its Direct Loan or complete the construction at risk in accordance with the terms of the loan documents and within budget. If disbursement has been withheld under this subsection, the Development Owner must provide evidence to the satisfaction of the Department that the Development will be timely completed and occupied in order to continue receiving funds. If disbursement is withheld for any reason, disbursement of any remaining Developer Fee will be made only after construction of the Development has been completed, and all requirements for expenditure and occupancy have been met; and

~~(8H)~~ Expenditures must be allowable and reasonable in accordance with federal and state rules and regulations. The Department shall review each expenditure requested for reasonableness. The Department may request the Development Owner make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of Department funds to Development Owner as may be necessary or advisable for compliance with all program requirements;

~~(9I)~~ Table Funding requests may be permitted at the time of closing, for disbursement of funds related to eligible acquisition costs and eligible softs costs incurred, and in an amount not to exceed 50% of the total funds. Table Funding must be requested in writing and will not be considered unless the Direct Loan Contract has been executed, and all necessary documentation has been completed and submitted to and accepted by the Department at least 10 calendar days prior to ~~planned~~the anticipated closing date;

~~(10J)~~ Following 50% construction completion, any funds will be released in accordance with the percentage of construction completion. Ten percent as documented on AIA Form G702/703 or HUD equivalent form. 10% of requested Hard Costs will be retained and will not be released until the final draw request. If the Development is receiving funds from more than one MFDL source, the retainage requirement will apply to each fund source individually. All of the items described in ~~subparagraphs (A) — (G)~~clauses (i) - (xii) of this ~~paragraph~~subparagraph are required in order to approve the final draw request:

~~(A)~~ Fully executed Certificate of Substantial Completion (AIA Form G704) with \$0 as the cost estimate of work that is incomplete. If AIA Form G704 indicates an amount of work remaining to be completed, the Architect must provide confirmation that all work has been completed;

~~(B)~~ A down date endorsement to the Direct Loan title policy or Nothing Further Certificate dated at least 30 calendar days after the date of completion as certified on the Certificate of Substantial Completion (AIA Form G704);

~~(C)~~ For Developments not layered with Housing Tax Credits, a Closed Final

Development Inspection Letter from the Department;

~~(Div)~~ For Developments subject to the Davis-Bacon Act, evidence from the Department's Senior Labor Standards Specialist that the final wage compliance report was received and approved or confirmation that HUD maintains Davis-Bacon oversight as a result of a HUD-insured first lien loan;

~~(Ev)~~ Certificate(s) of Occupancy (if New Construction);

~~(Fvi)~~ Development completion reports, which includes, but is not limited to, documentation of full compliance with the Uniform Relocation Act/104(d), Match Documentation requirements, and Section 3 of the Housing and Urban Development Act of 1968, as applicable to the Development, and any other applicable requirement; and

~~(Gvii)~~ If applicable to the Development, certification from Architect or a licensed engineer that all HUD ~~and REA~~ environmental mitigation conditions have been met; and

~~(Hk)~~ The final draw request must be submitted within 24 months from loan closing. Extensions to this deadline may only be granted unless Development Period has been extended in accordance with 10 TAC §13.12(3) or 10 TAC §13.13 of this chapter ~~(relating to, as applicable.~~

#### **(14) Annual Audits and Cost Certifications under 24 CFR §93.406(b).**

**(A) Annual Audits under 24 CFR §93.406(b).** Unless otherwise directed by the Department, the Development Owner shall arrange for the performance of an annual financial and compliance audit of funds received and performances rendered under the Direct Loan Contract, subject to the conditions and limitations set forth in the executed Direct Loan Contract. All approved audit reports will be made available for public inspection within 30 days after completion of the audit.

#### **(B) Cost Certifications under 24 CFR §93.406(b).**

**(i) Non-HTC-Layered Developments.** Within 180 calendar days of the later of all title transfer requirements and construction work having been performed, as reflected by the Development's Certificate(s) of Occupancy (if New Construction) or Certificate of Substantial Completion (AIA Form G704 or HUD equivalent form), or when all modifications required as a result of the Department's Final Construction Inspection are cleared as evidenced by receipt of the Closed Final Development Inspection Letter, the Development Owner will submit to the Department a cost certification done by an independent licensed certified public accountant of all Development costs (including project NHTF eligible costs), subject to the conditions and limitations set

forth in the executed Direct Loan Contract.

(ii) HTC-Layered Developments. With the Cost Certification required by the Low Income Housing Tax Credit Program, the Development Owner must submit to the Department a cost certification completed by an independent licensed certified public accountant of all Development costs (including NHTF project eligible costs), subject to the conditions and limitations set forth in the executed Direct Loan Contract.

### §13.12. Pre-Closing Amendments to Direct Loan Terms).

#### §13.12(a) Executive Approval Required Pre-Closing Amendments to Direct Loan Terms

The Executive Director or authorized designee may approve amendments to loan terms prior to closing as described in paragraphs (1) - (6) of this section. Board approval is necessary for any other changes prior to closing. subsection.

(1) Extensions of up to six months to the loan closing date required in 10 TAC §13.11(e) of this chapter (relating to Post-Award Requirements). may be approved prior to closing. An Applicant must ~~document~~submit sufficient evidence documenting good cause, ~~which includes~~including but ~~is~~ not limited to, documented delays caused by circumstances outside the control of the applicant or constraints in arranging a multiple fund source closing. An extension will not be available if an Applicant has:

(A) Failed to timely begin or complete ~~processes~~a process required to close; including, but not limited to:

(i) The process of finalizing all equity and debt financing; ~~or~~

(ii) The environmental ~~review~~clearance process; ~~or~~

(iii) The due diligence processing requirements; or

(B) Made changes to the Development that require significant additional underwriting by the Department without ~~sufficient time~~at least 45 days to complete the review;

(2) Changes to the loan maturity date to accommodate the requirements of other lenders or to maintain parity of term; may be approved prior to closing.

(3) Extensions of up to 12 months to the Construction Completion date or date of receipt of a Closed Final Development Inspection Letter ~~date~~required in 10 TAC §13.11(h) or (i), respectively, g) of this chapter may be requested but generally are not approved prior to initial loan closing. Extensions under this paragraph are determined based on documentation that the extension is necessary to complete construction and that there is good cause for the extension. ~~Such a request will generally not be approved prior to initial loan closing;~~

(4) Changes to the loan amortization or interest rate that cause the annual repayment amount to decrease less than 20%, or any changes to the amortization or interest rate that increase the annual repayment amount; up to 20%, may be approved prior to closing.

(5) Decreases in the Direct Loan amount, provided the decrease does not jeopardize the financial viability of the Development; may be approved prior to closing, though the Development Owner may be subject to penalties as further described in 10 TAC §13.11 of this chapter (relating to Post-Award Requirements). Increases will ~~generally~~ not be approved unless the Applicant competes for the additional funding under an open NOFA;

(6) Changes to other loan terms or requirements that would not require a Waiver, as necessary to facilitate the loan closing without exposing the Department to undue financial risk.

**(b) Board Approval Required Pre-Closing.** Board approval is necessary for any other changes prior to closing.

### **§13.13\_ Post-Closing Amendments to Direct Loan Terms\_**

**(a) Good Cause Extensions.** The Executive Director or authorized designee may approve extensions of up to 12 months ~~under 10 TAC §13.11(h), (i),g) or (pm)~~(11) of this chapter (relating to Post-Award Requirements) based on documentation that there is good cause for the extension.

~~(b)~~**(b) Amendments to MFDL Awards.** Except in cases of Force Majeure, changes to ~~federal~~ terms of awards subject to mandatory HUD reporting requirements will only be processed after the ~~Development~~Construction Completion is reported to the federal oversight entity as completed, and the last of the MFDL funds have been drawn.

**(c) Executive Amendments.** The Executive Director or authorized designee may approve amendments to loan terms post-closing as described in paragraphs (1) - (3) of this ~~section~~subsection. Board approval is necessary for any other changes post-closing.

(1) **Changes in Terms.** Changes to the amortization or maturity date to accommodate the requirements of other lenders or maintain parity of term may be approved post-closing, provided the changes result in the Direct Loan continuing to meet the requirements of §13.8(c)(1) and (3) of this chapter (relating to Loan Structure and Underwriting Requirements), and NOFA requirements.

(2) ~~Resubordination~~**Post-Closing Subordinations or Re-subordinations of MFDL Liens.** Re-subordination of the Direct Loan in conjunction with refinancing may be approved post-closing, provided the conditions in subparagraphs (A) - (E) of this paragraph are met:

(A) The Borrower is current with loan payments to the Department, and no notice has

been given of any Event of Default on any MFDL loan. Histories of late or non-payment on any other MFDL loan may result in denial of the request;

(B) The refinance does not propose payment to any of the Development Owner or Developer parties (including the Limited Partners);

(C) A proposal for partial-~~or full~~ repayment of the MFDL lien is made with the request; and

(D) The new superior lien is in an amount that is equal to or less than the original senior lien and does not negatively affect the financial feasibility of the Development.

~~(E)(i) For purposes of this section, a negative effect on the financial feasibility of the Development shall mean a reduction in the total Debt Coverage Ratio (DCR) of more than 0.05, or if the DCR no longer meets the requirements of 10 TAC §11.302 of this title; and~~

~~(ii) Changes to accommodate refinancing with a new superior lien that is in an amount that exceeds the original senior lien and which will be directly applied to property improvements, as evidenced by the loan or security agreements (exclusive of fees associated with the refinance and any required reserves), will be considered on a case by case basis.~~

~~(E) The subordination or re-subordination request does not include a request to subordinate or resubordinate any MFDL LURA, with the exception of partial subordination or re-subordination of receivership rights (subject to the proposed receiver entity or Affiliate not having been Debarred by the Department or on the Federal Suspended or Debarred Listing).~~

(3) **Workout Arrangements.** Changes required to the ~~Department's~~Department's loan terms or amounts that are part of an approved Asset Management Division work out arrangement may be approved after Construction Completion.

**(d) Contract Assignments and Assumptions of MFDL Liens.** The Executive Director or authorized designee may approve the Contract Assignment and Assumption of MFDL Liens following approval of an Ownership Transfer request if the conditions in paragraphs (1) – (3) of this subsection are met:

(1) The assignment or assumption is not prohibited by the Contract, Loan Documents, or regulations;

(2) The assignment or assumption request is based on either subparagraph (A) or (B) of this paragraph;



(A) There are insufficient funds available in the transaction to fully repay the Direct Loan at the time of acquisition, for which Deferred Developer Fee, Development Owner or Affiliate Contributions, or other similar liabilities will not be considered in determining whether the Direct Loan could be repaid at the time of acquisition; or

(B) The new superior lien will be directly applied to property improvements as evidenced by the loan or security agreements, exclusive of fees association with the new financing and any required reserves; and

(3) The corresponding Ownership Transfer has been approved in accordance with all requirements in §10.406 of this title (relating to Ownership Transfers), and no prospective Owner (including entity, person, Board Member, as those terms are defined in 2 CFR Part 180, including Limited Partners) have been subject to state Debarment or are on the Federal Suspended or Debarred Listing.

7d

**BOARD ACTION REQUEST**

**FAIR HOUSING, DATA MANAGEMENT AND REPORTING**

**OCTOBER 10, 2019**

Presentation, discussion, and possible action on an order proposing new 10 TAC, Chapter 10, Subchapter G, Affirmative Marketing Requirements and Written Policies and Procedures, and directing its publication for public comment in the *Texas Register*

**RECOMMENDED ACTION**

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

**WHEREAS**, oversight of the affirmative marketing requirements and the written policies and procedures (sometimes called tenant selection criteria), and the associated review process, are being moved organizationally within the Department from the Compliance Division to the Fair Housing, Data Management and Reporting unit, and as a result the two sections of the Compliance rule that govern those processes (10 TAC §10.610 and 10 TAC §10.617) are proposed to be repealed under separate action;

**WHEREAS**, those sections are being simultaneously proposed within a new subchapter within chapter 10 and reflecting some revisions; and

**WHEREAS**, upon Board approval, the proposed rule actions will be published in the *Texas Register* for public comment from October 25, 2019, through November 25, 2019, and subsequently presented to the Board for final adoption;

**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 action herein in the form presented to this meeting, to be published in the *Texas Register* for public comment, and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing, including any requested revisions to the preamble.

**BACKGROUND**

Recently oversight of the affirmative marketing requirements on the Department's multifamily portfolio and the written policies and procedures (often called tenant selection criteria) on that portfolio, and the associated review process, have been reassigned organizationally within the Department from the Compliance Division to the Fair Housing, Data Management and Reporting unit. As a result these two issues, currently addressed in the Compliance rule, are proposed to be repealed and moved into a new section of the rules at Chapter 10, Subchapter G, Affirmative Marketing Requirements and Written Policies and Procedures. With that change in rule location, minimal edits are also being made. In particular, the

Department is modifying its Occupancy Standards in response to concerns from Development Owners, as a result of tenant complaints, and to be more in line with how HUD is currently enforcing a December 1998 HUD Notice of Statement of Policy regarding Occupancy Standards as a Fair Housing enforcement consideration (also called the Keating memorandum, as it was authored by HUD's General Counsel at the time, Frank Keating). The Department is also highlighting particular requirements for Multifamily Direct Loan funded Developments.

Once approved in draft form, this proposed new will be published in the *Texas Register* for public comment and will be returned to the Board for final adoption.

To facilitate public review, the proposed rules reflect changes as blackline revisions to the current rule located at 10 TAC §10.610 and 10 TAC §10.617. However, the rule action will be submitted to the *Texas Register* as a proposed new rule located at 10 TAC Subchapter G, Affirmative Marketing Requirements and Written Policies and Procedures, §§10.800-10.803. Staff will, upon action by the Board, publish the proposed rule in the *Texas Register* for public comment from October 25, 2019, through November 25, 2019. Staff will return to the Board for final adoption of the rules.

## **Attachment A: Preamble for proposed new 10 TAC Subchapter G Affirmative Marketing Requirements and Written Policies and Procedures**

The Texas Department of Housing and Community Affairs (the Department) proposes new Subchapter G Affirmative Marketing Requirements and Written Policies and Procedures. The purpose of the proposed new sections is to provide compliance with Tex. Gov't Code §2306.053 and to update the rules to move requirements on the Department's multifamily portfolio relating to Affirmative Marketing and Written Policies and Procedures out of Subchapter F, detailing Compliance Monitoring requirements, and into a new subchapter to consolidate Fair Housing related requirements on the Department's multifamily portfolio into one separate location within the Uniform Multifamily Rules.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because it was determined that no changes to the rule generate costs to the properties in the Department's multifamily portfolio, and therefore no costs warrant being offset.

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

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

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed new rule would be in effect:

1. The proposed rule does not create or eliminate a government program. This rule provides for an assurance that Fair Housing requirements relating to Affirmative Marketing and Written Policies and Procedures for Multifamily Activities are clearly relayed to participating properties in the Department's portfolio.
2. The proposed new rule does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The proposed rule changes do not require additional future legislative appropriations.
4. The proposed rule changes will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The proposed rule is not creating a new regulation, except that it is moving a rule from one existing Subchapter to a new Subchapter and making minor revisions. The existing Subchapter is being repealed and those sections are being proposed as a new rulemaking simultaneously to provide for revisions.
6. The proposed rule will not expand, limit, or repeal an existing regulation.
7. The proposed rule will not increase nor decrease the number of individuals subject to the rule's applicability; and
8. The proposed rule will not negatively nor positively affect the state's economy.

**b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.** The Department, in drafting this proposed rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, §2306.053.

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

2. To the extent that multifamily properties in the Department's portfolio are considered small or micro-businesses, the economic impact of the rule on them is projected to be \$0 as the revisions being proposed are minor and add no costs to the property's operations. There are no rural communities subject to the proposed rule as these properties are not owned directly by municipalities; therefore the economic impact of the rule on rural communities is projected to be \$0.

3. The Department has determined that [because the rules apply to existing multifamily developments, there will be no economic effect on small or micro-businesses or rural communities.

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

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

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the proposed rule has no economic effect on local employment because the rules relate only to a process which has already been in effect for existing multifamily properties in the Department's portfolio; therefore, no local employment impact statement is required to be prepared for the rule.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that this new rule only administratively consolidates an existing set of rules relating to Fair Housing requirements into one separate Subchapter of the Uniform Multifamily Rules, while making minimal revisions, there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will be a consolidation of Fair Housing related requirements into one separate Subchapter of the Uniform Multifamily Rules. There will not be any economic cost to any individuals required to comply with the new sections because the processes described by the rule have already been in place through the rule found at Subchapter F of this Chapter relating to Uniform Multifamily Rules.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new sections are in effect, enforcing or administering the new sections does not have any foreseeable implications related to costs or revenues of the state or local governments because this rule has already been in effect elsewhere in rule.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held from October 25, 2019, through November 25, 2019, to receive input on the new proposed sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 77111-3941, or email [brooke.boston@tdhca.state.tx.us](mailto:brooke.boston@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, November 25, 2019.

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

## Chapter 10 Uniform Multifamily Rules

### Subchapter G Affirmative Marketing Requirements and Written Policies and Procedures

#### §10.800 Definitions

The capitalized terms in this subchapter shall have the meaning as defined in this title in Chapter 1 relating to Administration, Chapter 2 relating to Enforcement, Chapter 11 relating to the Qualified Action Plan, Chapter 12 relating to the Multifamily Housing Revenue Bond Rules, Chapter 13 relating to the Multifamily Direct Loan Rule, or Tex. Gov't Code Chapter 2306, Internal Revenue Code (the Code) §42, the HOME Final Rule, and other federal or Department rules, as applicable.

#### **§10.617-801 Affirmative Marketing Requirements**

(a) Applicability. ~~Effective April 1, 2015~~ €Compliance with this section is required for all Developments with five or more total units to further the objectives of Title VIII of the Civil Rights Act of 1968 and Executive Order 13166.

(b) General. ~~Owners of Developments~~A Development Owner with five or more total ~~units~~Units must affirmatively market ~~their units~~the Units to promote equal housing choice for prospective tenants, regardless of race, color, religion, sex, national origin, familial status, or disability and must develop and carry out an Affirmative Fair Housing Marketing Plan (or Affirmative Marketing Plan) to provide for marketing strategies and documentation of outreach efforts to prospective applicants identified as "least likely to apply." ~~In general, those populations that are least likely to apply may include: African Americans, Native Americans, Alaskan Natives, Asians, Native Hawaiians, Other Pacific Islanders, Caucasians (non-Hispanic), Hispanics or Latinos, and families with children.~~To determine the "least likely to apply" populations, a Development Owner is encouraged to use Worksheet 1 of HUD Form 935.2A, but at a minimum the Owner must document that they have compared the demographic composition of the Development to the market area to determine the populations least likely to apply. All Affirmative Marketing Plans must provide for affirmative marketing to ~~persons with disabilities~~Persons with Disabilities. Some Developments may be required by their LURAs to market units specifically to veterans or other populations.

(c) Plan format. A Development Owner must prepare and submit upon request a written Affirmative Marketing Plan. Owners are encouraged to use any version of HUD Form 935.2A to meet Affirmative Marketing requirements. ~~Owners~~An Owner participating in a HUD funded ~~programs~~program administered by the Department must use the version ~~required~~utilized by

the program.

(d) Marketing and Outreach.

(1) The plan must include special outreach efforts to the "least likely to apply" populations through specific media, organizations, or community contacts that work with least likely to apply populations or work in areas where least likely to apply populations live. The outreach efforts identified in the Affirmative Marketing Plan must be performed by the Development at least once per calendar year.

(2) To the extent that advertisements ~~Advertisements~~ and/or marketing materials are utilized for the Development, those materials must contain:

(A) The Fair Housing logo; ~~and~~

(B) The contact information for the individual who can assist if reasonable accommodations are needed in order to complete the application process. ~~The information about reasonable accommodations must be in both English and Spanish;~~ and

(C) Property contact information must be provided in both English and Spanish, and may be required to be provided in other languages in accordance with Limited English Proficiency Requirements.

(e) Timeframes.

(1) An Owner must begin its affirmative marketing efforts for each of the identified populations least likely to apply at least ~~six months~~ 90 calendar days prior to the anticipated date the first building is to be available for occupancy. ~~As a condition of an award to a new Development, the Board may require affirmative marketing efforts to begin more than six months prior to the anticipated date the first building is to be placed in service; and~~

(2) An Owner must update its Affirmative Marketing Plan and populations that are least likely to apply every five years from the effective date of the current plan or, for HUD funded or USDA properties, as otherwise required by HUD or USDA.

(f) ~~Record-keeping.~~ Owners must maintain records of each Affirmative Marketing Plan and specific outreach efforts completed for the greater of three years or the recordkeeping requirement identified in the LURA.

(g) ~~Exception to Affirmative Marketing.~~ If the Development has closed its wait~~ing~~-list, Affirmative Marketing is not required. Affirmative Marketing is required as long as the Owner is accepting applications, has an open wait~~ing~~-list, or is marketing prior to placement in service as required under subsection (e)(1) of this section.



## §10.610-802 Written Policies and Procedures

(a) The purpose of this section is to outline the policies and/or procedures of the Department (also called tenant section criteria) that are required to have written documentation. If an ~~owner~~ Owner fails to have such written policies and procedures, or fails to follow their written policies and procedures it will be handled as an Event of Noncompliance as further provided for in subsection (k) of this subchapter ~~be cited as noncompliance with this section.~~

(1) Owners must inform applicants/tenants in writing, at the time of application, or at the time of other ~~action~~ actions described in this section, that such policies/procedures as described in this section are available, and that the Owner will provide copies upon request to applicants/tenants or their representatives.

(2) The Owner must have all policies and related documentation required by this section and the TDHCA form based on HUD form 5380 "Notice of Occupancy Rights under the Violence Against Women Act" and the HUD form 5382 "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation" available in the leasing office and anywhere else where applications are taken; ~~Developments~~ Developments that accept electronic applications must maintain on post to their website these written policies and procedures tenant selection criteria and the same noted forms. ~~the TDHCA form based on HUD form 5380 "Notice of Occupancy Rights under the Violence Against Women Act" and the HUD form 5382 "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation."~~

(3) All policies must have an effective date. Any changes made to the policies require a new effective date, and a notice regarding the availability of new policies must be communicated to tenants in writing.

(4) In general, policies addressing credit, criminal history, and occupancy standards cannot be applied retroactively. Tenants who already reside in the ~~development~~ Development or applicants on the wait-list at the time new or revised tenant selection criteria are applied, and who are otherwise in good standing under the lease or wait-list, must not receive notices of termination or non-renewal based solely on their failure to meet the new or revised tenant selection criteria or be passed over on the wait-list. However, criteria related to program eligibility may be applied retroactively when a market development receives a new award of tax credits, federal, or state funds and a household is not eligible under the new program requirements, or when prior criteria violate federal or state law.

(b) Tenant Selection Criteria. A Development Owner ~~Owners~~ must maintain current and prior versions of the written Tenant Selection Criteria, for the longer of the records retention period that applies to the program, or for as long as tenants who were screened under the historical criteria are occupying the Development. ~~The criteria under which an applicant was screened must be included in the household's file.~~

(1) The criteria identified by a Development must be reasonably related to ~~the~~ an applicant's ability to perform under the lease (for a Development with MFDL funding this means to pay the rent, not to damage the housing, and not to interfere with the rights and quiet enjoyment of other tenants) -and include at a minimum:

(A) Requirements that determine an applicant's basic eligibility for the propertyDevelopment, including any preferences, restrictions, and any other tenancy requirements. Any restrictions on student occupancy and any exceptions to those restrictions, as documented in the tenant file as provided for in 10 TAC §10.612(b)(2) must be stated in the policies; ~~The tenant selection criteria must specifically list:~~

~~(i) The income and rent limits;~~

~~(ii) When applicable, restrictions on student occupancy and any exceptions to those restrictions; and~~

~~(iii) Fees and/or deposits required as part of the application process. Developments with HOME, NHTF, NSP, Section 811 and/or TCAP RF units cannot collect an application deposit for units designated under these programs. Owners of HTC, TCAP and Exchange Developments are discouraged from collecting an application deposit. If an application deposit is collected it must soon after be converted into a refundable security deposit. No fees or deposits may be collected to place a household or applicant on a waiting list.~~

(B) Applicant screening criteria, including what applicant attributes areis screened and what scores or findings would result in ineligibility~~;~~

~~(C) Occupancy Standards. If fewer than two persons (over the age of six) per bedroom for each rental unit are required for reasons other than those directed by local building code or safety regulations, a written justification must be provided.~~

~~(D)~~ The following statement: Screening criteria will be applied in a manner consistent with all applicable laws, including the Texas and Federal Fair Housing Acts, the Federal Fair Credit Reporting Act, program guidelines, and ~~the Department's TDHCA's~~ rules~~;~~

~~(E)~~ Specific age requirements if the Development is operating as an Elderly Property either under the Housing for Older Persons Act of 1995 as amended (HOPA), or the age related eligibly criteria required by its use of federal funds.

(2) The criteria must not:

(A) Include preferences for admission, ~~A property may not have a preference~~ unless it is either in a recorded LURA which has been approved by the Department (preferences are required to be in a LURA when a Development has MFDL funding, except for the preference allowed by paragraph (3) of this subsection), ~~or~~ is required by a program in which the Owner is participating

which requires the preference, [or is allowed by paragraph \(3\) of this subsection](#). Owners that include preferences in their leasing criteria due to other federal financing must provide [to the Department](#) either written approval from HUD, USDA, or VA for such preference, or identify the statute, written agreement, or federal guidance documentation that permits the adoption of this preference;

(B) Exclude an individual or family from admission to the Development solely because the household participates in the HOME Tenant Based Rental Assistance Program, the housing choice voucher program under Section 8, United States Housing Act of 1937 (42 U.S.C. §1-437), or other federal, state, or local government rental assistance program. If an Owner adopts a minimum income standard for households participating in a voucher program, it is limited to the greater of a monthly income of 2.5 times the household's share of the total monthly rent amount or \$2,500 annually; or

(C) In accordance with VAWA, deny admission on the basis that the applicant has been a victim of domestic violence, dating violence, sexual assault, or stalking.

(3) If the Development is funded with HOME, TCAP RF, NHTF, or NSP funds, in accordance with 24 CFR §93.356 and 24 CFR §92.359, the criteria may have a preference for persons who have experienced domestic violence, dating violence, sexual assault, or stalking.

#### [\(4\) Occupancy Standard Policy.](#)

[\(A\) If the Development restricts the number of occupants in a Unit in a more restrictive manner than found in Chapter 92.010 of the Texas Property Code, the standard must allow at least two persons per Bedroom plus one additional person per Unit. In an SRO or in an Efficiency that is less than 600 square feet, the standard must allow at least two persons per Unit. An Efficiency that is greater than 600 square feet must allow at least three persons per Unit.](#)

[\(B\) A Development may adopt a more restrictive standard than described in subparagraph \(A\) of this paragraph, if the Development is required to utilize a more restrictive standard by a local governmental entity, or a federal funding source. However, the Development must have this information available for Department review.](#)

[\(C\) Except for an Elderly Development that meets the requirements of the Housing for Persons Act exception under the Fair Housing Act, the Occupancy Standard Policy must state that children that join the household after the start of a lease term will not cause a household to be in violation of the lease.](#)

(c) Reasonable Accommodations Policy. Owners must maintain a written Reasonable Accommodations policy. The policy must be maintained at the Development. Owners are responsible for ensuring that their employees and contracted third party management companies are aware of and comply with the reasonable accommodation policy.

(1) The policy must provide:

(A) Information on how an applicant or current resident with a disability may request a reasonable accommodation; ~~and~~

(B) How transfers related to a reasonable accommodation will be addressed; and

(B) A timeframe in which the Owner will respond to a request that is compliant with 10 TAC §1.204(b)(3) and (d) (relating to Reasonable Accommodations).

(2) The policy must not:

(A) Require a household to make a reasonable accommodation request in writing;

(B) Require a household whose need is readily apparent to provide third party documentation of a disability;

(C) Require a household to provide specific medical or disability information other than the disability verification that may be requested to verify eligibility for reasonable accommodation;

(D) Exclude a household with person(s) with disabilities from admission to the Development because an accessible unit is not currently available; or

(E) Require a household to rent a unit that has already been made accessible.

(d) ~~Waitlist List~~-Policy. Owners must maintain a written wait-list policy, regardless of current Unit availability. The policy must be maintained at the Development.

(1) The policy must include procedures the Development uses in:

(A) Opening, closing, and selecting applicants from the wait-list, including but not limited to the requirements in 10 TAC §10.615(b);

(B) Determining how lawful preferences are applied; and

(C) Procedures for prioritizing applicants needing accessible Units in accordance with 24 CFR §8.27, and Chapter 1, Subchapter B of this title.

~~(2) Developments with additional rent and occupancy restrictions must maintain a waiting list for their lower rent restricted units. The Development's wait list policy must inform applicants and current residents of the availability of lower rent units and the process for renting a lower rent unit. Unless otherwise approved at application, underwriting and cost certification, all unit sizes must be available at the lower rent limits. The wait list policy for Developments with lower rent restricted units must address how the waiting list for their lower rent restricted units will be~~

~~managed and must include policies regarding changes in income that address the options available in §10.615 of this subchapter. The policy must not give a preference to prospective applicants over existing households. However, a Development may, but is not required to, prioritize existing households over prospective applicants.~~

~~(e) Developments that elect the income averaging test and all Developments with additional rent and occupancy restrictions must have written policies regarding changes in income that address the options available in §10.615 of this subchapter.~~

(e) Changes in Household Designation Policy. This is applicable if a Development has adopted a policy in accordance with 10 TAC §10.611(c).

(f) Denied Application Policies. Owners must maintain a written policy regarding the procedures they will follow when denying an applications and when notifying denied applicants of their rights.

(1) The policy must address the manner by which rejections of applications will be handled, including timeframes and appeal procedures, if any.

(2) Within seven days after the determination is made to deny an application, the owner must provide any rejected or ineligible applicant that completed the application process a written notification of the grounds for rejection. The written notification must include:

(A) The specific reason for the denial and reference the specific leasing criteria upon which the denial is based;

(B) Contact information for any third parties that provided the information on which the rejection was based and information on the appeals process, if one is used by the Development. An appeals procedure is required for HOME Developments that are owned by Community Housing Development Organizations, and Units at Developments that lease Units under the Department's Section 811-PRA program. The appeals process must provide a 14 day period for the applicant to contest the reason for the denial, and comply with other requirements of the HUD Handbook 4350.3 4-9; and

(C) The TDHCA form based on HUD form 5380 "Notice of Occupancy Rights under the Violence Against Women Act" and the HUD form 5382 "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation."

(3) The Development must keep and may periodically be requested to submit to the Department a log of all denied applicants that completed the application process to include:

(A) Basic household demographic and rental assistance information, if requested during any part of the application process; and

(B) The specific reason for which an applicant was denied, ~~the date the decision was made; and~~

~~(C) The date the denial notice was mailed or hand-delivered to the applicant.~~

~~(4) A file of all rejected applications must be maintained the length of time specified in the applicable program's recordkeeping requirements and include:~~

~~(A) A copy of the written notice of denial; and~~

~~(B) The Tenant Selection Criteria policy under which an applicant was screened.~~

(5) If an 811 applicant is being denied, within three calendar days of the denial the Department's 811 PRA Program point of contact must be notified and provided with a copy of the written notice that was provided to the applicant.

(g) Non-renewal and/or Termination Notices. ~~Owners~~ A Development Owner must maintain a written policy regarding procedures for providing households non-renewal and termination notices.

(1) The owner must provide in any non-renewal or termination notice, a specific and lawful reason for the termination or non-renewal.

(2) The notification must:

(A) Be delivered as required under applicable program rules and the lease. For HOME, TCAP RE, NHTF, NSP, HTC, TCAP and Exchange Developments, see 10 TAC §10.613(a)-(b) of this chapter (relating to Lease Requirements). For Section 811 PRA, see 24 CFR §-247.4(a)-(f);

(B) Include the TDHCA form based on HUD form 5380 "Notice of Occupancy Rights under the Violence Against Women Act" and the HUD form 5382 "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation." To avoid providing applicants and residents with duplicate information, TDHCA administered Developments layered with other federal funds are permitted to amend the TDHCA VAWA forms to incorporate requirements of other funders. However, none of the information included in the TDHCA created form may be omitted;

(C) State how a person with a disability may request a reasonable accommodation in relation to such notice; and

(D) Include information on the appeals process if one is used by the property Development (this is required under some LURAs, for HOME Developments that are owned by Community Housing Development Organizations, and for 811 PRA units).

~~(h) Unit Transfer Policies. Owners must maintain a written policy regarding procedures for~~

~~households to request a unit transfer. The policy must address the following:~~

~~(1) How security deposits will be handled for both the current unit and the new unit;~~

~~(2) How transfers related to a reasonable accommodation will be addressed; and~~

~~(3) For HTC Developments, how transfers will be handled with regard to the multiple building project election on IRS Form(s) 8609 line 8(b) and accompanying statements in accordance with §10.616 of this subchapter, concerning Household Unit Transfer Requirements for All Programs.~~

(h) At the time of application Owners must provide each adult in the household the TDHCA form based on HUD form 5380 "Notice of Occupancy Rights under the Violence Against Women Act" and the HUD form 5382 "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation." To avoid providing applicants and residents with duplicate information, TDHCA administered Developments layered with other federal funds are permitted to amend the TDHCA VAWA forms to incorporate requirements of other funders. However, none of the information included in the TDHCA created form may be omitted.

~~(j) HTC Developments that have elected average income test must describe in their leasing criteria how units will be leased and inform applicants of the set asides that the Development offers. Owners must disperse 20%, 30%, 40%, 50%, 60%, 70% and 80% units designations across all unit types in a manner that does not violate fair housing laws. HTC Developments that have elected the income averaging test must maintain separate waiting lists for each of the set asides offered by the Development. The waiting lists must be available to both existing households and prospective tenants. The Development cannot provide a preference for applicants over existing households. The Development is not required to place existing households that receive rental assistance on a waiting list for a lower rent unit. Owners are encouraged to designate households that receive rental assistance at the level indicated by the contract rent for the unit.~~

~~(k) Developments that participate in the Section 811 program must have a written EIV policy that includes security practices and complies with the HUD Handbook 4350.3, Chapter 9. Owners are discouraged from adopting policies that exceed the minimum requirements established by HUD.~~

(i) Policies and procedures will be reviewed periodically by the Department's Fair Housing staff, during monitoring visits, through as a result of resident complaints, or through an owner initiated written policies and procedures review. Owners may request a review of the written policies and procedures for a portfolio of Developments by submitting a request to [wppfair.housing@tdhca.state.tx.us](mailto:wppfair.housing@tdhca.state.tx.us). After review by the Department, an Owners may make non-substantive changes to their policies. ~~Significant changes to reviewed policies without Department approval may result in findings of noncompliance.~~

(m) Development Owners must allow applicants to submit applications via mail and at the Development site or leasing office; if the Development is electronically equipped, the Development may also allow applications to be submitted via email, website form, or fax. The

Development's tenant selection criteria must state available alternate means of submission and include address, email, or other necessary contact information on the form or its attached leasing criteria.

### **§10.803 Compliance and Events of Noncompliance**

(a) The Department will provide written notice to the Owner if the Department discovers through monitoring, review, resident complaint, or any other manner that the Development is not in compliance with the provisions of this subchapter. A 90 day Corrective Action Period will be provided. Documentation of correction must be received during the Corrective Action Period for an Event of Noncompliance to be considered corrected during the Corrective Action Period. The Department may extend the Corrective Action Period for up to six months from the date of the notice to the Development Owner only if there is good cause for granting an extension and the owner requests an extension during the original 90 day Corrective Action Period, and the request would not cause the Department or the Owner to miss a federal deadline. Requests for an extension may be submitted to: fair.housing@tdhca.state.tx.us.

(b) If an Owner submits evidence of corrective action during the Corrective Action Period that addresses each issue, but does not fully address all issues, the Department will give the Owner written notice and an additional 10 calendar day period to submit evidence of full corrective action.

(c) If communications to the Owner under this subchapter have a pattern of being returned to the Department as refused, unclaimed, or undeliverable, the Development may be considered not in compliance without further notice to the Owner. The Owner is responsible for providing the Department with current contact information, including address(es) (physical and electronic) and phone number(s). The Owner must also provide current contact information to the Department as required by §1.22 of this title (relating to Providing Contact Information to the Department), and ensure that such information is at all times current and correct.

(d) The Department will rely solely on the information supplied by the Owner in the Department's web-based Compliance Monitoring and Tracking System (CMTS) for notifications under this Subchapter. It is the Owner's sole responsibility to ensure at all times that such information is current, accurate, and complete. Correspondence sent to the email or physical address shown in CMTS will be deemed delivered to the Owner. Correspondence from the Department may be directly uploaded to the property's CMTS account using the secure electronic document attachment system. Once uploaded, notification of the attachment will be sent electronically to the email address listed in CMTS. The Department is not required to send a paper copy, and if it does so it does as a voluntary and non-precedential courtesy only.

(e) Events of Noncompliance identified in the evaluation of the requirements of this subchapter will be those specified in 10 TAC §10.625 of this chapter (relating to Events of Noncompliance).



7e

BOARD ACTION REQUEST

OCI, HTF & NSP DIVISION

OCTOBER 10, 2019

Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC Chapter 20, Single Family Programs Umbrella Rule, an order adopting new 10 TAC Chapter 20, Single Family Programs Umbrella Rule, and directing their publication in the Texas Register

RECOMMENDED ACTION

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

WHEREAS, the repeal of 10 TAC Chapter 20 and the new 10 TAC Chapter 20, Single Family Programs Umbrella Rule, are being made to clarify applicability of the Rule; update definitions; update eligibility requirements with respect to household property tax liabilities; clarify housing counseling and mobility counseling requirements; update insurance and title requirements for mortgage loan activities; and specify refinancing guidelines; and

WHEREAS, the proposed actions on this rule were published in the Texas Register and made available for public comment from August 9, 2019, through September 9, 2019, public comment was received, and the Department is providing a reasoned response for the rule now being presented for adoption;

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 repeal of 10 TAC Chapter 20 and adoption of new 10 TAC Chapter 20, regarding the Single Family Programs Umbrella Rule, in the form presented to this meeting, to be published in the Texas Register for adoption and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing, including the preparation of the subchapter specific preambles.

## BACKGROUND

The purpose of repealing and replacing the Single Family Programs Umbrella Rule is to clarify applicability of the Rule; update definitions; update eligibility requirements with respect to household property tax liabilities; clarify housing counseling and mobility counseling requirements; update insurance and title requirements for mortgage loan activities; specify refinancing guidelines; improve readability through the re-ordering of phrases; and improve consistency in terminology and capitalization.

Roundtables were hosted to discuss the changes to this rule in June 2019, and the proposed rule is reflective of the Department's response to that input. The proposed rule was published in the Texas Register on August 9, 2019, for public comment through September 9, 2019, and 35 comments were received. Staff recommends changes to the proposed rule as published in the Texas Register in order to address some of the public comments. The rule is attached in black line form to indicate the changes since the time of publication for public comment.

The significant updates initially proposed in the draft to 10 TAC Chapter 20 were:

- §20.3 Definitions, now includes the terms "Development," "Improvement Survey," and "Reverse Mortgage."
- §20.8 Single Family Housing Unit Eligibility Requirements, includes relevant citations to the Texas Tax Code and provides further information on how a household must address property tax delinquencies in order to be eligible for assistance.
- §20.9 Fair Housing, Affirmative Marketing, Homebuyer Counseling, and Reasonable Accommodations, provides further information on federally required housing counseling requirements, provides updates to mobility counseling, removes affirmative marketing and waitlist requirements from state funded-only programs, and otherwise reduces waitlist requirements from 30 to 21 calendar days.
- §20.12 Insurance and Title Requirements, clarifies that the Amy Young Barrier Removal Program is excluded from this section and specifies requirements for title reports.
- §20.13 Loan, Lien, and Mortgage Requirements for Activities, specifies requirements of loans made by third-party lenders and includes new requirements for homeowners who wish to refinance their primary mortgage.

Attachment A: Preamble, including required analysis, for adoption of the repeal of 10 TAC, Chapter 20, Single Family Programs Umbrella Rule

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC, Chapter 20, §§20.1 – 20.16, Single Family Programs Umbrella Rule. The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

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

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal will be in effect:

1. The repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous adoption making changes to the Single Family Programs Umbrella Rule.
2. The repeal does not require a change in work that will require the creation of new employee positions, nor will the repeal reduce workload to a degree that any existing employee positions are eliminated.
3. The repeal does not require additional future legislative appropriations.
4. The repeal does not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department.
5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.
6. The action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to the existing Single Family Programs Umbrella Rule.
7. The repeal will not increase nor decrease the number of individuals subject to the rule's applicability.
8. The repeal will not negatively nor positively affect the state's economy.

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

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

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

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6). The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal will be in effect there will be no economic effect on local employment; therefore no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be an elimination of an outdated rule while adopting a new updated rule under separate action. There will be no economic costs to individuals required to comply with the repealed section.

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

PUBLIC COMMENT AND REASONED RESPONSE. The public comment period was held from August 9, 2019, to September 9, 2019, to receive input on the proposed repealed rule. No comments on the repeal were received.

STATUTORY AUTHORITY. The repeal is made pursuant to TEX. GOV'T CODE §2306.053, which authorizes the Department to adopt rules.

Except as described, herein the proposed repealed rule affects no other code, article, or statute.

#### 10 TAC, Chapter 20, Single Family Programs Umbrella Rule

§20.1. Purpose.

§20.2. Applicability.

§20.3. Definitions.

§20.4. Eligible Single Family Activities.

§20.5. Funding Notices.

§20.6. Applicant Eligibility.

§20.7. Household Eligibility Requirements.

§20.8. Single Family Housing Unit Eligibility Requirements.

§20.9. Fair Housing, Affirmative Marketing, Homebuyer Counseling, and Reasonable Accommodations.

§20.10. Inspection Requirements for Construction Activities.

§20.11. Survey Requirements.

§20.12. Insurance and Title Requirements.

§20.13. Loan, Lien, and Mortgage Requirements for Activities.

§20.14. Amendments and Modifications to Written Agreements and Contracts.

§20.15. Compliance and Monitoring.

§20.16. Waivers and Appeals.

Attachment B: Preamble, including required analysis, for proposed new 10 TAC Chapter 20, Chapter 20, Single Family Programs Umbrella Rule

The Texas Department of Housing and Community Affairs (the Department) adopts, with changes, new 10 TAC, Chapter 20, §§20.1 – 20.16, Single Family Programs Umbrella Rule. The purpose of the new rule is to clarify applicability of the Rule; update definitions; update eligibility requirements with respect to household property tax liabilities; clarify housing counseling and mobility counseling requirements; update insurance and title requirements for mortgage loan activities; specify refinancing guidelines; improve readability through the re-ordering of phrases; and improve consistency in terminology and capitalization.

Tex. Gov't Code §2001.0045(b) does apply to the rule being adopted because no exceptions apply, however it should be noted that no costs are associated with this action that would have prompted a need to be offset.

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

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

Bobby Wilkinson, Executive Director, has determined that, for the first five years the rule will be in effect:

1. The new rule does not create or eliminate a government program, but relates to the re-adoption of this rule making changes to the Single Family Programs Umbrella Rule.
2. The new rule does not require a change in work that will require the creation of new employee positions, nor will the new rule reduce workload to a degree that any existing employee positions are eliminated.
3. The new rule does not require additional future legislative appropriations.
4. The new rule does not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department.
5. The new rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.
6. The new rule will not limit, expand or repeal an existing regulation but merely revises a rule.
7. The new rule will not increase nor decrease the number of individuals subject to the rule's applicability.
8. The new rule will not negatively nor positively affect the state's economy.

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

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

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

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

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

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new rule is in effect, the public benefit anticipated as a result of the new rule would be to further clarify the purpose and guidelines for Single Family Programs. There will be no economic costs to individuals required to comply with the new rule.

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

PUBLIC COMMENT AND REASONSED RESPONSE. The public comment period was held from August 9, 2019, through September 9, 2019, to receive input on the new rule. Thirty-five commenters provided public comment: Bryan College Station Habitat for Humanity (1, 2, 3, 11, 12, 13, 14), Equity Community Development Corporation (4), Habitat for Humanity of Smith County (5, 10), Habitat for Humanity Abilene (6, 7, 8, 9), Rio Grande Habitat for Humanity (15), Habitat for Humanity Texas (16, 17, 18), Habitat for Humanity of Polk County (19), Austin Habitat for Humanity (20), Golden Crescent Habitat for Humanity (21, 22), Habitat for Humanity of Texarkana (23, 24, 25, 26), Habitat for Humanity Pasadena (27), El Paso County Colonia Self-Help Center (28), Habitat for Humanity of Grayson County (29), Habitat for Humanity of Laredo (30, 33), Rebuilding Together Austin (31), Habitat for Humanity of San Antonio (32), Webb County Self-Help Center (34), and Galilee Community Development Corporation (35).

The comment summaries and reasoned responses are below. Several revisions to the rule are recommended in response to the comments.

1. §20.3 (26), Definitions (Commenter 34)

Comment Summary: The commenter interpreted the definition of "Forgivable Loan" as containing program requirements.

Staff Response: The definition defines the term and does not add or remove any restrictions. No revisions are recommended.

2. §20.6 (e), Applicant Eligibility (Commenter 33, 34)

Comment Summary: Commenter 34 recommended that there be consideration given for Administrators who cannot satisfy threshold requirements due to circumstances outside of

their control. In addition, both commenters stated that requiring licenses for loan origination and loan servicing creates Administrator hardship.

Staff Response: In order to be awarded a contract or reservation agreement for Department funds, applying entities must meet minimum qualifications and demonstrate minimum program controls for procurement, risk management, affirmative marketing, etc. Any allowances or variations in threshold requirements would be stated in the applicable Notice of Funding Availability, as long as they are in accordance with this rule, the Program rule, and any other applicable part of the Texas Administrative Code. The Department does not include requirements that it does not believe are important to the successful administration of the program. The requirement that applying entities and Administrators possess the licenses for originating and servicing mortgage loans is both a federal and state requirement, and cannot be waived by TDHCA. No revisions are recommended.

3. §20.9, Fair Housing, Affirmative Marketing, Homebuyer Counseling, and Reasonable Accommodation

Staff identified seven main categories of public comment regarding rule changes to 10 TAC §20.9.

a. Staff Training

Comment Summary: Twelve commenters (6, 7, 8, 9, 12, 15, 17, 19, 20, 21, 24, 30) indicated that their administrative staff are well trained in Fair Housing issues, as well as fair lending, and equal credit access. This training means that the staff are well versed in the legalities of mortgage lending and the various acts and laws to protect borrowers.

Staff Response: TDHCA appreciates this comment and that our Administrators and their staff take their legal responsibilities seriously and have the best interest of their clientele at heart. No changes have been made as a result of these comments.

b. Source of Funding and Exemptions, part 1 of 3

Comment Summary: Twenty-seven commenters (1, 2, 3, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29, 30) stated that the Affirmative Marketing requirements of 10 TAC §20.9 are only required of Administrators of federal programs such as HOME, not state general revenue funded programs. For the State to require Administrators of state programs like the Texas Bootstrap Loan Program and other Housing Trust Fund activities to affirmatively market their programs creates an undue burden.

Staff Response: TDHCA agrees that Affirmative Marketing is a requirement of federally funded programs and has changed §20.9 to eliminate state funded programs from this requirement. Changes have been made as a result of these comments.

Source of Funding and Exemptions, part 2 of 3



Comment Summary: Six commenters (1, 2, 3, 11, 13, 14) additionally indicated that the precedent to exempt HTF Administrators from affirmative marketing requirements already exists in the proposed Texas Administrative Code in 10 TAC §20.9(b)(1)(E), because in that section only Administrators of federal programs are required to provide housing counseling to applicants.

Staff Response: While an exception for the housing counseling requirements does exist, that housing counseling is not part of what is conventionally considered affirmative marketing. Additionally, the housing counselors defined within the proposed rule language are required to be certified by HUD. TDHCA, in an effort to reduce burdens, chose to exempt HTF Administrators from that particular requirement, especially since finding such a housing counselor would be more difficult in rural areas. No changes have been made as a result of these comments.

#### Source of Funding and Exemptions, part 3 of 3

Comment Summary: Twenty-four commenters (1, 2, 3, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 22, 23, 25, 26, 27, 29, 30) indicated that the State should fully exempt all Administrators of HTF programs and funds from the responsibility to affirmatively market their programs. Specifically, seven of these commenters suggested that, if not all Administrators, then at least all Habitat for Humanity organizations and its affiliates should be exempted from affirmative marketing requirements.

Staff Response: TDHCA staff are opposed to carving out exceptions for specific organizations, leaving other Administrators to be treated inequitably. No changes have been made for specific organizational exemptions as a result of these comments. However, TDHCA agrees that Affirmative Marketing is a requirement of federally funded programs and has revised §20.9 to eliminate state funded programs from this requirement.

#### c. Program Conflicts, part 1 of 3

Comment Summary: Eighteen commenters (6, 7, 8, 9, 10, 12, 15, 17, 20, 21, 22, 23, 24, 25, 26, 27, 29, 30) pointed out that the responsibility to affirmatively market HTF programs conflicted with their organization's own programs, procedures, and policies. This conflict is represented as therefore preventing Administrators from even receiving HTF funds (without presumably having to revise their own procedures).

Staff Response: TDHCA staff are sympathetic to this issue and that Administrators are committed to serving low-income Texans for their housing needs. This commitment often leads Administrators to have strong convictions that their own existing procedures are the best way to accomplish these goals. TDHCA staff is committed to providing training and technical assistance to our program Administrators to make sure that they are informed about how to become and remain an eligible recipient and partner, and how their current procedures could be revised in relatively minimal ways while still becoming compliant. TDHCA agrees that Affirmative Marketing is a requirement of federally funded programs and has revised §20.9 to eliminate state funded programs from this requirement.

#### Program Conflicts, part 2 of 3

Comment Summary: Twenty-one commenters (6, 7, 8, 9, 10, 12, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29, 30) indicated that their programs are designed to serve everyone, not just least likely to apply populations. Additionally, these commenters suggested that the affirmative marketing requirement for a 30 day application period, a waitlist policy, and focus on least likely to apply populations is in direct opposition to the Administrator's mission to serve all eligible applicants.

Staff Response: When it comes to whom is served, TDHCA does not require an Administrator to serve one protected class over another. However, TDHCA agrees that Affirmative Marketing is a requirement of federally funded programs. Additionally, TDHCA agrees that a waitlist policy and 30 day waiting period are not a state or federal requirement, although they are well regarded as best practices. TDHCA has revised §20.9 to remove the requirement for a waitlist policy and a 30 day waiting period for recipients of only state funds; these requirements remain for federally funded subrecipients, and all subrecipients (regardless of funding source) remain subject to the applicable rules, statutes, and regulations referenced in §20.9(a).

#### Program Conflicts, part 3 of 3

Comment Summary: Ten commenters (7, 8, 9, 12, 15, 17, 21, 24, 25, 30) pointed out that the Department's affirmative marketing rules have already had the effect of delaying approval of several Administrators' applications. This has the effect of limiting participation in the program and blocks HTF funds from reaching those Administrators.

Staff Response: Program staff has indicated that the only outstanding applications that have not yet been approved are in the process of fixing issues in their applications that will allow them to come into compliance. In those applications, staff identified areas where the application and/or the affirmative marketing plan was not compliant with 10 TAC §20.9(b)(1), and then provided technical assistance to help the Administrator address and correct these issues. Delays for approvals of the Department should be very minimal for applications that submit complete documentation.

TDHCA staff has been engaged in providing technical assistance with these specific affirmative marketing plans, and will continue to do so. No changes have been made as a result of these comments.

#### d. Waitlist Policy Concerns, part 1 of 3

Comment Summary: Twenty-one commenters (6, 7, 8, 9, 10, 12, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29, 30) indicated that their programs do not maintain waitlists, therefore they do not have a waitlist policy. The affirmative marketing requirement to have a waitlist policy adds a barrier to Administrators who serve everyone. Furthermore, the requirement to have a neutral random selection process conflicts with some

Administrators' preference to serve households that are those most in need, able to pay a mortgage, and are willing to partner with the Administrator's organization.

Staff Response: TDHCA is pleased that some of our Administrators are able to serve all of their applicants, and have enough resources to not even require an order be established for who gets assisted. TDHCA agrees that a waitlist policy and 30 day waiting period are not a state or federal requirement, although they are well regarded as best practices. TDHCA has revised §20.9 to remove the requirement for a waitlist policy and a 30 day waiting period for recipients of only state funds; these requirements remain for federally funded subrecipients, and all subrecipients (regardless of funding source) remain subject to the applicable rules, statutes, and regulations referenced in §20.9(a).

#### Waitlist Policy Concerns, part 2 of 3

Comment Summary: Twenty-one commenters (6, 7, 8, 9, 10, 12, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29, 30) were concerned that the required 30 day application period in the rule, which instructs Administrators to open their application period and keep it open for 30 calendar days, would conflict with the Equal Credit Opportunity Act (ECOA), which requires a loan originator to process any complete application for credit within 30 days of receipt of the complete application. An Administrator may not be able to comply with this ECOA provision in this instance. This 30 day application period institutes an unnecessary delay in the process.

Staff Response: Staff does not agree that an application by a client to an HTF program Administrator constitutes the same thing as a full and complete application for credit. In many cases, when an applicant applies to HTF Administrators, no property is yet identified and other aspects of a full and complete credit application are not present. This initial application is more akin to a statement of interest in the Administrator's program, which would not begin the 30 day clock specified by ECOA. TDHCA agrees that a waitlist policy and 30 day waiting period are not a state or federal requirement, although they are well regarded as best practices. TDHCA has revised §20.9 to remove the requirement for a waitlist policy and a 30 day waiting period for recipients of only state funds; these requirements remain for federally funded subrecipients, and all subrecipients (regardless of funding source) remain subject to the applicable rules, statutes, and regulations referenced in §20.9(a). Additionally, TDHCA staff believes that it would be acceptable to reduce the 30 calendar day application period to 21 calendar days in order to accommodate these commenters' concerns for federal funds. Changes have been made as a result of these comments.

#### Waitlist Policy Concerns, part 3 of 3

Comment Summary: One commenter (35) indicated that the opening and closing of a waitlist every time the administrator receives a new reservation agreement is burdensome.

Staff response: The commenter may provide a waitlist policy that addresses these concerns for staff approval. No changes have been made as a result of these comments.

e. Least Likely to Apply Populations

Comment Summary: Ten commenters (1, 2, 3, 11, 12, 13, 14, 15, 17, 21) stated that the TDHCA Affirmative Marketing Tool's identified least likely to apply populations do not reflect the eligible population in the Administrator's service area. These commenters felt that, as a low-income program, they should not have to market to local country clubs in order to market to groups such as Asians or Whites.

Staff Response: Regardless of the types of protected classes identified in the Department's tool as being the least likely to apply, TDHCA would never recommend, suggest, or require that an Administrator affirmatively market their programs to income-ineligible (over income) populations. All data available clearly suggests that there are income eligible households of all races, national origins, religions, and household sizes in all 13 of TDHCA's Uniform Service Regions. When TDHCA determines least likely to apply populations, it is looking for regions where the percentage of households served by a program type is significantly less than the percentage of households in the region. When TDHCA's affirmative marketing tool indicates that Asian households are a least likely to apply population, it means that Asian households make up a significantly smaller proportion of households served than they make up of the proportion of households in the region. As an example, in TDHCA's region 1, which is the Texas Panhandle, including cities like Amarillo and Lubbock , there were no Asian, American Indian or Native Alaskan, or Hawaiian or Other Pacific Islander households served by Administrators of homebuyer or rehabilitation activities from 2006-2015. This is clearly an indication that those populations are, in fact, least likely to apply and require affirmative marketing. Staff is able to provide technical assistance on suggested ways Administrators can outreach to specific populations that are more likely to be income eligible. Further, TDHCA agrees that Affirmative Marketing is a requirement of federally funded programs and has changed §20.9 to eliminate state funded programs from this requirement.

f. Marketing

Comment Summary: One commenter (20) indicated that, because demand far outpaces supply, many Administrators do not do much, if any, marketing. This commenter specifically stated that in the last seven years there has been no marketing done and there are hundreds of families still wanting a chance to own a home.

Staff Response: TDHCA staff appreciates this comment. No changes have been made as a result of this comment.

g. Burden, part 1 of 4

Comment Summary: One commenter (31) indicated that the requirement for a 30 day application period and neutral random selection process is administratively burdensome.

Staff Response: TDHCA staff does not believe that it is burdensome to accept applications for a 30 day period to assure affirmative marketing has had a chance to reach least likely to

apply populations. However, TDHCA will shorten the 30 calendar day period to a 21 calendar day period. The neutral random selection process is not burdensome, and can be done as easily as picking numbers out of a hat. TDHCA staff is always willing to give technical assistance on how to implement neutral random selection and has given technical assistance on this very topic. Changes have been made as a result of this comment.

Burden, part 2 of 4

Comment Summary: One commenter (32) indicated that the requirement to include an attachment to the HUD Form 935.2B with the State's additional marketing requirements is burdensome to the point that the Administrator can no longer participate in HTF activities.

Staff Response: In response to the HUD Form 935.2B form not being complete for the purposes of an HTF Affirmative Marketing Plan, elements of the HUD Form 935.2B do in fact require attachments. Specifically, Question 4c. Marketing Program: Community Contacts and Question 6b. Experience and Staff Instructions of HUD Form 935.2B require attachments.

Further, TDHCA staff created its own form that is available to all Administrators that limits additional attachments and includes detailed instructions on exactly what is required of an Administrator. The TDHCA form has been used by several Administrators for HOME Single Family activities, and those Administrators have found the form to be more user friendly and clear than the HUD Form 935.2B. TDHCA suggests that Administrators use the TDHCA form when possible, and has revised 10 TAC §20.9 to make the availability of the TDHCA form more prevalent. Changes have been made as a result of this comment on the use of available forms by Administrators of federal funds. Further, TDHCA agrees that Affirmative Marketing is a requirement of federally funded programs and has revised §20.9 to eliminate state funded programs from this requirement.

Burden, part 3 of 4

Comment Summary: One commenter (35) indicated that the submission of a new Affirmative Marketing Plan for every new contract or activity creates an undue burden.

Staff Response: Staff has clarified in 10 TAC §20.9 that Administrators may submit a previously approved AFHMP if no changes need to be made. Changes have been made as a result of this comment.

Burden, part 4 of 4

Comment Summary: Three commenters (28, 33, 34) stated that the homebuyer counseling and education requirements in §20.9 (b)(1)(E) for federally funded mortgage loan activities is cost-prohibitive for the Administrators and the participating low-income households, and creates administrative hardship.

Staff Response: These homebuyer counseling requirements are imposed by the U.S. Department of Housing and Urban Development on HUD-funded mortgage loan activities,

and the Department does not have the authority to waive them. No changes have been made as a result of these comments.

h. Other

Comment Summary: One commenter (32) stated that their submitted Affirmative Marketing plans do not conflict with the current Texas Administrative Code.

Staff Response: This comment is related to a specific application that is not impacted by the rule changes being contemplated. Staff will work with the applicant directly in the review of their plan. No changes have been made as a result of this comment.

4. §20.10 (a)(1), Inspection Requirements for Construction Activities (Commenter 28)

Comment Summary: The commenter asked for TDHCA's requirements on interim inspections of rehabilitation and reconstruction activities.

Staff Response: An interim inspection is required for all construction activities when the Administrator is utilizing Department funds for construction. No revisions are recommended.

5. §20.10 (a)(2)(B), Inspection Requirements for Construction Activities (Commenter 34)

Comment Summary: The commenter stated that third party certification of compliance with energy efficiency requirements will be costly, especially in the Texas-Mexico border region.

Staff Response: Staff agrees and suggests the revision below to provide more flexibility on who can certify compliance with energy efficiency requirements.

§20.10. Inspection Requirements for Construction Activities.

(a)(2)(B) Administrator or third party code or Qualified Inspector certification of compliance with the Minimum Energy Efficiency Requirements for Single Family Construction Activities under 10 TAC Chapter 21 is required, as applicable.

6. §20.10 (b)(1), Inspection Requirements for Construction Activities (Commenter 34)

Comment Summary: The commenter seeks more detail on what documentation the Department will accept in lieu of a Certificate of Occupancy in jurisdictions that do not issue Certificates of Occupancy.

Staff Response: As the subsection states, the Department will accept evidence (such as a building permit or other written confirmation issued by a Qualified Inspector) that the housing unit has passed all required building codes, zoning ordinances, and has no known

deficiencies related to health and safety standards, in accordance with subsection (a)(2) of this section. As further described in Program Rules, this must come from a Qualified Inspector. The Department will review this documentation on a case-by-case basis. No revisions are recommended.

7. §20.10 (e)(3), Inspection Requirements for Construction Activities (Commenter 4, 5, 31, 34)

Comment Summary: The commenters recommended that “qualified inspectors” instead of “code inspectors” be permitted to conduct inspections in areas outside municipalities or in extraterritorial jurisdictions. This modification would mitigate the potentially high cost of hiring code inspectors who are unwilling to inspect outside of municipal areas. Commenter 34 recommended that the Department further identify the checklists and forms it requires.

Staff Response: Staff agrees and suggests the revision below to replace “code inspector” with “qualified inspector”. Each Program will define “Qualified Inspector” within its own Rule or as required by federal regulation. The Department will continue to provide required forms on the program webpage, and will continue to notify Administrators of any form updates.

§20.10. Inspection Requirements for Construction Activities.

(e) Inspector Requirements.

(3) For areas not within a city or an extraterritorial jurisdiction, all Qualified-All non-municipal code Inspectors shall conduct inspections using applicable construction standards prescribed by the Department, and Department-approved inspection forms and checklists as applicable.

8. §20.11, Survey Requirements (Commenter 28)

Comment Summary: The commenter asked what kind of survey, if any, is required when replacing a Manufactured Housing Unit.

Staff Response: Each Program will provide further detail in its program rule and/or program manual, and Administrators must adhere to TDHCA's Manufactured Housing installation and registration procedures. No revisions are recommended.

9. §20.13, Loan, Lien, and Mortgage Requirements for Activities (Commenter 33, 34)

Comment Summary: Commenter 33 stated that applying traditional underwriting criteria, especially debt-to-income ratio restrictions, to low-income applicants of forgivable loans will exclude many of the colonia households for whom some of the single family activities are intended. Commenter 34 also stated that this subsection will render most economically disadvantaged colonia households ineligible for TDHCA loans assistance. The requirements in this subchapter will also create Administrator hardship.

Staff Response: The underwriting requirements in subsection (d) of this subchapter apply only to non-forgivable, amortizing loans, so debt-to-income ratios are not applicable to households seeking such assistance. For any Colonia Self-Help Centers qualifying households for grant assistance or forgivable loans, the mortgage loan underwriting requirements are not applicable. No revisions are recommended.

STATUTORY AUTHORITY. The new rule is adopted pursuant to TEX. GOV'T CODE §2306.053, which authorizes the Department to adopt rules.

Except as described, herein the adopted new rule affects no other code, article, or statute. The agency certifies that legal counsel has reviewed the new rule and found it to be within the state agency's legal authority to adopt.

## CHAPTER 20 SINGLE FAMILY PROGRAMS UMBRELLA RULE

### §20.1. Purpose.

This Chapter sets forth the common elements of the Texas Department of Housing and Community Affairs' (the Department) single family Programs, which include the Department's HOME Investment Partnerships Program (HOME), State Housing Trust Fund (SHTF), Texas Neighborhood Stabilization Program (NSP), and Office of Colonia Initiatives (OCI) Programs and other single family Programs as developed by the Department. Single family Programs are designed to improve and provide affordable housing opportunities to low-income individuals and families in Texas and in accordance with Chapter 2306 of the Tex. Gov't Code and any applicable statutes and federal regulations.

### §20.2. Applicability.

(a) This Chapter only applies to single family Programs. Program Rules may impose additional requirements related to any provision of this chapter. Where a Program Rule is less restrictive and the item is not preempted by federal law, the provisions of this chapter will govern Program decisions.

(b) Excluded from this Chapter are Activities performed under Chapter 27 (relating to Texas First Time Homebuyer Program Rule) and Chapter 28 (related to Taxable Mortgage Program) of this title.

### §20.3. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings unless the context indicates otherwise. Any capitalized terms not specifically defined in this section or any section referenced in this chapter shall have the meaning as defined in Chapter



2306 of the Tex. Gov't Code, the Program Rules, the Texas Administrative Code (TAC), or applicable federal regulations.

(1) Activity--The assistance provided to a specific Household or Administrator by which funds are used for acquisition, new construction, reconstruction, rehabilitation, refinance of an existing Mortgage, tenant-based rental assistance, or other Department approved Expenditure under a single family housing Program.

(2) Administrator--A unit of local government, Nonprofit Organization or other entity acting as a subrecipient, Developer, or similar organization that has an executed written Agreement with the Department.

(3) Affirmative Marketing Plan--HUD Form 935.2B or equivalent plan created in accordance with HUD requirements to direct specific marketing and outreach to potential tenants and homebuyers who are considered "least likely" to know about or apply for housing based on an evaluation of market area data. May be referred to as "Affirmative Fair Housing Marketing Plan" (AFHMP).

(4) 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 Department may determine Control to include, but not be 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.

(5) Affiliated Party--A person or entity with a contractual relationship with the Administrator as it relates to a Program, the form of assistance under a Program, or an Activity.

(6) Agreement--Same as "Contract." May be referred to as a "Reservation System Agreement" or "Reservation Agreement" when providing access to the Department's Reservation System as defined in this chapter.

(7) Amy Young Barrier Removal Program--A program designed to remove barriers and address immediate health and safety issues for Persons with Disabilities as outlined in the Program Rule.

(8) Annual Income--The definition of Annual Income and the methods utilized to establish eligibility for housing or other types of assistance as defined under the Program Rule.

(9) Applicant--An individual, unit of local government, nonprofit corporation or other entity, as applicable, who has submitted to the Department or to an Administrator an Application for Department funds or other assistance.

- (10) Application--A request for a Contract award or a request to participate in a Reservation System submitted by an Applicant to the Department in a form prescribed by the Department, including any exhibits or other supporting material.
- (11) Certificate of Occupancy--Document issued by a local authority to the owner of premises attesting that the structure has been built in accordance with building ordinances.
- (12) Combined Loan to Value (CLTV)--The aggregate principal balance of all the Mortgage Loans, including Forgivable Loans, divided by the appraised value.
- (13) Competitive Application Cycle--A defined period of time that Applications may be submitted according to a published Notice of Funding Availability (NOFA) that will include a submission deadline and selection or scoring criteria.
- (14) Concern--A policy, practice or procedure that has not yet resulted in a Finding, but if not changed will or may result in a Finding, or disallowed costs.
- (15) Contract--The executed written Agreement between the Department and an Administrator performing an Activity related to a single family Program that describes performance requirements and responsibilities. May also be referred to as "Agreement."
- (16) Control--The possession, directly or indirectly, of the power to direct or cause the direction of the management, operations or policies of any person or entity, whether through the ownership of voting securities, ownership interests, or by contract or otherwise.
- (17) Debt--A duty or obligation to pay money to a creditor, lender, or person which can include car payments, credit card bills, loans, child support payments, and student loans.
- (18) Debt-to-Income Ratio--The percentage of gross monthly income from Qualifying Income that goes towards paying off Debts and is calculated by dividing total recurring monthly Debt by gross monthly income expressed as a percentage.
- (19) Deobligate--The cancellation of or release of funds under a Contract or Agreement as a result of expiration of, termination of, or reduction of funds under a Contract or Agreement.
- (20) Developer--Any person, general partner, Affiliate, or Affiliated Party or affiliate of a person who owns or proposes a Development or expects to acquire control of a Development and is the person responsible for performing under the Contract with the Department.
- (21) Development--A residential housing project for homeownership that consists of one or more units owned by the Developer during the development period and financed under a common plan which has applied for Department funds. This includes a project consisting of multiple units of housing that are located on scattered sites.
- (22) Domestic Farm Laborer--Individuals (and the Household) who receive a substantial portion of their income from the production or handling of agricultural or aquacultural products.
- (23) Draw--Funds requested by the Administrator, approved by the Department and subsequently disbursed to the Administrator.
- (24) Enforcement Committee--The Committee as defined in Chapter 2 of this title (relating to Enforcement).

(25) Finding--An Administrator's material failure to comply with rules, regulations, the terms of the Contract, or to provide services under a Program to meet appropriate standards, goals, and other requirements established by the Department or funding source (including performance objectives). A Finding impacts the organization's ability to achieve the goals of the program and may jeopardize continued operations of the Administrator. A Finding includes the identification of an action or failure to act that results or may result in disallowed costs.

(26) Forgivable Loan--Financial assistance in the form of a Mortgage Loan that is not required to be repaid if the terms of the Mortgage Loan are met.

(27) HOME Program--A HUD funded Program authorized under the HOME Investment Partnerships Program at 42 U.S.C. §§12701 - 12839.

(28) Household--One or more persons occupying a rental unit or owner-occupied Single Family Housing Unit as their primary residence. May also be referred to as a "family" or "beneficiary."

(29) Housing Contract System (HCS)--The electronic information system that is part of the "central database" established by the Department to be used for tracking, funding, and reporting single family Contracts and Activities.

(30) Housing Trust Fund or State Housing Trust Fund (SHTF)--State-funded Programs authorized under Chapter 2306 of Tex. Gov't Code.

(31) HUD--The United States Department of Housing and Urban Development or its successor.

(32) Improvement Survey--A boundary survey plus land improvements by a Texas surveyor with a surveyor's seal, license number, and signature, meeting the requirements of the Texas Board of Professional Land Surveying under Chapter 663, Part 29, Title 2 of the TAC, showing (at a minimum) the accompanying legal description; all boundaries clearly labeled with calls and distance found on the ground and per the legal description; the location of all improvements, structures, visible utilities, fences, or walls; any boundary or visible encroachments; all adjoining and recording information; location of all easements, setback lines, and utilities; or other recorded matters affecting the use of the property.

(33) Life-of-Loan Flood Certification--Tracks the flood zone of the Single Family Housing Unit for the life of the Mortgage Loan.

(34) Limited English Proficiency (LEP)--Refers to persons who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English.

(35) Loan Assumption--An agreement between the buyer and seller of Single Family Housing Unit that the buyer will make remaining payments and adhere to terms and conditions of an existing Mortgage Loan on the Single Family Housing Unit and Program requirements. A Mortgage Loan assumption requires Department approval.

(36) Manufactured Housing Unit (MHU)--A structure that meets the requirements of Texas Manufactured Housing Standards Act, Chapter 1201 of the Texas Occupations Code or FHA guidelines as required by the Department.

(37) Mortgage--Has the same meaning as defined in §2306.004 of the Tex. Gov't Code.

(38) Mortgage Loan--Has the same meaning as defined in §2306.004 of the Tex. Gov't Code.

(39) Neighborhood Stabilization Program (NSP)--A HUD-funded program authorized by HR3221, the "Housing and Economic Recovery Act of 2008" (HERA) and Section 1497 of the Wall Street Reform and Consumer Protection Act of 2010, as a supplemental allocation to the CDBG Program.

(40) NOFA--Notice of Funding Availability or announcement of funding published by the Department notifying the public of available funds for a particular Program with certain requirements.

(41) Nonprofit Organization--An organization in which no part of its income is distributable to its members, directors or officers of the organization and has a current tax exemption classification status from the Internal Revenue Service in accordance with the Internal Revenue Code.

(42) Office of Colonia Initiatives--A division of the Department authorized under Chapter 2306 of Tex. Gov't Code, which acts as a liaison to the colonias and manages some Programs in the colonias.

(43) Parity Lien--A lien position whereby two or more lenders share a security interest of equal priority in the collateral.

(44) Persons with Disabilities--Any person who has a physical or mental impairment that substantially limits one or more major life activities; or has a record of such an impairment; or is being regarded as having such impairment. Included in this meaning is the term handicap as defined in the Fair Housing Act, and disability as defined by other applicable federal or state law.

(45) Principal Residence--The primary Single Family Housing Unit that a Household inhabits. May also be referred to as "primary residence."

(46) Program--The specific fund source from which single family funds are applied for and used.

(47) Program Income--Gross income received by the Administrator or Affiliate directly generated from the use of single family funds, including, but not limited to gross income received from matching contributions under the HOME Program.

(48) Program Manual--A set of guidelines designed to be an implementation tool for a single family Program which allows the Administrator to search for terms, statutes, regulations, forms and attachments. A Program Manual is developed by the Department and amended or supplemented from time to time.

(49) Program Rule--Chapters of this title which pertain to specific single family Program requirements.

(50) Qualified Inspector--Defined by Program Rule or federal requirement.

~~(50)~~ (51) Qualifying Income--The income used to calculate the Applicant and co-Applicant's debt-to-income ratio and excludes the total of any income not received consistently for the past 12 months from the date of Application including, but not limited to, income from a full or part

time job that lacks a stable job history, potential bonuses, commissions, and child support. Income received for less than 12 months such as retirement annuity or court ordered payments will be considered only if it is expected to continue at least 24 months in the foreseeable future.

(5452) Reservation--Funds set-aside for a Household submitted through the Department's Reservation System.

(5253) Reservation System--The Department's online tracking system that allows Administrators to reserve funds for a specific Household.

(5453) Resolution--Formal action by a corporate board of directors or other corporate body authorizing a particular act, transaction, or appointment. Resolutions must be in writing and state the specific action that was approved and adopted, the date the action was approved and adopted, and the signature of person or persons authorized to sign resolutions. Resolutions must be approved and adopted in accordance with the corporate bylaws of the issuing organization.

(5554) Reverse Mortgage--A Home Equity Conversion Mortgage insured by the FHA.

(5655) Self-Help--Housing Programs that allow low, very low, and extremely low-income families to build or rehabilitate their Single Family Housing Units through their own labor or volunteers.

(5756) Single Family Housing Unit--A residential dwelling designed and built for a Household to occupy as its primary residence where single family Program funds are used for rental, acquisition, construction, reconstruction or rehabilitation Activities of an attached or detached housing unit, including Manufactured Housing Units after installation. May be referred to as a single family "home," "housing," "property," "structure," or "unit."

(5857) TAC--Texas Administrative Code.

(5958) TMCS--Texas Minimum Construction Standards located at <http://www.tdhca.state.tx.us/single-family/training/index.htm>.

#### §20.4. Eligible Single Family Activities.

(a) Availability of funding for and specific Program requirements related to the Activities described in subsection (b)(1) - (7) of this section are defined in each Program's Rules.

(b) Activity Types for eligible single family housing Activities include the following, as allowed by the Program Rule or NOFA:

(1) Rehabilitation, or new construction of Single Family Housing Units;

(2) Reconstruction of an existing Single Family Housing Unit on the same site;

(3) Replacement of existing owner-occupied housing with a new MHU;

(4) Acquisition of Single Family Housing Units, including acquisition with rehabilitation and accessibility modifications;

(5) Refinance of an existing Mortgage or Contract for Deed mortgage;

(6) Tenant-based rental assistance; and

(7) Any other single family Activity as determined by the Department.

#### §20.5. Funding Notices.

(a) The Department will make funds available for eligible Administrators for single family activities through NOFAs, requests for qualifications (RFQs), request for proposals (RFPs), or other methods describing submission and eligibility guidelines and requirements.

(b) Funds may be allocated through Contract awards by the Department or by Department authority to submit Reservations.

(c) Funds may be subject to regional allocation in accordance with Chapter 2306 of the Tex. Gov't Code.

(d) Eligible Applicants must comply with the provisions of the Application materials and funding notice and are responsible for the accuracy and timely submission of all Applications and timely correction of all deficiencies.

#### §20.6. Applicant Eligibility.

(a) Eligible Applicants may include entities such as units of local government, Nonprofit Organizations, or other entities as further provided in the Program Rule and/or NOFA.

(b) An Applicant shall be in good standing with the Department, Texas Secretary of State, Texas Comptroller of Public Accounts and HUD, as applicable.

(c) An Applicant shall comply with all applicable state and federal rules, statutes, or regulations including those administrative requirements in Chapter 1 of this title (relating to Administration).

(d) An Applicant must provide Resolutions in accordance with the applicable Program Rule.

(e) The actions described in the following paragraphs (1) - (3) of this subsection may cause an Applicant and any Applications they have submitted, to be ineligible:

(1) Applicant did not satisfy all eligibility and/or threshold requirements described in the applicable Program Rule and NOFA;

(2) Applicant is debarred by HUD or the Department; or

(3) Applicant is currently noncompliant or has a history of noncompliance with any Department Program. Each Applicant will be reviewed by the Executive Award and Review Advisory Committee (EARAC) for its compliance history by the Department, as provided in §1.302 (relating to Previous Participation Reviews for Department Program Awards Not Covered by §1.301 of this Subchapter) and §1.303 (relating to Executive Award and Review Advisory Committee (EARAC)) of this title. An Application submitted by an Applicant found to be in noncompliance or otherwise violating the rules of the Department may be recommended with conditions or not recommended for funding by EARAC.

(f) The Department reserves the right to adjust the amount awarded based on the Application's feasibility, underwriting analysis, the availability of funds, or other similar factors as deemed appropriate by the Department.

(g) The Department may decline to fund any Application if the proposed Activities do not, in the Department's sole determination, represent a prudent use of the Department's funds. The Department is not obligated to proceed with any action pertaining to any Applications which are received, and may decide it is in the Department's best interest to refrain from pursuing any selection process. The Department reserves the right to negotiate individual components of any Application.

(h) If an Applicant/Administrator is originating or servicing a Mortgage Loan, the Applicant/Administrator must possess all licenses required under state or federal law for taking the Application of and/or servicing a residential mortgage loan and must be in good standing with respect thereto, unless Applicant/Administrator is specifically exempted from such licensure pursuant to the applicable state and federal laws and regulations regarding residential mortgage loans.

#### §20.7. Household Eligibility Requirements.

(a) The method used to determine Annual Income will be provided in the Program Rule.

(b) A Household must occupy the Single Family Housing Unit as their Principal Residence for the entirety of the affordability period as established by the Program Rule. If the Household fails to do so, the Department may declare the Mortgage Loan in default and accelerate the note.

#### §20.8. Single Family Housing Unit Eligibility Requirements.

(a) A Single Family Housing Unit must be located in the State of Texas.

(b) Real property taxes assessed on an owner-occupied Single Family Housing Unit must be current prior to the date of Mortgage Loan closing or effective date of the grant agreement. Delinquent property taxes will result in disapproval of the Activity unless one or more of the following conditions are satisfied:

(1) Household must be satisfactorily participating in an approved installment agreement in accordance with Texas Tax Code §33.02 with the taxing authority, and must be current for at least three consecutive months prior to the date of Application;

(2) Household must have qualified for an approved tax deferral plan agreement in accordance with Texas Tax Code §§33.06 or 33.065; or

(3) Household must have entered into an installment agreement under Texas Tax Code §§31.031 or 31.032, have made at least one payment under the agreement, and be current on the installment plan.

(c) A Single Family Housing Unit must not be encumbered with any liens which impair the good and marketable title as of the date of the Mortgage Loan closing or effective date of the grant agreement.

(d) Prior to any Department assistance, the owner must be current on any existing Mortgage Loans or home equity loans.

§20.9. Fair Housing, Waitlist Policy, Affirmative Marketing and Procedures, Homebuyer Counseling, Denials, Notice to Applicants, and Reasonable Accommodations, and Limited English Proficiency.

(a) Fair Housing. In addition to Chapter 1, Subchapter B of this title (relating to Accessibility and Reasonable Accommodations), an Administrator must comply with all applicable state and federal rules, statutes, or regulations, involving accessibility including the Fair Housing Act, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act, and the Architectural Barriers Act as well as state and local building codes that contain accessibility requirements; where local, state, or federal rules are more stringent, the most stringent rules shall apply. Administrators receiving Federal or state funds must comply with the Age Discrimination Act of 1975.

(b) Preferences. Administrators of the Amy Young Barrier Removal Program may have a preference prioritizing Households to prevent displacement from permanent housing, or to foster returning to permanent housing related to inaccessible features of the unit.

(c) Waitlist Policy. An Administrator receiving Federal funds must have a Waitlist Policy. The Waitlist Policy must be submitted to the Department each time the Administrator applies for a new contract or a new type of activity. The Administrator may submit a previously approved Waitlist Policy if no changes need to be made. The Waitlist Policy must be submitted at a minimum of every three years if the Administrator continues to accept new applications. An Administrator receiving Federal funds must submit a Waitlist Policy with an Affirmative Fair Housing Marketing Plan as described in §20.9(c), relating to Affirmative Marketing Procedures.

(1) A Waitlist Policy must include any Department approved preferences used in selecting Applicants from the list. An Administrator that has defined preferences in its written waitlist procedures or tenant selection plans, as applicable, will employ preferences first and select Applicants from the list of Applicants meeting the defined preference, still using the neutral random selection process. An Administrator of a federally funded Program may only request to establish preferences that are included in Department planning documents, specifically the One Year Action Plan or Consolidated Plan, or as otherwise allowed for CDBG funded Activities.

EXAMPLE: A HOME Program Administrator has specific program requirements to assist one in every four Households at 30% area median family income. This Administrator should use a neutral random selection process to rank Applicants, and select going down the list. When the



Administrator must assist a Household at or below 30% area median income they will then go down the list and select, in order, a Household at the 30% income level.

(2) An Administrator must accept Applications from possible eligible Applicants for a minimum of a 21 calendar day period. A first-come, first-served basis may not be used when initially selecting among eligible Applicants. At the close of the minimum 21 calendar day application period an Administrator must select Applicants through a neutral random selection process that the Administrator has written. Only after the Administrator has allowed for the minimum 21 calendar day period to accept applications and has used a neutral random selection process to assist Households, may the Administrator then accept applications on a first-come, first-served basis if funds remain in the current contract or Activity type. A HOME Tenant Based Rental Assistance Reservation System Applicant or Administrator applying for disaster funds may request that the Director of Programs or designee approve an exemption from the 21 calendar day period and the neutral random selection process, as necessary to respond to the disaster.

(b) Affirmative Marketing and Procedures. An Administrator receiving Federal or state funds must have an Affirmative Fair Housing Marketing Plan (AFHMP) and satisfy the requirements of this subsection. The AFHMP must be submitted to the Department each time the Administrator applies for a new contract or a new type of activity, and reflect marketing activities specific to the activity type. The Administrator may submit a previously approved AFHMP if no changes need to be made. The plan must be submitted at a minimum of every three years if the Administrator continues to accept new applications.

(1) Administrators must use the AFHMP form on the Department's website, HUD Form 935.2B, the form on the Department's website, or create an equivalent AFHMP that includes:

(A) Identification of the population "least likely to apply" for the Administrator's Program(s) without special outreach efforts. Administrators may use the Department's single family affirmative marketing tool to determine populations "least likely to apply." If Administrators use another method to determine the populations "least likely to apply" the AFHMP must provide a detailed explanation of the methodology used. Persons with Disabilities must always be included as a population least likely to apply.

(B) Identification of the methods of outreach that will be used to attract persons identified as least likely to apply. Outreach methods must include identification of a minimum of three organizations with whom the Administrator plans to conduct outreach, and whose membership or clientele consists primarily of protected class members in the groups least likely to apply. If the Administrator is unable to locate three such groups, the reason must be documented in the file.

(C) Identification of the methods to be used for collection of data and periodic evaluation to determine the success of the outreach efforts. If efforts have been unsuccessful, the Administrator's AFHMP should be revised to include new or improved outreach efforts.

(D) Description of the fair housing trainings required for Administrator staff, including delivery method, training provider and frequency. For programs involved in homebuyer transactions, training must include requirements of the Fair Housing Act relating to financing and advertising, expected real estate broker conduct, as well as redlining and zoning for all programs, and discriminatory appraisal practices ~~for programs involved in homebuyer transactions.~~

(E) A description for the provision of applicable counseling programs and educational materials that will be offered to Applicants. An Administrator offering any Mortgage Loan utilizing federal funds must require that potential home purchasers receive homeownership counseling and education at the time assistance is approved. Housing counseling may take place in-person or by telephone. Counseling may be provided online only if it is customized to the individual Household. Counseling must address pre- and/or post-purchase topics, as applicable to the Borrower's needs. A certificate of completion of counseling must be dated not more than 12 months from the date of submission of Mortgage Loan application. For an Applicant who will receive assistance from a federally funded Program on or after August 1, 2020, homeownership counseling must be provided by HUD-certified counselors working for agencies participating in HUD's Housing Counseling Program.

(2) Applicability.

(A) Affirmative marketing is required as long as an Administrator of federal funds is accepting applications or until all dwelling units are sold in the case of single family homeownership programs.

(B) An Administrator that currently has an existing list of Applicants and are not accepting new Applicants or establishing a waitlist are not required to affirmatively market until preparing to accept new Applications, but must develop a plan as described in this subsection. EXAMPLE: An Administrator has an active HOME Reservation System Participation Agreement with a closed waiting list. The Administrator must develop an affirmative marketing plan, but does not have to affirmatively market that portion of its Program. The Administrator should serve its waitlist. When the Administrator is nearing the bottom of the waitlist it should begin to affirmatively market the program, open up the program to new Applicants, finish serving the existing Households on the waitlist, and all new Applicants will be held for 2130 calendar days, and then selected based on the neutral random selection process as described in §20.9(b)(2) paragraph (3) of this subsection, relating to Waitlist Policy.

(C) An Administrator providing assistance in more than one service area must provide a separate plan for each market area in which the housing assistance will be provided.

(D) Administrator must conduct an analysis of the AFHMP at the close out of the contract or Activity and attach it to any subsequent AFHMP submitted for the same program.

(E) Administrators must include the Equal Housing Opportunity logo and slogan on any commercial and other media used in marketing outreach.

(F) Copies of all outreach and media ads must be kept and made available to the Department upon request.

~~(3) After the required outreach efforts have been made, an Administrator must accept Applications from possible eligible Applicants for a minimum of a 30 calendar day period. A first come, first served basis may not be used when initially selecting among eligible Applicants. At the close of the minimum 30 calendar day application period an Administrator must select Applicants through a neutral random selection process that the Administrator has written. Only after the Administrator has allowed for the minimum 30 calendar day period to accept applications and has used a neutral random selection process to assist Households, may the Administrator then accept applications on a first come, first served basis if funds remain in the current contract or Activity type. A HOME Tenant Based Rental Assistance Reservation System Applicant or Administrator applying for disaster funds may request that the Director of Programs or designee approve an exemption from the 30 calendar day period and the neutral random selection process, as necessary to respond to the disaster.~~

~~(4) An Administrator must include as an attachment to HUD Form 935.2B or equivalent AFHMP, a waitlist policy including any Department approved preferences used in selecting Applicants from the list. Administrators of the Amy Young Barrier Removal Program may have a preference prioritizing Households to prevent displacement from permanent housing, or to foster returning to permanent housing related to inaccessible features of the unit. An Administrator that has defined preferences in its written waitlist procedures or tenant selection plans, as applicable, will employ preferences first and select Applicants from the list of Applicants meeting the defined preference, still using the neutral random selection process. An Administrator of a federally funded Program may only request to establish preferences that are included in Department planning documents, specifically the One Year Action Plan or Consolidated Plan, or as otherwise allowed for CDBG funded Activities. EXAMPLE: A HOME Program Administrator has specific program requirements to assist one in every four Households at 30% area median family income. This Administrator should use a neutral random selection process to rank Applicants, and select going down the list. When the Administrator must assist a Household at or below 30% area median income they will then go down the list and select, in order, a Household at the 30% income level.~~

~~(5e) Homebuyer Counseling. An Administrator offering homeownership or rental assistance that allows the Household to relocate from their current residence must provide the Household access to mobility counseling. For homeownership, mobility counseling may be included in homeownership counseling and education trainings, and must cover the criteria noted in subparagraphs (1A) - (3C) of this paragraph.~~

~~(1A) Mobility counseling must, at a minimum, include easily understandable information that the Household can use in determining areas of opportunity within a service area, which must at minimum include the following: which areas have lower poverty rates, average income~~

information of different areas, school ratings, crime statistics, available area services, public transit, and other items the Administrator deems appropriate in helping the Household make informed choices when identifying housing.

(2B) Mobility counseling may be offered online or in-person, and must be customized for the Household.

(G3) An Administrator must collect signed certifications from Applicants acknowledging they have received mobility counseling. Certifications may be collected as a standalone form or may be integrated into existing program forms.

~~(6) Administrator must conduct an analysis of the AFHMP at the close out of the contract or Activity and attach it to any subsequent AFHMP submitted for the same program.~~

(F7) Denials. In the case of any Applicant's denial from a program, a letter providing the specific reason for the denial must be provided to the Applicant within seven calendar days of the denial. Administrators must keep a record of all denied Applicants including the basis for denial. Such records must be retained for the record retention period described by the Agreement or other sources.

(g8) Notice to Applicants. Administrator must provide Applicants with eligibility criteria, which shall include the procedures for requesting a reasonable accommodation to the Administrator's rules, policies, practices, and services, including but not limited to, as it relates to the Application process.

~~(9) Administrators must include the Equal Housing Opportunity logo and slogan on any commercial and other media used in marketing outreach.~~

~~(10) Copies of all outreach and media ads must be kept and made available to the Department upon request.~~

(he) A copy of all Reasonable Accommodation requests and the Administrator's compliant responses to such requests, in accordance with §1.204 of this title (relating to Reasonable Accommodations), must be kept as stated in §1.409 of this title (relating to Records Retention).

(id) Provisions Related to Limited English Proficiency.

(1) Administrator must have a Language Access Plan that ensures persons with Limited English Proficiency (LEP) have meaningful access and an equal opportunity to participate in services, activities, programs, and other benefits.

(2) Materials that are critical for ensuring meaningful access to an Administrator's major activities and programs, including but not limited to Applications, mortgage loan applications, consent forms and notices of rights, should be translated for any population considered least likely to apply that meets the threshold requirements of Safe Harbor LEP provisions as provided by HUD and published on the Department's website. Materials considered critical for ensuring meaningful access should be outlined in the Administrator's Language Access Plan.

(3) The Administrator is required to translate Vital Documents under Safe Harbor guidelines, they must include in their Language Access Plan how such translation services will be provided

(e.g., whether the Administrator will use voluntary or contracted qualified translation services, telephonic services, or will identify bilingual staff that will be available to assist Applicants in completing vital documents and/or accessing vital services). If the Administrator plans to use bilingual staff in its translation services, contact information for bilingual staff members must be provided.

(4) The Language Access Plan must be submitted to the Department upon request and be available for review during monitoring visits. HUD and the Department of Justice have issued requirements to ensure meaningful and appropriate access to programs for LEP individuals.

(5) Administrators must offer reasonable accommodations information and Fair Housing rights information in both English and Spanish, and other languages as required by the inclusion of "least likely to apply" groups to reach populations identified as least likely to apply.

(je) The plans noted in subsections (b)(1) and (d)(1) of this section, any documentation supporting the plans, and any changes made to the plans, must be kept in accordance with recordkeeping requirements for the specific Program, and in accordance with 10 TAC §1.409.

#### §20.10. Inspection Requirements for Construction Activities.

(a) The inspection requirements in this section are applicable to all construction activities, except for the Amy Young Barrier Removal Program, to the extent funded with SHTF.

(1) Interim inspections of construction progress are required for a Draw request.

(2) Final inspections are required for all single family construction Activities. The inspection must document that the Activity is complete; meets all applicable codes, requirements, zoning ordinances; and has no known deficiencies related to health and safety standards.

(A) A copy of the final inspection report must be provided to the Department and to the Household.

(B) Administrator, or third party code or Qualified Inspector certification of compliance with the Minimum Energy Efficiency Requirements for Single Family Construction Activities under 10 TAC Chapter 21 is required, as applicable.

(b) New construction requirements.

(1) A Certificate of Occupancy shall be issued prior to final payment for construction, as applicable. In instances where the local jurisdiction does not issue a Certificate of Occupancy for the Activity undertaken, the Administrator must provide to the Department documentation evidencing that the Single Family Housing Unit has passed all required building codes in accordance to subsection (a)(2) of this section.

(2) Applicant must demonstrate compliance with Tex. Gov't Code §2306.514, "Construction Requirements for Single Family Affordable Housing," and applicable Program Rules.

(c) Reconstruction requirements.

(1) The initial inspection must identify all substandard conditions listed in TMCS along with any other health or safety concerns, unless the unit has been condemned or in the case of a HOME Activity, the unit to be reconstructed is an MHU.

(A) A copy of the initial inspection report must be provided to the Department and to the Household as applicable. The initial inspection may be waived if the local building official certifies that the extent of the subject property's substandard conditions is beyond repair, or the property has been condemned.

(B) All substandard conditions identified in the initial inspection report shall be addressed in the work write-up and cost-estimate in adequate detail to document the need for reconstruction.

(2) A Certificate of Occupancy shall be issued prior to final payment for construction, as applicable. In instances where the local jurisdiction does not issue a Certificate of Occupancy for the Activity undertaken, the Administrator must provide to the Department documentation evidencing that the Single Family Housing Unit has passed all required building codes in accordance with subsection (a)(2) of this section.

(3) Applicant must demonstrate compliance with Tex. Gov't Code §2306.514, "Construction Requirements for Single Family Affordable Housing," and applicable Program Rules.

(d) Rehabilitation requirements.

(1) The initial inspection must identify all substandard conditions listed in TMCS, along with any other health and safety concerns.

(A) A copy of the initial inspection report must be provided to the Department and to the Household.

(B) All substandard conditions identified in the initial inspection report shall be addressed in the work write-up and cost-estimate in adequate detail to ensure that all substandard conditions are properly corrected.

(2) Final inspections must document that all substandard and health and safety issues identified in the initial inspection have been corrected. Also, all deficient items noted on the final inspection report must be corrected prior to the final draw of funds.

(3) Administrator shall meet the applicable requirements of the TMCS. TMCS requirements may be waived only through the process provided in §20.16 of this chapter (relating to Appeals).

(4) Correction of cosmetic issues, such as paint, wall texture, etc., will not be required if acceptable to the Program as outlined in the Program Rule, or if utilizing a Self-Help Construction Program.

(e) Inspector Requirements.

(1) Inspectors hired to verify compliance with this chapter must meet Program requirements as outlined in the Program Rule, as applicable.

(2) Within city limits and extraterritorial jurisdictions, municipal code inspectors shall conduct all inspections for local code requirements as applicable.

(3) For areas not within a city or an extraterritorial jurisdiction, all ~~Qualified code~~ inspectors shall conduct inspections using applicable construction standards prescribed by the Department, and Department-approved inspection forms and checklists as applicable.

(f) The Department reserves the right to reject any inspection report if, in its sole and reasonable determination, the report does not accurately represent the property conditions or if the inspector does not meet Program requirements. All related construction costs in a rejected inspection report may be disallowed until the deficiencies are adequately cured.

(g) A Single Family Housing Unit condemned by a unit of government will not be rehabilitated.

#### §20.11. Survey Requirements.

(a) The Amy Young Barrier Removal Program is excluded from the survey requirements in subsections (b) - (d) to the extent funded with SHTF.

(b) When Program funds are used for acquisition or construction, an Improvement Survey is required when:

(1) The rehabilitation project is enlarging the footprint; or

(2) The Activity is reconstruction, new construction, or acquisition of an existing home.

(c) If allowed by the Program Rules or NOFA, existing surveys for acquisition only activities may be used if the owner certifies that no changes were made to the footprint of any building or structure, or to any improvement on the Single Family Housing Unit, and the title company accepts the certification and survey.

(d) The Department reserves the right to determine the survey requirements on a per Activity basis if additional survey requirements would, at the sole discretion of the Department, benefit the Activity.

#### §20.12. Insurance and Title Requirements.

(a) The Amy Young Barrier Removal Program is excluded from this section, to the extent funded with SHTF.

(b) Title Insurance Requirements. A "Mortgagee's Title Insurance Policy" is required for all Department Mortgage Loans, exclusive of subordinate lien Mortgage Loans for down payment assistance and closing costs.

(1) The title insurance policy shall be issued by an entity that is licensed and in good standing with the Texas Department of Insurance.

(2) The policy must be in the amount of the Mortgage Loan. The mortgagee named shall be: "Texas Department of Housing and Community Affairs."

(3) The policy must include survey deletion coverage.

(c) Title Reports.

(1) Title reports are acceptable only for grants when title insurance is not available.

(2) Title reports must disclose the current ownership, easements, restrictions, and liens relating to the property, and include a search for judgements, mortgages or liens, affidavits, deed restrictions, building setback and easements, and any other factors which may impair the good and marketable title to the property.

(3) The preliminary title report may not be older than six months from the date of submission of the Activity to the Department.

(d) Builder's Risk. Builder's Risk (non-reporting form only) is required when the Department provides construction funds for a Single Family Housing Unit. At the end of the construction period, the binder must be endorsed to remove the "pending disbursements" clause.

(e) Hazard Insurance. If Department funds are provided in an amount that exceeds \$20,000, then:

(1) The Department requires property insurance for fire and extended coverage;

(2) Homeowner's policies or package policies that provide property and liability coverage are acceptable. All risk policies are acceptable;

(3) The amount of hazard insurance coverage should be no less than 100% of the current insurable value of improvements as of the date of Mortgage Loan closing or effective date of the grant agreement; and

(4) The Department must be named as a loss payee and mortgagee on the hazard insurance policy for any Activity receiving a Mortgage Loan from the Department.

(f) Flood Insurance. Flood insurance must be maintained for all structures located in special flood hazard areas as determined by the U.S. Federal Emergency Management Agency (FEMA).

(1) A Household may elect to obtain flood insurance even though flood insurance is not required. However, the Household may not be coerced or required to obtain flood insurance unless it is required in accordance with this section.

(2) Evidence of insurance, as required in this chapter, must be obtained prior to Mortgage Loan funding. A one year insurance policy must be paid. For Amortizing Mortgage Loans, a minimum of two months of reserves must be collected at the closing of the Mortgage Loan. The Department must be named as the loss payee on the policy.

#### §20.13. Loan, Lien, and Mortgage Requirements for Activities.

(a) The term "Borrower" in this section means the Household that is borrowing funds from or through the Department for the acquisition, new construction and/or rehabilitation of a Principal Residence.

(b) The fees to be paid by the Department or Borrower upfront or through the closing must be reasonable for the service rendered, in accordance with the typical fees paid in the market place for such activities and:



(1) Fees charged by third party Mortgage lenders are limited to the greater of 2% of the Mortgage Loan amount or \$3,500, including but not limited to origination, loan application, and/or underwriting fees, and

(2) Fees paid to other parties that are supported by an invoice and/or reflected on the Closing Disclosure will not be included in the limit in paragraph (1) of this subsection.

(c) A Loan made by a third-party lender in conjunction with Mortgage Loan from a federal source must be fixed-rate and may not include pre-payment penalties, balloon payments, negative amortization, or interest-only periods.

(d) Mortgage Loan Underwriting Requirements. The requirements in this paragraph shall apply to all non-forgivable amortizing Mortgage Loans.

(1) Debt-to-Income Ratio. The Household's total Debt-to-Income Ratio shall not exceed 45% of Qualifying Income (unless otherwise allowed or dictated by a participating lender providing a fixed rate Mortgage Loan that is insured or guaranteed by the federal government or a conventional Mortgage Loan that adheres to the guidelines set by Fannie Mae and Freddie Mac.) A potential Borrower's spouse who does not apply for the Mortgage Loan will be required to execute the information disclosure form(s) and the deed of trust as a "non-purchasing" spouse. The "non-purchasing" spouse will not be required to execute the note. For credit underwriting purposes all debts and obligations of the primary potential Borrower(s) and the "non-purchasing" spouse will be considered in the potential Borrower's total Debt-to-Income Ratio.

(2) Credit Qualifications.

(A) Potential Borrowers must have a credit history that indicates reasonable ability and willingness to meet debt obligations. In order for the Department to make a reasonable determination, all Borrowers must provide a credit release form. The Department may utilize credit reports if less than 90 days old as part of the Mortgage Loan application or obtain tri-merge credit reports on all potential Borrowers submitted to the Department for approval at the time of Mortgage Loan application. In addition to the initial credit report, the Department may at its discretion obtain one or more additional credit reports before Mortgage Loan closing to ensure the potential Borrower still meets Program requirements. Acceptable outstanding debt means that all accounts are paid as agreed and are current.

(B) Unacceptable Credit. Applicants meeting one or more of the following criteria will not be qualified to receive a single family Mortgage Program Loan from the Department:

(i) A credit history reflecting payments on any open consumer, retail and/or installment account (e.g., auto loans, signature loans, payday loans, credit cards or any other type of retail and/or installment loan, with the exception of a medical account) which have been delinquent for more than 30 days on two or more occasions within the last 12 months and must be current for the six months immediately preceding the date of the Mortgage Loan application ~~loan application date~~ application date;

(ii) A foreclosure or deed-in-lieu of foreclosure or a potential Borrower in default on a mortgage at the time of the short sale any of which had occurred or been completed within the last 24 months prior to the date of Mortgage Loan application;

(iii) An outstanding Internal Revenue Service tax lien or any other outstanding tax liens where the potential Borrower has not entered into a satisfactory repayment arrangement and been current for at least 12 months prior to the date of Mortgage Loan application;

(iv) A court-created or court-affirmed obligation or judgment caused by nonpayment that is outstanding at the date of Mortgage Loan application or any time prior to closing of the Mortgage Loan;

(v) Any account (with the exception of a medical account that is delinquent or has been placed for collection) that has been placed for "collection," "profit and loss" or "charged off" within the last 24 months prior to the date of Mortgage Loan application;

(vi) Any reported delinquency on any government debt at the date of Mortgage Loan application;

(vii) A bankruptcy that has been filed within the past 24 months prior to the date of the Mortgage Loan; or

(viii) Any reported child support payments in arrears unless the potential Borrower has evidence of having met satisfactory payment arrangements for at least 12 months prior to the date of the Mortgage Loan.

(C) Mitigation for Unacceptable Credit. The following exceptions will be considered as mitigation to the unacceptable credit criteria in subparagraph (B) of this paragraph.

(i) The potential Borrower is a Domestic Farm Laborer and receives a substantial portion of his/her income from the production or handling of agriculture or aquacultural products, and has demonstrated the ability and willingness to meet debt obligations as determined by the Department.

(ii) The potential Borrower provides documentation to evidence that the outstanding delinquency or unpaid account has been paid or settled or the potential Borrower has entered into a satisfactory repayment arrangement or debt management plan and been current for at least 12 consecutive months prior to the date of Mortgage Loan.

(iii) The potential Borrower submits to the Department a written explanation of the cause for the previous delinquency, which has since been brought current and is acceptable to the Executive Director or his or her designee.

(iv) Any and all outstanding judgments must be released prior to closing of Mortgaged Loan.

(v) If a potential Borrower is currently participating in a debt management plan, and the trustee or assignee provides a letter to the Department stating they are aware and agree with the potential borrower applying for a Mortgage Loan. If a potential Borrower filed a bankruptcy, the bankruptcy must have been discharged or dismissed more than 12 months prior to the date of Mortgage Loan application and the potential Borrower has re-established good credit with at

least one existing or new active consumer account or credit account that is in good standing with no delinquencies for at least 12 months prior to the date of Mortgage Loan application.

(vi) If a Chapter 13 Bankruptcy was filed, a potential Borrower must have satisfactorily made 12 consecutive payments and obtain court trustee's written approval to enter into Mortgage Loan.

(D) Liabilities.

(i) The potential Borrower's liabilities include all revolving charge accounts, real estate loans, alimony, child support, installment loans, and all other debts of a continuing nature with more than 10 monthly payments remaining. Debts for which the potential borrower is a co-signer will be included in the total monthly obligations. For payments with 10 or fewer monthly payments remaining, there shall be no late payments within the past 12 months or the debt will be included into the Debt-to-Income Ratio calculation. Payments on installment debts which are paid off prior to funding are not included for qualification purposes. Payments on all revolving debts (e.g., credit cards, payday loans, lines of credit, unsecured loans) and certain types of installment loans that appear to be recurring in nature will be included in the Debt-to-Income Ratio calculation, even if the potential Borrower intends to pay off the accounts, since the potential Borrower can reuse those credit sources, unless the account is paid off and closed. If the credit report shows a revolving account with an outstanding balance but no specific minimum payment, the payment must be calculated as the greater of 5% of the outstanding balance or \$10. If the potential Borrower provides a copy of the current statement reflecting the monthly payment that amount may be used for the Debt-to-Income Ratio calculation.

(ii) if a potential Borrower provides written evidence that a debt will be deferred at least 12 months from the date of closing, the debt will not be included in the Debt-to-Income Ratio calculation. Payments on any type of loan that have been deferred or have not yet commenced, including student loans and accounts in forbearance, will be calculated using 1% of the outstanding balance or monthly payment reported on the potential Borrower's credit report, whichever is less. Other types of loans with deferred payment will be calculated using the monthly payment shown on the potential Borrower's credit report. If the credit report does not include a monthly payment for the loan, the monthly payment shown in the loan agreement or payment statement will be utilized.

(E) Non-Traditional Credit and Insufficient Credit. If sufficient credit history is not evidenced based on subparagraph (A) of this paragraph, an Applicant must provide three lines of nontraditional credit such as utility payments, auto insurance, cell phone payments, child care or other credit, as approved by the Department, listed in their name and reflecting no more than one 30 day delinquency on payments due to nontraditional creditors within the last 12 months. The Non-Traditional Credit provided must not qualify as Unacceptable Credit as specified in subparagraph (B) of this paragraph.

(F) Equal Credit Opportunity Act. The Department and/or the Administrator on behalf of the Department will comply with all federal and state laws and regulations relating to the extension

of credit, including the Equal Credit Opportunity Act (ECOA) (15 U.S.C. 1691 et seq.) and its implementing regulation at 12 CFR Part 1002 (Regulation B) when qualifying potential Borrower(s) to receive a single family Mortgage Loan from the Department.

(e) The Department reserves the right to deny assistance in the event that the senior lien conditions are not to the satisfaction of the Department, as outlined in the Program Rules.

(f) Lien Position Requirements.

(1) A Mortgage Loan made by the Department shall be secured by a first lien on the real property if the Department's Mortgage Loan is the largest Mortgage Loan secured by the real property; or

(2) The Department may accept a Parity Lien position if the original principal amount of the leveraged Mortgage Loan is equal to or greater than the Department's Mortgage Loan; or

(3) The Department may accept a subordinate lien position if the original principal amount of the leveraged Mortgage Loan is at least 55% of the combined loans; however, liens related to other subsidized funds provided in the form of grants and non-amortizing Mortgage Loans, such as deferred payment or Forgivable Loans, must be subordinate to the Department's payable Mortgage Loan.

(g) Loan Terms. All Mortgage Loan terms must meet all of the following criteria:

(1) May not exceed a term of 30 years;

(2) May not be for a term of less than five years; and

(3) Interest rate may be as low as 0% as provided in the Program Rules.

(h) Loan Assumption. A Mortgage Loan may be assumable if the Department determines the potential Borrower assuming the Mortgage Loan is eligible according to the underwriting criteria of this section and complies with all Program requirements in effect at the time of the assumption.

(i) Cash Assets. An Applicant with unrestricted cash assets in excess of \$25,000 must use such excess funds towards the acquisition of the property in lieu of loan proceeds. Unrestricted cash assets for this purpose are Net Family Assets defined in 24 CFR §5.603.

(j) Appraisals.

(1) An appraisal is required by the Department on each property that is part of an acquisition Activity, except for down payment assistance only, prior to closing to determine the current market value.

(2) The appraisal must conform to the Uniform Standards of Professional Appraisal Practice (USPAP) as adopted by the Appraisal Standards Board of the Appraisal Foundation.

(3) The Appraiser must have an active and current license by the Texas Appraisal Licensing and Certification Board.

(k) Combined Loan to Value. The Combined Loan to Value ratio of the property may not exceed 100% of the cost to acquire the property. The lien amounts of Forgivable Loans shall be included when determining the Combined Loan to Value ratio. The cost to acquire the property

may exceed the appraised value only for an amount not to exceed the closing costs but in no case may result in cash back to the Borrower or exceed the limits under subsection (b)(1) of this section.

(l) Escrow Accounts.

(1) An escrow account must be established if:

(A) The Department holds a first lien Mortgage Loan which is due and payable on a monthly basis to the Department; or

(B) The Department holds a subordinate Mortgage Loan and the first lien lender does not require an escrow account, the Department will require an escrow account to be established.

(2) If an escrow account held by the Department is required under one of the provisions described in this subsection, then the following provisions described in subparagraphs (A) - (F) of this paragraph are applicable:

(A) The Borrower must contribute monthly payments to cover the anticipated costs, as calculated by the Department, of real estate taxes, hazard and flood insurance premiums, and other related costs as applicable;

(B) Escrow reserves shall be calculated based on land and completed improvement values;

(C) The Department may require up to two months of reserves for hazard and/or flood insurance, and property taxes to be collected at the time of closing to establish the required escrow account;

(D) In addition, the Department may also require that the property taxes be prorated at the time of closing and those funds be deposited with the Department;

(E) The Borrower will be required to deposit monthly funds to an escrow account with the Mortgage Loan servicer in order to pay the taxes and insurance. This will ensure that funds are available to pay for the cost of real estate taxes, insurance premiums, and other assessments when they come due;

(F) These funds are included in the Borrower's monthly payment to the Department or to the servicer; and

(G) The Department will establish and administer the escrow accounts in accordance with the Real Estate Settlement and Procedures Act of 1974 (RESPA) under 12 U.S.C. §2601 and its implementing regulations at 12 CFR Part 1024 (Regulation X), as applicable.

(m) Requirements for Originating Mortgage Loans for the Department.

(1) Any Administrator or staff member of an Administrator originating Mortgage Loans for the Department must be properly licensed and registered as a residential mortgage loan originator in accordance with Chapters 157 and 180 of the Texas Finance Code and its implementing regulations at Chapter 81, Part 4 of Title 7 of the TAC, unless exempt from licensure or registration pursuant to the applicable state and federal laws and regulations regarding residential mortgage loans.

(A) The Department reserves the right to reject any Mortgage Loan application originated by an Administrator or individual that is not properly licensed or registered.

(B) The Department will not reimburse any expenses related to a Mortgage Loan application received from an Administrator or individual that is not properly licensed or registered.

(2) Only Administrators approved by the Department may issue initial mortgage disclosures, including the Loan Estimate and other integrated disclosures for Mortgage Loans made by the Department as required under RESPA, Regulation X, the Dodd Frank Wall Street Reform and Consumer Protection Act (Dodd Frank) at 124 Stat.1375, the Truth in Lending Act (TILA) at 15 U.S.C. §1601 and its implementing regulations at 12 CFR §1026 (Regulation Z), and any applicable Texas laws, statutes, and regulations regarding consumer disclosures for residential mortgage loan transactions.

(A) The Department reserves the right to reject any application for Mortgage Loan and Loan Estimate submitted by an Administrator that has not received Department approval because the loan product as disclosed is not offered or the Borrower does not qualify for that loan product.

(B) The Department will not reimburse any expenses related to a Loan Estimate or Application received from an Administrator that does not have Department approval.

(3) Only an Administrator approved by the Department may issue final mortgage disclosures, including the Closing Disclosures and other integrated disclosures, for Mortgage Loans made by the Department as required under RESPA, Regulation X, Dodd Frank, TILA, Regulation ), and any applicable Texas laws, statutes, and regulations regarding consumer disclosures for residential mortgage loan transactions.

(A) The Department reserves the right to reject any Closing Disclosure issued by an Administrator or title company without Department approval.

(B) The Department reserves the right to refuse to fund a Mortgage Loan with a Closing Disclosure that does not have Department approval.

(4) The Department will not allow disbursement of any portion of the Department's Mortgage Loan for acquisition until seller delivers to the Borrower a fully executed deed to the property. After execution of the deed, the deed must be recorded in the records of the county where the property is located.

(5) The first monthly mortgage payment upon closing of the Mortgage Loan with monthly scheduled payments will be due one full month after the last day of the month in which the Mortgage Loan closed. For example, if the Mortgage Loan closed on May 10th or May 30th, the first Mortgage payment will be due July 1st.

(n) Principal Residence. Loans are only permitted for potential Borrowers who will occupy the property as their Principal Residence. The property must be occupied by the potential Borrower within the later of 60 days after closing or completion of the final Draw of Department funds for rehabilitation. It must remain the Household's Principal Residence as defined in the Mortgage

Loan documents or in the case of Forgivable Loans, until the forgiveness period has concluded in accordance with the Mortgage documents.

(o) Life-of-Loan Flood Certifications will be required to monitor for FEMA flood map revisions and community participation status changes for the term of the Mortgage Loan.

(p) Requirements for Subordinating to a Refinanced Loan. The Department may consent to the refinancing of the Household's superior third-party lender mortgage and execute a subordination agreement when the following conditions are met:

(1) Borrower is not refinancing into an adjustable rate mortgage;

(2) Combined loan balances do not exceed 100% of appraised value;

(3) There is no increase in principal or interest payments, with the exception made for Borrowers refinancing from a 30-year term to a shorter loan term;

(4) The Borrower will not receive any proceeds from the transaction unless it is for overpayment of Borrower's costs;

(5) All lienholders have consented to the refinancing; and

(6) In the case of Reverse Mortgages insured by the federal government (e.g. Home Equity Conversion Mortgage insured by the Federal Housing Administration), all other requirements are met.

#### §20.14. Amendments to Written Agreements and Contracts.

(a) The Department, acting by and through its Executive Director or his/her designee, may authorize, execute, and deliver amendments to any written Agreement or Contract that is not a Household commitment contract, provided that the requirements of this section are met unless otherwise indicated in the Program Rules.

(1) Time extensions. The Executive Director or his/her designee may grant up to a cumulative 12 months extension to the end date of any Contract unless otherwise indicated in the Program Rules. Any additional time extension granted by the Executive Director shall include a statement by the Executive Director identifying the unusual, non-foreseeable or extenuating circumstances justifying the extension. If more than a cumulative 12 months of extension is requested and the Department determines there are no unusual, non-foreseeable, or extenuating circumstances, it will be presented to the Board for approval, approval with revisions, or denial of the requested extension.

(2) Award or Contract Reductions. The Department may decrease an award for any good cause including but not limited to the request of the Administrator, insufficient eligible costs to support the award, or failure to meet deadlines or benchmarks.

(3) Changes in Household. Reductions in Contractual deliverables and the number of Households to be served shall require an amendment to the Contract. Increases in Contractual deliverables and Households that do not shift funds, or cumulatively shift less than 10% of total award or Contract funds, shall be completed through an amendment to the Contract and be

approved administratively. If such amendment is not approved, the Applicant will have the right to appeal in accordance with §1.7 of this title (relating to Appeals Process).

(4) Increases in Award and Contract Amounts.

(A) For a specific single family Program's Contract, the Department can award a cumulative increase of funds up to 50% of the original award amount.

(B) Requests for increases in funding will be evaluated by the Department on a first-come, first-served basis to assess the capacity to manage additional funding, the demonstrated need for additional funding and the ability to expend the increase in funding within the Contract period.

(C) The considerations to approve an increase in funding shall include, at a minimum, Administrator's ability to continue to meet existing deadlines, benchmarks, and reporting requirements.

(D) Increases in funds may come from Program funds, Deobligated funds, or Program Income.

(E) Qualifying requests will be recommended to the Executive Director or his/her designee for approval.

(F) The Board must approve requests for increases in Program funds in excess of the cumulative increase threshold established in this subsection.

(5) The single family Program Directors may approve Contract budget amendments that meet the requirements of paragraphs (A) - (D) of this subsection if:

(A) Funds must be available in a budget line item;

(B) The budget change(s) are less than 10% of the total Contract's budget;

(C) If units or Activities are desired to be increased, but funds must be shifted from another budget line item in which units or Activities from that budget line item have been completed; and

(D) The cumulative total of a Contract's budget modifications cannot exceed 10% of the original total Contract's budget amount.

(6) The Division Director may approve other amendments to a Contract or an Agreement, including amendments to the Administrator's service area, benchmarks, or selection of Activities administered under a Contract or an Agreement, provided that the amendment would not have negatively impacted the priority of Board approved Applications.

(b) The Department may terminate a Contract in whole or in part if the Administrator does not achieve performance benchmarks as outlined in the Program Rule and/or Contract, or for any other reason in the Department's reasonable discretion.

(c) In all instances noted in this section, where an expected Mortgage Loan transaction is involved, Mortgage Loan documents will be modified accordingly at the expense of the Administrator/borrower.

§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 these Contracts and Activities so they understand clearly, with a documented record, how they are performing in meeting 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 30 calendar day notice will be provided. However, if a credible complaint of fraud is received, the Department reserves the right to conduct unannounced monitoring visits, or provide a shorter notice period. If the Department receives a complaint under §1.2 of this title (relating to Department Complaint System to the Department), it will follow the procedures outlined therein instead of this section. It is the responsibility of the Administrator to maintain current contact information with the Department for the organization, key staff members, and governing body in accordance with §1.22 of this title (relating to Providing Contact Information to the Department).

(e) Upon request, an Administrator 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 and/or Concerns of noncompliance requiring corrective action, the Administrator will be provided a 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 Compliance Division 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 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 to the Enforcement Committee, or other action under this title.

(h) Monitoring Close Out. After completion of the monitoring review, 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 EARAC 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 federal 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 a provision of the Contract or a requirement of the TAC, or a provision of UGMS, the Administrator may submit an appeal to the Executive Director consistent with §1.7 of this title (relating to Appeals Process).

(3) An Administrator may request Alternative Dispute Resolution (ADR). An Administrator must send a proposal to the Department's Dispute Resolution Coordinator to initiate ADR pursuant to §1.17 of this title (relating to Alternative Dispute Resolution).

(j) If an Administrator does not respond to a monitoring letter or fails 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) An Administrator 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.

#### §20.16. Appeals.

Appeal of Department staff decisions or actions will follow requirements in Program Rules and Chapter 1 of this title (relating to Administration).

7f

**BOARD ACTION REQUEST**

**OCI, HTF & NSP DIVISION**

**OCTOBER 10, 2019**

Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC Chapter 26, Texas Housing Trust Fund Rule, an order adopting new 10 TAC Chapter 26, Texas Housing Trust Fund Rule, and directing their publication in the *Texas Register*

**RECOMMENDED ACTION**

**WHEREAS**, pursuant to Tex. Gov't Code, §2306.053, the Department is authorized to adopt rules governing the administration of the Department and its programs;

**WHEREAS**, pursuant to Tex. Gov't Code, §2306.202, the Department is required to use the Housing Trust Fund to provide loans, grants, or other comparable forms of assistance to local units of government, public housing authorities, nonprofit organizations and income-eligible individuals, families, and households to finance, acquire, rehabilitate, and develop decent, safe and sanitary housing;

**WHEREAS**, the repeal of 10 TAC Chapter 26 and the new 10 TAC Chapter 26, Texas Housing Trust Fund Rule, are being made to clarify applicability of the Rule to the Texas Bootstrap Loan Program and the Amy Young Barrier Removal Program; improve readability through the re-ordering of phrases and sections; and clarify and simplify program guidelines for the Amy Young Barrier Removal Program with regards to purpose, geographic dispersion of funds, administrative requirements, reservation system requirements, household eligibility, property eligibility, construction requirements and project completion requirements; and

**WHEREAS**, the proposed actions on this rule were published in the *Texas Register* and made available for public comment from August 9, 2019, through September 9, 2019, public comment was received, and the Department is providing a reasoned response for the rule now being presented for adoption;

**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 repeal of 10 TAC Chapter 26 and adoption of new 10 TAC Chapter 26, regarding the Texas Housing Trust Fund Rule, in the form presented to this meeting, to be published in the *Texas Register* for adoption and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing, including the preparation of the subchapter specific preambles.

## BACKGROUND

The purpose of repealing and replacing the Texas Housing Trust Fund (HTF) Rule is to clarify applicability of the rule to the Texas Bootstrap Loan Program and the Amy Young Barrier Removal Program; improve readability through the re-ordering of phrases and sections; and clarify and simplify program guidelines for the Amy Young Barrier Removal Program with regards to purpose, geographic dispersion of funds, administrative requirements, reservation system requirements, household eligibility, property eligibility, construction requirements and project completion requirements.

The proposed rule was published in the *Texas Register* on August 9, 2019, for public comment through September 9, 2019, and four comments were received. While reasoned response has been provided to those comments, staff is not recommending any revisions to the rules as a result of these comments. Staff is incorporating a change as a result of a comment made to the Single Family Umbrella Rule, to move the definition of Qualified Inspector from 10 TAC §20.21 to 10 TAC§20.2 to clarify that this definition applies to the Bootstrap Program as well. Staff recommends adoption of the proposed rule as published in the *Texas Register*. The rule is attached in its final form.

The significant updates made in the proposed version of the rule to 10 TAC Chapter 26 are:

- Subchapter A, General Guidance, contains minor correction of acronyms. §26.4, Use of Funds, now contains an additional subsection to clarify how and when HTF loan repayments and interest earnings may be used by the Department to resolve unanticipated challenges that may arise in the course of administering Single Family programs.
- Subchapter B, §26.20, Amy Young Barrier Removal Program Purpose, removes the \$20,000 funding cap per household in order to provide flexibility for the program to keep pace with rising construction and labor costs. The funding cap will be reflected in the Notice of Funding Availability. Funds, contains edits to more clearly describe the geographic dispersion of funds and Administrative Requirements and create consistency with other Department programs.
- Subchapter B, §26.21, Amy Young Barrier Removal Program Definitions, modifies the Qualified Inspector minimum experience requirement to three years in order to increase Administrators' ability to locate capable inspectors to assist with AYBR Program activities.
- Subchapter B, §26.23, Amy Young Barrier Removal Program Administrative Requirements, was reworded to improve clarity and readability, and include citations to applicable requirements with regards to financial accountability and Department Previous Participation Review.
- Subchapter B, §26.27, Amy Young Barrier Removal Program Construction Requirements, makes an exception to permit certain Manufactured Housing Units to participate in the program if they are receiving only exterior accessibility modifications. This section also requires a 12-month warranty on project deliverables.

## **Attachment A: Preamble, including required analysis, for the adoption of the repeal of 10 TAC, Chapter 26, Texas Housing Trust Fund Rule**

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC, Chapter 26, §§26.1 – 26.28, Texas Housing Trust Fund Rule. The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

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

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

Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal will be in effect:

1. The repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous adoption making changes to the Texas Housing Trust Fund Rule.
2. The repeal does not require a change in work that will require the creation of new employee positions, nor will the repeal reduce workload to a degree that any existing employee positions are eliminated.
3. The repeal does not require additional future legislative appropriations.
4. The repeal does not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department.
5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.
6. The action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to the existing Texas Housing Trust Fund Rule.
7. The repeal will not increase nor decrease the number of individuals subject to the rule's applicability.
8. The repeal will not negatively nor positively affect this state's economy.

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

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

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

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

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

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be an elimination of an outdated rule while adopting a new updated rule under separate action. There will be no economic costs to individuals required to comply with the repealed section.

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

PUBLIC COMMENT AND REASONED RESPONSE. The public comment period was held from August 9, 2019, through September 9, 2019, to receive input on the proposed repealed rule. No comments on the repeal were received.

STATUTORY AUTHORITY. The repeal is made pursuant to TEX. GOV'T CODE §2306.053, which authorizes the Department to adopt rules.

Except as described, herein the repealed rule affects no other code, article, or statute.

#### Subchapter A, General Guidance

§26.1. Purpose.

§26.2. Definitions.

§26.3. Allocation of Funds.

§26.4. Use of Funds.

§26.5. Prohibited Activities.

§26.6. Administrator Eligibility and Requirements.

#### Subchapter B, Amy Young Barrier Removal Program

§26.20. Amy Young Barrier Removal Program Purpose.

§26.21. Amy Young Barrier Removal Program Definitions.

§26.22. Amy Young Barrier Removal Program Geographic Dispersion.

§26.23. Amy Young Barrier Removal Program Administrative Requirements.

§26.24. Amy Young Barrier Removal Program Reservation System Requirements.

§26.25. Amy Young Barrier Removal Program Household Eligibility Requirements.

§26.26. Amy Young Barrier Removal Program Property Eligibility Requirements.

§26.27. Amy Young Barrier Removal Program Construction Requirements.

§26.28. Amy Young Barrier Removal Program Project Completion Requirements.



## **Attachment B: Preamble, including required analysis, for adopting new 10 TAC Chapter 26, Texas Housing Trust Fund Rule**

The Texas Department of Housing and Community Affairs (the Department) adopts, without changes, new 10 TAC, Chapter 26, §§26.1 – 26.28, Texas Housing Trust Fund Rule. The purpose of the new rule is to make changes that bring the rule up to date, streamline language and simplify program guidelines for the Amy Young Barrier Removal Program with regards to purpose, geographic dispersion of funds, administrative requirements, reservation system requirements, household eligibility, property eligibility, construction requirements and project completion requirements.

Tex. Gov't Code §2001.0045(b) does apply to the rule being adopted because no exceptions apply, however, it should be noted that no costs are associated with this action that would have prompted a need to be offset.

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

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

Bobby Wilkinson, Executive Director, has determined that, for the first five years the rule will be in effect:

1. The new rule does not create or eliminate a government program, but relates to the readoption of this rule making changes to the Texas Housing Trust Fund Rule.
2. The new rule does not require a change in work that will require the creation of new employee positions, nor will the new rule reduce workload to a degree that any existing employee positions are eliminated.
3. The new rule does not require additional future legislative appropriations.
4. The new rule does not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department.
5. The new rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.
6. The new rule will not limit, expand or repeal an existing regulation but merely revises a rule.
7. The new rule will not increase nor decrease the number of individuals subject to the rule's applicability.
8. The new rule will not negatively nor positively affect the state's economy.

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

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

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

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

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

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new rule is in effect, the public benefit anticipated as a result of the new rule would be to further clarify the purpose and use of the Texas Housing Trust Fund. There will be no economic costs to individuals required to comply with the new rule.

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

PUBLIC COMMENT AND REASONED RESPONSE. The public comment period was held from August 9, 2019, through September 9, 2019, to receive input on the new rule. Four commenters provided public comment: (1) Meals on Wheels Central Texas, (2) Habitat for Humanity of Smith County, (3) Galilee Community Development Corporation, and (4) Rebuilding Together Austin. The comment summaries and reasoned responses are below. No revisions in response to these comments are recommended to the rule. Staff is incorporating a change as a result of a comment made to the Single Family Umbrella Rule, to move the definition of Qualified Inspector from 10 TAC §20.21 to 10 TAC§20.2 to clarify that this definition applies to the Bootstrap Program as well.

1. §26.20, Amy Young Barrier Removal Program Purpose (Commenter 2, 3, 4)

Comment Summary: The commenters are in support of the proposed change to remove the current program assistance limit of \$20,000 per household because it would increase flexibility and allow Administrators to keep up with the rising costs of construction. Commenter 4 recommended that the new maximum assistance amount be increased to \$25,000 per household.

Staff Response: Staff appreciates the positive feedback. As it relates to the comment made by Commenter 4, the rule being adopted allows the Department to raise the maximum assistance amount via the 2020 Notice of Funding Availability (NOFA), and the Department has not yet determined what level above \$20,000 per unit it will release in the 2020 NOFA. No revisions to the rule are needed or recommended.

2. §26.21 (1), Amy Young Barrier Removal Program Definitions (Commenter 3)

Comment Summary: The commenter recommended expanding on the definition of "Administration Fee" to allow a higher fee (up to 15% or 20%, instead of the current 10%) to be paid to Administrators who complete a project in a rural area.

Staff Response: The Administrative Fee paid upon project completion is equal to 10% of the current maximum of \$20,000 in Project Costs. After rule changes are approved, to the extent that the maximum assistance amount increases in the NOFA, the associated Administrative Fee will also increase even if the fee remains at 10% of Project Costs. No revisions are recommended.

3. §26.22, Amy Young Barrier Removal Program Geographic Dispersion (Commenter 1, 2)

Comment Summary: The commenters recommended the reduction or total elimination of the maximum 6-month period that funding is set aside exclusively for each state service region prior to becoming available to all Administrators statewide. Commenters state the current process to disperse funds geographically is too lengthy and keeps funds set aside for state regions with no program participation while Administrators in other state regions have households ready to proceed.

Staff Response: This method of geographic dispersion of AYBR funding ensures that all state regions have the same access to funding, regardless of capacity. This method was designed to encourage Administrators in regions with low participation in the program to participate. Reducing or eliminating the time allotted to set aside funds for all regions will have a negative effect on new, small, rural, and/or less experienced Administrators. While the Department understands that households in oversubscribed regions have a waiting period for assistance, the goal of seeking to serve Texans in all areas of the state with the program is considered an important priority. No revisions are recommended.

4. §26.25 (d), Amy Young Barrier Removal Program Eligibility Requirements (Commenter 3)

Comment Summary: The commenter asked how to verify if a Household has a debt owed to the State of Texas.

Staff Response: Administrators must follow their own program policies with regard to debt verification, including having the Household certify debt status on their Program intake application. This comment was not a suggested edit to the rule and therefore no changes are recommended.

5. §26.27 (d)(2), Amy Young Barrier Removal Program Construction Requirements (Commenter 2, 3)

Comment Summary: The rule currently allows for no more than 25% of the Project Hard Costs to be utilized for life-threatening hazards and to correct unsafe conditions. It then additionally allows that the 25% may be exceeded, up to a total of 40% of Project Hard Costs, in certain limited cases if the life-threatening hazards represent certain specific features (examples include emergency escape, fire egress, and fire and carbon monoxide alarms). The commenters are in support of maintaining the 40% allowance for specific hazardous conditions because it maximizes project feasibility and flexibility. However, Commenter 3 recommended that window units and the electric subpanel brand "Federal Pacific" be added to the list of eligible line items that can be

included in this 40% threshold for safety-related modifications.

Staff Response: The primary purpose of the Program is barrier removal that increases accessibility within the maximum amount of grant assistance. Covering the substantial cost of electrical panel replacement in addition to meeting the other program requirements related to accessibility and energy efficiency may render an entire project infeasible, and/or detract from the purpose of the program of focusing on accessibility modifications. A traditional rehabilitation program with a higher assistance amount may be more suitable for projects involving major electrical repair. Window units are permissible if they do not interfere with local codes for egress. No revisions are recommended.

6. §26.28 (a), Amy Young Barrier Removal Program Project Completion Requirements (Commenter 3)

Comment Summary: The commenter is in support of the proposed change to allow the Department to grant additional extensions to an Administrator's activity completion due date beyond one 30-day extension because of extenuating circumstances.

Staff Response: Staff appreciates the positive feedback. No revisions to the rule are needed or recommended.

STATUTORY AUTHORITY. The new rule is proposed pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules.

Except as described, herein the proposed new rule affects no other code, article, or statute. The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

## CHAPTER 26 TEXAS HOUSING TRUST FUND RULE

### SUBCHAPTER A GENERAL GUIDANCE

#### §26.1. Purpose.

This chapter clarifies the administration of the Texas Housing Trust Fund Program (HTF or SHTF). The SHTF provides loans, grants or other comparable forms of assistance to income-eligible individuals, families and households. The SHTF is administered in accordance with Tex. Gov't Code, Chapter 2306, Chapter 20 of this title (relating to Single Family Programs Umbrella Rule), and Chapter 24 of this title (relating to Texas Bootstrap Loan Program Rule).

#### §26.2. Definitions.

(a) Definitions may be found in Tex. Gov't Code, Chapter 2306; Chapter 1 of this title (relating to Administration), Chapter 2 of this title (relating to Enforcement), Chapter 20 of this title (relating to Single Family Programs Umbrella Rule), Chapter 21 of this title (relating to Minimum Energy Efficiency Requirements for Single Family Construction Activities), and Chapter 24 of this title (relating to Texas Bootstrap Loan Program Rule), unless the context or the Notice of Funding Availability (NOFA) indicates otherwise.

(b) Qualified Inspector--Certified by the Administrator that the individual has professional certifications, relevant education or a minimum of three years of experience in a field directly related to home inspection, which may include but is not limited to installing, servicing, repairing or maintaining the structural, mechanical, plumbing and electrical systems found in Single Family Housing Units, as evidenced by inspection logs, certifications, training courses or other documentation.

#### §26.3. Allocation of Funds.

(a) The Department administers all SHTF funds provided to the Department in accordance with Tex. Gov't Code, Chapter 2306. The Department may solicit gifts and grants to endow the fund.

(b) Pursuant to Tex. Gov't Code §2306.202(b), use of the SHTF is limited to providing:

- (1) Assistance for individuals and families of low and very low income;
- (2) Technical assistance and capacity building to nonprofit organizations engaged in developing housing for individuals and families of low and very low income;
- (3) Security for repayment of revenue bonds issued to finance housing for individuals and families of low and very low income; and
- (4) Subject to the limitations in Tex. Gov't Code §2306.251, the Department may also use the fund to acquire property to endow the fund.

(c) Set-Asides. In accordance with Tex. Gov't Code §2306.202(a) and program guidelines:

- (1) In each biennium, the first \$2.6 million available through the SHTF for loans, grants, or other comparable forms of assistance shall be set aside and made available exclusively for Local Units of Government, Public Housing Authorities, and Nonprofit Organizations;

- (2) Any additional funds may also be made available to for-profit organizations provided that at least 45% of available funds, as determined on September 1 of each state fiscal year, in excess of the first \$2.6 million shall be made available to Nonprofit Organizations; and
- (3) The remaining portion shall be distributed to Nonprofit Organizations, for-profit organizations, and other eligible entities, pursuant to Tex. Gov't Code §2306.202.

#### **§26.4. Use of Funds.**

- (a) Use of additional or Deobligated Funds. In the event the Department receives additional funds, such as loan repayments, donations or interest earnings, the Department will redistribute the funds in accordance with the SHTF plan in effect at the time the additional funds become available.
- (b) Reprogramming of Funds. If funding for a program is undersubscribed or funds not utilized, within a timeframe as determined by the Department, remaining funds may be reprogrammed at the discretion of the Department consistent with the HTF plan in effect at the time.
- (c) Use of excess loan repayments and interest earnings. The SHTF may be used to respond to unanticipated challenges that may arise in the course of implementing approved single family Program Contracts, activities, or assets that are not readily addressed with federal funds. In the event that SHTF loan repayments and interest earnings exceed the requirements under the SHTF interest earnings and loan repayments Rider in the General Appropriations Act, up to \$250,000 per biennium of these excess SHTF loan repayments and interest earnings may be used for this purpose. If a balance exists from the previous biennium, the Department shall transfer only the necessary amount to replenish this fund to a maximum balance of \$250,000 at the start of the biennium. These funds may be used as described in this subsection.
- (1) Funds are to be used for internal disposition.
- (2) Neither Households nor Program Administrators are eligible to apply for these funds.
- (3) Any funds used under this subsection requires authorization of the Executive Director.
- (4) Uses for the funds must meet at least one of the following criteria:
- (A) For Households previously assisted by the Department with Department funds, for which the Department has confirmed that further work is still required, and for which the original source of funds is no longer able to be used; or
- (B) Properties previously owned by Households assisted by the Department, having been foreclosed upon by the Department, and requiring additional carrying costs or improvements to sell the property or transfer the property for an affordable purpose.

#### **§26.5. Prohibited Activities.**

- (a) Persons receiving or benefiting from SHTF funds, as determined by the Department, may not be currently delinquent or in default with child support, government loans, or any other debt owed to the State of Texas.
- (b) The activities described in paragraphs (1) - (8) of this subsection are prohibited in relation to the origination of a SHTF loan, but may be charged as an allowable cost by a third party lender for the origination of all other loans originated in connection with an HTF loan:

- (1) Payment of delinquent property taxes or related fees or charges on properties to be assisted with SHTF funds;
- (2) Loan origination fees;
- (3) Application fees;
- (4) Discount fees;
- (5) Underwriter fees;
- (6) Loan processing fees;
- (7) Loan servicing fees; and
- (8) Other fees not approved by the Department in writing prior to expenditure.

**§26.6. Administrator Eligibility and Requirements.**

Administrator must enter into a written Agreement with the Department in order to be eligible to access the State Housing Trust Fund.

**SUBCHAPTER B. AMY YOUNG BARRIER REMOVAL PROGRAM**

**§26.20. Amy Young Barrier Removal Program Purpose.**

The Amy Young Barrier Removal Program (the Program or AYBRP) provides one-time grants in combined Hard and Soft Costs to Persons with Disabilities in a Household qualified as Low-Income. Grant limits per household will be identified in the Notice of Funding Availability. Grants are for home modifications that increase accessibility, eliminate life-threatening hazards and correct unsafe conditions.

**§26.21. Amy Young Barrier Removal Program Definitions.**

The following words and terms used in this subchapter shall have the following meanings, unless the context clearly indicates otherwise. Other definitions are found in Tex. Gov't Code, Chapter 2306, Chapter 1 of this title (relating to Administration), Chapter 2 of this title (relating to Enforcement), Chapter 20 of this title (relating to Single Family Programs Umbrella Rule), Chapter 21 of this title (relating to Minimum Energy Efficiency Requirements for Single Family Construction Activities), and Chapter 26, Subchapter A of this title (relating to Texas Housing Trust Fund Rule).

- (1) Administration Fee--Funds equal to 10% of the Project Costs (combined Hard and Soft Costs) paid to an Administrator upon completion of a project.
- (2) Hard Costs--Site-specific costs incurred during construction, including but not limited to: general requirements, building permits, jobsite toilet rental, dumpster fees, site preparation, demolition, construction materials, labor, installation equipment expenses, etc.
- (3) Low-Income--Household income does not exceed the greater of 80% of the Area Median Family Income or 80% of the Statewide Income Limits, adjusted for Household size, in accordance with the current HOME Investment Partnerships Program income limits, as defined by HUD.
- (4) Project Costs--Program funds (combined Hard and Soft Costs) that directly assist a Household.
- ~~(5) Qualified Inspector--Certified by the Administrator that the individual has professional certifications, relevant education or a minimum of three years of experience in a field directly related to home inspection,~~

~~which may include but is not limited to installing, servicing, repairing or maintaining the structural, mechanical, plumbing and electrical systems found in Single Family Housing Units, as evidenced by inspection logs, certifications, training courses or other documentation.~~

(65) Reservation Agreement--A written Agreement including all amendments thereto between the Department and Administrator that authorizes the Administrator to reserve funds under the AYBRP.

(76) Reservation Setups--The submission of all required documents to the online Reservation System in order to reserve Program funds for an eligible Household.

(87) Soft Costs--Costs related to and identified with a specific Single Family Housing Unit other than construction costs, per §20.3 of this title, (relating to Definitions).

#### **§26.22. Amy Young Barrier Removal Program Geographic Dispersion.**

(a) The process to promote geographic dispersion of program funds is as follows:

(1) For a published period not to exceed 90 calendar days, each state region will be allocated funding amounts for its rural and urban subregions. During this initial period, these funds may be reserved only for Households located in these rural and urban subregions;

(2) After the initial release of funds under paragraph (1) of this subsection, each state region will combine any remaining funds from its rural and urban subregions into one regional balance for a second published period not to exceed 90 calendar days. During this second period, these funds may be reserved only for Households located in that state region; and

(3) After no more than 180 calendar days following the initial release date, any funds remaining across all state regions will collapse into one state-wide pool. For as long as funds are available, these funds may be reserved for any Households anywhere in the state on a first-come, first-served basis.

(b) If any additional funds beyond the original program allocations that derive from HTF loan repayments, interest earnings, deobligations, and/or other SHTF funds in excess of those funds required under Rider 8 or the Department's appropriation made under the General Appropriations Act may be placed directly into a state-wide pool for reservation.

#### **§26.23. Amy Young Barrier Removal Program Administrative Requirements.**

(a) To participate in the Program, an eligible participant must first be approved as an Administrator by the Department through the submission of a Reservation System Access Application. Eligible participants include, but are not limited to: Colonia Self-Help Centers established under Tex. Gov't Code, Chapter 2306, Subchapter Z; Councils of Government; Units of Local Government; Nonprofit Organizations; Local Mental Health Authorities and Public Housing Authorities. An eligible participant may be further limited by NOFA.

(b) The Applicant must enter into a Reservation Agreement (Agreement) with the Department in order to be eligible to reserve funds for the Amy Young Barrier Removal Program.

(1) A Nonprofit Organization must submit a current letter of determination from the Internal Revenue Service (IRS) under §501(c)(3), a charitable, nonprofit corporation, of the Internal Revenue Code of 1986, as evidenced by a certificate from the IRS that is dated 1986 or later. The exemption ruling must be effective throughout the agreement period to access the Reservation System.



- (2) A private Nonprofit Organization must be registered and in good standing with the Office of the Secretary of State and the State Comptroller's Office to do business in the State of Texas.
  - (3) The Applicant must demonstrate at least two years of capacity and experience in housing rehabilitation in Texas. The Applicant will be required to provide a summary of experience that must describe the capacity of key staff members and their skills and experience in client intake, records management, and managing housing rehabilitation. It must also describe organizational knowledge and experience in serving Persons with Disabilities.
  - (4) The Applicant must provide evidence of adherence to applicable financial accountability standards, demonstrated by an audited financial statement by a Certified Public Accountant for the most recent fiscal year. For a Nonprofit Organizations that does not yet have audited financial statements, the Department may accept a resolution from the Board of Directors that is signed and dated within the six months preceding the Application and that certifies that the procedures used by the organization conform to the requirements in 10 TAC §1.402, (relating to Cost Principles and Administrative Requirements).
  - (5) An Applicant must submit a current roster of all Board Members, Council Members, Commissioners, or other Members of its legal governing body, including names and mailing addresses.
  - (6) The Applicant must submit a resolution from the Board of Directors, Council, Commissioners, or other legal governing body that is signed and dated within the six months preceding the date of application submission. The resolution must state that the legal governing body has approved the Applicant to access the Reservation System for TDHCA's Amy Young Barrier Removal Program; and must designate the name and title of the individual authorized to execute a written Reservation System Access Agreement.
  - (7) The Applicant's history will be evaluated in accordance with 10 TAC Chapter 1, Subchapter A, §1.302 and §1.303, (relating to Previous Participation Reviews for Department Program Awards Not Covered by §1.301 of this Subchapter, and Executive Award and Review Advisory Committee (EARAC), respectively). Access to funds may be subject to terms and conditions.
  - (8) If applicable, the Applicant must submit copies of executed contracts with consultants or other organizations that are assisting in the implementation of the applicant's AYBRP activities. The Applicant must provide a summary of the consultant or other organization's experience in housing rehabilitation and/or serving Persons with Disabilities.
- (c) Administrators must follow the processes and procedures as required by the Department through its governing statute (Chapter 2306 of the Government Code), Administrative Rules (Texas Administrative Code, Title 10, Part 1), Reservation Agreement, Program Manual, forms, and NOFA.

**§26.24. Amy Young Barrier Removal Program Reservation System Requirements.**

- (a) The Department will not process a Reservation Setup or draw for any Administrator with a past due Single Audit or pending Audit Certification Form.
- (b) Reservation Setups will be processed in the order submitted on the Reservation System. Submission of a Reservation Setup consisting of support documentation on behalf of a Household does not guarantee funding.

(c) If an Administrator submits a Reservation Setup for a Household that is incomplete or missing any of the required forms as prescribed by the current setup instructions, the Reservation Setup will be set back to "pending" status and funds will be released for reservation.

(d) If support documentation for a Reservation Setup for a Household needs correction or additional information, the Department will notify the Administrator of the deficiencies. If any deficiencies remain uncured within 10 calendar days after notification has been sent to the Administrator, the Department may cancel the Household's Reservation.

(e) If a Household is determined to be eligible for assistance from the Department, the Department will reserve up to the maximum award amount permitted under the NOFA in Project Costs and an Administration Fee equal to 10% of the combined Hard and Soft costs in the Housing Contract System on behalf of the Household.

**§26.25. Amy Young Barrier Removal Program Household Eligibility Requirements.**

(a) At least one Household member shall meet the definition of Persons with Disabilities.

(b) The assisted Household shall not have Household income that exceeds 80% of Area Median Family Income.

(c) The assisted Household's liquid assets shall not exceed \$20,000. Liquid assets are considered to be cash deposited in checking or savings accounts, money markets, certificates of deposit, mutual funds or brokerage accounts; the net value of stocks or bonds that may be easily converted to cash; and the appraisal district's market value for any real property that is not a principal residence. Funds in tax-deferred accounts for retirement or education savings (e.g., Individual Retirement Accounts, 401Ks, 529 plans) are excluded from the liquid assets calculation.

(d) The Household may be ineligible for the program if there is debt owed to the State of Texas, including a tax delinquency; a child support delinquency; a student loan default; or any other delinquent debt owed to the State of Texas.

**§26.26. Amy Young Barrier Removal Program Property Eligibility Requirements.**

(a) Owner-occupied homes are eligible for Program assistance. In owner-occupied homes, the owner of record must reside in the home as their permanent residence unless otherwise approved by the Department. If the property is family-owned and the owner of record is deceased or not a Household member, the Department may deem the property renter-occupied unless satisfactory documentation is provided to the Department that confirms otherwise.

(b) Certain rental units are eligible for Program assistance and must meet the following requirements:

(1) In rental units, all Household occupants, including the Person with Disability, must be named on the Program intake application and Household Income Certification.

(2) The owner of record for the property shall provide a statement allowing accessibility modifications to be made to the property.

(c) The following rental properties are ineligible for Program assistance:

(1) Property that is or has been developed, owned, or managed by that Administrator or an Affiliate;

- (2) Rental units in properties that are financed with any federal funds or that are subject to 10 TAC Chapter 1, Subchapter B, §1.206 (relating to Applicability of the Construction Standards for Compliance with §504 of the Rehabilitation Act of 1973);
- (3) Rental units that have life-threatening hazards or unsafe conditions identified in the initial inspection. Program funds may not be used to correct hazardous or unsafe conditions in rental units, but may be used for accessibility modifications only after the life-threatening hazards and unsafe conditions have been corrected by the property owner at the property owner's expense; or
- (4) Rental units owned by a property owner who is delinquent on property taxes associated with the property occupied by the Household.

**§26.27. Amy Young Barrier Removal Program Construction Requirements.**

(a) Inspections.

- (1) Initial inspection arranged by the Administrator is required and must identify the accessibility modifications needed by the Person with Disability; assess and document the condition of the property; and identify all deficiencies that constitute life-threatening hazards and unsafe conditions.
- (2) Final inspection arranged by the Administrator is required and must verify, assess and document that all construction activities have been repaired, replaced and/or installed in a professional manner consistent with all applicable building codes and Program requirements, and as required in the Work Write-Up as described in subsection (e) of this section.
- (3) Initial and final inspections must be completed by a Qualified Inspector.
- (4) All On-Site Sewage Facilities (OSSF or septic system) shall be inspected by a Texas Commission on Environmental Quality authorized agent to determine if the system is in substantial compliance with Health & Safety Code, Chapter 366, and the rules adopted under that chapter, unless waived by the Department on a case-by-case basis.

(b) A Manufactured Housing Unit may be eligible for Program assistance if it was constructed on or after January 1, 1995. The Department may allow Manufactured Housing Units older than January 1, 1995, to receive only exterior accessibility modifications (i.e., ramps, handrails, concrete flatwork) as long as the Administrator can verify that the unit itself will be free of hazardous and unsafe conditions.

(c) Construction standards.

- (1) Administrators must follow all applicable sections of their local building codes and ordinances, pursuant to Section 214.212 of the Local Government Code. Where local codes do not exist, the 2015 International Residential Code (IRC), including Appendix J for Existing Buildings and Structures, is the applicable code for the Program.
- (2) Accessibility modifications shall be made with consideration of the design standards established by the 2010 ADA Standards. Any variation from 2010 ADA Standards must be documented by the Administrator as necessary to meet the disability related needs of the Person with a Disability.
- (3) Administrators must adhere to Chapter 21 of this title, (relating to Minimum Energy Efficiency Requirements for Single Family Construction Activities).
- (4) Administrators and/or subcontractors must honor a twelve-month warranty on all completed items in their scope of work.

(d) Life-threatening hazards and unsafe conditions.

(1) Administrators may make repairs to eliminate life-threatening hazards and correct unsafe conditions in the housing unit as long as no more than 25% of the Project Hard Costs budget is utilized for this purpose, unless otherwise approved by the Department.

(2) Life-threatening hazards and unsafe conditions include, but are not limited to: faulty or damaged electrical systems; faulty or damaged gas-fueled systems; faulty, damaged or absent heating and cooling systems; faulty or damaged plumbing systems, including sanitary sewer systems; faulty, damaged or absent smoke, fire and carbon monoxide detection/alarm systems; structural systems on the verge of collapse or failure; environmental hazards such as mold, lead-based paint, asbestos or radon; serious pest infestation; absence of adequate emergency escape and rescue openings and fire egress; and the absence of ground fault circuit interrupters (GFCI) and arc fault circuit interrupters (AFCI) in applicable locations.

(3) If the work write-up addresses any of the following line items, the percentage of Project Hard Costs devoted to eliminating life-threatening hazards and correcting unsafe conditions may only exceed 25% by the amount of the following line item's cost: emergency escape, rescue openings and fire egress; ground fault circuit interrupters (GFCI); arc fault circuit interrupters (AFCI); and smoke, fire and carbon monoxide detection/alarm systems. The combination of these line items plus the correction of any other unsafe conditions cannot exceed 40% of Project Hard Costs budget.

(4) All areas and components of the housing must be free of life-threatening hazards and unsafe conditions at project completion.

(e) Work-Write Ups. The Department shall review work-write ups (also referred to as "scope of work") and cost estimates prior to the Administrator soliciting bids.

(f) Bids. The Department shall review all line item bids Administrator selects for award prior to the commencement of construction. Lump sum bids will not be accepted.

(g) Change orders. An Administrator seeking a change order must obtain written Department approval prior to the commencement of any work related to the proposed change. Failure to get prior Departmental approval may result in disallowed costs.

#### **§26.28. Amy Young Barrier Removal Program Project Completion Requirements.**

(a) The Administrator has 90 calendar days from the date the Department approves the line item contract bid the Administrator selected for award to complete all construction activities and submit the Project and Administrative draw request, with required supporting documentation, in the Housing Contract System for reimbursement by the Department. The Department may grant a one-time, 30-calendar day extension to the Project completion deadline. The Department may grant additional extensions due to extenuating circumstances that are beyond the Administrator's control.

(b) The Department will reimburse the Administrator in one, single payment after the Administrator's successful submission of the Project and Administrative draw request per Department instructions. Interim draws will not be permitted. The Department reserves the right to delay draw approval in the event that the Household expresses dissatisfaction with the work completed in order to resolve any outstanding conflicts between the Household, and the Administrator and its subcontractors.

7g

BOARD ACTION REQUEST

SPECIAL INITIATIVES DIVISION

OCTOBER 10, 2019

Presentation, discussion, and possible action on an order proposing the repeal of 10 TAC Chapter 90, Migrant Labor Housing Facilities; an order proposing new 10 TAC Chapter 90, Migrant Labor Housing Facilities; and directing its publication for public comment in the Texas Register

RECOMMENDED ACTION

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

WHEREAS, pursuant to Tex. Gov't Code §2001.039, state agencies are required to review a rule every four years to assess whether the reasons for initially adopting the rule continue to exist;

WHEREAS, pursuant to Tex. Gov't Code Chapter 2306, Subchapter LL, relating to Migrant Labor Housing Facilities, a person may not establish, maintain, or operate a Migrant Labor Housing Facility without obtaining a License from the Department, and Subchapter LL further outlines requirements relating to the application, inspection, fees, and suspension of Licenses;

WHEREAS, staff recommends to the Board that there is a continuing need for this rule to exist, which is to ensure compliance with Tex. Gov't Code Chapter 2306, Subchapter LL, for which these rules establish the administrative procedures and substantive requirements, as required by statute;

WHEREAS, this rule was last adopted in 2006, with the exception of the forms noted in 10 TAC §90.8, which were last adopted in 2014, and changes are now needed to add the purpose of the rule, remove definitions redundant with statute, add a definition for the term "Provider" and previously undefined term "License," add a section addressing Applicable Standards, significantly reduce and streamline the section that had provided Facility standards, revise the fee structure for a reduced application fee in certain circumstances to prevent Providers being discouraged from pursuing a License because of possible cost, revise the inspection timeline to ensure timeliness and reduce the likelihood of a timing conflict, update the process for handling complaints, update the applicable forms, and improve readability and clarity; and

WHEREAS, such proposed rulemaking will be published in the Texas Register for public comment and subsequently returned to the Board for final adoption;

NOW, therefore, it is hereby

RESOLVED, that the Executive Director and his designees, be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department to cause the proposed repeal of 10 TAC Chapter 90, Migrant Labor Housing Facilities, and proposed new 10 TAC Chapter 90, Migrant Labor Housing Facilities, in the form presented to this meeting, to be published in the Texas Register and in connection therewith, make such non-substantive technical corrections, or preamble-related corrections, as they may deem necessary to effectuate the foregoing, including the preparation of the subchapter specific preambles.

### BACKGROUND

Tex. Gov't Code Chapter 2306, Subchapter LL (§§2306.921-2306.930), provides for the Department to serve as the agency that provides Licenses to any person or entity that establishes, maintains or operates a Migrant Labor Housing Facility, and outlines requirements relating to license applications, inspections, failing to meet standards, reinspection, License issuance and term, License posting, fees, and suspension or revocation of License.

While Tex. Gov't Code Chapter 2306, Subchapter LL, provides for the direction and authority of the licensing activity of Migrant Labor Housing Facilities, it does not provide the administrative specificity to fully implement this activity. As such, these rules set Department policy only so far as they provide the administrative implementation of the statutory activity.

Staff recommends that these rules be retained, but that this be accomplished through repeal of the existing rule and the adoption of a new rule. The proposed new rules reflect changes that add the purpose of the rule, remove definitions redundant with statute, add a definition for the new term "Provider" and previously undefined term "License", add a section addressing Applicable Standards, significantly streamline the section that had provided Facility standards and make it better align with federal requirements applicable to housing for workers in Texas under H2-A visas, revise the fee structure for a reduced application fee in certain circumstances to prevent Providers being discouraged from pursuing a License because of possible cost, revise the inspection timeline to ensure timeliness and reduce the likelihood of a timing conflict, update the process for handling complaints, update the applicable forms, and improve readability and clarity.

A blacklined version of the rule is provided, reflecting changes to the rule that is proposed for repeal and proposed new rule.

#### Migrant Labor Housing Initiatives/Update

Staff considered updating these rules one year ago, but chose to wait to see if the 86<sup>th</sup> Texas Legislature would pass any legislation relating to the program. While several bills on this issue were filed, no bills revising the statute pertaining to this licensing activity were passed. Staff has continued to meet with, write articles, hold workgroups, and attend conferences with advocates and growers who have an interest in the licensing requirement. As a result of these interactions staff has collected additional input, and made adjustments to the proposed rules.

Over the course of the past year, the Department has also been pursuing several initiatives to improve the Department's licensing responsibilities. Staff has initiated discussions with our sister agency, the Texas Workforce Commission (TWC), who inspects housing that is being provided for workers obtaining H-2A visas through the US Department of Labor (DOL). TWC has indicated that many Providers of such housing were unaware of the need to obtain a License from the Department, or that there was a possibility that housing that met the DOL standards might not meet Texas licensing standards. Staff has developed a list of agricultural-related entities based on job postings from the DOL website and notified the employers who have posted jobs that if they house workers, they may be required to obtain a License under the Tex. Gov't Code Chapter 2306, Subchapter LL. The Department has given these employers information about the statutory requirement, the proposed rule changes, rulemaking process, the requirements for obtaining a License, and how to proceed. Staff has also reached out to these employers and consultants to make them aware of the proposed rule changes. Through this outreach effort, the Department has raised awareness of the licensing requirement and have increased the number of Licensees from approximately 40 to more than 230.



Attachment 1: Preamble, including required analysis, for proposed repeal of 10 TAC Chapter 90, Migrant Labor Housing Facility

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 90, §§90.1-90.8, concerning Migrant Labor Housing Facilities. The purpose of the proposed repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

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

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

1. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed repeal would be in effect, the proposed rule does not create or eliminate a government program, but relates to the repeal, and simultaneous proposed new rule making changes to an existing activity governing licensing of Migrant Labor Housing Facilities.

2. The proposed repeal does not require a change in work that would require the creation of new employee positions, nor does the repeal reduce work load such that any existing employee positions could be eliminated.

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

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

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

6. The proposed action will repeal an existing regulation but is associated with the simultaneous proposed new rule making changes to an existing activity, the licensing of Migrant Labor Housing Facilities.

7. The proposed repeal will not increase or decrease the number of individuals subject to the rule's applicability.

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

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

The Department has evaluated this rule and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities, as the repealed rule will be replaced with a similar rule.

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

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

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal will be in effect there will be no economic effect

on local employment, as the repealed rule will be replaced with a similar rule; therefore no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the repeal of this rule is in effect, the public benefit anticipated as a result of the repealed section will be unaffected as the repealed rule will be replaced with a similar rule. There will not be economic costs to individuals required to comply with the repealed section.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held October 25, 2019, to November 25, 2019, to receive input on the repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Tom Gouris, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email [tom.gouris@tdhca.state.tx.us](mailto:tom.gouris@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 pm, Austin local time, NOVEMBER 25, 2019.

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

#### 10 TAC Chapter 90, Migrant Labor Housing Facility

§90.1. Definitions.

§90.2. Facilities.

§90.3. Licensing.

§90.4. Records.

§90.5. Complaints.

§90.6. Administrative Penalties and Sanctions.

§90.7. Dispute Resolution, Appeals, and Hearings.

§90.8. Forms.

## Attachment 2: Preamble, including required analysis, for proposed new 10 TAC Chapter 90, Migrant Labor Housing Facilities

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 90, §§90.1-90.9, concerning Migrant Labor Housing Facilities. In accordance with Tex. Gov't Code Chapter 2306, Subchapter LL, a person may not establish, maintain, or operate a Migrant Labor Housing Facility without obtaining a License from the Department, and Subchapter LL further outlines requirements relating to the application, inspection, fees, and suspension of Licenses. The purpose of the proposed new chapter is to provide compliance with Tex. Gov't Code Chapter 2306, Subchapter LL and update the rule to add the purpose of the rule, remove definitions redundant with statute, add a definition for the term "Provider" and previously undefined term "License," add a section addressing Applicable Standards, significantly reduce and streamline the section that had provided Facility standards, revise the fee structure for a reduced application fee in certain circumstances to prevent Providers being discouraged from pursuing a License because of possible cost, revise the inspection timeline to ensure timeliness and reduce the likelihood of a timing conflict, update the process for handling complaints, update the applicable forms, and improve readability and clarity.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because it is exempt under both §2001(0045(c)(6) which exempts rule changes necessary to protect the health, safety, and welfare of the residents of this state, and §2001.0045(c)(9), which exempts rule changes necessary to implement legislation. Compliance with the proposed rule is intended to ensure adherence to reasonable standards to benefit the health, safety, and welfare of those migrant laborers housed in the Facilities required to be licensed. Tex. Gov't Code Chapter 2306, Subchapter LL, provides for the implementation of this activity.

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

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

Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed rulemaking would be in effect:

1. The proposed rule does not create or eliminate a government program, but relates to the readoption of this rule, which makes changes to an existing activity, the licensing and oversight of certain Migrant Labor Housing Facilities.
2. The proposed rule does not require a change in work that would require the creation of new employee positions. While some additional work by the Department will be required associated with the acceptance of additional license applications and fees, added inspections, and follow-up of compliance with possible inspections findings, the Department anticipates handling this additional work with existing staff resources. The rule changes do not reduce work load such that any existing employee positions could be eliminated.
3. The proposed rule does not require additional future legislative appropriations.
4. In accordance with Tex. Gov't Code §2306.929, the Department is authorized to set the license fee in an amount not to exceed \$250. Since 2006, this rule has already had the fee set at \$250,

and the Department is not suggesting changing this basic fee though is proposing a lower fee for certain recently inspected Facilities. The Department does anticipate an increase in the possible fees received, as there is a more targeted initiative to encourage those Providers that are currently not licensed to apply for licensure, which would increase fee receipts. As an offset to this potential increase and to the extent that the Department can utilize the inspections conducted by other state agencies and thereby limit the cost by eliminating the duplication of work, the Department is proposing to reduce the fee for new Licensees where they already have a satisfactory inspection by another state agency.

5. The proposed rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.

6. The proposed rule will not limit or repeal an existing regulation, but can be considered to “expand” the existing regulations on this activity because the proposed rule clarifies the scope of facilities, standards, and individuals subject to the rule. Many Providers of such housing may have been unaware of the need to obtain a License from the Department, and were unaware of the possibility that housing that met the standards of the Department of Labor might not also meet the Texas licensing standards. This addition to the rule is necessary to clarify the statutory scope of Providers that must be licensed and ensure compliance with Tex. Gov’t Code, Chapter 2306, Subchapter LL.

7. The proposed rule does increase the number of individuals subject to the rule’s applicability as described in item 6 above.

8. The proposed rule may be considered to have a negative effect on the state’s economy because of the potential expense for employers to bring their Migrant Labor Housing Facility into compliance with the requirements of the rule and statutorily-required licensure. Alternatively, the rule could also impact an employer’s ability to procure the labor needed, which may affect the overall productivity of their industry and contribution to the state economy. This is an unavoidable consequence of the statute. The Department is not able to quantify or determine at this time the extent of Providers that are not currently licensed and the extent to which their Facilities are not up to licensure standard.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV’T CODE §2006.002. The Department has evaluated this rule and determined that:

1. TDHCA has, in drafting this proposed rule attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov’t Code, ch. 2306, subchapter LL.

2. None of the adverse effect strategies outlined in this subsection are applicable.

3. Based on raw data regarding H2-A visas that required housing inspections, there could be between 200 and 400 small or micro-businesses initially subject to the proposed rule, not already licensed and compliant. The latest United States Department of Agriculture Census of Agriculture reports Texas as having 1,610 farms with migrant workers and the same Census shows that approximately 29% of all Texas farms with hired workers have three or more workers, which results in a potential impact on 467 small businesses in total. The Department has determined that there may be adverse economic effects on small or micro-businesses for those Providers of

migrant labor housing that are not currently providing housing to their laborers that will meet the proposed standard, but these economic effects are an unavoidable consequence of the statute. A minimal fee of \$250 is in the existing rule and this is not being increased so does not present a new cost, other than for those not previously licensed. The proposed rule does include a \$175 reduction in the cost of a License for applicants who have recently been inspected by and provide a copy of a satisfactory housing inspection by another State or Federal agency. The economic impact of the rule beyond the fee can vary significantly per Provider depending on the extent to which their Facilities are not up to standard. Because the amount of work and materials needed to bring a Facility up to standard can vary dramatically from a Facility only needing to make a few minor repairs, to a possibly significant renovation of Facilities, an estimate is not able to be calculated. Moreover, though employers of workers on H2-A visas are required to provide housing to their workers, the Department cannot estimate the economic impact of the proposed rule if agricultural employers who currently provide housing to migrant laborers decide to cease providing housing rather than comply with the licensure standards.

The rule is not directly applicable to rural communities, other than through the business entities that primarily reside in those communities. However, for the reasons stated above, the economic consequences of the proposed changes are limited and unpredictable, thus no economic impact of the rule is projected for rural communities.

(3-a) The proposed rule identifies the applicable federal standard for housing of farm workers, where applicable, and an additional 11 requirements, which have already been part of the rule, but exceed one or both of the federal standards. Further, though federal requirements exempt places of public accommodation (such as hotels) from inspection, the proposed rules account for the statutory requirements regarding licensure of Facilities by placing the onus on an agricultural employer (who contracts for Facilities used by migrant workers) to obtain a License and facilitate an inspection of such a Facility – which would include rental accommodations such as a hotel.

The purpose of Tex. Gov't Code, Ch. 2306, subchapter LL, is clearly grounded in protection of the health, safety, and welfare of migrant farm workers. Tex. Gov't Code §2306.925 provides the Department with regulatory flexibility to define “the reasonable minimum standards of construction, sanitation, equipment, and operation” in order for a Migrant Labor Housing Facility to receive a License. These minimum federal standards are set out in 29 CFR §§500.130 and 500.132–500.135, (the Employment and Training Administration (ETA) and Occupational Safety and Health Administrations (OSHA) housing standards also referred to as the “ETA and OSHA Housing Standards”), and the proposed rule eliminates the exception for inspecting public accommodations provided in 29 CFR §500.131, and adds 11 additional standards – all grounded in enhanced health and safety. Whether, in accordance with the requirements of this analysis, the proposed rule uses “regulatory methods that will accomplish the objectives of the applicable rules while minimizing adverse impacts on small businesses” is a matter of perspective. Any additional regulations that increase health and safety standards accomplish the objectives of the statute; but each comes at a cost above the “minimum” required by federal regulation.

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

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

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the proposed rule may have a negative effect on a local economy and its employment if the local Providers in that community conclude that to bring their Facilities into compliance would be cost prohibitive, impact their hiring decisions, and/or impact their ability to procure the labor needed. These issues could possibly effect the overall productivity of their business and impact on local employment. Depending on the extent of how many Providers are in a given local economy and the extent to which that Providers' Facilities would not meet standards, this might be a concern; however, the Department is not able to quantify or determine that at this time for any given community.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic area affected by the rule . . ." Considering that the licensing standards in the new rule have largely been in effect for several years, there are no "probable" effects of the new rules on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be increased assurance of the health, safety, and welfare of migrant labor workers provided housing by their employers. The possible economic costs to any individuals required to comply with the new section will be the \$75 to \$250 fee for those Providers not already licensed, the up to \$200 per day fee for non-compliance and the cost of improvements needed to bring a Facility into compliance.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new section is in effect, enforcing or administering the new section does have some foreseeable implications related to costs or revenues of the state or local government: The minimal revenue to the state of \$75 to \$250 per application and up to \$200 per day for non-compliance will be used to offset additional expenses associated with inspection travel for each application. The other costs to administer the increased activity are being absorbed within current resources by the Department. There are no foreseeable implications relating to cost or revenues of local governments from enforcing or administering the proposed rule.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held October 25, 2019, to November 25, 2019, to receive input on the new Chapter. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Tom Gouris, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by fax to (512) 475-0220, or email [tom.gouris@tdhca.state.tx.us](mailto:tom.gouris@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 pm, Austin local time, NOVEMBER 25, 2019.

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

## 10 TAC Chapter 90 Migrant Labor Housing Facilities

### §90.1 Purpose.

The purpose of Chapter 90 is to establish rules governing Migrant Labor Housing Facilities that are subject to being licensed under Tex. Gov't Code Chapter 2306, Subchapter LL (§§2306.921-2306.933). It is recognized that alignment of state requirements with the federal standards for migrant farmworker housing that must be inspected in order to participate in other state and federal programs, such as with the U. S. Department of Labor's H2-A visa program, and allows for cooperative efforts between the Department and other state and federal entities to share information. This will reduce redundancies and improve the effectiveness of the required licensing.

### §90.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Additionally, any words and terms not defined in this section but defined or given specific meaning in Tex. Gov't Code Chapter §§2306.921-2306.933, are capitalized. Other terms in 29 CFR §§500.130-500.135, 20 CFR §§654.404 et seq., and 29 CFR §1910.142 or used in those sections and defined elsewhere in state or federal law or regulation, when used in this chapter, shall have the meanings defined therein, unless the context herein clearly indicates otherwise.

(1) Act--the state law that governs the operation and licensure of ~~migrant labor housing facilities~~Migrant Labor Housing Facilities in the state of Texas, found at ~~Texas Government~~Tex. Gov't Code, §§2306.921 - 2306.933.

(2) Board--The governing board of the Texas Department of Housing and Community Affairs.

(3) Business Day--any day that is not a Saturday, Sunday, or a holiday observed by the State of Texas.

(4) Business hours--8 a.m. to 5 p.m., local time.

(5) Department--The Texas Department of Housing and Community Affairs.

(6) Director--The Executive Director of the Department.

~~(7) Facility--a structure, trailer, or vehicle, or two or more contiguous or grouped structures, trailers, or vehicles, together with the land appurtenant.~~

~~(8)~~(7) Family--a group of people, whether legally related or not, that act as and hold themselves out to be a family~~Family~~; provided, however, that nothing herein shall be construed as creating or sanctioning any unlawful relationship or arrangement such as the custody of an unemancipated minor by a person other than their legal guardian.

~~(9) Licensee--any person that holds a valid license~~

~~(8) License--the document~~ issued to a Licensee in accordance with the Act.

~~(10) Migrant labor housing facility--a facility that is established, operated, or used for more than three days as living quarters for two or more seasonal, temporary, or migrant families or three or more seasonal, temporary, or migrant workers, whether rent is paid or reserved in connection with the use of the facility.~~

~~(11)~~ (9) Licensee--any Person that holds a valid License issued in accordance with the Act.

~~(10) Occupant--any person, including a worker~~Worker, who uses a ~~migrant labor housing facility~~Migrant Labor Housing Facility for housing purposes.

~~(12) Operator--any individual designated in an application for a license to operate a migrant~~

labor housing facility or in signed correspondence from a licensee to the Department as having authority to act on behalf of the licensee to administer day to day operation of that migrant labor housing facility and to respond to complaints, investigations, inspections, orders, and other matters as set forth in these rules.

~~(13)~~(11) Provider--any Person who provides for the use of a Migrant Labor Housing Facility by Migrant Agricultural Workers, whether the Facility is owned by the Provider, or is contractually obtained for (or otherwise arranged by) the Provider. The Provider is the operator under Tex. Gov't Code §2306.928.

(12) Worker--A migrant agricultural worker, as defined in the ActMigrant Agricultural Worker, being an individual who is ~~(a) working:~~

(A) Working or available for work seasonally or temporarily in primarily an agricultural or agriculturally related industry, and ~~(b) moves~~

(B) Moves one or more times from one place to ~~another~~another to perform seasonal or temporary employment or to be available for seasonal or temporary employment.

### §90.23. Applicability.

(a) All Migrant Labor Housing Facilities in the state of Texas, which may include hotels and other public accommodations if owned by or contracted for by employers in the agricultural or agriculturally related industry to house Workers, must be inspected and comply with the requirements in this chapter and 29 CFR §§500.130, 500.132 - 500.135, without the exception provided in 29 CFR §500.131.

~~(a) Facility site.~~

~~(1) Facility sites shall be well drained and free from depressions in which water may stand. Sinkholes, pools, swamps, or other surface collectors of water within 200 feet of the periphery of the site shall be drained, filled, or treated on an ongoing basis to prevent mosquito breeding. If they are drained or filled, this must be done so as not to create a hazard. If they are treated, they must be appropriately fenced if they present would present a hazard or attractive nuisance, such as a place where children might play or pets might drink.~~

~~(2) Facility sites shall be made and kept free from any conditions not conducive to housing such as conditions which create offensive odors, attract flies, create excessive noise, allow unregulated traffic, create a risk of fire, pose any other risk to safety, contribute to or permit flooding, result in or contribute to overcrowding, or create or promote the creation, perpetuation, or exacerbation of any other condition which would reasonably be viewed as hazardous or inappropriate to a living facility.~~

~~(3) Grounds within the facility site shall maintained so as to be free from debris, noxious plants (poison ivy, etc.) uncontrolled weeds, or brush.~~

~~(4) Facility sites shall have recreation space for the facility occupants based on the maximum facility capacity.~~

~~(5) Facility sites shall be located at least 500 feet from livestock pens or any place where livestock is kept or fed.~~



~~(6) The housing site shall not be subject to periodic flooding or located so the drainage from and through the site will endanger any domestic or public water supply or enter or surround any living facility.~~

~~(b) Water supply.~~

~~(1) A water supply which meets the provisions of Health and Safety Code, Chapter 341, and the Texas Commission on Environmental Quality's public drinking water standard, Texas Administrative Code, Title 30, Part 1, Chapter 290, Subchapter F, §§290.101–290.115, 290.117–290.119, and 290.121 and 290.122 (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems), shall be available at all times in each facility.~~

~~(2) When the water supply does not meet the standards, notice shall be given to facility occupants and posted in a conspicuous location in the facility site. Such notice shall be given in English the language primarily used at the migrant labor housing facility if other than English AND shall display a universal symbol that such water is unsafe for consumption. Approved bottle water shall be provided to the occupants.~~

~~(3) Facilities shall be connected to an existing public water supply system, if one is available.~~

~~(4) Adequate arrangements for provision of hot water for bathing, laundering, culinary, and dishwashing purposes shall be available in all facility sites.~~

~~(5) Facility sites shall provide water under pressure (a minimum of 20 psi and a minimum static of 35 psi) to each living arrangement and utility building.~~

~~(6) In common use arrangements, dining halls, recreation, and meeting rooms, drinking fountains shall be provided for each 100 occupants or fraction thereof and all such drinking fountains shall meet American National Standards Institute standards, "Specification for Drinking Fountains 2.4.2-1942."~~

~~(7) Each sink that provides both hot and cold water shall provide them through a single faucet that enables hot and cold water to be mixed to adjust the temperature.~~

~~(c) Excreta and liquid waste disposal.~~

~~(1) Arrangements shall be provided and maintained for effective sewage disposal. Raw or treated liquid waste shall not be discharged or allowed to accumulate on the ground surface or in any place other than a proper sewage disposal facility.~~

~~(2) Arrangements for disposal of excreta and liquid waste shall be connected to a public sewer system, if available.~~

~~(3) All other disposal systems, (such as septic tanks, liquid waste treatment, privies, and portable toilets) shall be constructed and maintained as required by the Texas Department of~~

## Health-

(4) Portable toilet rooms not ventilated by mechanical means shall be provided with adequate screened (16 mesh) ventilation openings.

## (d) Facilities-

(b) Where agricultural employers own, lease, rent, or otherwise contract for Facilities "used" by individuals or Families that meet the criteria described in the Act, the employer as Provider of said housing, "establishes" and becomes the "operator" of a Migrant Labor Housing Facility, and is the responsible entity for obtaining and "maintaining" the License on such Facility, as those terms are used in Tex. Gov't Code §2306.921 - .922.

(c) An applicant for a License must facilitate an inspection by the Department with the owner of the property(s) at which the Migrant Labor Housing Facility is located.

(d) Owners or operators of homeless shelters, public camp grounds, youth hostels, hotels and other public or private accommodations that do not contract for services with agricultural employers or other Providers to house Workers are not required to be licensed. Further, because a "Facility" under Tex. Gov't Code §2306.921(1) requires both elements of one or more structures, trailers, or vehicles, as well as the land appurtenant, no License would be required by a Worker or his/her Family using his/her own structure, trailer, or vehicle, but temporarily residing on the land of another.

(e) A Facility may include multiple buildings on scattered or noncontiguous sites, as long as the scattered sites are in a reasonable distance from each other, and the work location and the buildings are operated as one Facility by the Provider.

## §90.4. Standards and Inspections.

(a) Facilities must follow the appropriate housing standard as defined in 29 CFR §500.132, (the Employment and Training Administration (ETA) and Occupational Safety and Health Administrations (OSHA) housing standards also referred to as the "ETA and OSHA Housing Standards"). The inspection checklists setting forth those standards are available on the Department's website at <https://www.tdhca.state.tx.us/migrant-housing/index.htm>.

(b) Inspections of the Facilities of applicants for a License and Licensees may be conducted by the Department under the authority of Tex. Gov't Code §2306.928 upon reasonable notice and using the appropriate inspection forms noted in subsection (a) of this section. Inspections may be conducted by other State or Federal agencies, on behalf of the Department, on forms promulgated by those agencies.

(c) In addition to the standards noted in subsection (a) of this section, all Facilities must comply with the following additional state standards:

(1) Facilities shall be constructed in a manner to insure the protection of ~~occupants~~Occupants against the elements. Facilities shall be maintained in good repair and in a sanitary condition. All doors to the exterior shall have working locks and all windows shall have working interior latches. Each unit shall have a working smoke detector. Fire extinguishing equipment shall be provided in an accessible place located within 100 feet from each Facility. Such equipment shall provide protection equal to a 2 1/2 gallon stored pressure of five gallon pump type water extinguisher.

(2) ~~Facilities shall have flooring constructed of smooth finished, rigid materials and be readily cleanable. The flooring shall be installed so as to prevent entrance of ground or surface water~~

into the facility.

~~(3) In living arrangements utilized for combined cooking, eating, and sleeping purposes, no less than arrangements must have at least 100 square feet of floor space shall be provided for each occupant over SF per person (aged 18 months of age. Rooms used and older); the portion of the Facility for sleeping purposes only shall provide areas must include at least 50 square feet of floor space for each intended occupant. SF per person.~~

~~(4) (3) Facilities utilized by families for Families with children shall must have a separate room or partitioned sleeping area for the husband and wife. The partition shall provide privacy and shall not adversely affect the meeting of any other standard hereunder, including the availability of light and access to exits. adult Family members.~~

~~(5) (4) In dormitory-type facilities, separate sleeping accommodations shall be provided for each sex. In family Family housing units, separate sleeping accommodations shall be provided for each family Family unit.~~

~~(6) Adequate, separate arrangements for each person or family to hang clothes and store personal effects shall be provided.~~

~~(7) The total floor area of each habitable room in a facility shall have a minimum ceiling height of seven feet.~~

~~(8) Each habitable room shall have at least one window or skylight opening directly to the outside. The minimum total window or skylight area, including windows and doors, shall equal at least 10% of the usable floor area. The total area that can be opened shall equal at least 45% of the minimum window or skylight area required, except where comparable adequate ventilation is supplied by mechanical or some other method.~~

~~(9) (5) Facilities previously used to mix, load, or store pesticides and toxic chemicals may not be used for cooking, dishwashing, eating, sleeping, housing purposes, or other similar purposes.~~

~~(e) Cooking and eating arrangements.~~

~~(1) When workers or their families cook in their individual units, space shall be provided and equipped for cooking and eating. Each such space shall be provided with:~~

~~(A) a working stove with a minimum of four operating burners;~~

~~(B) adequate food storage shelves and a counter for food preparation; if children under the age of six years will be present, such storage facilities shall include a container with childproof locks in which to store any cleaning agents or similar dangerous substances that may be used in connection with food preparation and clean up, and this container shall be separate and apart for any place or container for food storage;~~

~~(C) provisions for mechanical refrigeration of food at a temperature of not more than 45 degrees F.;~~

~~(D) eating arrangements (table and chairs or equivalent) commensurate with the maximum capacity of the unit;~~

~~(E) adequate sinks with hot and cold water under pressure; and~~

~~(F) adequate lighting and ventilation.~~

~~(2) When workers or their families cook and eat in a communal room or building separate from their sleeping accommodations, each such room or building shall be provided with:~~

~~(A) a working stove with a minimum of four operating burners, in a ratio of one stove to 10 persons, or one stove to two families;~~

~~(B) adequate food storage shelves and a counter for food preparation;~~

~~(C) mechanical refrigeration for food at a temperature of not more than 45 degrees F.;~~

~~(D) eating arrangements (tables and chairs or equivalent) commensurate with the intended use of the room or building;~~

~~(E) adequate lighting and ventilation; and~~

~~(F) nonabsorbent floors of easily cleanable materials.~~

~~§ (6) In a central mess or multifamily feeding operation, the kitchen and mess hall shall be constructed in accordance with departmentary applicable local or state rules on food services sanitation, 25 TAC §§229.161—229.171 (relating to Food Service Sanitation), and~~

~~(A) shall be a size in proper proportion to the facility capacity and separate from the sleeping quarters;~~

~~(B) floors, walls, ceiling, tables, and shelves of all kitchens, dining rooms, refrigerators, and food storage rooms shall be maintained in a clean, sanitary condition;~~

~~(C) the exterior wall opening of all dining rooms shall be screened (16 mesh) and rendered fly-tight; and,~~

~~(D) screen doors shall be self-closing and installed to open outward from the area to be protected.~~

~~(f) Sleeping arrangements.~~

~~(1) Sleeping arrangements (beds, metal frame cots, or bunks complete with springs, mattresses, and mattress covers) in good repair shall be provided for facility occupants. Sleeping arrangements shall be cleaned and maintained in a sanitary condition. No bed shall be used by more than two occupants. Children of opposite genders shall not be required to share a bed and two unmarried adults of either gender shall not be required to share a bed.~~

~~(2) Mattresses and mattress covers shall be laundered and sanitized between assignment to different occupants.~~

~~(3) (7)~~ Beds, bunks, or cots shall have a clear space of at least 12 inches from the floor. Triple-deck ~~facilities~~bunks shall be prohibited. Single beds shall be spaced not closer than 36 inches laterally or end to end. Bunk beds shall be spaced not less than 48 inches laterally or 36 inches end to end. There shall be a clear ceiling height above a mattress of not less than 36 inches. The clear space above the lower mattress of the bunk beds and the bottom of the upper bunk shall not be less than 27 inches.

~~(g) Heating.~~

~~(1) All living quarters and service rooms shall be provided with properly installed, operable heating equipment that capable at all times of maintaining a temperature of at least 68 degrees F. If heating is centrally controlled, all areas affected shall be maintained at least 68 degrees F. at all times.~~

~~(2) All heating systems shall be failsafe in case of failure or interruption of the power or fuel source.~~

~~(3) All walls or ceilings within 18 inches of the stovepipe of a solid or liquid fuel stove shall be of fireproof material.~~

~~(4) All stoves or other sources of heat utilizing combustible fuel shall be installed to prevent fire and safety hazards. A vented metal collar shall be installed around a stovepipe, or any vent passing through a wall, ceiling, floor, or roof.~~

~~(5) All stove or other sources of heat utilizing combustible fuel shall be vented to prevent fire and safety hazards. All vents shall extend above the peak of the roof.~~

~~(6) If solid or liquid fuel stoves are used in a room with wooden or other combustible flooring, they shall be placed on a concrete slab, insulated metal sheets, or other fireproof materials sufficient to prevent the transfer of heat to the floor and such material shall extend at least 18 inches beyond the perimeter of the base of the stove.~~

~~(7) If portable heaters are provided they must be electric and UL approved, and the electricity supply to the unit where they are to be used must be sufficient to permit their operation without disruption other things in that unit requiring electricity to operate, such as stoves, lights, and other appliances.~~

~~(h) Bathrooms and laundry rooms.~~

~~(1) Bathrooms in family living accommodations shall be separate from other rooms to insure privacy.~~

~~(2) Sufficient bathrooms (including bathtubs, showers, and lavatory sinks) and laundry rooms for the occupants of each living arrangement shall be located within 200 feet of each living arrangement.~~

~~(3) Bathrooms and laundry rooms shall be constructed in a manner conducive to good repair~~

and shall be maintained in good repair and in a sanitary condition.

~~(4) Shower flooring shall be constructed of nonabsorbent, nonskid materials and shall have properly constructed and functioning floor drains.~~

~~(5) Communal bathrooms shall have bathing arrangements, hand washing arrangements, and dry dressing space for each sex separated by a solid nonabsorbent wall extending from the floor to ceiling to insure privacy. Communal bathrooms shall be designated "men" or "women" in English and in the language of the facility occupants, or in the universal symbols.~~

~~(6) (8) Communal bathrooms shall have a minimum of one showerhead per 10 persons and one lavatory sink per six persons. Showerheads shall be spaced at least three feet apart to insure a minimum of nine square feet of showering space per showerhead.~~

~~(7) (9) In all communal bathrooms separate shower stalls shall be provided.~~

~~(8) (10) Mechanical clothes washers shall be provided in a ratio of one per 50 persons. In addition to mechanical clothes washers, one laundry tray per 100 persons shall be provided. In lieu of mechanical clothes washers, one laundry tray or tub per 25 persons may be provided.~~

~~(9) Arrangements for drying clothes shall be provided.~~

~~(i) Toilets.~~

~~(1) Toilets shall be located within 200 feet of each living arrangement. No privy shall be located within 100 feet of any living arrangement, dining room, mess hall, or kitchen.~~

~~(2) Sufficient toilets for the occupants of each living arrangement shall be constructed in a manner conducive to good repair and maintained in a sanitary condition. Privies shall be fly proof and of adequate capacity.~~

~~(3) Communal accommodations shall have toilets for each sex separated by a solid wall from floor to ceiling and shall be designated "men" or "women" in English and in the language of the facility occupants, or in universal symbols.~~

~~(4) Communal toilet rooms shall be lighted naturally or artificially by a safe type of lighting and shall be well ventilated, all outside openings shall be screened with 16 mesh material.~~

~~(5) Water closets or privy seats shall be provided in a ratio of one per 15 persons of each sex. A minimum of one for each sex shall be provided in communal accommodations. Family living accommodations containing private toilets will not be considered when establishing the number of shared toilets.~~

~~(6) Urinals may be substituted for men's toilet seats in a ratio of one urinal of 24 inches of trough type urinals per toilet seat to a maximum of one-third of the required toilet seats.~~

~~(7) Urinals and the surrounding walls and floor shall be constructed of nonabsorbent material.~~

~~(j) Garbage and other refuse.~~

~~(1) Containers with tight fitting lids for garbage and other refuse storage shall be provided to and located within 100 feet of each living accommodation. Containers of up to 32 gallon capacity may be used. They shall be supplied in a ratio of one per living accommodation. Bulk type containers may be used. Lost or damaged containers must be promptly replaced.~~

~~(2) Containers shall be durable, in good repair, and maintained in a sanitary condition.~~

~~(3) Garbage and refuse shall be collected at least twice a week. Disposal of garbage and refuse shall be in accordance with requirements of the Texas Department of Health concerning solid waste management, 25 TAC Chapter 325 (relating to Solid Waste Management).~~

~~(k) Electricity and lighting.~~

~~(11) All facility sites shall be provided with electricity. The electrical systems shall conform to all applicable codes and shall be sufficient to provide the electricity with sufficient amperage to operate all required and available features, including but not limited to lighting, stoves, hot water heaters, heating systems, portable heaters, refrigeration, and such other devices as may be connected to wall type convenience outlets.~~

~~(2) Each habitable room and all communal rooms and areas (laundry rooms, toilets, privies, hallways, stairways, etc.) shall contain ceiling or wall type light fixtures. At least one wall type electrical convenience outlet shall be provided in each individual living room.~~

~~(3) Lighting shall be provided in the yard area and pathways to communal arrangements.~~

~~(4) All wiring and lighting fixtures shall be installed and maintained in a safe condition in accordance with National Electrical Code and state and local codes.~~

~~(5) Light levels in toilet and storage rooms shall be at least 20 foot candles 30 inches from the floor. Other rooms, including kitchens and living quarters, shall be at least 30 foot candles 30 inches from the floor.~~

~~(l) Screening.~~

~~(1) All outside opening shall be protected with screening of 16 mesh or less.~~

~~(2) All screen doors shall be tight and equipped with self-closing devices.~~

~~(3) All screens shall be maintained in good repair.~~

~~(m) Insect and rodent control.~~

~~(1) Housing sites, housing units, and utility areas shall be constructed to exclude insects, rodents, and other vermin.~~

~~(2) A vector control program shall be maintained to insure effective control of all insects,~~

rodents, and other vermin.

~~(3) All vector control programs shall be designed and executed to insure maximum protection of the occupants.~~

~~(n) Fire, safety, and first aid.~~

~~(1) All buildings or structures shall be maintained and used in accordance with the provisions of the state and local regulations.~~

~~(2) In one story facilities utilized by less than 10 persons, two means of escape shall be provided. One of the two required means of escape may be a readily accessible window with a space that can be opened of not less than 24 inches by 24 inches.~~

~~(3) Central dining facilities, assembly rooms, and all sleeping quarters intended for use by 10 or more persons shall have, as alternate means of escape, at least two remotely separated doors that open to an interior hallway or to the outside.~~

~~(4) Sleeping quarters and assembly rooms located on a second story shall have a stairway, plus permanently affixed exterior ladder or a second stairway.~~

~~(5) Fire extinguishing equipment shall be provided in an accessible place located within 100 feet from each facility. Such equipment shall provide protection equal to a 2 1/2 gallon stored pressure of five gallon pump type water extinguisher.~~

~~(6) First aid supplies shall be provided and be accessible at all times. The supplies shall be equivalent to the 16 unit first aid kit recommended by the American Red Cross, and shall be provided in a ratio of one to 50 persons. First aid kits shall be distributed and placed conspicuously throughout the migrant labor housing facility.~~

~~(7) Flammable or volatile liquids or materials, except those needed for household use other than use as fuel, shall not be stored in or adjacent to rooms used for living purposes.~~

~~(8) Agricultural pesticides and toxic chemicals other than those commonly regarded as being for household use, such as cleaning agents, shall not be stored within the facility site. Any pesticide or other toxic materials, and any potentially hazardous implements or equipment, kept within 500 feet of the facility site shall be stored in a secure, locked enclosure.~~

#### §90.35. Licensing.

(a) ~~Texas Government~~Tex. Gov't Code, §2306.922 requires the licensing of ~~migrant labor housing facilities.~~Migrant Labor Housing Facilities.

(b) Any ~~person~~Person who wants to apply for a ~~license~~License to operate a ~~facility~~Facility may obtain the application form from the Department. The required form is available on the Department's website at <https://www.tdhca.state.tx.us/migrant-housing/index.htm>~~Appendix A to these rules.~~



- (c) An application must be submitted to the Department ~~at least 45 days~~ prior to the intended operation of the ~~facility~~ Facility, but no more than 60 days ~~prior to said operation~~.
- (d) The fee for a ~~license is \$250, and the license is valid for one year~~ License is \$250 per year, except in such cases where the Facility was previously inspected and approved to be utilized for housing under a State or Federal migrant labor housing program, and that such inspection conducted by a State or Federal agency is provided to the Department. Where a copy of such inspection conducted by a State or Federal agency is less than 90 days old, has no material deficiencies or exceptions, and is provided to the Department prior to the Department's scheduled inspection, the application fee shall be reduced to \$75. However, if an inspection or re-inspection by the Department is required at the sole determination by the Department, the full application fee will apply. The License is valid for one year from the date of issuance unless sooner revoked or suspended.
- (e) Fees shall be tendered by check ~~or~~, money order, or via an online payment system (if provided by the Department), payable to the Texas Department of Housing and Community Affairs. If any check or other instrument given in payment of a licensing fee ~~is~~ returned for any reason, any ~~license~~ License that has been issued in reliance upon such payment being made is null and void.
- (f) A fee, when received in connection with an application is earned and is not subject to refund.
- (g) ~~Within 30 days of the~~ Upon receipt of a complete application and fee, the ~~facility~~ Department shall ~~be inspected~~ review the existing inspection conducted by a State or Federal agency, if applicable and/or schedule an inspection of the Facility by an authorized representative of the Department. Inspections shall be conducted during ~~business hours~~ Business Hours on ~~business days~~ weekdays that the Department is open, and shall cover all units that are subject to being occupied ~~-. Inspections by other State or Federal agencies in accordance with the requirements in 29 CFR §§500.130 - 500.135 may be accepted by the Department for purposes of this License, only if notice is given to the Department prior to the inspection in order for the Department to consider the inspection as being conducted by an authorized representative of the Department in accordance with Tex. Gov't Code §2306.928. In addition, a certification of the additional state standards described in 10 TAC §90.4(c) must be provided by the applicant, along with any supplemental documentation requested by the Department, such as photographs.~~
- (h) The ~~person~~ Person performing the inspection on behalf of the Department shall prepare a written report of findings of that inspection.
- (1) If the ~~person~~ Person performing the inspection finds that the ~~migrant labor housing facility~~ Migrant Labor Housing Facility, based on the inspection, ~~will be~~ is in compliance with 10 TAC §90.2 ~~of these rules~~ 4, and the Director finds that there is no other impediment to licensure, the ~~license~~ License will be issued.
- (2) If the ~~person~~ Person performing the inspection finds that although one or more deficiencies were noted that will require timely corrective action which may be confirmed by the ~~operator~~ Provider without need for re-inspection, and the Director finds that there is no other impediment to licensure, the ~~license~~ License will be issued subject to such conditions as the Director may specify. The applicant may, by signed letter, agree to these conditions, request a re-inspection within 60 days from the date of the Director's letter advising of the conditions, provide satisfactory documentation to support the completion of the corrective action as may be required by the Department, or treat the Director's imposing of conditions as a denial of the application.
- (3) If the ~~person~~ Person performing the inspection finds that although one or more deficiencies were noted that will require timely corrective action, the deficiencies are of such a nature that a

re-inspection is required, the applicant shall address these findings and advise the inspector, ~~within 60 days from the date of written notice of the findings, of a time when the facility may be re-inspected.~~ or Department, within 60 days from the date of written notice of the findings, of a time when the Facility may be re-inspected. If a re-inspection is required, the License will not be eligible for the reduced fee described in subsection (d) of this section and the balance of the \$250 fee must be remitted to the Department prior to the re-inspection. If Occupants are allowed to use the Facility prior to the re-inspection the applicant must acknowledge the operation of the Facility in violation of these rules, and pay a fee to the Department of up to \$200 per day of operation through the date the Facility is approved by the inspector, and eligible for licensing. If the results of the re-inspection are satisfactory and the Director finds that there is no other impediment to licensure, the ~~license will be issued~~ License will be issued. If it is the determination of the Director that the applicant made all reasonable efforts to complete any repairs and have the property re-inspected in a timely manner, the penalty for operating a Facility without a License may be reduced to an amount determined by the Director, but not less than \$200.

(4) If the person performing the inspection finds that the ~~migrant labor housing facility~~ Migrant Labor Housing Facility is in material ~~non-compliance~~ noncompliance with §90.24 of ~~these rules~~ this chapter, or that one or more imminent threats to health or safety are present, the Director may deny the ~~Application~~ application. In addition, the Department may also take action in accordance with §90.8 of this chapter.

(i) If the Director determines that an application for a ~~license~~ License ought to be granted subject to one or more conditions, the Director shall issue an order accompanying the ~~license~~ License, and such order shall:

- (1) Be clearly incorporated by reference on the face of the ~~license~~ License;
- (2) Specify the conditions and the basis in law or rule for each of them; and
- (3) Such conditions may include limitations whereby parts of a ~~migrant labor housing facility~~ Migrant Labor Housing Facility may be operated without restriction and other parts may not be operated until remedial action is completed and documented in accordance with the requirements set forth in the order.

(j) Correspondence regarding an application should be addressed to: Texas Department of Housing and Community Affairs Attention: Migrant Labor Housing Facilities PO BOX 12489 AUSTIN TX 78711-2489

(k) ~~Within 14 days of the date of receipt of an application and license fee, the~~ The Department shall issue a ~~written notice letter~~ informing the applicant ~~that the application is complete and accepted for filing, or, if the application is deficient, a letter specifying of~~ what is ~~else~~ needed to complete the application and/or if a deviation found during the inspection requires a correction in order to ~~process the application~~ qualify for issuance of a License.

(l) An applicant or ~~licensee~~ Licensee that wishes to appeal any order of the Director, including the appeal of a denial of an application for a ~~license~~ License or an election to appeal the imposing of conditions upon a ~~license~~ License, may appeal such order by sending a signed letter to the Director within thirty (30) days from the date specified on such order, indicating the matter that they wish to appeal.

#### §90.46. Records.

(a) Each ~~licensee~~ Licensee shall maintain on premises, available for inspection by the Department, the following records:

- (1) Copies of all correspondence to and from the Department. This shall include the current designation of each ~~Operator~~Provider;
- (2) A current list of the ~~occupants~~Occupants of the ~~facility~~Facility and the date that the occupancy of each commenced;
- (3) Documentation establishing that all bedding facilities were sanitized prior to their being assigned to the current occupant; and
- (4) Copies of any and all required federal, state, or local approvals and permits, including but not limited to any permits to operate a waste disposal system or a well or other water supply, and any correspondence or from such approving or permitting authorities.

(b) All such records shall be maintained for a period of at least ~~two~~three years.

(c) A Licensee shall post in at least one conspicuous location in a Facility or in at least one building per site for a scattered site Facility:

(1) A copy of the License;

(2) A decal provided by the Department with the licensing program logo and the year for which the License was granted; and,

(3) A poster provided by the Department or the following notice in at least 20 point bold face type: If you have concerns or problems with the condition or operation of this Facility or your unit, the Texas Department of Housing and Community Affairs (the Department) is the state agency that licenses and oversees this Facility. You may make a complaint to the Department by calling, toll-free, 1-833-522-7028, or by writing to Migrant Labor Housing c/o TDHCA, P.O. Box 13941, Austin, TX 78711-3941. This office has staff that speaks Spanish. To the fullest extent that we can, we will keep your identity confidential. The Department's rules prohibit any Facility or Provider from retaliating against you for making a complaint. Si Usted tiene preocupaciones o problemas con la condición u operación de esta instalación o su unidad, el Departamento de Vivienda y Asuntos Comunitarios del Estado de Texas (El Departamento o TDHCA) es la agencia que da licencia y supervisa esta instalación. Usted puede mandar sus quejas al Departamento por teléfono gratuitamente por marcando 1-833-522-7028o escribiendo a Migrant Labor Housing c/o TDHCA, P.O. Box 13941, Austin, TX 78711-3941. La oficina tiene personas que hablan español. A lo mas posible que podemos, protegeremos su identidad. Las regulaciones del Departamento prohíben cualquier represalias por la instalación,opor el operador contra personas que se quejen contra ellos.

#### §90.57. Complaints.

(a) If the Department receives any complaint, it shall investigate it by appropriate means, including the conducting of a complaint inspection. Any complaint inspection will be conducted after giving the ~~Operator~~Provider notice of the inspection and an opportunity to be present. The complainant will be contacted by the Department ~~within ten~~(as soon as possible but no later than 10) days of making a complaint ~~or, and such a call may be relayed to local authority(s) if a possible life threatening safety or health issue is involved, as promptly as reasonably possible.~~

(b) A ~~licensee~~Licensee, through its ~~Operator~~Provider, shall be provided a copy of any complaint (or, if the complaint was made verbally, a summary of the matter) and given a reasonable opportunity to respond. Generally, this shall be ~~ten~~(10) business days.

(1) Complaints may be made in writing or by telephone to 1-~~877-724-5676~~833-522-7028.

(2) Complaints may be made in English, Spanish, or in Englishother language.

(3) To the fullest extent permitted by applicable law, the identity of any ~~complaint~~complainant shall be maintained as confidential (unless the complainant specifically consents to the disclosure of their identity or requests that the Department disclose their identity).

(4) Licensees and ~~operators~~Providers shall not engage in any retaliatory action against an ~~occupant~~Occupant for making a complaint in good faith.

~~(5) A Licensee shall post in at least one conspicuous location in a facility the following notice in at least 20 point bold face type: If you have concerns or problems with the condition or operation of this facility or your unit, the Texas Department of Housing and Community Affairs (the "Department") is the state agency that licenses and oversees this facility. You may make a complaint to the Department by calling, toll free, 1-877-724-5676, or by writing to Migrant Labor Housing, TDHCA, 4413 82nd Street, Lubbock, TX 79424-3366. This office has staff that speaks Spanish. To the fullest extent that we can, we will keep your identity confidential. The Department's rules prohibit any facility or operator from retaliating against you for making a complaint. Si Usted tiene preocupaciones o problemas con la condición u operación de esta instalación o su unidad, el Departamento de Vivienda y Asuntos Comunitarios del Estado de Texas (El Departamento o TDHCA) es la agencia que da licencia y supervisa esta instalación. Usted puede mandar sus quejas al Departamento por teléfono gratuitamente por marcando 1-877-724-5676 u escribiendo a Migrant Labor Housing, TDHCA, 4412 82nd Street, Lubbock, TX 79424-3366. La oficina tiene personal que habla español. A lo mas posible que podemos, protegeremos su identidad. Las regulaciones del Departamento prohíben cualquier represalias por la instalación u el operador contra personas que se quejen contra ellos.~~

(c) If any complaint involves matters that could pose an imminent threat to health or safety, all time frames shall be accelerated, and such complaint shall be addressed as expeditiously as possible.

(d) The Department may conduct interviews, including interviews of ~~operators~~Providers and ~~occupants~~Occupants, and review such records as it deems necessary to investigate a complaint.

(e) The Department shall review the findings of any inspection and its review and, if it finds a violation of the Act or these rules to have occurred, issue a notice of violation.

(f) A notice of violation and order will be sent to the Licensee to the attention of the ~~Operator~~Provider.

(g) The notice of violation will set forth:

(1) The complaint or other matter made the subject of the notice;

(2) The findings of fact;

(3) The specific provisions of the Act and or these rules found to have been violated;

(4) The required corrective action;

(5) Any administrative penalty or other sanction to be assessed; and

(6) The timeframe for the Licensee either to agree to the recommended corrective action, and accept the administrative penalties and/or sanctions or appeal or to appeal the matter.

(h) The order will set forth:

(1) The complaint or other matter made the subject of the order;

(2) The findings of fact;

(3) The specific provisions of the Act and or these rules found to have been violated;

(4) The required corrective action;

(5) Any administrative penalty or other sanction assessed; and

(6) The date on which the order becomes effective if not appealed or otherwise resolved.

(i) Complaints regarding Migrant Labor Housing Facilities will be addressed under this section, and §1.2 of this title, concerning Department Complaint System to the Department, is not applicable.

#### §90.68. Administrative Penalties and Sanctions.

(a) When the Director finds that the requirements of the Act or these rules are not being met, he or she may assess administrative penalties or impose other sanctions as set forth below. Nothing herein limits the right, as set forth in the Act, to seek injunctive relief.

(b) For each violation of the Act or rules a penalty of up to \$200 per day per violation may be assessed.

(c) For violations that present an imminent threat to health or safety, if not promptly addressed, the Director may suspend or revoke the affected ~~license~~License.

(d) Administrative penalties assessed regarding Migrant Labor Housing Facilities will be addressed exclusively under this section, and 10 TAC Chapter 2, relating to Enforcement, is not applicable.

#### §90.79. Dispute Resolution, Appeals, and Hearings.

(a) A ~~licensee~~Licensee is entitled to appeal any order issued by the Director, including any order as a result of an inspection or a complaint and any order denying a ~~license~~License or issuing a ~~license~~License subject to specified conditions.

(b) In lieu of or during the pendency of any appeal, a ~~licensee~~Licensee may request to meet with the Director or, at his or her option, his or her designee to resolve disputes. Any such meeting may be by telephone or in person. Meetings in person shall be in the county where the ~~migrant labor housing facility~~Migrant Labor Housing Facility affected is located, unless the ~~licensee~~Licensee agrees otherwise.

(c) A ~~licensee~~Licensee may request alternative dispute resolution in accordance with the Department's rules regarding such resolution set forth at ~~10 TAC~~, §1.17 of this title.

(d) All appeals are contested cases subject to and to be handled in accordance with Chapter 2001, ~~Texas Government~~Tex. Gov't Code.

#### §90.8 Forms

(a) Appendix A—Application for a License to Operate a Migrant Labor Housing Facility form

201400302-1.pdf

(b) Appendix B—Application for Renewal of License to Operate a Migrant Labor Housing Facility form

201400302-2.pdf

(c) Appendix C—Report of Inspection—Migrant Labor Housing Facility

200900069-3.pdf

8a

**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**OCTOBER 10, 2019**

Presentation, discussion and possible action on a request for return and reallocation of tax credits under 10 TAC §11.6(5) related to Credit Returns Resulting from Force Majeure Events for Application 17028, The Vineyard on Lancaster

**RECOMMENDED ACTION**

**WHEREAS**, an award of Competitive (9%) Housing Tax Credits in the amount of \$1,330,273 to 17028 The Vineyard on Lancaster (the Development) was approved by the Board on July 27, 2017;

**WHEREAS**, staff executed a Carryover Allocation Agreement with the Development Owner on December 19, 2017, that included a certification from the Development Owner that each building for which the allocation was made would be placed in service by December 31, 2019;

**WHEREAS**, on August 19, 2019, the Department received from the Development Owner a request to extend the placement in service deadline under the provisions of 10 TAC §11.6(5) related to Credits Returns Resulting from Force Majeure Events;

**WHEREAS**, other than in situations covered by force majeure, the Department lacks authority to extend federal deadlines for placement in service; and

**WHEREAS**, the precipitating events described in the request meet the requirements for force majeure events described in 10 TAC §11.6(5);

**NOW, therefore, it is hereby**

**RESOLVED**, the request for treatment of The Vineyard on Lancaster under an application of the force majeure rule is approved, with the 2017 Qualified Allocation Plan and Uniform Multifamily Rules, and the 2019 Program Calendar applicable to the Development;

**FURTHER RESOLVED**, that the Applicant will receive a 2019 Carryover Agreement extending the placed in service deadline until May 31, 2020; and

**FURTHER RESOLVED**, that staff is authorized, empowered, and directed, for and on behalf of the Department to execute such documents, instruments and writings and perform such acts and deeds as may be necessary to effectuate the foregoing.

## BACKGROUND

An award of \$1,330,273 in Competitive (9%) Housing Tax Credits to the Development was approved by the Board on July 27, 2017. The Development proposed the New Construction of 104 Supportive Housing Units in Fort Worth. Staff executed a Carryover Allocation Agreement with the Development Owner on December 19, 2017, that included a certification from the Development Owner that, in order to satisfy the requirements of §42 of the Internal Revenue Code, each building for which the allocation was made would be placed in service by December 31, 2019.

On August 19, 2019, the Department received from the consultant for The Vineyard on Lancaster, LP, the Development Owner, a request to extend the placement-in-service deadline from December 31, 2019, to May 31, 2020, under the provisions of 10 TAC §11.6(5) related to Credits Returns Resulting from Force Majeure Events. This rule allows a Development Owner to return issued credits within three years of award, and have those credits re-allocated to the Development outside of the usual regional allocation system if all of the requirements of the subsection are met. Pursuant to 10 TAC §11.6(5), the Department's Governing Board may approve the execution of a current program year Carryover Allocation Agreement regarding the returned credits with the Development Owner that returned such credits only if:

(A) The credits were returned as a result of "Force Majeure" events that occurred after the start of construction and before issuance of Forms 8609. **Force Majeure events are the following sudden and unforeseen circumstances outside the control of the Development Owner:** acts of God such as fire, tornado, flooding, significant and unusual rainfall or subfreezing temperatures, or loss of access to necessary water or utilities as a direct result of significant weather events; explosion; vandalism; orders or acts of military authority; litigation; changes in law, rules, or regulations; national emergency or insurrection; riot; acts of terrorism; supplier failures; or materials or labor shortages. If a Force Majeure event is also a presidentially declared disaster, the Department may treat the matter under the applicable federal provisions. Force Majeure events must make construction activity impossible or materially impede its progress; (emphasis added)

Of the circumstances listed in the rule, the request indicates that force majeure might be triggered by significant and unusual rainfall.

### **Significant and Unusual Rainfall**

In the request, the Development Owner states that "58 construction days have been lost due to rainfall and/or mud for the Development between the months of August 2018 through July 2019 (12 months). When compared to the previous 5-year annual average rainfall for the area of 42.396 inches, the Development has already exceeded the annual average by over 19 inches during this 12-month construction period, with a total rainfall of 61.44 inches since groundbreaking." The request included an "Exhibit A" document described as a listing of "days lost due to precipitation or mud," and an "Exhibit B" of photographs described as depicting "pooling and mud from the rain."

Pursuant to 10 TAC §10.402(h) of the Asset Management Rules, all multifamily developments must submit a construction status report (CSR), due by the tenth day of the month following each reporting quarter's end (January, April, July, and October) and continue on a quarterly basis until the entire development is complete. The first CSR was due on October 10, 2018, and it is noted that the Owner



requested to extend that deadline and was granted an extension until January 10, 2019. It is also noted that the Owner requested and was granted two extensions of the 10% Test expenditure and submission deadline, with penalties for both. The submitted Construction Loan Agreement indicates that the loan was closed on July 26, 2018, with a completion date of October 31, 2019. Staff requested that the Development Owner provide evidence that the Development Owner had initiated a force majeure extension with the Lender, and that the Lender has agreed to extend the completion deadline. Evidence of such was provided. The submitted TDHCA National Housing Trust Fund (NHTF) Construction Loan Agreement indicates that the loan was closed on September 19, 2018, with a completion date of March 19, 2020 at the latest. Staff has no objection to extending the completion date required by the NHTF contract to May 31, 2020.

Included with the CSRs reviewed for this Development are field reports from the CODA Consulting Group (CODA). The reports are included with this action item. Review of the CSRs indicates that the notice to proceed with construction was issued on August 1, 2018. The CSRs indicate that Union Gospel Mission of Tarrant County, a subsidiary of the Development Owner, is the Contractor. Beginning with the first field report, CODA reports problems with the construction schedule due to rain.

- Report 1 dated October 3, 2018, of September 19 and September 24 site visits notes construction 5% complete:
  - “The site was wet and construction operations were halted for the day.”
  - “The Contractor has provided a line item construction schedule dated 07.13.18 and based on weather during September the schedule is being updated.”
- Report 1.1 dated October 17, 2018, of October 16 site visit notes:
  - “Weather is causing major delays. There have been 14 days of rain in the last 22 days, 9” of rain since October 1.”
  - “Weather could affect the work in progress. Rain forecast next 4 days, no possibility of drying.”
- Report 2 dated November 9, 2018, of October 31 site visit notes construction 8% complete:
  - “Estimated two months behind.”
  - “The site was wet and muddy and construction operations were progressing slowly.”
  - “Dewatering operations were halted until incoming rain has passed.”
  - “Possibility of additional personnel to increase production being offsite (sic) by the size and confined nature of the site.”
  - “The Contractor has provided a line item construction schedule dated 07.13.18 and based on weather during September and October the schedule is being updated. 23 Weather Delay Days have been requested in CO #1 under review.”
  - “The weather has been unseasonably wet posting record rainfall in both September and October and the area has been declared a ‘Disaster Area’ by the State of Texas. Change Order #1 adding 23 Weather Delay Days is being processed.”
- Report 2.1 dated November 15, 2018, of November 15 site visit notes:
  - “Weather has been good the past two weeks with only two days lost to rain or cold.”
  - “Weather could affect the work in progress. Rain could make the site unworkable and cold could affect the scheduling of concrete placement.”
- Report 3 dated December 11, 2018, of November 27 site visit notes construction 11% complete:

- “Estimated two months behind.”
- “Dewatering operations have been halted until incoming rain event.”
- “The Contractor has provided a line item construction schedule dated 11.11.18 and the G.C has gone to 6 day work weeks.”
- Report 3.1 dated December 18, 2018, of December 14 site visit notes:
  - “Weather has been poor the past two weeks with four days lost to rain or cold.”
  - “Weather could affect the work in progress. Rain could make the site unworkable and cold could affect the scheduling of concrete placement.”
- Report 4 dated January 17, 2019, of December 27, 2018 site visit notes construction 15% complete:
  - “The site was wet and construction operations were slowed due to 2.75” of rain in the previous 24 hours.”
  - “Dewatering operations were in progress.”
  - “31 days of weather delays through December.”
  - “There were only 4 days of actual rain in December, however, the impact was greater due to the previous wet conditions, the size and condition of the site and the type of construction in progress.”
- Report 5 dated February 12, 2019, of January 29 site visit notes construction 21% complete:
  - “Estimated three months behind.” (Completion date pushed to February 28, 2020)
  - “35 days of weather delays through January.”
- Report 6 dated March 14, 2019, of February 26 site visit notes construction 26% complete:
  - “Estimated four months behind.”
  - “42 days of weather delays through February.”
- Report 7 dated April 12, 2019, of March 26 site visit notes construction 32% complete:
  - “Estimated four months behind.”
  - “46 days of weather delays through March.”
- Report 8 dated May 13, 2019, of April 29 site visit notes construction 42% complete:
  - “Estimated four months behind.”
  - “48 days of weather delays through April.”
- Report 9 dated June 13, 2019, of May 28 site visit notes construction 50% complete:
  - “Estimated seven months behind.”
  - “5 weather days in May. 53 days of weather delays thru May 31.”

Staff has determined that the Development Owner has provided sufficient evidence that the Development has been affected by “sudden and unforeseen circumstances outside the control of the Development Owner” as described in 10 TAC §11.6(5), particularly significant and unusual rainfall. If the Board grants the request to consider this a force majeure event, the Development Owner will return \$1,330,273 in credits. The credits will be returned to the Development Owner with a 2019 Carryover Allocation Agreement and the date for the Development to be placed in service will be May 31, 2020, with the 2017 Qualified Allocation Plan and Uniform Multifamily Rules applicable to the Development.

If the Board denies the request to consider this a force majeure event, the Development Owner will retain \$1,330,273 in credits and the date by which the Development must be placed in service will remain

December 31, 2019. If the Development Owner returns the credits, the credits would first be made available in the subregion from which they were originally awarded, pursuant to 10 TAC §11.6(2), related to returned credits; in this case Region 3, Urban. There are pending Applications on the 2019 waiting list from that subregion. The next Application requests \$1,500,000, which is more than the amount of credits that would be returned. Pursuant to 10 TAC §11.6, staff would apply the credits to the collapse and, if enough credits are available, award credits to the next Application on the waiting list.

Staff recommends the Board approve the request for treatment of The Vineyard on Lancaster under an application of the force majeure rule.

19028

The Vineyard on  
Lancaster

Extension Approvals



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

[www.tdhca.state.tx.us](http://www.tdhca.state.tx.us)

Greg Abbott  
GOVERNOR

BOARD MEMBERS

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Leslie Bingham-Escareño, *Vice Chair*  
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Asusena Reséndiz, Member  
Sharon Thomason, Member  
Leo Vasquez, Member

May 22, 2018

*Writer's direct dial: 512-475-1987*  
*Email: [tim.irvine@tdhca.state.tx.us](mailto:tim.irvine@tdhca.state.tx.us)*

Don Shisler  
UGM-TC  
1321 East Lancaster  
Fort Worth, TX 76102  
Via Email Transmission: [dshisler@ugm-tc.org](mailto:dshisler@ugm-tc.org)

RE: THE VINEYARD ON LANCASTER (THE "DEVELOPMENT")  
HTC # 17028/ CMTS #5290  
10% TEST EXTENSION REQUEST

Dear Mr. Shisler:

The Texas Department of Housing and Community Affairs (the "Department") received your letter dated May 10, 2018, requesting an extension of the 10% Test expenditure and submission deadline from June 30, 2018, to August 31, 2018, for the above referenced development. You have explained that the type of project (supportive housing) and the deep targeting, required additional time to find an investor and negotiate an appropriate partnership agreement. The project is expected to close on June 1, 2018, with construction anticipated to commence shortly thereafter. Applicant states that the short time frame from closing as well as the lack of a land purchase cost (project is a ground lease) limits their ability to expend significant amounts of funds by the June 30th deadline. The requested submission deadline is August 31, 2018, which the Applicant believes will allow sufficient time to satisfy the expenditure requirement.

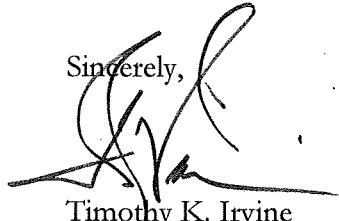
Your letter did not indicate that the issues and delays explained above were the result of something outside the Applicant's control and could not have been reasonably anticipated. Based on the information provided, staff has recommended a finding that the facts which gave rise to the need for the extension were within the reasonable control of the Applicant and could have been reasonably anticipated. I concur and further determine that a point deduction for any current application related to this Applicant or its Affiliates as a result of this extension request is warranted for the reasons discussed above.

Your request is granted with a one-point penalty for any current HTC application. The extended deadline for submission of your 10% Test documentation is now **August 31, 2018**. Any subsequent extension request would be considered independent of this determination with regard to 10 TAC §11.9(f).



Should you have any questions, please contact Rene Ruiz at (512) 475-1987 or via email at [rene.ruiz@tdhca.state.tx.us](mailto:rene.ruiz@tdhca.state.tx.us).

Sincerely,

A handwritten signature in black ink, appearing to read 'TKI', with a long horizontal flourish extending to the right.

Timothy K. Irvine  
Executive Director

TKI/RR

cc: Cindy Koning  
John McGeehan



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

[www.tdca.state.tx.us](http://www.tdca.state.tx.us)

Greg Abbott  
GOVERNOR

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Leslie Bingham-Escareño, *Vice Chair*  
Paul A. Braden, Member  
Asusena Reséndiz, Member  
Sharon Thomason, Member  
Leo Vasquez, Member

August 28, 2018

*Writer's direct dial: 512-475-1987*  
*Email: [tim.irvine@tdca.state.tx.us](mailto:tim.irvine@tdca.state.tx.us)*

Don Shisler  
UGM-TC  
1321 East Lancaster  
Fort Worth, TX 76102  
Via Email Transmission: [dshisler@ugm-tc.org](mailto:dshisler@ugm-tc.org)

RE: THE VINEYARD ON LANCASTER (THE "DEVELOPMENT")  
HTC # 17028/ CMTS #5290  
SECOND 10% TEST EXTENSION REQUEST

Dear Mr. Shisler:

The Texas Department of Housing and Community Affairs (the "Department") received your letter dated August 21, 2018, requesting a second extension of the 10% Test expenditure and submission deadline from August 31, 2018, to October 1, 2018, for the above referenced development.

According to the letter of request and discussions with the property's consultant, the extension is necessary due to an estimated 2-3 week delay in securing lumber materials for the Development, which are currently out of stock with the wholesale lumber provider.

Your letter did not indicate that the issues and delays explained above were the result of something outside the Applicant's control and could not have been reasonably anticipated. Based on the information provided, staff has recommended a finding that the facts which gave rise to the need for the extension were within the reasonable control of the Applicant and could have been reasonably anticipated. I concur and further determine that a point deduction for any current application related to this Applicant or its Affiliates as a result of this extension request is warranted for the reasons discussed above.

Your second request is granted with a one-point penalty for any HTC Application in the 2019 round. The extended deadline for submission of your 10% Test documentation is now **October 1, 2018**. Any subsequent extension request will be considered independently of this determination with regard to 10 TAC §11.9(f).



Vineyard on Lancaster (HTC #17028, CMTS ID 5290) – 10% Test Extension Request  
August 28, 2018  
Page 2

Should you have any questions, please contact Laura DeBellas at (512) 475-0577 or via email at [laura.debellas@tdhca.state.tx.us](mailto:laura.debellas@tdhca.state.tx.us).

Sincerely,



Timothy K. Irvine  
Executive Director

TKI/LD

cc: Lora Myrick





TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

[www.tdhca.state.tx.us](http://www.tdhca.state.tx.us)

Greg Abbott  
GOVERNOR

**BOARD MEMBERS**

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Asusena Reséndiz, *Member*  
Sharon Thomason, *Member*  
Leo Vasquez, *Member*

September 21, 2018

*Writer's direct dial: (512) 475-3357*  
*Email: [Rosalio.banuelos@tdhca.state.tx.us](mailto:Rosalio.banuelos@tdhca.state.tx.us)*

Lora Myrick  
Betco Housing Lab  
812 San Antonio, Suite L-14  
Austin, TX 78701  
Via Email: [lora@betcohousinglab.com](mailto:lora@betcohousinglab.com)

RE: THE VINEYARD ON LANCASTER (THE "DEVELOPMENT")  
HTC # 17028  
CONSTRUCTION STATUS REPORT EXTENSION APPROVAL

Ms. Myrick:

The Texas Department of Housing and Community Affairs (the "Department") received your request on September 10, 2018 to extend the deadline for the initial Construction Status Report for the above referenced Development from October 10, 2018 to the next quarterly deadline of January 10, 2019.

According to your request, closing is currently delayed and the Owner estimates that several of the documents requested as part of the initial construction status report in Subchapter E, Section 10.402(h) will not yet be available by the October 10<sup>th</sup> deadline.

Your request for extension has been approved. The new deadline for submission of the initial construction status report is January 10, 2019. The following report will be due on the regular quarterly deadline of April 10, 2019.

Any further questions should be directed to your Asset Manager, Laura DeBellis, at (512) 475-0577.

Sincerely,

A handwritten signature in cursive script that reads "Rosalio B".

Rosalio Banuelos,  
Acting Director of Multifamily Asset Management

LD



19028

The Vineyard on  
Lancaster

Force Majeure Request



August 19, 2019

Ms. Marni Holloway  
Director of Multifamily Finance  
Texas Department of Housing and Community Affairs  
211 E 11<sup>th</sup> Street  
Austin, Texas 78701

Via Email: [marni.holloway@tdhca.state.tx.us](mailto:marni.holloway@tdhca.state.tx.us)

Re: TDHCA Application #17028 – The Vineyards on Lancaster, Fort Worth, TX

Dear Ms. Holloway,

The Vineyard on Lancaster, L.P. (the “Owner”) received an allocation of Housing Tax Credits from the Texas Department of Housing and Community Affairs (“TDHCA”) for the construction of The Vineyards on Lancaster (the “Development”). The Owner is required to place the Development in service by December 31, 2019. Unfortunately, the Owner faces the possibility of not being able to place the Development in service prior to the end of this year as required by Section 42(h)(1)(E)(i) of the Internal Revenue Code. This possibility of the delayed placement in service is the result of events that we believe should fall under the provisions of §11.6(5) of the 2019 Qualified Allocation Plan (“QAP”) relating to Force Majeure.

#### Background Information

The Development is located in Fort Worth, Texas, in Tarrant County. The City of Fort Worth, and Tarrant County as a whole, has experienced significant rainfall throughout the construction of the Development, which has had an adverse effect on the initial construction schedule and placed-in-service timelines. A total of 58 construction days have been lost due to rainfall and/or mud for the Development between the months of August 2018 through July 2019 (12 months). When compared to the previous 5-year annual average rainfall for the area of 42.396 inches<sup>1</sup>, the Development has already exceeded the annual average by over 19 inches during this 12-month construction period, with a total rainfall of 61.44 inches<sup>2</sup> since groundbreaking. The Owner’s general contractor has assembled a list of days lost due to precipitation or mud; this information is tabulated on Exhibit A. Pictures taken from the weekly construction status reports that depict the pooling and mud from the rain are also included as Exhibit B.

---

<sup>1</sup> Source: [www.weather.gov](http://www.weather.gov)

<sup>2</sup> Source: [www.weather.gov](http://www.weather.gov)



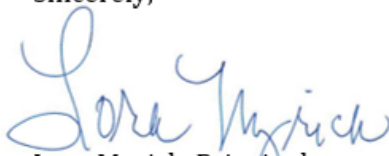
### Request

The Development is currently on track to meet the placement in service requirements by December 31, 2019, however, in the event that is not possible and due to the delays described above, we request that the Owner be permitted to return the Tax Credits and that TDHCA reallocate the Tax Credits to the Owner in the current year in accordance with §11.6(5) of the 2019 QAP relating to Force Majeure. We believe the Owner and Development meet all of the requirements in Section 11.6(5), in that:

1. The events that caused the delay occurred before issuance of 8609s and were sudden, unforeseen circumstances outside the control of the Development Owner.
2. The delays were not caused by willful negligence or acts of Owner, any Affiliate, or any other Related Party.
3. The Owner has provided evidence and a timeline of the events that was the direct result of the delays, see Exhibit A and Exhibit B.
4. Though there was little that could be done to mitigate the excessive rainfall, the Owner took all reasonable steps to minimize or mitigate any delays by closing on all financing and starting construction in August 2018, thus allowing for a total construction build-out period of 16 months. There was an allotted rain day budget of 37 days, but this was exhausted in the first 5 months of construction. Additionally, the Development was properly insured, and TDHCA was notified of the Force Majeure events.
5. The Force Majeure threatens to prevent the Owner from meeting the Place in Service requirements of the original allocation.
6. The requested current year Carryover Agreement would allocate the same amount of Tax Credits as those that would be returned.
7. The Development continues to be financially feasible, as these delays have not significantly increased the original construction budget of the Project, nor have there been any insurance proceeds received related to the Force Majeure event.

If you have any questions or would like to discuss these items further, please do not hesitate to contact me directly at (512) 785-3710 or via email at [lora@betcohousinglab.com](mailto:lora@betcohousinglab.com).

Sincerely,



Lora Myrick, Principal  
BETCO Consulting, LLC

**Lora Myrick** (512) 785-3710

[lora@betcohousinglab.com](mailto:lora@betcohousinglab.com) | 2201 Northland Drive Austin, Texas 78756 | 120 Joe Wimberley Blvd, Suite 104 Wimberley TX 78676

No.	Day / Date	Impeding Condition	Days Lost	58	Notes
1	8/10/2018	Rain	1		Light rain 10am, Heavy rain in afternoon 5in over 3days
2	8/13/2018	Mud	1		Site muddy
3	8/14/2018	Rain/Mud	1		Heavy Rain, site is extremely muddy & wet
4	9/4/18	Mud	1		Site muddy/received 2ins of rain on 9/3/2018
5	9/5/18	Mud	1		Site Muddy
6	9/7/18	Mud	1		Site Muddy
7	9/10/18	Lt.Rain/Mud	1		Site Muddy, received 5ins of rain over weekend
8	9/11/18	Mud	1		Site Muddy
9	9/12/18	Mud	1		Site Muddy received 1/4 of rain in last 24hrs
10	9/13/18	Mud	1		Site Muddy
11	9/15/18	Mud	1		Site Muddy
12	9/21/18	Rain/Mud	1		Site Muddy received 1/8 of rain in last 24hrs
13	9/24/18	Mud	1		Site Muddy received 4ins of rain over weekend
14	9/26/18	Mud	1		Pad to soft to access
15	9/27/18	Mud	1		Building pads to wet to drill
16	9/29/18	Lt.Rain/Mud	1		Sat. tried to make up day started raining
17	10/9/18	Thunderstorms	1		Thunderstorms all day, received 1 3/8 of rain
18	10/10/18	Mud	1		Site Muddy
19	10/15/18	Rain/Mud	1		Raining Received 4ins of rain over weekend
20	10/16/18	Rain/Mud	1		Raining Received 2ins of rain over night
21	10/17/18	Rain/Mud	1		Raining received 3/4 of rain in past 24hrs
22	10/18/18	Rain/Mud	1		Site Muddy received 3/4 of rain over night
23	10/19/18	Rain/Mud	1		Raining/muddy received 3/16 of inch over night
24	10/24/18	Rain/Mud	1		Raining/muddy received 2ins of rain over night
25	10/25/18	Mud	1		Site Muddy
26	10/31/19	Rain	1		Raining/Muddy Received 1in of rain
27	11/8/18	Rain	1		Received 1/8 of inch of rain over night
28	11/11/18	Rain/Mud	1		Received 3/8 of a inch of rain over night
29	12/7/18	Rain/Mud	1		Received 1/4in of rain over night
30	12/8/18	Rain/Mud	1		Received 1 1/4ins of rain on Sat.
31	12/26/18	Rain/Mud	1		Received 2.25 in of rain over night
32	1/2/19	Rain/Mud	1		Received 1/2in of rain
33	1/3/19	Rain/Mud	1		Received 1in of rain in past 24hrs
34	1/11/19	Rain/Mud	1		Received 3/8 of a inch of rain over night
35	1/12/19	Rain/Mud	1		Received 3/8 of a inch of rain over night
36	2/7/19	Lt.Rain/Cold	1		Received 1/8 of inch of rain over night
37	2/8/19	Cold	1		Cold Weather
38	2/9/19	Lt.Rain/Cold	1		Received 1/4in of rain over weekend
39	2/10/19	Lt.Rain/Cold	1		Received 1/4in of rain over weekend
40	2/11/19	Lt.Rain/Mud	1		Received 1/4in of rain over night
41	2/19/19	Lt.Rain/Mud	1		Received 5/8in of rain
42	3/4/19	Cold	1		Extreme cold weather 9 degrees
43	3/12/19	Rain	1		Received 1 3/8 of rain
44	3/13/19	Rain	1		Received 1 3/8 of rain
45	4/6/19	Rain	1		Received 3/4in of rain
46	4/13/19	Rain	1		Received 2ins of rain
47	4/25/19	Rain	1		Received 1/2in of rain in pass 24hrs
48	4/30/19	Rain	1		Received 1/4in of rain in pass 24hrs
49	5/2/19	Rain/Mud	1		Received 1 1/4ins of rain in pass 24hrs
50	5/3/19	Rain/Mud	1		Received 1/2in of rain in pass 24hrs
51	5/7/19	Rain/Mud	1		Received 3/4in of rain in pass 24hrs
52	5/11/19	Rain/Mud	1		Received 1.5 in of rain
53	5/21/19	Rain/Mud	1		Received .25 in of rain
54	6/1/19	Rain/Mud	1		Received 1 3/4 in of rain
55	6/5/19	Rain	1		Received 1/4 in of rain overnight
56	6/17/19	Rain	1		Received .75 in of rain
57	6/19/19	Rain	1		Received 1/8in of rain
58	6/24/19	Rain	1		Received .75in of rain

# Exhibit B

## The Vineyard on Lancaster

### Grade Beams Flooded



# The Vineyard on Lancaster

Grade Beams Flooded



# The Vineyard on Lancaster

Bldg B No Work due to rain





# The Vineyard on Lancaster

Bldg A Stairwells Ongoing. Delayed by cold weather



# The Vineyard on Lancaster

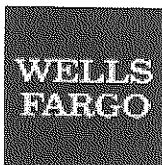
No work due to rain



# The Vineyard on Lancaster

No work due to rain/mud





**Misty D. Ramsey**  
Vice President

**Wells Fargo Bank, NA**  
Community Lending and Investment  
201 Main Street Suite 300  
MAC T9639-030  
Fort Worth, TX 76102  
PH: 682-316-1299  
[misty.d.ramsey@wellsfargo.com](mailto:misty.d.ramsey@wellsfargo.com)

**Via Electronic Mail and Overnight Mail**

September 18, 2019

The Vineyard on Lancaster, LP  
c/o Union Gospel Mission of Tarrant County  
Attn: Don Shisler  
PO Box 1957  
Fort Worth, TX 76101

**Re: Loan made pursuant to the Loan Documents dated July 26, 2018 in the original principal amount of \$10,000,000 by and between Wells Fargo Bank, National Association ("Lender") and The Vineyard on Lancaster, LP ("Borrower").**

Dear Mr. Shisler:

This letter concerns the Construction Loan Agreement ("Agreement") dated July 26, 2018 by and between The Vineyard on Lancaster, LP ("Borrower") and Wells Fargo Bank, National Association ("Lender"). Capitalized terms used herein and not otherwise defined shall have their respective meanings as set forth in the Loan Documents, as that term is defined in the Agreement.

Borrower has requested an extension of Section 4.2 of the Agreement regarding the Completion of Construction on or before the Completion Date ("Completion Covenant"). Borrower has requested, and Lender has agreed, to waive compliance with the Completion Covenant for the time period commencing October 31, 2019 and ending on March 31, 2020 ("Completion Covenant Waiver Period"). Waiver is subject to the Texas Department of Housing and Community Affairs extending the December 31, 2019 date that the development is required to be placed in service to, at a minimum, May 31, 2020.

Lender's agreement to waive compliance with the Completion Covenant for the specified time period and during the Completion Covenant Waiver Period is not intended to waive, nor shall it be deemed, in any way, to waive Lender's right to require (i) compliance with the Completion Covenant for time periods not specified herein or not during the Completion Covenant Waiver Periods or (ii) compliance with all other covenants specified in the Loan Documents in accordance with the terms thereof. Furthermore Lender's agreement to waive compliance with the Completion Covenant is a one-time accommodation only and does not and shall not

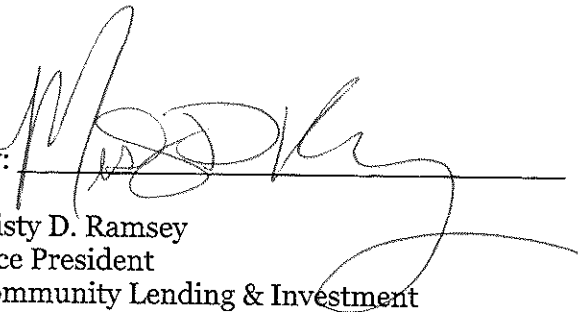
(Continued on Following Page)

constitute an agreement by Lender, nor does it constitute a binding commitment or precedent that would require Lender, to grant further accommodations of any kind.

Except as set forth above, Lender reserves the right, in its discretion, to exercise any or all of its rights and remedies under the Loan Documents as a result of any Default which may be continuing on the date hereof or any Default which may occur after the date hereof, and Lender has not waived any of such rights or remedies, and nothing in this letter, and no delay on its part in exercising any such rights or remedies, should be construed as a waiver of any such rights or remedies.

No changes or modifications to the Loan Documents are intended or implied by this letter, and in all respects the Loan Documents are hereby specifically ratified, restated and confirmed as of the effective date hereof.

Sincerely,  
Wells Fargo Bank, NA

By:   
Misty D. Ramsey  
Vice President  
Community Lending & Investment



**Misty D. Ramsey**  
Vice President

**Wells Fargo Bank, NA**  
Community Lending and Investment  
201 Main Street Suite 300  
MAC T9639-030  
Fort Worth, TX 76102  
PH: 682-316-1299  
[misty.d.ramsey@wellsfargo.com](mailto:misty.d.ramsey@wellsfargo.com)

**Via Electronic Mail**

September 18, 2019

The Vineyard on Lancaster, LP  
c/o Union Gospel Mission of Tarrant County  
Attn: Don Shisler  
PO Box 1957  
Fort Worth, TX 76101

**Re: Force Majeure Request TDHCA Application #17028, The Vineyard on Lancaster, LP**

Dear Mr. Shisler:

This letter acknowledges the receipt of the Force Majeure request for the above referenced Texas Department of Housing and Community Affairs ("TDHCA") application #17028 for The Vineyard on Lancaster project where Wells Fargo Bank, National Association ("Lender") provided the construction financing to The Vineyard on Lancaster, LP ("Borrower").

Lender approves the Force Majeure request to extend the placed in service date for The Vineyard on Lancaster project, subject to the TDHCA extending the placed in service date from December 31, 2019 to May 31, 2020.

The Lender has formally waived the required Completion Date of October 31, 2019 to March 31, 2020, subject to the TDHCA extending the placed in service date as stated above.

Sincerely,  
Wells Fargo Bank, NA

By: 

Misty D. Ramsey  
Vice President  
Community Lending & Investment

19028  
The Vineyard on  
Lancaster  
Construction Status  
Reports

---

## RE: CODA Third Party Reports - TVOL

1 message

---

David Ochs <dochs@codaconsults.com>

Tue, Sep 3, 2019 at 11:58 AM

To: William Teschke <william.teschke@huntcompanies.com>, Barbara Kubeczka <bkubeczka@codaconsults.com>, Jerry Mulkey <jmulkey@codaconsults.com>, Shelly Peabody <speabody@codaconsults.com>  
Cc: Tim Bass <tim.bass@huntcompanies.com>, Ellen Rourke <erourke@nationalhousing.com>, "Don Shisler (dshisler@ugm-tc.org)" <dshisler@ugm-tc.org>, Lora Myrick <lora@betcohousinglab.com>, Coni Hennesdorf <chennersdorf@codaconsults.com>

CODA gives our consent to providing copies of CODA's construction inspection reports for the Vineyard on Lancaster project to TDHCA.

David N. Ochs, P.E. (TX)

CODA Consulting Group

2210 Hiline Drive

Bulverde, TX 78163

E-mail: [DOchs@CODAConsults.com](mailto:DOchs@CODAConsults.com)

Phone – Office: 832-302-9074

---

**From:** William Teschke [mailto:[william.teschke@huntcompanies.com](mailto:william.teschke@huntcompanies.com)]

**Sent:** Tuesday, September 03, 2019 11:49 AM

**To:** David Ochs; Barbara Kubeczka; Jerry Mulkey; Shelly Peabody

**Cc:** Tim Bass; Ellen Rourke; Don Shisler ([dshisler@ugm-tc.org](mailto:dshisler@ugm-tc.org)); Lora Myrick

**Subject:** FW: CODA Third Party Reports - TVOL

David,

Please see Lora's request below. Are you able to respond to this email giving your consent for us to share CODA's construction monitoring reports for the Vineyard on Lancaster with TDHCA?





October 3, 2018

Via email: [william.teschke@huntcompanies.com](mailto:william.teschke@huntcompanies.com) [tim.bass@huntcompanies.com](mailto:tim.bass@huntcompanies.com)

Mr. William Teschke  
Mr. Tim Bass  
Hunt Capital Partners LLC  
15910 Ventura Blvd., Suite 1000  
Encino, CA 91436

Subject: Monthly Construction Monitoring Report 1  
The Vineyard on Lancaster  
1413 E. Lancaster Avenue  
Fort Worth, Texas 76102  
CODA Project No. 18-1887

Gentlemen:

CODA Consulting Group, LLC (CODA) is pleased to submit this report of the construction progress of the above referenced project. These services were provided in accordance with the scope of services and terms and conditions outlined in CODA's Proposal P18-2908 dated June 13, 2018 and authorized June 15, 2018 and also Hunt Capital Partners, LLC Agreement for New Construction Projects dated June 15, 2018 and authorized June 15, 2018.

The services included reviewing an Application for Payment prepared by the Developer which included the Contractor's Application for Payment (in AIA Documents G702 and G703 format) prepared by the general contractor, with attached supporting documentation. We also visited the site, met with representatives of the general contractor and visually toured the site to observe the progress and quality of construction. The attached report was prepared documenting our observations and conclusions for the previous month's construction progress and total work to date.

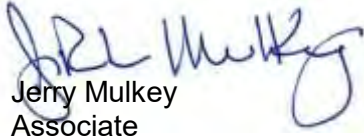
This report has been prepared on behalf of and exclusively for the use of Hunt Capital Partners, and J.P. Morgan Capital Corporation/J.P. Morgan Chase Bank, N.A. Reliance on this report is governed by the scope of services and terms and conditions of the contract under which the work was performed. This report and the findings contained herein shall not, in whole or in part, be disseminated or conveyed to any other party or be used or relied upon by any other party, in whole or in part, without CODA's prior written consent.

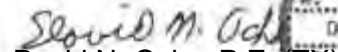
Hunt Capital Partners LLC  
The Vineyard on Lancaster  
Fort Worth, TX

We appreciate the opportunity to work with you on this project and trust the contents of this report are satisfactory. We would be pleased to discuss our findings and conclusions with you. If you have any questions, please do not hesitate to contact us.

Sincerely,

**CODA Consulting Group, LLC**

  
Jerry Mulkey  
Associate

  
David N. Ochs, P.E. (TX)  
Senior Associate



Cc: Lewam Ghebremichael – Hunt Companies ([lewam.ghebremichael@huntcompanies.com](mailto:lewam.ghebremichael@huntcompanies.com))  
Joseph Leal – Hunt Companies – ([joseph.leal@huntcompanies.com](mailto:joseph.leal@huntcompanies.com))

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**Tax Credit Application**

TDHCA Tax Credit Application provided. See table in Appendix A for Tax Credit Application required items versus provided construction features and amenities.

**II. PROJECT DESCRIPTION**

The Vineyard on Lancaster will include the construction of 104 one and two-bedroom “supportive housing” apartments on 1.553 acres in the Near East Side neighborhood of Fort Worth, Texas. The site is part of the Union Gospel Mission. The site is cleared and level with evidence of previously demolished buildings and perimeter metal and chain link fence. Parking will include 14 garage spaces, 10 under-building spaces and 74 open spaces or 98 total spaces.

The planned development includes two five-level buildings each with four-levels of wood framed apartments over a concrete framed podium. The concrete podium will be supported on straight shaft drilled piers to rock with concrete columns supporting the post-tensioned podium slab. The four apartment levels will be wood framed supported by the podium. The south Building A will have a medical clinic and retail space on the first floor, an elevator and two stairs to access the upper floors and 60 apartments on the upper four floors. The north Building B will have the Leasing Office, common amenities and a 14 space parking garage with tenant mailboxes on the first floor, an elevator and two stairs to serve access to the upper floors and 44 apartments on the upper four floors. Common amenities include a laundry, a community room and a full time social services case worker. The on-site medical clinic will provide free services to the tenants. Exterior construction will include brick and fiber cement siding with storefront systems for the first floor retail, medical clinic and leasing office areas and vinyl framed insulated windows for the residential floor areas. The roof will low-sloped with a single-ply roof membrane.

**III. STATUS OF CONSTRUCTION**

**A. SITE VISIT**

Date: September 19, 2018 and September 24, 2018  
Individual: Jerry Mulkey  
Company: CODA Consulting Group

CODA normally attends the monthly construction progress meetings which are typically the first full week of the month. The meeting was attended by:

<u>Present</u>	<u>Name</u>	<u>Company</u>	<u>Function-Title</u>
No		Union Gospel Mission	Developer Project Manager
Yes	Bridger Caulder	Fort Construction	Contractor Project Manager
Yes	Harvey Blinn	Fort Construction	Contractor Superintendent
No		Schwartz Hanson Architects	Architect Const. Rep.
Yes	Jerry Mulkey	CODA Consulting	Lender Construction Rep.

After the meeting Jerry Mulkey of CODA walked the site to review the status of construction.

Photographs taken during the site visit are attached in Appendix B.

## **B. CONSTRUCTION PROGRESS**

### **Progress this Period:**

Considering the stage of construction, the geographic area, the time of year, the weather, site conditions and project staffing, was typical/expected construction progress made this month?: **Yes** The weather has been good for the site preparation, the building pad excavation and build-up work and the drilled pier installation work in progress.

**If No – Why Not?:** NA

### **Progress to Date:**

#### **SITE WORK**

- Site clearing is complete
- Erosion control fencing is in-place
- Building pad preparation is substantially complete
- Site utilities have been staked

#### **PAVEMENTS AND SIDEWALKS**

- Work not started

#### **PODIUM CONSTRUCTION**

- Drilled piers are under construction

#### **BUILDING SHELL**

- Work not started

#### **INTERIOR BUILD-OUT**

- Work not started

#### **INTERIOR FINISHES**

- Work not started

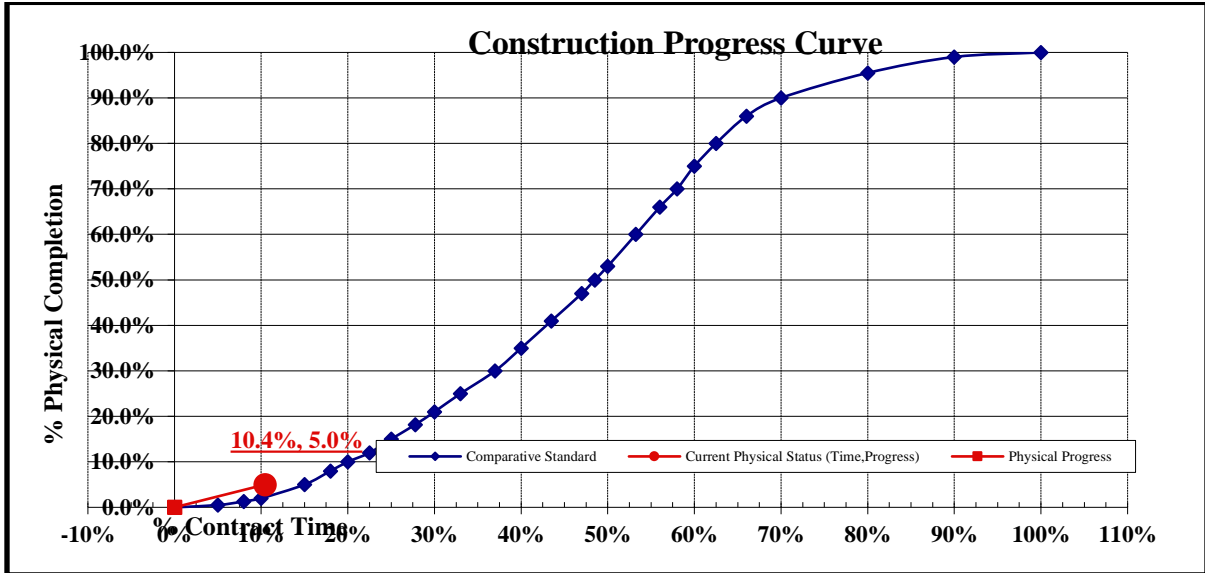
#### **AMENITIES AND LANDSCAPING**

- Work not started

### **Construction Progress Graph**

Hunt Capital Partners, and J.P. Morgan Chase Bank, N.A. have requested that we track progress based on the construction start date and the expected completion date based on the contract duration. The Construction Progress Curve below compares the actual construction progress to the construction start date, a construction finish date based on the

contract duration and the HUD Form 5372 theoretical progress curve. If the “Current Physical Status” point (red dot) is left of the corresponding point on the Comparative Standard S-curve (blue), the project is ahead of schedule by the % variance. Conversely, if the “Current Physical Status” point is right of the corresponding point on the S-curve, the project is behind schedule by the % variance:



Actual construction start date:	<b>I. 08/01/18</b>
Based on the actual start date and the project progress, the project is:	<b>II. On schedule (+3 weeks)</b>
The TDHCA Placed in service date for this project is:	<b>III. 12/31/19</b>
Estimated completion date if rate of progress to date continues to completion:	<b>IV. 12/31/19</b>

The contract time is currently 10.4 percent complete and the work is 5 percent complete.

**Construction Progress Tables:** CODA has prepared Construction Progress Tables for the Civil/Site Work and Building Construction which provide a more detailed summary of the construction progress. These tables are updated each month during our site visits and the current month’s information or progress is shown in **dark type**. The tables are included in Appendix A.

**Stored Materials:** The contractor is not requesting separate payment for stored materials this application. We did observe drilled pier and grade beam reinforcing materials staged on-site for installation.

**Percent Complete:** Based on our experience, the project schedule of values, the provided Application for Payment and our observations on-site, we estimate the project construction percent complete as:

Reported Financial Percent Complete: **6.95%**  
 Estimated Physical Percent Complete: **5%**

**Photographs:** Photographs documenting the site conditions and construction progress during our site visit are included in Appendix B.

**IV. QUALITY OF CONSTRUCTION**

**A. TESTING LABORATORY**

Name: Alliance Geotechnical Group  
City, State: Dallas, TX  
Phone No.: 972-444-8889  
Contact Person:

**B. GEOTECHNICAL REPORT RECOMMENDATIONS**

A Geotechnical Report was provided from Alliance Geotechnical Group dated January 11, 2018. A site soil potential vertical rise (PVR), which is the ground surface movement between periods of drought followed by periods of wet weather, was projected at 3 to 6 plus inches.

Building Pad Preparation: To reduce the building pad PVR to one inch or less the report recommended:

- Excavate building pads 9 feet deep (basically to rock) to 2 feet outside building perimeters.
- Backfill in compacted layers using on-site soils moisture conditioned to 5 to 8 percent above optimum moisture for compaction.
- The top 18 inches of building pad fill should be “select soil” with a Liquid Limit less than 35% and a Plasticity Index of 5 to 14.

Foundations: Foundations should include straight shaft drilled piers extending a minimum of 2 feet into hard limestone with an end bearing pressure of 40,000 pounds per square foot (psf) and side skin friction of 6,500 psf. Grade beams connecting the drilled piers should include a 4 inch “void box” under the beams. The drilled piers and grade beams support concrete columns which support the podium slabs.

Pavements: The garage slabs and building slabs-on-grade were not specified but are expected to be considered light duty pavements. The Geotechnical Report recommended pavement sections of:

<b>Material</b>	<b>Light Duty Pavement (Auto Parking Lot)</b>	<b>Heavy Duty Pavement (Moderate Heavy Truck Use)</b>
Concrete (3,600 PSI)	5”	6”
Base	8” compacted subgrade	8” flex base (crushed stone or crushed concrete)
Reinforcing	#3 @ 18” OCEW	#3 @ 18” OCEW
Joints	12’ – 15’ OCEW	12’ – 15’ OCEW

- Notes:
1. OCEW means on centers each way.
  2. Lime stabilization of Light Duty pavement subgrades is recommended but not required.
  3. Heavy Duty pavements can also consist of 7" of concrete over a compacted soil subgrade.
  4. The Contractor confirmed that all new open site pavements will be 6 inch concrete.

### **C. GEOTECHNICAL RECOMMENDATIONS AND TESTING LAB RESULTS**

Based on our observations on-site, conversations with the superintendent and/or grading contractor, review of test reports and/or conversations with the testing laboratory, we concluded:

#### Site Preparation

- The contractor stated Alpha Testing Inc. will be the project testing laboratory and CODA is on the distribution list.
- The contractor stated the building pads will be constructed using on-site soils with 18" select fill cap.
- The building pads being installed to grade level.
- The soils are tested by Alpha Testing Lab and reports are reportedly fourth coming.

#### Testing Lab Reports:

- CODA has not received any testing reports for review to date. Fort Construction states that the reports are forth coming.

#### Foundations

- Drilled piers are under construction.
- Drill pier installation is being observed and logged by Alpha Testing.

#### Pavements

- Work not started.

### **D. CONFIRMATION OF AMENITIES, EQUIPMENT, MATERIALS AND FHAA**

During our construction site visits, CODA completes Confirmation of Amenities, Equipment, Materials and Fair Housing Amendments (FHAA) forms to document the construction. The forms are included in Appendix A.

To our knowledge, based on information provided to date, all amenities listed on the amenities schedule are planned to be provided.

### **E. QUALITY STATEMENT**

Based on our experience, our observations on-site, and documents provided for our review, in our opinion, the work completed to date is in general compliance with the scope of work





**Photograph 1:** Tying pier cap reinforcing.



**Photograph 2:** Reinforcing for drilled piers.



**Photograph 3:** Pad "B" ready for piers.



**Photograph 4:** Full length pier reinforcing steel cages staged for cutting and placing.



**Photograph 5:** Removing soil spoils from the drilled shaft.



**Photograph 6:** Dressing a pier cage for installation.



**Photograph 7:** Pier spotted for layout and starting grade.



**Photograph 8:** City water crew relocating existing water meter.



**Photograph 9:** Removing pier soil spoils to haul-off area.



**Photograph 10:** Existing emergency generator on-site.



**Photograph 11:** Off loading grade beam reinforcing steel.



**Photograph 12:** Abandoned right-of-way between Buildings "A" and "B".



October 17, 2018

Via Email: [William.teschke@huntcompanies.com](mailto:William.teschke@huntcompanies.com)  
[Tim.bass@huntcompanies.com](mailto:Tim.bass@huntcompanies.com)

Mr. William Teschke  
Mr. Tim Bass  
Hunt Capital Partners LLC  
15910 Ventura Blvd., Suite 1000  
Encino, CA 91436

JP Morgan Chase Bank, NA  
2200 Ross Avenue, Floor 9  
Dallas, TX 75201

Subject: Bi-Monthly Construction Monitoring Report 1.1  
The Vineyard on Lancaster  
1413 E. Lancaster Avenue  
Fort Worth, Texas 76102  
CODA Project No. 18-1887

Gentlemen:

CODA Consulting Group, LLC (CODA) is pleased to submit this Bi-Monthly Construction Monitoring Report for the above referenced project. These services were provided in accordance with the scope of services and terms and conditions outlined in CODA's proposal P18-2908 dated June 13, 2018 and authorized June 15, 2018 and also Hunt Capital Partners, LLC Agreement for New Construction Projects dated June 15, 2018 and authorized June 15, 2018.

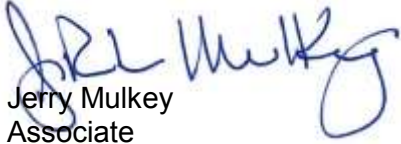
CODA makes two site visits per month to monitor the construction progress. Monthly Construction Monitoring Reports include attending the Developer / Architect / Contractor scheduled monthly meetings to review the project progress, address upcoming issues and expected progress and to review the status of RFIs, Submittals and Change Orders and to review and approve the Contractor's Application for Payment. The Monthly Construction Progress Reports will be numbered 1.0, 2.0 etc. CODA has also been asked to visit the project mid-month between the Construction Progress Report meetings to review the project progress including staffing, delivery of materials, anticipated delays, etc. These meetings are scheduled with the Contractor Superintendent. The Bi-Monthly Construction Monitoring Reports to document these meetings will be numbered 1.1, 2.1, etc. Both reports include photographs documenting the construction progress.

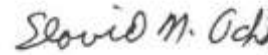
This report has been prepared on behalf of and exclusively for the use of Hunt Capital Partners and J.P. Morgan Capital Corporation / J.P. Morgan Chase Bank, N.A. Reliance on this report is governed by the scope of services and terms and conditions of the contract under which the work was performed. This report and the findings contained herein shall not, in whole or in part, be disseminated or conveyed to any other party or be used or relied upon by any other party, in whole or in part, without CODA's prior written consent.

We appreciate the opportunity to work with you on this project and trust the contents of this report are satisfactory. We would be pleased to discuss our findings and conclusions with you. If you have any questions, please do not hesitate to contact us.

Sincerely,

**CODA Consulting Group, LLC**

  
Jerry Mulkey  
Associate

  
David N. Ochs, P.E. (TX)  
Senior Associate





**PROJECT PROGRESS SUMMARY**

Bi-Monthly Site Visit Report No. 1.1 Site Visit Date: 10/16/18

CODA Representative: Jerry Mulkey

Information for this report was provided by the following individuals during the site visit or by telephone or e-mail.

Title	Name	Company	Phone No.
Contractor Superintendent		FORT Construction	
Contractor Project Mgr.	Bridger Clader	FORT Construction	817-885-7979

Construction Progress	CODA Response
<b>Weather:</b> Has the weather at the site since the previous site visit affected the project progress?	Yes. Weather is causing major delays. There have been 14 days of rain in the last 22 days, 9" of rain since October 1.
<b>Staffing:</b> Has the contractor and subcontractor staffing of the project since the previous site visit affected the project progress?	No staffing shortage was reported.
<b>Material and Equipment Deliveries:</b> Have material or equipment deliveries in the past, or projected in the future, expected to impact the project schedule?	Reinforcing materials are on site. Grade beam and column steel has been tied. A scheduling impact was not determined.
<b>Materials and Equipment:</b> Are the materials and equipment being incorporated into the construction project in accordance with industry standards?	Yes.
<b>Quality of Construction:</b> Is the quality of the construction work in accordance with industry standards?	Completed earth and concrete work to date is in compliance per the testing laboratory
<b>Summary:</b> Considering the stage of construction, the geographic area, the time of year, the weather, the site conditions, the project staffing, expected material and equipment deliveries and the Developer/Design/Construction Team interactions:	
<ul style="list-style-type: none"> <li>Was reasonable project progress made since the previous site visit?</li> </ul>	No. 14 days of rain or mud in the last 22 days
<ul style="list-style-type: none"> <li>Are future project delays anticipated?</li> </ul>	Possible. Weather could affect the work in progress. Rain forecast next 4 days, no possibility of drying.

**QUALITY STATEMENT**

Based on our experience, our observations on-site, and documents provided for our review, in our opinion, the work completed to date is in general compliance with the scope of work shown on the construction documents reviewed and generally meets accepted standards of good quality workmanship.

**FOLLOW-UP ITEMS**

Are there any issues that will need to be resolved before our next scheduled site visit?

CODA Response: No.

If Yes – What?:

1. None at this time.



**Photograph 1:** Overall of site with grade beam and podium reinforcing in foreground.



**Photograph 2:** Podium column reinforcing cages.



**Photograph 3:** Building pad at Building "B". Site is very wet from recent rains.



**Photograph 4:** Access way between Buildings "A" and "B". Note drilled piers in place.



**Photograph 5:** South Grade Beam at Building "A". Recent continuing rainfall is delaying the site work.



**Photograph 6:** North grade beam line at Building "A". Recent continuing rainfall is delaying the site work.



November 9, 2018

Via email: [william.teschke@huntcompanies.com](mailto:william.teschke@huntcompanies.com) [tim.bass@huntcompanies.com](mailto:tim.bass@huntcompanies.com)

Mr. William Teschke  
Mr. Tim Bass  
Hunt Capital Partners LLC  
15910 Ventura Blvd., Suite 1000  
Encino, CA 91436

Subject: Monthly Construction Monitoring Report 2  
The Vineyard on Lancaster  
1413 E. Lancaster Avenue  
Fort Worth, Texas 76102  
CODA Project No. 18-1887

Gentlemen:

CODA Consulting Group, LLC (CODA) is pleased to submit this report of the construction progress of the above referenced project. These services were provided in accordance with the scope of services and terms and conditions outlined in CODA's Proposal P18-2908 dated June 13, 2018 and authorized June 15, 2018 and also Hunt Capital Partners, LLC Agreement for New Construction Projects dated June 15, 2018 and authorized June 15, 2018.

The services included reviewing an Application for Payment prepared by the Developer which included the Contractor's Application for Payment (in AIA Documents G702 and G703 format) prepared by the general contractor, with attached supporting documentation. We also visited the site, met with representatives of the general contractor and visually toured the site to observe the progress and quality of construction. The attached report was prepared documenting our observations and conclusions for the previous month's construction progress and total work to date.

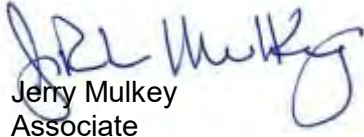
This report has been prepared on behalf of and exclusively for the use of Hunt Capital Partners, and J.P. Morgan Capital Corporation/J.P. Morgan Chase Bank, N.A. Reliance on this report is governed by the scope of services and terms and conditions of the contract under which the work was performed. This report and the findings contained herein shall not, in whole or in part, be disseminated or conveyed to any other party or be used or relied upon by any other party, in whole or in part, without CODA's prior written consent.

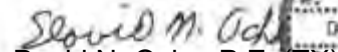
Hunt Capital Partners LLC  
The Vineyard on Lancaster  
Fort Worth, TX

We appreciate the opportunity to work with you on this project and trust the contents of this report are satisfactory. We would be pleased to discuss our findings and conclusions with you. If you have any questions, please do not hesitate to contact us.

Sincerely,

**CODA Consulting Group, LLC**

  
Jerry Mulkey  
Associate

  
David N. Ochs, P.E. (TX)  
Senior Associate



Cc: Joseph Leal – Hunt Companies – ([joseph.leal@huntcompanies.com](mailto:joseph.leal@huntcompanies.com))

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**Tax Credit Application**

TDHCA Tax Credit Application provided. See table in Appendix A for Tax Credit Application required items versus provided construction features and amenities.

**II. PROJECT DESCRIPTION**

The Vineyard on Lancaster will include the construction of 104 one and two-bedroom “supportive housing” apartments on 1.553 acres in the Near East Side neighborhood of Fort Worth, Texas. The planned development includes two five-level buildings each with four-levels of wood framed apartments over a concrete framed podium. The concrete podium will be supported on straight shaft drilled piers to rock with concrete columns supporting the post-tensioned podium slab. The four apartment levels will be wood framed supported by the podium. The south Building A will have a medical clinic and retail space on the first floor, an elevator and two stairs to access the upper floors and 60 apartments on the upper four floors. The north Building B will have the Leasing Office, common amenities and a 14 space parking garage with tenant mailboxes on the first floor, an elevator and two stairs to serve access to the upper floors and 44 apartments on the upper four floors. Common amenities include a laundry, a community room and a full time social services case worker. The on-site medical clinic will provide free services to the tenants. Exterior construction will include brick and fiber cement siding with storefront systems for the first floor retail, medical clinic and leasing office areas and vinyl framed insulated windows for the residential floor areas. The roof will low-sloped with a single-ply roof membrane.

**III. STATUS OF CONSTRUCTION**

**A. SITE VISIT**

Date: October 31, 2018  
Individual: Jerry Mulkey  
Company: CODA Consulting Group

CODA meets with representatives of Fort Construction typically the first full week of the month. The meeting was attended by:

Present	Name	Company	Function-Title
No		Union Gospel Mission	Developer Project Manager
Yes	Bridger Caulder	Fort Construction	Contractor Project Manager
Yes	Harvey Blinn	Fort Construction	Contractor Superintendent
No		Schwartz Hanson Architects	Architect Const. Rep.
Yes	Jerry Mulkey	CODA Consulting	Lender Construction Rep.

The following documents were provided at the meeting or by e-mail before or after the meeting.

- Contractor Application for Payment No.4 AIA G702 and G703 for \$160,738.20 for work through 10/31/18, signed by the contractor and notarized on 10/31/18 and by the Architect 11/08/18.

- Conditional Waiver and Release on Progress Payment for Payment No 4 for \$160,738.20.
- Unconditional Waiver and Release on previous Progress Payment #3 was not provided.

Items discussed at the meeting included:

- The site was wet and muddy and construction operations were progressing slowly.
- Dewatering operations were halted until incoming rain has passed.
- Possibility of additional personnel to increase production being offsite by the size and confined nature of the site.
- The Contractor has provided a line item construction schedule dated 07.13.18 and based on weather during September and October the schedule is being updated. 23 Weather Delay Days have been requested in CO #1 under review.

Monthly Construction Progress Meetings are scheduled at 10:30 PM at the construction office on the last Tuesday of each month. The Developer has requested that CODA not attend these meetings. Future scheduled dates are:

	February 26, 2019	June 25, 2019	October 29, 2019
November 27, 2018	March 26, 2019	July 30, 2019	November 26, 2019
December UK, 2018	April 30, 2019	August 27, 2019	December 31, 2019
January 29, 2019	May 28, 2019	September 24, 2019	January 28, 2019

CODA has also been authorized to make bi-monthly site visits between the Monthly Construction Progress Meetings. These meetings are scheduled with the superintendent and abbreviated reports will be provided for the bi-monthly meetings.

After the meeting Jerry Mulkey of CODA walked the site to review the status of construction.

Photographs taken during the site visit are attached in Appendix B.

## **B. CONSTRUCTION PROGRESS**

### **Progress this Period:**

Considering the stage of construction, the geographic area, the time of year, the weather, site conditions and project staffing, was typical/expected construction progress made this month?: **No**

**If No – Why Not?:** The weather has been unseasonably wet posting record rainfall in both September and October and the area has been declared a “Disaster Area” by the State of Texas (Attached). Change Order #1 adding 23 Weather Delay Days is being processed.

**Progress to Date:**

**SITE WORK**

- Site clearing is complete
- Erosion control fencing is in-place
- Building pad preparation is substantially complete
- Site utilities are being installed.

**PAVEMENTS AND SIDEWALKS**

- Work not started

**PODIUM CONSTRUCTION**

- Drilled piers are complete.
- Grade beams at Buildings “A” and “B” are under construction.
- Pier caps and Podium column bases are under construction.

**BUILDING SHELL**

- Work not started

**INTERIOR BUILD-OUT**

- Work not started

**INTERIOR FINISHES**

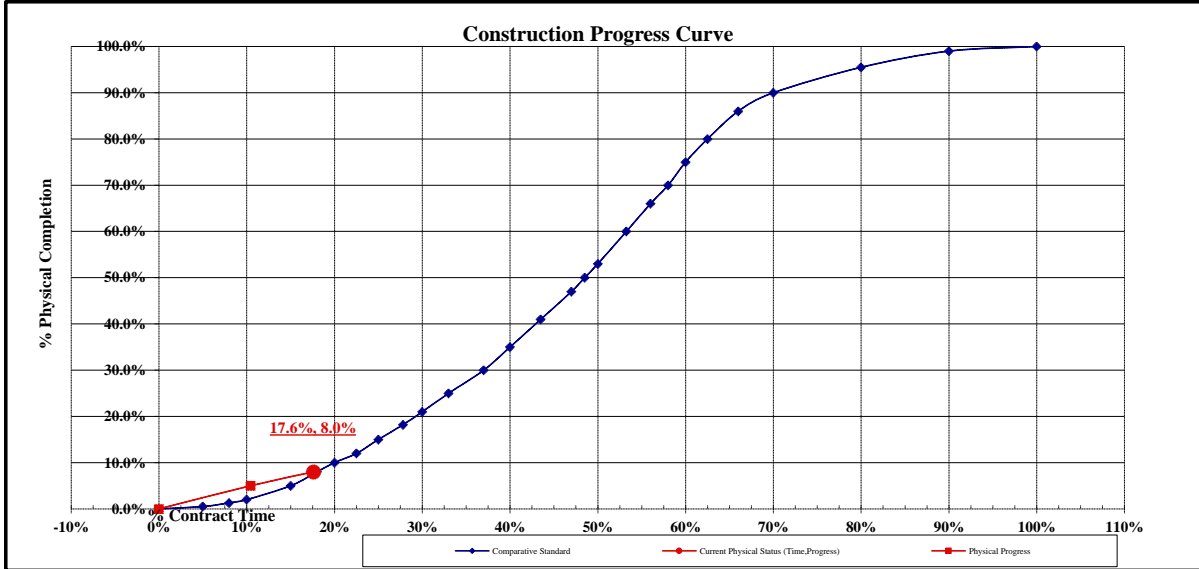
- Work not started

**AMENITIES AND LANDSCAPING**

- Work not started

**Construction Progress Graph**

Hunt Capital Partners, and J.P. Morgan Chase Bank, N.A. have requested that we track progress based on the construction start date and the expected completion date based on the contract duration. The Construction Progress Curve below compares the actual construction progress to the construction start date, a construction finish date based on the contract duration and the HUD Form 5372 theoretical progress curve. If the “Current Physical Status” point (red dot) is left of the corresponding point on the Comparative Standard S-curve (blue), the project is ahead of schedule by the % variance. Conversely, if the “Current Physical Status” point is right of the corresponding point on the S-curve, the project is behind schedule by the % variance:



Actual construction start date:	I. <b>08/01/18</b>
Based on the actual start date and the project progress, the project is:	II. <b>Behind schedule 2 months</b>
The TDHCA Placed in service date for this project is:	III. <b>12/31/19</b>
Estimated completion date if rate of progress to date continues to completion:	IV. <b>12/31/19</b>

The contract time is currently 17.6 percent complete and the work is 8 percent complete.

CODA notes the Construction Progress Curve above was developed for garden-style apartments and is less accurate for podium style projects. The two months behind schedule estimate is based on the contractor provided Construction Schedule which shows the podium slabs should already be in place and the podium support columns have not yet started.

**Construction Progress Tables:** CODA has prepared Construction Progress Tables for the Civil/Site Work and Building Construction which provide a more detailed summary of the construction progress. These tables are updated each month during our site visits and the current month's information or progress is shown in **dark type**. The tables are included in Appendix A.

**Stored Materials:** The contractor is not requesting separate payment for stored materials this application. We did observe drilled pier and grade beam reinforcing materials staged on-site for installation.

**Percent Complete:** Based on our experience, the project schedule of values, the provided Application for Payment and our observations on-site, we estimate the project construction percent complete as:



**Photograph 1:** Podium column and pier cap reinforcing.



**Photograph 2:** Standing water at North grade beam excavation Building "B".



**Photograph 3:** Beam forms at South grade beam Building "B".



**Photograph 4:** Sanitary line at driveway.



**Photograph 5:** Beam break at North grade beam Building "A".



**Photograph 6:** Podium column line ready for vertical reinforcing.



**Photograph 7:** Column form base.



**Photograph 8:** Backfilled South grade beam at Building "A".





**Photograph 9:** Beam spoils to be moved to haul-off area.



**Photograph 10:** Rubbing form tie holes at North beam Building “A”.



November 15, 2018

Via Email: [William.teschke@huntcompanies.com](mailto:William.teschke@huntcompanies.com)  
[Tim.bass@huntcompanies.com](mailto:Tim.bass@huntcompanies.com)

Mr. William Teschke  
Mr. Tim Bass  
Hunt Capital Partners LLC  
15910 Ventura Blvd., Suite 1000  
Encino, CA 91436

JP Morgan Chase Bank, NA  
2200 Ross Avenue, Floor 9  
Dallas, TX 75201

Subject: Bi-Monthly Construction Monitoring Report 2.1  
The Vineyard on Lancaster  
1413 E. Lancaster Avenue  
Fort Worth, Texas 76102  
CODA Project No. 18-1887

Gentlemen:

CODA Consulting Group, LLC (CODA) is pleased to submit this Bi-Monthly Construction Monitoring Report for the above referenced project. These services were provided in accordance with the scope of services and terms and conditions outlined in CODA's proposal P18-2908 dated June 13, 2018 and authorized June 15, 2018 and also Hunt Capital Partners, LLC Agreement for New Construction Projects dated June 15, 2018 and authorized June 15, 2018.

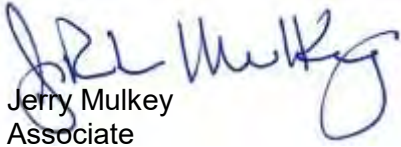
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This report has been prepared on behalf of and exclusively for the use of Hunt Capital Partners and J.P. Morgan Capital Corporation / J.P. Morgan Chase Bank, N.A. Reliance on this report is governed by the scope of services and terms and conditions of the contract under which the work was performed. This report and the findings contained herein shall not, in whole or in part, be disseminated or conveyed to any other party or be used or relied upon by any other party, in whole or in part, without CODA's prior written consent.

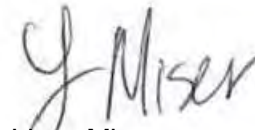
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Sincerely,

**CODA Consulting Group, LLC**



Jerry Mulkey  
Associate



Lizzy Miser  
Associate Director of Construction Services

Cc: Joseph Leal, Hunt ([joseph.leal@huntcompanies.com](mailto:joseph.leal@huntcompanies.com))

**PROJECT PROGRESS SUMMARY**

Bi-Monthly Site Visit Report No. 2.1 Site Visit Date: 11/15/18

CODA Representative: Jerry Mulkey

Information for this report was provided by the following individuals during the site visit or by telephone or e-mail.

Title	Name	Company	Phone No.
Contractor Superintendent	Harvey Blinn	FORT Construction	682-478-6483
Contractor Project Mgr.	Bridger Clader	FORT Construction	817-885-7979

Construction Progress	CODA Response
<b>Weather:</b> Has the weather at the site since the previous site visit affected the project progress?	Yes. Weather has been good the past two weeks with only two days lost to rain or cold.
<b>Staffing:</b> Has the contractor and subcontractor staffing of the project since the previous site visit affected the project progress?	No staffing shortage was reported. 20 man forming crew on site, and 4 equipment operators.
<b>Material and Equipment Deliveries:</b> Have material or equipment deliveries in the past, or projected in the future, expected to impact the project schedule?	Reinforcing materials are on site. Grade beam and column steel has been tied. Metal column forms are in use and metal forms for the Podium are being delivered.
<b>Materials and Equipment:</b> Are the materials and equipment being incorporated into the construction project in accordance with industry standards?	Yes.
<b>Quality of Construction:</b> Is the quality of the construction work in accordance with industry standards?	Completed earth and concrete work to date is in compliance per the testing laboratory
<b>Summary:</b> Considering the stage of construction, the geographic area, the time of year, the weather, the site conditions, the project staffing, expected material and equipment deliveries and the Developer/Design/Construction Team interactions:	
<ul style="list-style-type: none"> <li>Was reasonable project progress made since the previous site visit?</li> </ul>	Yes. 2 days of rain or cold in the last 14 days
<ul style="list-style-type: none"> <li>Are future project delays anticipated?</li> </ul>	Possible. Weather could affect the work in progress. Rain Could make the site unworkable and cold could affect the scheduling of concrete placement.

**QUALITY STATEMENT**

Based on our experience, our observations on-site, and documents provided for our review, in our opinion, the work completed to date is in general compliance with the scope of work shown on the construction documents reviewed and generally meets accepted standards of good quality workmanship.

**FOLLOW-UP ITEMS**

Are there any issues that will need to be resolved before our next scheduled site visit?

CODA Response: YES

If Yes – What?:

1. The city is reviewing plan revisions and is holding the Permit for Construction until review is complete. Permit should be issued by Wednesday November 21, 2018. With forming work in progress this should not create a delay.



**Photograph 1:** Setting forms at North grade beam at Building "B".



**Photograph 2:** Preparing beam bottom at South grade beam at Building "B".



**Photograph 3:** West stairwell grade beams at Building "A".



**Photograph 4:** Elevator pit slab at Building "A".



**Photograph 5:** Setting column forms South grade beam at Building "A".



**Photograph 6:** Last seven columns at the North grade beam at Building "A".





December 11, 2018

Via email: [william.teschke@huntcompanies.com](mailto:william.teschke@huntcompanies.com) [tim.bass@huntcompanies.com](mailto:tim.bass@huntcompanies.com)

Mr. William Teschke  
Mr. Tim Bass  
Hunt Capital Partners LLC  
15910 Ventura Blvd., Suite 1000  
Encino, CA 91436

Subject: Monthly Construction Monitoring Report 3  
The Vineyard on Lancaster  
1413 E. Lancaster Avenue  
Fort Worth, Texas 76102  
CODA Project No. 18-1887

Gentlemen:

CODA Consulting Group, LLC (CODA) is pleased to submit this report of the construction progress of the above referenced project. These services were provided in accordance with the scope of services and terms and conditions outlined in CODA's Proposal P18-2908 dated June 13, 2018 and authorized June 15, 2018 and also Hunt Capital Partners, LLC Agreement for New Construction Projects dated June 15, 2018 and authorized June 15, 2018.

The services included reviewing an Application for Payment prepared by the Developer which included the Contractor's Application for Payment (in AIA Documents G702 and G703 format) prepared by the general contractor, with attached supporting documentation. We also visited the site, met with representatives of the general contractor and visually toured the site to observe the progress and quality of construction. The attached report was prepared documenting our observations and conclusions for the previous month's construction progress and total work to date.

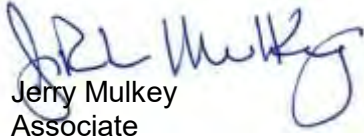
This report has been prepared on behalf of and exclusively for the use of Hunt Capital Partners, and J.P. Morgan Capital Corporation/J.P. Morgan Chase Bank, N.A. Reliance on this report is governed by the scope of services and terms and conditions of the contract under which the work was performed. This report and the findings contained herein shall not, in whole or in part, be disseminated or conveyed to any other party or be used or relied upon by any other party, in whole or in part, without CODA's prior written consent.

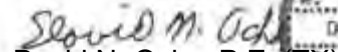
Hunt Capital Partners LLC  
The Vineyard on Lancaster  
Fort Worth, TX

We appreciate the opportunity to work with you on this project and trust the contents of this report are satisfactory. We would be pleased to discuss our findings and conclusions with you. If you have any questions, please do not hesitate to contact us.

Sincerely,

**CODA Consulting Group, LLC**

  
Jerry Mulkey  
Associate

  
David N. Ochs, P.E. (TX)  
Senior Associate



Cc: Joseph Leal – Hunt Companies – ([joseph.leal@huntcompanies.com](mailto:joseph.leal@huntcompanies.com))

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**Tax Credit Application**

TDHCA Tax Credit Application provided. See table in Appendix A for Tax Credit Application required items versus provided construction features and amenities.

**II. PROJECT DESCRIPTION**

The Vineyard on Lancaster will include the construction of 104 one and two-bedroom “supportive housing” apartments on 1.553 acres in the Near East Side neighborhood of Fort Worth, Texas. The planned development includes two five-level buildings each with four-levels of wood framed apartments over a concrete framed podium. The concrete podium will be supported on straight shaft drilled piers to rock with concrete columns supporting the post-tensioned podium slab. The four apartment levels will be wood framed supported by the podium. The south Building A will have a medical clinic and retail space on the first floor, an elevator and two stairs to access the upper floors and 60 apartments on the upper four floors. The north Building B will have the Leasing Office, common amenities and a 14 space parking garage with tenant mailboxes on the first floor, an elevator and two stairs to serve access to the upper floors and 44 apartments on the upper four floors. Common amenities include a laundry, a community room and a full time social services case worker. The on-site medical clinic will provide free services to the tenants. Exterior construction will include brick and fiber cement siding with storefront systems for the first floor retail, medical clinic and leasing office areas and vinyl framed insulated windows for the residential floor areas. The roof will low-sloped with a single-ply roof membrane.

**III. STATUS OF CONSTRUCTION**

**A. SITE VISIT**

Date: November 27, 2018  
Individual: Jerry Mulkey  
Company: CODA Consulting Group

CODA meets with representatives of Fort Construction typically the first full week of the month. The meeting was attended by:

<b>Present</b>	<b>Name</b>	<b>Company</b>	<b>Function-Title</b>
Yes	Don Schussler	Union Gospel Mission	Developer Project Manager
Yes	Bridger Caulder	Fort Construction	Contractor Project Manager
Yes	Harvey Blinn	Fort Construction	Contractor Superintendent
Yes	Joe Bloodworth	Schwartz Hanson Architects	Architect Const. Rep.
Yes	Jerry Mulkey	CODA Consulting	Lender Construction Rep.

The following documents were provided at the meeting or by e-mail before or after the meeting.

- Contractor Application for Payment No.5 AIA G702 and G703 for \$346,179.82 for work through 11/30/18, signed by the contractor and notarized on 12/05/18 and by the Architect 12/06/18.

- Conditional Waiver and Release on Progress Payment for Payment No 5 for \$346,179.82.
- Unconditional Waiver and Release on previous Progress Payment #4 was not provided.

Items discussed at the meeting included:

- The site was dry and construction operations were progressing normally.
- Dewatering operations have been halted until incoming rain event.
- Possibility of additional personnel to increase production being offset by the size and confined nature of the site.
- The Contractor has provided a line item construction schedule dated 11.11.18 and the G.C has gone to 6 day work weeks. 23 Weather Delay Days have been requested in CO #1 under review.

Monthly Construction Progress Meetings are scheduled at 10:30 PM at the UGM Board Room on the last Tuesday of each. Future scheduled dates are:

December TBD, 2018	February 26, 2019	June 25, 2019	October 29, 2019
January 29, 2019	March 26, 2019	July 30, 2019	November 26, 2019
	April 30, 2019	August 27, 2019	December 31, 2019
	May 28, 2019	September 24, 2019	January 28, 2019

CODA has also been authorized to make bi-monthly site visits between the Monthly Construction Progress Meetings. These meetings are scheduled with the superintendent and abbreviated reports will be provided for the bi-monthly meetings.

After the meeting Jerry Mulkey of CODA walked the site to review the status of construction.

Photographs taken during the site visit are attached in Appendix B.

## **B. CONSTRUCTION PROGRESS**

### **Progress this Period:**

Considering the stage of construction, the geographic area, the time of year, the weather, site conditions and project staffing, was typical/expected construction progress made this month?: **No**

**If No – Why Not?:** The weather has been unseasonably wet posting record rainfall in both September and October and the area has been declared a “Disaster Area” by the State of Texas. There was some rain in November and the G.C. has gone to a 6 day work week. Change Order #1 adding 23 Weather Delay Days is being processed.

### **Progress to Date:**

#### **SITE WORK**

- Site clearing is complete
- Erosion control fencing is in-place

- Building pad preparation is substantially complete
- Site utilities are installed.

**PAVEMENTS AND SIDEWALKS**

- Work not started

**PODIUM CONSTRUCTION**

- Drilled piers are complete.
- Grade beams at Buildings “A” and “B” are complete.
- Pier caps and Podium columns and bases are under construction.

**BUILDING SHELL**

- Work not started

**INTERIOR BUILD-OUT**

- Work not started

**INTERIOR FINISHES**

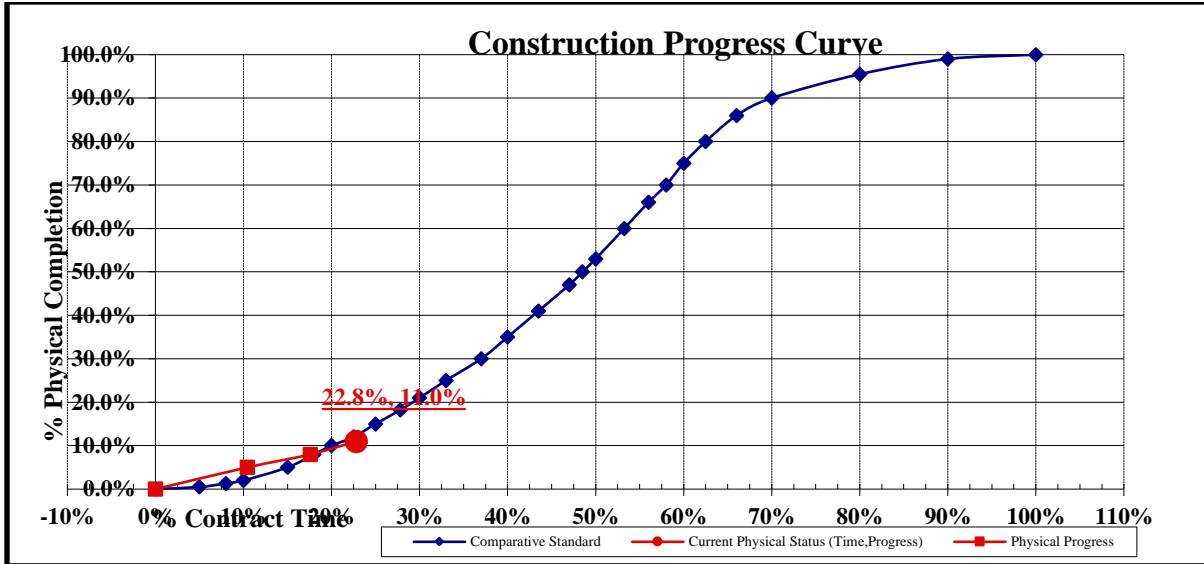
- Work not started

**AMENITIES AND LANDSCAPING**

- Work not started

**Construction Progress Graph**

Hunt Capital Partners, and J.P. Morgan Chase Bank, N.A. have requested that we track progress based on the construction start date and the expected completion date based on the contract duration. The Construction Progress Curve below compares the actual construction progress to the construction start date, a construction finish date based on the contract duration and the HUD Form 5372 theoretical progress curve. If the “Current Physical Status” point (red dot) is left of the corresponding point on the Comparative Standard S-curve (blue), the project is ahead of schedule by the % variance. Conversely, if the “Current Physical Status” point is right of the corresponding point on the S-curve, the project is behind schedule by the % variance:



Actual construction start date:	I. <b>08/01/18</b>
Based on the actual start date and the project progress, the project is:	II. <b>Behind schedule 2 months</b>
The TDHCA Placed in service date for this project is:	III. <b>12/31/19</b>
Estimated completion date if rate of progress to date continues to completion:	IV. <b>12/31/19</b>

The contract time is currently 22.8 percent complete and the work is 11 percent complete.

CODA notes the Construction Progress Curve above was developed for garden-style apartments and is less accurate for podium style projects. The two months behind schedule estimate is based on the contractor provided revised Construction Schedule which shows the podium slabs should be in place January 9 and the podium support columns are not yet complete.

**Construction Progress Tables:** CODA has prepared Construction Progress Tables for the Civil/Site Work and Building Construction which provide a more detailed summary of the construction progress. These tables are updated each month during our site visits and the current month's information or progress is shown in **dark type**. The tables are included in Appendix A.

**Stored Materials:** The contractor is requesting separate payment for stored materials this application. The G.C. is billing for stored light fixtures and has provided photographs of the materials. Additionally, we did observe column and podium reinforcing materials staged on-site for installation.

**Percent Complete:** Based on our experience, the project schedule of values, the provided Application for Payment and our observations on-site, we estimate the project construction percent complete as:



**Photograph 1:** Column and Podium reinforcing at Building "B".



**Photograph 2:** North grade beam rubbed and ready for backfill Building "B".





**Photograph 3:** Plumbing column forms at Building “B”.



**Photograph 4:** Incoming electrical service conduits at Building “B”.



**Photograph 5:** Installing soil retainers at void boxes for grade beam at Building "A".



**Photograph 6:** Stairwell beams at Building "B".



**Photograph 7:** Podium columns at Building "A".



**Photograph 8:** Elevator pit at Building "A".



**Photograph 9:** Sanitary line bedded and ready for backfill.



**Photograph 10:** Podium columns at Building "B".



December 18, 2018

Via Email: [William.teschke@huntcompanies.com](mailto:William.teschke@huntcompanies.com)  
[Tim.bass@huntcompanies.com](mailto:Tim.bass@huntcompanies.com)

Mr. William Teschke  
Mr. Tim Bass  
Hunt Capital Partners LLC  
15910 Ventura Blvd., Suite 1000  
Encino, CA 91436

JP Morgan Chase Bank, NA  
2200 Ross Avenue, Floor 9  
Dallas, TX 75201

Subject: Bi-Monthly Construction Monitoring Report 3.1  
The Vineyard on Lancaster  
1413 E. Lancaster Avenue  
Fort Worth, Texas 76102  
CODA Project No. 18-1887

Gentlemen:

CODA Consulting Group, LLC (CODA) is pleased to submit this Bi-Monthly Construction Monitoring Report for the above referenced project. These services were provided in accordance with the scope of services and terms and conditions outlined in CODA's proposal P18-2908 dated June 13, 2018 and authorized June 15, 2018 and also Hunt Capital Partners, LLC Agreement for New Construction Projects dated June 15, 2018 and authorized June 15, 2018.

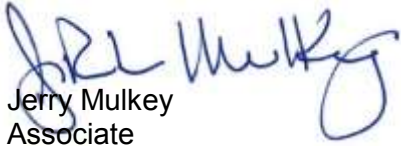
CODA makes two site visits per month to monitor the construction progress. Monthly Construction Monitoring Reports include attending the Developer / Architect / Contractor scheduled monthly meetings to review the project progress, address upcoming issues and expected progress and to review the status of RFIs, Submittals and Change Orders and to review and approve the Contractor's Application for Payment. The Monthly Construction Progress Reports will be numbered 1.0, 2.0 etc. CODA has also been asked to visit the project mid-month between the Construction Progress Report meetings to review the project progress including staffing, delivery of materials, anticipated delays, etc. These meetings are scheduled with the Contractor Superintendent. The Bi-Monthly Construction Monitoring Reports to document these meetings will be numbered 1.1, 2.1, etc. Both reports include photographs documenting the construction progress.

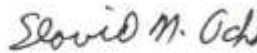
This report has been prepared on behalf of and exclusively for the use of Hunt Capital Partners and J.P. Morgan Capital Corporation / J.P. Morgan Chase Bank, N.A. Reliance on this report is governed by the scope of services and terms and conditions of the contract under which the work was performed. This report and the findings contained herein shall not, in whole or in part, be disseminated or conveyed to any other party or be used or relied upon by any other party, in whole or in part, without CODA's prior written consent.

We appreciate the opportunity to work with you on this project and trust the contents of this report are satisfactory. We would be pleased to discuss our findings and conclusions with you. If you have any questions, please do not hesitate to contact us.

Sincerely,

**CODA Consulting Group, LLC**

  
Jerry Mulkey  
Associate

  
David N. Ochs, P.E. (TX)  
Senior Associate



Cc: Joseph Leal, Hunt ([joseph.leal@huntcompanies.com](mailto:joseph.leal@huntcompanies.com))

**PROJECT PROGRESS SUMMARY**

Bi-Monthly Site Visit Report No. 3.1 Site Visit Date: 12/14/18

CODA Representative: Jerry Mulkey

Information for this report was provided by the following individuals during the site visit or by telephone or e-mail.

Title	Name	Company	Phone No.
Contractor Superintendent	Harvey Blinn	FORT Construction	682-478-6483
Contractor Project Mgr.	Bridger Clader	FORT Construction	817-885-7979

Construction Progress	CODA Response
<b>Weather:</b> Has the weather at the site since the previous site visit affected the project progress?	Yes. Weather has been poor the past two weeks with four days lost to rain or cold.
<b>Staffing:</b> Has the contractor and subcontractor staffing of the project since the previous site visit affected the project progress?	No staffing shortage was reported. 18 man forming crew on site, and 3 equipment operators.
<b>Material and Equipment Deliveries:</b> Have material or equipment deliveries in the past, or projected in the future, expected to impact the project schedule?	Reinforcing materials are on site. Grade beam and column steel has been placed. The balance of metal column forms are set and metal forms for the Podium Deck are being placed.
<b>Materials and Equipment:</b> Are the materials and equipment being incorporated into the construction project in accordance with industry standards?	Yes.
<b>Quality of Construction:</b> Is the quality of the construction work in accordance with industry standards?	Completed earth and concrete work to date is in compliance per the testing laboratory
<b>Summary:</b> Considering the stage of construction, the geographic area, the time of year, the weather, the site conditions, the project staffing, expected material and equipment deliveries and the Developer/Design/Construction Team interactions:	
<ul style="list-style-type: none"> <li>Was reasonable project progress made since the previous site visit?</li> </ul>	Yes. 4 days of rain or cold in the last 14 days. The GC managed to place and finish Building "A" slab and continued to progress on Building "B: Columns.
<ul style="list-style-type: none"> <li>Are future project delays anticipated?</li> </ul>	Possible. Weather could affect the work in progress. Rain could make the site unworkable and cold could affect the scheduling of concrete placement.

## **QUALITY STATEMENT**

Based on our experience, our observations on-site, and documents provided for our review, in our opinion, the work completed to date is in general compliance with the scope of work shown on the construction documents reviewed and generally meets accepted standards of good quality workmanship.

## **FOLLOW-UP ITEMS**

Are there any issues that will need to be resolved before our next scheduled site visit?

CODA Response: No

If Yes – What?: NA

1. The city is reviewing plan revisions and is holding the Permit for Construction until review is complete. Permit should be issued by Wednesday November 21, 2018. With forming work in progress this should not create a delay.

**RESOLVED:** The City of Fort Worth has issued the building permits. **RESOLVED**





**Photograph 1:** Completed columns at Building "B".



**Photograph 2:** Wet excavation between Buildings "A" and "B".



Photograph 3: Last column forms at Building "B".



Photograph 4: Balance of columns at Building "A".



**Photograph 5:** Podium Deck forming at Building "A".



**Photograph 6:** Poured in place walls at stairwell in Building "A".



January 17, 2019

Via email: [william.teschke@huntcompanies.com](mailto:william.teschke@huntcompanies.com) [tim.bass@huntcompanies.com](mailto:tim.bass@huntcompanies.com)

Mr. William Teschke  
Mr. Tim Bass  
Hunt Capital Partners LLC  
15910 Ventura Blvd., Suite 1000  
Encino, CA 91436

Subject: Monthly Construction Monitoring Report 4  
The Vineyard on Lancaster  
1413 E. Lancaster Avenue  
Fort Worth, Texas 76102  
CODA Project No. 18-1887

Gentlemen:

CODA Consulting Group, LLC (CODA) is pleased to submit this report of the construction progress of the above referenced project. These services were provided in accordance with the scope of services and terms and conditions outlined in CODA's Proposal P18-2908 dated June 13, 2018 and authorized June 15, 2018 and also Hunt Capital Partners, LLC Agreement for New Construction Projects dated June 15, 2018 and authorized June 15, 2018.

The services included reviewing an Application for Payment prepared by the Developer which included the Contractor's Application for Payment (in AIA Documents G702 and G703 format) prepared by the general contractor, with attached supporting documentation. We also visited the site, met with representatives of the general contractor and visually toured the site to observe the progress and quality of construction. The attached report was prepared documenting our observations and conclusions for the previous month's construction progress and total work to date.

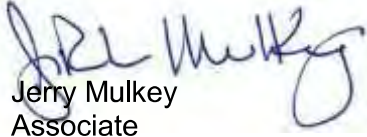
This report has been prepared on behalf of and exclusively for the use of Hunt Capital Partners, and J.P. Morgan Capital Corporation/J.P. Morgan Chase Bank, N.A. Reliance on this report is governed by the scope of services and terms and conditions of the contract under which the work was performed. This report and the findings contained herein shall not, in whole or in part, be disseminated or conveyed to any other party or be used or relied upon by any other party, in whole or in part, without CODA's prior written consent.

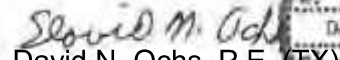
Hunt Capital Partners LLC  
The Vineyard on Lancaster  
Fort Worth, TX

We appreciate the opportunity to work with you on this project and trust the contents of this report are satisfactory. We would be pleased to discuss our findings and conclusions with you. If you have any questions, please do not hesitate to contact us.

Sincerely,

**CODA Consulting Group, LLC**

  
Jerry Mulkey  
Associate

  
David N. Ochs, P.E. (TX)  
Senior Associate



Cc: Joseph Leal – Hunt Companies – ([joseph.leal@huntcompanies.com](mailto:joseph.leal@huntcompanies.com))

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**Tax Credit Application**

TDHCA Tax Credit Application provided. See table in Appendix A for Tax Credit Application required items versus provided construction features and amenities.

**II. PROJECT DESCRIPTION**

The Vineyard on Lancaster will include the construction of 104 one and two-bedroom “supportive housing” apartments on 1.553 acres in the Near East Side neighborhood of Fort Worth, Texas. The planned development includes two five-level buildings each with four-levels of wood framed apartments over a concrete framed podium. The concrete podium will be supported on straight shaft drilled piers to rock with concrete columns supporting the post-tensioned podium slab. The four apartment levels will be wood framed supported by the podium. The south Building A will have a medical clinic and retail space on the first floor, an elevator and two stairs to access the upper floors and 60 apartments on the upper four floors. The north Building B will have the Leasing Office, common amenities and a 14 space parking garage with tenant mailboxes on the first floor, an elevator and two stairs to serve access to the upper floors and 44 apartments on the upper four floors. Common amenities include a laundry, a community room and a full time social services case worker. The on-site medical clinic will provide free services to the tenants. Exterior construction will include brick and fiber cement siding with storefront systems for the first floor retail, medical clinic and leasing office areas and vinyl framed insulated windows for the residential floor areas. The roof will low-sloped with a single-ply roof membrane.

**III. STATUS OF CONSTRUCTION**

**A. SITE VISIT**

Date: December 27, 2018  
Individual: Jerry Mulkey  
Company: CODA Consulting Group

CODA meets with representatives of Fort Construction typically the first full week of the month. The meeting was attended by:

Present	Name	Company	Function-Title
No	Don Schussler	Union Gospel Mission	Developer Project Manager
Yes	Bridger Caulder	Fort Construction	Contractor Project Manager
Yes	Harvey Blinn	Fort Construction	Contractor Superintendent
No	Joe Bloodworth	Schwartz Hanson Architects	Architect Const. Rep.
Yes	Jerry Mulkey	CODA Consulting	Lender Construction Rep.

The following documents were provided at the meeting or by e-mail before or after the meeting.

- Contractor Application for Payment No.6 AIA G702 and G703 for \$477,708.28 for work through 12/31/18, signed by the contractor and notarized on 1/11/19 and by the Architect 1/15/19.

- Conditional Waiver and Release on Progress Payment for Payment #6 for \$477,708.28.
- Unconditional Waiver and Release on previous Progress Payment #5 for \$367,254.82\*. Was revised from \$346,179.82 after CODA Report #3 was published.
- RFI Log
- Submittal Log
- Weather Log
- Schedule Revised 12.11.18

Items discussed at the meeting included:

- The site was wet and construction operations were slowed due to 2.75" of rain in the previous 24 hours.
- Dewatering operations were in progress.
- Place and finish of Podium Slab "A".
- Possibility of additional personnel to increase production being offset by the size and confined nature of the site.
- The Contractor has provided a line item construction schedule dated 11.11.18 and the G.C has gone to 6 day work weeks. 23 Weather Delay Days have been requested in CO #1 under review.
- 31 days of weather delays through December

Monthly Construction Progress Meetings are scheduled at 10:30 PM at the UGM Board Room on the last Tuesday of each. Future scheduled dates are:

January 29, 2019	February 26, 2019	June 25, 2019	October 29, 2019
	March 26, 2019	July 30, 2019	November 26, 2019
	April 30, 2019	August 27, 2019	December 31, 2019
	May 28, 2019	September 24, 2019	January 28, 2019

CODA has also been authorized to make bi-monthly site visits between the Monthly Construction Progress Meetings. These meetings are scheduled with the superintendent and abbreviated reports will be provided for the bi-monthly meetings.

After the meeting Jerry Mulkey of CODA walked the site to review the status of construction.

Photographs taken during the site visit are attached in Appendix B.

## **B. CONSTRUCTION PROGRESS**

### **Progress this Period:**

Considering the stage of construction, the geographic area, the time of year, the weather, site conditions and project staffing, was typical/expected construction progress made this month?: **No**

**If No – Why Not?:** The weather has been unseasonably wet posting record rainfall in both September and October and the area has been declared a "Disaster Area" by the State of Texas. Change Order #1 adding 23 Weather Delay Days is being processed. There were



only 4 days of actual rain in December, however, the impact was greater due to the previous wet conditions, the size and condition of the site and the type of construction in progress.

**Progress to Date:**

**SITE WORK**

- Site clearing is complete.
- Erosion control fencing is in-place.
- Building pad preparation is substantially complete.
- Site utilities are installed.

**PAVEMENTS AND SIDEWALKS**

- Grading for paving under Podium “B” has started.

**PODIUM CONSTRUCTION**

- Drilled piers are complete.
- Grade beams at Buildings “A” and “B” are complete.
- Pier caps and Podium columns and bases are complete.
- Poured in place walls are complete at Building “A”.
- Podium slab “A” is formed.

**BUILDING SHELL**

- Work not started.

**INTERIOR BUILD-OUT**

- Work not started.

**INTERIOR FINISHES**

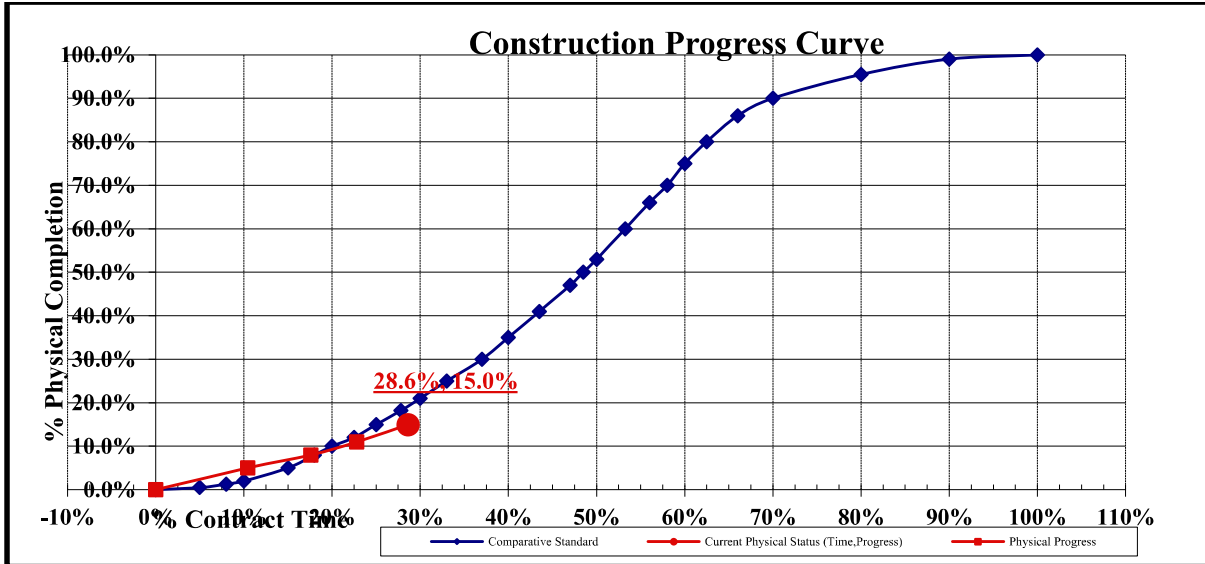
- Work not started.

**AMENITIES AND LANDSCAPING**

- Work not started.

**Construction Progress Graph**

Hunt Capital Partners, and J.P. Morgan Chase Bank, N.A. have requested that we track progress based on the construction start date and the expected completion date based on the contract duration. The Construction Progress Curve below compares the actual construction progress to the construction start date, a construction finish date based on the contract duration and the HUD Form 5372 theoretical progress curve. If the “Current Physical Status” point (red dot) is left of the corresponding point on the Comparative Standard S-curve (blue), the project is ahead of schedule by the % variance. Conversely, if the “Current Physical Status” point is right of the corresponding point on the S-curve, the project is behind schedule by the % variance:



Actual construction start date:	I. <b>08/01/18</b>
Based on the actual start date and the project progress, the project is:	II. <b>Behind schedule 2 months</b>
The TDHCA Placed in service date for this project is:	III. <b>12/31/19</b>
Estimated completion date if rate of progress to date continues to completion:	IV. <b>12/31/19</b>

The contract time is currently 28.6 percent complete and the work is 15 percent complete.

CODA notes the Construction Progress Curve above was developed for garden-style apartments and is less accurate for podium style projects. The two months behind schedule estimate is based on the contractor provided revised Construction Schedule which shows the podium slabs should be in place January 9 and Podium "A" is still being formed and forming has not started on Podium B.

**Construction Progress Tables:** CODA has prepared Construction Progress Tables for the Civil/Site Work and Building Construction which provide a more detailed summary of the construction progress. These tables are updated each month during our site visits and the current month's information or progress is shown in **dark type**. The tables are included in Appendix A.

**Stored Materials:** The contractor is not requesting separate payment for stored materials this application. However, we did observe podium reinforcing and post-tension materials staged on-site for installation.

**Percent Complete:** Based on our experience, the project schedule of values, the provided Application for Payment and our observations on-site, we estimate the project construction percent complete as:



**Photograph 1:** Balance of grade beam forming at Building "B".



**Photograph 2:** Muddy site conditions at Building "A".



**Photograph 3:** Shore jacks for Podium Slab at Building "A".



**Photograph 4:** Cast in place walls at Building "A".



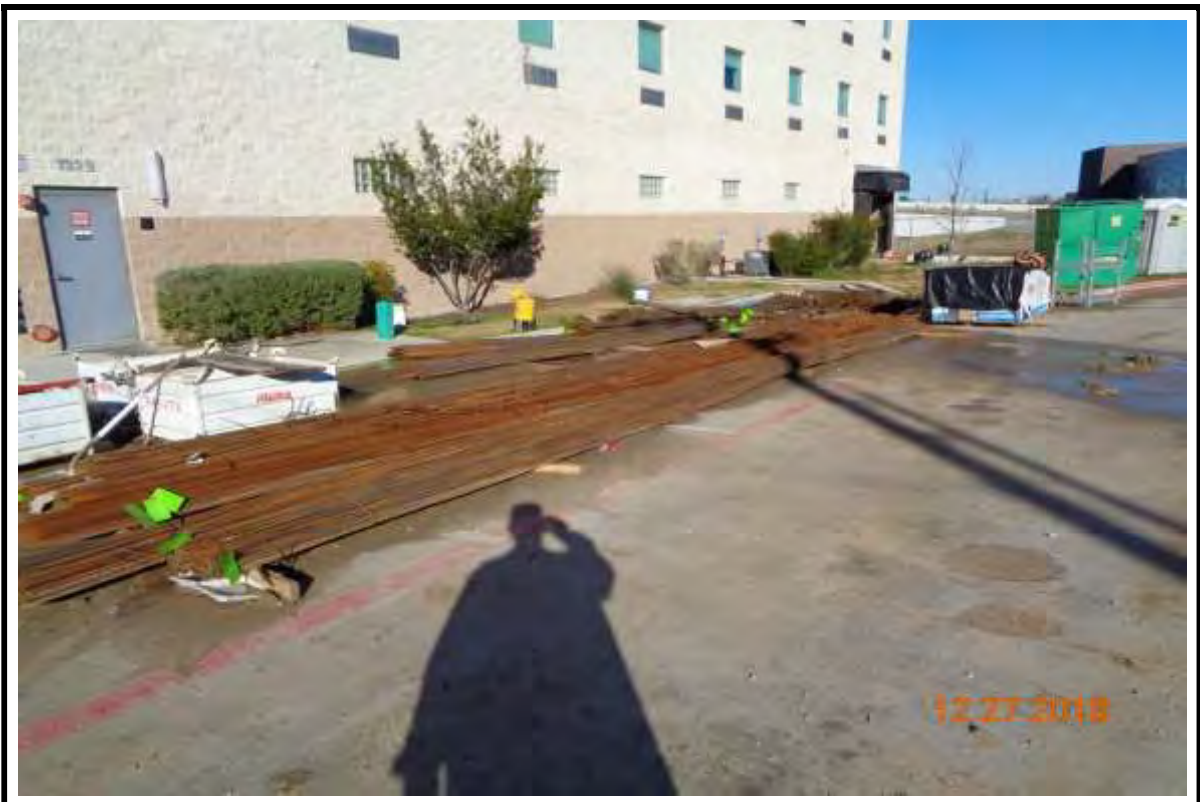
**Photograph 5:** Plastic faced plywood forms for Podium Deck at Building "A".



**Photograph 6:** Timber beam for support at Building "A" Podium Deck.



**Photograph 7:** Post tension tendons for installation at Building "A" Podium Deck.



**Photograph 8:** Conventional reinforcing for installation Building "A" Podium Deck.



**Photograph 9:** Completed Podium columns at Building "B" West end.



**Photograph 10:** Completed Podium columns at Building "B" East end.



February 12, 2019

Via email: [william.teschke@huntcompanies.com](mailto:william.teschke@huntcompanies.com) [tim.bass@huntcompanies.com](mailto:tim.bass@huntcompanies.com)

Mr. William Teschke  
Mr. Tim Bass  
Hunt Capital Partners LLC  
15910 Ventura Blvd., Suite 1000  
Encino, CA 91436

Subject: Monthly Construction Monitoring Report 5  
The Vineyard on Lancaster  
1413 E. Lancaster Avenue  
Fort Worth, Texas 76102  
CODA Project No. 18-1887

Gentlemen:

CODA Consulting Group, LLC (CODA) is pleased to submit this report of the construction progress of the above referenced project. These services were provided in accordance with the scope of services and terms and conditions outlined in CODA's Proposal P18-2908 dated June 13, 2018 and authorized June 15, 2018 and also Hunt Capital Partners, LLC Agreement for New Construction Projects dated June 15, 2018 and authorized June 15, 2018.

The services included reviewing an Application for Payment prepared by the Developer which included the Contractor's Application for Payment (in AIA Documents G702 and G703 format) prepared by the general contractor, with attached supporting documentation. We also visited the site, met with representatives of the general contractor and visually toured the site to observe the progress and quality of construction. The attached report was prepared documenting our observations and conclusions for the previous month's construction progress and total work to date.

This report has been prepared on behalf of and exclusively for the use of Hunt Capital Partners, and J.P. Morgan Capital Corporation/J.P. Morgan Chase Bank, N.A. Reliance on this report is governed by the scope of services and terms and conditions of the contract under which the work was performed. This report and the findings contained herein shall not, in whole or in part, be disseminated or conveyed to any other party or be used or relied upon by any other party, in whole or in part, without CODA's prior written consent.

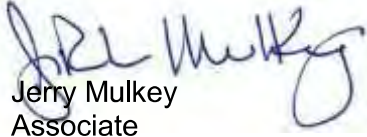


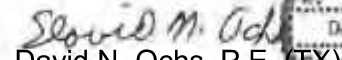
Hunt Capital Partners LLC  
The Vineyard on Lancaster  
Fort Worth, TX

We appreciate the opportunity to work with you on this project and trust the contents of this report are satisfactory. We would be pleased to discuss our findings and conclusions with you. If you have any questions, please do not hesitate to contact us.

Sincerely,

**CODA Consulting Group, LLC**

  
Jerry Mulkey  
Associate

  
David N. Ochs, P.E. (TX)  
Senior Associate



Cc: Joseph Leal – Hunt Companies – ([joseph.leal@huntcompanies.com](mailto:joseph.leal@huntcompanies.com))

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**Tax Credit Application**

TDHCA Tax Credit Application provided. See table in Appendix A for Tax Credit Application required items versus provided construction features and amenities.

**II. PROJECT DESCRIPTION**

The Vineyard on Lancaster will include the construction of 104 one and two-bedroom “supportive housing” apartments on 1.553 acres in the Near East Side neighborhood of Fort Worth, Texas. The planned development includes two five-level buildings each with four-levels of wood framed apartments over a concrete framed podium. The concrete podium will be supported on straight shaft drilled piers to rock with concrete columns supporting the post-tensioned podium slab. The four apartment levels will be wood framed supported by the podium. The south Building A will have a medical clinic and retail space on the first floor, an elevator and two stairs to access the upper floors and 60 apartments on the upper four floors. The north Building B will have the Leasing Office, common amenities and a 14 space parking garage with tenant mailboxes on the first floor, an elevator and two stairs to serve access to the upper floors and 44 apartments on the upper four floors. Common amenities include a laundry, a community room and a full time social services case worker. The on-site medical clinic will provide free services to the tenants. Exterior construction will include brick and fiber cement siding with storefront systems for the first floor retail, medical clinic and leasing office areas and vinyl framed insulated windows for the residential floor areas. The roof will low-sloped with a single-ply roof membrane.

**III. STATUS OF CONSTRUCTION**

**A. SITE VISIT**

Date: January 29, 2019  
Individual: Jerry Mulkey  
Company: CODA Consulting Group

CODA meets with representatives of Fort Construction typically the first full week of the month. The meeting was attended by:

Present	Name	Company	Function-Title
No	Don Schussler	Union Gospel Mission	Developer Project Manager
Yes	Bridger Caulder	Fort Construction	Contractor Project Manager
Yes	Harvey Blinn	Fort Construction	Contractor Superintendent
No	Joe Bloodworth	Schwartz Hanson Architects	Architect Const. Rep.
Yes	Jerry Mulkey	CODA Consulting	Lender Construction Rep.

The following documents were provided at the meeting or by e-mail before or after the meeting.

- Contractor Application for Payment No.7 AIA G702 and G703 for \$754,671.81 for work through 1/31/18, signed by the contractor and notarized on 1/31/19 and unsigned by the Architect.

- Conditional Waiver and Release on Progress Payment for Payment #7 for \$754,671.81.
- Unconditional Waiver and Release on previous Progress Payment #6 for \$477,708.28.
- RFI Log
- Submittal Log
- Weather Log

Items discussed at the meeting included:

- The site was dry and construction operations were in progress.
- Start of Masonry.
- Form wrecking at Podium Slab "A".
- Possibility of additional personnel to increase production being offset by the size and confined nature of the site.
- 35 days of weather delays thru January.

Monthly Construction Progress Meetings are scheduled at 10:30 PM at the UGM Board Room on the last Tuesday of each. Future scheduled dates are:

February 26, 2019	June 25, 2019	October 29, 2019
March 26, 2019	July 30, 2019	November 26, 2019
April 30, 2019	August 27, 2019	December 31, 2019
May 28, 2019	September 24, 2019	January 28, 2019

CODA has also been authorized to make bi-monthly site visits between the Monthly Construction Progress Meetings. These meetings are scheduled with the superintendent and abbreviated reports will be provided for the bi-monthly meetings.

After the meeting Jerry Mulkey of CODA walked the site to review the status of construction.

Photographs taken during the site visit are attached in Appendix B.

## **B. CONSTRUCTION PROGRESS**

### **Progress this Period:**

Considering the stage of construction, the geographic area, the time of year, the weather, site conditions and project staffing, was typical/expected construction progress made this month?: **Yes**

**If No – Why Not?:** Change Order #1 adding 23 Weather Delay Days is being processed. There were only 4 days of actual rain in January, however, the impact was greater due to the previous wet conditions, the size and condition of the site and the type of construction in progress. 6% progress was made but it was a critical path 6%.

**Progress to Date:**

**SITE WORK**

- Site clearing is complete.
- Erosion control fencing is in-place.
- Building pad preparation is substantially complete.
- Site utilities are installed.

**PAVEMENTS AND SIDEWALKS**

- Paving under Podium “B” has been placed and finished.
- Grading and sub-grad preparation is underway between Buildings “A” and “B”.

**PODIUM CONSTRUCTION**

- Drilled piers are complete.
- Grade beams at Buildings “A” and “B” are complete.
- Pier caps and Podium columns and bases are complete.
- Slab at Building “A” is complete.
- Slab and paving at Building “B” are complete.
- Poured in place walls are complete at Building “A”.
- Poured in place walls are 50% complete at Building “B”.
- Podium slab “A” is complete..

**BUILDING SHELL**

- Masonry at Building “A” stair wells has started.

**INTERIOR BUILD-OUT**

- Sub-floor trusses for first elevated units are being placed.

**INTERIOR FINISHES**

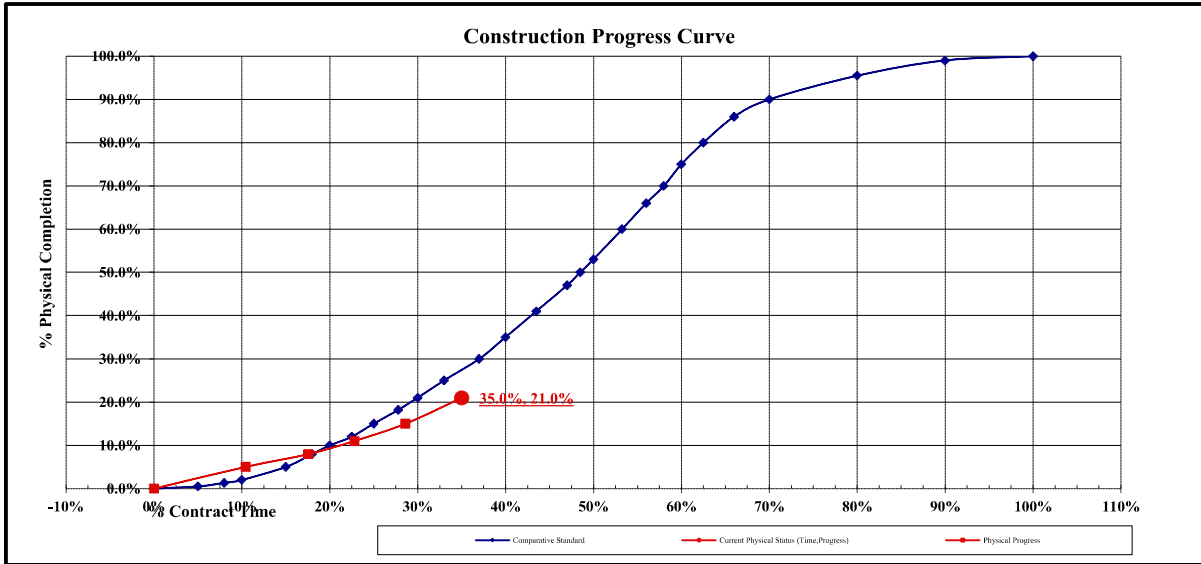
- Work not started.

**AMENITIES AND LANDSCAPING**

- Work not started.

**Construction Progress Graph**

Hunt Capital Partners, and J.P. Morgan Chase Bank, N.A. have requested that we track progress based on the construction start date and the expected completion date based on the contract duration. The Construction Progress Curve below compares the actual construction progress to the construction start date, a construction finish date based on the contract duration and the HUD Form 5372 theoretical progress curve. If the “Current Physical Status” point (red dot) is left of the corresponding point on the Comparative Standard S-curve (blue), the project is ahead of schedule by the % variance. Conversely, if the “Current Physical Status” point is right of the corresponding point on the S-curve, the project is behind schedule by the % variance:



Actual construction start date:	I. <b>08/01/18</b>
Based on the actual start date and the project progress, the project is:	II. <b>Behind schedule 3 months</b>
The TDHCA Placed in service date for this project is:	III. <b>12/31/19</b>
Estimated completion date if rate of progress to date continues to completion:	IV. <b>2/28/20</b>

The contract time is currently 35 percent complete and the work is 21 percent complete.

CODA notes the Construction Progress Curve above was developed for garden-style apartments and is less accurate for podium style projects. The two months behind schedule estimate is based on the contractor provided revised Construction Schedule which shows both of the podium slabs should be in place January 9. Podium “A” was placed 1/18/19 and forming has not started on Podium B.

**Construction Progress Tables:** CODA has prepared Construction Progress Tables for the Civil/Site Work and Building Construction which provide a more detailed summary of the construction progress. These tables are updated each month during our site visits and the current month’s information or progress is shown in **dark type**. The tables are included in Appendix A.

**Stored Materials:** The contractor is not requesting separate payment for stored materials this application. However, we did observe podium reinforcing and post-tension materials staged on-site for installation, Masonry mortar and CMU materials, sub-floor trusses, podium and wall forming and shores.

**Percent Complete:** Based on our experience, the project schedule of values, the provided Application for Payment and our observations on-site, we estimate the project construction percent complete as:



**Photograph 1:** Sub-floor trusses for 1<sup>st</sup> floor units at Building “A”.



**Photograph 2:** Onsite batch plant to control Masonry strength and color.



**Photograph 3:** Finished podium columns and paving at Building "B".



**Photograph 4:** Finished Common Area slab on grade with elevator pit at Building "B".





**Photograph 5:** Grading for continuation of paving between Buildings "A" and "B".



**Photograph 6:** Start of Masonry stairwells at Building "A".



**Photograph 7:** Demolition of Building “A” Podium Deck forms.



**Photograph 8:** Installation of sub-floor joists on Building “A” Podium Deck.



**Photograph 9:** Cast-in-place wall reinforcing at Building "B" West end.



**Photograph 10:** Completed Stairwell wall at Building "B" East end.



March 14, 2019

Via email: [william.teschke@huntcompanies.com](mailto:william.teschke@huntcompanies.com) [tim.bass@huntcompanies.com](mailto:tim.bass@huntcompanies.com)

Mr. William Teschke  
Mr. Tim Bass  
Hunt Capital Partners LLC  
15910 Ventura Blvd., Suite 1000  
Encino, CA 91436

Subject: Monthly Construction Monitoring Report 6  
The Vineyard on Lancaster  
1413 E. Lancaster Avenue  
Fort Worth, Texas 76102  
CODA Project No. 18-1887

Gentlemen:

CODA Consulting Group, LLC (CODA) is pleased to submit this report of the construction progress of the above referenced project. These services were provided in accordance with the scope of services and terms and conditions outlined in CODA's Proposal P18-2908 dated June 13, 2018 and authorized June 15, 2018 and also Hunt Capital Partners, LLC Agreement for New Construction Projects dated June 15, 2018 and authorized June 15, 2018.

The services included reviewing an Application for Payment prepared by the Developer which included the Contractor's Application for Payment (in AIA Documents G702 and G703 format) prepared by the general contractor, with attached supporting documentation. We also visited the site, met with representatives of the general contractor and visually toured the site to observe the progress and quality of construction. The attached report was prepared documenting our observations and conclusions for the previous month's construction progress and total work to date.

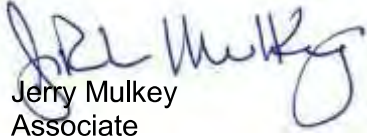
This report has been prepared on behalf of and exclusively for the use of Hunt Capital Partners, and J.P. Morgan Capital Corporation/J.P. Morgan Chase Bank, N.A. Reliance on this report is governed by the scope of services and terms and conditions of the contract under which the work was performed. This report and the findings contained herein shall not, in whole or in part, be disseminated or conveyed to any other party or be used or relied upon by any other party, in whole or in part, without CODA's prior written consent.

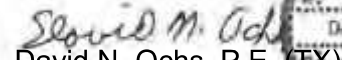
Hunt Capital Partners LLC  
The Vineyard on Lancaster  
Fort Worth, TX

We appreciate the opportunity to work with you on this project and trust the contents of this report are satisfactory. We would be pleased to discuss our findings and conclusions with you. If you have any questions, please do not hesitate to contact us.

Sincerely,

**CODA Consulting Group, LLC**

  
Jerry Mulkey  
Associate

  
David N. Ochs, P.E. (TX)  
Senior Associate



Cc: Joseph Leal – Hunt Companies – ([joseph.leal@huntcompanies.com](mailto:joseph.leal@huntcompanies.com))

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**Tax Credit Application**

TDHCA Tax Credit Application provided. See table in Appendix A for Tax Credit Application required items versus provided construction features and amenities.

**II. PROJECT DESCRIPTION**

The Vineyard on Lancaster will include the construction of 104 one and two-bedroom “supportive housing” apartments on 1.553 acres in the Near East Side neighborhood of Fort Worth, Texas. The planned development includes two five-level buildings each with four-levels of wood framed apartments over a concrete framed podium. The concrete podium will be supported on straight shaft drilled piers to rock with concrete columns supporting the post-tensioned podium slab. The four apartment levels will be wood framed supported by the podium. The south Building A will have a medical clinic and retail space on the first floor, an elevator and two stairs to access the upper floors and 60 apartments on the upper four floors. The north Building B will have the Leasing Office, common amenities and a 14 space parking garage with tenant mailboxes on the first floor, an elevator and two stairs to serve access to the upper floors and 44 apartments on the upper four floors. Common amenities include a laundry, a community room and a full time social services case worker. The on-site medical clinic will provide free services to the tenants. Exterior construction will include brick and fiber cement siding with storefront systems for the first floor retail, medical clinic and leasing office areas and vinyl framed insulated windows for the residential floor areas. The roof will low-sloped with a single-ply roof membrane.

**III. STATUS OF CONSTRUCTION**

**A. SITE VISIT**

Date: February 26, 2019  
Individual: Jerry Mulkey  
Company: CODA Consulting Group

CODA meets with representatives of Fort Construction typically the first full week of the month. The meeting was attended by:

Present	Name	Company	Function-Title
No	Don Schussler	Union Gospel Mission	Developer Project Manager
Yes/phone	Bridger Caulder	Fort Construction	Contractor Project Manager
Yes	Harvey Blinn	Fort Construction	Contractor Superintendent
No	Joe Bloodworth	Schwartz Hanson Architects	Architect Const. Rep.
Yes	Jerry Mulkey	CODA Consulting	Lender Construction Rep.

The following documents were provided at the meeting or by e-mail before or after the meeting.

- Contractor Application for Payment No.8 AIA G702 and G703 for \$754,671.81 for work through 2/28/19, signed by the contractor and notarized on 2/28/19 and unsigned by the Architect.

- Conditional Waiver and Release on Progress Payment for Payment #8 for \$721,037.37.
- Unconditional Waiver and Release on previous Progress Payment #7 for \$754,671.81 was not submitted.
- RFI Log
- Submittal Log
- Weather Log

Items discussed at the meeting included:

- The site was dry and construction operations were in progress.
- Topping out West stair CMU enclosure and Elevator shaft and start of East stair CMU enclosure at Building "A".
- Form wrecking and post-tensioning at Podium Slab "B".
- Possibility of additional personnel to increase production being offset by the size and confined nature of the site.
- 42 days of weather delays thru February.

Monthly Construction Progress Meetings are scheduled at 10:30 PM at the UGM Board Room on the last Tuesday of each. Future scheduled dates are:

March 26, 2019	June 25, 2019	October 29, 2019
April 30, 2019	July 30, 2019	November 26, 2019
May 28, 2019	August 27, 2019	December 31, 2019
	September 24, 2019	January 28, 2019

CODA has also been authorized to make bi-monthly site visits between the Monthly Construction Progress Meetings. These meetings are scheduled with the superintendent and abbreviated reports will be provided for the bi-monthly meetings.

After the meeting Jerry Mulkey of CODA walked the site to review the status of construction.

Photographs taken during the site visit are attached in Appendix B.

## **B. CONSTRUCTION PROGRESS**

### **Progress this Period:**

Considering the stage of construction, the geographic area, the time of year, the weather, site conditions and project staffing, was typical/expected construction progress made this month?: **Yes**

**If No – Why Not?:** Change Order #1 adding 23 Weather Delay Days is being processed. There were only 6 days of actual rain in February, however, the impact was greater due to the previous wet conditions, the size and condition of the site and the type of construction in progress. 11% progress was made on critical path.



**Progress to Date:**

**SITE WORK**

- Site clearing is complete.
- Erosion control fencing is in-place.
- Building pad preparation is substantially complete.
- Site utilities are installed.

**PAVEMENTS AND SIDEWALKS**

- Paving under Podium “B” has been placed and finished.
- Grading and sub-grad preparation is underway between Buildings “A” and “B”.

**PODIUM CONSTRUCTION**

- Drilled piers are complete.
- Grade beams at Buildings “A” and “B” are complete.
- Pier caps and Podium columns and bases are complete.
- Slab at Building “A” is complete.
- Slab and paving at Building “B” are complete.
- Poured in place walls are complete at Building “A”.
- Poured in place walls are complete at Building “B”.
- Podium slab “A” is complete.
- Podium slab “B” is complete.

**BUILDING SHELL**

- Masonry at Building “A” West stair well has topped-out.
- Masonry at Building “A” East stair well has started.
- Elevator shaft has topped-out.
- Gas rough-in has started at Building “A”
- Plumbing rough-in has started at Building “A”
- Fire Protection rough-in has started at Building “A”
- Electrical rough-in has started at Building “A”

**INTERIOR BUILD-OUT**

- Sub-floor trusses for first elevated units are being placed.

**INTERIOR FINISHES**

- Work not started.

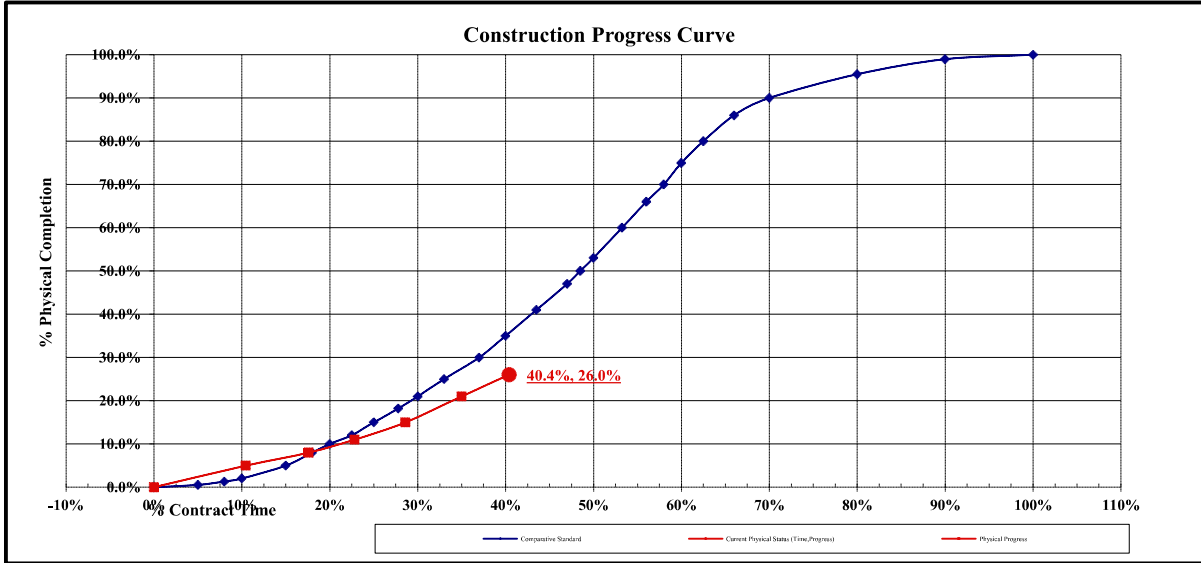
**AMENITIES AND LANDSCAPING**

- Work not started.

**Construction Progress Graph**

Hunt Capital Partners, and J.P. Morgan Chase Bank, N.A. have requested that we track progress based on the construction start date and the expected completion date based on the contract duration. The Construction Progress Curve below compares the actual construction progress to the construction start date, a construction finish date based on the

contract duration and the HUD Form 5372 theoretical progress curve. If the “Current Physical Status” point (red dot) is left of the corresponding point on the Comparative Standard S-curve (blue), the project is ahead of schedule by the % variance. Conversely, if the “Current Physical Status” point is right of the corresponding point on the S-curve, the project is behind schedule by the % variance:



Actual construction start date:	<b>08/01/18</b>
Based on the actual start date and the project progress, the project is:	<b>Behind Contractor's schedule 4 months</b>
The TDHCA Placed in service date for this project is:	<b>12/31/19</b>
Estimated completion date if rate of progress to date continues to completion:	<b>2/28/20</b>

The contract time is currently 40.4 percent complete and the work is 26 percent complete.

CODA notes the Construction Progress Curve above was developed for garden-style apartments and is less accurate for podium style projects. The four months behind schedule estimate is based on the original closing schedule 07/13/18. The contractor has provided a revised Construction Schedule 12/11/18 which shows the podium slab at Building “B” be complete on 2/1/19. We estimate this podium slab will be complete on 3/1/19.

**Construction Progress Tables:** CODA has prepared Construction Progress Tables for the Civil/Site Work and Building Construction which provide a more detailed summary of the construction progress. These tables are updated each month during our site visits and the current month’s information or progress is shown in **dark type**. The tables are included in Appendix A.

**Stored Materials:** The contractor is not requesting separate payment for stored materials this application. However, we did observe podium reinforcing and post-tension materials staged on-site for installation, Masonry mortar and CMU materials, sub-floor trusses, podium and wall forming and shores.

**Percent Complete:** Based on our experience, the project schedule of values, the provided Application for Payment and our observations on-site, we estimate the project construction percent complete as:

Reported Financial Percent Complete:	26%
Estimated Physical Percent Complete:	26%

**Photographs:** Photographs documenting the site conditions and construction progress during our site visit are included in Appendix B.

#### **IV. QUALITY OF CONSTRUCTION**

##### **A. TESTING LABORATORY**

Name:	Alliance Geotechnical Group
City, State:	Dallas, TX
Phone No.:	972-444-8889
Contact Person:	

##### **B. GEOTECHNICAL REPORT RECOMMENDATIONS**

A Geotechnical Report was provided from Alliance Geotechnical Group dated January 11, 2018. A site soil potential vertical rise (PVR), which is the ground surface movement between periods of drought followed by periods of wet weather, was projected at 3 to 6 plus inches.

**Building Pad Preparation:** To reduce the building pad PVR to one inch or less the report recommended:

- Excavate building pads 9 feet deep (basically to rock) to 2 feet outside building perimeters.
- Backfill in compacted layers using on-site soils moisture conditioned to 5 to 8 percent above optimum moisture for compaction.
- The top 18 inches of building pad fill should be “select soil” with a Liquid Limit less than 35% and a Plasticity Index of 5 to 14.

**Foundations:** Foundations should include straight shaft drilled piers extending a minimum of 2 feet into hard limestone with an end bearing pressure of 40,000 pounds per square foot (psf) and side skin friction of 6,500 psf. Grade beams connecting the drilled piers should include a 4 inch “void box” under the beams. The drilled piers and grade beams support concrete columns which support the podium slabs.

**Pavements:** The garage slabs and building slabs-on-grade were not specified but are expected to be considered light duty pavements. The Geotechnical Report recommended pavement sections of:



**Photograph 1:** CMU stair well top-out at Building "A".



**Photograph 2:** Elevator shaft top-out at Building "A".



**Photograph 3:** Under podium sanitary and storm piping at Building "A".



**Photograph 4:** Sprinkler piping staged for installation at Building "A".



**Photograph 5:** Regrading for continuation of paving between Buildings “A” and “B”.



**Photograph 6:** Start of East masonry stairwell at Building “A”.



**Photograph 7:** 2<sup>nd</sup> Level floor structure over Podium Deck at Building "A".



**Photograph 8:** Building "B" Podium Deck with concrete placed and finished.



**Photograph 9:** Shoring ready to “wreck” at Building “B” West end.



**Photograph 10:** Completed Stairwell wall at Building “B” East end first level.





April 12, 2019

Via email: [william.teschke@huntcompanies.com](mailto:william.teschke@huntcompanies.com) [tim.bass@huntcompanies.com](mailto:tim.bass@huntcompanies.com)

Mr. William Teschke  
Mr. Tim Bass  
Hunt Capital Partners LLC  
15910 Ventura Blvd., Suite 1000  
Encino, CA 91436

Subject: Monthly Construction Monitoring Report 7  
The Vineyard on Lancaster  
1413 E. Lancaster Avenue  
Fort Worth, Texas 76102  
CODA Project No. 18-1887

Gentlemen:

CODA Consulting Group, LLC (CODA) is pleased to submit this report of the construction progress of the above referenced project. These services were provided in accordance with the scope of services and terms and conditions outlined in CODA's Proposal P18-2908 dated June 13, 2018 and authorized June 15, 2018 and also Hunt Capital Partners, LLC Agreement for New Construction Projects dated June 15, 2018 and authorized June 15, 2018.

The services included reviewing an Application for Payment prepared by the Developer which included the Contractor's Application for Payment (in AIA Documents G702 and G703 format) prepared by the general contractor, with attached supporting documentation. We also visited the site, met with representatives of the general contractor and visually toured the site to observe the progress and quality of construction. The attached report was prepared documenting our observations and conclusions for the previous month's construction progress and total work to date.

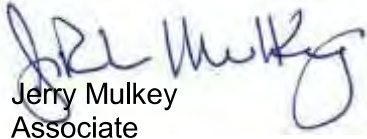
This report has been prepared on behalf of and exclusively for the use of Hunt Capital Partners, and J.P. Morgan Capital Corporation/J.P. Morgan Chase Bank, N.A. Reliance on this report is governed by the scope of services and terms and conditions of the contract under which the work was performed. This report and the findings contained herein shall not, in whole or in part, be disseminated or conveyed to any other party or be used or relied upon by any other party, in whole or in part, without CODA's prior written consent.

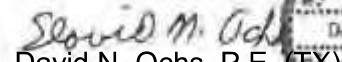
Hunt Capital Partners LLC  
The Vineyard on Lancaster  
Fort Worth, TX

We appreciate the opportunity to work with you on this project and trust the contents of this report are satisfactory. We would be pleased to discuss our findings and conclusions with you. If you have any questions, please do not hesitate to contact us.

Sincerely,

**CODA Consulting Group, LLC**

  
Jerry Mulkey  
Associate

  
David N. Ochs, P.E. (TX)  
Senior Associate



Cc: Joseph Leal – Hunt Companies – ([joseph.leal@huntcompanies.com](mailto:joseph.leal@huntcompanies.com))

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**II. PROJECT DESCRIPTION**

The Vineyard on Lancaster will include the construction of 104 one and two-bedroom “supportive housing” apartments on 1.553 acres in the Near East Side neighborhood of Fort Worth, Texas. The planned development includes two five-level buildings each with four-levels of wood framed apartments over a concrete framed podium. The concrete podium will be supported on straight shaft drilled piers to rock with concrete columns supporting the post-tensioned podium slab. The four apartment levels will be wood framed supported by the podium. The south Building A will have a medical clinic and retail space on the first floor, an elevator and two stairs to access the upper floors and 60 apartments on the upper four floors. The north Building B will have the Leasing Office, common amenities and a 14 space parking garage with tenant mailboxes on the first floor, an elevator and two stairs to serve access to the upper floors and 44 apartments on the upper four floors. Common amenities include a laundry, a community room and a full time social services case worker. The on-site medical clinic will provide free services to the tenants. Exterior construction will include brick and fiber cement siding with storefront systems for the first floor retail, medical clinic and leasing office areas and vinyl framed insulated windows for the residential floor areas. The roof will low-sloped with a single-ply roof membrane.

**III. STATUS OF CONSTRUCTION**

**A. SITE VISIT**

Date: March 26, 2019  
Individual: Jerry Mulkey  
Company: CODA Consulting Group

CODA meets with representatives of Fort Construction to review construction progress and the Application for Payment typically the first full week of the month. The meeting was attended by:

Present	Name	Company	Function-Title
No	Don Schussler	Union Gospel Mission	Developer Project Manager
Yes/phone	Bridger Caulder	Fort Construction	Contractor Project Manager
Yes	Harvey Blinn	Fort Construction	Contractor Superintendent
No	Joe Bloodworth	Schwartz Hanson Architects	Architect Const. Rep.
Yes	Jerry Mulkey	CODA Consulting	Lender Construction Rep.

The following documents were provided at the meeting or by e-mail before or after the meeting.

- Contractor Application for Payment No.9 AIA G702 and G703 for \$701,172.98 for work through 3/31/19, signed by the contractor and notarized on 3/29/19 and signed by the Architect 4/5/19.
- Conditional Waiver and Release on Progress Payment for Payment #9 for \$701,172.98.

- Unconditional Waiver and Release on previous Progress Payment #8 for \$721,037.37 was not submitted.
- RFI Log.
- Submittal Log.
- Weather Log (Reviewed on site).
- Weekly Reports
- Schedule 4.10.19

Items discussed at the meeting included:

- The site was dry and construction operations were in progress.
- Topping out masonry elevator tower at Building "B".
- Layout sub-floor at Podium Slab "B".
- Installation of steel stairs.
- 46 days of weather delays thru March.

Monthly Construction Progress Meetings are scheduled at 10:30 PM at the UGM Board Room on the last Tuesday of each. Future scheduled dates are:

April 30, 2019	August 27, 2019	December 31, 2019
May 28, 2019	September 24, 2019	January 28, 2020
June 25, 2019	October 29, 2019	
July 30, 2019	November 26, 2019	

CODA has also been authorized to make bi-monthly site visits between the Monthly Construction Progress Meetings. These meetings are scheduled with the superintendent and abbreviated reports will be provided for the bi-monthly meetings.

After the meeting Jerry Mulkey of CODA walked the site to review the status of construction.

Photographs taken during the site visit are attached in Appendix B.

## **B. CONSTRUCTION PROGRESS**

### **Progress this Period:**

Considering the stage of construction, the geographic area, the time of year, the weather, site conditions and project staffing, was typical/expected construction progress made this month?: **No**

**If No – Why Not?:** Change Order #1 adding 23 Weather Delay Days is being processed. There were only 4 days of actual rain in March, however, the impact was greater due to the previous wet conditions, the size and condition of the site and the type of construction in progress. Only 6% progress was made on critical path.

**Progress to Date:**

**SITE WORK**

- Site clearing is complete.
- Erosion control fencing is in-place.
- Building pad preparation is substantially complete.
- Site utilities are installed.

**PAVEMENTS AND SIDEWALKS**

- Paving under Podium "B" has been placed and finished.
- Grading and sub-grad preparation is underway between Buildings "A" and "B".

**PODIUM CONSTRUCTION**

- Drilled piers are complete.
- Grade beams at Buildings "A" and "B" are complete.
- Pier caps and Podium columns and bases are complete.
- Slab at Building "A" is complete.
- Slab and paving at Building "B" are complete.
- Poured in place walls are complete at Building "A".
- Poured in place walls are complete at Building "B".
- Podium slab "A" is complete.
- Podium slab "B" is complete.

**BUILDING SHELL**

- Masonry at Building "A" stairwells and elevator shaft have topped-out.
- Masonry at Building "B" East stairwell and Elevator shaft have topped out and West stair well is near completion.
- Gas rough-in has Continues at Building "A".
- Plumbing rough-in has started at Building "B" and continues at Building "A".
- Fire Protection rough-in has started at Building "B" and continues at Building "A".
- Electrical rough-in has started at Building "B" and continues at Building "A".

**INTERIOR BUILD-OUT**

- Sub-floor trusses and deck for first elevated units are being placed at Building "A".
- Building "A" 2<sup>nd</sup> level wall framing is in progress.
- Building "A" 3<sup>rd</sup> level floor trusses have started.

**INTERIOR FINISHES**

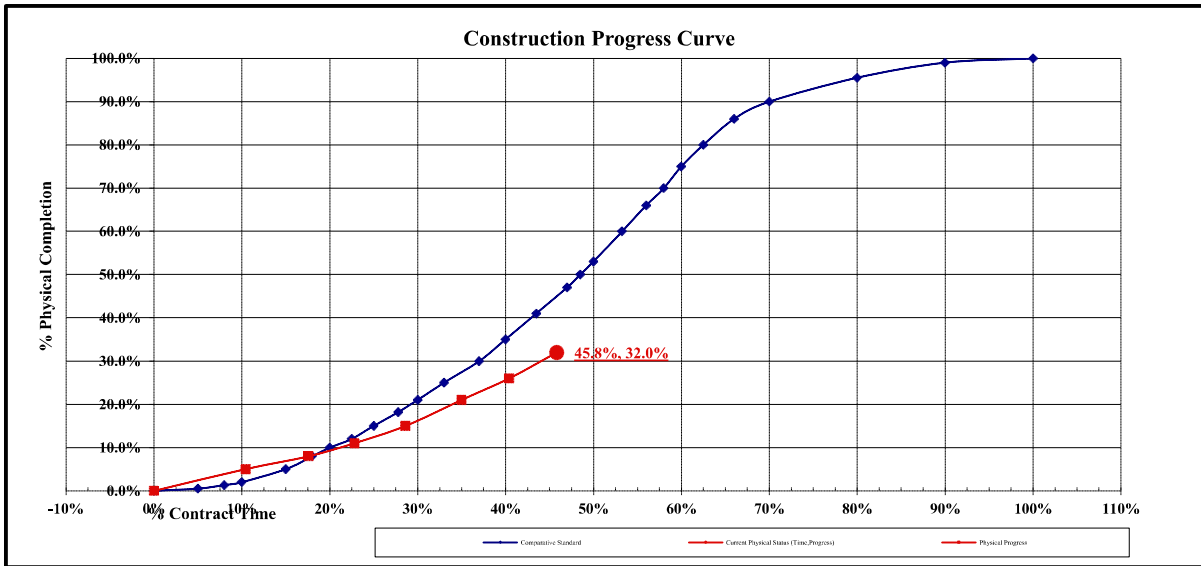
- Work not started.

**AMENITIES AND LANDSCAPING**

- Work not started.

**Construction Progress Graph**

Hunt Capital Partners, and J.P. Morgan Chase Bank, N.A. have requested that we track progress based on the construction start date and the expected completion date based on the contract duration. The Construction Progress Curve below compares the actual construction progress to the construction start date, a construction finish date based on the contract duration and the HUD Form 5372 theoretical progress curve. If the “Current Physical Status” point (red dot) is left of the corresponding point on the Comparative Standard S-curve (blue), the project is ahead of schedule by the % variance. Conversely, if the “Current Physical Status” point is right of the corresponding point on the S-curve, the project is behind schedule by the % variance:



Actual construction start date:	<b>08/01/18</b>
Based on the actual start date and the project progress, the project is:	<b>Behind Contractor's schedule 4 months</b>
The TDHCA Placed in service date for this project is:	<b>12/31/19</b>
Estimated completion date if rate of progress to date continues to completion:	<b>2/28/20</b>

The contract time is currently 45.8 percent complete and the work is 32 percent complete.

CODA notes the Construction Progress Curve above was developer for garden-style apartments and is less accurate for podium style projects. The four months behind schedule estimate is based on the original closing schedule 07/13/18. The contractor has provided a revised Construction Schedule 12/11/18 which shows the podium slab at Building “B” be complete on 2/1/19. This podium slab was complete on 3/1/19.

**Construction Progress Tables:** CODA has prepared Construction Progress Tables for the Civil/Site Work and Building Construction which provide a more detailed summary of the construction progress. These tables are updated each month during our site visits and the

current month's information or progress is shown in **dark type**. The tables are included in Appendix A.

**Stored Materials:** The contractor is not requesting separate payment for stored materials this application. However, we did observe podium reinforcing and post-tension materials staged on-site for installation, Masonry mortar and CMU materials, sub-floor trusses, podium and wall forming and shores.

**Percent Complete:** Based on our experience, the project schedule of values, the provided Application for Payment and our observations on-site, we estimate the project construction percent complete as:

Reported Financial Percent Complete:	32%
Estimated Physical Percent Complete:	32%

**Photographs:** Photographs documenting the site conditions and construction progress during our site visit are included in Appendix B.

#### **IV. QUALITY OF CONSTRUCTION**

##### **A. TESTING LABORATORY**

Name:	Alliance Geotechnical Group
City, State:	Dallas, TX
Phone No.:	972-444-8889
Contact Person:	

##### **B. GEOTECHNICAL REPORT RECOMMENDATIONS**

A Geotechnical Report was provided from Alliance Geotechnical Group dated January 11, 2018. A site soil potential vertical rise (PVR), which is the ground surface movement between periods of drought followed by periods of wet weather, was projected at 3 to 6 plus inches.

**Building Pad Preparation:** To reduce the building pad PVR to one inch or less the report recommended:

- Excavate building pads 9 feet deep (basically to rock) to 2 feet outside building perimeters.
- Backfill in compacted layers using on-site soils moisture conditioned to 5 to 8 percent above optimum moisture for compaction.
- The top 18 inches of building pad fill should be "select soil" with a Liquid Limit less than 35% and a Plasticity Index of 5 to 14.

**Foundations:** Foundations should include straight shaft drilled piers extending a minimum of 2 feet into hard limestone with an end bearing pressure of 40,000 pounds per square foot (psf) and side skin friction of 6,500 psf. Grade beams connecting the drilled piers should include a 4 inch "void box" under the beams. The drilled piers and grade beams support concrete columns which support the podium slabs.





**Photograph 1:** 1<sup>st</sup> floor metal wall framing with wood framing on podium above at Building "A".



**Photograph 2:** Premixed mortar staged for masonry installation.



**Photograph 3:** Topping out CMU stair tower at Building "B".



**Photograph 4:** Stair installation at Building "A".



**Photograph 5:** Elevator shaft masonry at Building "B".



**Photograph 6:** Fire sprinkler piping at Building "A".



Photograph 7: Main fire riser tree at Building "A".



Photograph 8: Lifting trusses at Building "A".



**Photograph 9:** Utilities Rough-in at Building "B".



**Photograph 10:** Sheathing staged for installation, Metal wall framing beyond.



May 13, 2019

Via email: [william.teschke@huntcompanies.com](mailto:william.teschke@huntcompanies.com) [tim.bass@huntcompanies.com](mailto:tim.bass@huntcompanies.com)

Mr. William Teschke  
Mr. Tim Bass  
Hunt Capital Partners LLC  
15910 Ventura Blvd., Suite 1000  
Encino, CA 91436

Subject: Monthly Construction Monitoring Report 8  
The Vineyard on Lancaster  
1413 E. Lancaster Avenue  
Fort Worth, Texas 76102  
CODA Project No. 18-1887

Gentlemen:

CODA Consulting Group, LLC (CODA) is pleased to submit this report of the construction progress of the above referenced project. These services were provided in accordance with the scope of services and terms and conditions outlined in CODA's Proposal P18-2908 dated June 13, 2018 and authorized June 15, 2018 and also Hunt Capital Partners, LLC Agreement for New Construction Projects dated June 15, 2018 and authorized June 15, 2018.

The services included reviewing an Application for Payment prepared by the Developer which included the Contractor's Application for Payment (in AIA Documents G702 and G703 format) prepared by the general contractor, with attached supporting documentation. We also visited the site, met with representatives of the general contractor and visually toured the site to observe the progress and quality of construction. The attached report was prepared documenting our observations and conclusions for the previous month's construction progress and total work to date.

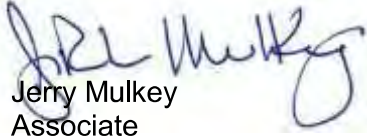
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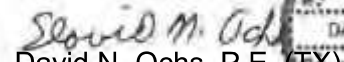
Hunt Capital Partners LLC  
The Vineyard on Lancaster  
Fort Worth, TX

We appreciate the opportunity to work with you on this project and trust the contents of this report are satisfactory. We would be pleased to discuss our findings and conclusions with you. If you have any questions, please do not hesitate to contact us.

Sincerely,

**CODA Consulting Group, LLC**

  
Jerry Mulkey  
Associate

  
David N. Ochs, P.E. (TX)  
Senior Associate



Cc: Joseph Leal – Hunt Companies – ([joseph.leal@huntcompanies.com](mailto:joseph.leal@huntcompanies.com))

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**II. PROJECT DESCRIPTION**

The Vineyard on Lancaster will include the construction of 104 one and two-bedroom “supportive housing” apartments on 1.553 acres in the Near East Side neighborhood of Fort Worth, Texas. The planned development includes two five-level buildings each with four-levels of wood framed apartments over a concrete framed podium. The concrete podium will be supported on straight shaft drilled piers to rock with concrete columns supporting the post-tensioned podium slab. The four apartment levels will be wood framed supported by the podium. The south Building A will have a medical clinic and retail space on the first floor, an elevator and two stairs to access the upper floors and 60 apartments on the upper four floors. The north Building B will have the Leasing Office, common amenities and a 14 space parking garage with tenant mailboxes on the first floor, an elevator and two stairs to serve access to the upper floors and 44 apartments on the upper four floors. Common amenities include a laundry, a community room and a full time social services case worker. The on-site medical clinic will provide free services to the tenants. Exterior construction will include brick and fiber cement siding with storefront systems for the first floor retail, medical clinic and leasing office areas and vinyl framed insulated windows for the residential floor areas. The roof will low-sloped with a single-ply roof membrane.

**III. STATUS OF CONSTRUCTION**

**A. SITE VISIT**

Date: April 29, 2019  
Individual: Jerry Mulkey  
Company: CODA Consulting Group

CODA meets with representatives of Fort Construction to review construction progress and the Application for Payment typically the first full week of the month. The meeting was attended by:

Present	Name	Company	Function-Title
No	Don Schussler	Union Gospel Mission	Developer Project Manager
Yes/phone	Bridger Caulder	Fort Construction	Contractor Project Manager
Yes	Harvey Blinn	Fort Construction	Contractor Superintendent
No	Joe Bloodworth	Schwartz Hanson Architects	Architect Const. Rep.
Yes	Jerry Mulkey	CODA Consulting	Lender Construction Rep.

The following documents were provided at the meeting or by e-mail before or after the meeting.

- Contractor Application for Payment No.10 AIA G702 and G703 for \$1,333,929.24 for work through 3/31/19, signed by the contractor and notarized on 3/29/19 and signed by the Architect 4/5/19.
- Conditional Waiver and Release on Progress Payment for Payment #10 for \$1,333,929.24 executed 4/29/19.

- Unconditional Waiver and Release on previous Progress Payment #9 for \$701,172.98 was signed 4/29/19.
- RFI Log.
- Submittal Log.
- Weather Log (Reviewed on site).
- Weekly Reports

Items discussed at the meeting included:

- The site was dry and construction operations were in progress.
- Topping out of framing at Building "A".
- Completion of sub-floor at Podium Slab "B" and start of wall framing.
- Installation of steel stairs.
- 48 days of weather delays thru April.

Monthly Construction Progress Meetings are scheduled at 10:30 PM at the UGM Board Room on the last Tuesday of each. Future scheduled dates are:

May 28, 2019	August 27, 2019	December 31, 2019
June 25, 2019	September 24, 2019	January 28, 2020
July 30, 2019	October 29, 2019	
	November 26, 2019	

CODA has also been authorized to make bi-monthly site visits between the Monthly Construction Progress Meetings. These meetings are scheduled with the superintendent and abbreviated reports will be provided for the bi-monthly meetings.

After the meeting Jerry Mulkey of CODA walked the site to review the status of construction.

Photographs taken during the site visit are attached in Appendix B.

## **B. CONSTRUCTION PROGRESS**

### **Progress this Period:**

Considering the stage of construction, the geographic area, the time of year, the weather, site conditions and project staffing, was typical/expected construction progress made this month?: **No**

**If No – Why Not?:** Change Order #1 adding 23 Weather Delay Days is being processed. There were only 4 days of actual rain in March, however, the impact was greater due to the previous wet conditions, the size and condition of the site and the type of construction in progress. Only 6% progress was made on critical path.

### **Progress to Date:**

#### **SITE WORK**

- Site clearing is complete.
- Erosion control fencing is in-place.

- Building pad preparation is substantially complete.
- Site utilities are installed.
- AT&T overhead lines and poles have been removed.

#### PAVEMENTS AND SIDEWALKS

- Grading and sub-grad preparation is underway between Buildings “A” and “B”.
- Paving and slab beneath Podium “B” is complete

#### PODIUM CONSTRUCTION

- Drilled piers are complete.
- Grade beams at Buildings “A” and “B” are complete.
- Pier caps and Podium columns and bases are complete.
- Slab at Building “A” is complete.
- Slab and paving at Building “B” are complete.
- Poured in place walls are complete at Building “A”.
- Poured in place walls are complete at Building “B”.
- Podium slab “A” is complete.
- Podium slab “B” is complete.

#### BUILDING SHELL

- Masonry at Building “A” stairwells and elevator shaft have topped-out.
- Masonry at Building “B” stairwells and elevator shaft have topped out.
- Exterior wall framing is through the 4<sup>th</sup> floor.
- Exterior siding is through the 3<sup>rd</sup> floor.

#### INTERIOR BUILD-OUT

- Sub-floor trusses and deck for 2<sup>nd</sup> floor units is complete at Building “A”.
- Building “A” metal framing at 1<sup>st</sup> floor is on going.
- Building “A” 4th level wall framing is in progress.
- Building “A” 5th level floor trusses have started.
- Building “B” metal stud framing continues.
- Building “B” sub-floor trusses and decking have started at Podium “B”.
- Gas rough-in is complete at Building “A”.
- Plumbing rough-in has started at Building “B” and continues at Building “A”.
- Fire Protection rough-in has started at Building “B” and continues at Building “A”.
- Electrical rough-in has started at Building “B” and continues at Building “A”.

#### INTERIOR FINISHES

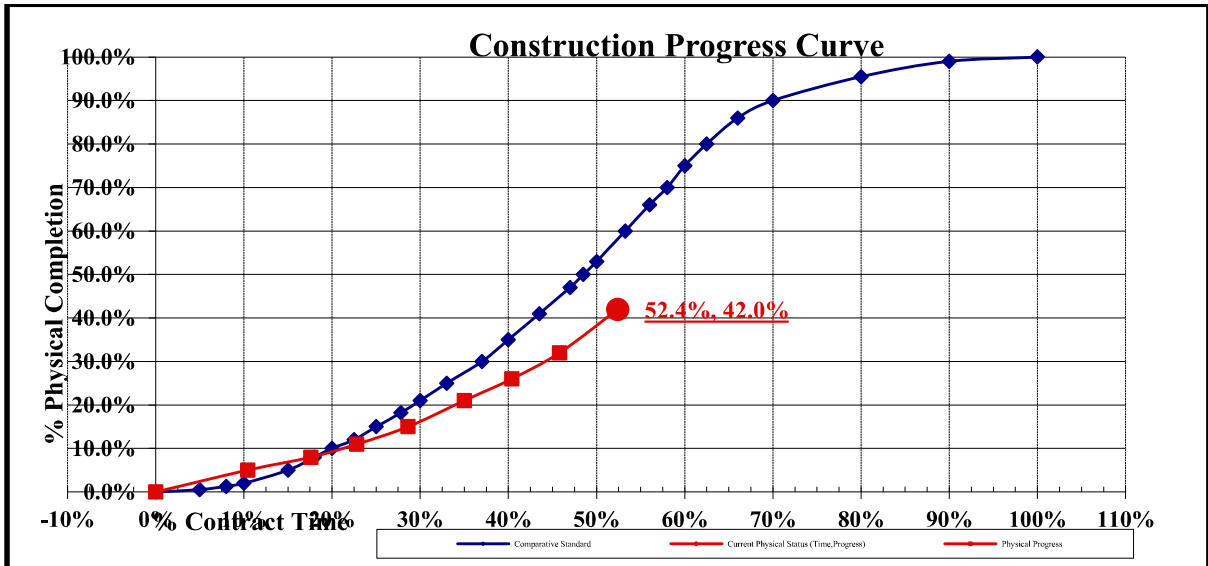
- Work not started.

#### AMENITIES AND LANDSCAPING

- Work not started.

**Construction Progress Graph**

Hunt Capital Partners, and J.P. Morgan Chase Bank, N.A. have requested that we track progress based on the construction start date and the expected completion date based on the contract duration. The Construction Progress Curve below compares the actual construction progress to the construction start date, a construction finish date based on the contract duration and the HUD Form 5372 theoretical progress curve. If the “Current Physical Status” point (red dot) is left of the corresponding point on the Comparative Standard S-curve (blue), the project is ahead of schedule by the % variance. Conversely, if the “Current Physical Status” point is right of the corresponding point on the S-curve, the project is behind schedule by the % variance:



Actual construction start date:	<b>08/01/18</b>
Based on the actual start date and the project progress, the project is:	<b>Behind Contractor's 7/13/19 schedule 4 months</b>
The TDHCA Placed in service date for this project is:	<b>12/31/19</b>
Estimated completion date if rate of progress to date continues to completion:	<b>2/28/20</b>

The contract time is currently 52.4 percent complete and the work is 42 percent complete.

CODA notes the Construction Progress Curve above was developer for garden-style apartments and is less accurate for podium style projects. The four months behind schedule estimate is based on the original closing schedule 07/13/18. The contractor has provided a revised Construction Schedule 5/2/19 which shows the 4<sup>th</sup> floor framing at Building “A” be complete on 4/17/19. The 4<sup>th</sup> floor framing was 85% to 90% complete on 4/29/19, making the project 3 to 4 weeks behind the most current schedule..

**Construction Progress Tables:** CODA has prepared Construction Progress Tables for the Civil/Site Work and Building Construction which provide a more detailed summary of the

construction progress. These tables are updated each month during our site visits and the current month's information or progress is shown in **dark type**. The tables are included in Appendix A.

**Stored Materials:** The contractor is not requesting separate payment for stored materials this application. However, we did observe wall framing materials, floor trusses, exterior sheathing and MEP and Fire Protection materials, on site for installation.

**Percent Complete:** Based on our experience, the project schedule of values, the provided Application for Payment and our observations on-site, we estimate the project construction percent complete as:

Reported Financial Percent Complete:	42%
Estimated Physical Percent Complete:	42%

**Photographs:** Photographs documenting the site conditions and construction progress during our site visit are included in Appendix B.

#### **IV. QUALITY OF CONSTRUCTION**

##### **A. TESTING LABORATORY**

Name:	Alliance Geotechnical Group
City, State:	Dallas, TX
Phone No.:	972-444-8889
Contact Person:	

##### **B. GEOTECHNICAL REPORT RECOMMENDATIONS**

A Geotechnical Report was provided from Alliance Geotechnical Group dated January 11, 2018. A site soil potential vertical rise (PVR), which is the ground surface movement between periods of drought followed by periods of wet weather, was projected at 3 to 6 plus inches.

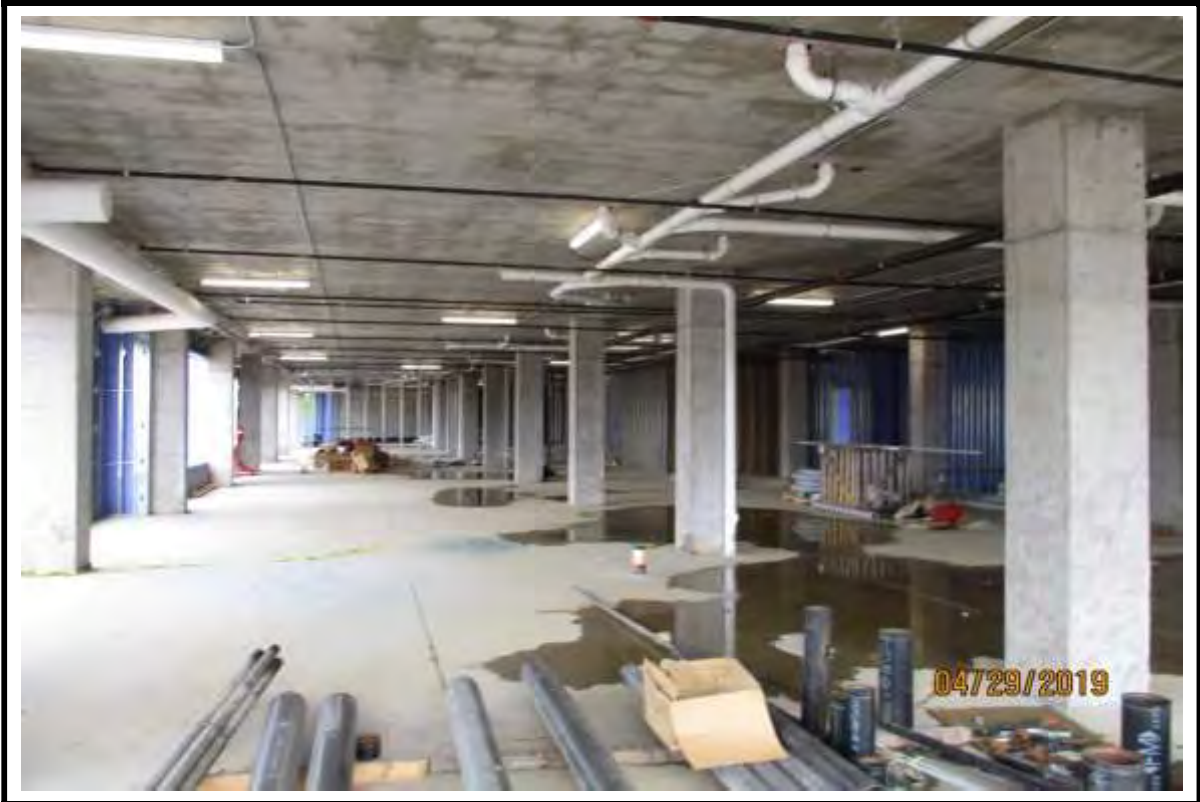
**Building Pad Preparation:** To reduce the building pad PVR to one inch or less the report recommended:

- Excavate building pads 9 feet deep (basically to rock) to 2 feet outside building perimeters.
- Backfill in compacted layers using on-site soils moisture conditioned to 5 to 8 percent above optimum moisture for compaction.
- The top 18 inches of building pad fill should be "select soil" with a Liquid Limit less than 35% and a Plasticity Index of 5 to 14.

**Foundations:** Foundations should include straight shaft drilled piers extending a minimum of 2 feet into hard limestone with an end bearing pressure of 40,000 pounds per square foot (psf) and side skin friction of 6,500 psf. Grade beams connecting the drilled piers should include a 4 inch "void box" under the beams. The drilled piers and grade beams support concrete columns which support the podium slabs.



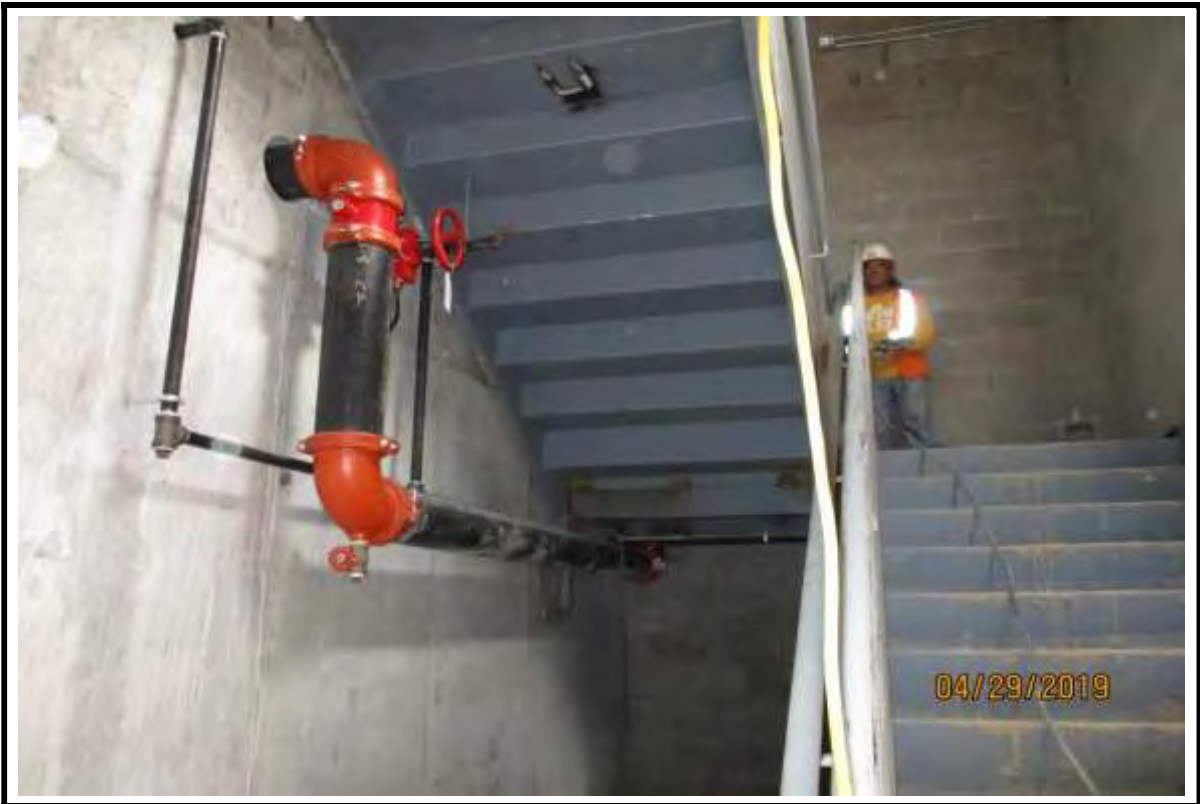
**Photograph 1:** CMU stair tower with wood framing on podium at Building “A”.



**Photograph 2:** Framing out ground level of Building “A”.



Photograph 3: Covered parking at Building "A".



Photograph 4: Stair installation at Building "A".

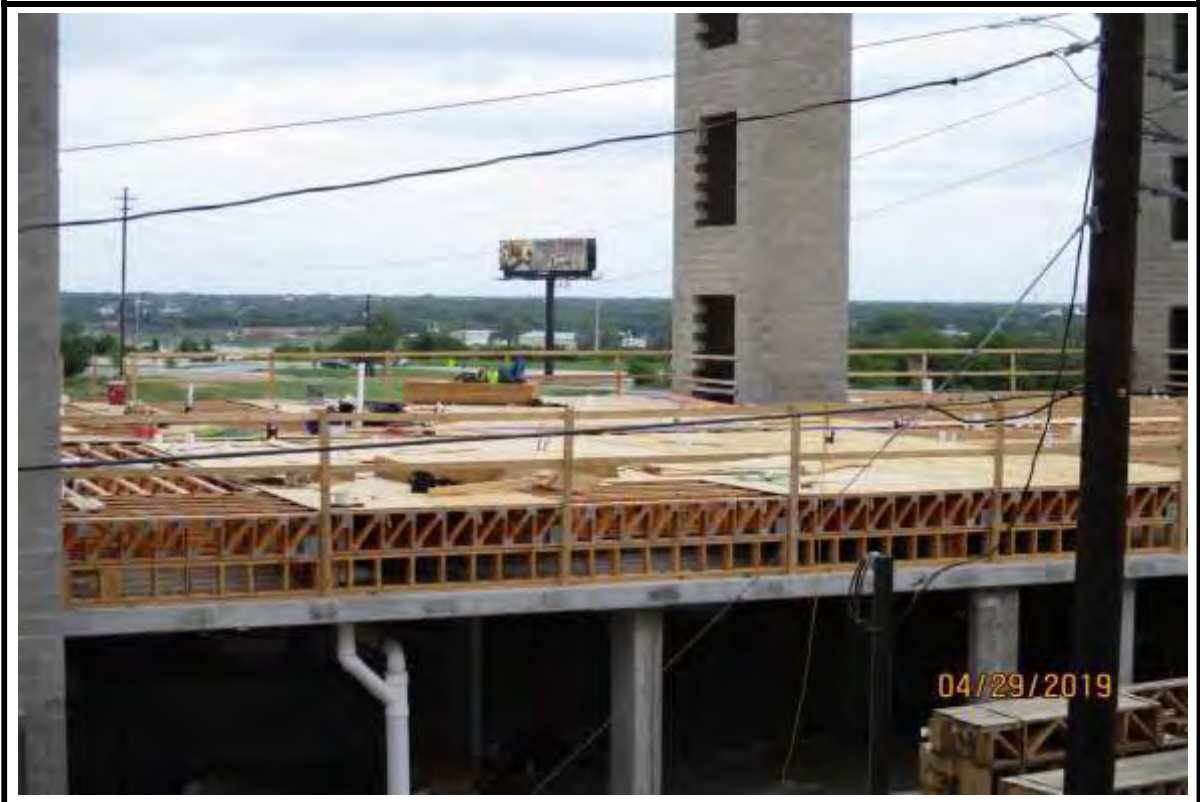


**Photograph 5:** Wood framing to 4<sup>th</sup> floor at Building "A".



**Photograph 6:** CMU stair towers and wood framing starting at Building "B".





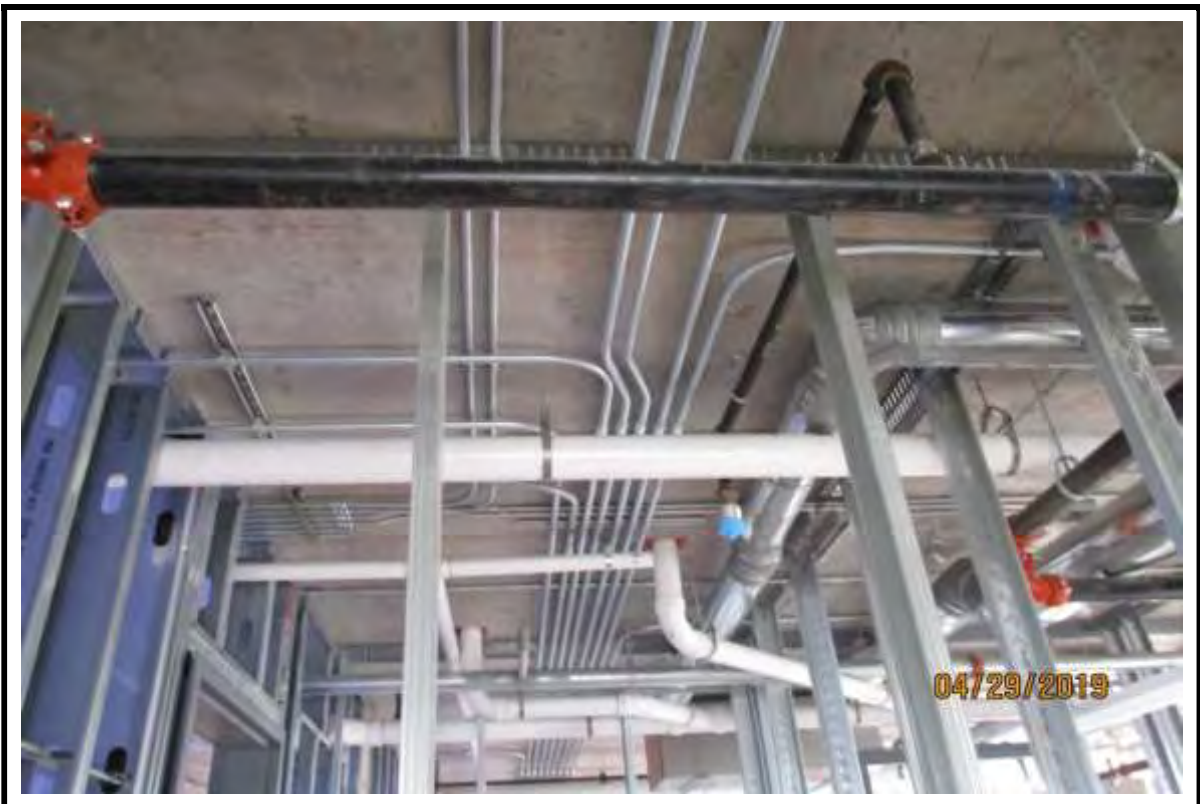
**Photograph 7:** Sub floor trusses and wood deck for 2<sup>nd</sup> floor at Building "B".



**Photograph 8:** Duct work ready for installation at Building "B".



**Photograph 9:** Metal stud framing in Administration Area at Building "B".



**Photograph 10:** MEP and Fire Protection rough-in at Building "B".



June 13, 2019

Via email: [william.teschke@huntcompanies.com](mailto:william.teschke@huntcompanies.com) [tim.bass@huntcompanies.com](mailto:tim.bass@huntcompanies.com)

Mr. William Teschke  
Mr. Tim Bass  
Hunt Capital Partners LLC  
15910 Ventura Blvd., Suite 1000  
Encino, CA 91436

Subject: Monthly Construction Monitoring Report 9  
The Vineyard on Lancaster  
1413 E. Lancaster Avenue  
Fort Worth, Texas 76102  
CODA Project No. 18-1887

Gentlemen:

CODA Consulting Group, LLC (CODA) is pleased to submit this report of the construction progress of the above referenced project. These services were provided in accordance with the scope of services and terms and conditions outlined in CODA's Proposal P18-2908 dated June 13, 2018 and authorized June 15, 2018 and also Hunt Capital Partners, LLC Agreement for New Construction Projects dated June 15, 2018 and authorized June 15, 2018.

The services included reviewing an Application for Payment prepared by the Developer which included the Contractor's Application for Payment (in AIA Documents G702 and G703 format) prepared by the general contractor, with attached supporting documentation. We also visited the site, met with representatives of the general contractor and visually toured the site to observe the progress and quality of construction. The attached report was prepared documenting our observations and conclusions for the previous month's construction progress and total work to date.

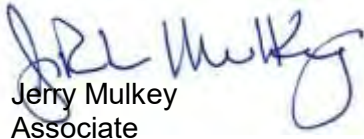
This report has been prepared on behalf of and exclusively for the use of Hunt Capital Partners, and J.P. Morgan Capital Corporation/J.P. Morgan Chase Bank, N.A. Reliance on this report is governed by the scope of services and terms and conditions of the contract under which the work was performed. This report and the findings contained herein shall not, in whole or in part, be disseminated or conveyed to any other party or be used or relied upon by any other party, in whole or in part, without CODA's prior written consent.

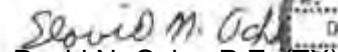
Hunt Capital Partners LLC  
The Vineyard on Lancaster  
Fort Worth, TX

We appreciate the opportunity to work with you on this project and trust the contents of this report are satisfactory. We would be pleased to discuss our findings and conclusions with you. If you have any questions, please do not hesitate to contact us.

Sincerely,

**CODA Consulting Group, LLC**

  
Jerry Mulkey  
Associate

  
David N. Ochs, P.E. (TX)  
Senior Associate



Cc: Joseph Leal – Hunt Companies – ([joseph.leal@huntcompanies.com](mailto:joseph.leal@huntcompanies.com))

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APPENDIX A CONSTRUCTION PROGRESS TABLES

APPENDIX B PHOTOGRAPHS

APPENDIX C PROVIDED DOCUMENTS

**Tax Credit Application**

TDHCA Tax Credit Application provided. See table in Appendix A for Tax Credit Application required items versus provided construction features and amenities.

**II. PROJECT DESCRIPTION**

The Vineyard on Lancaster will include the construction of 104 one and two-bedroom “supportive housing” apartments on 1.553 acres in the Near East Side neighborhood of Fort Worth, Texas. The planned development includes two five-level buildings each with four-levels of wood framed apartments over a concrete framed podium. The concrete podium will be supported on straight shaft drilled piers to rock with concrete columns supporting the post-tensioned podium slab. The four apartment levels will be wood framed supported by the podium. The south Building A will have a medical clinic and retail space on the first floor, an elevator and two stairs to access the upper floors and 60 apartments on the upper four floors. The north Building B will have the Leasing Office, common amenities and a 14 space parking garage with tenant mailboxes on the first floor, an elevator and two stairs to serve access to the upper floors and 44 apartments on the upper four floors. Common amenities include a laundry, a community room and a full time social services case worker. The on-site medical clinic will provide free services to the tenants. Exterior construction will include brick and fiber cement siding with storefront systems for the first floor retail, medical clinic and leasing office areas and vinyl framed insulated windows for the residential floor areas. The roof will low-sloped with a single-ply roof membrane.

**III. STATUS OF CONSTRUCTION**

**A. SITE VISIT**

Date: May 28, 2019  
Individual: Jerry Mulkey  
Company: CODA Consulting Group

CODA meets with representatives of Fort Construction to review construction progress and the Application for Payment typically the first full week of the month. The meeting was attended by:

<u>Present</u>	<u>Name</u>	<u>Company</u>	<u>Function-Title</u>
No	Don Schussler	Union Gospel Mission	Developer Project Manager
Yes/phone	Bridger Caulder	Fort Construction	Contractor Project Manager
Yes	Harvey Blinn	Fort Construction	Contractor Superintendent
No	Joe Bloodworth	Schwartz Hanson Architects	Architect Const. Rep.
Yes	Jerry Mulkey	CODA Consulting	Lender Construction Rep.

The following documents were provided at the meeting or by e-mail before or after the meeting.

- Contractor Application for Payment No.11 AIA G702 and G703 for \$922,103.43 for work through 5/31/19, signed and sealed by contractor but unsigned by Architect.

- Conditional Waiver and Release on Progress Payment for Payment #11 for \$922,103.43 executed 6/04/19.
- RFI Log.
- Submittal Log.
- Weather Log (Reviewed on site).
- Weekly Reports

Items discussed at the meeting included:

- The site was dry and construction operations were in progress.
- Topping out of framing at Building "B".
- Start of roofing at Building "A"
- Moving Electrical Transmission lines underground between Buildings "A" and "B".
- 5 weather days in May. 53 days of weather delays thru May 31.

Monthly Construction Progress Meetings are scheduled at 10:30 PM at the UGM Board Room on the last Tuesday of each. Future scheduled dates are:

June 25, 2019	August 27, 2019	December 31, 2019
July 30, 2019	September 24, 2019	January 28, 2020
	October 29, 2019	
	November 26, 2019	

CODA has also been authorized to make bi-monthly site visits between the Monthly Construction Progress Meetings. These meetings are scheduled with the superintendent and abbreviated reports will be provided for the bi-monthly meetings.

After the meeting Jerry Mulkey of CODA walked the site to review the status of construction.

Photographs taken during the site visit are attached in Appendix B.

## **B. CONSTRUCTION PROGRESS**

### **Progress this Period:**

Considering the stage of construction, the geographic area, the time of year, the weather, site conditions and project staffing, was typical/expected construction progress made this month?: **Yes** 8% progress was recorded this month, which is in line for monthly progress at this stage in the project.

**If No – Why Not?: NA**

### **Progress to Date:**

#### **SITE WORK**

- Site clearing is complete.
- Erosion control fencing is in-place.
- Building pad preparation is substantially complete.
- Site utilities are installed.

- AT&T overhead lines and poles have been removed.

#### PAVEMENTS AND SIDEWALKS

- Grading and sub-grad preparation is underway between Buildings “A” and “B”.
- Paving and slab beneath Podium “B” is complete

#### PODIUM CONSTRUCTION

- Drilled piers are complete.
- Grade beams at Buildings “A” and “B” are complete.
- Pier caps and Podium columns and bases are complete.
- Slab at Building “A” is complete.
- Slab and paving at Building “B” are complete.
- Poured in place walls are complete at Building “A”.
- Poured in place walls are complete at Building “B”.
- Podium slab “A” is complete.
- Podium slab “B” is complete.

#### BUILDING SHELL

- Masonry at Building “A” stairwells and elevator shaft have topped-out.
- Masonry at Building “B” stairwells and elevator shaft have topped out.
- Exterior wall framing is topped-out at Building “A”.
- Exterior wall framing is through the 4<sup>th</sup> floor at Building “B”.
- Sheathing is complete at Building “A”.
- Sheathing is complete through the 3<sup>rd</sup> floor at Building “B”.
- Waterproofing is complete at masonry and 3 sides of Building “A”.
- Waterproofing is complete at masonry and 1<sup>st</sup> floor of Building “A”.
- Roofing is being stocked at Building “A”.

#### INTERIOR BUILD-OUT

- Sub-floor trusses and deck for 2<sup>nd</sup> floor units are complete at Building “A”.
- Building HVAC rough-in continues at Buildings “A” and “B”.
- “A” metal framing at 1<sup>st</sup> floor is on going.
- Building “A” 5th level wall framing, and roof decking are complete.
- Building “B” metal stud framing continues.
- Building “B” sub-floor trusses and decking are complete.
- Building “B” wall framing, floor joists and decking are complete through the 4<sup>th</sup> floor.
- Gas rough-in is complete at Building “A”.
- Plumbing rough-in continues at Buildings “A” and “B”.
- Electrical rough-in continues at Buildings “A” and “B”.
- HVAC rough-in continues at Buildings “A” and “B”.
- Fire Protection rough-in continues at Buildings “A” and “B”.

#### INTERIOR FINISHES

- Work not started.

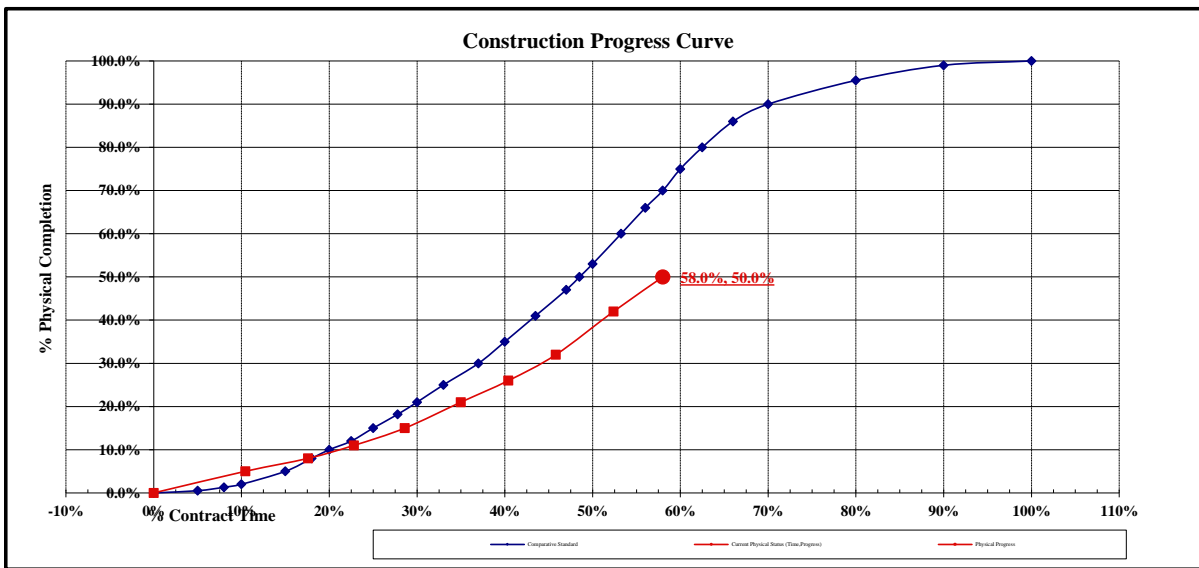


AMENITIES AND LANDSCAPING

- Work not started.

**Construction Progress Graph**

Hunt Capital Partners, and J.P. Morgan Chase Bank, N.A. have requested that we track progress based on the construction start date and the expected completion date based on the contract duration. The Construction Progress Curve below compares the actual construction progress to the construction start date, a construction finish date based on the contract duration and the HUD Form 5372 theoretical progress curve. If the “Current Physical Status” point (red dot) is left of the corresponding point on the Comparative Standard S-curve (blue), the project is ahead of schedule by the % variance. Conversely, if the “Current Physical Status” point is right of the corresponding point on the S-curve, the project is behind schedule by the % variance:



Actual construction start date:	<b>08/01/18</b>
Based on the actual start date and the project progress, the project is:	<b>Behind Contractor's 7/13/18 schedule 7 months</b>
The TDHCA Placed in service date for this project is:	<b>12/31/19</b>
Estimated completion date if rate of progress to date continues to completion:	<b>2/28/20</b>

The contract time is currently 58 percent complete and the work is 50 percent complete.

CODA notes the Construction Progress Curve above was developer for garden-style apartments and is less accurate for podium style projects. The seven months behind schedule estimate is based on the original closing schedule 07/13/18. The contractor has provided a revised Construction Schedule 5/31/19 which shows the 5<sup>th</sup> floor framing at Building “A” be complete on 5/17/19 and project completion in mid-December 2019. We

think this schedule is optimistic. The 5<sup>th</sup> floor framing was complete on 5/28/19 and roofing had started, making the project a week or 10 days behind the most current schedule.

**Construction Progress Tables:** CODA has prepared Construction Progress Tables for the Civil/Site Work and Building Construction which provide a more detailed summary of the construction progress. These tables are updated each month during our site visits and the current month's information or progress is shown in **dark type**. The tables are included in Appendix A.

**Stored Materials:** The contractor is not requesting separate payment for stored materials this application. However, we did observe wall framing materials, floor trusses, exterior sheathing and MEP and Fire Protection materials, on site for installation.

**Percent Complete:** Based on our experience, the project schedule of values, the provided Application for Payment and our observations on-site, we estimate the project construction percent complete as:

Reported Financial Percent Complete:	50%
Estimated Physical Percent Complete:	50%

**Photographs:** Photographs documenting the site conditions and construction progress during our site visit are included in Appendix B.

#### **IV. QUALITY OF CONSTRUCTION**

##### **A. TESTING LABORATORY**

Name:	Alliance Geotechnical Group
City, State:	Dallas, TX
Phone No.:	972-444-8889
Contact Person:	

##### **B. GEOTECHNICAL REPORT RECOMMENDATIONS**

A Geotechnical Report was provided from Alliance Geotechnical Group dated January 11, 2018. A site soil potential vertical rise (PVR), which is the ground surface movement between periods of drought followed by periods of wet weather, was projected at 3 to 6 plus inches.

**Building Pad Preparation:** To reduce the building pad PVR to one inch or less the report recommended:

- Excavate building pads 9 feet deep (basically to rock) to 2 feet outside building perimeters.
- Backfill in compacted layers using on-site soils moisture conditioned to 5 to 8 percent above optimum moisture for compaction.
- The top 18 inches of building pad fill should be "select soil" with a Liquid Limit less than 35% and a Plasticity Index of 5 to 14.



**Photograph 1:** Sealing exterior sheathing joints and screw heads prior to exterior finishes at Building "A".



**Photograph 2:** HVAC duct work materials staged for installation Building "A".



**Photograph 3:** Metal stud framing in medical clinic on first floor at Building "A".



**Photograph 4:** 1<sup>st</sup> floor waterproofing at retail area of Building "A".



**Photograph 5:** Plumbing rough-in 3<sup>th</sup> floor at Building "A".



**Photograph 6:** CMU stair towers and wood framing to 4<sup>th</sup> floor at Building "B".



**Photograph 7:** Floor trusses staged for 4<sup>th</sup> floor at Building "B".



**Photograph 8:** Meter base installation at Building "B".



**Photograph 9:** Metal stud framing in Administration Area at Building "B".



**Photograph 10:** Overhead conduit rough-in from electrical main distribution at Building "B".

**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**OCTOBER 10, 2019**

Presentation, discussion and possible action on a request for return and reallocation of tax credits under 10 TAC §11.6(5) related to Credit Returns Resulting from Force Majeure Events for Application 17259, Mistletoe Station

**RECOMMENDED ACTION**

**WHEREAS**, an award of Competitive (9%) Housing Tax Credits in the amount of \$1,500,000 to 17259, Mistletoe Station (the Development) was approved by the Board on July 27, 2017;

**WHEREAS**, staff executed a Carryover Allocation Agreement with the Development Owner on December 19, 2017, that included a certification from the Development Owner that each building for which the allocation was made would be placed in service by December 31, 2019;

**WHEREAS**, on September 20, 2019, the Department received from the Development Owner a request to extend the placement in service deadline under the requirements of 10 TAC §11.6(5) related to Credits Returns Resulting from Force Majeure Events;

**WHEREAS**, other than in situations covered by force majeure, the Department lacks authority to extend federal deadlines for placement in service; and

**WHEREAS**, the precipitating events described in the request meet the requirements for force majeure events described in 10 TAC §11.6(5);

**NOW, therefore, it is hereby**

**RESOLVED**, the request for treatment of Mistletoe Station under an application of the force majeure rule is approved, with the 2017 Qualified Allocation Plan and Uniform Multifamily Rules, and the 2019 Program Calendar applicable to the Development;

**FURTHER RESOLVED**, that the Applicant will receive a 2019 Carryover Agreement extending the placed in service deadline until April 30, 2020; and

**FURTHER RESOLVED**, that staff is authorized, empowered, and directed, for and on behalf of the Department to execute such documents, instruments and writings and perform such acts and deeds as may be necessary to effectuate the foregoing.

**BACKGROUND**

An award of \$1,500,000 in Competitive (9%) Housing Tax Credits to the Development was approved by the Board on July 27, 2017. The Development proposed the New Construction of 78 Units for a General population in Fort Worth. Staff executed a Carryover Allocation Agreement with the Development Owner on December 19, 2017, that included a certification from the Development Owner that, in order



to satisfy the requirements of §42 of the Internal Revenue Code, each building for which the allocation was made would be placed in service by December 31, 2019.

On September 20, 2019, the Department received from attorneys for Mistletoe Station, LLC, the Development Owner, a request to extend the placement in service deadline from December 31, 2019, to April 30, 2020, under the provisions of 10 TAC §11.6(5) related to Credits Returns Resulting from Force Majeure Events. This rule allows a Development Owner to return issued credits within three years of award and have those credits re-allocated to the Development outside of the usual regional allocation system if all of the requirements of the subsection are met. Pursuant to 10 TAC §11.6(5), the Department's Governing Board may approve the execution of a current program year Carryover Allocation Agreement regarding the returned credits with the Development Owner that returned such credits only if:

(A) The credits were returned as a result of "Force Majeure" events that occurred after the start of construction and before issuance of Forms 8609. **Force Majeure events are the following sudden and unforeseen circumstances outside the control of the Development Owner:** acts of God such as fire, tornado, flooding, significant and unusual rainfall or subfreezing temperatures, or loss of access to necessary water or utilities as a direct result of significant weather events; explosion; vandalism; orders or acts of military authority; litigation; changes in law, rules, or regulations; national emergency or insurrection; riot; acts of terrorism; supplier failures; or materials or labor shortages. If a Force Majeure event is also a presidentially declared disaster, the Department may treat the matter under the applicable federal provisions. Force Majeure events must make construction activity impossible or materially impede its progress; (emphasis added)

Of the circumstances listed in the rule, the request indicates that force majeure might be triggered by significant and unusual rainfall.

#### **Significant and Unusual Rainfall**

Per the request, "between construction commencement on September 4, 2018 and September 26, 2018, there were only eight (8) working days of construction on the Development during this time. After September 26, 2018, rain caused an additional thirty-two (32) lost days of construction through December 2018. In addition, construction was unable to be undertaken on numerous non-rain days following rain days, due to the site being too wet to work. These weather delays took place during utility and site work, as well as framing, which meant that additional time was required to recapture the construction progress for the Development that was lost as a result of the foregoing delays." The request includes an "Exhibit A" depicting a weather-related disaster declaration issued by the Governor on September 28, 2018, including Tarrant County; an "Exhibit B" from the general contractor and an "Exhibit C" from the architect describing how the construction schedule was affected by the delays. Per the contractor, "construction was moved to a six-day workweek schedule to make up for the lost time associated with severe weather, but the number of lost workdays in September and October of 2018 nonetheless led to significant delays in site and utility work." Per the architect, "the total construction schedule to date has totaled, of 98 rain days, over 3 months, within 12 month of construction schedule. This high frequency of rain is well above historical data for this region of Texas, accounting for a significant construction delay that the construction team could not have planned for. The information provided in the log of rain days by the contractor, the request for a 120 day extension is a reasonable request based on my professional experience."

Though not included as events that qualify as “Force Majeure” events, the request states that, in addition to the weather delays, construction was delayed by a Phase II environmental investigation of the subject property, which resulted in a delay of over 60 days while the testing was conducted, as described in “Exhibit D”. Per the request, “due to the uncertainty of the developable acreage and lack of plans, the Owner was not able to procure financing proposals. ...As such, the developer was delayed in proceeding with its financing and purchasing the land for Mistletoe Station.” Per the request, this delay caused the Development Owner to request an extension to the 10% Test deadline, as described in “Exhibit E”, which was approved by the Department. Further, the request states that “the closing of the Development financing was also delayed as a result of an unrelated extraordinary and unforeseeable event; that is, the withdrawal of the intended tax credit investor approximately one week before closing.” The request includes an “Exhibit F” which describes the “circumstances surrounding such event.” Finally, per the request, “commencement of construction was delayed due to complexities resulting from the City of Fort Worth requiring the up sizing of new utility lines for the Development in order to accommodate future development in the neighborhood. These requirements caused delays in the Development's permitting and financing closing, due to the City's procurement standards that required a public bid process and execution of multiple community facilities agreements.” The request includes as “Exhibit G” a letter from the City of Fort Worth regarding this issue.

Pursuant to 10 TAC §10.402(h) of the Asset Management Rules, all multifamily developments must submit a construction status report (CSR), due by the tenth day of the month following each reporting quarter's end (January, April, July, and October) and continue on a quarterly basis until the entire development is complete. The first CSR was due on October 10, 2018. The submitted Credit Support and Funding Agreement with JP Morgan Chase Bank indicates that the loan was closed on August 30, 2018, with a completion date of December 31, 2019. Staff requested that the Development Owner provide evidence that the Lender has agreed to extend the completion deadline. Evidence of such was provided. A second Loan Agreement with the Fort Worth Housing Finance Corporation indicates that loan was closed on August 24, 2018. A construction contract with Rumsey Construction, LLC, was signed on July 31, 2018; a construction contract with Maker Bros., LLC was signed on August 6, 2018; and the Development Agreement and Partnership Agreement were signed on August 30, 2018. Per the Affidavit of Commencement, construction started on September 4, 2018.

Included with the CSRs reviewed for this Development are field reports from BGO Architects (BGO). The reports are included with this action item. The CSRs do not include detailed information regarding building site conditions, but they indicate weather as a limiting factor beginning with the January 2019 report. Photographs submitted with the reports document conditions at the site. The Development Owner estimates that construction is 70.91% through September 2019.

- Report 1 dated September 27, 2018, of same day site visit:
  - Site conditions “sunny and warm.”
  - Site – Clearing/Excavation
  - Building #1 – Clearing/Excavation
  - Building #2 – Clearing/Excavation
- Report 2 dated October 30, 2018, of undated site visit:
  - Site conditions “sunny and warm.”
  - Site – Excavation and Culvert Construction
  - Building #1 – Excavation
  - Building #2 – Excavation

- Report 3 dated November 27, 2018, of same day site visit:
  - Site conditions “sunny and warm.”
  - Site – Utility Installation
  - Building #1 – Earthwork and existing utility removal
  - Building #2 – Earthwork and existing utility removal
  
- Report 4 dated January 10, 2019, of December 19, 2018 site visit:
  - Site conditions “50 degrees, cloudy, light rain.”
  - Weather / rain days have been a factor on the progress of construction to date.
  - Site prep and clearing is 100% complete.
  - Erosion Control/SWPPP is 41% complete.
  - The site utilities are underway including water, fire line, and sanitary approx. 59% complete.
  - Cast in place concrete has just started and is 1% complete.
  - Foundation pad prep is graded but is being utilized for excavation spoils to complete site utilities at Building A.
  
- Report 5 dated March 10, 2019, of January 23 site visit:
  - Site conditions “50 degrees, sunny dry end of the day.”
  - Weather / rain days have been a factor on the progress of construction to date. Ongoing.
  - The site utilities are underway including water, fire line, and sanitary approx. 63% complete.
  - Cast in place concrete piers is progressing at 12% complete.
  - Foundation pad prep and grading is progressing, at Building B.
  - Building #1 Type B w/Club Leasing  
Beckham Rd. rough grading as progress on building B foundation pad is progressing up to Mistletoe Blvd.  
Foundation at pad prep., Building B work is progressing.
  - Building #2 A Type  
Foundation pad is graded.  
12% pf the drilled piers have been placed.
  - The South Fire lane concrete is placed and saw cut for 60% of the length.
  
- Report 6 dated March 14, 2019, of February 27 site visit:
  - Site conditions “55 degrees, overcast.”
  - Weather / rain days have been a factor on the progress of construction to date. Ongoing.
  - Beckman Rd. had been poured, and saw cut. More than 60% of onsite paved has now been place
  - Offsite Box Calvert compete final grading completed
  - Cast in place concrete is progressing at 21% complete.
  - Foundation pad prep and grading is complete at Building B.
  - Building #1 Type B w/Club Leasing  
Beckham Rd. concrete placed and tied into Mistletoe Blvd.  
Foundation prep work is progressing.
  - Building #2 A Type  
Foundation pad is graded.  
The last drilled pier was placed 2/4/19. Pier caps were approximately 80% complete on 2/27/19 and the interior foundation beams were complete.

- The South Fire lane concrete is placed.
- Report 7 dated April 9, 2019, of March 28 site visit:
  - Site conditions “60 degrees, clear.”
  - Weather / rain days have been a factor on the progress of construction to date. Ongoing.
  - Retaining wall along church complete.
  - Cast in place concrete is progressing at 50% complete.
  - Building #1 Type B w/Club Leasing  
Foundation construction ongoing.  
Majority of site retaining wall installed.
  - Building #2 A Type  
Pier caps complete and grade beams are 90% complete.  
Plumbing installation ongoing.  
Concrete columns for podium ongoing.
- Report 8 dated April 24, 2019, of same day site visit:
  - Site conditions “60 degrees, raining.”
  - Weather / rain days have been a factor on the progress of construction to date. Ongoing.
  - A majority of onsite paving has now been placed.
  - The site utilities are complete including water, fire line, and sanitary.
  - Cast in place concrete is progressing at 68% complete.
  - Retaining walls are complete at Building B.
  - Building #1 Type B w/Club Leasing  
Majority of site retaining wall installed.
  - Building #2 A Type  
Pier caps complete and grade beams are complete.  
Concrete at parking level ongoing.
- Report 9 dated June 7, 2019, of May 24 site visit:
  - Site conditions “86 degrees, Sunny.”
  - Weather / rain days have been a factor on the progress of construction to date. Ongoing.
  - Cast in place concrete foundation is complete.
  - Building #1 Type B w/Club Leasing  
Foundation construction complete.  
Gravity installed.
  - Building #2 A Type  
Concrete at parking level complete.  
Concrete columns for podium complete.  
Podium forming 30% complete.
- Report 10 dated July 9, 2019, of June 24 site visit:
  - Site conditions “86 degrees, Partly Sunny.”
  - Weather / rain days have been a factor on the progress of construction to date. Ongoing.
  - Building #1 Type B w/Club Leasing  
Gravity wall installed.  
Footing for sound wall poured.  
Framing on second floor ongoing.  
Steel framing required intumescent paint per code.
  - Building #2 A Type

Podium forming 75% complete.  
30% of Podium Poured.

- Report 11 dated August 9, 2019, of July 26 site visit:
  - Site conditions “86 degrees, Partly Sunny.”
  - Weather / rain days have been a factor on the progress of construction to date. Ongoing.
  - Building #1 Type B w/Club Leasing  
Roof framing ongoing.
  - Building #2 A Type  
Podium forming 95% complete  
60% of Podium Poured
- Report 12 dated September 12, 2019, of August 28 site visit:
  - Site conditions “94 degrees, Sunny.”
  - Weather / rain days have been a factor on the progress of construction to date. Ongoing.
  - Offsite Box Culvert not compete, final grading completed
  - Retaining wall around Existing light pole to be reworked
  - Concrete is poured at Handicap ramp at Building B, ongoing.
  - Sidewalk and exterior concrete stairs installed
  - Building #1 Type B w/Club Leasing  
Roof framing complete  
Exterior sheathing installed, windows installed and Tyvek installation complete.  
Exterior Fiber Cement board installed.  
Insulation installation ongoing.  
Gypsum board stored in unit.  
Plumbing rough in ongoing  
Sprinkler rough in ongoing
  - Building #2 A Type  
Podium complete  
Wood framing on going  
Plumbing rough in ongoing  
Firewall installation ongoing

Based on information from the contractor and architect submitted with the request, staff has determined that the Development Owner has provided sufficient evidence that the Development has been affected by “sudden and unforeseen circumstances outside the control of the Development Owner” as described in 10 TAC §11.6(5), particularly significant and unusual rainfall. Staff did not consider other issues identified by the request as those issues, in Staff’s opinion, do not meet the threshold for force majeure events. If the Board grants the request to consider this a force majeure event, the Development Owner will return \$1,500,000 in credits. The credits will be returned to the Development Owner with a 2019 Carryover Allocation Agreement, and the date for the Development to be placed in service will be April 30, 2020, with the 2017 Qualified Allocation Plan and Uniform Multifamily Rules applicable to the Development.

If the Board denies the request to consider this a force majeure event, the Development Owner will retain \$1,500,000 in credits and the date by which the Development must be placed in service will remain December 31, 2019. If the Development Owner returns the credits, the credits would first be made available in the subregion from which they were originally awarded, pursuant to 10 TAC §11.6(2), related

to returned credits; in this case Region 3, Urban. There are pending Applications on the 2019 waiting list from that subregion. The next Application requests \$1,500,000, which is the amount of credits that would be returned. Pursuant to 10 TAC §11.6, staff would award the credits to 19020 Riva Keene.

Staff recommends the Board approve the request for treatment of Mistletoe Station under an application of the force majeure rule.

17259

Mistletoe Station  
Extension Request



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

[www.tdhca.state.tx.us](http://www.tdhca.state.tx.us)

Greg Abbott  
GOVERNOR

**BOARD MEMBERS**  
J.B. Goodwin, *Chair*  
Leslie Bingham-Escareño, *Vice Chair*  
Paul A. Braden, *Member*  
Asusena Reséndiz, *Member*  
Sharon Thomason, *Member*  
Leo Vasquez, *Member*

June 4, 2018

*Writer's direct dial: 512-475-3296*  
*Email: [tim.irvine@tdhca.state.tx.us](mailto:tim.irvine@tdhca.state.tx.us)*

Sarah Anderson  
S. Anderson Consulting  
1305 E 6<sup>th</sup> St., Suite 12  
Austin, TX 78702  
Via Email Transmission: [sarah@sarahandersonconsulting.com](mailto:sarah@sarahandersonconsulting.com)

RE: MISTLETOE STATION (THE "DEVELOPMENT")  
HTC # 17259/ CMTS #5326  
10% TEST EXTENSION REQUEST

Dear Ms. Anderson:

The Texas Department of Housing and Community Affairs (the "Department") received your letter dated May 18, 2018, requesting an extension without penalty, as outlined in §11.9(f) of the 2018 QAP, of the 10% Test expenditure and submission deadline from July 2, 2018, to September 15, 2018, for the above referenced development. You have explained that the Applicant continues to work through issues related to prolonged environmental issues associated with Phase I & II investigations which delayed ability to secure financing. You letter states that the requested extended deadline will allow sufficient time to satisfy the permitting and financing requirements.

You have also requested a determination that the point adjustment for applications submitted during the current 2018 competitive round is not warranted, stating that the issues and delays explained above were not the result of anything within the Applicant's control and could not have been reasonably anticipated. Based on the information provided, staff has recommended an affirmative finding that the facts which gave rise to the need for the extension were beyond the reasonable control of the Applicant and could not have been reasonably anticipated. I concur and further determine that a point deduction for any current application as a result of this extension request is not warranted for the reasons discussed above.

The request for an extension is granted without penalty. The new deadline to submit the 10% Test is **September 15, 2018**. Any subsequent extension request would be considered independent of this determination with regard to 10 TAC §11.9(f).



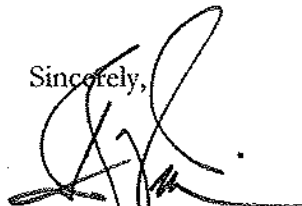


June 4, 2018

Page 2

Should you have any questions, please contact Rene Ruiz at (512) 475-1987 or via email at [rene.ruiz@tdhca.state.tx.us](mailto:rene.ruiz@tdhca.state.tx.us).

Sincerely,



Timothy K. Irvine  
Executive Director

TKI/RR

cc: Lisa Stephens (via email)

17259

Mistletoe Station  
Force Majeure Request



GARY J. COHEN  
PARTNER  
Shutts & Bowen LLP  
200 South Biscayne Boulevard  
Suite 4100  
Miami, Florida 33131  
DIRECT (305) 347-7308  
FAX (305) 347-7808  
EMAIL gcohen@shutts.com

September 20, 2019

Ms. Marni Holloway  
Director of Multifamily Finance  
Texas Dept. of Housing and Community Affairs  
221 East 11<sup>th</sup> Street  
Austin, TX 78701-2401

**RE: Mistletoe Station, LLC**

Dear Ms. Holloway:

Our firm represents Mistletoe Station, LLC ("**Owner**"), which received an allocation of low-income housing tax credits ("**Tax Credits**") from the Texas Department of Housing and Community Affairs ("**TDHCA**") for the construction of the Development, and this letter is sent on Owner's behalf. Pursuant to Section 42(h)(1)(E)(i) of the Internal Revenue Code, Owner is required to place the Development in service by December 31, 2019.

The Development is in Tarrant County, Texas, which has been directly and indirectly impacted by severe weather and flooding in September 2018. Governor Greg Abbott issued a proclamation declaring a state of disaster caused by this severe weather on September 28, 2018. See attached Exhibit A.

As a result of this severe weather and flooding, between construction commencement on September 4, 2018 and September 26, 2018, there were only eight (8) working days of construction on the Development during this time. After September 26, 2018, rain caused an additional thirty-two (32) lost days of construction through December 2018. In addition, construction was unable to be undertaken on numerous non-rain days following rain days, due to the site being too wet to work. These weather delays took place during utility and site work, as well as framing, which meant that additional time was required to recapture the construction progress for the Development that was lost as a result of the foregoing delays. The architect estimates that these weather events created a significant delay to the construction schedule. Please see attached Exhibit B (letter from general contractor Maker Bros.) and Exhibit C (letter from architect) describing and detailing these delays.

These unforeseeable severe weather and flooding delays come on the heels of an extraordinary set of circumstances (described below) that have already delayed commencement of construction of the Development.

After notification that the Development was to be awarded allocation of Tax Credits, a Phase II environmental investigation of the subject property was undertaken, as

recommended by the initial Phase I report. The Phase II investigation discovered a petroleum based product and arsenic in the soil and ground water on a portion of the development site. From September 2017 through March 2018, subsequent investigations were conducted by the environmental consultant engaged by the Developer (Terracon Consultants, Inc.). A property assessment report was submitted to regulatory authorities and in April 2018 a no further action letter was obtained.

Due to the above-described environmental concerns, it was originally unknown how much of the property would be able to be developed as a residential use. Until Terracon was able to define the impacted area(s), Owner was unable to submit site plan and building plans, resulting in a delay of over sixty (60) days while the testing was conducted. Due to the uncertainty of the developable acreage and lack of plans, the Owner was not able to procure financing proposals. In December 2017, after the impacted area was defined, a plan was formulated to remove all residential structures from the impacted area. This allowed the development plans to proceed while the remainder of the environmental testing was conducted. However, the loss of time ultimately impacted the closing schedule. As such, the developer was delayed in proceeding with its financing and purchasing the land for Mistletoe Station. Please see Exhibit D (a letter from the environmental consultant confirming the timing and delays as a result of the environmental review work).

The Owner advised TDHCA of the foregoing delay when it requested an extension of the 10% test on May 18, 2018 (see letter from owner's consultant, attached as Exhibit E).

The closing of the Development financing was also delayed as a result of an unrelated extraordinary and unforeseeable event; that is, the withdrawal of the intended tax credit investor approximately one week before closing. The circumstances surrounding such event are more fully described in a letter from the ultimate tax credit investor (Hunt Capital Partners) attached as Exhibit F.

Finally, commencement of construction was delayed due to complexities resulting from the City of Fort Worth requiring the upsizing of new utility lines for the Development in order to accommodate future development in the neighborhood. These requirements caused delays in the Development's permitting and financing closing, due to the City's procurement standards that required a public bid process and execution of multiple community facilities agreements. See letter from the City of Fort Worth attached as Exhibit G.

Due to the foregoing delays, the Development will likely not be able to be placed in service by December 31, 2019 as required by its Carryover Allocation Agreement with TDHCA. As such, we request that Owner be permitted to return the Tax Credits and that TDHCA reallocate the Tax Credits in the current year pursuant to the "Force Majeure" provisions in Section 11.6(5) of the 2019 Qualified Allocation Plan (the "QAP"). We believe Owner and the Development meet all the requirements of Section 11.6(5), in that:

1. The delays in construction were a direct result of significant weather events referenced above, which the architect estimates added one hundred twenty (120) days to the construction schedule. These weather delays came on top of a protracted environmental review and financing process.
2. The delays were not caused by willful negligence or acts of Owner, any Affiliate, or any other related party.
3. Evidence of the impact of state disaster-level severe weather and flooding on the construction schedule of the Development is attached as Exhibits A, B, and C.
4. Owner and the contractor are experienced developers and builders of these types of properties, and each took steps available to them to mitigate the delays; however, the weather was not within their control. Contractor undertook six day work weeks and offered incentives to subcontractors to provide additional labor to make up for lost time, but the delays were too significant to achieve completion by December 31, 2019.
5. Owner substantially fulfilled all its obligations that were not impeded by the weather events; the Development was properly insured, and TDHCA was notified of the weather events.
6. The weather events have prevented Owner from meeting the placement in service requirements of the original carryover allocation.
7. The requested current year Carryover Agreement would allocate the same amount of Tax Credits as those that would be returned.
8. The Development continues to be financially viable. Owner has undertaken significant financial commitment in connection with the Development (due to the withdrawal of the initial tax creditor investor and the re-pricing of the Tax Credits) in order to proceed with this very worthwhile affordable housing development.

In connection with the requested reallocation of Tax Credits, owner requests a new placement in service deadline of April 30, 2020 (rather than a later placement in service deadline which would be permitted under Section 42 of the Internal Revenue Code as a result of the receipt of a new Tax Credit allocation).

Ms. Marni Holloway  
September 20, 2019  
Page 4

Please feel free to contact me with any questions. We sincerely appreciate your assistance with this matter.

Sincerely,

  
Gary J. Cohen

# EXHIBIT A




GOVERNOR GREG ABBOTT

September 28, 2018

FILED IN THE OFFICE OF THE  
SECRETARY OF STATE  
4:03 PM 'CLOCK

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

SEP 28 2018  
  
Secretary of State

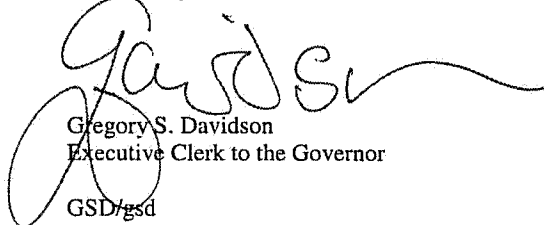
Dear Mr. Secretary:

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

A proclamation declaring a state of disaster in Ellis, Sutton, and Tarrant counties caused by severe weather and flooding that began on September 21, 2018.

The original proclamation is attached to this letter of transmittal.

Respectfully submitted,

  
Gregory S. Davidson  
Executive Clerk to the Governor  
GSD/gsd

Attachment



**PROCLAMATION**  
BY THE  
**Governor of the State of Texas**

---

TO ALL TO WHOM THESE PRESENTS SHALL COME:

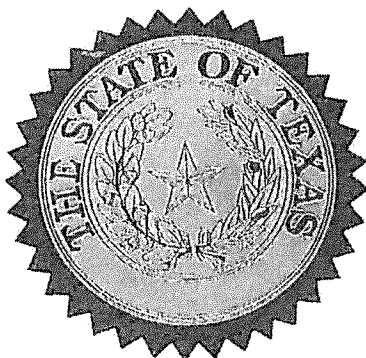
I, GREG ABBOTT, Governor of the State of Texas, do hereby certify that the severe weather and flooding event that began on September 21, 2018, has caused widespread and severe property damage in Ellis, Sutton, and Tarrant counties.

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

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

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

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



IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 28th day of September, 2018.

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

GREG ABBOTT  
Governor

ATTESTED BY:

A handwritten signature in black ink that reads "Rolando B. Pablos".

ROLANDO B. PABLOS  
Secretary of State

FILED IN THE OFFICE OF THE  
SECRETARY OF STATE  
4:03 PM, O'CLOCK

SEP 28 2018

## EXHIBIT B



**MAKER** *Bros.*

September 10, 2019

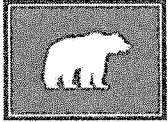
TO: Marni Holloway  
Texas Department of Housing and Community Affairs  
221 East 11th Street  
Austin, Texas 78701

RE: Megan Lasch  
Mistletoe Station, LLC  
5501-A Balcones Dr. #302

Based on the severe weather and flooding experienced in Tarrant County from September through November of 2018, and the frequency of rain during site and utility work, the construction of Mistletoe Station experienced significant delays. Construction was moved to a six-day workweek schedule to make up for the lost time associated with severe weather, but the number of lost workdays in September and October of 2018 nonetheless led to significant delays in site and utility work. Attached is a log of rain days during construction of the project, as well as architect's reports noting delays due to severe weather and flooding. Based on our experience, this is an extreme case, where a significant amount of rain and severe weather caused more delays than can be reasonably expected and accounted for through contingency planning.

Signed,

Justin C. Bailey



**MAKER Bros.**

Mistletoe Station	Rain Mud Days (X)	TOTAL RAIN
T	9/4/2018	
W	9/5/2018	
T	9/6/2018	
F	9/7/2018	X 1
S	9/8/2018	X 2
S	9/9/2018	X 3
M	9/10/2018	X 4
T	9/11/2018	X 5
W	9/12/2018	X 6
T	9/13/2018	X 7
F	9/14/2018	X 8
S	9/15/2018	X 9
S	9/16/2018	X 10
M	9/17/2018	
T	9/18/2018	
W	9/19/2018	
T	9/20/2018	X 11
F	9/21/2018	X 12
S	9/22/2018	X 13
S	9/23/2018	X 14
M	9/24/2018	X 15
T	9/25/2018	X 16
W	9/26/2018	X 17
T	9/27/2018	
F	9/28/2018	
S	9/29/2018	
S	9/30/2018	
M	10/1/2018	
T	10/2/2018	
W	10/3/2018	X 18
T	10/4/2018	X 19
F	10/5/2018	X 20
S	10/6/2018	X 21
S	10/7/2018	X 22



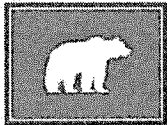
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M	10/8/2018	X	23
T	10/9/2018	X	24
W	10/10/2018	X	25
T	10/11/2018		
F	10/12/2018	X	26
S	10/13/2018	X	27
S	10/14/2018	X	28
M	10/15/2018	X	29
T	10/16/2018	X	30
W	10/17/2018	X	31
T	10/18/2018	X	32
F	10/19/2018	X	33
S	10/20/2018	X	34
S	10/21/2018	X	35
M	10/22/2018		
T	10/23/2018		
W	10/24/2018	X	36
T	10/25/2018	X	37
F	10/26/2018		
S	10/27/2018		
S	10/28/2018		
M	10/29/2018		
T	10/30/2018		
W	10/31/2018	X	38
T	11/1/2018	X	39
F	11/2/2018		
S	11/3/2018		
S	11/4/2018		
M	11/5/2018		
T	11/6/2018		
W	11/7/2018		
T	11/8/2018		
F	11/9/2018		
S	11/10/2018		
S	11/11/2018	X	40
M	11/12/2018		
T	11/13/2018		



**MAKER** *Bros.*

W	11/14/2018		
T	11/15/2018		
F	11/16/2018		
S	11/17/2018		
S	11/18/2018		
M	11/19/2018		
T	11/20/2018		
W	11/21/2018		
T	11/22/2018		
F	11/23/2018		
S	11/24/2018		
S	11/25/2018		
M	11/26/2018		
T	11/27/2018		
W	11/28/2018		
T	11/29/2018		
F	11/30/2018		
S	12/1/2018		
S	12/2/2018		
M	12/3/2018		
T	12/4/2018		
W	12/5/2018		
T	12/6/2018		
F	12/7/2018	X	41
S	12/8/2018	X	42
S	12/9/2018	X	43
M	12/10/2018		
T	12/11/2018		
W	12/12/2018		
T	12/13/2018		
F	12/14/2018		
S	12/15/2018	X	44
S	12/16/2018	X	45
M	12/17/2018		
T	12/18/2018		
W	12/19/2018		
T	12/20/2018		



**MAKER** *Bros.*

F	12/21/2018		
S	12/22/2018		
S	12/23/2018		
M	12/24/2018		
T	12/25/2018		
W	12/26/2018	X	46
T	12/27/2018	X	47
F	12/28/2018	X	48
S	12/29/2018	X	49
S	12/30/2018		
M	12/31/2018		
T	1/1/2019		
W	1/2/2019	X	50
T	1/3/2019	X	51
F	1/4/2019	X	52
S	1/5/2019	X	53
S	1/6/2019		
M	1/7/2019		
T	1/8/2019		
W	1/9/2019		
T	1/10/2019		
F	1/11/2019	X	54
S	1/12/2019	X	55
S	1/13/2019		
M	1/14/2019		
T	1/15/2019		
W	1/16/2019		
T	1/17/2019		
F	1/18/2019		
S	1/19/2019		
S	1/20/2019		
M	1/21/2019		
T	1/22/2019		
W	1/23/2019		
T	1/24/2019		
F	1/25/2019		
S	1/26/2019		



**MAKER** *Bros.*

S	1/27/2019		
M	1/28/2019		
T	1/29/2019		
W	1/30/2019		
T	1/31/2019		
F	2/1/2019		
S	2/2/2019		
S	2/3/2019		
M	2/4/2019		
T	2/5/2019		
W	2/6/2019		
T	2/7/2019		
F	2/8/2019		
S	2/9/2019	X	56
S	2/10/2019		
M	2/11/2019	X	57
T	2/12/2019		
W	2/13/2019		
T	2/14/2019		
F	2/15/2019		
S	2/16/2019		
S	2/17/2019		
M	2/18/2019		
T	2/19/2019	X	58
W	2/20/2019	X	59
T	2/21/2019		
F	2/22/2019	X	60
S	2/23/2019	X	61
S	2/24/2019		
M	2/25/2019		
T	2/26/2019		
W	2/27/2019		
T	2/28/2019	X	62
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S	3/2/2019	X	64
S	3/3/2019	X	65
M	3/4/2019	X	66





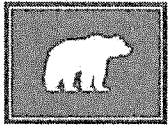
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T	3/5/2019		
W	3/6/2019		
T	3/7/2019		
F	3/8/2019		
S	3/9/2019	X	67
S	3/10/2019		
M	3/11/2019		
T	3/12/2019	X	68
W	3/13/2019	X	69
T	3/14/2019	X	70
F	3/15/2019		
S	3/16/2019		
S	3/17/2019		
M	3/18/2019		
T	3/19/2019		
W	3/20/2019		
T	3/21/2019		
F	3/22/2019		
S	3/23/2019		
S	3/24/2019		
M	3/25/2019		
T	3/26/2019		
W	3/27/2019		
T	3/28/2019		
F	3/29/2019		
S	3/30/2019		
S	3/31/2019		
M	4/1/2019		
T	4/2/2019		
W	4/3/2019		
T	4/4/2019		
F	4/5/2019		
S	4/6/2019	X	71
S	4/7/2019	X	72
M	4/8/2019	X	73
T	4/9/2019		
W	4/10/2019		



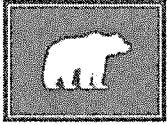
**MAKER Bros.**

T	4/11/2019		
F	4/12/2019		
S	4/13/2019	X	74
S	4/14/2019	X	75
M	4/15/2019	X	76
T	4/16/2019		
W	4/17/2019		
T	4/18/2019	X	77
F	4/19/2019	X	78
S	4/20/2019		
S	4/21/2019		
M	4/22/2019		
T	4/23/2019		
W	4/24/2019	X	79
T	4/25/2019	X	80
F	4/26/2019		
S	4/27/2019		
S	4/28/2019		
M	4/29/2019		
T	4/30/2019		
W	5/1/2019	X	81
T	5/2/2019	X	82
	5/3/2019	X	83
S	5/4/2019	X	84
S	5/5/2019		
M	5/6/2019		
T	5/7/2019		
W	5/8/2019	X	85
T	5/9/2019	X	86
F	5/10/2019		
S	5/11/2019	X	86
S	5/12/2019	X	87
M	5/13/2019		
T	5/14/2019		
W	5/15/2019		
T	5/16/2019		
F	5/17/2019		



**MAKER** *Bros.*

S	5/18/2019	X	88
S	5/19/2019	X	89
M	5/20/2019		
T	5/21/2019	X	90
W	5/22/2019		
T	5/23/2019		
F	5/24/2019		
S	5/25/2019		
S	5/26/2019		
M	5/27/2019		
T	5/28/2019		
W	5/29/2019		
T	5/30/2019		
F	5/31/2019	X	91
S	6/1/2019	X	92
S	6/2/2019	X	93
M	6/3/2019		
T	6/4/2019		
W	6/5/2019		
T	6/6/2019		
F	6/7/2019		
S	6/8/2019		
S	6/9/2019		
M	6/10/2019		
T	6/11/2019		
W	6/12/2019		
T	6/13/2019		
F	6/14/2019		
S	6/15/2019		
S	6/16/2019	X	94
M	6/17/2019		
T	6/18/2019		
W	6/19/2019		
T	6/20/2019		
F	6/21/2019		
S	6/22/2019		
S	6/23/2019	X	95



**MAKER** *Bros.*

M	6/24/2019	X	96
T	6/25/2019		
W	6/26/2019		
T	6/27/2019		
F	6/28/2019		
S	6/29/2019		
S	6/30/2019		
M	7/1/2019		
T	7/2/2019		
W	7/3/2019		
T	7/4/2019		
F	7/5/2019		
S	7/6/2019		
S	7/7/2019		
M	7/8/2019		
T	7/9/2019		
W	7/10/2019		
T	7/11/2019		
F	7/12/2019		
S	7/13/2019		
S	7/14/2019		
M	7/15/2019		
T	7/16/2019		
W	7/17/2019		
T	7/18/2019		
F	7/19/2019		
S	7/20/2019		
S	7/21/2019		
M	7/22/2019		
T	7/23/2019		
W	7/24/2019		
T	7/25/2019		
F	7/26/2019		
S	7/27/2019		
S	7/28/2019		
M	7/29/2019		
T	7/30/2019		



**MAKER** *Bros.*

W	7/31/2019		
T	8/1/2019		
F	8/2/2019		
S	8/3/2019		
S	8/4/2019		
M	8/5/2019		
T	8/6/2019		
W	8/7/2019		
T	8/8/2019		
F	8/9/2019		
S	8/10/2019		
S	8/11/2019		
M	8/12/2019		
T	8/13/2019		
W	8/14/2019		
T	8/15/2019		
F	8/16/2019		
S	8/17/2019		
S	8/18/2019		
M	8/19/2019		
T	8/20/2019		
W	8/21/2019		
T	8/22/2019		
F	8/23/2019		
S	8/24/2019	X	97
S	8/25/2019		
M	8/26/2019		
T	8/27/2019	X	98
W	8/28/2019		
T	8/29/2019		
F	8/30/2019		
S	8/31/2019		

# EXHIBIT C

# BGO ARCHITECTS

September 20, 2019

Ms. Marni Holloway  
Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup> Street  
Austin, Texas 78701

RE: Megan Lasch  
Mistletoe Station, LLC  
5501-A Balcones Dr. #302

Dear Marni,

The Mistletoe Station Multifamily development had received a significant amount of rain during the fall of 2018 between the first weeks of September 2018 to the end November 2018 accruing 40 rain days, more than one month of rain within a 2 month time frame. The total construction schedule to date has totaled, of 98 rain days, over 3 months, within 12 month of construction schedule. This high frequency of rain is well above historical data for this region of Texas, accounting for a significant construction delay that the construction team could not have planned for. The information provided in the log of rain days by the contractor, the request for a 120 day extension is a reasonable request based on my professional experience.

To my knowledge the contractor has done everything possible to regain these lost days, during the installation of utilities but too many lost day were impossible to regain. As the Architect we had noted this is many of our construction reports based on our review of the log of rain days provided to my team during the monthly meetings.

Respectfully,



Erik O. Earnshaw NCARB  
C.E.O.  
BGO Architects

# EXHIBIT D





May 21, 2018

Mistletoe Station, LLC  
421 West 3<sup>rd</sup> Street, Suite 1504  
Austin, Texas 78701

Attn: Ms. Megan Lasch  
P: (830) 330-0762

Re: Environmental Subsurface Investigations  
Mistletoe Station  
Mistletoe Boulevard and Beckham Place  
Fort Worth, Tarrant County, Texas

Dear Ms. Lasch:

Terracon Consultants, Inc. (Terracon) has prepared this letter as a response to your inquiry concerning the extent of environmental investigation required for the Mistletoe Station project site referenced above (Terracon Project Nos. 95177087 and 95177573).

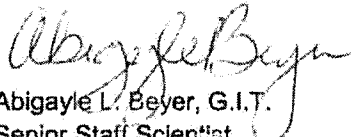
In response to the recognized environmental concerns (RECs) identified during Terracon's February 2017 Phase I Environmental Site Assessment (ESA), Terracon initiated the first of a series of subsurface investigations at the site in August 2017 (Limited Site Investigation, LSI) and concluded investigation activities in February 2018. A total of five (5) mobilizations were required to complete soil sampling activities (with additional mobilizations for groundwater sampling), including one investigation specifically requested by the Texas Commission on Environmental Quality (TCEQ) in order to fulfill residential assessment criteria. The TCEQ Corrective Action program issued a "no further action required" concurrence in response to Terracon's cumulative findings on April 6, 2018.

Terracon's investigations were conducted in a manner consistent with generally accepted practices of the profession undertaken in similar studies in the same geographic area during the same time period. However, it is Terracon's experience that the extent and specific character of the releases identified at the Mistletoe Station project site could not have been anticipated based solely on the information available prior to August 2017, and the magnitude of subsurface investigation required at the site was notably more extensive than is typical for sites with similar RECs in the project area.

If you have any additional questions, please contact our Fort Worth office at (817) 268-8600.

Sincerely,

**Terracon Consultants, Inc.**

  
Abigayle L. Beyer, G.I.T.  
Senior Staff Scientist

  
Meghan N. Espinoza  
Senior Project Manager

Terracon Consultants Inc. 2501 E Loop 820 N Fort Worth, TX 76118-6978  
P 817-268-8600 F 817-268-8602 terracon.com

Environmental

Facilities

Geotechnical

Materials

# EXHIBIT E



May 18, 2018

Rosalio Banuelos  
TDHCA  
221 E. 11th St.  
Austin, TX 78701

Re: Extension of 10% Test for #17259 (Mistletoe Station)

Mr. Banuelos,

Please consider this a formal request for an extension of the land acquisition, title commitment and accountant's report for the 10% Test for Mistletoe Station (TDHCA#17259), a new construction family development to be located in Fort Worth, Texas.

When the Phase I report for Mistletoe Station was prepared in February of 2017, a Phase II investigation was recommended due to previous uses of the property. In August of 2017, the Developer engaged Terracon to conduct the recommended Phase II investigation. The result of that Phase II investigation was the discovery of petroleum based product and arsenic in the soil and ground water on a portion of the property. From September of 2017 through March of 2018, subsequent investigations were recommended and conducted by Terracon; these culminated in an Affected Property Assessment Report (APAR). A synopsis of those investigations is contained in paragraph 3.7 of the attached Phase I update beginning on page 15. The APAR was submitted to TCEQ for review and in April of 2018, TCEQ issued a No Further Action letter, contained on page 61 of the attached report. Based on receipt of the No Further Action letter, an updated Phase I report was issued by Terracon instead of a formal Phase II as of May 15, 2018. A copy of the completed report has been uploaded to the Department's FTP site.

Due to the environmental concerns, it was unknown how much of the property would be able to be developed as a residential use. One of the requirements of Terracon was to define the impacted area(s). This resulted in the site plan and building plans being delayed more than 60 days while the testing was conducted. Due to the uncertainty of the developable acreage and lack of plans, the Developer was not able to procure financing proposals. In December, after the impacted area was defined, a plan was formulated to remove all residential structure from the impacted area. This allowed the development plans to proceed while the remainder of the environmental testing was conducted. However, the loss of time ultimately impacted the closing schedule. As such, the developer was delayed in proceeding with its financing and purchasing the land for Mistletoe Station. Please see attached letter from Environmental provider confirming the timing and delays as a result to the environmental review work.

Currently the Developer has secured an equity commitment, construction loan and permanent loan commitments for the development. It is anticipated that the building permit, plat and site plan reviews will be complete and the development will be permit ready in June/July. Based upon that schedule, it is anticipated that the financing could close in July/August of 2018.

For this reason, the Applicant is requesting an extension of the 10% test. The Developer has done everything in their control to close prior to the July 2, 2018, 10% test deadline, but the prolonged environmental process has



made that impossible. Furthermore, the amount of testing required to ascertain the environmental concerns is unusual and could not have been predicted by the Developer.

We believe that the facts which gave rise to the need for the extension were beyond the reasonable control of the Applicant and could not have been reasonably anticipated; therefore we are requesting that there be no penalty points assessed to the developer on its future Tax Credit applications. We would also note that because this request is being made more than 30 days prior to the deadline that an extension fee is not required.

We respectfully request an extension of the July 2, 2018 deadline to September 15, 2018 (75 days) to allow us to close on the land, meet the 10% expenditure requirement and have the accountant's report prepared.

Please contact me directly if you have any questions or comments related to this request.

Sincerely,

A handwritten signature in cursive script that reads "Sarah Anderson".

Sarah Anderson  
S. Anderson Consulting  
(512) 554-4721

# EXHIBIT F



## MEMORANDUM

February 11, 2019

Andrew Sinnott  
Texas Department of Community Affairs (TDHCA)  
Multifamily Loan Programs Administrator  
221 E. 11th Street  
Austin, TX 78701

**RE: Multifamily Direct Loan Application – #17259 Mistletoe Station**

Mr. Sinnott:

Hunt Capital Partners (HCP) is the tax credit partner in the Mistletoe Station project referenced above. HCP's investment in Mistletoe Station, LLC closed on August 31, 2018 under extraordinary circumstances without a tax credit investor being identified and without a clear exit strategy in place for syndication of the credits. HCP did so because it felt this project was an important investment into the affordable housing market. Mistletoe Station is a development located in a high opportunity location in an extremely sought-after area in the urban core of Fort Worth. It is one of the most exciting locations we have had the opportunity to help facilitate the creation of affordable housing. That being said, as the project progressed through design and development, it encountered many hurdles including environmental issues common for urban core developments, increased city infrastructure requirements, and more importantly lack of CRA need for Tarrant County investments. This was a limiting factor in the amount of credit pricing ultimately available for the development. Under these circumstances, the structure of the transaction was such that additional funds needed to be sourced in order for the project to be viably financed and syndicated. A summary of these circumstances is provided below for your review:

- The intended end purchaser of the tax credits – one of the few investors available in Tarrant County – advised the week of closing that it would not proceed with the transaction. At the time of closing, HCP and the project owner (collectively 'Partners') had invested approximately \$1.1MM into plans, permits, engineering, environmental and legal expenses.
- Due to the late notice by the investor, there was no time to secure another investor and source additional funds. HCP was forced to reprice the transaction for a multi-investor fund but that re-pricing resulted in a substantial loss of funds and \$0 paid developer fee in the deal. As a result, the project is essentially financially non-viable given the lack of contingencies required by most lenders and investors.
- Given the Partners sizeable investment in the project and the 16-month construction timeline, the Partners determined that closing the transaction and proceeding with construction was the best course of action for this transaction in order to meet its placed in service deadline. As a condition of closing, the Partners agreed that additional funds were needed to be infused into the project in order for it to be feasible and to attract alternative tax credit investors.
- The construction lender required a \$500,000 cash escrow from the Partners and an additional credit enhancement from HCP in the form of a liquidity guaranty for it to move forward with its construction loan. To follow through with its commitment to the project and protect its investment, HCP posted \$500,000 of its own funds in an escrow account as security for the transaction to cover cost overruns, lease up delays, and permanent loan resizing risk. This requirement is typically uncustomary and prohibitive for any tax credit syndicator under ordinary circumstances.
- As a condition of closing, HCP agreed to continue searching for an alternate investor willing to pay a higher tax credit price and Saigebrook agreed to apply for TCAP and TIF funds and to attempt to source any additional funds it could. To date, Saigebrook has applied for both TIF and TCAP funds and HCP continues

to search for potential investors for the Mistletoe Station project, a challenging task in Tarrant County. Furthermore, the lack of paid developer fee is hindering the ability to secure alternate investors.

- As it currently stands, the Mistletoe project budget includes less than 6% contingency on hard costs and it has already incurred contingency costs of roughly 30% of the budgeted amount (it's currently nearly 20% complete). Moreover, additional contingency costs for encasement of piers due to water on-site will be processed next month, further depleting the budgeted contingency funds. Noteworthy also is that the hard cost contingency budget was limited to 6% due to a lack of funds despite a recommendation for a larger contingency from HCP's third-party engineers.
- Besides construction cost overruns, several other risks pose serious concerns for the task of completion still ahead including rising interest rates, lease up risk and conversion risk, both of which are exacerbated due to the number of market rate units contained in the project. The requirement for a high number of market rate units was a condition of the neighborhood's support and therefore could not be modified prior to closing. Typically, these risks would be mitigated by paid developer fee in the deal which can be captured if necessary to provide a cash reserve to offset these unforeseen circumstances. As explained above, the Mistletoe structure contains no paid developer fee in the deal and, thus, the level of risk in this transaction is extremely high. This level of risk has also made it virtually impossible to source an alternative investor for the tax credits which could provide better pricing but would require a more conventional risk profile.
- In summary, despite the challenges this development faced both Partners elected to stay committed to the project and took on substantial financial risk with no paid fee. As a result of that commitment, a high opportunity neighborhood in the urban core of one our state's largest cities will receive affordable housing. This project is also helping to facilitate millions of dollars of public infrastructure through the City's participation in the financing structure. This infrastructure will lower the barrier for other infill tracts in the area, spurring further economic development. In addition, Mistletoe Station includes units set aside for permanent supportive housing, 811 residents, even market rate, making it a substantially mixed income community. If successful, this project is a textbook example of how the housing tax credit program can truly benefit a community through its partnerships, not just by providing much needed housing.

There is still a substantial road ahead with construction and conversion for this development to come to fruition. We were put in extremely dire circumstances outside of our control. In order to follow through with the commitments made to the community and to TDHCA we chose to proceed with closing with the understanding that this project should be eligible for additional funds based on our review of the TCAP NOFA and Rules. If delaying closing – or any other alternatives – had been viable at the time, the Partners would have selected that path.

Due to the above described circumstances beyond the control of the Mistletoe Partners, we request that you sincerely consider granting TCAP funds to ensure financial viability for the Mistletoe Station project. Should you need to discuss this request in more detail, please feel free to contact me at (972) 803-3416 or via email at [omar.chaudhry@huntcompanies.com](mailto:omar.chaudhry@huntcompanies.com).

Thank you for your consideration.

Sincerely,



Director, Acquisitions  
Hunt Capital Partners

# EXHIBIT G





September 16, 2019

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

Re: Mistletoe Station, 1916 Mistletoe Blvd. Fort Worth, Texas

This letter is being provided to the Texas Department of Housing and Community Affairs (TDHCA) in support of Mistletoe Station's request for an extension of its Placed in Service Date. The City of Fort Worth has been closely involved in the development of Mistletoe Station since the initial Resolution of Support in early 2017 and continues to support the development in its need for an extension of the Placed-In-Service Date. The development has experienced a variety of delays due to the complexities of the site and multiple layers of financing.

The development is a mixed-income residential apartment complex suited to the Near Southside neighborhood. The City of Fort Worth is committed to the provision of quality affordable housing and has been and will continue to be supportive of the project on these grounds.

The City's involvement in the development includes funding from four separate City entities, all of whom have a financial and public interest in the project's completion and success: Fort Worth's Tax Increment Reinvestment Zone Number Four (Southside TIF) will reimburse up to \$2,600,000 in Qualified Costs as defined by the Southside TIF agreement, the City of Fort Worth's Neighborhood Services Department provided a HOME Investment Partnerships Program (HOME) loan in the amount of \$1,056,000, the Fort Worth Housing Finance Corporation provided a loan in the amount of \$750,000, and the City of Fort Worth's Water Department provided a waiver of fees in the amount of \$134,000. The involvement of these separate entities not only shows the extent of City support for the development, but adds additional layers of complexity given the different requirements of each funding source.

One example of these complexities, which caused a 60 to 90 day delay in construction, is the City of Fort Worth's Water Department recognition that the development's need to relocate utilities was an opportunity to upsize the new utility lines to accommodate for future developments in the neighborhood. This allowed the utility lines to be built once, and costs to be shared between the development and the City. Although this was a great opportunity for cost savings, it caused delays to Mistletoe Station's initial closing due to the City's procurement standards that required a public bid process and execution of multiple Community Facilities Agreements. Additionally, there are more stringent guidelines that must be followed during construction and additional inspections that are needed due to this partnership, that would not be necessary in a traditional private development.

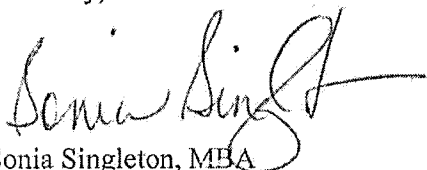
**Neighborhood Services Department**

City of Fort Worth ★ 200 Texas Street ★ Fort Worth, Texas 76102  
817-392-7540 ★ Fax 817-392-7328

The City understands that despite these complications and delays, the developer is working diligently to move the project forward in a timely manner. The City will continue to support the development in its provision of quality, affordable, mixed income housing in a high opportunity area.

Please feel free to contact me at 817-392-5774 if you have any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sonia Singleton". The signature is written in black ink and is positioned above the printed name.

Sonia Singleton, MBA  
Interim Director

cc: Chad LaRoque, Housing Development & Grants Manager  
Diana Carranza, Neighborhood Development Coordinator

**From:** [Lisa Stephens](#)  
**To:** [Sharon Gamble](#); [Gary J. Cohen](#)  
**Cc:** [Megan Lasch](#); "[Alyssa Carpenter](#)"; [Marni Holloway](#)  
**Subject:** FW: TDHCA # 17259 Mistletoe Station Placed In Service Extension Request  
**Date:** Tuesday, September 24, 2019 1:13:34 PM

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Sharon, please see below from Chase confirming that they are in agreement to extend the completion date to 4/30/20.

Thank you  
Lisa

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**From:** Allam, Vinita <[vinita.allam@chase.com](mailto:vinita.allam@chase.com)>  
**Sent:** Tuesday, September 24, 2019 12:41 PM  
**To:** Lisa Stephens <[Lisa@Saigebrook.com](mailto:Lisa@Saigebrook.com)>; Ochoa, Olivio C <[olivio.c.ochoa@chase.com](mailto:olivio.c.ochoa@chase.com)>  
**Cc:** Megan Lasch <[megan@o-sda.com](mailto:megan@o-sda.com)>  
**Subject:** RE: TDHCA # 17259 Mistletoe Station Placed In Service Extension Request

Yes, our completion date will be extended concurrently with the extension by TDHCA. We are in agreement to extend to 4/30/2020.

**Vinita Amin Allam** | Underwriter | Community Development Banking | Commercial Banking | **Chase** | T: 713 216 4164 | F: 713 216 0109 | [vinita.allam@chase.com](mailto:vinita.allam@chase.com) | [chase.com/cdb](http://chase.com/cdb)

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**From:** Lisa Stephens [mailto:[Lisa@Saigebrook.com](mailto:Lisa@Saigebrook.com)]  
**Sent:** Tuesday, September 24, 2019 11:59 AM  
**To:** Ochoa, Olivio C (CB, USA) <[olivio.c.ochoa@chase.com](mailto:olivio.c.ochoa@chase.com)>; Allam, Vinita (CB, USA) <[vinita.allam@chase.com](mailto:vinita.allam@chase.com)>  
**Cc:** Megan Lasch <[megan@o-sda.com](mailto:megan@o-sda.com)>  
**Subject:** FW: TDHCA # 17259 Mistletoe Station Placed In Service Extension Request  
**Importance:** High

Olivio & Vinita, please see the request below from TDHCA. Based upon the state declared disaster area for the amount of rain received in the fall of 2018, we have requested from TDHCA an extension of the placed in service date via a credit swap. The request is to extend the completion date from Dec 31, 2019 to April 30, 2020. Per the email below, TDHCA is requesting confirmation that if they grant the extension, Chase will likewise agree to the extension of the completion date. Can you please send me an email at your earliest convenience confirming same?

Thank you  
Lisa

---

**From:** Sharon Gamble <[sharon.gamble@tdhca.state.tx.us](mailto:sharon.gamble@tdhca.state.tx.us)>

**Sent:** Tuesday, September 24, 2019 10:42 AM

**To:** Gary J. Cohen <[GCohen@shutts.com](mailto:GCohen@shutts.com)>; Lisa Stephens <[Lisa@Saigebrook.com](mailto:Lisa@Saigebrook.com)>

**Cc:** 'Alyssa Carpenter' <[ajcarpen@gmail.com](mailto:ajcarpen@gmail.com)>; Megan Lasch <[megan@o-sda.com](mailto:megan@o-sda.com)>; Marni Holloway <[marni.holloway@tdhca.state.tx.us](mailto:marni.holloway@tdhca.state.tx.us)>

**Subject:** RE: TDHCA # 17259 Mistletoe Station Placed In Service Extension Request

**Importance:** High

Good morning, All. Need a few things:

The submitted Credit Support and Funding Agreement with JP Morgan Chase Bank indicates that the "Bank's Required Completion Date" is December 31, 2019:

"Bank's Required Completion Date: The earliest to occur of (a) December 31, 2019 (which date may be extended by the Credit Agency as evidenced by documentation acceptable to the Bank), (b) the date the Investor Member shall require Substantial Completion (as such term is used in the Operating Agreement) as provided in the Operating Agreement, (c) the date required in the TIF Agreement for completion of the Improvements, (d) the date required for completion of the Improvements under the Subordinate Loan Documents, (e) the date required to be completed in the Tax Credit Allocation (or otherwise by the Credit Agency) for placing the Premises in Service (as such term is used by the Credit Agency in this context) in order to maintain its Low Income Housing Tax Credit, (f) the date required for completing the Improvements in the HAP Commitment, and (g) the date required for completing the Improvements in the TIF Agreement."

Provide evidence that the Lender has agreed to an extension of the completion date in writing.

The FWHFC contract includes an "Exhibit F Affidavit of Commencement" that is blank. When did the "Improvements" commence?

BGO field report #7 is missing from the CSRs. Can you send me a copy? Also, can you get BGO to estimate the percentage of the development that was complete (overall) as of field report #10, the last we have on file?

Regards,

Sharon D. Gamble MSW, PMP

Competitive (9%) Housing Tax Credit Program Administrator

Texas Department of Housing and Community Affairs

(512) 936-7834

<https://www.tdhca.state.tx.us/multifamily/housing-tax-credits-9pct/index.htm>

Any person receiving guidance from TDHCA staff should be mindful that, as set forth in 10 TAC Section 11.1(b) there are important limitations and caveats (Also see 10 TAC §11.2(a)).

About TDHCA

The Texas Department of Housing and Community Affairs administers a number of state and federal programs through for-profit, nonprofit, and local government partnerships to strengthen communities through affordable housing development, home ownership opportunities, weatherization, and community-based services for Texans in

need. For more information, including current funding opportunities and information on local providers, please visit [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us)

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*Mary Louise Garcia* Mary Louise Garcia

**AFFIDAVIT OF COMMENCEMENT**

THE STATE OF TEXAS           §  
  §  
COUNTY OF TARRANT       §

BEFORE ME, the undersigned authority, on this day personally appeared Lisa M. Stephens, President of Saigebrook Mistletoe, LLC, a Texas limited liability company, managing member of Mistletoe Station, LLC, a Texas limited liability company ("**Owner**"), and Aubrey Thagard, Assistant General Manager of Fort Worth Housing Finance Corporation ("**Original Contractor**"), known to me to be the persons whose names are subscribed below, and who, being by me first duly sworn, did each on his or her oath state as follows (in their capacities set forth below and not individually):

1. The Owner is the owner of the real property (the "**Land**") situated in Tarrant County, Texas, more particularly described in Exhibit "A", attached hereto and made a part hereof for all purposes, on which building and other related Improvements (the "**Improvements** ") are being constructed.

The address of Owner is:

MISTLETOE STATION, LLC  
5501-A Balcones Drive, #302  
Austin, TX 78731

The address of Original Contractor is:

FORT WORTH HOUSING FINANCE CORPORATION  
200 Texas St.  
Fort Worth, Texas 76102

The name and address of any other original contractor, presently known, after reasonable inquiry, to the Affiants, to the Owner or to the Original Contractor, that is furnishing, or will furnish, labor, service, or materials, for the construction of the Improvements or related infrastructural improvements, and the nature of such labor, service or materials, is as follows: Maker Bros, LLC, a Texas limited liability company, shall be deemed to be the "Original Contractor" for purposes of the infrastructural improvements related to the Improvements.

Maker Bros, LLC  
4901 Keller Springs, Suite 101  
Addison, TX 75001

Work on the Improvements and related infrastructural improvements (including the first delivery of materials and equipment to the Land in connection with the Improvements

and infrastructural improvements) actually commenced on September 4, 2018 at eight o'clock a.m.

This affidavit has been jointly made by Owner and each Original Contractor by and through an authorized representative of each, the same being the undersigned Affiants. This affidavit may be executed in identical counterparts, each of which shall be deemed an original, and all of which, collectively, shall constitute one affidavit.


[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

EXECUTED this 2nd day of October, 2018.

AFFIANTS:

MISTLETOE STATION, LLC, a Texas limited liability company

By: Saigebrook Mistletoe, LLC, a Texas limited liability company, its managing member

By:   
Lisa M. Stephens,  
President

FORT WORTH HOUSING FINANCE CORPORATION

By: \_\_\_\_\_  
Fernando Costa, General Manager

MAKER BROS, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



EXECUTED this 2nd day of October, 2018.

AFFIANTS:

MISTLETOE STATION, LLC, a Texas limited liability company

By: Saigebrook Mistletoe, LLC, a Texas limited liability company, its managing member

By: \_\_\_\_\_  
Lisa M. Stephens,  
President

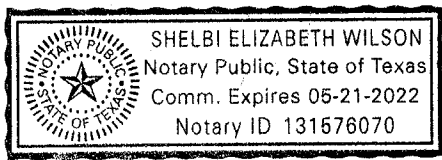
FORT WORTH HOUSING FINANCE CORPORATION

By:  \_\_\_\_\_ ✓  
Aubrey Thagard, Assistant General Manager

MAKER BROS, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF TEXAS §  
                                  §  
COUNTY OF Parker §



This instrument was acknowledged before me on the 2<sup>nd</sup> day of October, 2018, by Lisa M. Stephens, President of Saigebrook Mistletoe, LLC, a Texas limited liability company, on behalf of said limited liability company, managing member of MISTLETOE STATION, LLC, a Texas limited liability company.

Shelbi Elizabeth Wilson  
Notary Public, State of Texas

STATE OF TEXAS §  
                                  §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on \_\_\_\_\_, 2018, by Fernando Costa, General Manager of FORT WORTH HOUSING FINANCE CORPORATION, a Texas housing finance corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public in and for the  
State of Texas

My Commission Expires:  
\_\_\_\_\_

\_\_\_\_\_  
Printed Name

STATE OF TEXAS §  
                                  §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on \_\_\_\_\_, 2018, by \_\_\_\_\_, \_\_\_\_\_ of MAKER BROS, LLC, a Texas limited liability company, on behalf of said limited liability company.

\_\_\_\_\_  
Notary Public in and for the  
State of Texas

My Commission Expires:  
\_\_\_\_\_

\_\_\_\_\_  
Printed Name

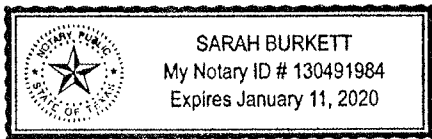
STATE OF TEXAS           §  
   §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2018, by Lisa M. Stephens, President of Saigebrook Mistletoe, LLC, a Texas limited liability company, on behalf of said limited liability company, managing member of MISTLETOE STATION, LLC, a Texas limited liability company.

\_\_\_\_\_  
Notary Public, State of Texas

STATE OF TEXAS           §  
   §  
COUNTY OF TARRANT §

This instrument was acknowledged before me on October 4, 2018, by Aubrey Thagard, Assistant General Manager of FORT WORTH HOUSING FINANCE CORPORATION, a Texas housing finance corporation, on behalf of said corporation.



Sarah Burkett  
\_\_\_\_\_  
Notary Public in and for the  
State of Texas

My Commission Expires:  
\_\_\_\_\_

\_\_\_\_\_  
Printed Name

STATE OF TEXAS           §  
   §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on \_\_\_\_\_, 2018, by \_\_\_\_\_, \_\_\_\_\_ of MAKER BROS, LLC, a Texas limited liability company, on behalf of said limited liability company.

\_\_\_\_\_  
Notary Public in and for the  
State of Texas

My Commission Expires:  
\_\_\_\_\_

\_\_\_\_\_  
Printed Name

EXECUTED this 2nd day of October, 2018

AFFIANTS:

MISTLETOE STATION, LLC, a Texas limited liability company

By: Saigebrook Mistletoe, LLC, a Texas limited liability company, its managing member

By: \_\_\_\_\_  
Lisa M. Stephens,  
President

FORT WORTH HOUSING FINANCE CORPORATION

By: \_\_\_\_\_  
Fernando Costa, General Manager

MAKER BROS, LLC

By: \_\_\_\_\_  
Name: Justin C. Bailey  
Title: Manager

STATE OF TEXAS           §  
  §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2018, by Lisa M. Stephens, President of Saigebrook Mistletoe, LLC, a Texas limited liability company, on behalf of said limited liability company, managing member of MISTLETOE STATION, LLC, a Texas limited liability company.

\_\_\_\_\_  
Notary Public, State of Texas

STATE OF TEXAS           §  
  §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on \_\_\_\_\_, 2018, by Fernando Costa, General Manager of FORT WORTH HOUSING FINANCE CORPORATION, a Texas housing finance corporation, on behalf of said corporation.

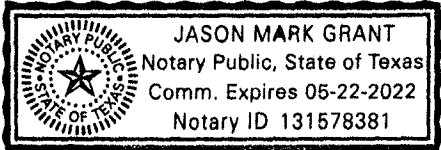
\_\_\_\_\_  
Notary Public in and for the  
State of Texas

My Commission Expires:

\_\_\_\_\_  
Printed Name

STATE OF TEXAS           §  
  §  
COUNTY OF DALLAS   §

This instrument was acknowledged before me on October 3rd, 2018, by Justin C. Bailey, Manager of MAKER BROS, LLC, a Texas limited liability company, on behalf of said limited liability company.



\_\_\_\_\_  
Notary Public in and for the  
State of Texas

My Commission Expires:  
May 22, 2022

Jason M. Grant  
Printed Name

17259

Mistletoe Station  
Construction Status  
Reports

## FIELD REPORT

---

**TO:** Lisa Stevens, Megan Lasch, Nathan Henry, Saigebrook Development

**FROM:** Les Young

**PROJECT NAME:** Mistletoe Station

**PROJECT NO:** 17116

**REPORT NO:** 1

**REPORT DATE:** 09-27-2018

**DATE ON SITE:** 9/27/18

**OBSERVER:** Erik Earnshaw

**DRAW REQUEST NO:** 1

---

**Site Conditions:** Sunny and Warm

**Progress Report:**

- Site – Clearing/Excavation
- Building #1 – Clearing/Excavation
- Building #2 – Clearing/Excavation

**General Comment Discussed Onsite:**

N/A

**Past Issues:**

- N/A

**SUMMARY:**

- Except for the above items, construction appears to be of good quality and substantially conforms to plans and specifications.

# Photographs – September 27, 2018

1)



2)



3)



4)



5)



6)



End of Report.



## FIELD REPORT

---

**TO:** Lisa Stevens, Megan Lasch, Nathan Henry, Saigebrook Development

**FROM:** Les Young

**PROJECT NAME:** Mistletoe Station

**PROJECT NO:** 17116

**REPORT NO:** 2

**REPORT DATE:** 10-30-2018

**DATE ON SITE:**

**OBSERVER:** Erik Earnshaw

**DRAW REQUEST NO:** 2

---

**Site Conditions:** Sunny and Warm

**Progress Report:**

- Site – Excavation and Culvert Construction
- Building #1 – Excavation
- Building #2 – Excavation

**General Comment Discussed Onsite:**

N/A

**Past Issues:**

- N/A

**SUMMARY:**

- Except for the above items, construction appears to be of good quality and substantially conforms to plans and specifications.

# Photographs – October 30, 2018

1)



2)



3)



4)



5)



6)



## FIELD REPORT

---

**TO:** Lisa Stevens, Megan Lasch, Nathan Henry, Saigebrook Development

**FROM:** Les Young

**PROJECT NAME:** Mistletoe Station

**PROJECT NO:** 17116

**REPORT NO:** 3

**REPORT DATE:** 11-27-18

**DATE ON SITE:** 11-27-18

**OBSERVER:** Les Young, Marissa Robles

**DRAW REQUEST NO:** 3

---

**Site Conditions:** Sunny and Warm

**Progress Report:**

- Site – Utility Installation
- Building #1 – Earthwork and existing utility removal
- Building #2 – Earthwork and existing utility removal

**General Comment Discussed Onsite:**

- Onsite Coordination of connecting existing utilities with new utilities.

**Past Issues:**

- None

**SUMMARY:**

- Except for the above items, construction appears to be of good quality and substantially conforms to plans and specifications.

Photographs – November 27, 2018

1)



2)



3)



4)



5)



6)



7)



8)



9)



10)



End of Report.

**FIELD REPORT**

---

**Attention:** Megan Lasch – CoBe  
Lisa Stephens – Mistletoe Station LLC

**Copied:** Justin Baily - Marker Bros.  
Kelton Gunter – Marker Bros.  
Kathy Turner – Saigebrook  
File

**Project Name:** Mistletoe Station – Fort Worth, Texas

**Project Number:** 17116 **Report Number:** 4

**Report Date:** 01/10/2019 **Date on Site:** 12/19/2018

**Observer:** Erik Earnshaw **Draw Request Number:** 4

---

**Weather:** 50 degrees, cloudy, light rain

---

**Construction Administration:**

**ASI's Issued:**

- None

**R.F.I's Status:**

- Refer to Maker Bros Construction Log

**Submittals:**

- Refer to Maker Bros Construction Log
- 

**Progress Report:**

**Site Work:**

- Site prep and clearing is 100% complete
- Erosion Control/SWPPP is 41% complete
- The site utilities are underway including water, fire line, and sanitary approx. 59% complete.
- Cast in place concrete has just started and is 1% complete

# BGO

## ARCHITECTS

- Foundation pad prep is graded but is being utilized for excavation spoils to complete site utilities at Building A
- Weather / rain days have been a factor on the progress of construction to date

### **Building #1 Type B w/Club Leasing**

- No work has started awaiting existing utilities to be removed including a fiber point of connection at the midpoint of Beckham Rd.

### **Building #2 A Type**

- Foundation pad is graded

### **Additional Items Discussed:**

1. The termination of the 2-hr fire barrier wall at Building B club entry, 2<sup>nd</sup> floor location. It was discussed that the wall could be moved to be adjacent to the window jab as long as the 2-hr fire barrier was maintained from the floor system to the intersection wall. The fire barrier is required to separate the different types of fire sprinkler systems NFPA 13 / NFPA 13R. **See attached SK-1.**
2. The egress stair at building B on the west end of the building, where the first story of the stair shaft is constructed of CMU, currently showing metal mid-level landing. It is acceptable by code; to frame this mid-level landing with wood trusses instead. See sheet A6-11 for reference.

**SITE PHOTOGRAPHS:**



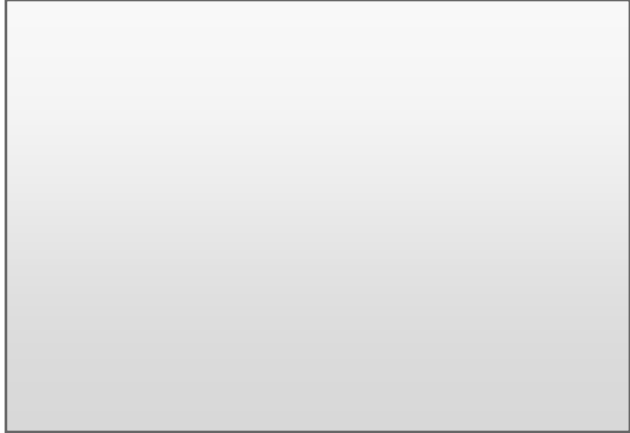
Tree line along Mistletoe Blvd. and Building B location



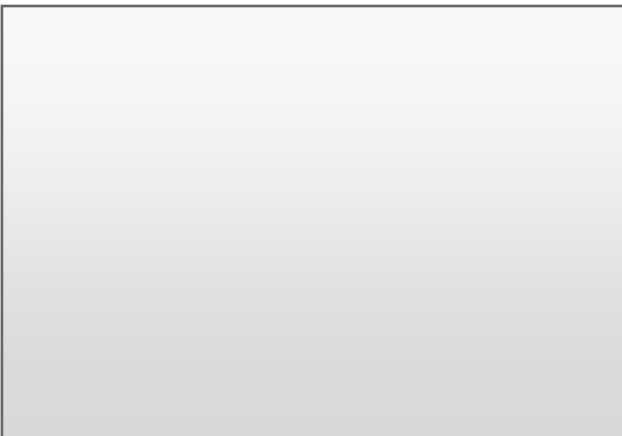
Off-site utility connection work progressing



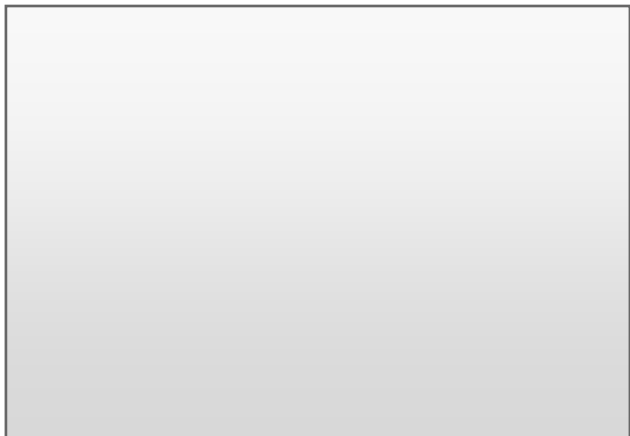
Building Pad A in distance



Blank



Blank



Blank



**FIELD REPORT**

---

**Attention:** Megan Lasch – CoBe  
Lisa Stephens – Mistletoe Station LLC

**Copied:** Justin Baily - Marker Bros.  
Kelton Gunter – Marker Bros.  
Kathy Turner – Saigebrook  
File

**Project Name:** Mistletoe Station – Fort Worth, Texas

**Project Number:** 17116 **Report Number:** 5

**Report Date:** 03/10/2019 **Date on Site:** 01/23/2019

**Observer:** Erik Earnshaw **Draw Request Number:** 5

---

**Weather:** 50 degrees, sunny dry end of the day

---

**Construction Administration:**

**ASI's Issued:**

- None

**R.F.I's Status:**

- Refer to Maker Bros Construction Log

**Submittals:**

- Refer to Maker Bros Construction Log
- 

**Progress Report:**

**Site Work:**

- Beckman Rd. progress with dirt work
- Offsite Box Calvert progressing on the Southside of Mistletoe Blvd.

# BGO

## ARCHITECTS

- The site utilities are underway including water, fire line, and sanitary approx. 63% compete.
- Cast in place concrete piers is progressing at 12% compete
- Foundation pad prep and grading is progressing, at Building B
- Weather / rain days have been a factor on the progress of construction to date. Ongoing

### **Building #1 Type B w/Club Leasing**

- Beckham Rd. rough grading as progress on building B foundation pad is progressing up to Mistletoe Blvd.
- Foundation at pad prep., Building B work is progressing

### **Building #2 A Type**

- Foundation pad is graded
- 12% pf the drilled piers have been placed
- The South Fire lane concrete is placed and saw cut for 60% of the length

### **Additional Items Discussed:**

Review of RFI's

**SITE PHOTOGRAPHS:**



Box Culvert In Progress



Building B looking north



Beckman Rd. on far left building B foundation pad prep underway



Building B staking



Building A Drilling piers in progress



Building A fire lane concrete being placed, ongoing progress of fire lane



Southwest corner of Building A



Building A Drilling piers in progress



Building A Drilling pier completed at this location.



Building A rebar storage



Building A Drilling piers in progress



Blank

**FIELD REPORT**

---

**Attention:** Megan Lasch – CoBe  
Lisa Stephens – Mistletoe Station LLC

**Copied:** Justin Baily - Marker Bros.  
Kelton Gunter – Marker Bros.  
Kathy Turner – Saigebrook  
File

**Project Name:** Mistletoe Station – Fort Worth, Texas

**Project Number:** 17116 **Report Number:** 6

**Report Date:** 03/14/2019 **Date on Site:** 02/27/2019

**Observer:** Erik Earnshaw **Draw Request Number:** 6

---

**Weather:** 55 degrees, overcast

---

**Construction Administration:**

**ASI's Issued:**

- None

**R.F.'s Status:**

- Refer to Maker Bros Construction Log

**Submittals:**

- Refer to Maker Bros Construction Log
- 

**Progress Report:**

**Site Work:**

- Beckman Rd. had been poured, and saw cut. More than 60% of onsite paved has now been place
- Offsite Box Calvert compete final grading completed

- The site utilities are underway including water, fire line, and sanitary approx. 63% compete.
- Cast in place concrete is progressing at 21% compete
- Foundation pad prep and grading is complete at Building B
- Weather / rain days have been a factor on the progress of construction to date. Ongoing

### **Building #1 Type B w/Club Leasing**

- Beckham Rd. concrete placed and tied into Mistletoe Blvd.
- Foundation prep. work is progressing

### **Building #2 A Type**

- Foundation pad is graded
- The last drilled pier was placed 2/4/19. Pier caps were approximately 80% complete on 2/27/19 and the interior foundation beams were complete.
- The South Fire lane concrete is placed

### **Additional Items Discussed:**

Review of RFI's

**SITE PHOTOGRAPHS:**



Offsite box culvert completed final grading underway



Corner of Bldg. B, Beckman Rd. looking west



North end of Beckman rd. Bldg. A beyond



North towards Mistletoe Blvd., Building B pad beyond



Bldg. A drilled piers with rebar



Ongoing progress at Bldg. A drilled piers

**FIELD REPORT**

---

**Attention:** Megan Lasch – CoBe  
Lisa Stephens – Mistletoe Station LLC

**Copied:** Justin Baily - Marker Bros.  
Kelton Gunter – Marker Bros.  
Kathy Turner – Saigebrook  
File

**Project Name:** Mistletoe Station – Fort Worth, Texas

**Project Number:** 17116 **Report Number:** 7

**Report Date:** 04/09/2019 **Date on Site:** 03/28/2019

**Observer:** Les Young **Draw Request Number:** 7

---

**Weather:** 60 degrees, clear

---

**Construction Administration:**

**ASI's Issued:**

- None

**R.F.I's Status:**

- Refer to Maker Bros Construction Log

**Submittals:**

- Refer to Maker Bros Construction Log
- 

**Progress Report:**

**Site Work:**

- Beckman Rd.had been poured, and saw cut. A majority of onsite paving has now been placed.
- Offsite Box Calvert compete final grading completed
- Retaining wall along church complete.



- The site utilities are underway including water, fire line, and sanitary.
- Cast in place concrete is progressing at 50% complete
- Foundation pad prep and grading is complete at Building B
- Weather / rain days have been a factor on the progress of construction to date, ongoing

**Building #1 Type B w/Club Leasing**

- Beckham Rd. concrete placed and tied into Mistletoe Blvd.
- Foundation construction ongoing.
- Majority of site retaining wall installed.

**Building #2 A Type**

- Pier caps complete and grade beams are 90% complete
- Plumbing installation ongoing.
- Concrete columns for podium ongoing.

**Additional Items Discussed:**

Review of RFI's

**SITE PHOTOGRAPHS:**



Headwall Construction



Headwall and drainage construction



Foundation for Building B



Foundation for Building B



Foundation for Building B



Foundation for Building B



Foundation for Building B



Foundation for Building B



Foundation for Building B



Building A



Building B



Building B



Building B



Building B



Concrete Fire lane



Fire lane



Drainage along Fire Lane



Looking north across site



Earthwork under bridge



Existing sewer



Elevator pit at Building B



Podium columns at Building B



Podium columns and retaining wall at Building B



Plumbing at Building B

**FIELD REPORT**

---

**Attention:** Megan Lasch – CoBe  
Lisa Stephens – Mistletoe Station LLC

**Copied:** Justin Baily - Marker Bros.  
Kelton Gunter – Marker Bros.  
Kathy Turner – Saigebrook  
File

**Project Name:** Mistletoe Station – Fort Worth, Texas

**Project Number:** 17116 **Report Number:** 8

**Report Date:** 04/24/2019 **Date on Site:** 04/24/2019

**Observer:** Les Young **Draw Request Number:** 8

---

**Weather:** 60 degrees, Raining

---

**Construction Administration:**

**ASI's Issued:**

- None

**R.F.I's Status:**

- Refer to Maker Bros Construction Log

**Submittals:**

- Refer to Maker Bros Construction Log
- 

**Progress Report:**

**Site Work:**

- Beckman Rd.had been poured, and saw cut. A majority of onsite paving has now been placed.
- Offsite Box Culvert compete final grading completed
- Retaining wall along church complete.

- The site utilities are complete including water, fire line, and sanitary.
- Cast in place concrete is progressing at 68% complete
- Retaining walls are complete at Building B
- Weather / rain days have been a factor on the progress of construction to date, ongoing

### **Building #1 Type B w/Club Leasing**

- Beckham Rd. concrete placed and tied into Mistletoe Blvd.
- Foundation construction ongoing.
- Majority of site retaining wall installed.

### **Building #2 A Type**

- Pier caps complete and grade beams are complete
- Concrete at parking level ongoing
- Concrete columns for podium ongoing.

### **Additional Items Discussed:**

Review of RFI's

**SITE PHOTOGRAPHS:**



Headwall at Creek



New Mistletoe



Looking North across site



Mistletoe and the west corner of Building B



Building B



Building B





Retaining wall at Building B



Retaining wall at Building B



Building A



Building A and Firelane



Retaining wall at B



Retaining wall at Building B Stair



Gravity wall and parking lot between buildings



Building A columns



Building A parking and columns



Building A parking



Building A and Fire lane



Grease trap



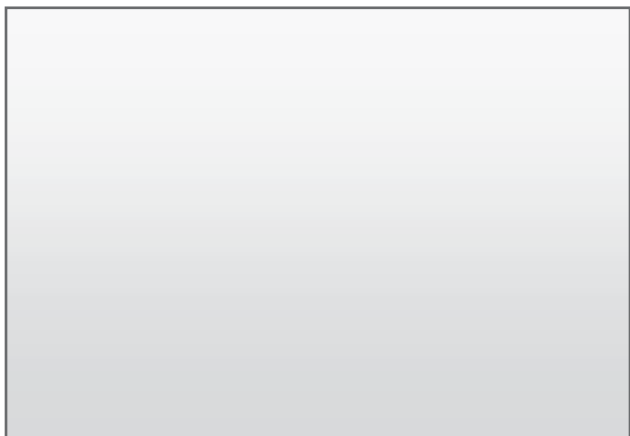
Building B Stair walls



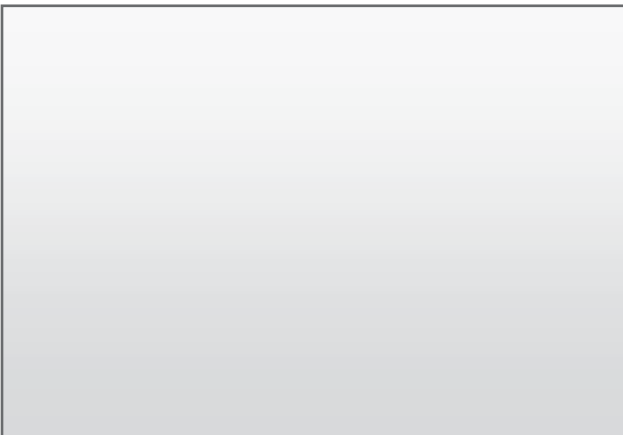
Building B Stair walls



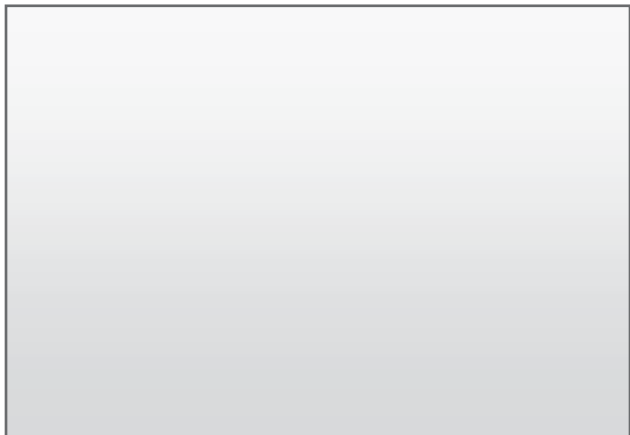
Looking North toward Rosedale



Not Used



Not Used



Not Used

**FIELD REPORT**

---

**Attention:** Megan Lasch – CoBe  
Lisa Stephens – Mistletoe Station LLC

**Copied:** Justin Baily - Marker Bros.  
Kelton Gunter – Marker Bros.  
Kathy Turner – Saigebrook  
File

**Project Name:** Mistletoe Station – Fort Worth, Texas

**Project Number:** 17116 **Report Number:** 9

**Report Date:** 06/07/2019 **Date on Site:** 05/24/2019

**Observer:** Les Young **Draw Request Number:** 8

---

**Weather:** 86 degrees, Sunny

---

**Construction Administration:**

**ASI's Issued:**

- None

**R.F.I's Status:**

- Refer to Maker Bros Construction Log

**Submittals:**

- Refer to Maker Bros Construction Log
- 

**Progress Report:**

**Site Work:**

- Beckman Rd. had been poured, and saw cut. A majority of onsite paving has now been placed.
- Offsite Box Culvert compete final grading completed
- Retaining wall along church complete.

- The site utilities are complete including water, fire line, and sanitary.
- Cast in place concrete foundation is complete
- Retaining walls are complete at Building B
- Weather / rain days have been a factor on the progress of construction to date, ongoing

### **Building #1 Type B w/Club Leasing**

- Beckham Rd. concrete placed and tied into Mistletoe Blvd.
- Foundation construction complete
- Gravity installed

### **Building #2 A Type**

- Pier caps complete and grade beams are complete
- Concrete at parking level complete
- Concrete columns for podium complete
- Podium forming 30% complete

### **Additional Items Discussed:**

Review of RFI's  
Review of Shop Drawings  
Accessible route through building B

**SITE PHOTOGRAPHS:**



Stored Framing Material



Stored Framing Material



Stored Framing Material



Stored Framing Material



Culvert



Repaired Mistletoe and Building B Foundation



Foundation for Sound wall



Looking North Across site toward Building A



View Northeast across site



Building A



Building A



Building A Podium forming



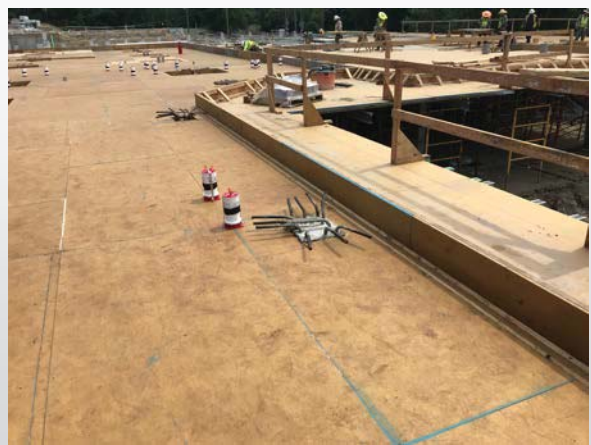
Building A Podium forming



Building A Podium forming



Building A Podium Forming



Building A Podium Forming



Looking West across site from Building A



Looking West across site



**SITE PHOTOGRAPHS:**



Building A Podium Forming



Building A along retaining wall



Excavation under Rosedale



Transformer pads



Retaining wall at Building B



Retaining wall at Building B



Building B Foundation along Mistletoe



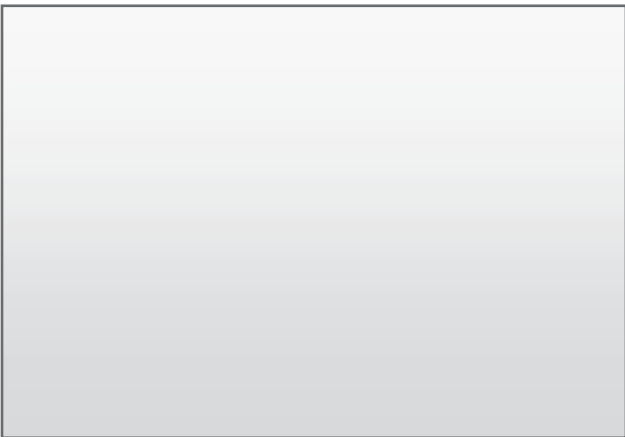
Stair tower foundation



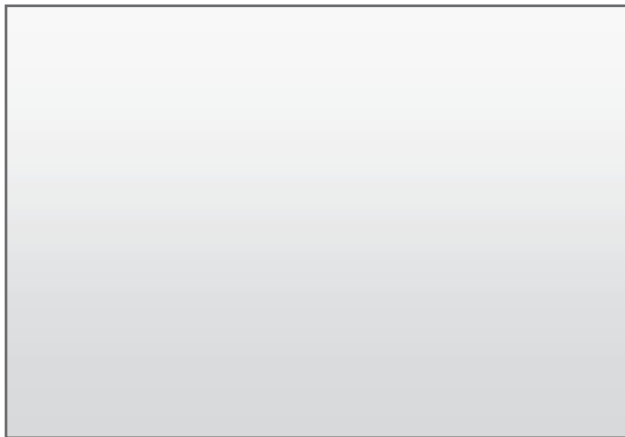
Gravity wall at Building B



Building A columns



Not Used



Not Used

**FIELD REPORT**

---

**Attention:** Megan Lasch – CoBe  
Lisa Stephens – Mistletoe Station LLC

**Copied:** Justin Baily - Marker Bros.  
Kelton Gunter – Marker Bros.  
Kathy Turner – Saigebrook  
File

**Project Name:** Mistletoe Station – Fort Worth, Texas

**Project Number:** 17116 **Report Number:** 10

**Report Date:** 07/09/2019 **Date on Site:** 06/24/2019

**Observer:** Les Young **Draw Request Number:** 10

---

**Weather:** 86 degrees, Partly Sunny

---

**Construction Administration:**

**ASI's Issued:**

- None

**R.F.I's Status:**

- Refer to Maker Bros Construction Log

**Submittals:**

- Refer to Maker Bros Construction Log
- 

**Progress Report:**

**Site Work:**

- Beckman Rd. had been poured, and saw cut. A majority of onsite paving has now been placed.
- Offsite Box Culvert compete final grading completed
- Retaining wall along church complete.

- The site utilities are complete including water, fire line, and sanitary.
- Cast in place concrete foundation is complete
- Retaining walls are complete at Building B
- Weather / rain days have been a factor on the progress of construction to date, ongoing

### **Building #1 Type B w/Club Leasing**

- Beckham Rd. concrete placed and tied into Mistletoe Blvd.
- Foundation construction complete
- Gravity wall installed
- Footing for sound wall poured
- Framing on second floor ongoing
- Steel framing required intumescent paint per code

### **Building #2 A Type**

- Pier caps complete and grade beams are complete
- Concrete at parking level complete
- Concrete columns for podium complete
- Podium forming 75% complete
- 30% of Podium Poured

### **Additional Items Discussed:**

Review of RFI's  
Review of Shop Drawings  
Accessible route through building B

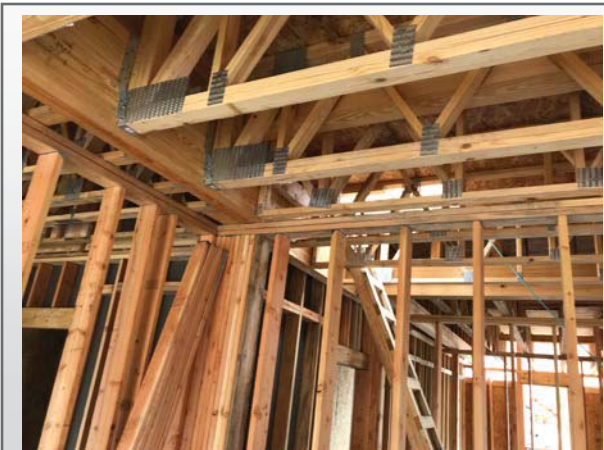
**SITE PHOTOGRAPHS:**



Clubhouse Framing at entry – Building B



First floor framing – Building B



First Floor framing – Building B



Steel Structural framing – Building B  
Provide intumescent paint on steel



Steel Structural Framing – Building B  
Provide intumescent paint on steel



Location for Pilaster – Building B



Second floor framing – Building B



Concrete podium and concrete columns  
Building A



Courtyard Building B



Courtyard Building B



Columns – Building A



Top of Podium – Building A



Top of Podium Building A



Formwork for Building A



Looking North across site from Building A



Framing Building B



Drive on the West side of site



Retaining wall and stair tower – Building B

## FIELD REPORT

---

**Attention:** Megan Lasch – CoBe  
Lisa Stephens – Mistletoe Station LLC

**Copied:** Justin Baily - Marker Bros.  
Kelton Gunter – Marker Bros.  
Kathy Turner – Saigebrook  
File

**Project Name:** Mistletoe Station – Fort Worth, Texas

**Project Number:** 17116

**Report Number:**

11

**Report Date:** 08/09/2019

**Date on Site:**

07/26/2019

**Observer:** Les Young

**Draw Request Number:**

10

---

**Weather:** 86 degrees, Partly Sunny

---

### Construction Administration:

**ASI's Issued:**

- None

**R.F.I's Status:**

- Refer to Maker Bros Construction Log

**Submittals:**

- Refer to Maker Bros Construction Log
- 

### Progress Report:

**Site Work:**

- Beckman Rd. had been poured, and saw cut. A majority of onsite paving has now been placed.
- Offsite Box Culvert compete final grading completed
- Retaining wall along church complete.



- The site utilities are complete including water, fire line, and sanitary.
- Cast in place concrete foundation is complete
- Retaining walls are complete at Building B
- Weather / rain days have been a factor on the progress of construction to date, ongoing

**Building #1 Type B w/Club Leasing**

- Beckham Rd. concrete placed and tied into Mistletoe Blvd.
- Foundation construction complete
- Gravity wall installed
- Footing for sound wall poured
- Roof Framing ongoing
- Steel framing required intumescent paint per code

**Building #2 A Type**

- Pier caps complete and grade beams are complete
- Concrete at parking level complete
- Concrete columns for podium complete
- Podium forming 95% complete
- 60% of Podium Poured

**Additional Items Discussed:**

Review of RFI's

Review of Shop Drawings

Accessible route through building B

**SITE PHOTOGRAPHS: JULY 26, 2019**



**Building B Framing**



**Building B Framing**



**Building B Framing**



**Building B Framing**



**Building B Framing**



**Building B Interior**



Building B Interior



Building B Courtyard



Building B Courtyard



Building B Exit



Building B window sill



Building B Breezeway



Building B Interior Framing



Building B Breezeway



Building B Interior Framing



Building B C2 unit



Building B HC ramp



Building A Podium



Building B Exterior



Building B Exterior



Building A Podium



Building A Podium



Building A Podium



Building A Podium

**FIELD REPORT**

---

**Attention:** Megan Lasch – CoBe  
Lisa Stephens – Mistletoe Station LLC

**Copied:** Justin Baily - Marker Bros.  
Kelton Gunter – Marker Bros.  
Kathy Turner – Saigebrook  
File

**Project Name:** Mistletoe Station – Fort Worth, Texas

**Project Number:** 17116 **Report Number:** 12

**Report Date:** 09/12/2019 **Date on Site:** 08/28/2019

**Observer:** Les Young **Draw Request Number:** 12

---

**Weather:** 94 degrees, Sunny

---

**Construction Administration:**

**ASI's Issued:**

- None

**R.F.I's Status:**

- Refer to Maker Bros Construction Log

**Submittals:**

- Refer to Maker Bros Construction Log
- 

**Progress Report:**

**Site Work:**

- Onsite paving complete.
- Offsite Box Culvert not complete, final grading completed
- Retaining wall along church complete.
- Retaining wall around Existing light pole to be reworked

# BGO

## ARCHITECTS

- Concrete is poured at Handicap ramp at Building B, ongoing.
- The site utilities are complete including water, fire line, and sanitary.
- Cast in place concrete foundation is complete.
- Retaining walls are complete at Building B.
- Sidewalk and exterior concrete stairs installed
- Weather / rain days have been a factor on the progress of construction.

### **Building #1 Type B w/Club Leasing**

- Beckham Rd. concrete placed and tied into Mistletoe Blvd.
- Foundation construction complete
- Gravity wall installed
- Footing for sound wall poured
- Roof Framing complete
- Steel framing required intumescent paint per code
- Interior Corridors to comply with W-4 wall type at Unit/Corridor Separation. Please add 5/8" type 'x' sheetrock
- Exterior sheathing installed, windows installed and Tyvek installation complete.
- Exterior Fiber Cement board installed.
- Insulation installation ongoing.
- Gypsum board stored in unit.
- Plumbing rough in ongoing
- Sprinkler rough in ongoing
- I directed Kelton to provide full insulation above clubhouse ceiling truss space as it is not sprinklered per the plans.

### **Building #2 A Type**

- Podium complete
- Concrete at parking level complete
- Wood framing on going
- Plumbing rough in ongoing
- Firewall installation ongoing

### **Additional Items Discussed:**

Review of RFI's  
Review of Shop Drawings  
Accessible route through building B

**SITE PHOTOGRAPHS:**



Building B South Elevation



Building B West Elevation



Building B North Elevations



Building B West Elevation



Retaining Wall at Existing Telephone Pole



Concrete Handicap Ramp





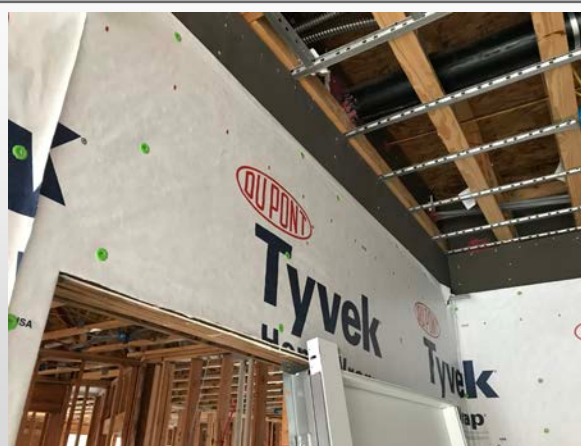
Concrete Handicap Ramp



Building A



Building A



Building B Corridor



Building B Corridor



Truss space above clubhouse



Truss space above clubhouse



Framing at clubhouse storefront location



Stored Sheetrock at Building B



Sill detail at Building B



Insulation Installation at Building B



Building A looking from B



Stored Material



Stored Material



Building B South and East Elevation



Building B East Elevation



Space between retaining wall at Building A



Parking level under podium at Building A

**SITE PHOTOGRAPHS:**



Parking level under podium at Building A



Parking level under podium at Building A



Stored material under podium



Standing water at unit framing above podium



Courtyard above podium at Building A



Unit framing above podium at Building A



Move window per RFI at Firewall location



Courtyard Framing on Building A



Framing on Building A



Framing and Firewall at Building A



Framing at Building A



Framing and Firewall at Building A

**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**OCTOBER 10, 2019**

Presentation, discussion and possible action on a request for return and reallocation of tax credits under 10 TAC §11.6(5) related to Credit Returns Resulting from Force Majeure Events for Application 17290, Golden Trails

**RECOMMENDED ACTION**

**WHEREAS**, an award of Competitive (9%) Housing Tax Credits in the amount of \$520,840 to 17290, Golden Trails (the Development) was approved by the Board on July 27, 2017;

**WHEREAS**, staff executed a Carryover Allocation Agreement with the Development Owner on December 12, 2017, that included a certification from the Development Owner that each building for which the allocation was made would be placed in service by December 31, 2019;

**WHEREAS**, on August 22, 2019, the Department received from the Development Owner a request to extend the placement in service deadline under the requirements of 10 TAC §11.6(5) related to Credits Returns Resulting from Force Majeure Events;

**WHEREAS**, other than in situations covered by force majeure, the Department lacks authority to extend federal deadlines for placement in service; and

**WHEREAS**, the precipitating events described in the request meet the requirements for force majeure events described in 10 TAC §11.6(5);

**NOW, therefore, it is hereby**

**RESOLVED**, the request for treatment of Golden Trails under an application of the force majeure rule is approved, with the 2017 Qualified Allocation Plan and Uniform Multifamily Rules applicable to the Development;

**FURTHER RESOLVED**, that the Applicant will receive a 2019 Carryover Agreement extending the placed in service deadline until June 10, 2020; and

**FURTHER RESOLVED**, that staff is authorized, empowered, and directed, for and on behalf of the Department to execute such documents, instruments and writings and perform such acts and deeds as may be necessary to effectuate the foregoing.

**BACKGROUND**

An award of \$520,840 in Competitive (9%) Housing Tax Credits to the Development was approved by the Board on July 27, 2017. The Development proposed the New Construction of 45 Units for an Elderly population in West. Staff executed a Carryover Allocation Agreement with the Development Owner on December 12, 2017, that included a certification from the Development Owner that, in order to satisfy

the requirements of §42 of the Internal Revenue Code, each building for which the allocation was made would be placed in service by December 31, 2019.

On August 22, 2019, the Department received from attorneys for West Texas Golden Trails, LP, the Development Owner, a request to extend the placement in service deadline from December 31, 2019, to June 10, 2020, under the provisions of 10 TAC §11.6(5) related to Credits Returns Resulting from Force Majeure Events. This rule allows a Development Owner to return issued credits within three years of award and have those credits re-allocated to the Development outside of the usual regional allocation system if all of the requirements of the subsection are met. Pursuant to 10 TAC §11.6(5), the Department's Governing Board may approve the execution of a current program year Carryover Allocation Agreement regarding the returned credits with the Development Owner that returned such credits only if:

(A) The credits were returned as a result of "Force Majeure" events that occurred after the start of construction and before issuance of Forms 8609. **Force Majeure events are the following sudden and unforeseen circumstances outside the control of the Development Owner:** acts of God such as fire, tornado, flooding, significant and unusual rainfall or subfreezing temperatures, or loss of access to necessary water or utilities as a direct result of significant weather events; explosion; vandalism; orders or acts of military authority; litigation; changes in law, rules, or regulations; national emergency or insurrection; riot; acts of terrorism; supplier failures; or materials or labor shortages. If a Force Majeure event is also a presidentially declared disaster, the Department may treat the matter under the applicable federal provisions. Force Majeure events must make construction activity impossible or materially impede its progress; (emphasis added)

Of the circumstances listed in the rule, the request indicates that force majeure might be triggered by significant and unusual rainfall.

### **Significant and Unusual Rainfall**

In the request, the Development Owner states that "McLennan County typically receives approximately 36 inches of rain per year. However, since October, 2018, when the work on the Project's foundation commenced, through June, 2019, a mere nine months, 42.79 inches of rain have already fallen." The request states, "Due to these unforeseen issues, a total of 154 construction days have been affected due to the rainfall and/or the need to allow the clay to dry sufficiently before construction of the foundation could proceed." The request includes an "Exhibit A" document with rainfall data from the US Department of Commerce, an "Exhibit B" showing how the construction schedule was affected by the delays, an "Exhibit C" described as "a list of days lost due to the precipitation or unworkable condition of the soil as a direct result of the precipitation", and an "Exhibit D" of photographs described as "depicting problems with the soil."

Pursuant to 10 TAC §10.402(h) of the Asset Management Rules, all multifamily developments must submit a construction status report (CSR), due by the tenth day of the month following each reporting quarter's end (January, April, July, and October) and continue on a quarterly basis until the entire development is complete. The first CSR was due on October 10, 2018. The submitted TDHCA HOME Construction Loan Agreement indicates that the loan was closed on June 14, 2018, with a completion date of January 14, 2020, at the latest. Staff has no objection to extending the completion date required by the HOME contract to June 10, 2020. A second Construction Loan Agreement indicates the loan was closed on July 20, 2018, with a completion date of October 31, 2019. Staff requested that the

Development Owner provide evidence that the Lender has agreed to extend the completion deadline, which the Development Owner provided. The construction contract was signed on June 18, 2018, and the Development Agreement and Partnership Agreement were signed on July 20, 2018. Per the timeline in the request, construction started in July 2018.

Included with the CSRs reviewed for this Development are field reports from AECC, Inc. (AECC). The reports are summarized below. The CSRs indicate that 4C Development – Texas, LLC, a related entity of the Development Owner, is the Developer and Hamilton Builders, LLC, a related entity of the Development Owner, is the Contractor. The CSRs do not include detailed information regarding building site conditions, however, photographs submitted with the request document conditions at the site.

- Report 1 dated September 20, 2018, of August 27 site visit notes construction 2.5% complete:
  - Site conditions “clear, dry.”
  - “At the time of our site visit, a temporary construction entrance had been established. A temporary job trailer was on-site. Earth working equipment was mobilized and active on site. Clearing and grubbing operations are well under way. Excavation and rough grading of the site was in progress.”
- Report 2 dated October 22, 2018, of September 27 site visit notes construction 7.3% complete:
  - Site conditions “clear, dry.”
  - “Clearing and grubbing operations are nearing completion. Excavation and rough grading of the site was well under way. The building pad has been graded. Slab form setting is well under way.”
- Report 3 dated November 15, 2018, of October 29 site visit notes construction 11% complete:
  - Site conditions “clear, wet.”
  - “The building pad has been prepared. Slab form setting is well under way.”
  - “Significant Items of Concern: Project schedule.”
- Report 4 dated December 17, 2018, of November 27 site visit notes construction 19% complete:
  - Site conditions “clear, dry.”
  - “Paving curbs are well under way at the entry drive. The asphalt base has been poured. Site wet utilities are in progress. Slab form setting is nearing completion.”
  - “Significant Items of Concern: Project schedule.”
- Report 5 dated January 15, 2019, of January 4 site visit notes construction 20% complete:
  - Site conditions “clear, wet.”
  - “Site wet utilities are nearing completion.”
  - “Significant Items of Concern: Project schedule, testing reports.”
- Report 6 dated February 15, 2019, of January 31 site visit notes construction 26% complete:
  - Site conditions “cloudy, dry.”



- “The building pad has been prepared. Underslab plumbing rough-ins are in progress. Slab form setting is nearing completion. Drilled piers cage insertion and concrete are in progress.”
- “Significant Items of Concern: Project schedule, testing reports.”
- Report 7 dated March 8, 2019, of February 28 site visit notes construction 29% complete:
  - Site conditions “cloudy, damp.”
  - “Underslab plumbing rough-ins are well under way. Slab form setting is nearing completion. Drilled piers cage insertion and concrete are well under way.”
  - “Significant Items of Concern: Project schedule.”
- Report 8 dated April 15, 2019, of March 26 site visit notes construction 33% complete:
  - Site conditions “clear, dry.”
  - “Underslab plumbing rough-ins are complete. Drilled piers cage insertion and concrete are complete.”
  - “Significant Items of Concern: Project schedule.”
- Report 9 dated May 15, 2019, of April 30 site visit notes construction 30% complete:
  - Site conditions “rain.”
  - “Forms and pt tendon reinforcing placement is in progress.”
  - “An up-to-date project schedule should be provided.”
  - “Significant Items of Concern: Project schedule.”
- Report 10 dated June 7, 2019, of May 29 site visit notes construction 31% complete:
  - Site conditions “light rain.”
  - “Forms and PT tendon reinforcing placement is well under way.”
  - “An up-to-date project schedule should be provided.”
  - “Significant Items of Concern: Project schedule.”
  - “Job progress has been slow this period.”

Based on photographs submitted with the request, staff has determined that the Development Owner has provided sufficient evidence that the Development has been affected by “sudden and unforeseen circumstances outside the control of the Development Owner” as described in 10 TAC §11.6(5), particularly significant and unusual rainfall. If the Board grants the request to consider this a force majeure event, the Development Owner will return \$520,840 in credits. The credits will be returned to the Development Owner with a 2019 Carryover Allocation Agreement and the date for the Development to be placed in service will be June 10, 2020, with the 2017 Qualified Allocation Plan and Uniform Multifamily Rules applicable to the Development.

If the Board denies the request to consider this a force majeure event, the Development Owner will retain \$520,840 in credits and the date by which the Development must be placed in service will remain December 31, 2019. If the Development Owner returns the credits, the credits would first be made available in the subregion from which they were originally awarded, pursuant to 10 TAC §11.6(2), related to returned credits; in this case Region 8, Rural. There is one pending Application on the 2019 waiting list from that subregion. The next Application requests \$975,749, which is more than the amount of credits that would be returned. Pursuant to 10 TAC §11.6, staff would apply the credits to the collapse and, if enough credits are available, award credits to the next Application on the waiting list.

Staff recommends the Board approve the request for treatment of Golden Trails under an application of the force majeure rule.

17290  
Golden Trails  
Force Majeure Request



A LIMITED LIABILITY PARTNERSHIP  
ATTORNEYS & COUNSELORS

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(214) 780-1401 (Fax)  
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August 22, 2019

*Via Email Marni.Holloway@tdhca.state.tx.us*

Ms. Marni Holloway, Director of Multifamily Finance  
Texas Department of Housing and Community Affairs  
211 E 11<sup>th</sup> Street  
Austin, Texas 78701

Re: TDHCA Application #17290 - Golden Trails

Dear Ms. Holloway:

West Texas Golden Trails, LP (the “Owner”), received an allocation of Housing Tax Credits from the Texas Department of Housing and Community Affairs (“TDHCA”) for the construction of a project called Golden Trails, located at 314 Melodie Drive, West, Texas (the “Project”). The Owner is required to place the Project into service no later than December 31, 2019, as required by Section 42(h)(1)(E)(i) of the Internal Revenue Code of 1986, as amended. Unfortunately, the Owner faces the likelihood that it will not be able to place the Project into service by that date. This possibility of the delayed placement in service is the result of events that we believe should fall under the Force Majeure provisions of §11.6(5) of the Texas Administrative Code.

#### Background Information

The Project is located in West, McLennan County, Texas. The City of West, along with the entire county, experienced significant and unusual rainfall throughout the construction of the Project, which has had an adverse effect on the initial construction schedule and in-service timelines. McLennan County typically receives approximately 36 inches of rain per year.<sup>1</sup> However, since October, 2018, when the work on the Project’s foundation commenced, through June, 2019, a mere nine months, 42.79 inches of rain have already fallen.<sup>2</sup> **This significantly increased rainfall has primarily impacted the pouring of the building’s slab, which materially impeded the Project’s progress.** More specifically, the greater-than-average and more frequent rain events, coupled with the type of slab construction required by the on-site soils and how the soils react to this unanticipated rainfall, caused the Project to experience significant delays in construction.

<sup>1</sup> <https://www.bestplaces.net/climate/city/texas/west>

<sup>2</sup> See Record of Climatological Observations, National Oceanic & Atmospheric Administration, at Exhibit A.

The site sits on what is called “high-plastic” or “fat” clays, which are very sensitive to moisture. Essentially, when moisture is introduced to this type of clay, it absorbs the moisture and swells, similar to a sponge. This type of clay also holds the moisture longer than other clays and, as a result, the clay takes longer to return to a workable condition after a rain event.

As an additional complication, because of the shrinkage and swelling associated with this type of clay when it encounters moisture, each section of the slab had to be isolated from the subgrade underneath it by 18 inches, requiring a multi-step process to grade the subgrade elevation, drill and pour piers, install lifting mechanisms and under-slab utilities, lay poly, post-tension cables, and rebar, and finally pour the slab. The slab is then slowly raised to the 18-inch mark.

Because of the 18-inch subgrade that was required due to the soil, the foundation was more susceptible to water infiltration from the rain, which caused additional delays. After rain events, construction crews were forced to wait for the slab subgrade to become stable enough to support the heavy drilling equipment and concrete trucks needed to construct the piers that support the floor slab. Since the size of the Project necessitated constructing the slab in three sections, this process was repeated multiple times as rain forced the crew to allow the slab and soils to dry enough to attempt to complete the various steps in constructing the slab.

Due to these unforeseen issues, a total of 154 construction days have been affected due to the rainfall and/or the need to allow the clay to dry sufficiently before construction of the foundation could proceed. Further, because of the nature of foundation work, there were times when a period of consecutive, rain-free days was required in order to work on the slab, which occasionally meant waiting for a multi-day favorable forecast before work could begin. Of course, the delays in constructing the slab affect the schedule of the entire project as these delays push out the anticipated start dates of other tasks, creating a cascade effect.<sup>3</sup>

The Owner has assembled a list of days lost due to the precipitation or unworkable condition of the soil as a direct result of the precipitation, which is attached hereto as Exhibit C. Pictures taken from the weekly construction status reports, which depict the problems with the soil, are included as Exhibit D. These weekly photo reports also show the daily forecast for the applicable month and the daily rain fall in inches.

### Request

While we hope that the Project can meet the placement in service requirements by the December 31, 2019, deadline, in the event that is not possible due to the delays described above, we request that the Owner be permitted to return the Tax Credits and that the TDHCA reallocate the Tax Credits to the Owner in the current year in accordance with §11.6(5) of the 2019 QAP relating to Force Majeure. We believe the Owner and Project meet all of the requirements in §11.6(5), in that:

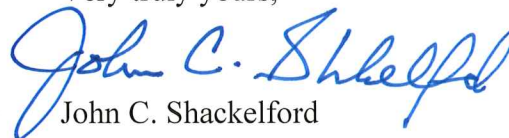
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<sup>3</sup> See the Construction Timeline at Exhibit B, which shows how the delays have impacted the overall construction timeline.

1. The events that caused the delay (i.e., the excessive rainfall resulted in unfavorable construction conditions) occurred before the issuance of 8609s and were sudden, unforeseen circumstances outside the control of the Project Owner.
2. The delays were not caused by willful negligence or acts of Owner, any affiliate of Owner, or any other related party of Owner.
3. The Owner has provided evidence and a timeline of the events showing that the delays were the direct result of the Force Majeure event, see Exhibits A-D.
4. Though there was little that could be done to mitigate the excessive rainfall, the Owner took all reasonable steps to minimize or mitigate any delays by taking a number of provisional measures, including pumping water from the building pad, creating a berm to divert water and covering the foundation with a secondary barrier to help reduce the amount of water penetration. These ongoing efforts are detailed at Exhibit E.
5. The Force Majeure threatens to prevent the Owner from meeting the place in service requirements of the original allocation.
6. The requested current year Carryover Agreement would allocate the same amount of Tax Credits as those that would be returned.
7. The Project continues to be financially feasible, as these delays have not significantly increased the original construction budget, nor have there been any insurance proceeds received related to the Force Majeure event.

If you have any questions or would like to discuss these matters further, please do not hesitate to contact me directly at 214-780-1414 or via email at [jshack@shackelford.law](mailto:jshack@shackelford.law).

Very truly yours,

  
John C. Shackelford

JCS:tlw

cc: J. Ryan Hamilton (via email)  
Adam Horton (via email)  
Leslie Wilde (via email)  
Michael Podoloff (via email – [mike.podoloff@tdhca.state.tx.us](mailto:mike.podoloff@tdhca.state.tx.us))  
Lauren Osterman (via email)

**EXHIBIT “A”**  
**(Attached)**

## Record of Climatological Observations

**These data are quality controlled and may not be identical to the original observations.**

Generated on 03/26/2019

Observation Time Temperature: Unknown Observation Time Precipitation: 0700

Year	Month	Day	Temperature (F)		At Observation	Precipitation				Evaporation		Soil Temperature (F)						
			24 Hrs. Ending at Observation Time			24 Hour Amounts Ending at Observation Time				At Obs. Time	24 Hour Wind Movement (mi)	Amount of Evap. (in)	4 in. Depth			8 in. Depth		
			Max.	Min.		Rain, Melted Snow, Etc. (in)	Flag	Snow, Ice Pellets, Hail (in)	Flag				Snow, Ice Pellets, Hail, Ice on Ground (in)	Ground Cover (see *)	Max.	Min.	Ground Cover (see *)	Max.
2018	09	01				0.00												
2018	09	02				0.00												
2018	09	03				0.00												
2018	09	04				0.21												
2018	09	05				0.00												
2018	09	06				0.21												
2018	09	07				0.00												
2018	09	08				0.48												
2018	09	09				1.12												
2018	09	10				0.00												
2018	09	11				0.00												
2018	09	12				0.58												
2018	09	13				0.23												
2018	09	14				0.00												
2018	09	15				0.22												
2018	09	16				0.00												
2018	09	17				0.00												
2018	09	18				0.00												
2018	09	19				0.00												
2018	09	20				0.00												
2018	09	21				0.05												
2018	09	22				0.15												
2018	09	23				0.00												
2018	09	24				0.00												
2018	09	25				0.00												
2018	09	26				0.00												
2018	09	27				0.00												
2018	09	28				0.00												
2018	09	29				0.17												
2018	09	30				0.00												
Summary						3.42		0.0										

Empty, or blank, cells indicate that a data observation was not reported.

\*Ground Cover: 1=Grass; 2=Fallow; 3=Bare Ground; 4=Brome grass; 5=Sod; 6=Straw mulch; 7=Grass muck; 8=Bare muck; 0=Unknown

"s" This data value failed one of NCDC's quality control tests.

"T" values in the Precipitation or Snow category above indicate a "trace" value was recorded.

"A" values in the Precipitation Flag or the Snow Flag column indicate a multiday total, accumulated since last measurement, is being used.

Data value inconsistency may be present due to rounding calculations during the conversion process from SI metric units to standard imperial units.



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Generated on 03/26/2019

Observation Time Temperature: Unknown Observation Time Precipitation: 0700

Year	Month	Day	Temperature (F)		At Observation	Precipitation				Evaporation		Soil Temperature (F)						
			24 Hrs. Ending at Observation Time			24 Hour Amounts Ending at Observation Time				At Obs. Time	24 Hour Wind Movement (mi)	Amount of Evap. (in)	4 in. Depth			8 in. Depth		
			Max.	Min.		Rain, Melted Snow, Etc. (in)	Flag	Snow, Ice Pellets, Hail (in)	Flag				Snow, Ice Pellets, Hail, Ice on Ground (in)	Ground Cover (see *)	Max.	Min.	Ground Cover (see *)	Max.
2018	10	01				0.00												
2018	10	02				0.00												
2018	10	03				0.00												
2018	10	04				0.00												
2018	10	05				0.00												
2018	10	06				0.00												
2018	10	07				0.33												
2018	10	08				0.32												
2018	10	09				0.52												
2018	10	10				1.05												
2018	10	11				0.00												
2018	10	12				0.00												
2018	10	13				0.00												
2018	10	14				0.60												
2018	10	15				0.06												
2018	10	16				1.89												
2018	10	17				1.26												
2018	10	18				0.00												
2018	10	19				0.00												
2018	10	20				1.10												
2018	10	21				0.00												
2018	10	22				0.00												
2018	10	23				0.00												
2018	10	24				0.00												
2018	10	25				1.06												
2018	10	26				0.00												
2018	10	27				0.00												
2018	10	28				0.00												
2018	10	29				0.00												
2018	10	30				0.00												
2018	10	31				0.00												
Summary						8.19		0.0										

Empty, or blank, cells indicate that a data observation was not reported.

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Generated on 03/26/2019

Observation Time Temperature: Unknown Observation Time Precipitation: 0700

Year	Month	Day	Temperature (F)		At Observation	Precipitation				Evaporation		Soil Temperature (F)							
			24 Hrs. Ending at Observation Time			24 Hour Amounts Ending at Observation Time				At Obs. Time	24 Hour Wind Movement (mi)	Amount of Evap. (in)	4 in. Depth			8 in. Depth			
			Max.	Min.		Rain, Melted Snow, Etc. (in)	Flag	Snow, Ice Pellets, Hail (in)	Flag				Snow, Ice Pellets, Hail, Ice on Ground (in)	Ground Cover (see *)	Max.	Min.	Ground Cover (see *)	Max.	Min.
2018	11	01				0.54													
2018	11	02				0.00													
2018	11	03				0.00													
2018	11	04				0.53													
2018	11	05				0.00													
2018	11	06				0.00													
2018	11	07				0.00													
2018	11	08				0.00													
2018	11	09				0.00													
2018	11	10				0.00													
2018	11	11				0.00													
2018	11	12				1.65													
2018	11	13				0.00													
2018	11	14				0.00													
2018	11	15				0.00													
2018	11	16				0.00													
2018	11	17				0.00													
2018	11	18				0.00													
2018	11	19				0.00													
2018	11	20				0.00													
2018	11	21				0.00													
2018	11	22				0.00													
2018	11	23				0.00													
2018	11	24				0.00													
2018	11	25				0.00													
2018	11	26				0.00													
2018	11	27				0.00													
2018	11	28				0.00													
2018	11	29				0.00													
2018	11	30				0.00													
Summary						2.72		0.0											

Empty, or blank, cells indicate that a data observation was not reported.

\*Ground Cover: 1=Grass; 2=Fallow; 3=Bare Ground; 4=Brome grass; 5=Sod; 6=Straw mulch; 7=Grass muck; 8=Bare muck; 0=Unknown

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"T" values in the Precipitation or Snow category above indicate a "trace" value was recorded.

"A" values in the Precipitation Flag or the Snow Flag column indicate a multiday total, accumulated since last measurement, is being used.

Data value inconsistency may be present due to rounding calculations during the conversion process from SI metric units to standard imperial units.

## Record of Climatological Observations

**These data are quality controlled and may not be identical to the original observations.**

Generated on 03/26/2019

Observation Time Temperature: Unknown Observation Time Precipitation: 0700

Year	Month	Day	Temperature (F)		At Observation	Precipitation				Evaporation		Soil Temperature (F)						
			24 Hrs. Ending at Observation Time			24 Hour Amounts Ending at Observation Time				At Obs. Time	24 Hour Wind Movement (mi)	Amount of Evap. (in)	4 in. Depth			8 in. Depth		
			Max.	Min.		Rain, Melted Snow, Etc. (in)	Flag	Snow, Ice Pellets, Hail (in)	Flag				Snow, Ice Pellets, Hail, Ice on Ground (in)	Ground Cover (see *)	Max.	Min.	Ground Cover (see *)	Max.
2018	12	01				0.00												
2018	12	02				0.00												
2018	12	03				0.00												
2018	12	04				0.00												
2018	12	05				0.00												
2018	12	06				0.00												
2018	12	07				0.00												
2018	12	08				0.10												
2018	12	09				1.45												
2018	12	10				0.05												
2018	12	11				0.00												
2018	12	12				0.00												
2018	12	13				0.00												
2018	12	14				0.00												
2018	12	15				0.00												
2018	12	16				0.00												
2018	12	17				0.00												
2018	12	18				0.00												
2018	12	19				0.00												
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2018	12	22				0.00												
2018	12	23				0.00												
2018	12	24				0.00												
2018	12	25				0.00												
2018	12	26				0.00												
2018	12	27				1.91												
2018	12	28				0.00												
2018	12	29				0.00												
2018	12	30				0.05												
2018	12	31				0.56												
Summary						4.33		0.0										

Empty, or blank, cells indicate that a data observation was not reported.

\*Ground Cover: 1=Grass; 2=Fallow; 3=Bare Ground; 4=Brome grass; 5=Sod; 6=Straw mulch; 7=Grass muck; 8=Bare muck; 0=Unknown

"s" This data value failed one of NCDC's quality control tests.

"T" values in the Precipitation or Snow category above indicate a "trace" value was recorded.

"A" values in the Precipitation Flag or the Snow Flag column indicate a multiday total, accumulated since last measurement, is being used.

Data value inconsistency may be present due to rounding calculations during the conversion process from SI metric units to standard imperial units.

## Record of Climatological Observations

**These data are quality controlled and may not be identical to the original observations.**

Generated on 03/26/2019

Observation Time Temperature: Unknown Observation Time Precipitation: 0700

Year	Month	Day	Temperature (F)		At Observation	Precipitation				Evaporation		Soil Temperature (F)						
			24 Hrs. Ending at Observation Time			24 Hour Amounts Ending at Observation Time				At Obs. Time	24 Hour Wind Movement (mi)	Amount of Evap. (in)	4 in. Depth			8 in. Depth		
			Max.	Min.		Rain, Melted Snow, Etc. (in)	Flag	Snow, Ice Pellets, Hail (in)	Flag				Snow, Ice Pellets, Hail, Ice on Ground (in)	Ground Cover (see *)	Max.	Min.	Ground Cover (see *)	Max.
2019	01	01				0.00												
2019	01	02				0.43												
2019	01	03				2.35												
2019	01	04				0.12												
2019	01	05				0.00												
2019	01	06				0.00												
2019	01	07				0.00												
2019	01	08				0.00												
2019	01	09				0.00												
2019	01	10				0.00												
2019	01	11				0.00												
2019	01	12				0.25												
2019	01	13				0.00												
2019	01	14				0.00												
2019	01	15				0.00												
2019	01	16				0.00												
2019	01	17				0.00												
2019	01	18				0.00												
2019	01	19				0.00												
2019	01	20				0.00												
2019	01	21				0.00												
2019	01	22				0.00												
2019	01	23				0.09												
2019	01	24				0.00												
2019	01	25				0.00												
2019	01	26				0.21												
2019	01	27				0.00												
2019	01	28				0.00												
2019	01	29				0.00												
2019	01	30				0.00												
2019	01	31				0.00												
Summary						3.45		0.0										

Empty, or blank, cells indicate that a data observation was not reported.

\*Ground Cover: 1=Grass; 2=Fallow; 3=Bare Ground; 4=Brome grass; 5=Sod; 6=Straw mulch; 7=Grass muck; 8=Bare muck; 0=Unknown

"s" This data value failed one of NCDC's quality control tests.

"T" values in the Precipitation or Snow category above indicate a "trace" value was recorded.

"A" values in the Precipitation Flag or the Snow Flag column indicate a multiday total, accumulated since last measurement, is being used.

Data value inconsistency may be present due to rounding calculations during the conversion process from SI metric units to standard imperial units.

## Record of Climatological Observations

**These data are quality controlled and may not be identical to the original observations.**

Generated on 08/13/2019

Observation Time Temperature: Unknown Observation Time Precipitation: 0700

Year	Month	Day	Temperature (F)		At Observation	Precipitation				Evaporation		Soil Temperature (F)							
			24 Hrs. Ending at Observation Time			24 Hour Amounts Ending at Observation Time				At Obs. Time	24 Hour Wind Movement (mi)	Amount of Evap. (in)	4 in. Depth			8 in. Depth			
			Max.	Min.		Rain, Melted Snow, Etc. (in)	Flag	Snow, Ice Pellets, Hail (in)	Flag				Snow, Ice Pellets, Hail, Ice on Ground (in)	Ground Cover (see *)	Max.	Min.	Ground Cover (see *)	Max.	Min.
2019	02	01				0.00													
2019	02	02				0.00													
2019	02	03				0.00													
2019	02	04				0.00													
2019	02	05				0.00													
2019	02	06				0.00													
2019	02	07				0.10													
2019	02	08				0.00													
2019	02	09				0.18													
2019	02	10				0.18													
2019	02	11				0.15													
2019	02	12				0.00													
2019	02	13				0.00													
2019	02	14				0.00													
2019	02	15				0.00													
2019	02	16				0.00													
2019	02	17				0.00													
2019	02	18				0.00													
2019	02	19				0.00													
2019	02	20				1.31													
2019	02	21				0.00													
2019	02	22				0.00													
2019	02	23				0.00													
2019	02	24				0.00													
2019	02	25				0.00													
2019	02	26				0.00													
2019	02	27				0.00													
2019	02	28				0.00													
Summary						1.92		0.0											

Empty, or blank, cells indicate that a data observation was not reported.  
 \*Ground Cover: 1=Grass; 2=Fallow; 3=Bare Ground; 4=Brome grass; 5=Sod; 6=Straw mulch; 7=Grass muck; 8=Bare muck; 0=Unknown  
 "s" This data value failed one of NCDC's quality control tests.  
 "T" values in the Precipitation or Snow category above indicate a "trace" value was recorded.  
 "A" values in the Precipitation Flag or the Snow Flag column indicate a multiday total, accumulated since last measurement, is being used.  
 Data value inconsistency may be present due to rounding calculations during the conversion process from SI metric units to standard imperial units.

## Record of Climatological Observations

**These data are quality controlled and may not be identical to the original observations.**

Generated on 08/13/2019

Observation Time Temperature: Unknown Observation Time Precipitation: 0700

Year	Month	Day	Temperature (F)		At Observation	Precipitation				Evaporation		Soil Temperature (F)							
			24 Hrs. Ending at Observation Time			24 Hour Amounts Ending at Observation Time				At Obs. Time	24 Hour Wind Movement (mi)	Amount of Evap. (in)	4 in. Depth			8 in. Depth			
			Max.	Min.		Rain, Melted Snow, Etc. (in)	Flag	Snow, Ice Pellets, Hail (in)	Flag				Snow, Ice Pellets, Hail, Ice on Ground (in)	Ground Cover (see *)	Max.	Min.	Ground Cover (see *)	Max.	Min.
2019	03	01				0.00													
2019	03	02				0.00													
2019	03	03				0.00													
2019	03	04				0.00													
2019	03	05				0.00													
2019	03	06				0.00													
2019	03	07				0.00													
2019	03	08				0.00													
2019	03	09				0.00													
2019	03	10				0.05													
2019	03	11				0.00													
2019	03	12				0.00													
2019	03	13				0.91													
2019	03	14				0.16													
2019	03	15				0.00													
2019	03	16				0.00													
2019	03	17				0.00													
2019	03	18				0.00													
2019	03	19				0.00													
2019	03	20				0.00													
2019	03	21				0.00													
2019	03	22				0.00													
2019	03	23				0.17													
2019	03	24				0.00													
2019	03	25				0.00													
2019	03	26				0.00													
2019	03	27				0.00													
2019	03	28				0.00													
2019	03	29				0.00													
2019	03	30				0.00													
2019	03	31				0.00													
Summary						1.29		0.0											

Empty, or blank, cells indicate that a data observation was not reported.

\*Ground Cover: 1=Grass; 2=Fallow; 3=Bare Ground; 4=Brome grass; 5=Sod; 6=Straw mulch; 7=Grass muck; 8=Bare muck; 0=Unknown

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"T" values in the Precipitation or Snow category above indicate a "trace" value was recorded.

"A" values in the Precipitation Flag or the Snow Flag column indicate a multiday total, accumulated since last measurement, is being used.

Data value inconsistency may be present due to rounding calculations during the conversion process from SI metric units to standard imperial units.

## Record of Climatological Observations

**These data are quality controlled and may not be identical to the original observations.**

Generated on 08/13/2019

Observation Time Temperature: Unknown Observation Time Precipitation: 0700

Year	Month	Day	Temperature (F)		At Observation	Precipitation				Evaporation		Soil Temperature (F)						
			24 Hrs. Ending at Observation Time			24 Hour Amounts Ending at Observation Time				At Obs. Time	24 Hour Wind Movement (mi)	Amount of Evap. (in)	4 in. Depth			8 in. Depth		
			Max.	Min.		Rain, Melted Snow, Etc. (in)	Flag	Snow, Ice Pellets, Hail (in)	Flag				Snow, Ice Pellets, Hail, Ice on Ground (in)	Ground Cover (see *)	Max.	Min.	Ground Cover (see *)	Max.
2019	04	01				0.00												
2019	04	02				0.00												
2019	04	03				0.00												
2019	04	04				0.00												
2019	04	05				0.00												
2019	04	06				0.00												
2019	04	07				2.90												
2019	04	08				0.75												
2019	04	09				0.00												
2019	04	10				0.00												
2019	04	11				0.00												
2019	04	12				0.00												
2019	04	13				0.00												
2019	04	14				1.80												
2019	04	15				0.00												
2019	04	16				0.00												
2019	04	17				0.00												
2019	04	18				0.87												
2019	04	19				0.00												
2019	04	20				0.00												
2019	04	21				0.00												
2019	04	22				0.00												
2019	04	23				0.00												
2019	04	24				0.62												
2019	04	25				1.48												
2019	04	26				0.00												
2019	04	27				0.00												
2019	04	28				0.00												
2019	04	29				0.00												
2019	04	30				0.00												
Summary						8.42		0.0										

Empty, or blank, cells indicate that a data observation was not reported.

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## Record of Climatological Observations

**These data are quality controlled and may not be identical to the original observations.**

Generated on 08/13/2019

Observation Time Temperature: Unknown Observation Time Precipitation: 0700

Year	Month	Day	Temperature (F)		At Observation	Precipitation				Evaporation		Soil Temperature (F)						
			24 Hrs. Ending at Observation Time			24 Hour Amounts Ending at Observation Time				At Obs. Time	24 Hour Wind Movement (mi)	Amount of Evap. (in)	4 in. Depth			8 in. Depth		
			Max.	Min.		Rain, Melted Snow, Etc. (in)	Flag	Snow, Ice Pellets, Hail (in)	Flag				Snow, Ice Pellets, Hail, Ice on Ground (in)	Ground Cover (see *)	Max.	Min.	Ground Cover (see *)	Max.
2019	05	01				0.00												
2019	05	02				1.42												
2019	05	03				0.32												
2019	05	04				0.06												
2019	05	05				0.00												
2019	05	06				0.00												
2019	05	07				0.00												
2019	05	08				0.48												
2019	05	09				1.46												
2019	05	10				0.00												
2019	05	11				0.43												
2019	05	12				0.22												
2019	05	13				0.00												
2019	05	14				0.00												
2019	05	15				0.00												
2019	05	16				0.00												
2019	05	17				0.00												
2019	05	18				0.00												
2019	05	19				0.05												
2019	05	20				0.00												
2019	05	21				0.00												
2019	05	22				0.00												
2019	05	23				0.00												
2019	05	24				0.00												
2019	05	25				0.00												
2019	05	26				0.00												
2019	05	27				0.00												
2019	05	28				0.00												
2019	05	29				0.00												
2019	05	30				0.00												
2019	05	31				0.00												
Summary						4.44		0.0										

Empty, or blank, cells indicate that a data observation was not reported.

\*Ground Cover: 1=Grass; 2=Fallow; 3=Bare Ground; 4=Brome grass; 5=Sod; 6=Straw mulch; 7=Grass muck; 8=Bare muck; 0=Unknown

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## Record of Climatological Observations

**These data are quality controlled and may not be identical to the original observations.**

Generated on 08/13/2019

Observation Time Temperature: Unknown Observation Time Precipitation: 0700

Year	Month	Day	Temperature (F)		At Observation	Precipitation				Evaporation		Soil Temperature (F)							
			24 Hrs. Ending at Observation Time			24 Hour Amounts Ending at Observation Time				At Obs. Time	24 Hour Wind Movement (mi)	Amount of Evap. (in)	4 in. Depth			8 in. Depth			
			Max.	Min.		Rain, Melted Snow, Etc. (in)	Flag	Snow, Ice Pellets, Hail (in)	Flag				Snow, Ice Pellets, Hail, Ice on Ground (in)	Ground Cover (see *)	Max.	Min.	Ground Cover (see *)	Max.	Min.
2019	06	01				1.48													
2019	06	02				0.80													
2019	06	03				0.00													
2019	06	04				0.00													
2019	06	05				0.76													
2019	06	06				0.73													
2019	06	07				0.00													
2019	06	08				0.00													
2019	06	09				0.00													
2019	06	10				0.00													
2019	06	11				0.00													
2019	06	12				0.00													
2019	06	13				0.00													
2019	06	14				0.00													
2019	06	15				0.00													
2019	06	16				0.00													
2019	06	17				2.20													
2019	06	18				0.00													
2019	06	19				0.00													
2019	06	20				0.00													
2019	06	21				0.00													
2019	06	22				0.00													
2019	06	23				0.00													
2019	06	24				0.94													
2019	06	25				0.00													
2019	06	26				0.00													
2019	06	27				0.00													
2019	06	28				0.00													
2019	06	29				0.00													
2019	06	30				1.12													
Summary						8.03		0.0											

Empty, or blank, cells indicate that a data observation was not reported.

\*Ground Cover: 1=Grass; 2=Fallow; 3=Bare Ground; 4=Brome grass; 5=Sod; 6=Straw mulch; 7=Grass muck; 8=Bare muck; 0=Unknown

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**EXHIBIT “B”**  
**(Attached)**

ID	Task Name	Duration	Start	Finish
1	<b>Construction</b>	<b>485 days</b>	<b>Mon 7/9/18</b>	<b>Wed 6/3/20</b>
2	<b>Mobilization</b>	<b>5 days</b>	<b>Mon 7/9/18</b>	<b>Fri 7/13/18</b>
3	Site Access	2 days	Mon 7/9/18	Tue 7/10/18
4	Site Survey and Layout	3 days	Tue 7/10/18	Thu 7/12/18
5	Temp Sanitary	1 day	Fri 7/13/18	Fri 7/13/18
6	Trailer	1 day	Fri 7/13/18	Fri 7/13/18
7	<b>Site</b>	<b>432 days</b>	<b>Wed 7/11/18</b>	<b>Tue 3/24/20</b>
8	Install Construction Exit and Perim Controls	3 days	Wed 7/11/18	Fri 7/13/18
9	Strip Topsoil and Stockpile	2 days	Mon 7/16/18	Tue 7/17/18
10	Rough Grade	15 days	Wed 7/18/18	Tue 8/7/18
11	Install Storm Sewer and Inlets	10 days	Mon 10/29/18	Fri 11/9/18
12	Install Water Lines	10 days	Mon 11/12/18	Tue 11/27/18
13	Install Sanitary Sewer and Manholes	18 days	Wed 11/28/18	Fri 12/21/18
14	Install Underground Primary Power	9 days	Wed 12/26/18	Wed 1/9/19
15	Lighting Sleeves	2 days	Mon 2/11/19	Tue 2/12/19
16	Irrigation Sleeves	1 day	Wed 2/13/19	Wed 2/13/19
17	Final Grade Phase 1 Parking	5 days	Thu 2/14/19	Wed 2/20/19
18	Form and Pour C&G Streets	15 days	Mon 10/15/18	Fri 11/2/18
19	Place PUG on Streets	5 days	Thu 11/15/18	Wed 11/21/18
20	Place Limestone Temp access to PAD	3 days	Mon 11/26/18	Wed 11/28/18
21	Form and Pour C&G Parking Lot	5 days	Mon 3/4/19	Fri 3/8/19
22	Place PUG on Parking Lot	5 days	Mon 3/11/19	Fri 3/15/19
23	Moisture Injection	8 days	Fri 10/11/19	Tue 10/22/19
24	Install Clay Cap	5 days	Wed 10/23/19	Tue 10/29/19
25	Underground Power within Moisture Injection	3 days	Wed 10/30/19	Fri 11/1/19
26	Sewer within Moisture Injection	5 days	Mon 11/4/19	Fri 11/8/19
27	Water within Moisture Injection	5 days	Mon 11/11/19	Fri 11/15/19
28	Storm Sewer within Moisture Injection	3 days	Mon 11/18/19	Thu 11/21/19
29	Final Grade on all site	10 days	Fri 11/22/19	Thu 12/5/19
30	Form and Pour Flatwork/Sidewalks	20 days	Wed 1/29/20	Tue 2/25/20
31	Form and Pour Trash Enclosure	2 days	Wed 2/26/20	Thu 2/27/20
32	Masonry Trash Enclosure	3 days	Fri 2/28/20	Tue 3/3/20
33	Landscape and Irrigation	20 days	Wed 2/26/20	Tue 3/24/20
34	<b>Building</b>	<b>377 days</b>	<b>Wed 8/8/18</b>	<b>Tue 2/4/20</b>
35	<b>Foundation/Structural Steel/CMU Masonry</b>	<b>302 days</b>	<b>Wed 8/8/18</b>	<b>Wed 10/16/19</b>
36	Foundation Excavation	2 days	Wed 8/8/18	Thu 8/9/18
37	Building Gridline Survey	1 day	Fri 8/10/18	Fri 8/10/18
38	Pier Cage Construction	14 days	Mon 8/13/18	Thu 8/30/18
39	Drill/Pour Piers South Slab	33 days	Thu 11/29/18	Fri 1/18/19
40	Grade South PAD	1 day	Mon 1/21/19	Mon 1/21/19
41	Drill/Pour Piers North Slab	8 days	Mon 1/21/19	Wed 1/30/19
42	Grade North Slab	1 day	Thu 1/31/19	Thu 1/31/19
43	Misc Foundation Tasks for pad pour prep	10 days	Fri 2/1/19	Thu 2/14/19
44	Underslab Plumbing South Slab	10 days	Tue 1/22/19	Mon 2/4/19
45	Rough Plumbing Inspection South Slab	1 day	Tue 2/5/19	Tue 2/5/19

Project: West - Golden Trails - S  
Date: Wed 8/14/19

Task Split

Milestone

Project Summary

Inactive Milestone

Manual Task

Manual Summary Rollup

Manual Summary

Start-only

Finish-only

External Tasks

External Milestone

Deadline

Progress

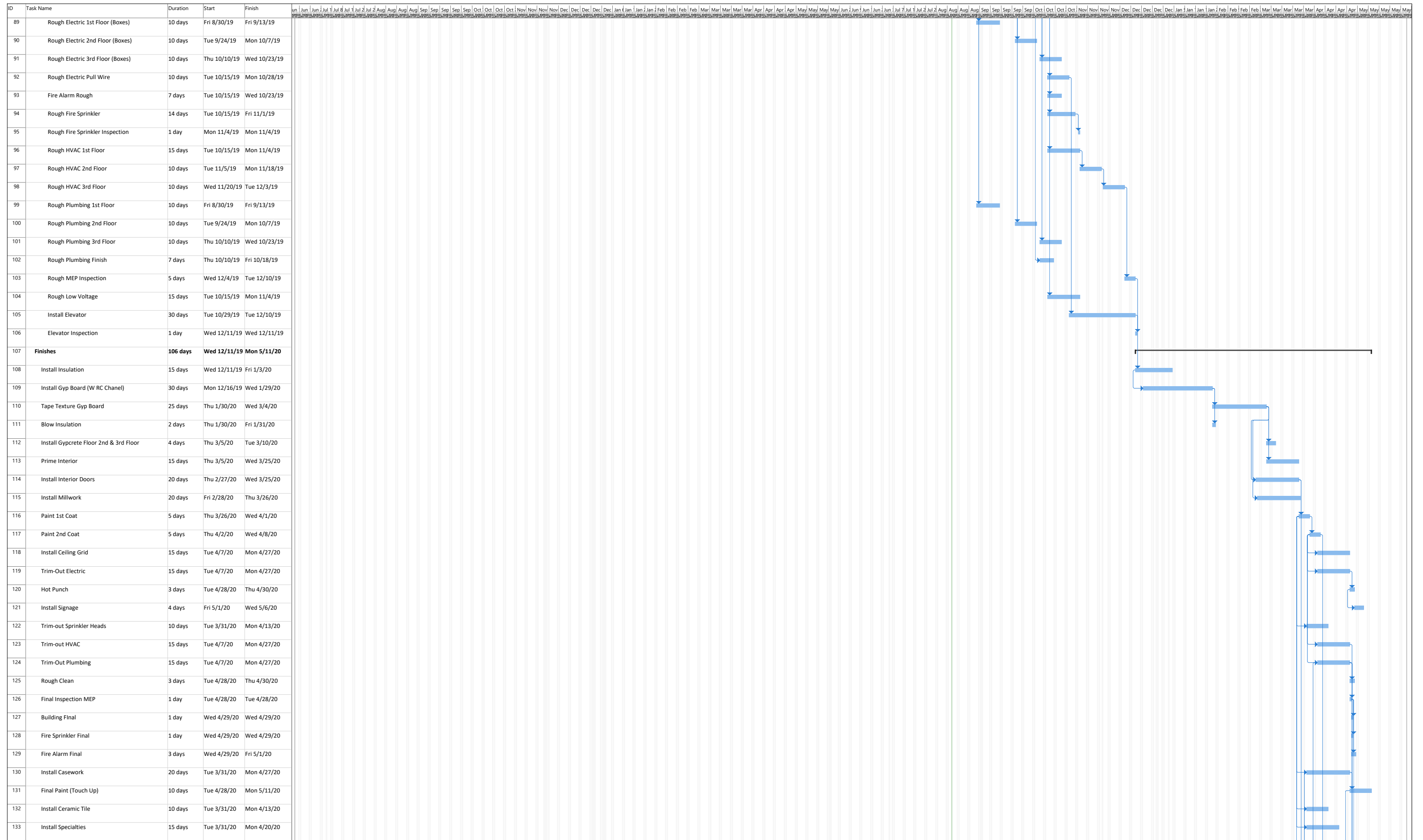
Manual Progress

Page 1

ID	Task Name	Duration	Start	Finish
46	Install Cables & Rebar for S Slab	3 days	Wed 3/20/19	Fri 3/22/19
47	Underslab Electric	2 days	Thu 3/21/19	Fri 3/22/19
48	Foundation Inspection	2 days	Mon 3/25/19	Tue 3/26/19
49	Pour South Slab	1 day	Fri 6/21/19	Fri 6/21/19
50	Stress Cables South Slab	1 day	Fri 6/28/19	Fri 6/28/19
51	Raise South Slab	2 days	Mon 7/1/19	Tue 7/2/19
52	Underslab Plumbing/Fire Lead In North Slab	7 days	Mon 6/24/19	Tue 7/2/19
53	Rough Plumbing Inspection North Slab	1 day	Wed 7/3/19	Wed 7/3/19
54	Install Cables & Rebar for N Slab	5 days	Wed 7/3/19	Wed 7/10/19
55	Underslab Electric	2 days	Tue 7/9/19	Wed 7/10/19
56	Foundation Inspection	2 days	Wed 7/10/19	Thu 7/11/19
57	Pour North Slab	1 day	Fri 7/12/19	Fri 7/12/19
58	Stress Cables North Slab	1 day	Mon 7/22/19	Mon 7/22/19
59	Raise North Slab	1 day	Tue 7/23/19	Tue 7/23/19
60	Pour Strip and Void Box	4 days	Wed 7/24/19	Mon 7/29/19
61	CMU South Stair Core	20 days	Wed 7/3/19	Wed 7/31/19
62	CMU Elevator Core	20 days	Tue 8/6/19	Tue 9/3/19
63	CMU North Stair Core	20 days	Tue 7/23/19	Mon 8/19/19
64	Install Structural Steel South Slab	5 days	Mon 8/26/19	Fri 8/30/19
65	Install South Stairs	15 days	Tue 9/3/19	Mon 9/23/19
66	Install North Stairs	15 days	Tue 9/24/19	Mon 10/14/19
67	Pour Stairs and Landings	2 days	Tue 10/15/19	Wed 10/16/19
68	<b>Framing &amp; Siding</b>	<b>130 days</b>	<b>Wed 7/31/19</b>	<b>Tue 2/4/20</b>
69	Frame 1st Floor Walls and 2nd floor Truss South	10 days	Wed 7/31/19	Tue 8/13/19
70	Frame 1st Floor Walls and 2nd Floor Truss North	8 days	Wed 8/14/19	Fri 8/23/19
71	Tie North and South Together	3 days	Mon 8/26/19	Wed 8/28/19
72	1st Floor Framing Inspections	1 day	Thu 8/29/19	Thu 8/29/19
73	Frame 2nd Floor Walls	10 days	Thu 8/29/19	Thu 9/12/19
74	Backout Framing	6 days	Fri 8/30/19	Mon 9/9/19
75	Frame 3rd Floor Trusses	7 days	Fri 9/13/19	Mon 9/23/19
76	2nd Floor Framing Inspection	1 day	Tue 9/24/19	Tue 9/24/19
77	Frame 3rd Floor Walls	6 days	Tue 9/24/19	Tue 10/1/19
78	Set Trusses and Sheath Roof (10K Skytrek)	6 days	Wed 10/2/19	Wed 10/9/19
79	3rd Floor Framing Inspection	1 day	Thu 10/10/19	Thu 10/10/19
80	Install Shingles	3 days	Thu 10/10/19	Mon 10/14/19
81	install Exterior Sheathing	10 days	Tue 9/24/19	Mon 10/7/19
82	Install Weather Tyvek	5 days	Fri 9/27/19	Thu 10/3/19
83	Install Windows	10 days	Tue 10/1/19	Mon 10/14/19
84	Install Exterior Doors/Hardware	2 days	Wed 10/9/19	Thu 10/10/19
85	Install Brick Veneer	28 days	Fri 12/6/19	Fri 1/17/20
86	Install Exterior Trim	15 days	Fri 12/6/19	Mon 12/30/19
87	Install Lap Siding	25 days	Tue 12/31/19	Tue 2/4/20
88	<b>Rough In</b>	<b>72 days</b>	<b>Fri 8/30/19</b>	<b>Wed 12/11/19</b>

Project: West - Golden Trails - S  
Date: Wed 8/14/19

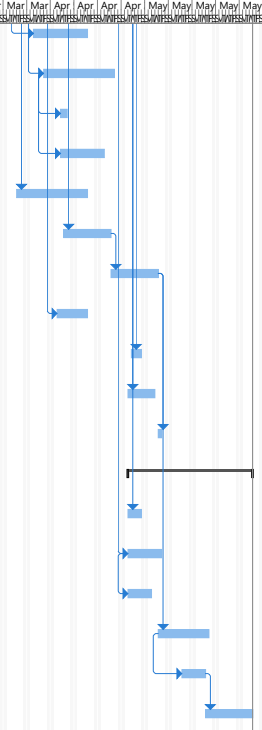
Task Milestone Project Summary Inactive Milestone Manual Task Manual Summary Rollup Start-only External Tasks Deadline Manual Progress  
Split Summary Inactive Task Inactive Summary Duration-only Manual Summary Finish-only External Milestone Progress



Project: West - Golden Trails - S  
Date: Wed 8/14/19

Task Split	Milestone	Project Summary	Inactive Milestone	Manual Task	Manual Summary Rollup	Start-only	External Tasks	Deadline	Manual Progress
	Summary	Inactive Task	Inactive Summary	Duration-only	Manual Summary	Finish-only	External Milestone	Progress	

ID	Task Name	Duration	Start	Finish
134	Trim-Out Fire Electric	12 days	Tue 3/31/20	Wed 4/15/20
135	Install Countertops	15 days	Fri 4/3/20	Thu 4/23/20
136	Install Mirrors	2 days	Wed 4/8/20	Thu 4/9/20
137	Install Trim 2	9 days	Wed 4/8/20	Mon 4/20/20
138	Install Door Hardware	15 days	Thu 3/26/20	Wed 4/15/20
139	Install LVP	10 days	Thu 4/9/20	Wed 4/22/20
140	Install Carpet Tiles	10 days	Thu 4/23/20	Wed 5/6/20
141	Install Minor Appliances	7 days	Tue 4/7/20	Wed 4/15/20
142	Install Major Appliances	3 days	Wed 4/29/20	Fri 5/1/20
143	Install Screens	6 days	Tue 4/28/20	Tue 5/5/20
144	Building Final	1 day	Thu 5/7/20	Thu 5/7/20
145	<b>Closeout</b>	<b>27 days</b>	<b>Tue 4/28/20</b>	<b>Wed 6/3/20</b>
146	Testing and Balancing (HVAC Startup)	4 days	Tue 4/28/20	Fri 5/1/20
147	Pre-punch by trades	8 days	Tue 4/28/20	Thu 5/7/20
148	Install Window Treatments	5 days	Tue 4/28/20	Mon 5/4/20
149	Final Cleaning	11 days	Thu 5/7/20	Thu 5/21/20
150	Owner Punch Walk	5 days	Thu 5/14/20	Wed 5/20/20
151	Complete Owner Punch	10 days	Thu 5/21/20	Wed 6/3/20



**EXHIBIT “C”**  
**(Attached)**



### WEATHER DELAYS

YEAR	MONTH	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	TOTALS
2018	SEPTEMBER																																0
2018	OCTOBER						X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	26
2018	NOVEMBER	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	19
2018	DECEMBER						X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	26
2019	JANUARY	X	X	X	X	X	X	X	X																								8
2019	FEBRUARY						X	X	X	X	X	X							X	X	X	X											10
2019	MARCH		X	X	X									X	X	X																	6
2019	APRIL					X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	24
2019	MAY	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X						X											19
2019	JUNE	X	X	X	X	X	X	X									X	X	X						X	X	X						15
2019	JULY	X																															1
2019	AUGUST																																

GRAND TOTAL: 154

KEY: X WEEKDAYS AFFECTED X WEEKENDS AFFECTED X HOLIDAYS AFFECTED

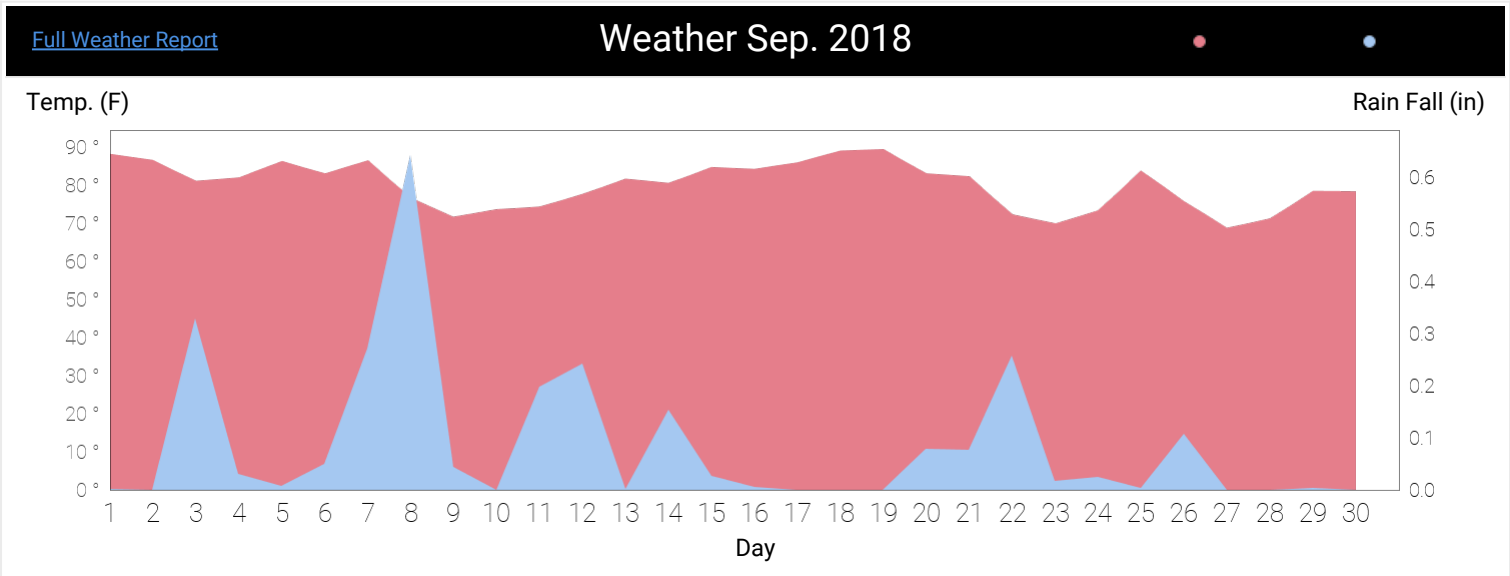
PROVISIONAL MEASURES MADE TO COMBAT FURTHER DELAYS (SEE ATTACHED CORRESPONDING DOCUMENTATION)



**EXHIBIT “D”**  
**(Attached)**
































[View All Photos](#)



## Week Two Photos 09/02/18 - 09/08/18

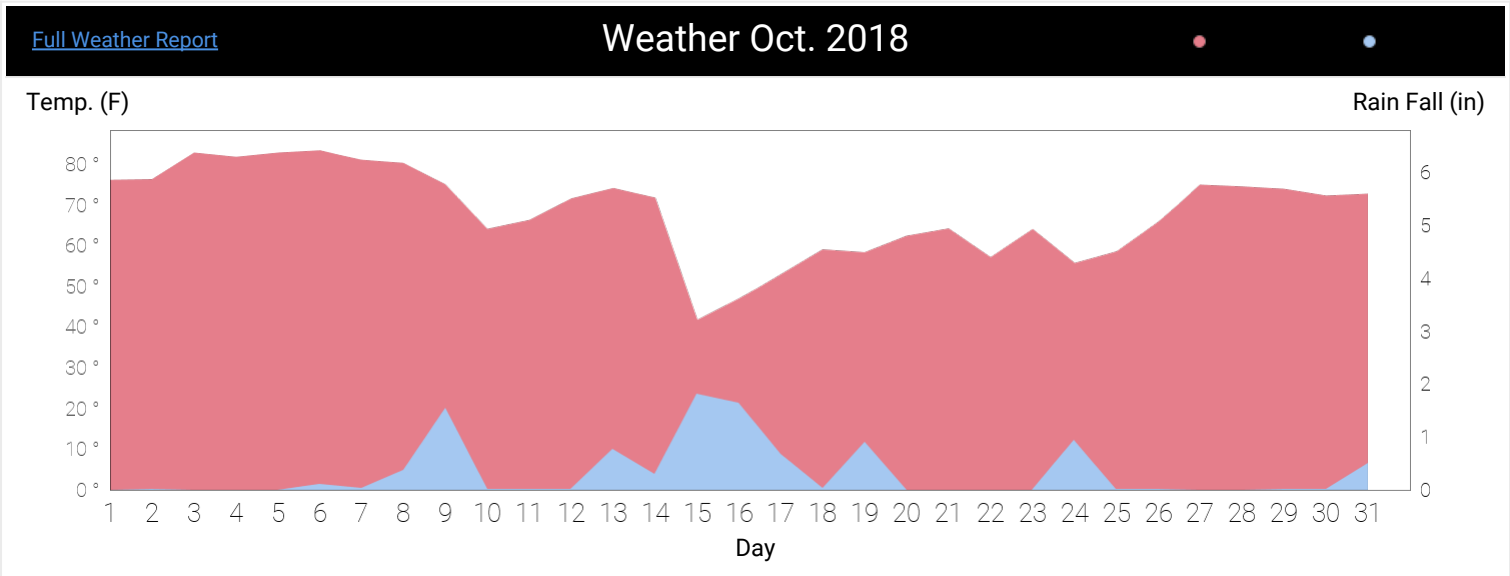


## Week Three Photos 09/09/18 - 09/15/18

<p>Sunday 09/02/18</p> <p> <b>87</b> °</p> <p>Mostly Cloudy Wind: 5 MPH SE Precipitation: .0" Humidity: 62%</p>	<p>Monday 09/03/18</p> <p> <b>81</b> °</p> <p>Humid and Overcast Wind: 2 MPH SE Precipitation: .33" Humidity: 74%</p>	<p>Tuesday 09/04/18</p> <p> <b>82</b> °</p> <p>Mostly Cloudy Wind: 6 MPH SE Precipitation: .03" Humidity: 71%</p>	<p>Wednesday 09/05/18</p> <p> <b>86</b> °</p> <p>Mostly Cloudy Wind: 6 MPH S Precipitation: .01" Humidity: 62%</p>	<p>Thursday 09/06/18</p> <p> <b>83</b> °</p> <p>Humid and Mostly Cloudy Wind: 5 MPH N Precipitation: .05" Humidity: 71%</p>	<p>Friday 09/07/18</p> <p> <b>86</b> °</p> <p>Clear Wind: 5 MPH S Precipitation: .27" Humidity: 62%</p>	<p>Saturday 09/08/18</p> <p> <b>77</b> °</p> <p>Humid and Mostly Cloudy Wind: 5 MPH SW Precipitation: .64" Humidity: 93%</p>
<p>Sunday 09/09/18</p> <p> <b>72</b> °</p> <p>Overcast Wind: 8 MPH N Precipitation: .04" Humidity: 91%</p>	<p>Monday 09/10/18</p> <p> <b>74</b> °</p> <p>Mostly Cloudy Wind: 5 MPH N Precipitation: .0" Humidity: 68%</p>	<p>Tuesday 09/11/18</p> <p> <b>74</b> °</p> <p>Mostly Cloudy Wind: 6 MPH E Precipitation: .2" Humidity: 89%</p>	<p>Wednesday 09/12/18</p> <p> <b>78</b> °</p> <p>Humid and Overcast Wind: 6 MPH SE Precipitation: .24" Humidity: 85%</p>	<p>Thursday 09/13/18</p> <p> <b>82</b> °</p> <p>Humid and Partly Cloudy Wind: 5 MPH E Precipitation: .0" Humidity: 74%</p>	<p>Friday 09/14/18</p> <p> <b>81</b> °</p> <p>Humid and Mostly Cloudy Wind: 8 MPH E Precipitation: .15" Humidity: 79%</p>	<p>Saturday 09/15/18</p> <p> <b>85</b> °</p> <p>Clear Wind: 5 MPH NE Precipitation: .03" Humidity: 66%</p>
<p>Sunday 09/16/18</p> <p> <b>84</b> °</p> <p>Humid and Partly Cloudy Wind: 4 MPH SE Precipitation: .0" Humidity: 68%</p>	<p>Monday 09/17/18</p> <p> <b>86</b> °</p> <p>Clear Wind: 5 MPH W Precipitation: .0" Humidity: 55%</p>	<p>Tuesday 09/18/18</p> <p> <b>89</b> °</p> <p>Clear Wind: 6 MPH S Precipitation: .0" Humidity: 57%</p>	<p>Wednesday 09/19/18</p> <p> <b>89</b> °</p> <p>Clear Wind: 7 MPH S Precipitation: .0" Humidity: 55%</p>	<p>Thursday 09/20/18</p> <p> <b>83</b> °</p> <p>Humid and Mostly Cloudy Wind: 10 MPH S Precipitation: .08" Humidity: 72%</p>	<p>Friday 09/21/18</p> <p> <b>82</b> °</p> <p>Humid and Mostly Cloudy Wind: 13 MPH S Precipitation: .08" Humidity: 78%</p>	<p>Saturday 09/22/18</p> <p> <b>72</b> °</p> <p>Overcast Wind: 11 MPH NW Precipitation: .26" Humidity: 86%</p>
<p>Sunday 09/23/18</p> <p> <b>70</b> °</p> <p>Overcast Wind: 4 MPH NW Precipitation: .02" Humidity: 94%</p>	<p>Monday 09/24/18</p> <p> <b>73</b> °</p> <p>Overcast Wind: 5 MPH SW Precipitation: .02" Humidity: 88%</p>	<p>Tuesday 09/25/18</p> <p> <b>84</b> °</p> <p>Humid and Partly Cloudy Wind: 11 MPH S Precipitation: .0" Humidity: 71%</p>	<p>Wednesday 09/26/18</p> <p> <b>76</b> °</p> <p>Overcast Wind: 14 MPH N Precipitation: .11" Humidity: 80%</p>	<p>Thursday 09/27/18</p> <p> <b>69</b> °</p> <p>Clear Wind: 5 MPH N Precipitation: .0" Humidity: 64%</p>	<p>Friday 09/28/18</p> <p> <b>71</b> °</p> <p>Overcast Wind: 7 MPH SE Precipitation: .0" Humidity: 82%</p>	<p>Saturday 09/29/18</p> <p> <b>78</b> °</p> <p>Overcast Wind: 9 MPH E Precipitation: .0" Humidity: 80%</p>
<p>Sunday 09/30/18</p> <p> <b>78</b> °</p> <p>Mostly Cloudy Wind: 6 MPH SE Precipitation: .0" Humidity: 75%</p>						

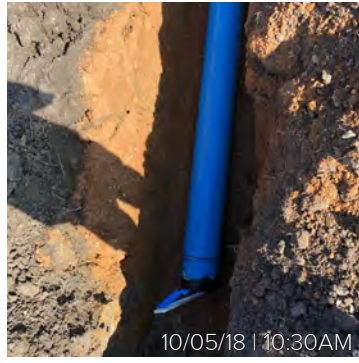


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## Week One Photos 10/01/18 - 10/06/18





### Week Two Photos 10/07/18 - 10/13/18



### Week Three Photos 10/14/18 - 10/20/18



10/15/18 | 09:59AM



10/15/18 | 09:59AM



10/16/18 | 08:24AM



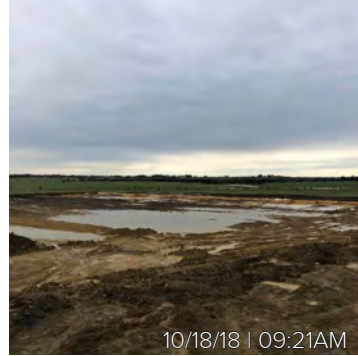
10/16/18 | 08:23AM



10/17/18 | 08:30AM



10/17/18 | 08:31AM



10/18/18 | 09:21AM



10/18/18 | 09:21AM



10/15/18 | 09:59AM



10/16/18 | 08:22AM



10/17/18 | 08:31AM



10/18/18 | 09:21AM

### Week Four Photos 10/21/18 - 10/27/18



10/22/18 | 10:19AM



10/22/18 | 10:19AM



10/23/18 | 03:41PM



10/23/18 | 03:41PM



10/24/18 | 10:29AM



10/24/18 | 10:28AM



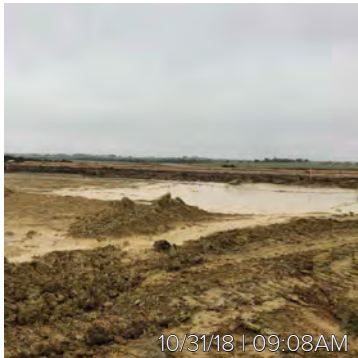
10/25/18 | 09:16AM



10/25/18 | 09:21AM



## Week Five Photos 10/28/18 - 10/31/18



## Weather Oct. 2018

Monday  
10/01/18

76 °

Overcast  
Wind: 6 MPH SE  
Precipitation: .0"  
Humidity: 82%

Tuesday  
10/02/18

76 °

Humid and Overcast  
Wind: 5 MPH S  
Precipitation: .01"

Wednesday  
10/03/18

83 °

Partly Cloudy  
Wind: 12 MPH S  
Precipitation: .0"  
Humidity: 64%

Thursday  
10/04/18

82 °

Mostly Cloudy  
Wind: 9 MPH S  
Precipitation: .0"  
Humidity: 72%

Friday  
10/05/18

83 °

Partly Cloudy  
Wind: 12 MPH S  
Precipitation: .0"  
Humidity: 66%

Saturday  
10/06/18

83 °

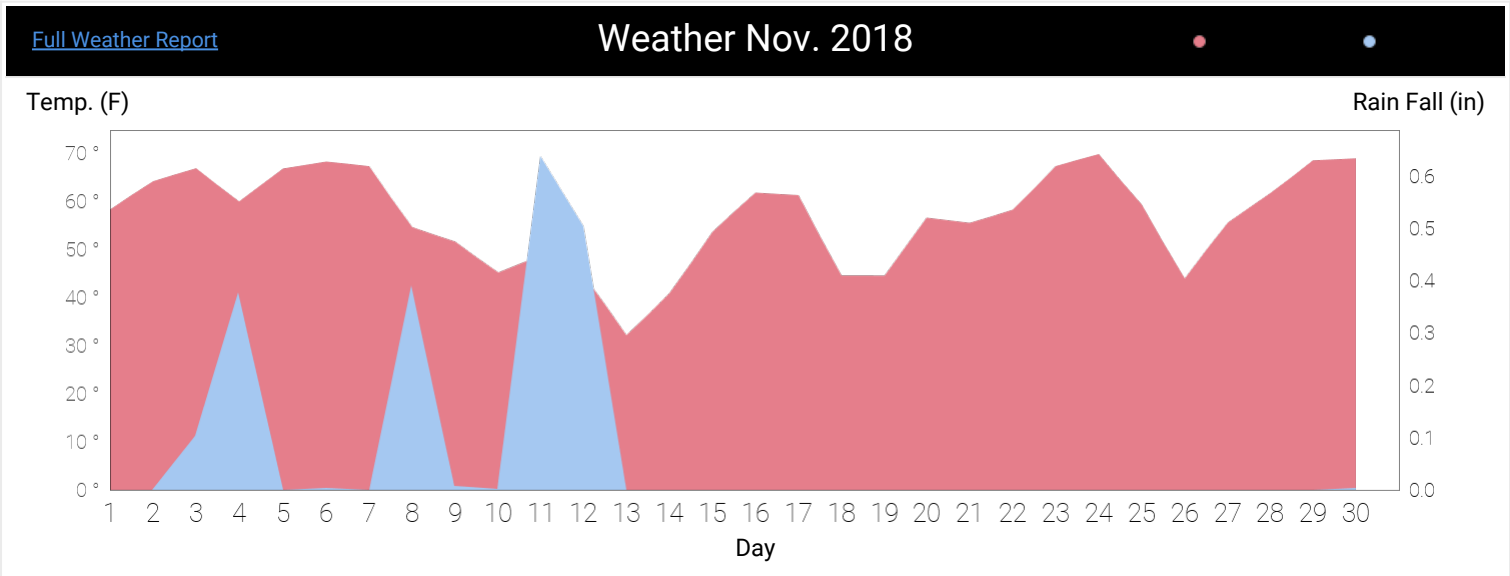
Humid and Partly Cloudy  
Wind: 8 MPH S  
Precipitation: .11"

		Humidity: 87%				Humidity: 72%	
Sunday 10/07/18	Monday 10/08/18	Tuesday 10/09/18	Wednesday 10/10/18	Thursday 10/11/18	Friday 10/12/18	Saturday 10/13/18	
81 °	80 °	75 °	64 °	66 °	72 °	74 °	
Mostly Cloudy Wind: 15 MPH S Precipitation: .02" Humidity: 73%	Mostly Cloudy Wind: 15 MPH S Precipitation: .38" Humidity: 75%	Rain Wind: 9 MPH SE Precipitation: 1.54" Humidity: 80%	Clear Wind: 9 MPH NW Precipitation: .0" Humidity: 76%	Clear Wind: 11 MPH NE Precipitation: .0" Humidity: 58%	Partly Cloudy Wind: 11 MPH S Precipitation: .0" Humidity: 63%	Breezy and Humid Wind: 18 MPH S Precipitation: .78" Humidity: 97%	
Sunday 10/14/18	Monday 10/15/18	Tuesday 10/16/18	Wednesday 10/17/18	Thursday 10/18/18	Friday 10/19/18	Saturday 10/20/18	
72 °	42 °	47 °	53 °	59 °	58 °	62 °	
Mostly Cloudy Wind: 5 MPH S Precipitation: .3" Humidity: 86%	Rain Wind: 14 MPH N Precipitation: 1.81" Humidity: 100%	Rain Wind: 11 MPH SE Precipitation: 1.63" Humidity: 97%	Overcast Wind: 14 MPH NW Precipitation: .68" Humidity: 91%	Overcast Wind: 8 MPH NE Precipitation: .03" Humidity: 80%	Rain Wind: 6 MPH S Precipitation: .91" Humidity: 99%	Overcast Wind: 10 MPH S Precipitation: .0" Humidity: 86%	
Sunday 10/21/18	Monday 10/22/18	Tuesday 10/23/18	Wednesday 10/24/18	Thursday 10/25/18	Friday 10/26/18	Saturday 10/27/18	
64 °	57 °	64 °	56 °	59 °	66 °	75 °	
Clear Wind: 7 MPH N Precipitation: .0" Humidity: 47%	Mostly Cloudy Wind: 2 MPH W Precipitation: .0" Humidity: 66%	Partly Cloudy Wind: 6 MPH NE Precipitation: .0" Humidity: 60%	Light Rain Wind: 7 MPH NE Precipitation: .93" Humidity: 99%	Overcast Wind: 9 MPH NW Precipitation: .01" Humidity: 88%	Clear Wind: 6 MPH NW Precipitation: .0" Humidity: 65%	Clear Wind: 8 MPH W Precipitation: .0" Humidity: 61%	
Sunday 10/28/18	Monday 10/29/18	Tuesday 10/30/18	Wednesday 10/31/18				
75 °	74 °	72 °	73 °				
Clear Wind: 9 MPH SW Precipitation: .0" Humidity: 60%	Clear Wind: 12 MPH S Precipitation: .01" Humidity: 72%	Overcast Wind: 16 MPH S Precipitation: .0" Humidity: 82%	Overcast Wind: 8 MPH S Precipitation: .49" Humidity: 94%				



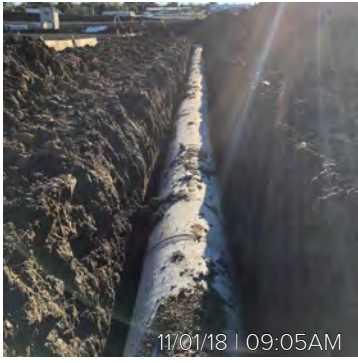


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### Week One Photos 11/01/18 - 11/03/18

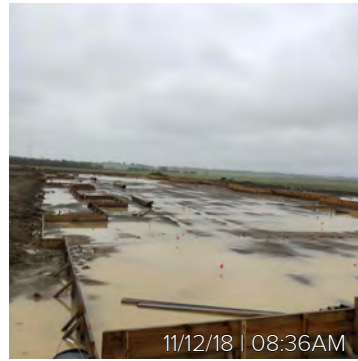
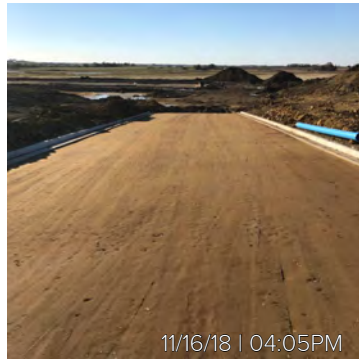
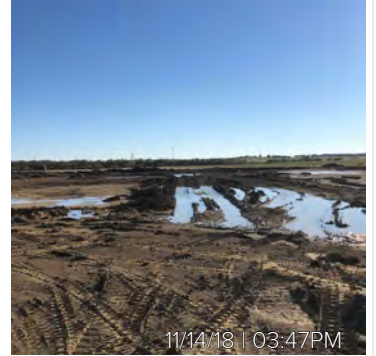
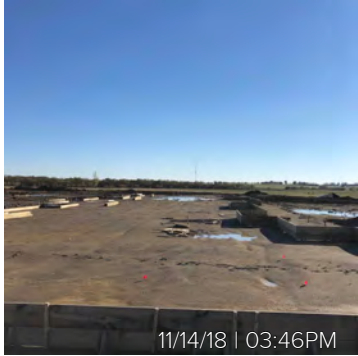
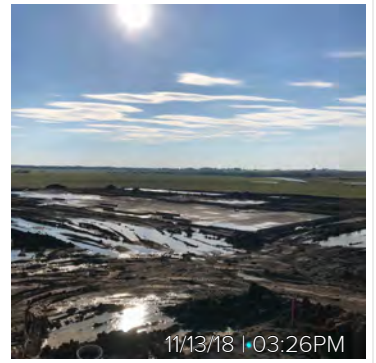
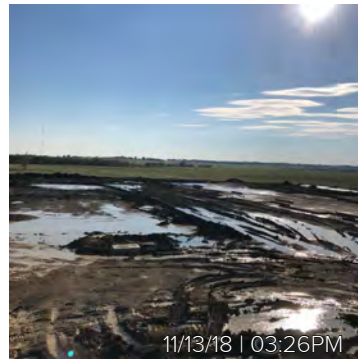
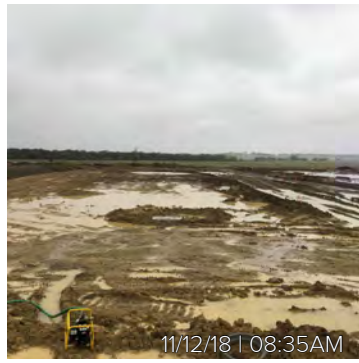




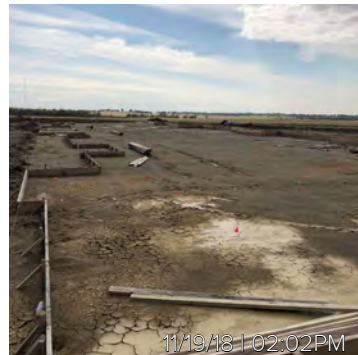
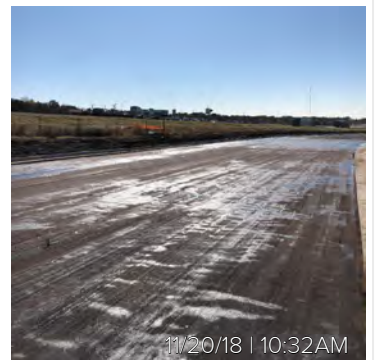
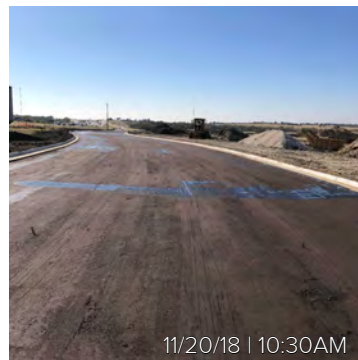
### Week Two Photos 11/04/18 - 11/10/18






























### Week Three Photos 11/11/18 - 11/17/18



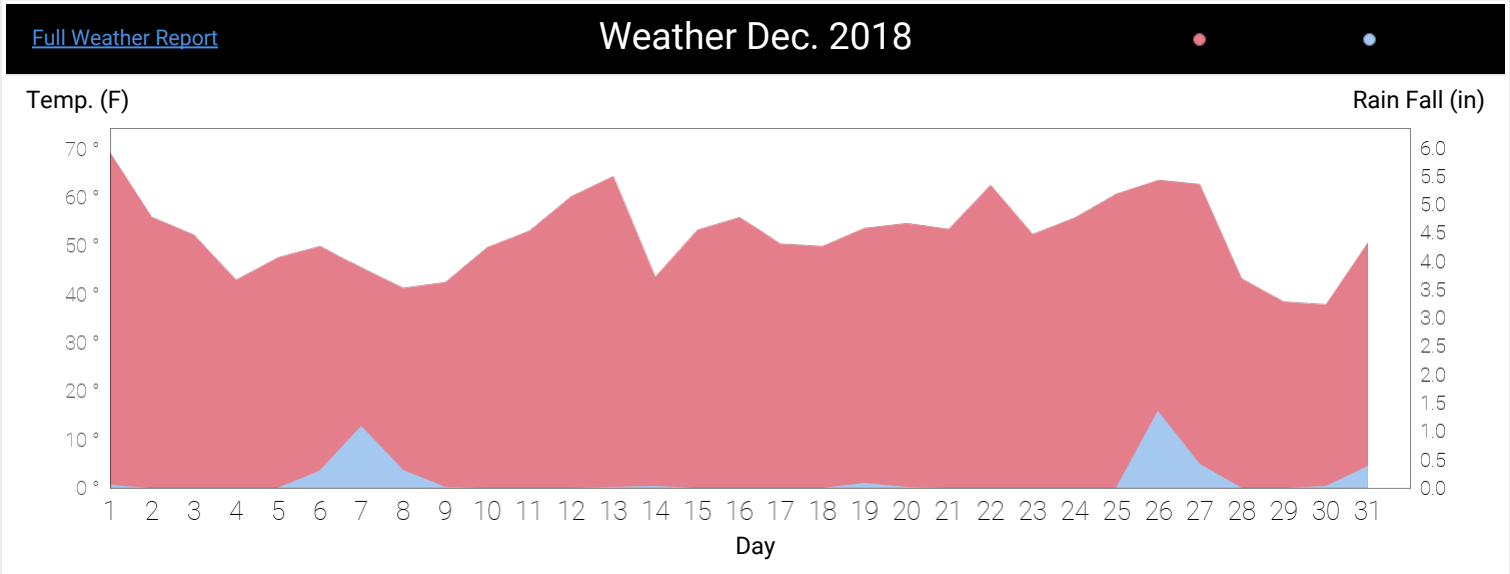
## Week Four Photos 11/18/18 - 11/24/18



<p>Sunday 11/04/18</p>  <b>60</b> ° <p>Clear Wind: 8 MPH N Precipitation: .38" Humidity: 60%</p>	<p>Monday 11/05/18</p>  <b>67</b> ° <p>Overcast Wind: 9 MPH S Precipitation: .0" Humidity: 92%</p>	<p>Tuesday 11/06/18</p>  <b>68</b> ° <p>Overcast Wind: 3 MPH SE Precipitation: .0" Humidity: 100%</p>	<p>Wednesday 11/07/18</p>  <b>67</b> ° <p>Overcast Wind: 9 MPH N Precipitation: .0" Humidity: 93%</p>	<p>Thursday 11/08/18</p>  <b>55</b> ° <p>Overcast Wind: 9 MPH NE Precipitation: .39" Humidity: 99%</p>	<p>Friday 11/09/18</p>  <b>52</b> ° <p>Mostly Cloudy Wind: 18 MPH N Precipitation: .01" Humidity: 68%</p>	<p>Saturday 11/10/18</p>  <b>45</b> ° <p>Overcast Wind: 2 MPH E Precipitation: .0" Humidity: 52%</p>
<p>Sunday 11/11/18</p>  <b>49</b> ° <p>Overcast Wind: 5 MPH SE Precipitation: .64" Humidity: 80%</p>	<p>Monday 11/12/18</p>  <b>45</b> ° <p>Breezy and Overcast Wind: 21 MPH N Precipitation: .5" Humidity: 91%</p>	<p>Tuesday 11/13/18</p>  <b>32</b> ° <p>Overcast Wind: 15 MPH NW Precipitation: .0" Humidity: 74%</p>	<p>Wednesday 11/14/18</p>  <b>41</b> ° <p>Clear Wind: 7 MPH NW Precipitation: .0" Humidity: 47%</p>	<p>Thursday 11/15/18</p>  <b>54</b> ° <p>Clear Wind: 4 MPH S Precipitation: .0" Humidity: 50%</p>	<p>Friday 11/16/18</p>  <b>62</b> ° <p>Clear Wind: 8 MPH S Precipitation: .0" Humidity: 44%</p>	<p>Saturday 11/17/18</p>  <b>61</b> ° <p>Clear Wind: 8 MPH S Precipitation: .0" Humidity: 76%</p>
<p>Sunday 11/18/18</p>  <b>45</b> ° <p>Overcast Wind: 12 MPH NW Precipitation: .0" Humidity: 76%</p>	<p>Monday 11/19/18</p>  <b>45</b> ° <p>Overcast Wind: 6 MPH N Precipitation: .0" Humidity: 65%</p>	<p>Tuesday 11/20/18</p>  <b>57</b> ° <p>Clear Wind: 8 MPH NE Precipitation: .0" Humidity: 47%</p>	<p>Wednesday 11/21/18</p>  <b>56</b> ° <p>Clear Wind: 5 MPH E Precipitation: .0" Humidity: 44%</p>	<p>Thursday 11/22/18</p>  <b>58</b> ° <p>Mostly Cloudy Wind: 8 MPH S Precipitation: .0" Humidity: 56%</p>	<p>Friday 11/23/18</p>  <b>67</b> ° <p>Clear Wind: 18 MPH SW Precipitation: .0" Humidity: 62%</p>	<p>Saturday 11/24/18</p>  <b>70</b> ° <p>Clear Wind: 14 MPH S Precipitation: .0" Humidity: 34%</p>
<p>Sunday 11/25/18</p>  <b>59</b> ° <p>Breezy Wind: 19 MPH NW Precipitation: .0" Humidity: 33%</p>	<p>Monday 11/26/18</p>  <b>44</b> ° <p>Clear Wind: 11 MPH NW Precipitation: .0" Humidity: 50%</p>	<p>Tuesday 11/27/18</p>  <b>56</b> ° <p>Clear Wind: 12 MPH S Precipitation: .0" Humidity: 38%</p>	<p>Wednesday 11/28/18</p>  <b>62</b> ° <p>Clear Wind: 14 MPH S Precipitation: .0" Humidity: 43%</p>	<p>Thursday 11/29/18</p>  <b>69</b> ° <p>Clear Wind: 16 MPH S Precipitation: .0" Humidity: 69%</p>	<p>Friday 11/30/18</p>  <b>69</b> ° <p>Overcast Wind: 12 MPH S Precipitation: .0" Humidity: 83%</p>	



[View All Photos](#)



## Week Two Photos 12/02/18 - 12/08/18





### Week Three Photos 12/09/18 - 12/15/18



### Week Four Photos 12/16/18 - 12/22/18



12/17/18 | 08:16AM



12/17/18 | 08:15AM



12/18/18 | 11:41AM



12/18/18 | 11:41AM



12/19/18 | 11:13AM



12/19/18 | 11:13AM



12/20/18 | 08:18AM



12/20/18 | 08:19AM



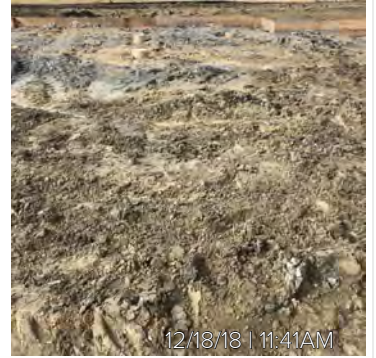
12/21/18 | 09:29AM



12/21/18 | 09:29AM

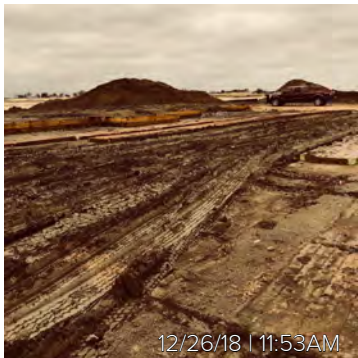


12/17/18 | 08:15AM



12/18/18 | 11:41AM

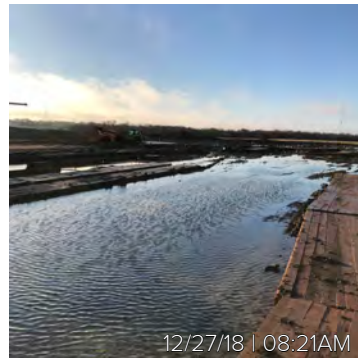
### Week Five Photos 12/23/18 - 12/29/18



12/26/18 | 11:53AM



12/26/18 | 11:53AM



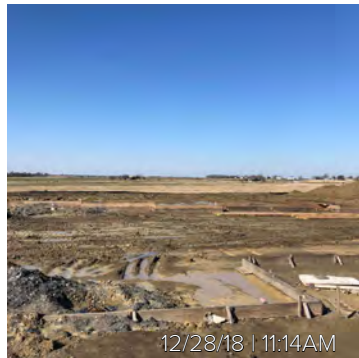
12/27/18 | 08:21AM



12/27/18 | 08:21AM



12/23/18 | 11:14AM



12/28/18 | 11:14AM



12/26/18 | 11:53AM



12/27/18 | 12:15PM



## Weather Dec. 2018

						<b>Saturday</b> 12/01/18  <b>69</b> °  <b>Clear</b> Wind: 17 MPH W Precipitation: .05" Humidity: 29%
<b>Sunday</b> 12/02/18  <b>56</b> °  <b>Clear</b> Wind: 7 MPH N Precipitation: .0" Humidity: 47%	<b>Monday</b> 12/03/18  <b>52</b> °  <b>Mostly Cloudy</b> Wind: 11 MPH N Precipitation: .0" Humidity: 53%	<b>Tuesday</b> 12/04/18  <b>43</b> °  <b>Clear</b> Wind: 4 MPH N Precipitation: .0" Humidity: 64%	<b>Wednesday</b> 12/05/18  <b>48</b> °  <b>Clear</b> Wind: 4 MPH SE Precipitation: .0" Humidity: 56%	<b>Thursday</b> 12/06/18  <b>50</b> °  <b>Overcast</b> Wind: 3 MPH S Precipitation: .29" Humidity: 99%	<b>Friday</b> 12/07/18  <b>46</b> °  <b>Rain</b> Wind: 8 MPH N Precipitation: 1.09" Humidity: 100%	<b>Saturday</b> 12/08/18  <b>41</b> °  <b>Light Rain</b> Wind: 14 MPH N Precipitation: .31" Humidity: 99%
<b>Sunday</b> 12/09/18  <b>42</b> °  <b>Mostly Cloudy</b> Wind: 11 MPH NW Precipitation: .0" Humidity: 79%	<b>Monday</b> 12/10/18  <b>50</b> °  <b>Clear</b> Wind: 4 MPH NW Precipitation: .0" Humidity: 50%	<b>Tuesday</b> 12/11/18  <b>53</b> °  <b>Clear</b> Wind: 15 MPH S Precipitation: .0" Humidity: 56%	<b>Wednesday</b> 12/12/18  <b>60</b> °  <b>Mostly Cloudy</b> Wind: 13 MPH S Precipitation: .0" Humidity: 80%	<b>Thursday</b> 12/13/18  <b>64</b> °  <b>Overcast</b> Wind: 11 MPH SW Precipitation: .01" Humidity: 66%	<b>Friday</b> 12/14/18  <b>44</b> °  <b>Breezy and Overcast</b> Wind: 19 MPH NW Precipitation: .03" Humidity: 86%	<b>Saturday</b> 12/15/18  <b>53</b> °  <b>Clear</b> Wind: 11 MPH NW Precipitation: .0" Humidity: 35%
<b>Sunday</b> 12/16/18  <b>56</b> °  <b>Clear</b> Wind: 9 MPH S Precipitation: .0" Humidity: 46%	<b>Monday</b> 12/17/18  <b>50</b> °  <b>Clear</b> Wind: 3 MPH W Precipitation: .0" Humidity: 66%	<b>Tuesday</b> 12/18/18  <b>50</b> °  <b>Clear</b> Wind: 0 MPH N Precipitation: .0" Humidity: 88%	<b>Wednesday</b> 12/19/18  <b>54</b> °  <b>Overcast</b> Wind: 5 MPH SE Precipitation: .08" Humidity: 99%	<b>Thursday</b> 12/20/18  <b>55</b> °  <b>Breezy</b> Wind: 18 MPH NW Precipitation: .01" Humidity: 44%	<b>Friday</b> 12/21/18  <b>53</b> °  <b>Clear</b> Wind: 3 MPH NW Precipitation: .0" Humidity: 37%	<b>Saturday</b> 12/22/18  <b>63</b> °  <b>Clear</b> Wind: 9 MPH S Precipitation: .0" Humidity: 41%
<b>Sunday</b> 12/23/18  <b>52</b> °  <b>Clear</b> Wind: 13 MPH N Precipitation: .0" Humidity: 50%	<b>Monday</b> 12/24/18  <b>56</b> °  <b>Clear</b> Wind: 12 MPH SE Precipitation: .0" Humidity: 61%	<b>Tuesday</b> 12/25/18  <b>61</b> °  <b>Overcast</b> Wind: 6 MPH SE Precipitation: .0" Humidity: 96%	<b>Wednesday</b> 12/26/18  <b>64</b> °  <b>Breezy and Overcast</b> Wind: 19 MPH SE Precipitation: 1.35" Humidity: 86%	<b>Thursday</b> 12/27/18  <b>63</b> °  <b>Clear</b> Wind: 14 MPH W Precipitation: .42" Humidity: 52%	<b>Friday</b> 12/28/18  <b>43</b> °  <b>Clear</b> Wind: 13 MPH N Precipitation: .0" Humidity: 60%	<b>Saturday</b> 12/29/18  <b>38</b> °  <b>Overcast</b> Wind: 12 MPH N Precipitation: .0" Humidity: 72%
Sunday	Monday					



12/30/19



38 °

Overcast  
Wind: 5 MPH N  
Precipitation: .02"  
Humidity: 84%

12/31/19

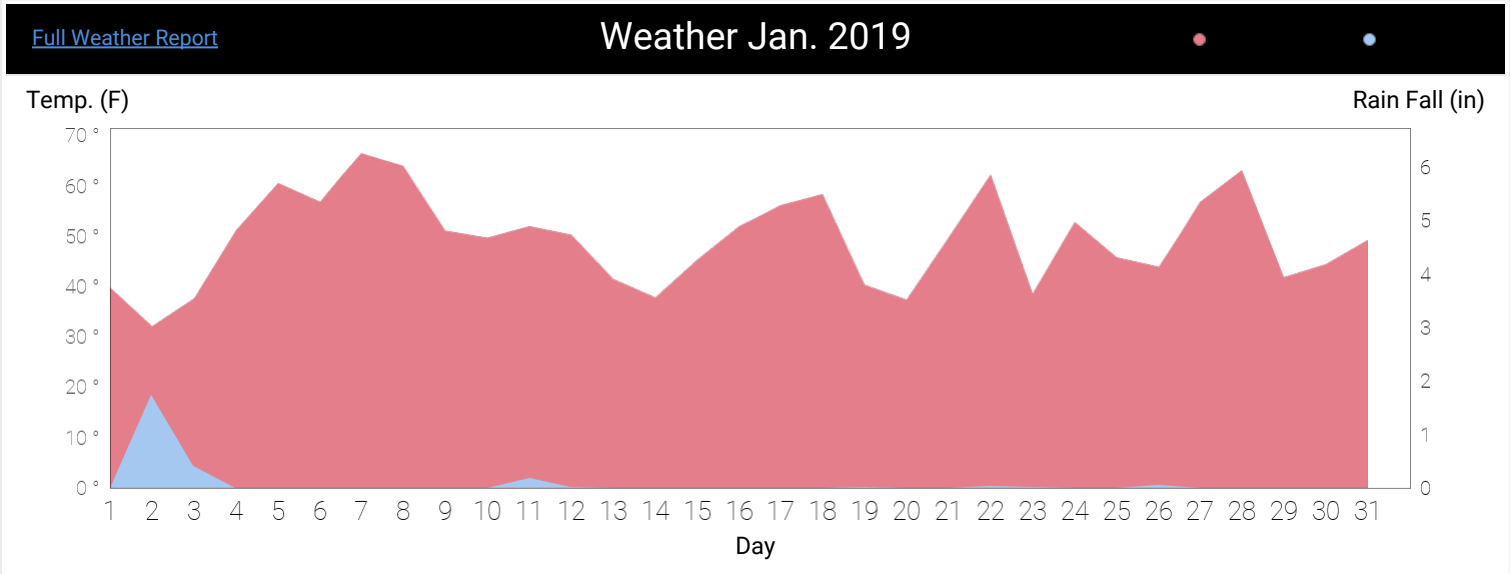


51 °

Clear  
Wind: 9 MPH SW  
Precipitation: .37"  
Humidity: 73%

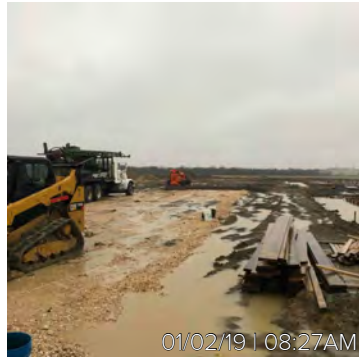


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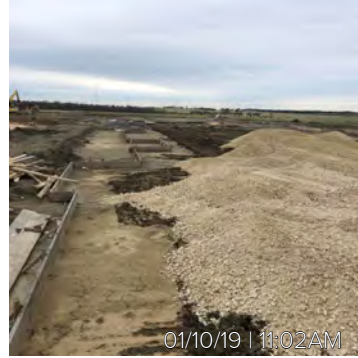


## Week One Photos 01/01/19 - 01/05/19































### Week Two Photos 01/06/19 - 01/12/19

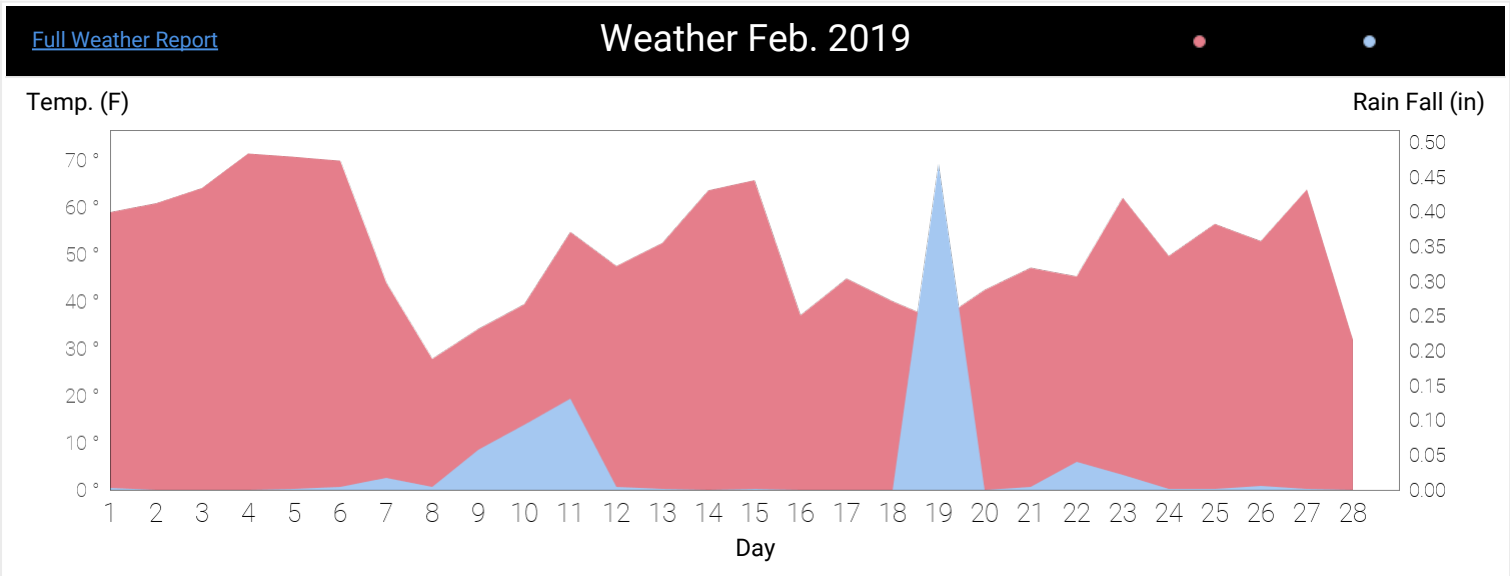


### Week Three Photos 01/13/19 - 01/19/19

<p>Sunday 01/06/19</p>  <p>57 °</p> <p>Mostly Cloudy Wind: 13 MPH S Precipitation: .0" Humidity: 92%</p>	<p>Monday 01/07/19</p>  <p>67 °</p> <p>Clear Wind: 10 MPH SW Precipitation: .0" Humidity: 83%</p>	<p>Tuesday 01/08/19</p>  <p>64 °</p> <p>Clear Wind: 10 MPH N Precipitation: .0" Humidity: 46%</p>	<p>Wednesday 01/09/19</p>  <p>51 °</p> <p>Clear Wind: 9 MPH NE Precipitation: .0" Humidity: 41%</p>	<p>Thursday 01/10/19</p>  <p>50 °</p> <p>Overcast Wind: 8 MPH SE Precipitation: .0" Humidity: 46%</p>	<p>Friday 01/11/19</p>  <p>52 °</p> <p>Overcast Wind: 12 MPH S Precipitation: .17" Humidity: 67%</p>	<p>Saturday 01/12/19</p>  <p>50 °</p> <p>Clear Wind: 16 MPH NW Precipitation: .0" Humidity: 59%</p>
<p>Sunday 01/13/19</p>  <p>41 °</p> <p>Mostly Cloudy Wind: 8 MPH N Precipitation: .0" Humidity: 69%</p>	<p>Monday 01/14/19</p>  <p>38 °</p> <p>Overcast Wind: 2 MPH N Precipitation: .0" Humidity: 79%</p>	<p>Tuesday 01/15/19</p>  <p>45 °</p> <p>Overcast Wind: 6 MPH S Precipitation: .0" Humidity: 77%</p>	<p>Wednesday 01/16/19</p>  <p>52 °</p> <p>Overcast Wind: 8 MPH S Precipitation: .0" Humidity: 98%</p>	<p>Thursday 01/17/19</p>  <p>56 °</p> <p>Clear Wind: 12 MPH N Precipitation: .0" Humidity: 71%</p>	<p>Friday 01/18/19</p>  <p>58 °</p> <p>Overcast Wind: 13 MPH S Precipitation: .0" Humidity: 99%</p>	<p>Saturday 01/19/19</p>  <p>40 °</p> <p>Breezy and Partly Cloudy Wind: 25 MPH NW Precipitation: .0" Humidity: 59%</p>
<p>Sunday 01/20/19</p>  <p>37 °</p> <p>Clear Wind: 1 MPH S Precipitation: .0" Humidity: 54%</p>	<p>Monday 01/21/19</p>  <p>50 °</p> <p>Clear Wind: 15 MPH S Precipitation: .0" Humidity: 72%</p>	<p>Tuesday 01/22/19</p>  <p>62 °</p> <p>Overcast Wind: 16 MPH S Precipitation: .02" Humidity: 79%</p>	<p>Wednesday 01/23/19</p>  <p>39 °</p> <p>Clear Wind: 17 MPH NW Precipitation: .01" Humidity: 47%</p>	<p>Thursday 01/24/19</p>  <p>53 °</p> <p>Clear Wind: 9 MPH S Precipitation: .0" Humidity: 36%</p>	<p>Friday 01/25/19</p>  <p>46 °</p> <p>Clear Wind: 3 MPH S Precipitation: .0" Humidity: 63%</p>	<p>Saturday 01/26/19</p>  <p>44 °</p> <p>Overcast Wind: 1 MPH W Precipitation: .06" Humidity: 98%</p>
<p>Sunday 01/27/19</p>  <p>57 °</p> <p>Clear Wind: 6 MPH N Precipitation: .0" Humidity: 57%</p>	<p>Monday 01/28/19</p>  <p>63 °</p> <p>Clear Wind: 9 MPH S Precipitation: .0" Humidity: 54%</p>	<p>Tuesday 01/29/19</p>  <p>42 °</p> <p>Clear Wind: 6 MPH NE Precipitation: .0" Humidity: 36%</p>	<p>Wednesday 01/30/19</p>  <p>44 °</p> <p>Mostly Cloudy Wind: 9 MPH SE Precipitation: .0" Humidity: 39%</p>	<p>Thursday 01/31/19</p>  <p>49 °</p> <p>Overcast Wind: 7 MPH S Precipitation: .0" Humidity: 84%</p>		

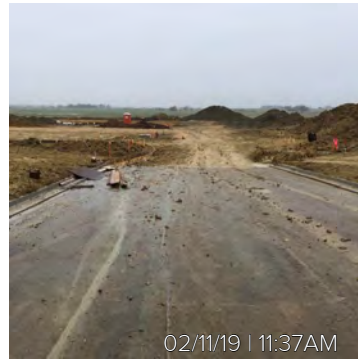
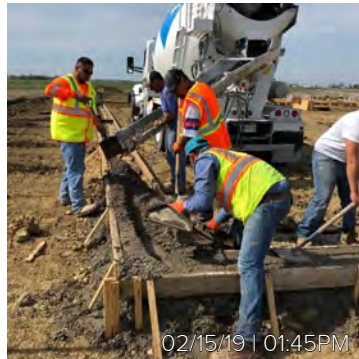
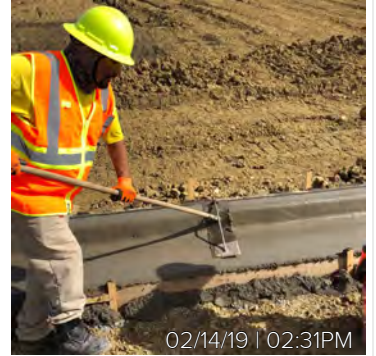


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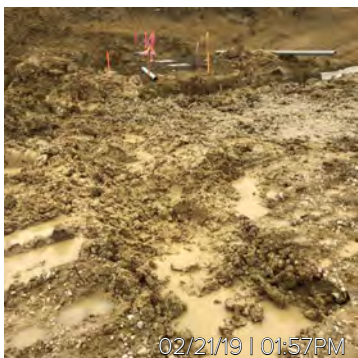


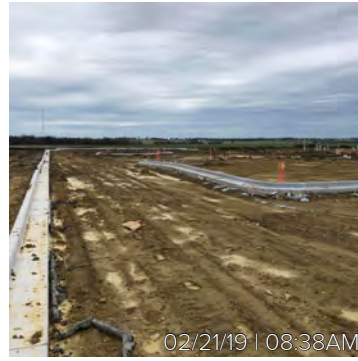
### Week One Photos 02/01/19 - 02/02/19





### Week Four Photos 02/17/19 - 02/23/19





### Week Five Photos 02/24/19 - 02/28/19



### Weather Feb. 2019

Friday  
02/01/19



























59 °

Overcast  
Wind: 6 MPH SE  
Precipitation: .0"  
Humidity: 89%

Saturday  
02/02/19

61 °

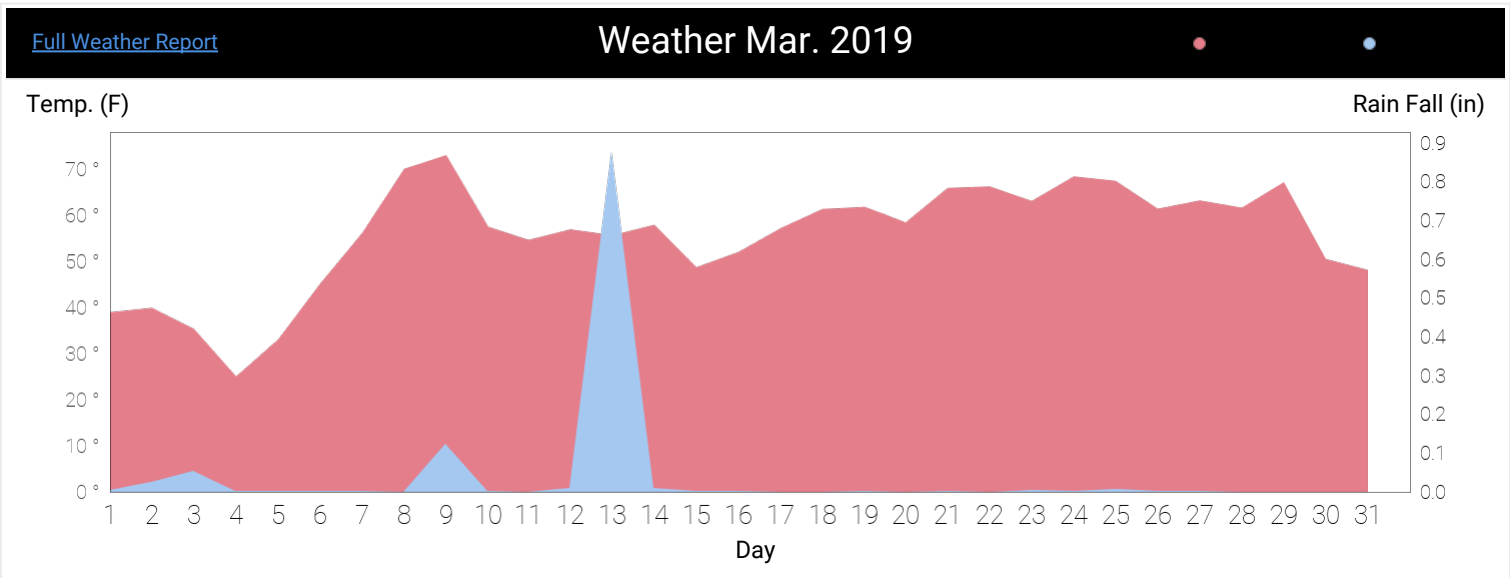
Overcast  
Wind: 8 MPH S  
Precipitation: .0"  
Humidity: 90%

<p>Sunday 02/03/19</p>  <p><b>64</b> °</p> <p>Overcast Wind: 10 MPH S Precipitation: .0" Humidity: 95%</p>	<p>Monday 02/04/19</p>  <p><b>71</b> °</p> <p>Partly Cloudy Wind: 10 MPH S Precipitation: .0" Humidity: 75%</p>	<p>Tuesday 02/05/19</p>  <p><b>71</b> °</p> <p>Overcast Wind: 16 MPH S Precipitation: .0" Humidity: 84%</p>	<p>Wednesday 02/06/19</p>  <p><b>70</b> °</p> <p>Overcast Wind: 11 MPH S Precipitation: .0" Humidity: 93%</p>	<p>Thursday 02/07/19</p>  <p><b>44</b> °</p> <p>Mostly Cloudy Wind: 17 MPH N Precipitation: .02" Humidity: 77%</p>	<p>Friday 02/08/19</p>  <p><b>28</b> °</p> <p>Mostly Cloudy Wind: 12 MPH N Precipitation: .0" Humidity: 60%</p>	<p>Saturday 02/09/19</p>  <p><b>34</b> °</p> <p>Overcast Wind: 6 MPH N Precipitation: .06" Humidity: 92%</p>
<p>Sunday 02/10/19</p>  <p><b>39</b> °</p> <p>Overcast Wind: 4 MPH SE Precipitation: .09" Humidity: 100%</p>	<p>Monday 02/11/19</p>  <p><b>55</b> °</p> <p>Overcast Wind: 9 MPH S Precipitation: .13" Humidity: 100%</p>	<p>Tuesday 02/12/19</p>  <p><b>47</b> °</p> <p>Clear Wind: 17 MPH N Precipitation: .0" Humidity: 62%</p>	<p>Wednesday 02/13/19</p>  <p><b>52</b> °</p> <p>Clear Wind: 16 MPH S Precipitation: .0" Humidity: 52%</p>	<p>Thursday 02/14/19</p>  <p><b>64</b> °</p> <p>Breezy Wind: 20 MPH S Precipitation: .0" Humidity: 68%</p>	<p>Friday 02/15/19</p>  <p><b>66</b> °</p> <p>Clear Wind: 8 MPH S Precipitation: .0" Humidity: 68%</p>	<p>Saturday 02/16/19</p>  <p><b>37</b> °</p> <p>Overcast Wind: 5 MPH N Precipitation: .0" Humidity: 91%</p>
<p>Sunday 02/17/19</p>  <p><b>45</b> °</p> <p>Partly Cloudy Wind: 15 MPH N Precipitation: .0" Humidity: 72%</p>	<p>Monday 02/18/19</p>  <p><b>40</b> °</p> <p>Clear Wind: 9 MPH NE Precipitation: .0" Humidity: 61%</p>	<p>Tuesday 02/19/19</p>  <p><b>36</b> °</p> <p>Light Rain Wind: 6 MPH N Precipitation: .47" Humidity: 100%</p>	<p>Wednesday 02/20/19</p>  <p><b>42</b> °</p> <p>Clear Wind: 2 MPH SW Precipitation: .0" Humidity: 83%</p>	<p>Thursday 02/21/19</p>  <p><b>47</b> °</p> <p>Overcast Wind: 11 MPH E Precipitation: .0" Humidity: 78%</p>	<p>Friday 02/22/19</p>  <p><b>45</b> °</p> <p>Foggy Wind: 5 MPH NE Precipitation: .04" Humidity: 100%</p>	<p>Saturday 02/23/19</p>  <p><b>62</b> °</p> <p>Clear Wind: 19 MPH W Precipitation: .02" Humidity: 26%</p>
<p>Sunday 02/24/19</p>  <p><b>50</b> °</p> <p>Clear Wind: 5 MPH N Precipitation: .0" Humidity: 41%</p>	<p>Monday 02/25/19</p>  <p><b>56</b> °</p> <p>Clear Wind: 14 MPH SE Precipitation: .0" Humidity: 38%</p>	<p>Tuesday 02/26/19</p>  <p><b>53</b> °</p> <p>Overcast Wind: 3 MPH E Precipitation: .0" Humidity: 95%</p>	<p>Wednesday 02/27/19</p>  <p><b>64</b> °</p> <p>Overcast Wind: 2 MPH W Precipitation: .0" Humidity: 90%</p>	<p>Thursday 02/28/19</p>  <p><b>32</b> °</p> <p>Overcast Wind: 8 MPH N Precipitation: .0" Humidity: 97%</p>		





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## Week One Photos 03/01/19 - 03/02/19





03/11/19 | 02:59PM



03/11/19 | 02:58PM



03/12/19 | 09:16AM



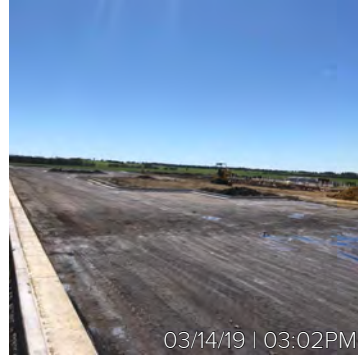
03/12/19 | 09:16AM



03/13/19 | 10:09AM



03/13/19 | 10:10AM



03/14/19 | 03:02PM



03/14/19 | 03:01PM



03/15/19 | 11:55AM



03/15/19 | 11:49AM



03/11/19 | 02:57PM



03/12/19 | 12:51PM

### Week Four Photos 03/17/19 - 03/23/19



03/18/19 | 02:19PM



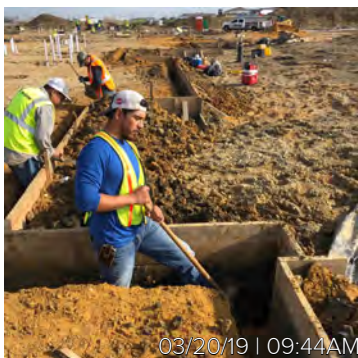
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03/19/19 | 03:22PM



03/19/19 | 03:22PM



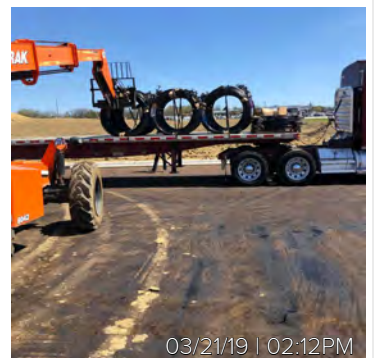
03/20/19 | 09:44AM
































03/20/19 | 09:45AM

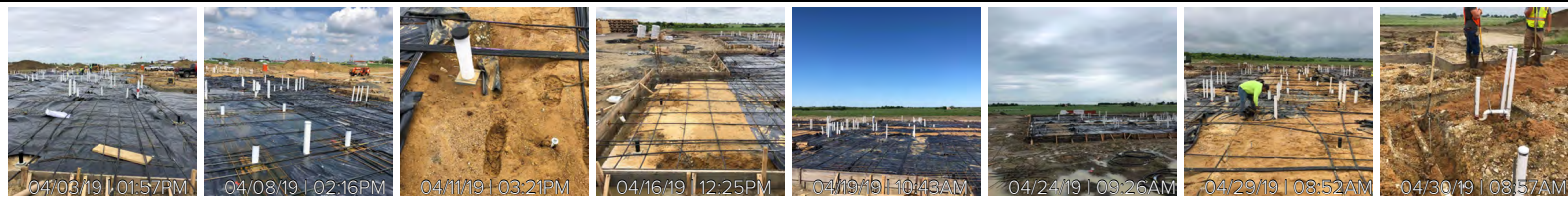


03/21/19 | 04:40PM

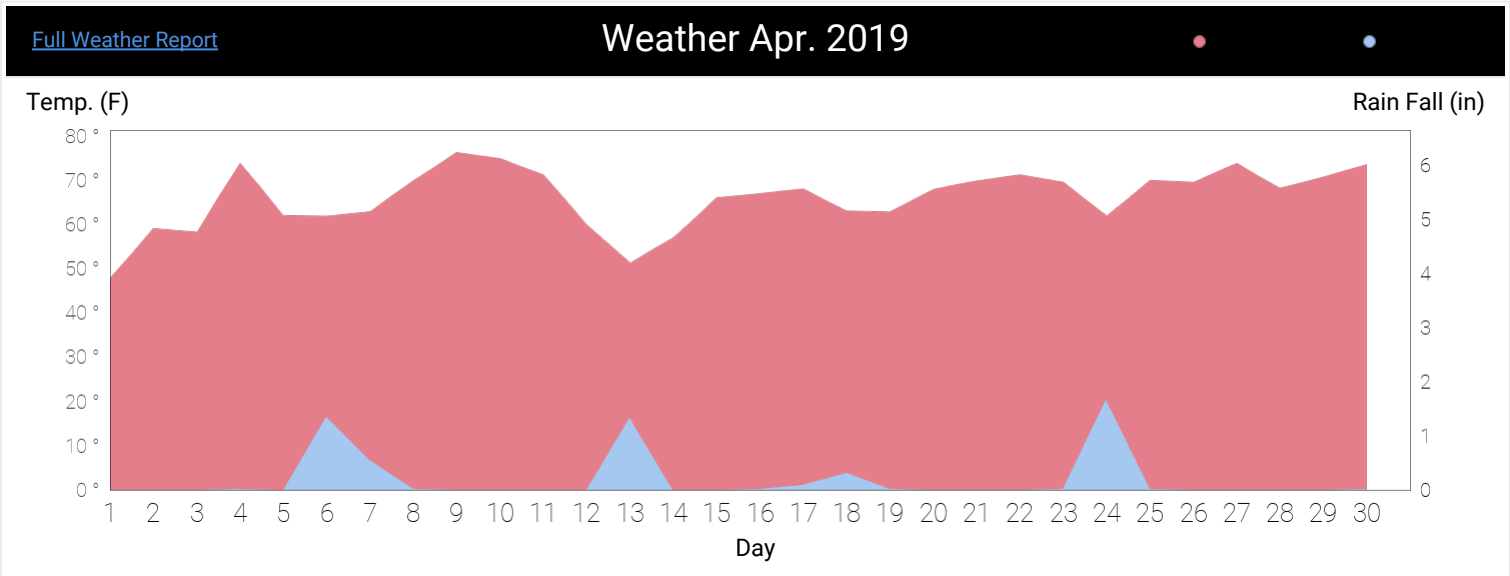


03/21/19 | 02:12PM

<p>Sunday 03/03/19</p>  <p><b>35</b> °</p> <p>Overcast Wind: 17 MPH N Precipitation: .05" Humidity: 100%</p>	<p>Monday 03/04/19</p>  <p><b>25</b> °</p> <p>Overcast Wind: 12 MPH N Precipitation: .0" Humidity: 51%</p>	<p>Tuesday 03/05/19</p>  <p><b>33</b> °</p> <p>Clear Wind: 11 MPH N Precipitation: .0" Humidity: 37%</p>	<p>Wednesday 03/06/19</p>  <p><b>45</b> °</p> <p>Clear Wind: 10 MPH SE Precipitation: .0" Humidity: 34%</p>	<p>Thursday 03/07/19</p>  <p><b>56</b> °</p> <p>Mostly Cloudy Wind: 12 MPH S Precipitation: .0" Humidity: 89%</p>	<p>Friday 03/08/19</p>  <p><b>70</b> °</p> <p>Mostly Cloudy Wind: 10 MPH S Precipitation: .0" Humidity: 78%</p>	<p>Saturday 03/09/19</p>  <p><b>73</b> °</p> <p>Clear Wind: 15 MPH W Precipitation: .12" Humidity: 27%</p>
<p>Sunday 03/10/19</p>  <p><b>58</b> °</p> <p>Overcast Wind: 8 MPH NE Precipitation: .0" Humidity: 60%</p>	<p>Monday 03/11/19</p>  <p><b>55</b> °</p> <p>Overcast Wind: 11 MPH NE Precipitation: .0" Humidity: 75%</p>	<p>Tuesday 03/12/19</p>  <p><b>57</b> °</p> <p>Overcast Wind: 10 MPH SE Precipitation: .01" Humidity: 100%</p>	<p>Wednesday 03/13/19</p>  <p><b>56</b> °</p> <p>Mostly Cloudy Wind: 14 MPH S Precipitation: .88" Humidity: 93%</p>	<p>Thursday 03/14/19</p>  <p><b>58</b> °</p> <p>Clear Wind: 13 MPH NW Precipitation: .01" Humidity: 40%</p>	<p>Friday 03/15/19</p>  <p><b>49</b> °</p> <p>Clear Wind: 13 MPH N Precipitation: .0" Humidity: 42%</p>	<p>Saturday 03/16/19</p>  <p><b>52</b> °</p> <p>Clear Wind: 8 MPH NE Precipitation: .0" Humidity: 35%</p>
<p>Sunday 03/17/19</p>  <p><b>57</b> °</p> <p>Clear Wind: 4 MPH NE Precipitation: .0" Humidity: 34%</p>	<p>Monday 03/18/19</p>  <p><b>61</b> °</p> <p>Clear Wind: 4 MPH E Precipitation: .0" Humidity: 39%</p>	<p>Tuesday 03/19/19</p>  <p><b>62</b> °</p> <p>Clear Wind: 10 MPH S Precipitation: .0" Humidity: 43%</p>	<p>Wednesday 03/20/19</p>  <p><b>58</b> °</p> <p>Mostly Cloudy Wind: 6 MPH NW Precipitation: .0" Humidity: 75%</p>	<p>Thursday 03/21/19</p>  <p><b>66</b> °</p> <p>Clear Wind: 5 MPH W Precipitation: .0" Humidity: 40%</p>	<p>Friday 03/22/19</p>  <p><b>66</b> °</p> <p>Clear Wind: 0 MPH NW Precipitation: .0" Humidity: 51%</p>	<p>Saturday 03/23/19</p>  <p><b>63</b> °</p> <p>Overcast Wind: 13 MPH S Precipitation: .0" Humidity: 87%</p>
<p>Sunday 03/24/19</p>  <p><b>68</b> °</p> <p>Overcast Wind: 12 MPH S Precipitation: .0" Humidity: 82%</p>	<p>Monday 03/25/19</p>  <p><b>68</b> °</p> <p>Clear Wind: 8 MPH NE Precipitation: .01" Humidity: 57%</p>	<p>Tuesday 03/26/19</p>  <p><b>61</b> °</p> <p>Clear Wind: 3 MPH E Precipitation: .0" Humidity: 61%</p>	<p>Wednesday 03/27/19</p>  <p><b>63</b> °</p> <p>Clear Wind: 15 MPH SE Precipitation: .0" Humidity: 57%</p>	<p>Thursday 03/28/19</p>  <p><b>62</b> °</p> <p>Mostly Cloudy Wind: 13 MPH S Precipitation: .0" Humidity: 85%</p>	<p>Friday 03/29/19</p>  <p><b>67</b> °</p> <p>Mostly Cloudy Wind: 16 MPH S Precipitation: .0" Humidity: 80%</p>	<p>Saturday 03/30/19</p>  <p><b>51</b> °</p> <p>Overcast Wind: 21 MPH NW Precipitation: .0" Humidity: 79%</p>
<p>Sunday 03/31/19</p>  <p><b>48</b> °</p> <p>Clear Wind: 10 MPH N Precipitation: .0" Humidity: 49%</p>						

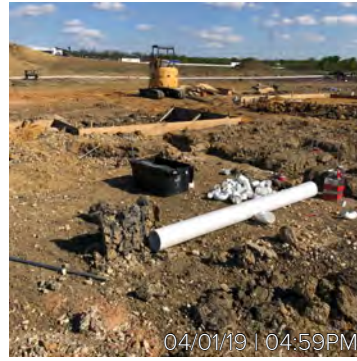


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## Week One Photos 04/01/19 - 04/06/19

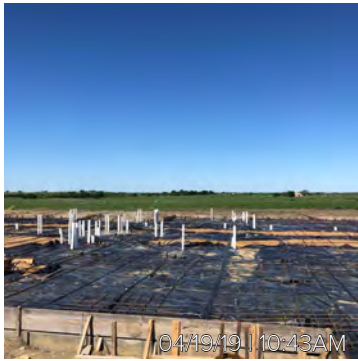
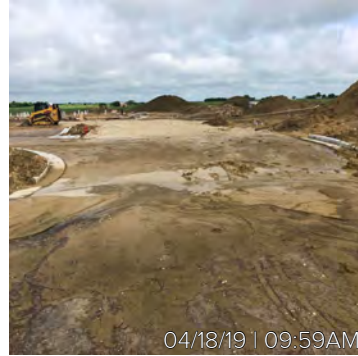




### Week Two Photos 04/07/19 - 04/13/19









### Week Three Photos 04/14/19 - 04/20/19



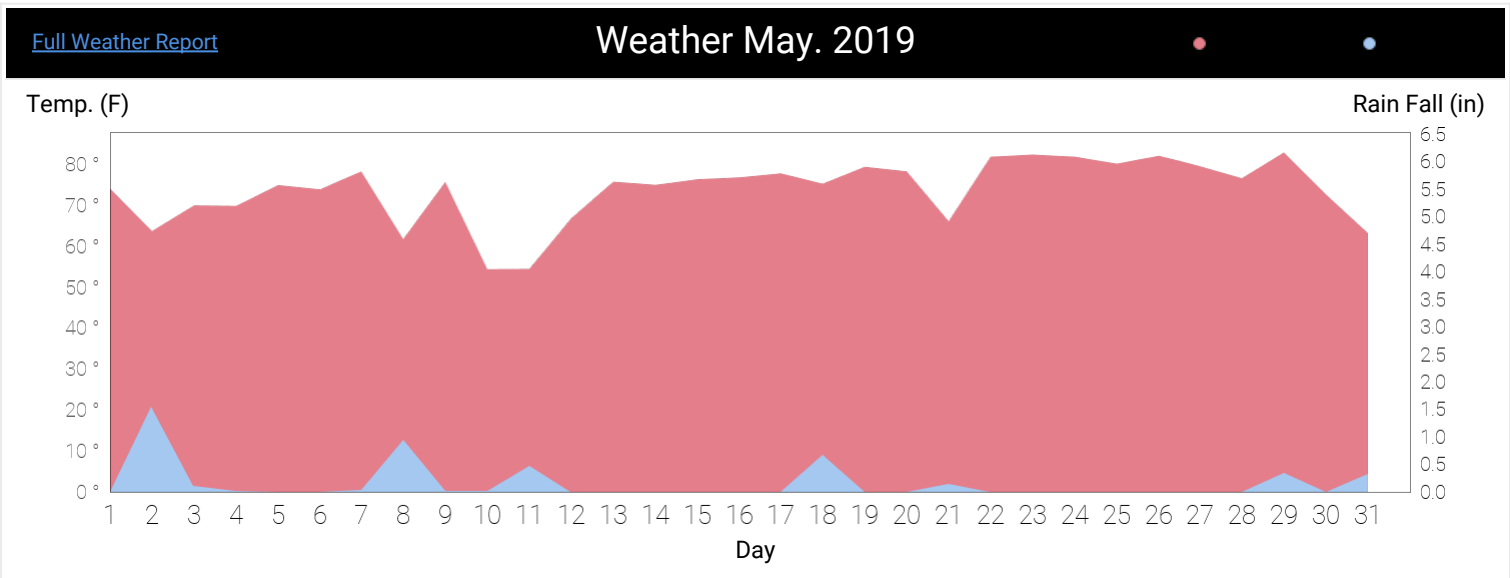
### Week Four Photos 04/21/19 - 04/27/19



<p>Sunday 04/07/19</p>  <p><b>63</b> °</p> <p>Light Rain Wind: 7 MPH S Precipitation: .55" Humidity: 100%</p>	<p>Monday 04/08/19</p>  <p><b>70</b> °</p> <p>Clear Wind: 9 MPH NW Precipitation: .0" Humidity: 87%</p>	<p>Tuesday 04/09/19</p>  <p><b>76</b> °</p> <p>Clear Wind: 3 MPH S Precipitation: .0" Humidity: 50%</p>	<p>Wednesday 04/10/19</p>  <p><b>75</b> °</p> <p>Clear Wind: 14 MPH S Precipitation: .0" Humidity: 59%</p>	<p>Thursday 04/11/19</p>  <p><b>71</b> °</p> <p>Clear Wind: 11 MPH NW Precipitation: .0" Humidity: 28%</p>	<p>Friday 04/12/19</p>  <p><b>60</b> °</p> <p>Clear Wind: 8 MPH E Precipitation: .0" Humidity: 45%</p>	<p>Saturday 04/13/19</p>  <p><b>51</b> °</p> <p>Heavy Rain Wind: 15 MPH NW Precipitation: 1.33" Humidity: 100%</p>
<p>Sunday 04/14/19</p>  <p><b>57</b> °</p> <p>Clear Wind: 9 MPH NW Precipitation: .0" Humidity: 51%</p>	<p>Monday 04/15/19</p>  <p><b>66</b> °</p> <p>Clear Wind: 13 MPH S Precipitation: .0" Humidity: 63%</p>	<p>Tuesday 04/16/19</p>  <p><b>67</b> °</p> <p>Mostly Cloudy Wind: 14 MPH S Precipitation: .0" Humidity: 80%</p>	<p>Wednesday 04/17/19</p>  <p><b>68</b> °</p> <p>Overcast Wind: 7 MPH S Precipitation: .09" Humidity: 100%</p>	<p>Thursday 04/18/19</p>  <p><b>63</b> °</p> <p>Mostly Cloudy Wind: 11 MPH NW Precipitation: .3" Humidity: 93%</p>	<p>Friday 04/19/19</p>  <p><b>63</b> °</p> <p>Clear Wind: 18 MPH NW Precipitation: .0" Humidity: 42%</p>	<p>Saturday 04/20/19</p>  <p><b>68</b> °</p> <p>Clear Wind: 5 MPH S Precipitation: .0" Humidity: 49%</p>
<p>Sunday 04/21/19</p>  <p><b>70</b> °</p> <p>Clear Wind: 9 MPH S Precipitation: .0" Humidity: 75%</p>	<p>Monday 04/22/19</p>  <p><b>71</b> °</p> <p>Mostly Cloudy Wind: 14 MPH S Precipitation: .0" Humidity: 74%</p>	<p>Tuesday 04/23/19</p>  <p><b>70</b> °</p> <p>Overcast Wind: 6 MPH SE Precipitation: .0" Humidity: 87%</p>	<p>Wednesday 04/24/19</p>  <p><b>62</b> °</p> <p>Light Rain Wind: 4 MPH SE Precipitation: 1.66" Humidity: 100%</p>	<p>Thursday 04/25/19</p>  <p><b>70</b> °</p> <p>Clear Wind: 4 MPH W Precipitation: .0" Humidity: 76%</p>	<p>Friday 04/26/19</p>  <p><b>70</b> °</p> <p>Clear Wind: 6 MPH NE Precipitation: .0" Humidity: 52%</p>	<p>Saturday 04/27/19</p>  <p><b>74</b> °</p> <p>Clear Wind: 11 MPH S Precipitation: .0" Humidity: 67%</p>
<p>Sunday 04/28/19</p>  <p><b>68</b> °</p> <p>Overcast Wind: 8 MPH S Precipitation: .0" Humidity: 92%</p>	<p>Monday 04/29/19</p>  <p><b>71</b> °</p> <p>Mostly Cloudy Wind: 11 MPH S Precipitation: .0" Humidity: 84%</p>	<p>Tuesday 04/30/19</p>  <p><b>74</b> °</p> <p>Overcast Wind: 10 MPH S Precipitation: .01" Humidity: 87%</p>				



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## Week One Photos 05/01/19 - 05/04/19


































### Week Two Photos 05/05/19 - 05/11/19

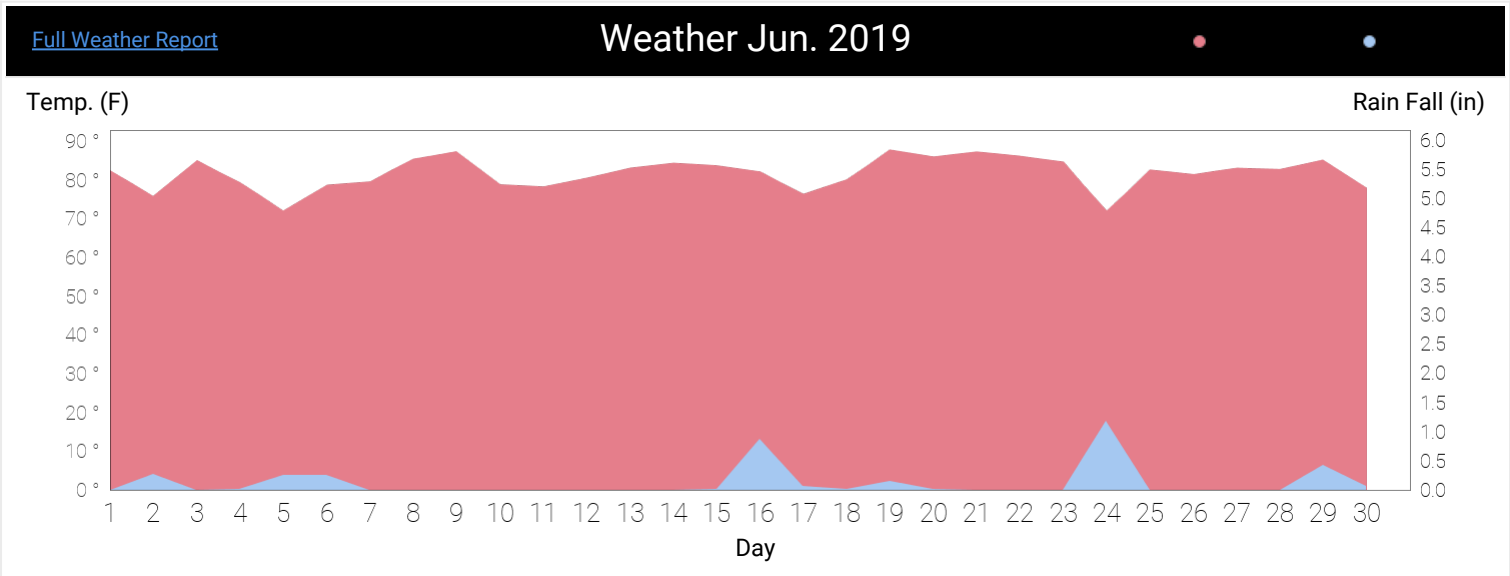


### Week Three Photos 05/12/19 - 05/18/19

<p>Sunday 05/05/19</p> <p> 75 °</p> <p>Clear Wind: 6 MPH S Precipitation: .0" Humidity: 70%</p>	<p>Monday 05/06/19</p> <p> 74 °</p> <p>Clear Wind: 8 MPH S Precipitation: .0" Humidity: 72%</p>	<p>Tuesday 05/07/19</p> <p> 78 °</p> <p>Mostly Cloudy Wind: 9 MPH SE Precipitation: .03" Humidity: 80%</p>	<p>Wednesday 05/08/19</p> <p> 62 °</p> <p>Heavy Rain Wind: 5 MPH N Precipitation: .94" Humidity: 100%</p>	<p>Thursday 05/09/19</p> <p> 76 °</p> <p>Clear Wind: 4 MPH N Precipitation: .0" Humidity: 82%</p>	<p>Friday 05/10/19</p> <p> 54 °</p> <p>Overcast Wind: 8 MPH N Precipitation: .0" Humidity: 81%</p>	<p>Saturday 05/11/19</p> <p> 54 °</p> <p>Light Rain Wind: 5 MPH NW Precipitation: .46" Humidity: 100%</p>
<p>Sunday 05/12/19</p> <p> 67 °</p> <p>Clear Wind: 8 MPH N Precipitation: .0" Humidity: 67%</p>	<p>Monday 05/13/19</p> <p> 76 °</p> <p>Clear Wind: 2 MPH SE Precipitation: .0" Humidity: 53%</p>	<p>Tuesday 05/14/19</p> <p> 75 °</p> <p>Clear Wind: 4 MPH SW Precipitation: .0" Humidity: 65%</p>	<p>Wednesday 05/15/19</p> <p> 76 °</p> <p>Clear Wind: 5 MPH S Precipitation: .0" Humidity: 70%</p>	<p>Thursday 05/16/19</p> <p> 77 °</p> <p>Clear Wind: 6 MPH S Precipitation: .0" Humidity: 63%</p>	<p>Friday 05/17/19</p> <p> 78 °</p> <p>Mostly Cloudy Wind: 11 MPH S Precipitation: .0" Humidity: 74%</p>	<p>Saturday 05/18/19</p> <p> 75 °</p> <p>Humid and Overcast Wind: 8 MPH S Precipitation: .66" Humidity: 90%</p>
<p>Sunday 05/19/19</p> <p> 79 °</p> <p>Clear Wind: 6 MPH N Precipitation: .0" Humidity: 64%</p>	<p>Monday 05/20/19</p> <p> 78 °</p> <p>Humid and Mostly Cloudy Wind: 12 MPH S Precipitation: .0" Humidity: 89%</p>	<p>Tuesday 05/21/19</p> <p> 66 °</p> <p>Overcast Wind: 5 MPH SE Precipitation: .13" Humidity: 89%</p>	<p>Wednesday 05/22/19</p> <p> 82 °</p> <p>Mostly Cloudy Wind: 11 MPH S Precipitation: .0" Humidity: 71%</p>	<p>Thursday 05/23/19</p> <p> 82 °</p> <p>Mostly Cloudy Wind: 16 MPH S Precipitation: .0" Humidity: 67%</p>	<p>Friday 05/24/19</p> <p> 82 °</p> <p>Mostly Cloudy Wind: 9 MPH SE Precipitation: .0" Humidity: 68%</p>	<p>Saturday 05/25/19</p> <p> 80 °</p> <p>Mostly Cloudy Wind: 9 MPH S Precipitation: .0" Humidity: 73%</p>
<p>Sunday 05/26/19</p> <p> 82 °</p> <p>Mostly Cloudy Wind: 11 MPH S Precipitation: .0" Humidity: 63%</p>	<p>Monday 05/27/19</p> <p> 80 °</p> <p>Mostly Cloudy Wind: 10 MPH S Precipitation: .0" Humidity: 72%</p>	<p>Tuesday 05/28/19</p> <p> 77 °</p> <p>Partly Cloudy Wind: 12 MPH S Precipitation: .0" Humidity: 82%</p>	<p>Wednesday 05/29/19</p> <p> 83 °</p> <p>Humid and Mostly Cloudy Wind: 8 MPH S Precipitation: .33" Humidity: 72%</p>	<p>Thursday 05/30/19</p> <p> 73 °</p> <p>Overcast Wind: 7 MPH N Precipitation: .0" Humidity: 79%</p>	<p>Friday 05/31/19</p> <p> 63 °</p> <p>Rain Wind: 5 MPH NE Precipitation: .32" Humidity: 100%</p>	



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## Week Two Photos 06/02/19 - 06/08/19



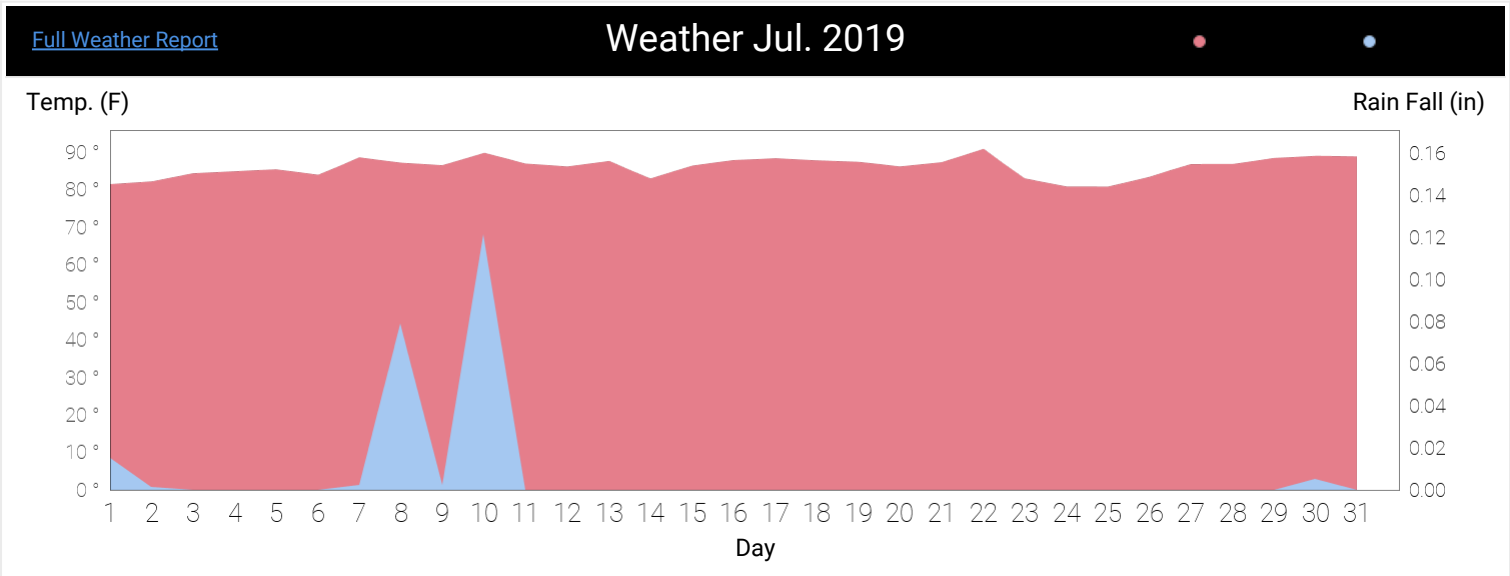


# Weather Jun. 2019

							<b>Saturday</b> 06/01/19  <b>82</b> °  Clear Wind: 3 MPH SW Precipitation: .0" Humidity: 70%
<b>Sunday</b> 06/02/19  <b>76</b> °  Clear Wind: 2 MPH S Precipitation: .26" Humidity: 80%	<b>Monday</b> 06/03/19  <b>85</b> °  Clear Wind: 4 MPH SW Precipitation: .0" Humidity: 63%	<b>Tuesday</b> 06/04/19  <b>79</b> °  Mostly Cloudy Wind: 1 MPH S Precipitation: .0" Humidity: 78%	<b>Wednesday</b> 06/05/19  <b>72</b> °  Light Rain Wind: 3 MPH SE Precipitation: .25" Humidity: 100%	<b>Thursday</b> 06/06/19  <b>79</b> °  Clear Wind: 3 MPH W Precipitation: .25" Humidity: 64%	<b>Friday</b> 06/07/19  <b>80</b> °  Partly Cloudy Wind: 8 MPH NW Precipitation: .0" Humidity: 63%	<b>Saturday</b> 06/08/19  <b>85</b> °  Clear Wind: 6 MPH N Precipitation: .0" Humidity: 58%	
<b>Sunday</b> 06/09/19  <b>87</b> °  Humid Wind: 6 MPH S Precipitation: .0" Humidity: 63%	<b>Monday</b> 06/10/19  <b>79</b> °  Clear Wind: 6 MPH N Precipitation: .0" Humidity: 49%	<b>Tuesday</b> 06/11/19  <b>78</b> °  Clear Wind: 6 MPH SE Precipitation: .0" Humidity: 44%	<b>Wednesday</b> 06/12/19  <b>81</b> °  Clear Wind: 4 MPH NW Precipitation: .0" Humidity: 50%	<b>Thursday</b> 06/13/19  <b>83</b> °  Clear Wind: 2 MPH E Precipitation: .0" Humidity: 36%	<b>Friday</b> 06/14/19  <b>84</b> °  Clear Wind: 14 MPH S Precipitation: .0" Humidity: 58%	<b>Saturday</b> 06/15/19  <b>84</b> °  Mostly Cloudy Wind: 12 MPH S Precipitation: .0" Humidity: 64%	
<b>Sunday</b> 06/16/19  <b>82</b> °  Humid and Overcast Wind: 5 MPH S Precipitation: .87" Humidity: 75%	<b>Monday</b> 06/17/19  <b>76</b> °  Partly Cloudy Wind: 0 MPH S Precipitation: .06" Humidity: 76%	<b>Tuesday</b> 06/18/19  <b>80</b> °  Mostly Cloudy Wind: 6 MPH SE Precipitation: .0" Humidity: 61%	<b>Wednesday</b> 06/19/19  <b>88</b> °  Humid and Partly Cloudy Wind: 10 MPH S Precipitation: .15" Humidity: 68%	<b>Thursday</b> 06/20/19  <b>86</b> °  Humid Wind: 13 MPH S Precipitation: .0" Humidity: 70%	<b>Friday</b> 06/21/19  <b>87</b> °  Humid and Partly Cloudy Wind: 16 MPH S Precipitation: .0" Humidity: 66%	<b>Saturday</b> 06/22/19  <b>86</b> °  Humid and Mostly Cloudy Wind: 12 MPH S Precipitation: .0" Humidity: 69%	
<b>Sunday</b> 06/23/19  <b>85</b> °  Humid and Mostly Cloudy Wind: 13 MPH S Precipitation: .0" Humidity: 74%	<b>Monday</b> 06/24/19  <b>72</b> °  Clear Wind: 2 MPH SW Precipitation: 1.17" Humidity: 87%	<b>Tuesday</b> 06/25/19  <b>83</b> °  Clear Wind: 8 MPH S Precipitation: .0" Humidity: 66%	<b>Wednesday</b> 06/26/19  <b>81</b> °  Humid and Overcast Wind: 10 MPH S Precipitation: .0" Humidity: 77%	<b>Thursday</b> 06/27/19  <b>83</b> °  Humid and Partly Cloudy Wind: 5 MPH S Precipitation: .0" Humidity: 75%	<b>Friday</b> 06/28/19  <b>83</b> °  Partly Cloudy Wind: 6 MPH SW Precipitation: .0" Humidity: 69%	<b>Saturday</b> 06/29/19  <b>85</b> °  Clear Wind: 6 MPH W Precipitation: .42" Humidity: 60%	
<b>Sunday</b>							



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## Week One Photos 07/01/19 - 07/06/19



		Humidity: 77%	Humidity: 67%	Humidity: 70%	Humidity: 68%	
Sunday 07/07/19	Monday 07/08/19	Tuesday 07/09/19	Wednesday 07/10/19	Thursday 07/11/19	Friday 07/12/19	Saturday 07/13/19
89 °	87 °	87 °	90 °	87 °	86 °	88 °
Humid Wind: 6 MPH SW Precipitation: .0" Humidity: 59%	Humid Wind: 4 MPH S Precipitation: .08" Humidity: 63%	Humid Wind: 9 MPH S Precipitation: .0" Humidity: 67%	Humid Wind: 6 MPH S Precipitation: .12" Humidity: 64%	Clear Wind: 7 MPH N Precipitation: .0" Humidity: 59%	Partly Cloudy Wind: 5 MPH NE Precipitation: .0" Humidity: 54%	Mostly Cloudy Wind: 11 MPH N Precipitation: .0" Humidity: 58%
Sunday 07/14/19	Monday 07/15/19	Tuesday 07/16/19	Wednesday 07/17/19	Thursday 07/18/19	Friday 07/19/19	Saturday 07/20/19
83 °	86 °	88 °	88 °	88 °	87 °	86 °
Mostly Cloudy Wind: 11 MPH N Precipitation: .0" Humidity: 62%	Clear Wind: 2 MPH W Precipitation: .0" Humidity: 56%	Humid Wind: 9 MPH S Precipitation: .0" Humidity: 60%	Mostly Cloudy Wind: 13 MPH S Precipitation: .0" Humidity: 58%	Partly Cloudy Wind: 9 MPH S Precipitation: .0" Humidity: 58%	Clear Wind: 10 MPH S Precipitation: .0" Humidity: 56%	Clear Wind: 9 MPH S Precipitation: .0" Humidity: 61%
Sunday 07/21/19	Monday 07/22/19	Tuesday 07/23/19	Wednesday 07/24/19	Thursday 07/25/19	Friday 07/26/19	Saturday 07/27/19
87 °	91 °	83 °	81 °	81 °	83 °	87 °
Clear Wind: 6 MPH S Precipitation: .0" Humidity: 53%	Clear Wind: 4 MPH W Precipitation: .0" Humidity: 47%	Partly Cloudy Wind: 9 MPH NE Precipitation: .0" Humidity: 45%	Partly Cloudy Wind: 6 MPH NE Precipitation: .0" Humidity: 43%	Partly Cloudy Wind: 4 MPH E Precipitation: .0" Humidity: 41%	Clear Wind: 3 MPH SW Precipitation: .0" Humidity: 41%	Partly Cloudy Wind: 5 MPH SE Precipitation: .0" Humidity: 46%
Sunday 07/28/19	Monday 07/29/19	Tuesday 07/30/19	Wednesday 07/31/19			
87 °	88 °	89 °	89 °			
Mostly Cloudy Wind: 9 MPH S Precipitation: .0" Humidity: 60%	Clear Wind: 11 MPH SW Precipitation: .0" Humidity: 55%	Clear Wind: 4 MPH SW Precipitation: .0" Humidity: 56%	Humid Wind: 4 MPH SE Precipitation: .0" Humidity: 59%			

**EXHIBIT ‘E’**  
**(Attached)**



## **PROVISIONAL MEASURES**

**OCTOBER 23, 2018**

TW DIRT CREATED A BERM IN ORDER TO DIVERT WATER FROM BUILDING PAD AND PARKING AREAS.

**NOVEMBER 21, 2018**

BARNETT CONTRACTING FINISHED WORKING ON TEMPORARY ACCESS PATH AT BUILDING PAD.

**NOVEMBER 26, 2018**

SL SMITH CONCRETE UNLOADED AND INSTALLED CRANE MATS AT BUILDING PAD.

**DECEMBER 12, 2018**

SL SMITH CONCRETE PUMPED WATER OUT OF BUILDING PAD.

**DECEMBER 13, 2018**

SL SMITH CONCRETE PUMPED WATER OUT OF BUILDING PAD.

**DECEMBER 20, 2018**

SL SMITH CONCRETE GRADED OUT RUTS AND SCRAPED THE TOP OF THE BUILDING PAD IN ORDER TO HELP IT DRY OUT.

**DECEMBER 26, 2019**

SL SMITH CONCRETE COVERED 10 DRILLED PIER HOLES WITH MATS.

**DECEMBER 27, 2019**

SL SMITH CONCRETE PUMPED WATER OUT OF BUILDING PAD.

**JANUARY 4, 2019**

SL SMITH CONCRETE PUMPED WATER OUT OF BUILDING PAD.

**MARCH 14, 2019**

SL SMITH CONCRETE PUMPED WATER FROM DITCHES AND AROUND FOUNDATION.

**MARCH 15, 2019**

SL SMITH CONCRETE PUMPED WATER FROM DITCHES AND AROUND FOUNDATION.

**APRIL 9, 2019**

SL SMITH CONCRETE PUMPED WATER ON SOUTH END OF BUILDING PAD.

**APRIL 10, 2019**

SL SMITH CONCRETE PUMPED WATER FROM BEAMS AND ELEVATOR PIT.

**APRIL 15, 2019**

SL SMITH CONCRETE PUMPED WATER FROM TRENCHES ON NORTH END AND ELEVATOR PIT.



**APRIL 25, 2019**

SL SMITH CONCRETE PUMPED WATER FROM TRENCHES AND ELEVATOR PIT.

**APRIL 29, 2019**

SL SMITH CONCRETE REMOVED THE POLY FROM SOUTH END BUILDING PAD IN AN EFFORT TO HELP THE WATER TRAPPED UNDERNEATH TO EVAPORATE FASTER AFTER THE HEAVY RAIN THE SITE RECEIVED.

**APRIL 30, 2019**

SUSTAIRE PLUMBING RENTED A VAC TRON TO VACUUM MUD FROM TOP OF PIPES AND CUT A KEY WAY IN FRONT AND BACK OF BUILDING PAD TO HELP WITH DRAINAGE.

**MAY 2, 2019**

SUSTAIRE PLUMBING PUMPED WATER FROM TRENCHES ON THE NORTH END.

**MAY 13, 2019**

SL SMITH CONCRETE PUMPED WATER FROM ELEVATOR PIT.

**MAY 29, 2019**

SL SMITH CONCRETE COVERED FOUNDATION WITH SECOND BARRIER TO REDUCE THE AMOUNT OF WATER PENETRATION.

**JUNE 6, 2019**

SL SMITH CONCRETE PUMPED WATER FROM PERIMETER OF BUILDING PAD AND ELEVATOR PIT.

**JUNE 7, 2019**

SL SMITH CONCRETE PUMPED WATER FROM POLY, BEAMS, AND ELEVATOR PIT.

# 17290

## Golden Trails Construction Status Reports

Provider requested that reports not be posted. Staff has provided summaries within the action item document. Photographs are included with request documents.

**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**OCTOBER 10, 2019**

Presentation, discussion and possible action on a request for return and reallocation of tax credits under 10 TAC §11.6(5) related to Credit Returns Resulting from Force Majeure Events for Application 17295, Legacy Trails of Decatur

**RECOMMENDED ACTION**

**WHEREAS**, an award of Competitive (9%) Housing Tax Credits in the amount of \$597,599 to 17295 Legacy Trails of Decatur (the Development) was approved by the Board on July 27, 2017;

**WHEREAS**, staff executed a Carryover Allocation Agreement with the Development Owner on December 12, 2017, that included a certification from the Development Owner that each building for which the allocation was made would be placed in service by December 31, 2019;

**WHEREAS**, on August 21, 2019, the Department received from the Development Owner a request to extend the placement in service deadline under the requirements of 10 TAC §11.6(5) related to Credits Returns Resulting from Force Majeure Events;

**WHEREAS**, other than in situations covered by force majeure, the Department lacks authority to extend federal deadlines for placement in service; and

**WHEREAS**, the precipitating events and supporting documentation described in the request fail to meet the requirements for force majeure events described in 10 TAC §11.6(5);

**NOW, therefore, it is hereby**

**RESOLVED**, the request for treatment of Legacy Trails of Decatur under an application of the force majeure rule is denied.

**BACKGROUND**

An award of \$597,599 in Competitive (9%) Housing Tax Credits to the Development was approved by the Board on July 27, 2017. The Development proposed the New Construction of 70 Units for an Elderly population in Decatur. Staff executed a Carryover Allocation Agreement with the Development Owner on December 12, 2017, that included a certification from the Development Owner that, in order to satisfy the requirements of §42 of the Internal Revenue Code, each building for which the allocation was made would be placed in service by December 31, 2019.

On August 21, 2019, the Department received from the consultant for SCS Decatur 17, LP, the Development Owner, a request to extend the placement in service deadline, if necessary, from December 31, 2019, to June 30, 2020, under the requirements of 10 TAC §11.6(5) related to Credits

Returns Resulting from Force Majeure Events. This rule allows a Development Owner to return issued credits within three years of award and have those credits re-allocated to the Development outside of the usual regional allocation system if all of the requirements of the subsection are met. Pursuant to 10 TAC §11.6(5), the Department's Governing Board may approve the execution of a current program year Carryover Allocation Agreement regarding the returned credits with the Development Owner that returned such credits only if:

(A) The credits were returned as a result of "Force Majeure" events that occurred after the start of construction and before issuance of Forms 8609. **Force Majeure events are the following sudden and unforeseen circumstances outside the control of the Development Owner:** acts of God such as fire, tornado, flooding, significant and unusual rainfall or subfreezing temperatures, or loss of access to necessary water or utilities as a direct result of significant weather events; explosion; vandalism; orders or acts of military authority; litigation; changes in law, rules, or regulations; national emergency or insurrection; riot; acts of terrorism; supplier failures; or materials or labor shortages. If a Force Majeure event is also a presidentially declared disaster, the Department may treat the matter under the applicable federal provisions. Force Majeure events must make construction activity impossible or materially impede its progress; (emphasis added)

Of the circumstances listed in the rule, the request from the Development Owner indicates that force majeure was triggered by changes in law, rules, or regulations, and significant and unusual rainfall. The Request also indicates that a shutdown of the federal government from December 22, 2018, through January 25, 2019, affected the construction schedule.

### **Changes in Laws, Rules, or Regulations**

In the request, the Development Owner states that the possibility of tax reform in late 2017 "resulted in a freeze of the equity markets until it could be determined how investors could accurately predict their return on LIHTC investments." The Development Owner sought an investor from October 2017 to June 2018 when they secured an offer for a price per credit of \$.88, which was less than the \$.90 indicated in the Application. The result for the Development Owner was that additional financing was required. Per the request, an application for USDA 538 financing was made in August of 2018, and closing was set in December 2018, but then the federal government shut down, delaying closing until March 26, 2019. Per the Development Owner, the shut-down "resulted in a loss of approximately 60 days of the construction period."

### **Significant and Unusual Rainfall**

In the request, the Development Owner states that "between March 20, 2019 and July 28, 2019 the area received over 16 inches in rain. In addition to the rain days there were another 71 work days lost due to rain causing the site to be unworkable. The request included an "Exhibit A" document described as a "daily rainfall breakdown."

On October 2, 2019, the Development Owner sent a second letter, dated October 1, 2019, that did not mention changes in laws, rules or regulations or the government shutdown, but instead focused on significant and unusual rainfall. The letter included the same "Exhibit A" and, as "Exhibit B," photographs of the Development Site depicting the "pooling and mud from the rain" taken in May and June of 2019.

Pursuant to 10 TAC §10.402(h) of the Asset Management Rules, all multifamily developments must submit a construction status report (CSR), due by the tenth day of the month following each reporting quarter's end (January, April, July, and October) and continue on a quarterly basis until the entire development is complete. The first CSR was due on October 10, 2018. It is noted that the Owner requested to extend the deadline for the October 10, 2018, initial CSR and was granted an extension to January 10, 2019. A second request to extend the January 10, 2019, date to April 10, 2019, was granted. A request to extend the 10% Test expenditure and submission deadline with no penalty was approved. The submitted Loan Agreement indicates that the loan was closed on March 26, 2019, with a completion date of February 28, 2021.

Included with the CSRs reviewed for this Development are field reports from Cross Architects (Cross) and by Newbanks Construction and Property Condition Consultants (Newbanks). The reports are included with this action item. Review of the CSRs indicates that the contractor agreement was signed on February 11, 2019, which is indicated as the date of commencement of the work.

- Cross Report dated April 29, 2019, of April 26 site visit notes construction 7% complete:
  - No information regarding construction delays provided.
  - Attached photos show some puddling on the site.
- Newbanks Report dated May 28, 2019, of May 28 site visit notes construction 9% complete:
  - Report indicates project start date of March 20, 2019 and completion date of January 10, 2020.
  - No information regarding construction delays provided.
  - “No major or unusual construction problems observed or reported.”
  - Attached photos show some puddling on the site.
- Cross Report dated June 3, 2019, of May 28 site visit notes construction 9% complete:
  - No information regarding construction delays provided.
  - Photos show site work and materials storage.
  - Attached photos show some puddling on the site.
- Newbanks Report dated June 26, 2019, of June 26 site visit notes construction 11% complete:
  - No information regarding construction delays provided.
  - “No major or unusual construction problems observed or reported.”
  - “Per the graph of project progress, the project is approximately 1 to 1.5 months behind schedule based on typical billing trends.”
- Cross Report dated July 8, 2019, of June 25 site visit notes construction 13% complete:
  - No information regarding construction delays provided.
  - Attached photos show ongoing site work.

Staff has determined that the Development Owner has not provided sufficient evidence that the Development has been affected by “sudden and unforeseen circumstances outside the control of the Development Owner” as described in 10 TAC §11.6(5).

Regarding “significant and unusual rainfall,” staff does not believe that the Development Owner provided evidence that the delay was a direct result of the weather as is required under 10 TAC §11.6(5)(C).

(C) A Development Owner claiming *Force Majeure* must provide evidence of the type of event, as described in subparagraph (A) of this paragraph, when the event occurred, and that the loss was a direct result of the event;

As was stated above, the submitted Loan Agreement indicates that the loan was closed on March 26, 2019. Only one application had a later closing date, and that application is also seeking force majeure and is not recommended by staff. Had the financing closed timely, it is probable that construction would have been at a point of completion where rains in April and May of 2019 would not have had the same effect.

Regarding “changes in laws, rules, or regulations,” the request generally describes the uncertainty around potential tax law changes, but it does not name a changed law, rule or regulation that directly resulted in the delays prior to closing. It was widely known and discussed that changes in tax law were imminent and would likely affect the housing tax credit market. At the Board meeting of March 23, 2017, the Board approved a rule waiver that allowed deals awarded credits in 2016 to return the credits without penalty if they found that they could not get the equity pricing required to make their deals feasible, so as a 2017 applicant, the Development Owner would have been aware of the circumstance. Per the request, the Development Owner understood that the price for credits would be lower than expected as early as the fall of 2017. The Development Owner did not apply for the USDA 538 financing until August 2018; this application is a months-long process that is usually started prior to the submission of the LIHTC application in order to ensure closing the loan in time to start construction timely. The request includes no evidence that, but for the shutdown of the federal government, the USDA loan would have closed in December 2018, allowing for the timely completion of the construction. Per 10 TAC §11.6(5)(D):

(D) The Development Owner must prove that reasonable steps were taken to minimize or mitigate any delay or damages, that the Development Owner substantially fulfilled all obligations not impeded by the event, including timely closing of all financing and start of construction, that the Development and Development Owner was properly insured and that the Department was timely notified of the likelihood or actual occurrence of an event described in subparagraph (A) of this paragraph;

Staff does not believe that the Development Owner has demonstrated that “the Development Owner substantially fulfilled all obligations not impeded by the event, including timely closing of all financing and start of construction.” Staff believes that the development is delayed due to the Development Owner’s failure to apply for and close financing in a timely manner.

If the Board denies the request to consider this a force majeure event, the Development Owner will retain \$597,599 in credits and the date by which the Development must be placed in service will remain December 31, 2019. If the Development Owner returns the credits, the credits would first be made available in the subregion from which they were originally awarded, pursuant to 10 TAC §11.6(2), related to returned credits; in this case Region 3, Rural. There is one pending Application on the 2019 waiting list from that subregion. The Application requests \$615,000, which is more than the amount of credits that would be returned. Pursuant to 10 TAC §11.6, staff would apply the credits to the collapse and, if enough credits are available, award credits to the next Application on the waiting list.

If the Board grants the request to consider this a force majeure event, the Development Owner will return \$597,599 in credits. The credits will be returned to the Development Owner with a 2019

Carryover Allocation Agreement and the date for the Development to be placed in service will be June 30, 2020, with the 2017 Qualified Allocation Plan and Uniform Multifamily Rules applicable to the Development.

Staff recommends the Board deny the request for treatment of Legacy Trails of Decatur under an application of the force majeure rule.

17295

# Legacy Trails of Decatur Extension Approvals





TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

[www.tdhca.state.tx.us](http://www.tdhca.state.tx.us)

Greg Abbott  
GOVERNOR

**BOARD MEMBERS**

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Leslie Bingham-Escareño, *Vice Chair*  
Paul A. Braden, Member  
Asusena Reséndiz, Member  
Sharon Thomason, Member  
Leo Vasquez, Member

July 2, 2018

*Writer's direct dial: 512-475-3296*  
*Email: [tim.irvine@tdhca.state.tx.us](mailto:tim.irvine@tdhca.state.tx.us)*

Chaz Garrett  
LKC Development  
7801 Jack Finney Blvd., # 101  
Greenville, TX 75402  
Via Email: [chaz@salemclark.com](mailto:chaz@salemclark.com)

RE: LEGACY TRAILS OF DECATUR (THE "DEVELOPMENT")  
HTC # 17295  
10% TEST EXTENSION REQUEST

Dear Mr. Garrett:

The Texas Department of Housing and Community Affairs (the "Department") received your letter dated June 20, 2018, requesting a 10% Test extension from July 2, 2018, to August 1, 2018, for the above referenced development.

According to the letter of request and discussions with the property's consultant, the extension is necessary due to items identified in the title policy pertaining to easements and mineral rights discovered as the Owner was attempting to close on the land, which attorneys for the Owner and the Seller are actively addressing.

Staff has recommended approval of your request. ***The request for an extension is granted without penalty.*** The new deadline to submit the 10% Test is **August 1, 2018**. Any subsequent extension request will be considered independently of this determination and must be accompanied by the appropriate fee under §10.901.

Should you have any questions, please contact your Asset Manager, Laura DeBellis, at (512) 475-0557 or via email at [laura.debellis@tdhca.state.tx.us](mailto:laura.debellis@tdhca.state.tx.us).

Sincerely,

A handwritten signature in black ink, appearing to read "Timothy K. Irvine".

Timothy K. Irvine  
Executive Director

LD





TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

[www.tdhca.state.tx.us](http://www.tdhca.state.tx.us)

Greg Abbott  
GOVERNOR

**BOARD MEMBERS**

J.B. Goodwin, *Chair*  
Leslie Bingham-Escareño, *Vice Chair*  
Paul A. Braden, Member  
Asusena Reséndiz, Member  
Sharon Thomason, Member  
Leo Vasquez, Member

September 21, 2018

*Writer's direct dial: (512) 475-3357*  
*Email: [rosalio.banuelos@tdhca.state.tx.us](mailto:rosalio.banuelos@tdhca.state.tx.us)*

Lora Myrick  
Betco Housing Lab  
812 San Antonio, Suite L-14  
Austin, TX 78701  
Via Email: [lora@betcohousinglab.com](mailto:lora@betcohousinglab.com)

RE: LEGACY TRAILS OF DECATUR (THE "DEVELOPMENT")  
HTC # 17295  
CONSTRUCTION STATUS REPORT EXTENSION APPROVAL

Ms. Myrick:

The Texas Department of Housing and Community Affairs (the "Department") received your request on September 10, 2018 to extend the deadline for the initial Construction Status Report for the above referenced Development from October 10, 2018 to the next quarterly deadline of January 10, 2019.

According to your request, closing is currently delayed and the Owner estimates that several of the documents requested as part of the initial construction status report in Subchapter E, Section 10.402(h) will not yet be available by the October 10<sup>th</sup> deadline.

Your request for extension has been approved. The new deadline for submission of the initial construction status report is January 10, 2019. The following report will be due on the regular quarterly deadline of April 10, 2019.

Any further questions should be directed to your Asset Manager, Laura DeBellas, at (512) 475-0577.

Sincerely,

A handwritten signature in black ink that reads "Rosalio Banuelos".

Rosalio Banuelos  
Acting Director of Multifamily Asset Management

LD





TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

[www.tdhca.state.tx.us](http://www.tdhca.state.tx.us)

Greg Abbott  
GOVERNOR

BOARD MEMBERS

J.B. Goodwin, *Chair*  
Leslie Bingham-Escareño, *Vice Chair*  
Paul A. Braden, *Member*  
Asusena Reséndiz, *Member*  
Sharon Thomason, *Member*  
Leo Vasquez, *Member*

January 10, 2019

*Writer's direct dial: 512-475-3357*  
*Email: [rosalio.banuelos@tdhca.state.tx.us](mailto:rosalio.banuelos@tdhca.state.tx.us)*

Juli Gonzalez  
Betco Housing Lab  
812 San Antonio St., Suite L-14  
Austin, TX 78701  
830-734-8330

RE: LEGACY TRAILS OF DECATUR (THE DEVELOPMENT)  
HTC # 17295 / CMTS #5330  
SECOND EXTENSION FOR INITIAL CONSTRUCTION STATUS REPORT

Dear Ms. Gonzalez:

The Texas Department of Housing and Community Affairs (the Department) received your request on January 8, 2019, to extend the deadline for the initial Construction Status Report for the above referenced Development from January 10, 2019 to the next quarterly deadline of April 10, 2019.

According to your request, closing is currently delayed due to the partial government shutdown, and several of the documents requested as part of the initial construction status report in 10 TAC §10.402(h) will not be available by the January 10<sup>th</sup> deadline.

Your request for extension has been approved. The new deadline for submission of the initial construction status report is April 10, 2019. The following report will be due on the regular quarterly deadline of July 10, 2019.

If you have any further questions, please contact Rene Ruiz at (512) 475-1987.

Sincerely,

A handwritten signature in black ink that reads "Rosalio Banuelos".

Rosalio Banuelos  
Director of Multifamily Asset Management

RR/RB



17295

Legacy Trails of Decatur  
Force Majeure Request



August 21, 2019

Marni Holloway  
Director of Multifamily Finance  
Texas Department of Housing and Community Affairs  
211 E 11<sup>th</sup> Street  
Austin, Texas 78701

Via Email: [marni.holloway@tdhca.state.tx.us](mailto:marni.holloway@tdhca.state.tx.us)

Re: TDHCA Application #17295 – Legacy Trails of Decatur, Decatur, TX

Dear Ms. Holloway,

SCS Decatur 17, LP received an allocation of Housing Tax Credits from the TDHCA for the construction of Legacy Trails of Decatur. Having received the allocation of credits in 2017, the Owner is required to place the Development in service by December 31, 2019. Unfortunately, due to events outside the control of the owner, the owner faces the possibility of not being able to place the Development in service prior to the end of this year as required by Section 42(h)(1)(E)(i) of the Internal Revenue Code.

Due to matters outlined below, construction of the Project has been significantly delayed.

- In the fall of 2017 at the time the developer received the allocation of credits, news began to spread regarding the possibility of tax reform. Potential changes to the federal tax code resulted in a freeze of the equity markets until it could be determined how investors could accurately predict their return on LIHTC investments. During this time from the fall of 2017 to the spring of 2018, it was virtually impossible to obtain an equity offer on any deal that would make the developments financially feasible (offers were ranging from the high 70's to low 80's due to the uncertainty). Once tax reform was finally passed, the demand for tax credits decreased due to tax code changes and as a result, the pricing of \$0.90 was no longer attainable. This sudden event was the result of a change in law and regulations outside of the control of the Development Owner. Between the months of October 2017 - June 2018 the Owner worked diligently meeting with multiple debt and equity providers to try and secure financing terms that would maintain Legacy Trails of Decatur's financial feasibility. This also required a significant restructure in the loan terms. In June of 2018 AHP provided an LOI for credit pricing of \$0.88 that was accepted by the Owner.
- As a result of the reduced equity pricing, USDA RHS 538 construction and permanent USDA financing was the only viable option to continue with the development given the escalating construction costs and change in equity pricing. However, this type of financing requires additional processing time in comparison to conventional loans. The RD 538 loan was applied for on August 27, 2018. The loan commitment (approval)

Lora Myrick (512) 785-3710

lora@betcohousinglab.com | 2201 Northland Drive Austin, Texas 78756 | 120 Joe Wimberley Blvd, Suite 104 Wimberley TX 78676



was received on December 18, 2018 and the Rate Lock Deposit was paid on December 19, 2018. The owner and lenders were ready to close to allow for an end of December closing and a 12-month construction period to meet the December 31, 2019 placed in service deadline. Unfortunately, before the project could close, the United States federal government was shut down due to a political impasse in Washington on December 22, 2018. Although the government re-opened on January 25, 2019, it took several weeks for the RD department to get up to speed and for the closing process to start again, further delaying closing. The RHS guarantee fee was paid on February 7, 2019 and closing took place on March 26, 2019. The shutdown, and resulting ramp up period for USDA resulted in a loss of approximately 60 days of the construction period for the project.

- In addition to changes in regulation and the government shutdown, excessive rainfall had an adverse effect on the Development construction schedule. Building permits were received March 13, 2019. Over an inch of rain fell on March 13 and an additional 3 days of work were lost to the rainfall from that day. Construction began March 20, 2019. Since building permits were approved on March 13, 2019 there were 36 days where the area received more than 0.01 inches of rain. Between March 20, 2019 and July 28, 2019 the area received over 16 inches in rain. In addition to the rain days there were another 71 work days lost due to rain causing the site to be unworkable. See the attached Exhibit A for the daily rainfall breakdown. As of June 26, 2019, Legacy Trails of Decatur was 11% complete.

Due to the delays described above, we request that the Owner be permitted to return the Tax Credits and that TDHCA reallocate the Tax Credits to the Owner in the current year in accordance with §11.6(5) b of the 2019 QAP relating to Force Majeure. We believe the Owner and Development meet all of the requirements in Section 11.6(5), in that:

1. The events that caused the delay occurred before issuance of 8609s and were sudden, unforeseen circumstances outside the control of the Development Owner.
2. The delays were not caused by willful negligence or acts of Owner, any Affiliate, or any other Related Party.
3. The Owner has provided evidence and a timeline of the events that was the direct result of the delays.
4. The Owner took all reasonable steps to minimize or mitigate any delays by seeking alternate financing.
5. The Owner substantially fulfilled all of its obligations that were not impeded by the events described above, the Development was properly insured, and TDHCA was notified of the Force Majeure events.
6. The Force Majeure events have prevented the Owner from meeting the Place in Service requirements of the original allocation.



7. The requested current year Carryover Agreement would allocate the same amount of Tax Credits as those that would be returned.
8. Legacy Trails of Decatur continues to be financially feasible.

If you have any questions or would like to discuss these items further, please do not hesitate to contact me directly at (512) 785-3710 or via email at [lora@betcohousinglab.com](mailto:lora@betcohousinglab.com) .

Sincerely,

Lora Myrick, Principal  
BETCO Consulting, LLC

Cc: Sharon Gamble  
Laura DeBellas  
John Shackelford  
Chaz Garrett

# EXHIBIT A

2019		March				
MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY
25	26	27	28	01 0.00 Precipitation	02 0.00 Precipitation	03 0.07 Precipitation
04 0.00 Precipitation	05 0.00 Precipitation	06 0.00 Precipitation	07 0.00 Precipitation	08 0.00 Precipitation	09 0.24 Precipitation	10 0.00 Precipitation
11 0.07 Precipitation	12 0.07 Precipitation	13 1.13 Precipitation +3 Unworkable Days	14 0.05 Precipitation	15 0.00 Precipitation	16 0.00 Precipitation	17 0.00 Precipitation
18 0.00 Precipitation	19 0.00 Precipitation	20 0.00 Precipitation construction began	21 0.00 Precipitation	22 0.00 Precipitation	23 0.00 Precipitation	24 0.00 Precipitation
25 0.00 Precipitation	26 0.00 Precipitation	27 0.00 Precipitation	28 0.00 Precipitation	29 0.00 Precipitation	30 0.00 Precipitation	31 0.00 Precipitation
01	02	Notes: Red: Amount of Precipitation(6 Days)   Blue: Number of Unworkable days after the Rain(3 Days)   Total: 9 Days				



**2019****April**

MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY
01 0.00 Precipitation	02 0.00 Precipitation	03 0.00 Precipitation	04 0.15 Precipitation	05 0.00 Precipitation	06 0.05 Precipitation	07 0.34 Precipitation +1 Unworkable Days
08 0.00 Precipitation	09 0.00 Precipitation	10 0.00 Precipitation	11 0.00 Precipitation	12 0.00 Precipitation	13 0.29 Precipitation	14 1.62 Precipitation +5 Unworkable Days
15 0.00 Precipitation	16 0.00 Precipitation	17 0.00 Precipitation	18 0.86 Precipitation	19 0.03 Precipitation +3 Unworkable Days	20 0.00 Precipitation	21 0.00 Precipitation
22 0.00 Precipitation	23 0.00 Precipitation	24 1.49 Precipitation	25 0.05 Precipitation +2 Unworkable Days	26 0.00 Precipitation	27 0.00 Precipitation	28 0.03 Precipitation
29 0.04 Precipitation	30 0.00 Precipitation	01	02	03	04	05

Notes:

Red: Amount of Precipitation (11 Days) | Blue: Number of Unworkable days after the Rain(11 Days) | Total: 22 Days

**Total April Precipitation: 4.95"**  
**Total April Rain Days + Unworkable Days: 22**

# 2019

# May

MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY
29 0.00 Precipitation	30 0.00 Precipitation	01 0.21 Precipitation	02 2.04 Precipitation +5 Unworkable Days	03 0.20 Precipitation	04 0.02 Precipitation	05 0.00 Precipitation
06 0.00 Precipitation	07 0.00 Precipitation	08 0.49 Precipitation +1 Unworkable Days	09 0.64 Precipitation +2 Unworkable Days	10 0.00 Precipitation	11 0.30 Precipitation +1 Unworkable Days	12 0.41 Precipitation +2 Unworkable Days
13 0.00 Precipitation	14 0.00 Precipitation	15 0.00 Precipitation	16 0.00 Precipitation	17 0.00 Precipitation	18 0.03 Precipitation	19 1.65 Precipitation
20 0.00 Precipitation	21 0.55 Precipitation	22 0.17 Precipitation +3 Unworkable Days	23 0.00 Precipitation	24 0.00 Precipitation	25 0.00 Precipitation	26 0.00 Precipitation
27 0.00 Precipitation	28 0.00 Precipitation	29 0.00 Precipitation	30 2.24 Precipitation +2 Unworkable Days	31 0.00 Precipitation	01	02

Notes:

Red: Amount of Precipitation(13 Days) | Blue: Number of Unworkable days after the Rain(16 Days) | Total: 29 Days

**Total May Precipitation: 8.95"**

**Total May Rain Days + Unworkable Days: 29**

2019

June

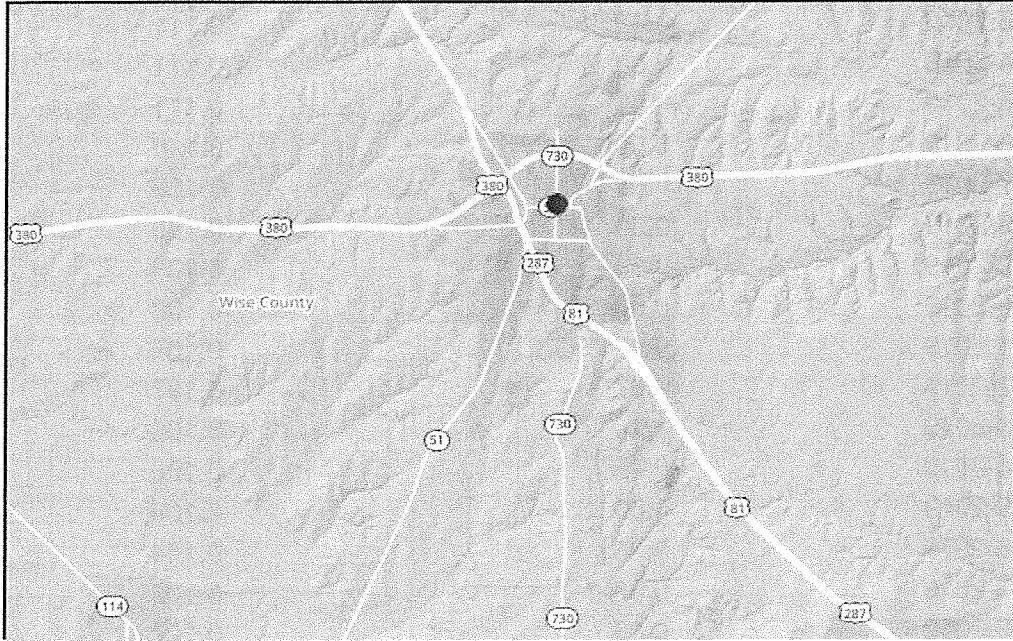
MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY
27	28	29	30	31	01 0.08 Precipitation	02 0.41 Precipitation
03 0.03 Precipitation +2 Unworkable Days	04 0.00 Precipitation	05 0.00 Precipitation	06 0.00 Precipitation	07 0.18 Precipitation +1 Unworkable Days	08 0.00 Precipitation	09 0.00 Precipitation
10 0.00 Precipitation	11 0.00 Precipitation	12 0.00 Precipitation	13 0.02 Precipitation	14 0.00 Precipitation	15 0.00 Precipitation	16 0.78 Precipitation
17 0.52 Precipitation +4 Unworkable Days	18 0.00 Precipitation	19 0.03 Precipitation	20 0.00 Precipitation	21 0.00 Precipitation	22 0.00 Precipitation	23 0.00 Precipitation
24 0.59 Precipitation +2 Unworkable Days	25 0.00 Precipitation	26 0.00 Precipitation	27 0.00 Precipitation	28 0.00 Precipitation	29 0.00 Precipitation	30 0.21 Precipitation +1 Unworkable Days
01	02	Red: Amount of Precipitation(10 Days)   Blue: Number of Unworkable days after the Rain(10 Days)   Total: 20 Days				

Total June Precipitation: 2.85"  
 Total June Rain Days + Unworkable Days: 20

# Detailed Data

## PRISM Precipitation Data for Single Location and Time Period

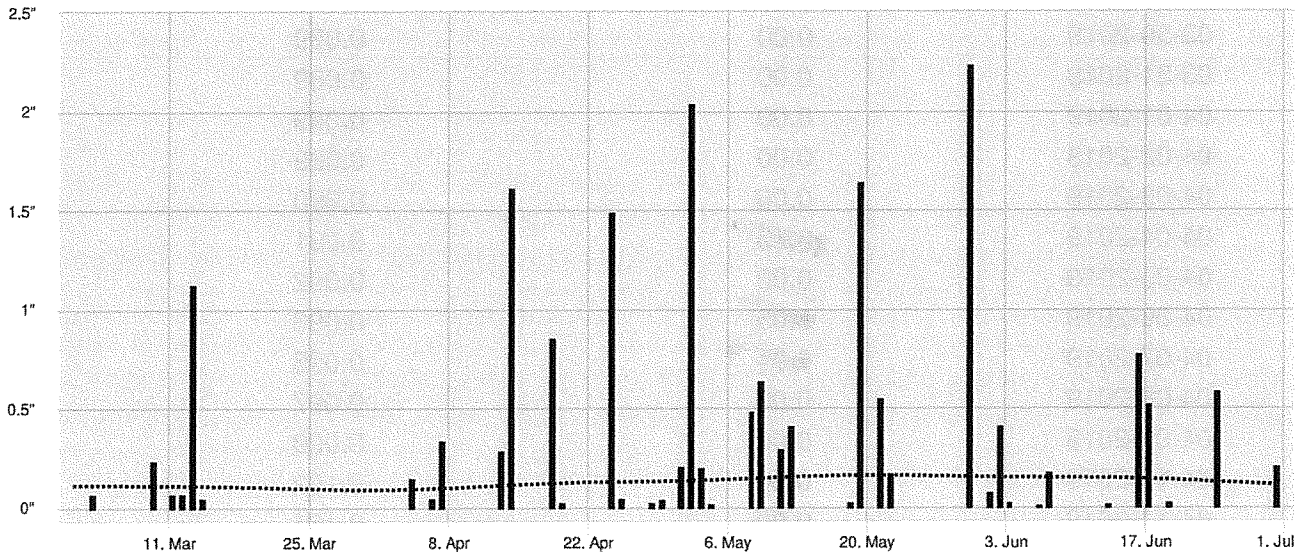
(created 02 Jul 2019)



Location: **Lat: 33.2354 Lon: -97.5861 (Texas - Wise County) -1**  
Elevation: **1,073 ft**  
Start Date: **01 March 2019** Data for this date is **unlikely to change**  
End Date: **30 June 2019** Data for this date is **preliminary**  
Assessment Basis: **Prior 10 years (2009-2018)**  
Plant Hardiness Zone: **8a: 10 to 15 °F**

### Precipitation (total inches)

■ Precip  
..... 10-yr avg precip





A LIMITED LIABILITY PARTNERSHIP  
ATTORNEYS & COUNSELORS

**John C. Shackelford**  
9201 N. Central Expressway  
Fourth Floor  
Dallas, Texas 75231  
(214) 780-1400 (Main)  
(214) 780-1414 (Direct)  
(214) 780-1401 (Fax)  
jshack@shackelford.law

October 1, 2019

Ms. Marni Holloway  
Director of Multifamily Finance  
Texas Department of Housing and Community Affairs  
211 E 11<sup>th</sup> Street  
Austin, Texas 78701

Via Email: [marni.holloway@tdhca.state.tx.us](mailto:marni.holloway@tdhca.state.tx.us)

Re: TDHCA Application #17295

Dear Ms. Holloway,

The SCS Decatur 17, LP. (the “Owner”) received an allocation of Housing Tax Credits from the Texas Department of Housing and Community Affairs (“TDHCA”) for the construction of Legacy Trails of Decatur (the “Development”). The Owner is required to place the Development in service by December 31, 2019. Unfortunately, the Owner faces the possibility of not being able to place the Development in service prior to the end of this year as required by Section 42(h)(1)(E)(i) of the Internal Revenue Code. This possibility of the delayed placement in service is the result of events that we believe should fall under the provisions of §11.6(5) of the 2019 Qualified Allocation Plan (“QAP”) relating to Force Majeure.

### Background Information

The Development is located in Decatur, Texas, in Wise County. The City of Decatur experienced significant rainfall during the construction of the Development, which has had an adverse effect on the initial construction schedule and placed-in-service timelines. A total of 71 construction days have been lost due to rainfall and/or mud for the Development between the months of April through June of 2019. When compared to the previous 3 years (2016, -2018) for the same 3-month period (April – June), the average rainfall was 7.533 inches<sup>1</sup>. The 2019 data shows for the same three-month period (April – June), the average rainfall was double at 14.72 inches<sup>2</sup> since groundbreaking.

The Owner’s general contractor has assembled a list of days lost due to precipitation or mud; this information is tabulated on Exhibit A. Pictures taken from the weekly construction status reports that depict the pooling and mud from the rain are also included as Exhibit B.

---

<sup>1</sup> Source: [www.weather.gov](http://www.weather.gov)

<sup>2</sup> Source: [www.weather.gov](http://www.weather.gov)

Due to the delays described above, we request that the Owner be permitted to return the Tax Credits and that TDHCA reallocate the Tax Credits to the Owner in the current year in accordance with §11.6(5) of the QAP relating to Force Majeure. We are requesting an extension through June 30, 2020. We believe the Owner and Development meet all of the requirements in Section 11.6(5), in that:

1. The events that caused the delay occurred before issuance of 8609s and were sudden, unforeseen circumstances outside the control of the Development Owner.
2. The delays were not caused by willful negligence or acts of Owner, any Affiliate, or any other Related Party.
3. The Owner has provided evidence of the events that was the direct result of the delays, see Exhibit A and Exhibit B.
4. Though there was little that could be done to mitigate the excessive rainfall, the Owner took all reasonable steps to minimize or mitigate any delays by seeking the best financing options available.
5. The Development and Developer was properly insured and the Department was timely notified of the likelihood or actual occurrence of an event described in 11.6(5)(A) of the Qualified Allocation Plan.
6. The Force Majeure threatens to prevent the Owner from meeting the Place in Service requirements of the original allocation.
7. The requested current year Carryover Agreement would allocate the same amount of Tax Credits as those that would be returned.
8. The Development continues to be financially feasible, as these delays have not significantly increased the original construction budget of the Project, nor have there been any insurance proceeds received related to the Force Majeure event.

Therefore, we respectfully request approval of this Force Majeure request. If you have any questions or would like to discuss these items further, please do not hesitate to contact me directly at (214) 780-1414 or [jshack@shackelford.law](mailto:jshack@shackelford.law).

Very truly yours,

A handwritten signature in blue ink that reads "John C. Shackelford" followed by a stylized monogram "JK".

John C. Shackelford

JCS/klm

cc: Bobby Wilkinson (via email)  
Beau Eccles (via email)  
Sharon Gamble (via email)  
Chaz Garrett (via email)  
Kelly Garrett (via email)  
Bob Long (via email)  
Lora Myrick (via email)

# EXHIBIT A

2019		March				
MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY
25	26	27	28	01	02	03
04 0.00 Precipitation	05 0.00 Precipitation	06 0.00 Precipitation	07 0.00 Precipitation	08 0.00 Precipitation	09 0.00 Precipitation	10 0.00 Precipitation
11 0.07 Precipitation	12 0.07 Precipitation	13 1.13 Precipitation +3 Unworkable Days	14 0.05 Precipitation	15 0.00 Precipitation	16 0.00 Precipitation	17 0.00 Precipitation
18 0.00 Precipitation	19 0.00 Precipitation	20 0.00 Precipitation construction began	21 0.00 Precipitation	22 0.00 Precipitation	23 0.00 Precipitation	24 0.00 Precipitation
25 0.00 Precipitation	26 0.00 Precipitation	27 0.00 Precipitation	28 0.00 Precipitation	29 0.00 Precipitation	30 0.00 Precipitation	31 0.00 Precipitation
01	02	Notes:				

Red: Amount of Precipitation(6 Days) | Blue: Number of Unworkable days after the Rain(3 Days) | Total: 9 Days



# 2019

## April

MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY
01 0.00 Precipitation	02 0.00 Precipitation	03 0.00 Precipitation	04 0.15 Precipitation	05 0.00 Precipitation	06 0.05 Precipitation	07 0.34 Precipitation +1 Unworkable Days
08 0.00 Precipitation	09 0.00 Precipitation	10 0.00 Precipitation	11 0.00 Precipitation	12 0.00 Precipitation	13 0.29 Precipitation	14 1.62 Precipitation +5 Unworkable Days
15 0.00 Precipitation	16 0.00 Precipitation	17 0.00 Precipitation	18 0.86 Precipitation	19 0.03 Precipitation +3 Unworkable Days	20 0.00 Precipitation	21 0.00 Precipitation
22 0.00 Precipitation	23 0.00 Precipitation	24 1.49 Precipitation	25 0.05 Precipitation +2 Unworkable Days	26 0.00 Precipitation	27 0.00 Precipitation	28 0.03 Precipitation
29 0.04 Precipitation	30 0.00 Precipitation	01 0.00 Precipitation	02 0.00 Precipitation	03 0.00 Precipitation	04 0.00 Precipitation	05 0.00 Precipitation
06 0.00 Precipitation	07 0.00 Precipitation	08 0.00 Precipitation	09 0.00 Precipitation	10 0.00 Precipitation	11 0.00 Precipitation	12 0.00 Precipitation

Notes:

Red: Amount of Precipitation (11 Days) | Blue: Number of Unworkable days after the Rain (11 Days) | Total: 22 Days

Total April Precipitation: 4.95"

Total April Rain Days + Unworkable Days: 22

# 2019

## May

MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY
29 0.00 Precipitation	30 0.00 Precipitation	01 0.21 Precipitation +5 Unworkable Days	02 2.04 Precipitation +5 Unworkable Days	03 0.20 Precipitation	04 0.02 Precipitation	05 0.00 Precipitation
06 0.00 Precipitation	07 0.00 Precipitation	08 0.49 Precipitation +1 Unworkable Days	09 0.64 Precipitation +2 Unworkable Days	10 0.00 Precipitation	11 0.30 Precipitation +1 Unworkable Days	12 0.41 Precipitation +2 Unworkable Days
13 0.00 Precipitation	14 0.00 Precipitation	15 0.00 Precipitation	16 0.00 Precipitation	17 0.00 Precipitation	18 0.03 Precipitation	19 1.65 Precipitation
20 0.00 Precipitation	21 0.55 Precipitation	22 0.17 Precipitation +3 Unworkable Days	23 0.00 Precipitation	24 0.00 Precipitation	25 0.00 Precipitation	26 0.00 Precipitation
27 0.00 Precipitation	28 0.00 Precipitation	29 0.00 Precipitation	30 2.24 Precipitation +2 Unworkable Days	31 0.00 Precipitation	01 0.00 Precipitation	02 0.00 Precipitation
03	04	Notes:				

Red: Amount of Precipitation(13 Days) | Blue: Number of Unworkable days after the Rain(16 Days) | Total: 29 Days

Total May Precipitation: 8.95"  
Total May Rain Days + Unworkable Days: 29

# 2019

# June

MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY
27	28	29	30	31	01	02
03	04	05	06	07	08	09
0.03 Precipitation +2 Unworkable Days	0.00 Precipitation	0.00 Precipitation	0.00 Precipitation	0.18 Precipitation +1 Unworkable Days	0.00 Precipitation	0.00 Precipitation
10	11	12	13	14	15	16
0.00 Precipitation	0.00 Precipitation	0.00 Precipitation	0.02 Precipitation	0.00 Precipitation	0.00 Precipitation	0.78 Precipitation
17	18	19	20	21	22	23
0.52 Precipitation +4 Unworkable Days	0.00 Precipitation	0.03 Precipitation	0.00 Precipitation	0.00 Precipitation	0.00 Precipitation	0.00 Precipitation
24	25	26	27	28	29	30
0.59 Precipitation +2 Unworkable Days	0.00 Precipitation	0.00 Precipitation	0.00 Precipitation	0.00 Precipitation	0.00 Precipitation	0.21 Precipitation +1 Unworkable Days
01	02					

Red: Amount of Precipitation(10 Days) | Blue: Number of Unworkable days after the Rain(10 Days) | Total: 20 Days

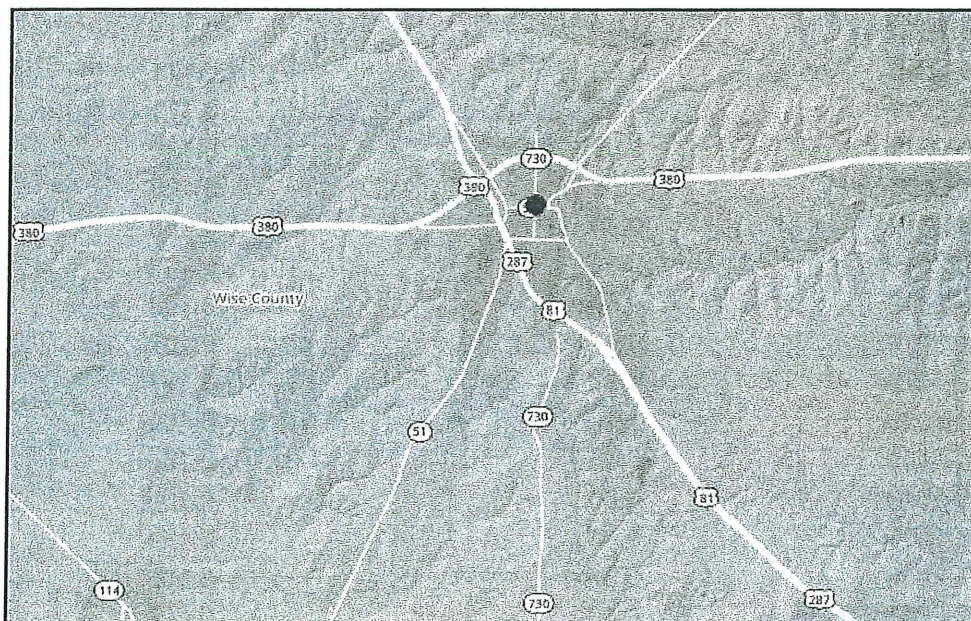
Total June Precipitation: 2.85"

Total June Rain Days + Unworkable Days: 20

# Detailed Data

## PRISM Precipitation Data for Single Location and Time Period

(created 02 Jul 2019)



Location: Lat: 33.2354 Lon: -97.5861 (Texas - Wise County) -1

Elevation: 1,073 ft

Start Date: 01 March 2019 Data for this date is **unlikely to change**

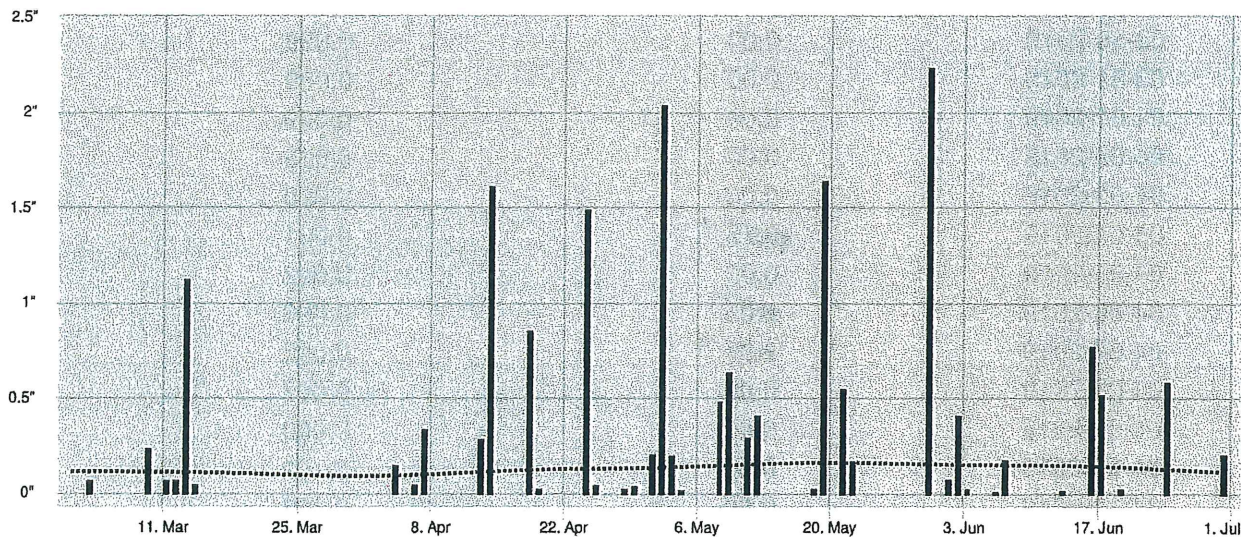
End Date: 30 June 2019 Data for this date is **preliminary**

Assessment Basis: **Prior 10 years (2009-2018)**

Plant Hardiness Zone: **8a: 10 to 15 °F**

### Precipitation (total inches)

■ Precip  
..... 10-yr avg precip



## EXHIBIT B

Pictures taken on 05-09-19

Rough grading started which includes grading of roads, slab area, plumbing and sewer line preparation.



Infrastructure preparation: including plumbing and sewer lines.



Erosion control as required by the State and the city



Sewer piping on-site and ready for installation.



Current site status after the rain



**Pictures taken on 05-28-19**

Pad preparation on building 3 on hold due to rain and ground conditions



Pad status of Building 2 on hold due to rain and ground conditions





Status of detention pond on the West side of the property.



Pictures taken on 06-26-19

Water main tie-in at west side of the property on hold



Sewer line culvert installation to building pad on hold due to water in picture



Building 4 and 11 status of slab preparation



Building 7 status of slab preparation





17295

Legacy Trails of Decatur  
Construction Status  
Reports

From: [Lora Myrick](mailto:Lora Myrick)  
To: [randall@newbanks.com](mailto:randall@newbanks.com)  
Subject: Third Party Construction Inspections - Decatur Forest Majors  
Date: Thursday, September 19, 2019 2:24 PM  
Attachments: [image001.png](#)

Will this work?  
Thanks!  
Lora

**Randall Beggs <[rbeggs@newbanks.com](mailto:rbeggs@newbanks.com)>**

2:27 PM (2 hours ago)  

to me, Micah, Amy, Juli

Yes, we are providing the reliance letters [including our approval that they may be posted and/or published by TDHCA for their purposes.](#) Thanks

Randall Beggs | Managing Partner



123 South Main Street, Keller, TX 76248

O: 817.379.4441

C: 817.688.8809

[rbeggs@newbanks.com](mailto:rbeggs@newbanks.com)

[www.newbanks.com](http://www.newbanks.com)

Nationwide Construction & Property Condition Consultants Since 1961

**\*PLEASE NOTE:** My email address has changed. Please send all future correspondence to [rbeggs@newbanks.com](mailto:rbeggs@newbanks.com). Thanks!

From: Lora Myrick (mailto:[lora@betchoosinglab.com](mailto:lora@betchoosinglab.com))  
Sent: Thursday, September 19, 2019 2:22 PM  
To: Micah Towery <[mtobery@newbanks.com](mailto:mtobery@newbanks.com)>  
Cc: Randall Beggs <[rbeggs@newbanks.com](mailto:rbeggs@newbanks.com)>; Amy Felts <[amy@saemclick.com](mailto:amy@saemclick.com)>; Juli Gonzalez <[jul@betchoosinglab.com](mailto:jul@betchoosinglab.com)>  
Subject: Re: FW: Third party construction inspections - Legacy Trails of Decatur

Thank you!

I also want to make mention that TDHCA will only use the sections of the report that speak to the construction status and corresponding pictures of construction status. No other portion of the report will be made public. Hope this helps.

Thank you!

Lora

--  
Lora Myrick  
President  
812 San Antonio, Suite L-14  
Austin, Texas 78701  
(512) 785-3710  
[www.betchoosinglab.com](http://www.betchoosinglab.com)





April 29, 2019

**SCS Decatur 17, LP**

7810 Jack Finney Blvd #101  
Greenville, Texas 75402

Project: Legacy Trails of Decatur  
Project Number: 17033  
Project Location: Decatur, TX  
Date of Inspection: April 26, 2019  
Pay Application: 2  
Weather: 71 Degrees / Sunny

Attendance: Mike Bonner – Watermark Construction  
Mark Leon – Cross Architects

An on-site visit was made by the Cross Architects representative(s) listed above as a visual observation of the above-mentioned project. Please see attached photos.

**Observations:**

The overall project is approximately 7% complete and appeared to be in compliance with the construction documents.

**General Notes:**

- Job trailer on site
- All pads are in progress
- Clearing of site in progress

**Sitework:**

- Coordinating electrical vault and entry drive locations with city
- Rough grade of all fire lanes in progress

**CLUBHOUSE:**NOTES:  

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TYPE OF WORK	STATUS	TYPE OF WORK	STATUS
BUILDING PAD	IP	UNIT/BREEZEWAY FLR TOPPING	NS
FORM BOARDS	NS	PATIO/BALCONY RAILING	NS
UNDERGROUND PLUMBING	NS	DRAFTSTOPPING	NS
GRADE BEAMS W/ POLY	NS	SHOWER/TUB	NS
POST TENSION CABLES	NS	INSULATION	NS
FOUNDATION SLAB	NS	SHEETROCK	NS
FRAMING	NS	TAPE, BED AND TEXTURE	NS
EXTERIOR SHEATHING	NS	INTERIOR DOOR AND TRIM	NS
BUILDING WRAP	NS	INTERIOR PAINT	NS
ROOF DECKING	NS	EXTERIOR PAINT	NS
ROOFING MATERIAL	NS	CABINETS	NS
ROUGH PLUMBING	NS	COUNTERTOPS	NS
ROUGH ELECTRICAL	NS	PLUMBING TRIM	NS
ROUGH HVAC	NS	ELECTRICAL TRIM	NS
FIRE SPRINKLER SYSTEM	NS	HVAC TRIM	NS
EXTERIOR WINDOWS	NS	FLOORING	NS
EXTERIOR DOORS	NS	APPLIANCES	NS
EXTERIOR WALL FINISH	NS	LANDSCAPING	NS
STAIRS	NS	FINAL CLEAN	NS

<b>STATUS LEGEND:</b>	NS = NOT STARTED	IP = IN PROGRESS	CO = COMPLETE
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**BUILDING 1:**NOTES:  

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TYPE OF WORK	STATUS	TYPE OF WORK	STATUS
BUILDING PAD	IP	UNIT/BREEZEWAY FLR TOPPING	NS
FORM BOARDS	NS	PATIO/BALCONY RAILING	NS
UNDERGROUND PLUMBING	NS	DRAFTSTOPPING	NS
GRADE BEAMS W/ POLY	NS	SHOWER/TUB	NS
POST TENSION CABLES	NS	INSULATION	NS
FOUNDATION SLAB	NS	SHEETROCK	NS
FRAMING	NS	TAPE, BED AND TEXTURE	NS
EXTERIOR SHEATHING	NS	INTERIOR DOOR AND TRIM	NS
BUILDING WRAP	NS	INTERIOR PAINT	NS
ROOF DECKING	NS	EXTERIOR PAINT	NS
ROOFING MATERIAL	NS	CABINETS	NS
ROUGH PLUMBING	NS	COUNTERTOPS	NS
ROUGH ELECTRICAL	NS	PLUMBING TRIM	NS
ROUGH HVAC	NS	ELECTRICAL TRIM	NS
FIRE SPRINKLER SYSTEM	NS	HVAC TRIM	NS
EXTERIOR WINDOWS	NS	FLOORING	NS
EXTERIOR DOORS	NS	APPLIANCES	NS
EXTERIOR WALL FINISH	NS	LANDSCAPING	NS
STAIRS	NS	FINAL CLEAN	NS

<b>STATUS LEGEND:</b>	NS = NOT STARTED	IP = IN PROGRESS	CO = COMPLETE
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**BUILDING 2:**NOTES:  

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TYPE OF WORK	STATUS	TYPE OF WORK	STATUS
BUILDING PAD	IP	UNIT/BREEZEWAY FLR TOPPING	NS
FORM BOARDS	NS	PATIO/BALCONY RAILING	NS
UNDERGROUND PLUMBING	NS	DRAFTSTOPPING	NS
GRADE BEAMS W/ POLY	NS	SHOWER/TUB	NS
POST TENSION CABLES	NS	INSULATION	NS
FOUNDATION SLAB	NS	SHEETROCK	NS
FRAMING	NS	TAPE, BED AND TEXTURE	NS
EXTERIOR SHEATHING	NS	INTERIOR DOOR AND TRIM	NS
BUILDING WRAP	NS	INTERIOR PAINT	NS
ROOF DECKING	NS	EXTERIOR PAINT	NS
ROOFING MATERIAL	NS	CABINETS	NS
ROUGH PLUMBING	NS	COUNTERTOPS	NS
ROUGH ELECTRICAL	NS	PLUMBING TRIM	NS
ROUGH HVAC	NS	ELECTRICAL TRIM	NS
FIRE SPRINKLER SYSTEM	NS	HVAC TRIM	NS
EXTERIOR WINDOWS	NS	FLOORING	NS
EXTERIOR DOORS	NS	APPLIANCES	NS
EXTERIOR WALL FINISH	NS	LANDSCAPING	NS
STAIRS	NS	FINAL CLEAN	NS

<b>STATUS LEGEND:</b>	NS = NOT STARTED	IP = IN PROGRESS	CO = COMPLETE
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**BUILDING 3:**NOTES:  

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TYPE OF WORK	STATUS	TYPE OF WORK	STATUS
BUILDING PAD	IP	UNIT/BREEZEWAY FLR TOPPING	NS
FORM BOARDS	NS	PATIO/BALCONY RAILING	NS
UNDERGROUND PLUMBING	NS	DRAFTSTOPPING	NS
GRADE BEAMS W/ POLY	NS	SHOWER/TUB	NS
POST TENSION CABLES	NS	INSULATION	NS
FOUNDATION SLAB	NS	SHEETROCK	NS
FRAMING	NS	TAPE, BED AND TEXTURE	NS
EXTERIOR SHEATHING	NS	INTERIOR DOOR AND TRIM	NS
BUILDING WRAP	NS	INTERIOR PAINT	NS
ROOF DECKING	NS	EXTERIOR PAINT	NS
ROOFING MATERIAL	NS	CABINETS	NS
ROUGH PLUMBING	NS	COUNTERTOPS	NS
ROUGH ELECTRICAL	NS	PLUMBING TRIM	NS
ROUGH HVAC	NS	ELECTRICAL TRIM	NS
FIRE SPRINKLER SYSTEM	NS	HVAC TRIM	NS
EXTERIOR WINDOWS	NS	FLOORING	NS
EXTERIOR DOORS	NS	APPLIANCES	NS
EXTERIOR WALL FINISH	NS	LANDSCAPING	NS
STAIRS	NS	FINAL CLEAN	NS

<b>STATUS LEGEND:</b>	NS = NOT STARTED	IP = IN PROGRESS	CO = COMPLETE
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**BUILDING 4:**

NOTES:

TYPE OF WORK	STATUS	TYPE OF WORK	STATUS
BUILDING PAD	IP	UNIT/BREEZEWAY FLR TOPPING	NS
FORM BOARDS	NS	PATIO/BALCONY RAILING	NS
UNDERGROUND PLUMBING	NS	DRAFTSTOPPING	NS
GRADE BEAMS W/ POLY	NS	SHOWER/TUB	NS
POST TENSION CABLES	NS	INSULATION	NS
FOUNDATION SLAB	NS	SHEETROCK	NS
FRAMING	NS	TAPE, BED AND TEXTURE	NS
EXTERIOR SHEATHING	NS	INTERIOR DOOR AND TRIM	NS
BUILDING WRAP	NS	INTERIOR PAINT	NS
ROOF DECKING	NS	EXTERIOR PAINT	NS
ROOFING MATERIAL	NS	CABINETS	NS
ROUGH PLUMBING	NS	COUNTERTOPS	NS
ROUGH ELECTRICAL	NS	PLUMBING TRIM	NS
ROUGH HVAC	NS	ELECTRICAL TRIM	NS
FIRE SPRINKLER SYSTEM	NS	HVAC TRIM	NS
EXTERIOR WINDOWS	NS	FLOORING	NS
EXTERIOR DOORS	NS	APPLIANCES	NS
EXTERIOR WALL FINISH	NS	LANDSCAPING	NS
STAIRS	NS	FINAL CLEAN	NS

<b>STATUS LEGEND:</b>	NS = NOT STARTED	IP = IN PROGRESS	CO = COMPLETE
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**BUILDING 5:**

NOTES:

TYPE OF WORK	STATUS	TYPE OF WORK	STATUS
BUILDING PAD	IP	UNIT/BREEZEWAY FLR TOPPING	NS
FORM BOARDS	NS	PATIO/BALCONY RAILING	NS
UNDERGROUND PLUMBING	NS	DRAFTSTOPPING	NS
GRADE BEAMS W/ POLY	NS	SHOWER/TUB	NS
POST TENSION CABLES	NS	INSULATION	NS
FOUNDATION SLAB	NS	SHEETROCK	NS
FRAMING	NS	TAPE, BED AND TEXTURE	NS
EXTERIOR SHEATHING	NS	INTERIOR DOOR AND TRIM	NS
BUILDING WRAP	NS	INTERIOR PAINT	NS
ROOF DECKING	NS	EXTERIOR PAINT	NS
ROOFING MATERIAL	NS	CABINETS	NS
ROUGH PLUMBING	NS	COUNTERTOPS	NS
ROUGH ELECTRICAL	NS	PLUMBING TRIM	NS
ROUGH HVAC	NS	ELECTRICAL TRIM	NS
FIRE SPRINKLER SYSTEM	NS	HVAC TRIM	NS
EXTERIOR WINDOWS	NS	FLOORING	NS
EXTERIOR DOORS	NS	APPLIANCES	NS
EXTERIOR WALL FINISH	NS	LANDSCAPING	NS
STAIRS	NS	FINAL CLEAN	NS

<b>STATUS LEGEND:</b>	NS = NOT STARTED	IP = IN PROGRESS	CO = COMPLETE
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**BUILDING 6:**

NOTES:

TYPE OF WORK	STATUS	TYPE OF WORK	STATUS
BUILDING PAD	IP	UNIT/BREEZEWAY FLR TOPPING	NS
FORM BOARDS	NS	PATIO/BALCONY RAILING	NS
UNDERGROUND PLUMBING	NS	DRAFTSTOPPING	NS
GRADE BEAMS W/ POLY	NS	SHOWER/TUB	NS
POST TENSION CABLES	NS	INSULATION	NS
FOUNDATION SLAB	NS	SHEETROCK	NS
FRAMING	NS	TAPE, BED AND TEXTURE	NS
EXTERIOR SHEATHING	NS	INTERIOR DOOR AND TRIM	NS
BUILDING WRAP	NS	INTERIOR PAINT	NS
ROOF DECKING	NS	EXTERIOR PAINT	NS
ROOFING MATERIAL	NS	CABINETS	NS
ROUGH PLUMBING	NS	COUNTERTOPS	NS
ROUGH ELECTRICAL	NS	PLUMBING TRIM	NS
ROUGH HVAC	NS	ELECTRICAL TRIM	NS
FIRE SPRINKLER SYSTEM	NS	HVAC TRIM	NS
EXTERIOR WINDOWS	NS	FLOORING	NS
EXTERIOR DOORS	NS	APPLIANCES	NS
EXTERIOR WALL FINISH	NS	LANDSCAPING	NS
STAIRS	NS	FINAL CLEAN	NS

<b>STATUS LEGEND:</b>	NS = NOT STARTED	IP = IN PROGRESS	CO = COMPLETE
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**BUILDING 7:**

NOTES:

TYPE OF WORK	STATUS	TYPE OF WORK	STATUS
BUILDING PAD	IP	UNIT/BREEZEWAY FLR TOPPING	NS
FORM BOARDS	NS	PATIO/BALCONY RAILING	NS
UNDERGROUND PLUMBING	NS	DRAFTSTOPPING	NS
GRADE BEAMS W/ POLY	NS	SHOWER/TUB	NS
POST TENSION CABLES	NS	INSULATION	NS
FOUNDATION SLAB	NS	SHEETROCK	NS
FRAMING	NS	TAPE, BED AND TEXTURE	NS
EXTERIOR SHEATHING	NS	INTERIOR DOOR AND TRIM	NS
BUILDING WRAP	NS	INTERIOR PAINT	NS
ROOF DECKING	NS	EXTERIOR PAINT	NS
ROOFING MATERIAL	NS	CABINETS	NS
ROUGH PLUMBING	NS	COUNTERTOPS	NS
ROUGH ELECTRICAL	NS	PLUMBING TRIM	NS
ROUGH HVAC	NS	ELECTRICAL TRIM	NS
FIRE SPRINKLER SYSTEM	NS	HVAC TRIM	NS
EXTERIOR WINDOWS	NS	FLOORING	NS
EXTERIOR DOORS	NS	APPLIANCES	NS
EXTERIOR WALL FINISH	NS	LANDSCAPING	NS
STAIRS	NS	FINAL CLEAN	NS

<b>STATUS LEGEND:</b>	NS = NOT STARTED	IP = IN PROGRESS	CO = COMPLETE
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**BUILDING 8:**

NOTES:

TYPE OF WORK	STATUS	TYPE OF WORK	STATUS
BUILDING PAD	IP	UNIT/BREEZEWAY FLR TOPPING	NS
FORM BOARDS	NS	PATIO/BALCONY RAILING	NS
UNDERGROUND PLUMBING	NS	DRAFTSTOPPING	NS
GRADE BEAMS W/ POLY	NS	SHOWER/TUB	NS
POST TENSION CABLES	NS	INSULATION	NS
FOUNDATION SLAB	NS	SHEETROCK	NS
FRAMING	NS	TAPE, BED AND TEXTURE	NS
EXTERIOR SHEATHING	NS	INTERIOR DOOR AND TRIM	NS
BUILDING WRAP	NS	INTERIOR PAINT	NS
ROOF DECKING	NS	EXTERIOR PAINT	NS
ROOFING MATERIAL	NS	CABINETS	NS
ROUGH PLUMBING	NS	COUNTERTOPS	NS
ROUGH ELECTRICAL	NS	PLUMBING TRIM	NS
ROUGH HVAC	NS	ELECTRICAL TRIM	NS
FIRE SPRINKLER SYSTEM	NS	HVAC TRIM	NS
EXTERIOR WINDOWS	NS	FLOORING	NS
EXTERIOR DOORS	NS	APPLIANCES	NS
EXTERIOR WALL FINISH	NS	LANDSCAPING	NS
STAIRS	NS	FINAL CLEAN	NS

<b>STATUS LEGEND:</b>	NS = NOT STARTED	IP = IN PROGRESS	CO = COMPLETE
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**BUILDING 9:**

NOTES:

TYPE OF WORK	STATUS	TYPE OF WORK	STATUS
BUILDING PAD	IP	UNIT/BREEZEWAY FLR TOPPING	NS
FORM BOARDS	NS	PATIO/BALCONY RAILING	NS
UNDERGROUND PLUMBING	NS	DRAFTSTOPPING	NS
GRADE BEAMS W/ POLY	NS	SHOWER/TUB	NS
POST TENSION CABLES	NS	INSULATION	NS
FOUNDATION SLAB	NS	SHEETROCK	NS
FRAMING	NS	TAPE, BED AND TEXTURE	NS
EXTERIOR SHEATHING	NS	INTERIOR DOOR AND TRIM	NS
BUILDING WRAP	NS	INTERIOR PAINT	NS
ROOF DECKING	NS	EXTERIOR PAINT	NS
ROOFING MATERIAL	NS	CABINETS	NS
ROUGH PLUMBING	NS	COUNTERTOPS	NS
ROUGH ELECTRICAL	NS	PLUMBING TRIM	NS
ROUGH HVAC	NS	ELECTRICAL TRIM	NS
FIRE SPRINKLER SYSTEM	NS	HVAC TRIM	NS
EXTERIOR WINDOWS	NS	FLOORING	NS
EXTERIOR DOORS	NS	APPLIANCES	NS
EXTERIOR WALL FINISH	NS	LANDSCAPING	NS
STAIRS	NS	FINAL CLEAN	NS

<b>STATUS LEGEND:</b>	NS = NOT STARTED	IP = IN PROGRESS	CO = COMPLETE
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**BUILDING 10:**

NOTES:

TYPE OF WORK	STATUS	TYPE OF WORK	STATUS
BUILDING PAD	IP	UNIT/BREEZEWAY FLR TOPPING	NS
FORM BOARDS	NS	PATIO/BALCONY RAILING	NS
UNDERGROUND PLUMBING	NS	DRAFTSTOPPING	NS
GRADE BEAMS W/ POLY	NS	SHOWER/TUB	NS
POST TENSION CABLES	NS	INSULATION	NS
FOUNDATION SLAB	NS	SHEETROCK	NS
FRAMING	NS	TAPE, BED AND TEXTURE	NS
EXTERIOR SHEATHING	NS	INTERIOR DOOR AND TRIM	NS
BUILDING WRAP	NS	INTERIOR PAINT	NS
ROOF DECKING	NS	EXTERIOR PAINT	NS
ROOFING MATERIAL	NS	CABINETS	NS
ROUGH PLUMBING	NS	COUNTERTOPS	NS
ROUGH ELECTRICAL	NS	PLUMBING TRIM	NS
ROUGH HVAC	NS	ELECTRICAL TRIM	NS
FIRE SPRINKLER SYSTEM	NS	HVAC TRIM	NS
EXTERIOR WINDOWS	NS	FLOORING	NS
EXTERIOR DOORS	NS	APPLIANCES	NS
EXTERIOR WALL FINISH	NS	LANDSCAPING	NS
STAIRS	NS	FINAL CLEAN	NS

<b>STATUS LEGEND:</b>	NS = NOT STARTED	IP = IN PROGRESS	CO = COMPLETE
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**BUILDING 11:**

NOTES:

TYPE OF WORK	STATUS	TYPE OF WORK	STATUS
BUILDING PAD	IP	UNIT/BREEZEWAY FLR TOPPING	NS
FORM BOARDS	NS	PATIO/BALCONY RAILING	NS
UNDERGROUND PLUMBING	NS	DRAFTSTOPPING	NS
GRADE BEAMS W/ POLY	NS	SHOWER/TUB	NS
POST TENSION CABLES	NS	INSULATION	NS
FOUNDATION SLAB	NS	SHEETROCK	NS
FRAMING	NS	TAPE, BED AND TEXTURE	NS
EXTERIOR SHEATHING	NS	INTERIOR DOOR AND TRIM	NS
BUILDING WRAP	NS	INTERIOR PAINT	NS
ROOF DECKING	NS	EXTERIOR PAINT	NS
ROOFING MATERIAL	NS	CABINETS	NS
ROUGH PLUMBING	NS	COUNTERTOPS	NS
ROUGH ELECTRICAL	NS	PLUMBING TRIM	NS
ROUGH HVAC	NS	ELECTRICAL TRIM	NS
FIRE SPRINKLER SYSTEM	NS	HVAC TRIM	NS
EXTERIOR WINDOWS	NS	FLOORING	NS
EXTERIOR DOORS	NS	APPLIANCES	NS
EXTERIOR WALL FINISH	NS	LANDSCAPING	NS
STAIRS	NS	FINAL CLEAN	NS

<b>STATUS LEGEND:</b>	NS = NOT STARTED	IP = IN PROGRESS	CO = COMPLETE
-----------------------	------------------	------------------	---------------

















Regards,

Cross Architects, PLLC  
Mark Leon Jr

CROSS ARCHITECTS, PLLC  
1255 W. 15<sup>th</sup> Street, #125 • Plano, Texas 75075 • 972.398.6644 • 972.312.8666 Fax



## Legacy Trails of Decatur

Decatur, Texas

Project #D-3093

<b>Report No.:</b>	2
<b>Contractor Application No.:</b>	3
<b>Period Ending:</b>	05/24/19
<b>Site Visit Date:</b>	05/28/19
<b>Hard Costs Recommended:</b>	\$174,551.80
<b>Completion Date:</b>	01/10/20
<b>Project % Complete:</b>	9%

Prepared for:

Bellwether EREC, LLC  
LaPorte, IN

Prepared by:

**Brian Saltzman**  
o: 817.379.4442  
c: 817.372.7606  
e: bsaltzman@newbanks.com

NATIONWIDE CONSTRUCTION & PROPERTY CONDITION CONSULTANTS SINCE 1961

Atlanta • Birmingham • Boston • Charlotte • Chicago • Dallas • Denver • Las Vegas  
Nashville • New York • Orlando • Raleigh • San Antonio • Seattle • Washington D.C.

May 28, 2019

Mr. Micah Towery  
USDA Processor  
**Bellwether Enterprise Real Estate Capital, LLC**  
4555 W. Burgundy Trail  
LaPorte, IN 46350  
Email: [mtowery@bwecap.com](mailto:mtowery@bwecap.com)

**RE: Legacy Trails of Decatur | Decatur, Texas**

Dear Mr. Towery:

Attached for your use and review is our report number two. We have received and reviewed Application for Payment No. 3 from Watermark Commercial Contractors, LLC for the above referenced project. Based on our site visit, review of the work in place, and analysis of the submitted Application for Payment, we recommend approval of disbursement in the requested amount of **\$174,551.80** for hard costs.

For additional explanation of our disbursement recommendation and the status of construction, please refer to sections I through VIII and related exhibits in the following Site Observation Report.

The project is approximately 9% complete.

The following report, inclusive of photographs, is a summary of our observations. Should you have any questions or comments regarding this report or project, please do not hesitate to call.

Sincerely,



**Brian Saltzman | Senior Associate**

**o:** 817.379.4442

**c:** 817.372.7606

**e:** [bsaltzman@newbanks.com](mailto:bsaltzman@newbanks.com)

Cc: Corey Poteet ([corey.poteet@m1bank.net](mailto:corey.poteet@m1bank.net))

## **I. PROJECT DESCRIPTION**

The proposed project will be a 70-unit apartment complex, located on 7.50 acres of land at 228 Buchanan Road in Decatur, Texas. There will be one point of vehicular access located on the west side of the site from Buchanan Road. The development is shown to include 11 apartment buildings, Club building, gazebo, dog park, trash enclosures, and related site improvements.

## **II. SITE WORK**

Underground water main utilities have started with a large run of pipe installation being completed along the new entry drive from Buchanan Road on the north side of the site. Installation of the first fire hydrant is complete.

Sanitary sewer utilities are scheduled to start today.

Surveying, staking, and grading is progressing at the interior paving areas.

## **III. STRUCTURES**

Pad preparation is complete at Buildings 2 – 12.

Surveying and corner staking has been completed at Building 12 this period.

Underground through slab plumbing rough-in is scheduled to commence at Building 12 today.

For a detailed accounting of the progress at each building section, please see the attached matrix.

		CH	2	3	4	5	6	7	8	9	10	11	12
<b>"X" = COMPLETE</b>													
<b>"P" = IN PROGRESS</b>													
<b>"S" = STOCKED</b>													
SLABS	SLAB GRADED	P	X	X	X	X	X	X	X	X	X	X	X
	UNDER SLAB PLUMBING												S
	SLAB FORMWORK												
	PT CABLE   VAPOR BARRIER												
	SLAB POURED												
EXTERIOR	FRAMING												
	ROOFING												
	STUCCO												
	MASONRY												
	SIDING												
	EXTERIOR PAINTING												
	GUTTERS												
	WINDOWS												
	STAIRS/RAILINGS												
	SIGNAGE												
LANDSCAPING													
ROUGH IN	MECHANICAL ROUGH IN												
	ELECTRICAL ROUGH IN												
	PLUMBING ROUGH IN												
	SPRINKLER ROUGH IN												
	LIFE SAFETY/FIRE ALARM												
EQUIP.	HVAC CONDENSING UNIT												
	HVAC AIR HANDLING UNIT												
	WATER HEATERS												
	APPLIANCES												
FINISH OUT	INSULATION												
	SHEET ROCK												
	JOINTS TAPED   FLOATED												
	GYPCRETE												
	CERAMIC TILE - BATH												
	CABINETS												
	COUNTERTOPS												
	EXTERIOR DOORS												
	INTERIOR DOORS												
	FINISH HARDWARE												
	INTERIOR PAINTING												
	PLUMBING TRIM-OUT												
	ELECTRICAL TRIM-OUT												
	CARPET												
	VCT/VINYL/TILE/WOOD												
MIRRORS/TOILET ACC.													
DRAPES/BLINDS													

#### IV. FINISH QUALITY

The quality of construction and materials appears to be satisfactory.

#### V. PROBLEMS

No major or unusual construction problems were observed or reported in the course of this site visit. As with all construction projects, routine issues arise during construction. These items appear to be addressed by the construction team in a timely manner.

#### VI. GENERAL REMARKS

During our site visit we were able to meet with Mr. Mike Bonner, project manager for Watermark Commercial Contractors, LLC. Mr. Potter was very helpful and informative regarding job progress to date.

Mr. Bonner stated that re-permitting of Building 1 is currently in progress due to the original permit consisted of Building 1 as 2 separate buildings. This will adjust the numbering of the Buildings with the Clubhouse being relabeled at Building 1. The revised plans have been submitted to the city by the architect and they are awaiting approval.

Contractor

Watermark  
John Gambini  
P: 512.858.0247  
jgambini@wmctx.com

Owner's Rep:

Micah Towery  
Bellwether  
P: 574.216.7276  
mtowery@bwecap.com

Project Manager:

Mike Bonner  
Watermark  
C:

Superintendent:

Robert Guerrero  
Watermark  
C:

#### Stored Materials

The current application lists no stored materials. Materials currently stocked on site includes rebar, forming lumber, water piping, sanitary sewer piping, storm sewer piping, storm sewer manhole components, and fire hydrants.

#### Laboratory Test Reports

We have not been provided with copies of the test reports to review.

#### VII. PERCENTAGE COMPLETE & SCHEDULE

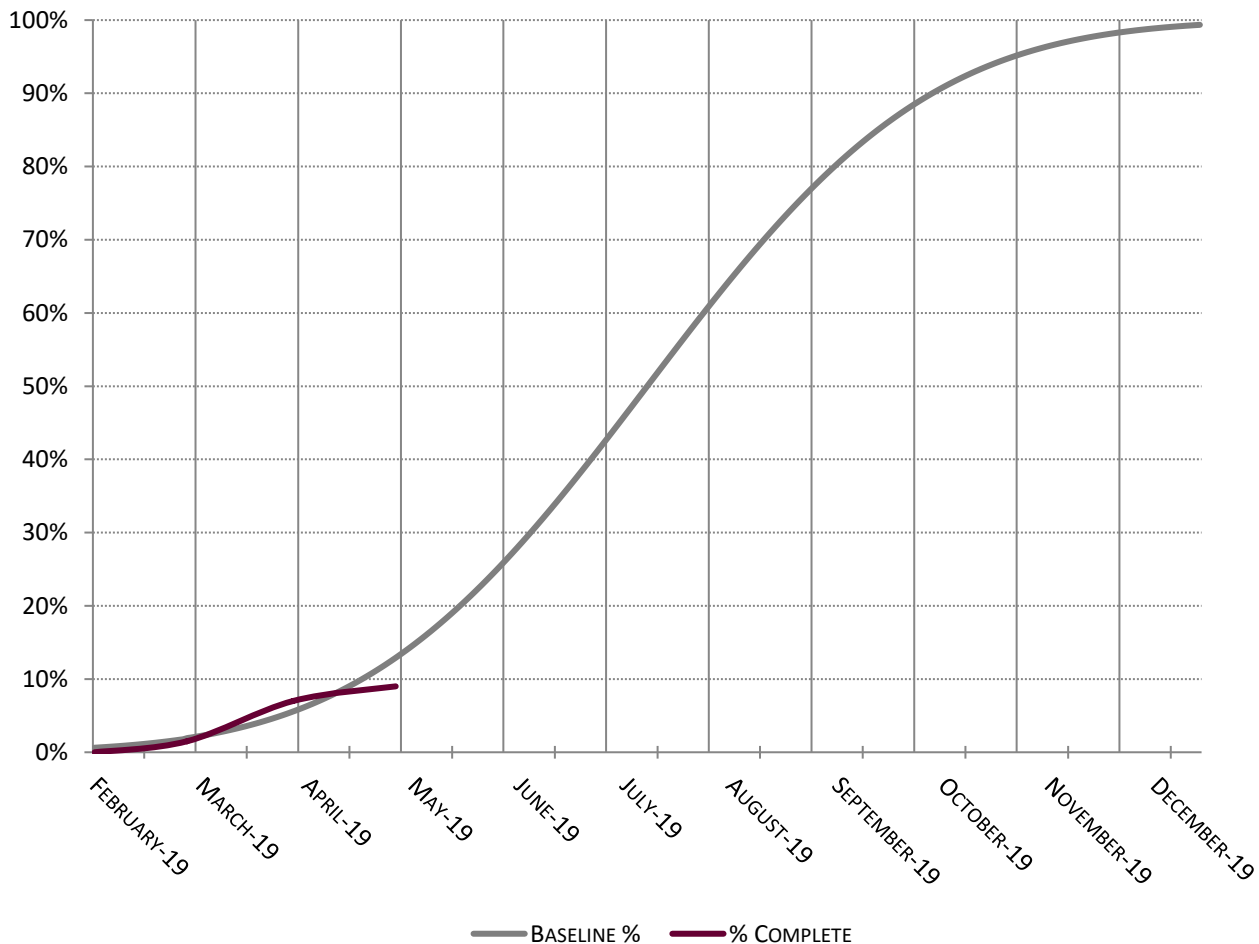
We have received a construction schedule from the contractor indicating a project start date of 03/20/19 and completion date of 01/10/20. This equates to a project duration of approximately 10 months.



Per the current application for payment, the overall project progress calculates to 9% complete. We judge this percentage to be generally consistent with conditions observed in the field. Per the following graph of project progress, the project is on schedule based on typical billing trends.

The following progress analysis graph charts the project progress against a baseline S-curve that represents typical progression of construction projects. The baseline is only an approximation of the actual construction schedule, where percentage of completion is plotted against the duration of the project in months. The purple progress line is plotted each month to indicate whether the project is generally tracking ahead, on, or behind schedule. If the purple line is on or above the gray baseline, this indicates that the project is on or ahead of schedule; if the purple line is below the gray baseline this indicates the project is behind schedule.

### Project Analysis Chart



Work Commenced  
March 20, 2019

Contract Completion Date  
Not Provided

Based On Schedule Received  
January 10, 2020

## VIII. DRAW COMMENTS

### Disbursement Recommendations

We have received and reviewed Application for Payment No. 3 from Watermark Commercial Contractors, LLC for the above referenced project. Based on our site visit, review of the work in place, and analysis of the submitted Application for Payment, we recommend approval of disbursement in the requested amount of **\$174,551.80** for hard costs.

Line items on the current application are generally consistent with conditions observed in the field. Based on the project cost breakdown and on our confirmation of the percentage of work complete, it is our opinion that undisbursed funds remaining in the hard cost budget should be sufficient to complete the project as currently defined.

### Releases of Lien

Conditional and unconditional lien waivers did accompany the current applications.

### Retainage

Retainage is being held at a rate of 10% on completed subcontractor work. Retainage held to date totals \$49,332.14, which equates to 7% overall.

### Approved Change Orders

The current application includes no change orders. The contract sum to date stands at \$7,213,984.00.

### Potential Change Orders

A Proposed Change Order Log has not been provided. According to the GC, there is an existing utility box located within the proposed paving area of the main entry drive that will need to be relocated. The contractor and owner are reviewing to determine the best course of action and whether a change order will be issued to the contractor for this additional scope.

### Contingency

The current application does not include a Contingency line item.

### Balance to Complete

The balance to complete is in the amount of \$6,580,615.20. In our opinion, the undistributed funds remaining in the hard cost budget should be sufficient to substantially complete the project based on our review of the application for payment and the progress of the project.

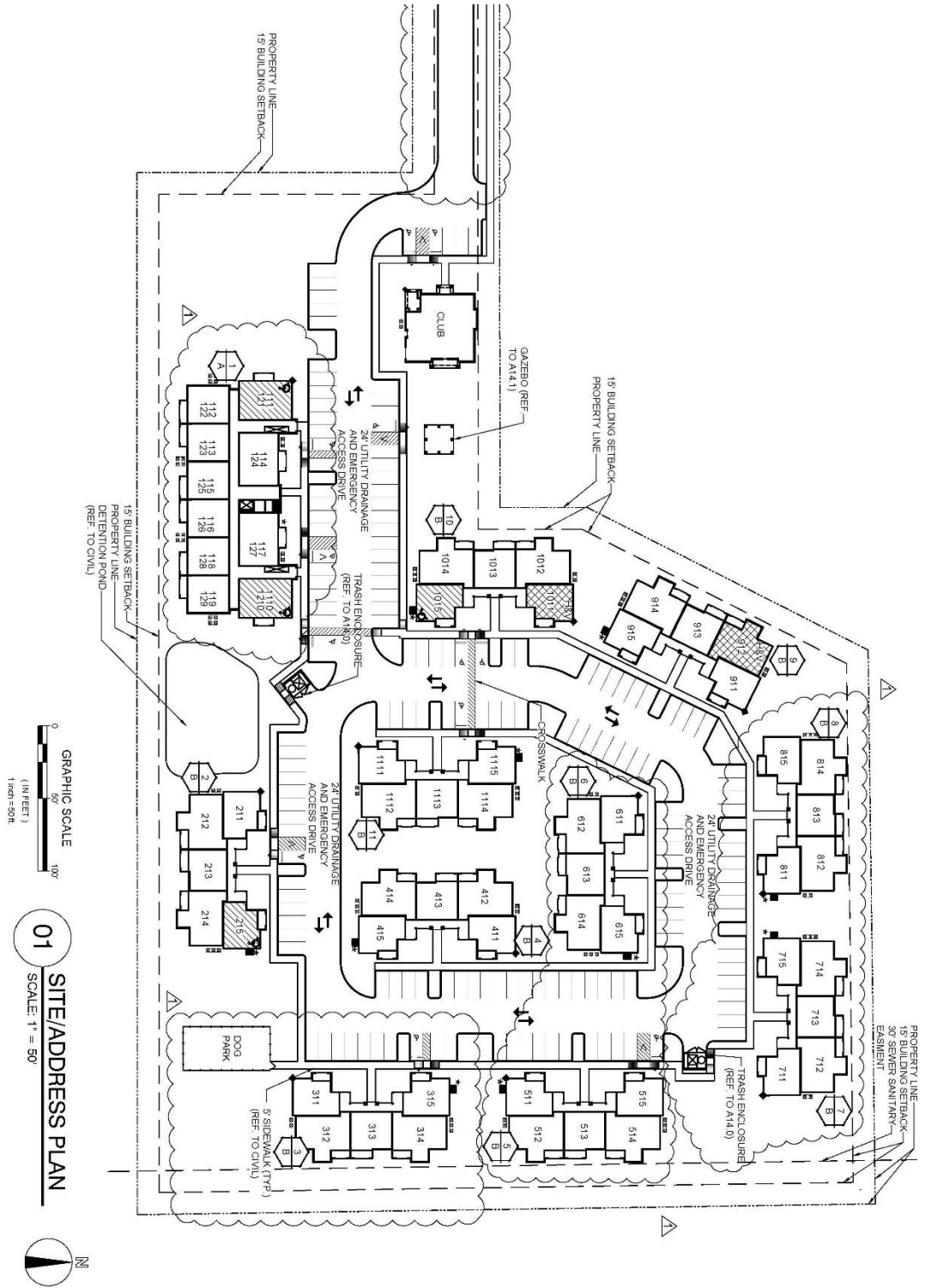
## IX. LIMITING CONDITIONS

It is intended that this report be solely for the benefit of the Client, whether paid for by the Client or any other party. Newbanks, Inc. | Dallas (Consultant) does not warrant this report, or any portions of this report, to any other party without prior express written consent.

The opinions expressed by Consultant shall not relieve the Design Professionals from inadequacy of engineering or architectural design or compliance with any laws, codes, and ordinances. This evaluation is not intended to be a complete, exhaustive, or detailed review of any systems or components, nor a check of the Design Professionals' calculations.

Furthermore, it is understood that Consultant does not assume or accept any of the design or supervisory responsibility of the Architect, Engineer, or consulting engineers or construction manager. Consultant shall not be responsible for the Contractor's failure to carry out the work in accordance with the loan documents or construction contract. The comments and recommendations stated in this report should not be construed in any way to constitute a warranty or guarantee, express or implied, regarding the current or future performance of any system or component. Services performed herewith are limited to those as Client's Consultant. Consultant's liability including its employees, other consultants, and agents, shall be limited to its total collected fee amount. It is agreed that this limitation shall apply to all claims, costs, and damages without respect to the legal theory asserted, and shall be governed by the laws of the State of Texas.

## X. SITE PLAN



## XI. PHOTOGRAPHS



Photo 1: Progress at main entry drive off Buchanan Road.



Photo 2: Water main installation at north side of site.



Photo 3: Fire hydrant installation at interior of site.



Photo 4: Rough grading progressing at interior paving areas.



Photo 5: Pad preparation at Building 2.



Photo 6: Pad preparation at Building 3.



Photo 7: Progress at detention pond on west side of site.



Photo 8: Completed surveying and corner staking at Building 12.



Photo 9: Stocked water piping.



Photo 10: Stocked sanitary sewer and underslab plumbing piping.



Photo 11: Stocked storm sewer piping.



Photo 12: Stocked stormwater curb inlets.



June 3, 2019

**SCS Decatur 17, LP**

7810 Jack Finney Blvd #101  
Greenville, Texas 75402

Project: Legacy Trails of Decatur  
Project Number: 17033  
Project Location: Decatur, TX  
Date of Inspection: May 28, 2019  
Pay Application: 3  
Weather: 85 Degrees / Sunny

Attendance: Mike Bonner – Watermark Construction  
Mark Leon – Cross Architects

An on-site visit was made by the Cross Architects representative(s) listed above as a visual observation of the above-mentioned project. Please see attached photos.

**Observations:**

The overall project is approximately 9% complete and appeared to be in compliance with the construction documents.

**General Notes:**

- All pads are compacted, excluding club
- Construction entrance in place
- Rough grade for entry drive complete
- Water line installed from firelane to club

**Sitework:**

- Need to relocate communication box at the entry in order to pour the firelane
- Waiting on city to approve the plan amendment prior to pulling permits

**CLUBHOUSE:**NOTES:  

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TYPE OF WORK	STATUS	TYPE OF WORK	STATUS
BUILDING PAD	IP	UNIT/BREEZEWAY FLR TOPPING	NS
FORM BOARDS	NS	PATIO/BALCONY RAILING	NS
UNDERGROUND PLUMBING	NS	DRAFTSTOPPING	NS
GRADE BEAMS W/ POLY	NS	SHOWER/TUB	NS
POST TENSION CABLES	NS	INSULATION	NS
FOUNDATION SLAB	NS	SHEETROCK	NS
FRAMING	NS	TAPE, BED AND TEXTURE	NS
EXTERIOR SHEATHING	NS	INTERIOR DOOR AND TRIM	NS
BUILDING WRAP	NS	INTERIOR PAINT	NS
ROOF DECKING	NS	EXTERIOR PAINT	NS
ROOFING MATERIAL	NS	CABINETS	NS
ROUGH PLUMBING	NS	COUNTERTOPS	NS
ROUGH ELECTRICAL	NS	PLUMBING TRIM	NS
ROUGH HVAC	NS	ELECTRICAL TRIM	NS
FIRE SPRINKLER SYSTEM	NS	HVAC TRIM	NS
EXTERIOR WINDOWS	NS	FLOORING	NS
EXTERIOR DOORS	NS	APPLIANCES	NS
EXTERIOR WALL FINISH	NS	LANDSCAPING	NS
STAIRS	NS	FINAL CLEAN	NS

<b>STATUS LEGEND:</b>	NS = NOT STARTED	IP = IN PROGRESS	CO = COMPLETE
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**BUILDING 1:**NOTES:  

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TYPE OF WORK	STATUS	TYPE OF WORK	STATUS
BUILDING PAD	CO	UNIT/BREEZEWAY FLR TOPPING	NS
FORM BOARDS	NS	PATIO/BALCONY RAILING	NS
UNDERGROUND PLUMBING	NS	DRAFTSTOPPING	NS
GRADE BEAMS W/ POLY	NS	SHOWER/TUB	NS
POST TENSION CABLES	NS	INSULATION	NS
FOUNDATION SLAB	NS	SHEETROCK	NS
FRAMING	NS	TAPE, BED AND TEXTURE	NS
EXTERIOR SHEATHING	NS	INTERIOR DOOR AND TRIM	NS
BUILDING WRAP	NS	INTERIOR PAINT	NS
ROOF DECKING	NS	EXTERIOR PAINT	NS
ROOFING MATERIAL	NS	CABINETS	NS
ROUGH PLUMBING	NS	COUNTERTOPS	NS
ROUGH ELECTRICAL	NS	PLUMBING TRIM	NS
ROUGH HVAC	NS	ELECTRICAL TRIM	NS
FIRE SPRINKLER SYSTEM	NS	HVAC TRIM	NS
EXTERIOR WINDOWS	NS	FLOORING	NS
EXTERIOR DOORS	NS	APPLIANCES	NS
EXTERIOR WALL FINISH	NS	LANDSCAPING	NS
STAIRS	NS	FINAL CLEAN	NS

<b>STATUS LEGEND:</b>	NS = NOT STARTED	IP = IN PROGRESS	CO = COMPLETE
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**BUILDING 2:**

NOTES:

TYPE OF WORK	STATUS	TYPE OF WORK	STATUS
BUILDING PAD	CO	UNIT/BREEZEWAY FLR TOPPING	NS
FORM BOARDS	NS	PATIO/BALCONY RAILING	NS
UNDERGROUND PLUMBING	NS	DRAFTSTOPPING	NS
GRADE BEAMS W/ POLY	NS	SHOWER/TUB	NS
POST TENSION CABLES	NS	INSULATION	NS
FOUNDATION SLAB	NS	SHEETROCK	NS
FRAMING	NS	TAPE, BED AND TEXTURE	NS
EXTERIOR SHEATHING	NS	INTERIOR DOOR AND TRIM	NS
BUILDING WRAP	NS	INTERIOR PAINT	NS
ROOF DECKING	NS	EXTERIOR PAINT	NS
ROOFING MATERIAL	NS	CABINETS	NS
ROUGH PLUMBING	NS	COUNTERTOPS	NS
ROUGH ELECTRICAL	NS	PLUMBING TRIM	NS
ROUGH HVAC	NS	ELECTRICAL TRIM	NS
FIRE SPRINKLER SYSTEM	NS	HVAC TRIM	NS
EXTERIOR WINDOWS	NS	FLOORING	NS
EXTERIOR DOORS	NS	APPLIANCES	NS
EXTERIOR WALL FINISH	NS	LANDSCAPING	NS
STAIRS	NS	FINAL CLEAN	NS

<b>STATUS LEGEND:</b>	NS = NOT STARTED	IP = IN PROGRESS	CO = COMPLETE
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**BUILDING 3:**

NOTES:

TYPE OF WORK	STATUS	TYPE OF WORK	STATUS
BUILDING PAD	CO	UNIT/BREEZEWAY FLR TOPPING	NS
FORM BOARDS	NS	PATIO/BALCONY RAILING	NS
UNDERGROUND PLUMBING	NS	DRAFTSTOPPING	NS
GRADE BEAMS W/ POLY	NS	SHOWER/TUB	NS
POST TENSION CABLES	NS	INSULATION	NS
FOUNDATION SLAB	NS	SHEETROCK	NS
FRAMING	NS	TAPE, BED AND TEXTURE	NS
EXTERIOR SHEATHING	NS	INTERIOR DOOR AND TRIM	NS
BUILDING WRAP	NS	INTERIOR PAINT	NS
ROOF DECKING	NS	EXTERIOR PAINT	NS
ROOFING MATERIAL	NS	CABINETS	NS
ROUGH PLUMBING	NS	COUNTERTOPS	NS
ROUGH ELECTRICAL	NS	PLUMBING TRIM	NS
ROUGH HVAC	NS	ELECTRICAL TRIM	NS
FIRE SPRINKLER SYSTEM	NS	HVAC TRIM	NS
EXTERIOR WINDOWS	NS	FLOORING	NS
EXTERIOR DOORS	NS	APPLIANCES	NS
EXTERIOR WALL FINISH	NS	LANDSCAPING	NS
STAIRS	NS	FINAL CLEAN	NS

<b>STATUS LEGEND:</b>	NS = NOT STARTED	IP = IN PROGRESS	CO = COMPLETE
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**BUILDING 4:**

NOTES:

TYPE OF WORK	STATUS	TYPE OF WORK	STATUS
BUILDING PAD	CO	UNIT/BREEZEWAY FLR TOPPING	NS
FORM BOARDS	NS	PATIO/BALCONY RAILING	NS
UNDERGROUND PLUMBING	NS	DRAFTSTOPPING	NS
GRADE BEAMS W/ POLY	NS	SHOWER/TUB	NS
POST TENSION CABLES	NS	INSULATION	NS
FOUNDATION SLAB	NS	SHEETROCK	NS
FRAMING	NS	TAPE, BED AND TEXTURE	NS
EXTERIOR SHEATHING	NS	INTERIOR DOOR AND TRIM	NS
BUILDING WRAP	NS	INTERIOR PAINT	NS
ROOF DECKING	NS	EXTERIOR PAINT	NS
ROOFING MATERIAL	NS	CABINETS	NS
ROUGH PLUMBING	NS	COUNTERTOPS	NS
ROUGH ELECTRICAL	NS	PLUMBING TRIM	NS
ROUGH HVAC	NS	ELECTRICAL TRIM	NS
FIRE SPRINKLER SYSTEM	NS	HVAC TRIM	NS
EXTERIOR WINDOWS	NS	FLOORING	NS
EXTERIOR DOORS	NS	APPLIANCES	NS
EXTERIOR WALL FINISH	NS	LANDSCAPING	NS
STAIRS	NS	FINAL CLEAN	NS

<b>STATUS LEGEND:</b>	NS = NOT STARTED	IP = IN PROGRESS	CO = COMPLETE
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**BUILDING 5:**

NOTES:

TYPE OF WORK	STATUS	TYPE OF WORK	STATUS
BUILDING PAD	CO	UNIT/BREEZEWAY FLR TOPPING	NS
FORM BOARDS	NS	PATIO/BALCONY RAILING	NS
UNDERGROUND PLUMBING	NS	DRAFTSTOPPING	NS
GRADE BEAMS W/ POLY	NS	SHOWER/TUB	NS
POST TENSION CABLES	NS	INSULATION	NS
FOUNDATION SLAB	NS	SHEETROCK	NS
FRAMING	NS	TAPE, BED AND TEXTURE	NS
EXTERIOR SHEATHING	NS	INTERIOR DOOR AND TRIM	NS
BUILDING WRAP	NS	INTERIOR PAINT	NS
ROOF DECKING	NS	EXTERIOR PAINT	NS
ROOFING MATERIAL	NS	CABINETS	NS
ROUGH PLUMBING	NS	COUNTERTOPS	NS
ROUGH ELECTRICAL	NS	PLUMBING TRIM	NS
ROUGH HVAC	NS	ELECTRICAL TRIM	NS
FIRE SPRINKLER SYSTEM	NS	HVAC TRIM	NS
EXTERIOR WINDOWS	NS	FLOORING	NS
EXTERIOR DOORS	NS	APPLIANCES	NS
EXTERIOR WALL FINISH	NS	LANDSCAPING	NS
STAIRS	NS	FINAL CLEAN	NS

<b>STATUS LEGEND:</b>	NS = NOT STARTED	IP = IN PROGRESS	CO = COMPLETE
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**BUILDING 6:**NOTES:  

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TYPE OF WORK	STATUS	TYPE OF WORK	STATUS
BUILDING PAD	CO	UNIT/BREEZEWAY FLR TOPPING	NS
FORM BOARDS	NS	PATIO/BALCONY RAILING	NS
UNDERGROUND PLUMBING	NS	DRAFTSTOPPING	NS
GRADE BEAMS W/ POLY	NS	SHOWER/TUB	NS
POST TENSION CABLES	NS	INSULATION	NS
FOUNDATION SLAB	NS	SHEETROCK	NS
FRAMING	NS	TAPE, BED AND TEXTURE	NS
EXTERIOR SHEATHING	NS	INTERIOR DOOR AND TRIM	NS
BUILDING WRAP	NS	INTERIOR PAINT	NS
ROOF DECKING	NS	EXTERIOR PAINT	NS
ROOFING MATERIAL	NS	CABINETS	NS
ROUGH PLUMBING	NS	COUNTERTOPS	NS
ROUGH ELECTRICAL	NS	PLUMBING TRIM	NS
ROUGH HVAC	NS	ELECTRICAL TRIM	NS
FIRE SPRINKLER SYSTEM	NS	HVAC TRIM	NS
EXTERIOR WINDOWS	NS	FLOORING	NS
EXTERIOR DOORS	NS	APPLIANCES	NS
EXTERIOR WALL FINISH	NS	LANDSCAPING	NS
STAIRS	NS	FINAL CLEAN	NS

<b>STATUS LEGEND:</b>	NS = NOT STARTED	IP = IN PROGRESS	CO = COMPLETE
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**BUILDING 7:**NOTES:  

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TYPE OF WORK	STATUS	TYPE OF WORK	STATUS
BUILDING PAD	CO	UNIT/BREEZEWAY FLR TOPPING	NS
FORM BOARDS	NS	PATIO/BALCONY RAILING	NS
UNDERGROUND PLUMBING	NS	DRAFTSTOPPING	NS
GRADE BEAMS W/ POLY	NS	SHOWER/TUB	NS
POST TENSION CABLES	NS	INSULATION	NS
FOUNDATION SLAB	NS	SHEETROCK	NS
FRAMING	NS	TAPE, BED AND TEXTURE	NS
EXTERIOR SHEATHING	NS	INTERIOR DOOR AND TRIM	NS
BUILDING WRAP	NS	INTERIOR PAINT	NS
ROOF DECKING	NS	EXTERIOR PAINT	NS
ROOFING MATERIAL	NS	CABINETS	NS
ROUGH PLUMBING	NS	COUNTERTOPS	NS
ROUGH ELECTRICAL	NS	PLUMBING TRIM	NS
ROUGH HVAC	NS	ELECTRICAL TRIM	NS
FIRE SPRINKLER SYSTEM	NS	HVAC TRIM	NS
EXTERIOR WINDOWS	NS	FLOORING	NS
EXTERIOR DOORS	NS	APPLIANCES	NS
EXTERIOR WALL FINISH	NS	LANDSCAPING	NS
STAIRS	NS	FINAL CLEAN	NS

<b>STATUS LEGEND:</b>	NS = NOT STARTED	IP = IN PROGRESS	CO = COMPLETE
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**BUILDING 8:**

NOTES:

TYPE OF WORK	STATUS	TYPE OF WORK	STATUS
BUILDING PAD	CO	UNIT/BREEZEWAY FLR TOPPING	NS
FORM BOARDS	NS	PATIO/BALCONY RAILING	NS
UNDERGROUND PLUMBING	NS	DRAFTSTOPPING	NS
GRADE BEAMS W/ POLY	NS	SHOWER/TUB	NS
POST TENSION CABLES	NS	INSULATION	NS
FOUNDATION SLAB	NS	SHEETROCK	NS
FRAMING	NS	TAPE, BED AND TEXTURE	NS
EXTERIOR SHEATHING	NS	INTERIOR DOOR AND TRIM	NS
BUILDING WRAP	NS	INTERIOR PAINT	NS
ROOF DECKING	NS	EXTERIOR PAINT	NS
ROOFING MATERIAL	NS	CABINETS	NS
ROUGH PLUMBING	NS	COUNTERTOPS	NS
ROUGH ELECTRICAL	NS	PLUMBING TRIM	NS
ROUGH HVAC	NS	ELECTRICAL TRIM	NS
FIRE SPRINKLER SYSTEM	NS	HVAC TRIM	NS
EXTERIOR WINDOWS	NS	FLOORING	NS
EXTERIOR DOORS	NS	APPLIANCES	NS
EXTERIOR WALL FINISH	NS	LANDSCAPING	NS
STAIRS	NS	FINAL CLEAN	NS

<b>STATUS LEGEND:</b>	NS = NOT STARTED	IP = IN PROGRESS	CO = COMPLETE
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**BUILDING 9:**

NOTES:

TYPE OF WORK	STATUS	TYPE OF WORK	STATUS
BUILDING PAD	CO	UNIT/BREEZEWAY FLR TOPPING	NS
FORM BOARDS	NS	PATIO/BALCONY RAILING	NS
UNDERGROUND PLUMBING	NS	DRAFTSTOPPING	NS
GRADE BEAMS W/ POLY	NS	SHOWER/TUB	NS
POST TENSION CABLES	NS	INSULATION	NS
FOUNDATION SLAB	NS	SHEETROCK	NS
FRAMING	NS	TAPE, BED AND TEXTURE	NS
EXTERIOR SHEATHING	NS	INTERIOR DOOR AND TRIM	NS
BUILDING WRAP	NS	INTERIOR PAINT	NS
ROOF DECKING	NS	EXTERIOR PAINT	NS
ROOFING MATERIAL	NS	CABINETS	NS
ROUGH PLUMBING	NS	COUNTERTOPS	NS
ROUGH ELECTRICAL	NS	PLUMBING TRIM	NS
ROUGH HVAC	NS	ELECTRICAL TRIM	NS
FIRE SPRINKLER SYSTEM	NS	HVAC TRIM	NS
EXTERIOR WINDOWS	NS	FLOORING	NS
EXTERIOR DOORS	NS	APPLIANCES	NS
EXTERIOR WALL FINISH	NS	LANDSCAPING	NS
STAIRS	NS	FINAL CLEAN	NS

<b>STATUS LEGEND:</b>	NS = NOT STARTED	IP = IN PROGRESS	CO = COMPLETE
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**BUILDING 10:**

NOTES:

TYPE OF WORK	STATUS	TYPE OF WORK	STATUS
BUILDING PAD	CO	UNIT/BREEZEWAY FLR TOPPING	NS
FORM BOARDS	NS	PATIO/BALCONY RAILING	NS
UNDERGROUND PLUMBING	NS	DRAFTSTOPPING	NS
GRADE BEAMS W/ POLY	NS	SHOWER/TUB	NS
POST TENSION CABLES	NS	INSULATION	NS
FOUNDATION SLAB	NS	SHEETROCK	NS
FRAMING	NS	TAPE, BED AND TEXTURE	NS
EXTERIOR SHEATHING	NS	INTERIOR DOOR AND TRIM	NS
BUILDING WRAP	NS	INTERIOR PAINT	NS
ROOF DECKING	NS	EXTERIOR PAINT	NS
ROOFING MATERIAL	NS	CABINETS	NS
ROUGH PLUMBING	NS	COUNTERTOPS	NS
ROUGH ELECTRICAL	NS	PLUMBING TRIM	NS
ROUGH HVAC	NS	ELECTRICAL TRIM	NS
FIRE SPRINKLER SYSTEM	NS	HVAC TRIM	NS
EXTERIOR WINDOWS	NS	FLOORING	NS
EXTERIOR DOORS	NS	APPLIANCES	NS
EXTERIOR WALL FINISH	NS	LANDSCAPING	NS
STAIRS	NS	FINAL CLEAN	NS

<b>STATUS LEGEND:</b>	NS = NOT STARTED	IP = IN PROGRESS	CO = COMPLETE
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**BUILDING 11:**

NOTES:

TYPE OF WORK	STATUS	TYPE OF WORK	STATUS
BUILDING PAD	CO	UNIT/BREEZEWAY FLR TOPPING	NS
FORM BOARDS	NS	PATIO/BALCONY RAILING	NS
UNDERGROUND PLUMBING	NS	DRAFTSTOPPING	NS
GRADE BEAMS W/ POLY	NS	SHOWER/TUB	NS
POST TENSION CABLES	NS	INSULATION	NS
FOUNDATION SLAB	NS	SHEETROCK	NS
FRAMING	NS	TAPE, BED AND TEXTURE	NS
EXTERIOR SHEATHING	NS	INTERIOR DOOR AND TRIM	NS
BUILDING WRAP	NS	INTERIOR PAINT	NS
ROOF DECKING	NS	EXTERIOR PAINT	NS
ROOFING MATERIAL	NS	CABINETS	NS
ROUGH PLUMBING	NS	COUNTERTOPS	NS
ROUGH ELECTRICAL	NS	PLUMBING TRIM	NS
ROUGH HVAC	NS	ELECTRICAL TRIM	NS
FIRE SPRINKLER SYSTEM	NS	HVAC TRIM	NS
EXTERIOR WINDOWS	NS	FLOORING	NS
EXTERIOR DOORS	NS	APPLIANCES	NS
EXTERIOR WALL FINISH	NS	LANDSCAPING	NS
STAIRS	NS	FINAL CLEAN	NS

<b>STATUS LEGEND:</b>	NS = NOT STARTED	IP = IN PROGRESS	CO = COMPLETE
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Regards,

Cross Architects, PLLC  
Mark Leon Jr

CROSS ARCHITECTS, PLLC  
1255 W. 15<sup>th</sup> Street, #125 • Plano, Texas 75075 • 972.398.6644 • 972.312.8666 Fax



## Legacy Trails of Decatur

Decatur, Texas

Project #D-3093

<b>Report No.:</b>	3
<b>Contractor Application No.:</b>	4
<b>Period Ending:</b>	06/25/19
<b>Site Visit Date:</b>	06/26/19
<b>Hard Costs Recommended:</b>	\$122,848.50
<b>Completion Date:</b>	01/10/20
<b>Project % Complete:</b>	11%

Prepared for:

Bellwether EREC, LLC  
LaPorte, IN

Prepared by:

**Brian Saltzman**  
o: 817.379.4442  
c: 817.372.7606  
e: bsaltzman@newbanks.com

NATIONWIDE CONSTRUCTION & PROPERTY CONDITION CONSULTANTS SINCE 1961

Atlanta • Birmingham • Boston • Charlotte • Chicago • Dallas • Denver • Las Vegas  
Nashville • New York • Orlando • Raleigh • San Antonio • Seattle • Washington D.C.

June 26, 2019

Mr. Micah Towery  
USDA Processor  
**Bellwether Enterprise Real Estate Capital, LLC**  
4555 W. Burgundy Trail  
LaPorte, IN 46350  
Email: [mtowery@bwecap.com](mailto:mtowery@bwecap.com)

**RE: Legacy Trails of Decatur | Decatur, Texas**

Dear Mr. Towery:

Attached for your use and review is our report number three. We have received and reviewed Application for Payment No. 4 from Watermark Commercial Contractors, LLC for the above referenced project. Based on our site visit, review of the work in place, and analysis of the submitted Application for Payment, we recommend approval of disbursement in the **\*revised\*** amount of **\$122,848.50** for hard costs.

For additional explanation of our disbursement recommendation and the status of construction, please refer to sections I through VIII and related exhibits in the following Site Observation Report.

The project is approximately 11% complete.

The following report, inclusive of photographs, is a summary of our observations. Should you have any questions or comments regarding this report or project, please do not hesitate to call.

Sincerely,



**Brian Saltzman | Senior Associate**

**o:** 817.379.4442

**c:** 817.372.7606

**e:** [bsaltzman@newbanks.com](mailto:bsaltzman@newbanks.com)

Cc: Corey Poteet ([corey.poteet@m1bank.net](mailto:corey.poteet@m1bank.net))

## **I. PROJECT DESCRIPTION**

The proposed project will be a 70-unit apartment complex, located on 7.50 acres of land at 228 Buchanan Road in Decatur, Texas. There will be one point of vehicular access located on the west side of the site from Buchanan Road. The development is shown to include 11 apartment buildings, Club building, gazebo, dog park, trash enclosures, and related site improvements.

## **II. SITE WORK**

Relocation of the existing communication utility boxes has been completed on the west side of the site along Buchanan Road (by others).

Installation of earth fill and grading in preparation for the storm sewer culver installation is progressing along the existing creek bed on the west side of the site.

Installation and tie-in of the new underground water main has been completed on the west side of the site along the entry drive off of Buchanan Road, extending just past the creek/culvert location to the second fire hydrant location. Installation of 2 fire hydrants has been completed along this line to date. Installation of the water main loop at the interior of the site for the buildings has not yet started.

Installation of the underground sanitary sewer loop is nearing completion. Back-fill and compaction is progressing. Manhole installation is nearing completion. Tie-in to the exiting manhole has been completed on the east side of the site. Tie-in at the secondary location on the north side of the site is in progress.

## **III. STRUCTURES**

As previously noted, pad preparation is complete at Buildings 2 – 12. Pad preparation has not yet started at the Clubhouse building.

Corner staking and batter board installation has been completed at 7 buildings this period.

Underground through slab plumbing rough-in has not yet started. However, the plumber is pre-fitting materials in preparation for installation.

For a detailed accounting of the progress at each building section, please see the attached matrix.



		CH	2	3	4	5	6	7	8	9	10	11	12
<b>"X" = COMPLETE</b>													
<b>"P" = IN PROGRESS</b>													
<b>"S" = STOCKED</b>													
SLABS	SLAB GRADED		X	X	X	X	X	X	X	X	X	X	X
	UNDER SLAB PLUMBING												
	SLAB FORMWORK												
	PT CABLE   VAPOR BARRIER												
	SLAB POURED												
EXTERIOR	FRAMING												
	ROOFING												
	STUCCO												
	MASONRY												
	SIDING												
	EXTERIOR PAINTING												
	GUTTERS												
	WINDOWS												
	STAIRS/RAILINGS												
	SIGNAGE												
LANDSCAPING													
ROUGH IN	MECHANICAL ROUGH IN												
	ELECTRICAL ROUGH IN												
	PLUMBING ROUGH IN												
	SPRINKLER ROUGH IN												
	LIFE SAFETY/FIRE ALARM												
EQUIP.	HVAC CONDENSING UNIT												
	HVAC AIR HANDLING UNIT												
	WATER HEATERS												
	APPLIANCES												
FINISH OUT	INSULATION												
	SHEET ROCK												
	JOINTS TAPED   FLOATED												
	GYPCRETE												
	CERAMIC TILE - BATH												
	CABINETS												
	COUNTERTOPS												
	EXTERIOR DOORS												
	INTERIOR DOORS												
	FINISH HARDWARE												
	INTERIOR PAINTING												
	PLUMBING TRIM-OUT												
	ELECTRICAL TRIM-OUT												
	CARPET												
VCT/VINYL/TILE/WOOD													
MIRRORS/TOILET ACC.													
DRAPES/BLINDS													

#### IV. FINISH QUALITY

The quality of construction and materials appears to be satisfactory.

#### V. PROBLEMS

No major or unusual construction problems were observed or reported in the course of this site visit. As with all construction projects, routine issues arise during construction. These items appear to be addressed by the construction team in a timely manner.

#### VI. GENERAL REMARKS

During our site visit we were able to meet with Mr. Robert Barragan, project superintendent for Watermark Commercial Contractors, LLC. Mr. Barragan was very helpful and informative regarding job progress to date.

Contractor

Watermark  
John Gambini  
P: 512.858.0247  
jgambini@wmcctx.com

Owner's Rep:

Micah Towery  
Bellwether  
P: 574.216.7276  
mtowery@bwecap.com

Project Manager:

Mike Bonner  
Watermark  
C:

Superintendent:

Robert Barragan  
Watermark  
C: 817.845.4211

#### Stored Materials

The contractor is billing for stored forming lumber and reinforcing materials on the Paving – Concrete/Asphalt line item this period totaling \$33,540.00. We observed these materials on site.

#### Laboratory Test Reports

We have not been provided with copies of the test reports to review.

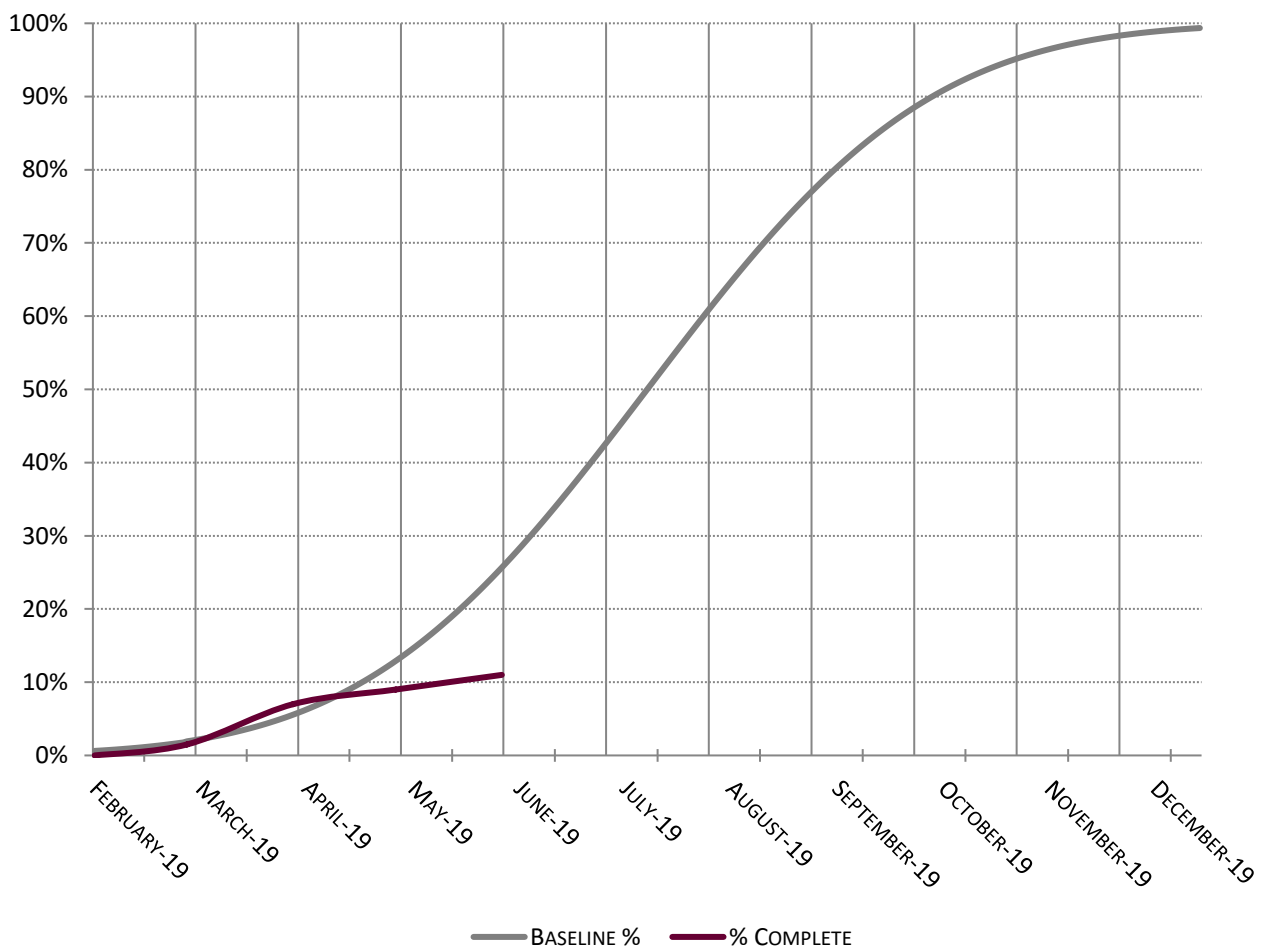
#### VII. PERCENTAGE COMPLETE & SCHEDULE

We have received a construction schedule from the contractor indicating a project start date of 03/20/19 and completion date of 01/10/20. This equates to a project duration of approximately 10 months.

Per the current application for payment, the overall project progress calculates to 11% complete. We judge this percentage to be generally consistent with conditions observed in the field. **Per the following graph of project progress, the project is approximately 1 to 1.5 months behind schedule based on typical billing trends.**

The following progress analysis graph charts the project progress against a baseline S-curve that represents typical progression of construction projects. The baseline is only an approximation of the actual construction schedule, where percentage of completion is plotted against the duration of the project in months. The purple progress line is plotted each month to indicate whether the project is generally tracking ahead, on, or behind schedule. If the purple line is on or above the gray baseline, this indicates that the project is on or ahead of schedule; if the purple line is below the gray baseline this indicates the project is behind schedule.

### Project Analysis Chart



Work Commenced  
March 20, 2019

Contract Completion Date  
Not Provided

Based On Schedule Received  
January 10, 2020

## VIII. DRAW COMMENTS

### Disbursement Recommendations

We have received and reviewed Application for Payment No. 4 from Watermark Commercial Contractors, LLC for the above referenced project. Based on our site visit, review of the work in place, and analysis of the submitted Application for Payment, we recommend approval of disbursement in the **\*revised\*** amount of **\$122,848.50** for hard costs.

The contractor is billing for 90% completion on the Storm Sewer System (Onsite) line item this period. However, we observed this work to be less than 80% complete during our site visit. Therefore, we recommend this line item billing be reduced to \$0.00 for This Period.

The contractor is billing for 95% completion on the Water Systems (Onsite) – Labor & Material line item this period. However, we observed this work to be less than 80% complete during our site visit. Therefore, we recommend this line item billing be reduced to \$0.00 for This Period.

The contractor is billing for stored materials totaling 10% completion on the Concrete Foundations line item this period. However, we observed that no work has been completed this period and the ratio of cost to materials observed on site do not coincide. Therefore, we recommend this line item billing be reduced to \$0.00 for Materials Presently Stored.

The contractor is billing for stored materials totaling 40% completion on the Granite Tops line item this period. However, this billing would be considered non-typical as we observed that no granite materials are on site, no back-up for stored materials have been submitted, and due to the current status of the project these materials will not be needed for several months. Therefore, we recommend this line item billing be reduced to \$0.00 for Materials Presently Stored.

The contractor is billing for 13% completion on the Plumbing Systems line item this period. However, we observed this work to be less than 6% complete during our site visit. Therefore, we recommend this line item billing be reduced to \$0.00 for This Period.

**We recommend that the lender obtain a fully executed copy of the current Application for Payment, including revisions (see attached), prior to funding.**

### Releases of Lien

Conditional and unconditional lien waivers did accompany the current applications.

### Retainage

Retainage is being held at a rate of 10% on completed subcontractor work. Retainage held to date totals \$49,332.14, which equates to 7% overall.

### Approved Change Orders

The current application includes no change orders. The contract sum to date stands at \$7,213,984.00.

### Potential Change Orders

A Proposed Change Order Log has not been provided.

**Contingency**

The current application does not include a Contingency line item.

**Balance to Complete**

The balance to complete is in the amount of \$6,457,766.70. In our opinion, the undistributed funds remaining in the hard cost budget should be sufficient to substantially complete the project based on our review of the application for payment and the progress of the project.

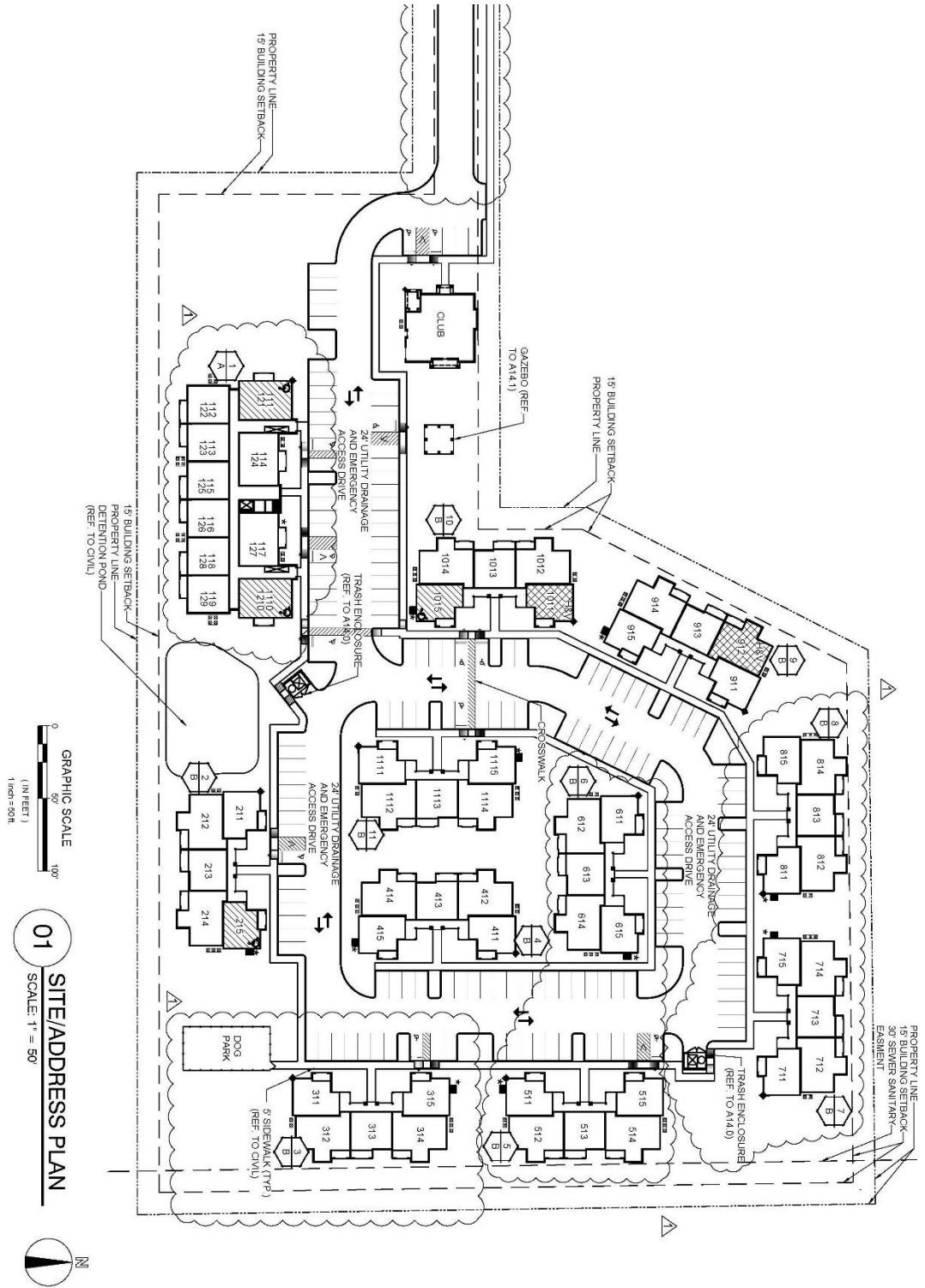
**IX. LIMITING CONDITIONS**

It is intended that this report be solely for the benefit of the Client, whether paid for by the Client or any other party. Newbanks, Inc. (Dallas (Consultant)) does not warrant this report, or any portions of this report, to any other party without prior express written consent.

The opinions expressed by Consultant shall not relieve the Design Professionals from inadequacy of engineering or architectural design or compliance with any laws, codes, and ordinances. This evaluation is not intended to be a complete, exhaustive, or detailed review of any systems or components, nor a check of the Design Professionals' calculations.

Furthermore, it is understood that Consultant does not assume or accept any of the design or supervisory responsibility of the Architect, Engineer, or consulting engineers or construction manager. Consultant shall not be responsible for the Contractor's failure to carry out the work in accordance with the loan documents or construction contract. The comments and recommendations stated in this report should not be construed in any way to constitute a warranty or guarantee, express or implied, regarding the current or future performance of any system or component. Services performed herewith are limited to those as Client's Consultant. Consultant's liability including its employees, other consultants, and agents, shall be limited to its total collected fee amount. It is agreed that this limitation shall apply to all claims, costs, and damages without respect to the legal theory asserted, and shall be governed by the laws of the State of Texas.

## X. SITE PLAN



**01 SITE/ADDRESS PLAN**  
SCALE: 1" = 50'

**XI. PHOTOGRAPHS**



Photo 1: Completed communication box relocation along Buchanan Rd. (by others).



Photo 2: Completed water main tie-in at west side of site.



Photos 3 – 4: Earth fill and grading in progress for storm sewer culvert installation.



Photo 4:

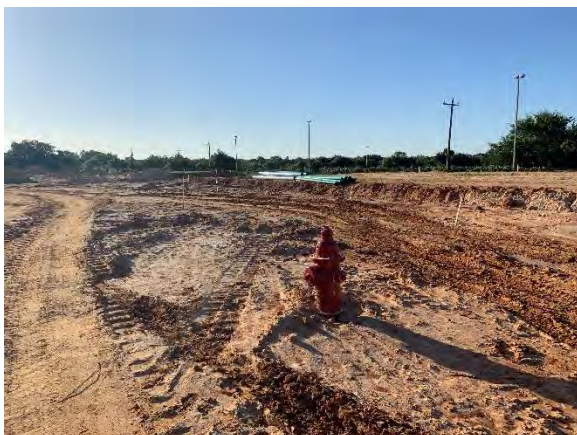


Photo 5: Completed fire hydrant installation at east side of creek.



Photo 6: Final sanitary sewer manhole installation to be completed at west side of site.



Photos 7 – 8: Sanitary sewer utilities and manhole installation at east side of site.



Photo 8:



Photo 9: Completed sanitary sewer tie-in to existing manhole at east side of site.



Photo 10: Completed batter board installation at Building 7.



Photo 11: Completed batter board installation at Buildings 4 & 11.

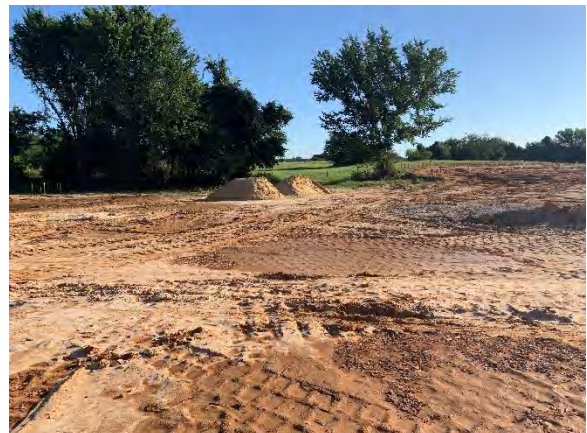


Photo 12: Earth fill and pad preparation remaining to be completed at Building 1 Clubhouse.





July 8, 2019

**SCS Decatur 17, LP**

7810 Jack Finney Blvd #101  
Greenville, Texas 75402

Project: Legacy Trails of Decatur  
Project Number: 17033  
Project Location: Decatur, TX  
Date of Inspection: June 25, 2019  
Pay Application: 3  
Weather: 85 Degrees / Sunny

Attendance: Mike Bonner – Watermark Construction  
Mark Leon – Cross Architects

An on-site visit was made by the Cross Architects representative(s) listed above as a visual observation of the above-mentioned project. Please see attached photos.

**Observations:**

The overall project is approximately 13% complete and appeared to be in compliance with the construction documents.

**General Notes:**

- Underground in place at building #5, 7 and 12
- Main sanitary and sewer complete

**Sitework:**

- Water maintap installed and line run from Buchanan to building #12
- Storm system in progress
- From lumber at domestic piping material onsite

**BUILDING 1:**

NOTES:

TYPE OF WORK	STATUS	TYPE OF WORK	STATUS
BUILDING PAD	IP	UNIT/BREEZEWAY FLR TOPPING	NS
FORM BOARDS	NS	PATIO/BALCONY RAILING	NS
UNDERGROUND PLUMBING	NS	DRAFTSTOPPING	NS
GRADE BEAMS W/ POLY	NS	SHOWER/TUB	NS
POST TENSION CABLES	NS	INSULATION	NS
FOUNDATION SLAB	NS	SHEETROCK	NS
FRAMING	NS	TAPE, BED AND TEXTURE	NS
EXTERIOR SHEATHING	NS	INTERIOR DOOR AND TRIM	NS
BUILDING WRAP	NS	INTERIOR PAINT	NS
ROOF DECKING	NS	EXTERIOR PAINT	NS
ROOFING MATERIAL	NS	CABINETS	NS
ROUGH PLUMBING	NS	COUNTERTOPS	NS
ROUGH ELECTRICAL	NS	PLUMBING TRIM	NS
ROUGH HVAC	NS	ELECTRICAL TRIM	NS
FIRE SPRINKLER SYSTEM	NS	HVAC TRIM	NS
EXTERIOR WINDOWS	NS	FLOORING	NS
EXTERIOR DOORS	NS	APPLIANCES	NS
EXTERIOR WALL FINISH	NS	LANDSCAPING	NS
STAIRS	NS	FINAL CLEAN	NS

<b>STATUS LEGEND:</b>	NS = NOT STARTED	IP = IN PROGRESS	CO = COMPLETE
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**BUILDING 2:**

NOTES:

TYPE OF WORK	STATUS	TYPE OF WORK	STATUS
BUILDING PAD	CO	UNIT/BREEZEWAY FLR TOPPING	NS
FORM BOARDS	CO	PATIO/BALCONY RAILING	NS
UNDERGROUND PLUMBING	NS	DRAFTSTOPPING	NS
GRADE BEAMS W/ POLY	NS	SHOWER/TUB	NS
POST TENSION CABLES	NS	INSULATION	NS
FOUNDATION SLAB	NS	SHEETROCK	NS
FRAMING	NS	TAPE, BED AND TEXTURE	NS
EXTERIOR SHEATHING	NS	INTERIOR DOOR AND TRIM	NS
BUILDING WRAP	NS	INTERIOR PAINT	NS
ROOF DECKING	NS	EXTERIOR PAINT	NS
ROOFING MATERIAL	NS	CABINETS	NS
ROUGH PLUMBING	NS	COUNTERTOPS	NS
ROUGH ELECTRICAL	NS	PLUMBING TRIM	NS
ROUGH HVAC	NS	ELECTRICAL TRIM	NS
FIRE SPRINKLER SYSTEM	NS	HVAC TRIM	NS
EXTERIOR WINDOWS	NS	FLOORING	NS
EXTERIOR DOORS	NS	APPLIANCES	NS
EXTERIOR WALL FINISH	NS	LANDSCAPING	NS
STAIRS	NS	FINAL CLEAN	NS

<b>STATUS LEGEND:</b>	NS = NOT STARTED	IP = IN PROGRESS	CO = COMPLETE
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**BUILDING 3:**

NOTES:

TYPE OF WORK	STATUS	TYPE OF WORK	STATUS
BUILDING PAD	CO	UNIT/BREEZEWAY FLR TOPPING	NS
FORM BOARDS	CO	PATIO/BALCONY RAILING	NS
UNDERGROUND PLUMBING	NS	DRAFTSTOPPING	NS
GRADE BEAMS W/ POLY	NS	SHOWER/TUB	NS
POST TENSION CABLES	NS	INSULATION	NS
FOUNDATION SLAB	NS	SHEETROCK	NS
FRAMING	NS	TAPE, BED AND TEXTURE	NS
EXTERIOR SHEATHING	NS	INTERIOR DOOR AND TRIM	NS
BUILDING WRAP	NS	INTERIOR PAINT	NS
ROOF DECKING	NS	EXTERIOR PAINT	NS
ROOFING MATERIAL	NS	CABINETS	NS
ROUGH PLUMBING	NS	COUNTERTOPS	NS
ROUGH ELECTRICAL	NS	PLUMBING TRIM	NS
ROUGH HVAC	NS	ELECTRICAL TRIM	NS
FIRE SPRINKLER SYSTEM	NS	HVAC TRIM	NS
EXTERIOR WINDOWS	NS	FLOORING	NS
EXTERIOR DOORS	NS	APPLIANCES	NS
EXTERIOR WALL FINISH	NS	LANDSCAPING	NS
STAIRS	NS	FINAL CLEAN	NS

<b>STATUS LEGEND:</b>	NS = NOT STARTED	IP = IN PROGRESS	CO = COMPLETE
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**BUILDING 4:**

NOTES:

TYPE OF WORK	STATUS	TYPE OF WORK	STATUS
BUILDING PAD	CO	UNIT/BREEZEWAY FLR TOPPING	NS
FORM BOARDS	CO	PATIO/BALCONY RAILING	NS
UNDERGROUND PLUMBING	NS	DRAFTSTOPPING	NS
GRADE BEAMS W/ POLY	NS	SHOWER/TUB	NS
POST TENSION CABLES	NS	INSULATION	NS
FOUNDATION SLAB	NS	SHEETROCK	NS
FRAMING	NS	TAPE, BED AND TEXTURE	NS
EXTERIOR SHEATHING	NS	INTERIOR DOOR AND TRIM	NS
BUILDING WRAP	NS	INTERIOR PAINT	NS
ROOF DECKING	NS	EXTERIOR PAINT	NS
ROOFING MATERIAL	NS	CABINETS	NS
ROUGH PLUMBING	NS	COUNTERTOPS	NS
ROUGH ELECTRICAL	NS	PLUMBING TRIM	NS
ROUGH HVAC	NS	ELECTRICAL TRIM	NS
FIRE SPRINKLER SYSTEM	NS	HVAC TRIM	NS
EXTERIOR WINDOWS	NS	FLOORING	NS
EXTERIOR DOORS	NS	APPLIANCES	NS
EXTERIOR WALL FINISH	NS	LANDSCAPING	NS
STAIRS	NS	FINAL CLEAN	NS

<b>STATUS LEGEND:</b>	NS = NOT STARTED	IP = IN PROGRESS	CO = COMPLETE
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**BUILDING 5:**NOTES:  

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TYPE OF WORK	STATUS	TYPE OF WORK	STATUS
BUILDING PAD	CO	UNIT/BREEZEWAY FLR TOPPING	NS
FORM BOARDS	CO	PATIO/BALCONY RAILING	NS
UNDERGROUND PLUMBING	CO	DRAFTSTOPPING	NS
GRADE BEAMS W/ POLY	NS	SHOWER/TUB	NS
POST TENSION CABLES	NS	INSULATION	NS
FOUNDATION SLAB	NS	SHEETROCK	NS
FRAMING	NS	TAPE, BED AND TEXTURE	NS
EXTERIOR SHEATHING	NS	INTERIOR DOOR AND TRIM	NS
BUILDING WRAP	NS	INTERIOR PAINT	NS
ROOF DECKING	NS	EXTERIOR PAINT	NS
ROOFING MATERIAL	NS	CABINETS	NS
ROUGH PLUMBING	NS	COUNTERTOPS	NS
ROUGH ELECTRICAL	NS	PLUMBING TRIM	NS
ROUGH HVAC	NS	ELECTRICAL TRIM	NS
FIRE SPRINKLER SYSTEM	NS	HVAC TRIM	NS
EXTERIOR WINDOWS	NS	FLOORING	NS
EXTERIOR DOORS	NS	APPLIANCES	NS
EXTERIOR WALL FINISH	NS	LANDSCAPING	NS
STAIRS	NS	FINAL CLEAN	NS

<b>STATUS LEGEND:</b>	NS = NOT STARTED	IP = IN PROGRESS	CO = COMPLETE
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**BUILDING 6:**NOTES:  

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TYPE OF WORK	STATUS	TYPE OF WORK	STATUS
BUILDING PAD	CO	UNIT/BREEZEWAY FLR TOPPING	NS
FORM BOARDS	CO	PATIO/BALCONY RAILING	NS
UNDERGROUND PLUMBING	NS	DRAFTSTOPPING	NS
GRADE BEAMS W/ POLY	NS	SHOWER/TUB	NS
POST TENSION CABLES	NS	INSULATION	NS
FOUNDATION SLAB	NS	SHEETROCK	NS
FRAMING	NS	TAPE, BED AND TEXTURE	NS
EXTERIOR SHEATHING	NS	INTERIOR DOOR AND TRIM	NS
BUILDING WRAP	NS	INTERIOR PAINT	NS
ROOF DECKING	NS	EXTERIOR PAINT	NS
ROOFING MATERIAL	NS	CABINETS	NS
ROUGH PLUMBING	NS	COUNTERTOPS	NS
ROUGH ELECTRICAL	NS	PLUMBING TRIM	NS
ROUGH HVAC	NS	ELECTRICAL TRIM	NS
FIRE SPRINKLER SYSTEM	NS	HVAC TRIM	NS
EXTERIOR WINDOWS	NS	FLOORING	NS
EXTERIOR DOORS	NS	APPLIANCES	NS
EXTERIOR WALL FINISH	NS	LANDSCAPING	NS
STAIRS	NS	FINAL CLEAN	NS

<b>STATUS LEGEND:</b>	NS = NOT STARTED	IP = IN PROGRESS	CO = COMPLETE
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**BUILDING 7:**

NOTES:

TYPE OF WORK	STATUS	TYPE OF WORK	STATUS
BUILDING PAD	CO	UNIT/BREEZEWAY FLR TOPPING	NS
FORM BOARDS	CO	PATIO/BALCONY RAILING	NS
UNDERGROUND PLUMBING	CO	DRAFTSTOPPING	NS
GRADE BEAMS W/ POLY	NS	SHOWER/TUB	NS
POST TENSION CABLES	NS	INSULATION	NS
FOUNDATION SLAB	NS	SHEETROCK	NS
FRAMING	NS	TAPE, BED AND TEXTURE	NS
EXTERIOR SHEATHING	NS	INTERIOR DOOR AND TRIM	NS
BUILDING WRAP	NS	INTERIOR PAINT	NS
ROOF DECKING	NS	EXTERIOR PAINT	NS
ROOFING MATERIAL	NS	CABINETS	NS
ROUGH PLUMBING	NS	COUNTERTOPS	NS
ROUGH ELECTRICAL	NS	PLUMBING TRIM	NS
ROUGH HVAC	NS	ELECTRICAL TRIM	NS
FIRE SPRINKLER SYSTEM	NS	HVAC TRIM	NS
EXTERIOR WINDOWS	NS	FLOORING	NS
EXTERIOR DOORS	NS	APPLIANCES	NS
EXTERIOR WALL FINISH	NS	LANDSCAPING	NS
STAIRS	NS	FINAL CLEAN	NS

<b>STATUS LEGEND:</b>	NS = NOT STARTED	IP = IN PROGRESS	CO = COMPLETE
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**BUILDING 8:**

NOTES:

TYPE OF WORK	STATUS	TYPE OF WORK	STATUS
BUILDING PAD	CO	UNIT/BREEZEWAY FLR TOPPING	NS
FORM BOARDS	CO	PATIO/BALCONY RAILING	NS
UNDERGROUND PLUMBING	NS	DRAFTSTOPPING	NS
GRADE BEAMS W/ POLY	NS	SHOWER/TUB	NS
POST TENSION CABLES	NS	INSULATION	NS
FOUNDATION SLAB	NS	SHEETROCK	NS
FRAMING	NS	TAPE, BED AND TEXTURE	NS
EXTERIOR SHEATHING	NS	INTERIOR DOOR AND TRIM	NS
BUILDING WRAP	NS	INTERIOR PAINT	NS
ROOF DECKING	NS	EXTERIOR PAINT	NS
ROOFING MATERIAL	NS	CABINETS	NS
ROUGH PLUMBING	NS	COUNTERTOPS	NS
ROUGH ELECTRICAL	NS	PLUMBING TRIM	NS
ROUGH HVAC	NS	ELECTRICAL TRIM	NS
FIRE SPRINKLER SYSTEM	NS	HVAC TRIM	NS
EXTERIOR WINDOWS	NS	FLOORING	NS
EXTERIOR DOORS	NS	APPLIANCES	NS
EXTERIOR WALL FINISH	NS	LANDSCAPING	NS
STAIRS	NS	FINAL CLEAN	NS

<b>STATUS LEGEND:</b>	NS = NOT STARTED	IP = IN PROGRESS	CO = COMPLETE
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**BUILDING 9:**

NOTES:

TYPE OF WORK	STATUS	TYPE OF WORK	STATUS
BUILDING PAD	CO	UNIT/BREEZEWAY FLR TOPPING	NS
FORM BOARDS	CO	PATIO/BALCONY RAILING	NS
UNDERGROUND PLUMBING	NS	DRAFTSTOPPING	NS
GRADE BEAMS W/ POLY	NS	SHOWER/TUB	NS
POST TENSION CABLES	NS	INSULATION	NS
FOUNDATION SLAB	NS	SHEETROCK	NS
FRAMING	NS	TAPE, BED AND TEXTURE	NS
EXTERIOR SHEATHING	NS	INTERIOR DOOR AND TRIM	NS
BUILDING WRAP	NS	INTERIOR PAINT	NS
ROOF DECKING	NS	EXTERIOR PAINT	NS
ROOFING MATERIAL	NS	CABINETS	NS
ROUGH PLUMBING	NS	COUNTERTOPS	NS
ROUGH ELECTRICAL	NS	PLUMBING TRIM	NS
ROUGH HVAC	NS	ELECTRICAL TRIM	NS
FIRE SPRINKLER SYSTEM	NS	HVAC TRIM	NS
EXTERIOR WINDOWS	NS	FLOORING	NS
EXTERIOR DOORS	NS	APPLIANCES	NS
EXTERIOR WALL FINISH	NS	LANDSCAPING	NS
STAIRS	NS	FINAL CLEAN	NS

<b>STATUS LEGEND:</b>	NS = NOT STARTED	IP = IN PROGRESS	CO = COMPLETE
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**BUILDING10:**

NOTES:

TYPE OF WORK	STATUS	TYPE OF WORK	STATUS
BUILDING PAD	CO	UNIT/BREEZEWAY FLR TOPPING	NS
FORM BOARDS	CO	PATIO/BALCONY RAILING	NS
UNDERGROUND PLUMBING	NS	DRAFTSTOPPING	NS
GRADE BEAMS W/ POLY	NS	SHOWER/TUB	NS
POST TENSION CABLES	NS	INSULATION	NS
FOUNDATION SLAB	NS	SHEETROCK	NS
FRAMING	NS	TAPE, BED AND TEXTURE	NS
EXTERIOR SHEATHING	NS	INTERIOR DOOR AND TRIM	NS
BUILDING WRAP	NS	INTERIOR PAINT	NS
ROOF DECKING	NS	EXTERIOR PAINT	NS
ROOFING MATERIAL	NS	CABINETS	NS
ROUGH PLUMBING	NS	COUNTERTOPS	NS
ROUGH ELECTRICAL	NS	PLUMBING TRIM	NS
ROUGH HVAC	NS	ELECTRICAL TRIM	NS
FIRE SPRINKLER SYSTEM	NS	HVAC TRIM	NS
EXTERIOR WINDOWS	NS	FLOORING	NS
EXTERIOR DOORS	NS	APPLIANCES	NS
EXTERIOR WALL FINISH	NS	LANDSCAPING	NS
STAIRS	NS	FINAL CLEAN	NS

<b>STATUS LEGEND:</b>	NS = NOT STARTED	IP = IN PROGRESS	CO = COMPLETE
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**BUILDING 11:**

NOTES:

TYPE OF WORK	STATUS	TYPE OF WORK	STATUS
BUILDING PAD	CO	UNIT/BREEZEWAY FLR TOPPING	NS
FORM BOARDS	CO	PATIO/BALCONY RAILING	NS
UNDERGROUND PLUMBING	NS	DRAFTSTOPPING	NS
GRADE BEAMS W/ POLY	NS	SHOWER/TUB	NS
POST TENSION CABLES	NS	INSULATION	NS
FOUNDATION SLAB	NS	SHEETROCK	NS
FRAMING	NS	TAPE, BED AND TEXTURE	NS
EXTERIOR SHEATHING	NS	INTERIOR DOOR AND TRIM	NS
BUILDING WRAP	NS	INTERIOR PAINT	NS
ROOF DECKING	NS	EXTERIOR PAINT	NS
ROOFING MATERIAL	NS	CABINETS	NS
ROUGH PLUMBING	NS	COUNTERTOPS	NS
ROUGH ELECTRICAL	NS	PLUMBING TRIM	NS
ROUGH HVAC	NS	ELECTRICAL TRIM	NS
FIRE SPRINKLER SYSTEM	NS	HVAC TRIM	NS
EXTERIOR WINDOWS	NS	FLOORING	NS
EXTERIOR DOORS	NS	APPLIANCES	NS
EXTERIOR WALL FINISH	NS	LANDSCAPING	NS
STAIRS	NS	FINAL CLEAN	NS

<b>STATUS LEGEND:</b>	NS = NOT STARTED	IP = IN PROGRESS	CO = COMPLETE
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**BUILDING 12:**

NOTES:

TYPE OF WORK	STATUS	TYPE OF WORK	STATUS
BUILDING PAD	CO	UNIT/BREEZEWAY FLR TOPPING	NS
FORM BOARDS	CO	PATIO/BALCONY RAILING	NS
UNDERGROUND PLUMBING	CO	DRAFTSTOPPING	NS
GRADE BEAMS W/ POLY	NS	SHOWER/TUB	NS
POST TENSION CABLES	NS	INSULATION	NS
FOUNDATION SLAB	NS	SHEETROCK	NS
FRAMING	NS	TAPE, BED AND TEXTURE	NS
EXTERIOR SHEATHING	NS	INTERIOR DOOR AND TRIM	NS
BUILDING WRAP	NS	INTERIOR PAINT	NS
ROOF DECKING	NS	EXTERIOR PAINT	NS
ROOFING MATERIAL	NS	CABINETS	NS
ROUGH PLUMBING	NS	COUNTERTOPS	NS
ROUGH ELECTRICAL	NS	PLUMBING TRIM	NS
ROUGH HVAC	NS	ELECTRICAL TRIM	NS
FIRE SPRINKLER SYSTEM	NS	HVAC TRIM	NS
EXTERIOR WINDOWS	NS	FLOORING	NS
EXTERIOR DOORS	NS	APPLIANCES	NS
EXTERIOR WALL FINISH	NS	LANDSCAPING	NS
STAIRS	NS	FINAL CLEAN	NS

<b>STATUS LEGEND:</b>	NS = NOT STARTED	IP = IN PROGRESS	CO = COMPLETE
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Regards,

A handwritten signature in blue ink that reads "Mark Leon Jr.".

Cross Architects, PLLC  
Mark Leon Jr

**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**OCTOBER 10, 2019**

Presentation, discussion and possible action on a request for return and reallocation of tax credits under 10 TAC §11.6(5) related to Credit Returns Resulting from Force Majeure Events for Application 17327, Legacy Trails of Lindale

**RECOMMENDED ACTION**

**WHEREAS**, an award of Competitive (9%) Housing Tax Credits in the amount of \$889,904 to 17327 Legacy Trails of Lindale (the Development) was approved by the Board on July 27, 2017;

**WHEREAS**, staff executed a Carryover Allocation Agreement with the Development Owner on December 12, 2017, that included a certification from the Development Owner that each building for which the allocation was made would be placed in service by December 31, 2019;

**WHEREAS**, on July 31, 2019, the Department received from the Development Owner a request to extend the placement in service deadline under the requirements of 10 TAC §11.6(5) related to Credits Returns Resulting from Force Majeure Events;

**WHEREAS**, other than in situations covered by force majeure, the Department lacks authority to extend federal deadlines for placement in service; and

**WHEREAS**, the precipitating events described in the request meet the requirements for force majeure events described in 10 TAC §11.6(5);

**NOW, therefore, it is hereby**

**RESOLVED**, the request for treatment of Legacy Trails of Lindale under an application of the force majeure rule is approved, with the 2017 Qualified Allocation Plan and Uniform Multifamily Rules, and the 2019 Program Calendar applicable to the Development;

**FURTHER RESOLVED**, that the Applicant will receive a 2019 Carryover Agreement extending the placed in service deadline until June 30, 2020; and

**FURTHER RESOLVED**, that staff is authorized, empowered, and directed, for and on behalf of the Department to execute such documents, instruments and writings and perform such acts and deeds as may be necessary to effectuate the foregoing.

**BACKGROUND**

An award of \$889,904 in Competitive (9%) Housing Tax Credits to the Development was approved by the Board on July 27, 2017. The Development proposed the New Construction of 72 Units for an Elderly population in Lindale. Staff executed a Carryover Allocation Agreement with the Development Owner on December 12, 2017, that included a certification from the Development Owner that, in order to satisfy

the requirements of §42 of the Internal Revenue Code, each building for which the allocation was made would be placed in service by December 31, 2019.

On July 31, 2019, the Department received from the consultant for SCS Lindale 17, LP, the Development Owner, a request to extend the placement in service deadline, if necessary, from December 31, 2019, to June 30, 2020, under the requirements of 10 TAC §11.6(5) related to Credits Returns Resulting from Force Majeure Events. This rule allows a Development Owner to return issued credits within three years of award, and have those credits re-allocated to the Development outside of the usual regional allocation system if all of the requirements of the subsection are met. Pursuant to 10 TAC §11.6(5), the Department's Governing Board may approve the execution of a current program year Carryover Allocation Agreement regarding the returned credits with the Development Owner that returned such credits only if:

(A) The credits were returned as a result of "Force Majeure" events that occurred after the start of construction and before issuance of Forms 8609. **Force Majeure events are the following sudden and unforeseen circumstances outside the control of the Development Owner:** acts of God such as fire, tornado, flooding, significant and unusual rainfall or subfreezing temperatures, or loss of access to necessary water or utilities as a direct result of significant weather events; explosion; vandalism; orders or acts of military authority; litigation; changes in law, rules, or regulations; national emergency or insurrection; riot; acts of terrorism; supplier failures; or materials or labor shortages. If a Force Majeure event is also a presidentially declared disaster, the Department may treat the matter under the applicable federal provisions. Force Majeure events must make construction activity impossible or materially impede its progress; (emphasis added)

Of the circumstances listed in the rule, the request from the Development Owner indicates that force majeure was triggered by significant and unusual rainfall.

#### **Significant and Unusual Rainfall**

In the request, the Development Owner states that "87 construction days have been lost due to rainfall and/or mud for the Development between the months of November 2018 through July 2019 (9 months). When compared to the previous 4-year annual average rainfall for the area of 48.91 inches, the Development has already exceeded the expected annual average rainfall during this 9- month construction period, with a total rainfall of 51.82 inches since groundbreaking." The request included an "Exhibit A" document described as a listing of "days lost due to precipitation or mud," and an "Exhibit B" of photographs described as depicting "pooling and mud from the rain." The request also includes several photographs indicating erosion and puddling of water on the site.

Pursuant to 10 TAC §10.402(h) of the Asset Management Rules, all multifamily developments must submit a construction status report (CSR), due by the tenth day of the month following each reporting quarter's end (January, April, July, and October) and continue on a quarterly basis until the entire development is complete. The first CSR was due on October 10, 2018. It is noted that the Owner requested to extend the deadline for the October 10, 2018 initial CSR, and was granted an extension until January 10, 2019. It is also noted that the Owner requested and was granted an extension of the 10% Test expenditure and submission deadline, without penalty. The submitted Construction Loan Agreement indicates that the loan was closed on November 9, 2018 with a completion date of November

1, 2019. Staff requested that the Development Owner provide evidence that the Lender has agreed to extend the completion deadline, and the Development Owner provided such.

Included with the CSRs reviewed for this Development are field reports from Building Review and Inspection Xperts (sic) (BRIX). The reports are included with this action item. Review of documentation provided in the request indicates that the notice to proceed with construction was issued on November 12, 2018. The CSRs indicate that Salem Clarke Construction, a subsidiary of the Development Owner, is the Contractor. Beginning with the first field report, BRIX reports problems with the construction schedule due to rain:

- Report dated March 7, 2019, of March 4 site visit notes construction 9% complete:
  - “Project is progressing at a slow pace, and appears to be approximately 75 days behind original contracted schedule.”
  - “Contractor reported 60 rain days since the beginning of construction.”
- Report dated April 10, 2019, of April 2 and April 4 site visits notes construction 14% complete:
  - “Project is progressing at a slow pace, and appears to be approximately 75 days behind original contracted schedule. This information is based on the original schedule. An updated schedule have been requested but not provided to date.”
  - “BRIX-AL estimate that Building 1 will be substantially complete on December 28, 2019; Buildings 2&3 on January 4, 2020; Buildings 4&5 on January 11, 2020; Buildings 6&7 on January 18, 2020 and Buildings 8&9 on January 25, 2020.”
  - “Updated Construction Schedule was requested for our file.”
  - “Contractor reported 60 rain days since the beginning of construction.”
- Report dated May 3, 2019, of April 23 site visit notes construction 17% complete:
  - “Project is progressing at a slow pace, and appears to be approximately 75 days behind original contracted schedule. This information is based on the original schedule. An updated schedule have been requested but not provided to date.”
  - “Updated Construction Schedule was requested for our file but has not been provided to date (May 2, 2019)”
  - “Contractor reported 60 rain days since the beginning of construction.”
- Report dated June 5, 2019, of May 22 site visit notes construction 25% complete:
  - “Current Estimated Date of Substantial Completion by BRIX (overall): February 5, 2020”
  - “Project is progressing at a slow pace, and appears to be approximately 2 3/4 months behind the original contracted schedule. This information is based on the updated schedule displayed in the construction trailer.”
  - “Contractor reported 69 rain days since the beginning of construction.”
  - “Concrete testing documents have been requested but not provided.”
  - “Footing inspections have occurred and documentation has been requested but not provided.”
  - “A copy of the framing contract has been requested but not yet received (recommended).”
  - “BRIX-AL requested 2-week look ahead schedule from General Contractor to better understand near future project sequencing. The schedule has not been received to date.”

Staff asked the Applicant to explain why Forest Trails (17288), another Development awarded in 2017 and being completed in Lindale less than one-half mile from the Development Site, was not similarly affected by the rain. The Applicant explained the following:

- Difference in elevation: The Forest Trails site is at a higher elevation than Legacy Trails of Lindale. The topography of the area slopes downward towards the site of Legacy Trails of Lindale. When rain falls, it naturally runs off the higher elevation and pools at the lowest point of the Legacy Trails of Lindale site, which is the entrance to the site (see Exhibit A). The rain flooded the construction entrance for days at a time, making access to the site impossible. In contrast, the entrance to the site of Forest Trails is one of the highest points of the site.
- The Legacy Trails of Lindale site had more extensive site work and off-site work than that of Forest Trails, which allowed them to move forward with vertical construction sooner. The off-site work for Legacy Trails of Lindale included storm drains, water and fire hydrants, sewer laterals, and off-site utilities. The Forest Trails site only had water and sewer off sites.
- The site work for Legacy Trails of Lindale included cutting down approximately 10 feet of dirt to move and compact it on the other side of the site, while the Forest Trails site is fairly level. Legacy Trails of Lindale had to build an 850 foot road extending from Lindale Cemetery Road to reach the development site. The grading and earthwork for the two sites vary considerably.
- Forest Trails is building 60 units in a single-story design of 30 duplex buildings while Legacy Trails of Lindale is building 76 garden-style units with nearly half of the units in a two-story building. The building slabs for Forest Trails are smaller than those for Legacy Trails of Lindale. Because the site of Forest Trails is at a higher elevation, it is reasonable to conclude there are some areas of the site that would be dry enough to pour this size building pad as opposed to the building pads for Legacy Trails of Lindale. Additionally, Forest Trails is constructing 16 units less than Legacy Trails of Lindale.

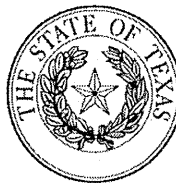
Staff has determined that the Development Owner has provided sufficient evidence that the Development has been affected by “sudden and unforeseen circumstances outside the control of the Development Owner” as described in 10 TAC §11.6(5), particularly significant and unusual rainfall. If the Board grants the request to consider this a force majeure event, the Development Owner will return \$889,904 in credits. The credits will be returned to the Development Owner with a 2019 Carryover Allocation Agreement and the date for the Development to be placed in service will be June 30, 2020, with the 2017 Qualified Allocation Plan and Uniform Multifamily Rules applicable to the Development.

If the Board denies the request to consider this a force majeure event, the Development Owner will retain \$889,904 in credits and the date by which the Development must be placed in service will remain December 31, 2019. If the Development Owner returns the credits, the credits would first be made available in the subregion from which they were originally awarded, pursuant to 10 TAC §11.6(2), related to returned credits; in this case Region 4, Rural. There are no pending Applications on the 2019 waiting list from that subregion. Pursuant to 10 TAC §11.6, staff would apply the credits to the collapse and, if enough credits are available, award credits to the next Application on the 2019 waiting list.

Staff recommends the Board approve the request for treatment of Legacy Trails of Lindale under an application of the force majeure rule.

17327

# Legacy Trails of Lindale Extension Approvals



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

[www.tdhca.state.tx.us](http://www.tdhca.state.tx.us)

Greg Abbott  
GOVERNOR

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Paul A. Braden, Member  
Asusena Reséndiz, Member  
Sharon Thomason, Member  
Leo Vasquez, Member

June 29, 2018

Writer's direct dial: 512-475-3296  
Email: [tim.irvine@tdhca.state.tx.us](mailto:tim.irvine@tdhca.state.tx.us)

Chaz Garrett  
SCS Lindale 17, LP.  
7801 Jack Finney Blvd, Suite 101  
Greenville, TX 75402  
Email: [chaz@salemclark.com](mailto:chaz@salemclark.com)

RE: WESTWIND OF LINDALE (THE "DEVELOPMENT")  
HTC #17327, CMTS ID 5334  
10% TEST EXTENSION

Dear Mr. Garrett:

The Texas Department of Housing and Community Affairs (the "Department") received your letter of June 20, 2018, requesting an extension without penalty, as outlined in §11.9(f) of the 2018 QAP, of the 10% Test submission deadline from July 2, 2018, to August 2, 2018, for the above referenced development. According to your request, the extension is necessary due to the delay in securing a viable syndication commitment until June 11, 2018, which delayed the purchasing of the building materials needed to meet the 10% Test expenditure requirement.

Your letter also requests a determination that the point adjustment for applications submitted during the current 2018 competitive round is not warranted, stating that the issues and delays explained above were not the result of anything within the Applicant's control and could not have been reasonably anticipated. Based on the information provided, I concur and further determine that a point deduction for any current application as a result of this extension request is not warranted for the reasons discussed above.

The request for an extension is granted without penalty. The new deadline to submit the 10% Test is **August 2, 2018**. Any subsequent extension request would be considered independent of this determination with regard to 10 TAC §11.9(f). Should you have any questions, please contact Kent Bedell at 512.475.3882 or via email at [kent.bedell@tdhca.state.tx.us](mailto:kent.bedell@tdhca.state.tx.us).

Sincerely,

A handwritten signature in black ink, appearing to read "Timothy K. Irvine".

Timothy K. Irvine  
Executive Director

TKI/KB

cc: Lora Myrick (via email): [lora@betcohousinglab.com](mailto:lora@betcohousinglab.com)







TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

[www.tdhca.state.tx.us](http://www.tdhca.state.tx.us)

Greg Abbott  
GOVERNOR

**BOARD MEMBERS**

J.B. Goodwin, *Chair*  
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Paul A. Braden, Member  
Asusena Reséndiz, Member  
Sharon Thomason, Member  
Leo Vasquez, Member

September 13, 2018

*Writer's direct dial: 512-475-3357*  
*Email: [rosalio.banuelos@tdhca.state.tx.us](mailto:rosalio.banuelos@tdhca.state.tx.us)*

Juli Gonzales  
Senior Development Consultant  
Housing Lab by BETCO  
812 San Antonio, Suite L-14  
Austin, TX 78701  
Email: [juli@betcohousinglab.com](mailto:juli@betcohousinglab.com)

RE: LEGACY TRAILS OF LINDALE (THE "DEVELOPMENT")  
HTC # 17327; CMTS # 5334  
INITIAL CONSTRUCTION STATUS REPORT EXTENSION

Ms. Gonzales:

The Texas Department of Housing and Community Affairs (the "Department") received your email on September 10, 2018, requesting to extend the deadline for the initial Construction Status Report for the above referenced Development from October 10, 2018 to January 10, 2019. According to your request, the closing of the construction financing has been delayed; therefore, the required construction status report documents cannot be provided until after the closing occurs.

Your request for an extension is granted. Please note that the next Construction Status Report for the above referenced Development will be due by January 10, 2019, and subsequent reports are due by the 10th day of the month following each reporting quarter's end (January, April, July, and October) and continue on a quarterly basis until the entire Development is complete as evidenced by one of the following: certificates of occupancy for each building, the Architect's Certificate(s) of Substantial Completion (AIA Document G704) for the entire development, the final Application and Certificate for Payment (AIA Document G702 and G703), or an equivalent form approved for submission by the construction lender and/or investor. Any subsequent extension request would be considered independent of this determination.

Any further questions should be directed to your Asset Manager, Kent Bedell, at (512) 475-3882 or [kent.bedell@tdhca.state.tx.us](mailto:kent.bedell@tdhca.state.tx.us).

Sincerely,

A handwritten signature in black ink that reads "Rosalio B".

Rosalio Banuelos  
Acting Director of Multifamily Asset Management

RB/kb

cc: Lora Myrick (via email): [lora@betcohousinglab.com](mailto:lora@betcohousinglab.com)



17327

Legacy Trails of Lindale  
Force Majeure Request



July 31, 2019

Mr. Kent Bedell  
Sr. Asset Manager  
Texas Department of Housing and Community Affairs  
211 E 11<sup>th</sup> Street  
Austin, Texas 78701

Via Email: [kent.bedell@tdhca.state.tx.us](mailto:kent.bedell@tdhca.state.tx.us)

Re: TDHCA Application #17327 – Legacy Trails of Lindale, Lindale, TX

Dear Mr. Bedell,

The SCS Lindale 17, L.P. (the “Owner”) received an allocation of Housing Tax Credits from the Texas Department of Housing and Community Affairs (“TDHCA”) for the construction of Legacy Trails of Lindale (the “Development”). The Owner is required to place the Development in service by December 31, 2019. Unfortunately, the Owner faces the possibility of not being able to place the Development in service prior to the end of this year as required by Section 42(h)(1)(E)(i) of the Internal Revenue Code. This possibility of the delayed placement in service is the result of events that we believe should fall under the provisions of §11.6(5) of the 2019 Qualified Allocation Plan (“QAP”) relating to Force Majeure. As of July 31, 2019, Legacy Trails of Lindale was 45% complete.

#### Background Information

The Development is located in Lindale, Texas, in Smith County. The City of Lindale, and Smith County as a whole, has experienced significant rainfall throughout the construction of the Development, which has had an adverse effect on the initial construction schedule and placed-in-service timelines. A total of 87 construction days have been lost due to rainfall and/or mud for the Development between the months of November 2018 through July 2019 (9 months). When compared to the previous 4-year annual average rainfall for the area of 48.91 inches<sup>1</sup>, the Development has already exceeded the expected annual average rainfall during this 9-month construction period, with a total rainfall of 51.82 inches<sup>2</sup> since groundbreaking. The Owner’s general contractor has assembled a list of days lost due to precipitation or mud; this information is tabulated on Exhibit A. Pictures taken from the construction status reports that depict the pooling and mud from the rain are also included as Exhibit B.

#### Request

In the event that is not possible and due to the delays described above, we request that the Owner be permitted to return the Tax Credits and that TDHCA reallocate the Tax Credits to

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<sup>1</sup> Source: [www.weather.gov](http://www.weather.gov)

<sup>2</sup> Source: Exhibit A

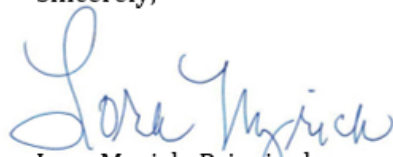


the Owner in the current year in accordance with §11.6(5) of the 2019 QAP relating to Force Majeure. We believe the Owner and Development meet all of the requirements in Section 11.6(5), in that:

1. The events that caused the delay occurred before issuance of 8609s and were sudden, unforeseen circumstances outside the control of the Development Owner.
2. The delays were not caused by willful negligence or acts of Owner, any Affiliate, or any other Related Party.
3. The Owner has provided evidence and a timeline of the events that was the direct result of the delays, see Exhibit A and Exhibit B.
4. Though there was little that could be done to mitigate the excessive rainfall, the Owner took all reasonable steps to minimize or mitigate any delays. Additionally, the Development was properly insured, and TDHCA was notified of the Force Majeure events.
5. The Force Majeure threatens to prevent the Owner from meeting the Place in Service requirements of the original allocation.
6. The requested current year Carryover Agreement would allocate the same amount of Tax Credits as those that would be returned.
7. The Development continues to be financially feasible, as these delays have not significantly increased the original construction budget of the Project, nor have there been any insurance proceeds received related to the Force Majeure event.

If you have any questions or would like to discuss these items further, please do not hesitate to contact me directly at (512) 785-3710 or via email at [lora@betcohousinglab.com](mailto:lora@betcohousinglab.com).

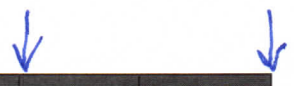
Sincerely,



Lora Myrick, Principal  
BETCO Consulting, LLC

2018

EXHIBIT A



Day	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
1	0.00	0.00	1.21	0.00	0.00	0.00	0.00	0.00	0.00	1.45	0.01	0.01
2	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.01	0.00	0.00	0.00
3	0.00	0.07	0.00	0.12	0.00	0.00	1.02	0.00	0.21	0.00	0.00	0.00
4	0.00	0.01	0.00	0.00	0.60	0.00	0.00	0.00	0.84	0.00	0.92	0.00
5	0.00	0.02	0.02	0.00	0.03	0.00	0.04	0.00	0.00	0.00	0.00	0.00
6	0.00	1.75	0.00	0.16	0.00	0.00	0.17	0.00	0.00	0.00	0.00	0.23
7	1.06	0.18	0.00	0.10	0.00	0.00	0.00	0.00	0.04	0.04	0.02	1.76
8	0.04	0.00	0.00	0.00	0.00	0.00	0.75	0.00	0.24	0.07	1.89	0.69
9	0.00	0.00	0.00	0.00	0.00	0.00	0.26	0.00	0.01	0.33	0.20	0.01
10	0.00	0.06	0.00	0.00	0.00	0.05	0.01	0.14	0.58	0.00	0.00	0.00
11	0.72	0.03	0.20	0.00	0.00	0.00	0.39	1.01	0.03	0.00	1.17	0.00
12	0.00	0.05	0.00	0.00	0.00	0.00	0.10	0.58	0.08	0.00	2.22	0.00
13	0.00	0.35	0.00	0.81	0.00	0.00	0.00	0.00	0.00	2.49	0.01	0.27
14	0.00	0.20	0.00	0.10	0.00	0.00	0.00	0.00	0.03	0.01	0.00	0.20
15	0.16	0.01	0.00	0.00	0.00	0.00	0.00	0.00	0.23	1.12	0.00	0.00
16	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.67	0.00	0.00
17	0.01	0.27	0.28	0.00	0.00	0.00	0.00	0.00	0.51	0.69	0.00	0.00
18	0.03	0.03	0.03	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
19	0.01	0.00	0.03	0.00	0.00	0.28	0.00	0.00	0.01	1.29	0.01	0.59
20	0.00	0.43	0.00	0.00	0.03	1.28	0.00	0.00	0.00	0.05	0.00	0.04
21	0.13	3.66	0.00	2.22	0.00	0.00	0.00	0.00	0.77	0.00	0.00	0.00
22	0.06	0.41	0.00	0.33	0.05	0.00	0.00	0.00	1.95	0.00	0.00	0.00
23	0.00	0.45	0.00	0.00	0.00	0.00	0.00	0.00	0.31	0.00	0.00	0.00
24	0.00	0.93	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.36	0.00	0.00
25	0.00	0.00	0.00	0.06	0.00	0.08	0.00	0.00	0.01	0.28	0.00	0.00
26	0.00	0.00	0.00	0.01	0.01	0.00	0.00	0.00	0.00	0.00	0.00	0.81
27	0.06	0.66	0.24	0.00	0.00	0.00	0.00	0.00	0.22	0.00	0.00	2.19
28	0.00	0.00	2.62	0.00	0.00	0.00	0.03	0.00	0.00	0.00	0.00	0.00
29	0.00		0.10	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
30	0.00		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.28
31	0.00		0.00		0.00		0.09	0.00		1.97		0.27
Rain Days	10	19	9	9	5	4	10	3	18	14	9	13
Month Total	2.28 in	9.57 in	4.73 in	3.91 in	0.72 in	1.69 in	2.86 in	1.73 in	6.08 in	11.82 in	6.45 in	7.35 in
YTD Total	2.28 in	11.85 in	16.58 in	20.49 in	21.21 in	22.90 in	25.76 in	27.49 in	33.57 in	45.39 in	51.84 in	59.19 in

2019

Day	Jan	Feb	Mar	Apr	May	Jun	Jul
1	0.00	0.00	0.00	0.00	0.10	0.00	0.00
2	1.74	0.00	0.01	0.00	4.13	0.00	0.00
3	0.61	0.00	0.28	0.00	0.00	0.00	0.00
4	0.00	0.00	0.00	0.00	0.06	0.00	0.07
5	0.00	0.01	0.00	0.00	0.00	0.81	0.00
6	0.00	0.01	0.00	1.64	0.00	0.00	0.00
7	0.00	0.63	0.00	0.54	0.01	0.00	0.00
8	0.00	0.00	0.00	0.74	2.17	0.00	0.00
9	0.00	0.05	0.54	0.00	0.01	0.03	0.00
10	0.00	0.00	0.00	0.00	0.00	0.00	0.23
11	0.33	0.98	0.00	0.00	0.53	0.00	0.00
12	0.11	0.00	0.00	0.00	0.00	0.00	0.00
13	0.00	0.00	0.58	1.64	0.00	0.00	0.06
14	0.00	0.00	0.45	0.04	0.00	0.00	0.04
15	0.00	0.00	0.00	0.00	0.00	0.00	0.00
16	0.01	0.00	0.00	0.00	0.00	2.28	0.00
17	0.00	0.02	0.00	0.04	0.00	0.04	0.00
18	0.02	0.00	0.00	1.72	0.67	0.00	0.00
19	0.25	0.41	0.00	0.00	0.00	0.87	0.00
20	0.00	0.01	0.00	0.00	0.00	0.08	0.00
21	0.00	0.27	0.00	0.00	0.39	0.00	0.00
22	0.78	1.90	0.00	0.00	0.00	0.00	0.00
23	0.34	0.25	0.00	0.00	0.00	1.24	0.00
24	0.00	0.00	0.00	4.41	0.00	0.46	0.00
25	0.00	0.00	0.16	0.01	0.00	0.92	0.00
26	0.00	0.06	0.00	0.00	0.00	0.07	0.00
27	0.00	0.02	0.00	0.00	0.00	0.00	0.00
28	0.00	0.01	0.00	0.00	0.00	0.00	0.00
29	0.00		0.05	0.00	0.13	0.00	0.00
30	0.00		0.06	0.00	0.89	0.00	---
31	0.00		0.00		0.00		---
Rain Days	9	14	8	9	11	10	4
Month Total	4.19 in	4.63 in	2.13 in	10.78 in	9.09 in	6.80 in	0.40 in
YTD Total	4.19 in	8.82 in	10.95 in	21.73 in	30.82 in	37.62 in	38.02 in

# EXHIBIT B

IMG 90 --Erosion that has to be put back when dried out.



IMG 91 –Rain soaked and washed away dirt around form boards....all has to be replaced when dried out.



IMG 84 –More erosion



IMG 85 –Entrance to site—workers and machinery can't get in for days.





IMG 155-Roadbed washed away, had to be rebuilt when dry.



IMG 156-Takes days for this to dry out.



IMG 157-Very wet conditions.



IMG158-All the roads and pads destroyed by heavy rains.



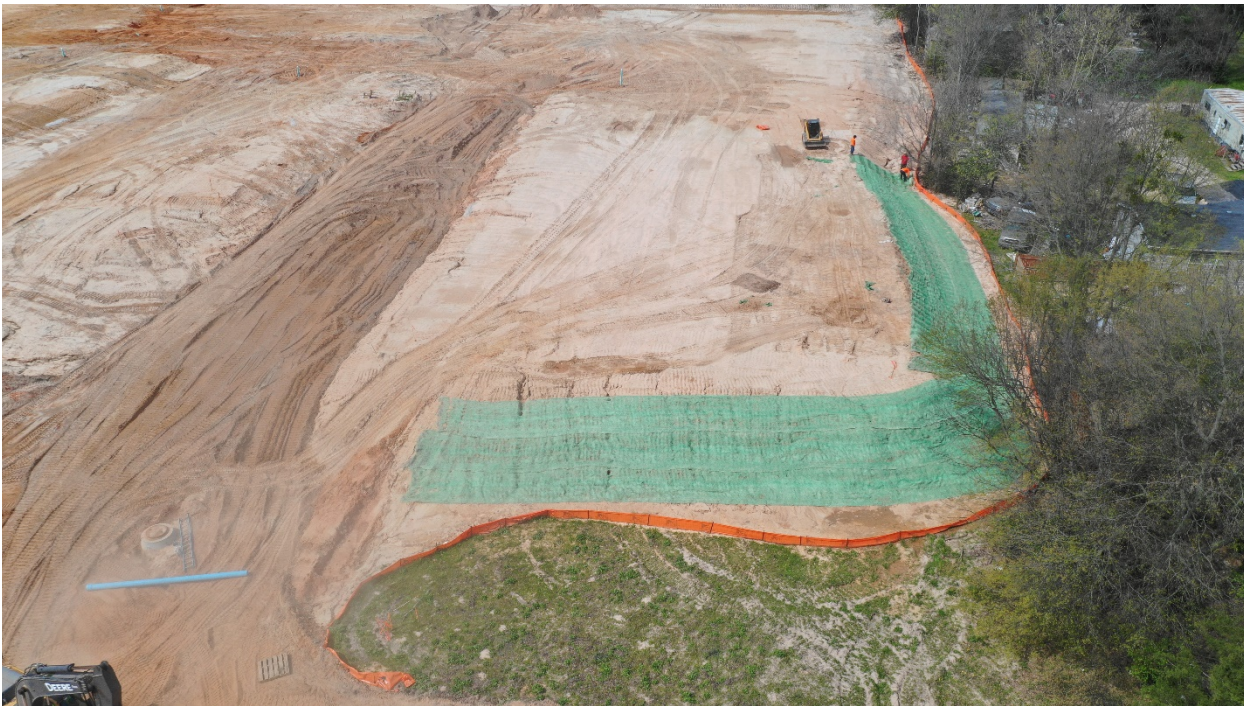
DJI128 –Water standing on site....work halted.



DJI130 –Building pad destroyed by abundant rain....must be rebuilt.



DJI147 -Stopped work to stop erosion.



DJI202 -Entrance road being rebuilt after washing away to left side.



Rain –Standing water in blue circles. Workers trying to pump water out of work area.





August 27, 2019

Sharon Gamble  
Competitive Housing Tax Credit Administrator  
Texas Department of Housing and Community Affairs  
211 E 11<sup>th</sup> Street  
Austin, Texas 78701

Via Email: [sharon.gamble@tdhca.state.tx.us](mailto:sharon.gamble@tdhca.state.tx.us)

Re: TDHCA Application #17327 – Legacy Trails of Lindale, Lindale, TX

Dear Sharon,

Thank you for your questions and the opportunity to provide further information.

We reached out to the developers of Forest Trails regarding the impact of rain on the construction schedule. They responded, *“We’ve experienced some significant delays due to weather. Those delays, coupled with a delayed closing (HUD related) in December of 2018, definitely have us in a tight spot. As things stand right now we anticipate we will complete by the end of the year but it will be a push to get there.”* There is no doubt both developments have been adversely affected by the weather, as Forest Trails is only 15% further in construction than Legacy Trails of Lindale.

There are important differences to note between the two developments and the sites.

The attached topographic map, shows the Forest Trails site is at a higher elevation than Legacy Trails of Lindale. The topography of the area slopes downward towards the site of Legacy Trails of Lindale. When rain falls, it naturally runs off the higher elevation and pools at the lowest point of the Legacy Trails of Lindale site, which is the entrance to the site (see Exhibit A). The rain flooded the construction entrance for days at a time, making access to the site impossible. In contrast, the entrance to the site of Forest Trails is one of the highest points of the site.

The Legacy Trails of Lindale site had more extensive site work and off-site work than that of Forest Trails, which allowed them to move forward with vertical construction sooner. The off-site work for Legacy Trails of Lindale included storm drains, water and fire hydrants, sewer laterals, and off-site utilities. The Forest Trails site only had water and sewer off sites.

The site work for Legacy Trails of Lindale included cutting down approximately 10 feet of dirt to move and compact it on the other side of the site, while the Forest Trails site is fairly level. Legacy Trails of Lindale had to build an 850 foot road extending



from Lindale Cemetery Road to reach the development site. The grading and earthwork for the two sites vary considerably.

Forest Trails is building 60 units in a single-story design of 30 duplex buildings while Legacy Trails of Lindale is building 76 garden-style units with nearly half of the units in a two-story building. The building slabs for Forest Trails measure 50' 5" x 56' 11" (Building Type A) and 50' 5" x 64' 5" (Building Type B). Because the site of Forest Trails is at a higher elevation, it's reasonable to conclude there are some areas of the site that would be dry enough to pour this size building pad as opposed to the building pads for Legacy Trails of Lindale, that measure 316' 3.5" x 83' 5" (Building Type A) and 110' 7" x 61' 0.5" (Building Type B). Additionally, Forest Trails is constructing 16 units less than Legacy Trails of Lindale.

Finally, the current draft of the 2020 Qualified Allocation Plan (QAP) has proposed language for credit returns via Force Majeure including a "discussion of other developments under construction in the Subregion and an analysis as to why they were not similarly impacted." The 2017 QAP and subsequent QAPs do not have this language. This request should not be subject to proposed rules that have not been adopted by the governing board or signed into effect by the Governor. There are several variables that can impact one development over another in the same sub region. Simply because there is more than one development being constructed in the same area, does not mean that each development is the same product type, shares the same topographic landscape, or will be able to overcome common obstacles.

If you have any questions or would like to discuss these items further, please do not hesitate to contact me directly at (512) 785-3710 or via email at [lora@betcohousinglab.com](mailto:lora@betcohousinglab.com).

Sincerely,

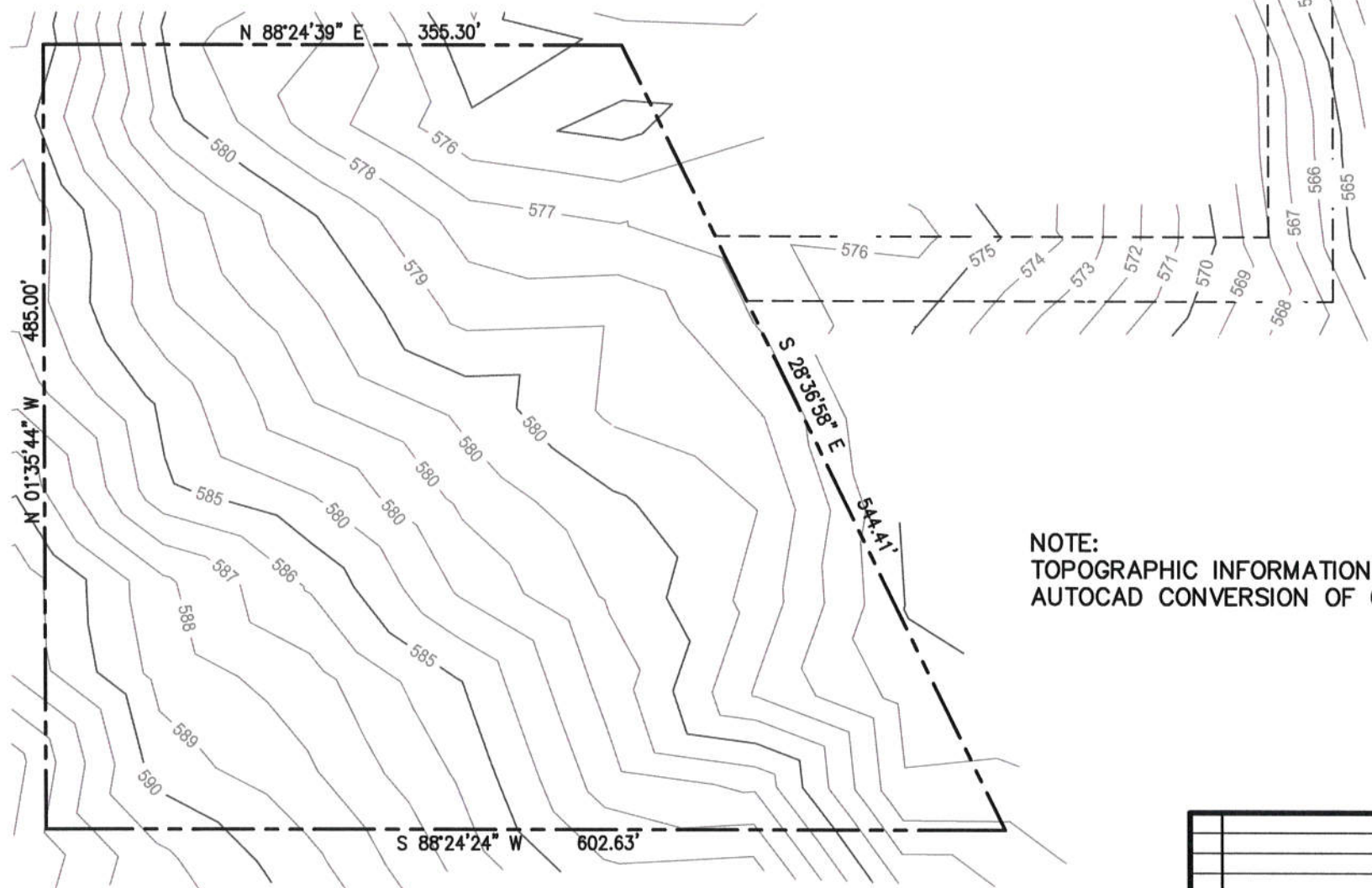
Lora Myrick, Principal  
BETCO Consulting, LLC

Cc: Marni Holloway  
Kent Bedell  
John Shackelford  
Chaz Garrett

LINDALE CEMETERY ROAD / C.R. 467



SCALE: 1" = 100'



NOTE:  
TOPOGRAPHIC INFORMATION OBTAINED BY  
AUTOCAD CONVERSION OF GOOGLE EARTH DATA.



NOT FOR CONSTRUCTION

No.	Description	By	Date
1	ISSUED FOR APPLICATION	BS	02/24/17

  
**ENGINEERS - SURVEYORS**  
**Everett Griffith, Jr. & Associates Inc.**  
 408 NORTH THIRD STREET, LUFKIN, TEXAS 75901  
 936-634-5528  
 TX ENGINEERING FIRM NO. F-1156  
 TX SURVEYING FIRM NO. 100291-00

**LEGACY TRAILS OF LINDALE**  
 LINDALE, TEXAS  
**PRELIMINARY TOPOGRAPHIC SURVEY**

Designed By: BS	Drawn By: DKF	Scale: 1"=120'
Surveyed By: -	Checked By: BS	F.B. No. -
Calculated By: BS	Date: 2/24/17	Save Name: SITE WK

Drawing or Job No. E S-154  
 Sheet 2 of 5



Regions Bank  
1717 McKinney Avenue, Suite 1200  
Dallas, TX 75202



September 23, 2019

Mr. Chaz Garrett  
Manager of the General Partner  
SCS Lindale 17, LP  
7801 Jack Finney Blvd, Suite 101  
Greenville, Texas 75042

**Re: Legacy Trails of Lindale  
Lindale, TX**

Dear Mr. Garrett:

Per your request, Regions Bank (Bank) will modify the definition of Construction Completion within the bridge loan and the construction loan, extending the date required for the receipt of temporary certificates of occupancy on all buildings at Legacy Trails of Lindale, from November 1, 2019 to March 1, 2020, conditional upon the Texas Department of Housing and Community Affairs (TDHCA) approval to extend the development's placed in service deadline from December 31, 2019 to at least April 30, 2020 and provided there are no outstanding loan defaults at that time. Once this modification is approved by the TDHCA, the Bank will document this loan modification in a Loan Modification Agreement to be prepared by our legal counsel.

Please feel free to call me at (214) 220-6171 should you have any questions. Thank you for your time and we appreciate the opportunity to work with you.

Very truly yours,

A handwritten signature in blue ink that reads "D. N. Payne".

David N. Payne  
Senior Vice President  
Regions Bank

17327

Legacy Trails of Lindale  
Construction Status  
Reports



March 7, 2019

Mr. Dominick Accurso, Jr., R.A.  
 Senior Development Risk Manager  
 Regions Bank  
 111 Great Neck Road, Suite 500  
 Great Neck, New York 11021

Reference: Legacy Trails of Lindale  
 Sunset Drive  
 Lindale, Texas 75771

Dear Mr. Accurso,

In compliance with your request, and our agreement, we performed a site visit for the above-referenced project on March 4, 2019. The purpose of this visit was to review the progress of the project and verify the quantities of the in place work. A summary of the conditions observed during our site visit is shown on the following pages and attached project photographs.

Percent Complete:	Salem Clark Construction
Current Percentage Complete - In Place and Stored	9%
Change This Period	9%

**Pay-Out Authorization:**

Application Number	Salem Clark Construction
Period To:	February 22, 2019
Total Completed & Stored	\$781,956.35
Retainage (10%)	\$26,895.10
Total Earned (less Retainage)	\$755,061.25
Previous Payments	\$450,004.70
Current - <b>RECOMMENDED PAYMENT</b> Due	<b>\$305,056.55</b>

**Stored Materials:**

- Materials Currently Stored Onsite: \$ 80,000.00
- Materials Currently Stored Offsite: \$ 450,004.70

There currently appears to be adequate work areas available and stored materials on site to provide for continuous construction which include domestic water and sanitary sewer pipe, gravel, and prefabricated sewer manholes.

Offsite stored material include framing lumber and related materials. An invoice and insurance certificate are provided with request. Funding for Deposits and Offsite stored material is subject to review and approval by Regions Bank.

**Balance to Complete (including Retainage):**

<b>Salem Clark Construction</b>	
	\$7,640,452.75

The “Balance to Complete” is based on the Schedule of Values presented by the Contractor, **Salem Clark Construction**. Draw request have not been provided for our review.

**Change Orders:**

	<b>Salem Clark Construction</b>
Original Contract Amount	\$8,395,514.00
Previous Change Order(s)	\$0.00
<b>Current Change Order(s)</b>	<b>\$0.00</b>
Current Contract Amount	\$8,395,514.00

There are no change orders to date.

**Schedule:**

- Notice to Proceed Date: **November 12, 2018**
- Scheduled Placed-in Service Date: **December 31, 2019**
- Substantial Completion by Contract (365 days): **November 12, 2019**
- Current Estimated Date of Substantial Completion (overall): **January 26, 2020**

**Project is progressing at a Slow pace, and appears to be approximately 75 days behind original contracted schedule.**

**Quality of Work:**

We believe that the overall quality of in place work is consistent with generally accepted industry standards for this type of project, at this stage of construction. Note that this statement is limited to our select involvement in the project, and should not be interpreted as an ongoing daily review of work being performed.

**Open Issues/Documentation:**

- We have requested to be kept informed of the results of inspections, scope of work outlines, and any changes in scope of work. Contractor reported that soils testing is ongoing and performed tests met or exceeded project specifications. Test results were not available for review.
- Building, Grading Permits and Notice to Proceed were provided for our review.
- Updated Construction Schedule was requested for our file.
- Contractor reported 60 rain days since the beginning of construction.

**General Comments:**

The proposed project is to construct the Legacy Trails of Lindale; an apartment complex containing 8-each 1-story apartment buildings (Type-B buildings) and 1-each 2-story apartment building (Type-A building), housing 76 total apartment units. A clubhouse is to be built within the southeast corner on the 1<sup>st</sup> floor of the 2-story Type-A building; and a gazebo is to be constructed off the northwest corner of the detention pond, across the parking lot and south of the clubhouse. The apartment buildings are to have a gross square-footage of 65,560 square feet (SF), with the apartment units occupying 63,500 SF and the clubhouse 2,060 SF.

Cloudy weather with temperatures in the twenties were experienced during our site visit. We have interviewed the site superintendent Mike Wolf 903.268.5647 and project manager Chaz Garrett 903.450.1520 via phone.

A site contractor has mobilized to the site with a trailer. Erosion control measures are in-place. Site clearing and grubbing have occurred. Staking for utilities is in-place. Excavation for underground sanitary is underway.

Rough grading of building pads 1 to 9 appears to be at or near subgrade elevation. Excavation of detention pond appears to be complete. Surveying of each building pad was noted on-going during our visit.

Lien Waiver from General Contractor **Salem Clark Construction** is received in the requested amount.

March 7, 2019

Page 4

If you have any questions regarding the items discussed in our report or require additional information, please contact us at your earliest convenience.

Sincerely,

Jerry Klimcak

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

Jerry Klimcak  
Principal

Attachments:



**Photo # 1**  
Site Entrance



**Photo # 2**  
Future driveway to development



**Photo # 3**  
Staged sanitary, domestic, and sewer



**Photo # 4**  
View of Excavation and gravel placement for sewer manhole



**Photo # 5**  
Site Overview and Detention Pond



**Photo # 6**  
View of clubhouse and building 1 pad



**Photo # 7**  
View of building 2 pad

**Photo # 8**  
View of building 3 pad



**Photo # 9**  
View of building 4 pad

**Photo # 10**  
View of building 5 pad



**Photo # 11**  
View of building 6 pad

**Photo # 12**  
View of building 7 pad



March 7, 2019



**Photo # 13**  
View of building 8 pad



**Photo # 14**  
View of building 9 pad



## SITE OBSERVATION REPORT #5



Legacy Trail of Lindale  
Sunset Drive  
Lindale, Texas 75771

Prepared For:  
Regions Affordable Housing, LLC  
111 Great Neck Road, Suite 500  
Great Neck, New York 11021

April 10, 2019

April 10, 2019

Page 2

Mr. Dominick Accurso, Jr., R.A.  
Senior Development Risk Manager  
Regions Bank  
111 Great Neck Road, Suite 500  
Great Neck, New York 11021

Reference: Legacy Trails of Lindale  
Sunset Drive  
Lindale, Texas 75771

Dear Mr. Accurso,

In compliance with your request, and our agreement, we performed a site visit for the above-referenced project on April 2 and 4, 2019. The purpose of these visits was to review the progress of the project and verify the quantities of the in place work. A summary of the conditions observed during our site visit is shown on the following pages and attached project photographs. We appreciate the opportunity to provide these engineering services.

If you have any questions regarding the items discussed in our report or require additional information, please contact us at your earliest convenience.

Sincerely,



Jerry Klimcak  
Principal

Attachments:

**General Information:**

Report Prepared By: BRIX-AL LLC

Observation Date: April 2, 2019

Attendees: Architect's Representative Eric Sanchez [esanchez@crossarchitects.com](mailto:esanchez@crossarchitects.com)  
Superintendents Mike Wolf and Tim Hightower  
BRIX-AL Representative Thomas Thurman

Application for Payment Number: 2

Date Received: April 5, 2019

Date: April 10, 2019

**Project Directory:**

Owner: SCS Lindale 17, LP; Chaz Garrett 903-450-1520

Contractor: Salem Clark Construction; Chaz Garrett 903-450-1520

Superintendents: Salem Clark Construction; Mike Wolf 903-268-5647  
and Tim Hightower 903-456-9949

Architect: Cross Architects, PLLC; Mark Leon 972-398-6644

Civil Engineer: Everett Griffith, Jr. & Associates; Rick Freeman 936-634-5528

Struct. Engineer: Douglas Structure, PLLC; Nathan Douglas 972-395-7557

MEP Engineer: PQR International, Chris Sutton 214-509-8263

**Budget Summary:**

The current Application for Payment is attached in the Appendix.

<b>Percent Complete:</b>	<b>Salem Clark Construction</b>
Current Percentage Complete - In Place and Stored	14%
Change This Period	5%

**Pay-Out Authorization:**

<b>Application for Payment No. 5</b>	<b>Contractor's Application</b>	<b>Consultant's Recommendation</b>
Period To:	March 29, 2019	March 29, 2019
Original Contract Sum	\$8,395,514.00	\$8,395,514.00
Change Orders	\$0.00	\$0.00
Contract Sum to Date	\$8,395,514.00	\$8,395,514.00
Total Completed & Stored	\$1,156,847.30	\$1,156,847.30
Retainage (10% per contract)	\$64,384.19	\$115,684.73
Total Earned (less Retainage)	\$1,092,463.11	\$1,041,162.57
Previous Payments	\$755,061.25	\$755,061.25
Current - <b>RECOMMENDED PAYMENT Due</b>	<b>\$337,401.86</b>	<b>\$286,101.32</b>
Balance to Complete Including Retainage	\$7,303,050.89	\$7,354,351.43

**Stored Materials:**

- Materials Currently Stored Onsite: \$100,000.00
- Materials Currently Stored Offsite: \$ 450,004.70

There currently appears to be adequate work areas available and stored materials on site to provide for continuous construction. Material stored on site include domestic water pipe, fire hydrants & connections, PVC plumbing pipe & connections, storm drainage pipe, forming lumber and prefabricated manholes.

Offsite stored material include framing lumber and related materials. An invoice and insurance certificate have not been provided with request, recommended. Funding for Deposits and Offsite stored material is subject to review and approval by Regions Bank.

**Balance to Complete (including Retainage):**

<b>Salem Clark Construction</b>	
\$7,303,050.89	

The "Balance to Complete" is based on the Schedule of Values presented by the Contractor, **Salem Clark Construction**.

**Change Order Log:**

- No Change Orders to date.

<b>Change Order Log</b>				
CO#	Date	Description	Schedule Impact	CO Amount

**Pending / Potential Change Orders:**

- Pending / Potential Change Orders have been requested to be submitted with every monthly report. A Potential Change Order Log has not been provided with the Current Application for Payment.

<b>Potential Change Order Log</b>				
PCO#	Date	Description	Schedule Impact	CO Amount

**Contingency:**

	<b>Construction Contingency</b>
Original Construction Contingency	\$424,027.00
Contingency Expenditure to Date	\$0.00
Remaining Construction Contingency	<b>\$0.00</b>
Pending / Potential Change Orders	\$0.00
Potential Remaining Construction Contingency.	\$0.00

- The development budget provided during Plan & Cost Review showed no contingency, but the construction budget identifies a contingency of \$424,027.00.

**Schedule:**

- Notice to Proceed Date: **November 12, 2018**
- Scheduled Placed-in Service Date: **December 31, 2019**
- Substantial Completion by Contract (365 days): **November 12, 2019**
- Current Estimated Date of Substantial Completion (**overall**): **January 26, 2020**
- BRIX-AL estimate that Building 1 will be substantially complete on December 28, 2019; Buildings 2&3 on January 4, 2020; Buildings 4&5 on January 11, 2020; Buildings 6&7 on January 18, 2020 and Buildings 8&9 on January 25, 2020.

**Project is progressing at a Slow pace, and appears to be approximately 75 days behind original contracted schedule. This information is based on the original schedule. An updated schedule have been requested but not provided to date.**

**Quality of Work:**

We believe that the overall quality of in place work is consistent with generally accepted industry standards for this type of project, at this stage of construction. Note that this statement is limited to our select involvement in the project, and should not be interpreted as an ongoing daily review of work being performed.

**Open Issues/Documentation:**

- We have requested to be kept informed of the results of inspections, scope of work outlines, and any changes in scope of work. Contractor reported that soils testing is ongoing and performed tests met or exceeded project specifications. Test results were not available for review.
- Building, Grading Permits and Notice to Proceed were provided for our review.

- Updated Construction Schedule was requested for our file.
- Contractor reported 60 rain days since the beginning of construction.
- Soils tests have been requested for our file.

### **General Comments:**

The proposed project is to construct the Legacy Trails of Lindale; an apartment complex containing 8-each 1-story apartment buildings (Type-B buildings) and 1-each 2-story apartment building (Type-A building), housing 76 total apartment units. A clubhouse is to be built within the southeast corner on the 1<sup>st</sup> floor of the 2-story Type-A building; and a gazebo is to be constructed off the northwest corner of the detention pond, across the parking lot and south of the clubhouse. The apartment buildings are to have a gross square-footage of 65,560 square feet (SF), with the apartment units occupying 63,500 SF and the clubhouse 2,060 SF.

Clear weather with temperatures in the fifties were experienced during our site visit. We have interviewed the site superintendents Mike Wolf 903.268.5647 and Tim Hightower 903.456.9949 about project progress.

A site contractor has mobilized to the site with a trailer. Erosion control measures are in-place. Site clearing and grubbing have occurred. Staking for utilities and buildings are in-place.

Clearing and grubbing is mostly complete. Building pads 1 through 9 have been established. Excavation of detention pond is complete as well. Future parking areas and entry drive are near or at sub grade elevations.

Placement of storm drainage from Lindale Cemetery Road to detention pond utilizing RCP is near complete. Contractor continues with placement of storm drainage lines from detention pond towards the parking lot. Storm drainage is estimated at 45% complete.

Underground sanitary lines have been placed and backfilled. Sanitary sewer has been connected to the sewer main at Lindale Cemetery Road. Placement of the underground domestic water lines is in the early stage. Water valves have been installed along the access road. Placement of underground water is estimated at 10-15% complete.

Contractor completed placement of the under slab plumbing at Buildings 4, 5 and 6. Slab forms have been placed at Buildings 4, 5, 6 and 7.

Lien Waiver from General Contractor **Salem Clark Construction** has not been included with request, recommended.



*April 10, 2019*

*Page 8*

If you have any questions regarding the items discussed in our report or require additional information, please contact us at your earliest convenience.

Sincerely,

Jerry Klimcak

A handwritten signature in black ink, appearing to read "Jerry Klimcak". The signature is fluid and cursive, with a prominent initial "J" and a long, sweeping underline.

Jerry Klimcak  
Principal

Attachments:



**Photo # 1**  
Storm drainage installed near Lindale Cemetery Road



**Photo # 2**  
Sanitary sewer connection at Lindale Cemetery Road



**Photo # 3**  
Install of storm drainage in progress throughout site



**Photo # 4**  
Detail of sanitary sewer stubs near building 5



**Photo # 5**  
View of sanitary sewer stubs throughout site



**Photo # 6**  
Detail of sanitary sewer manhole



**Photo # 7**  
View of completed pond excavation



**Photo # 8**  
Detail of installed water valves



**Photo # 9**  
Detail of installed water valves



**Photo # 10**  
View of established building pad 1



**Photo # 11**  
View of established building pad 3



**Photo # 12**  
Underslab plumbing complete at Building 4



**Photo # 13**  
Underslab plumbing complete at Building 5



**Photo # 14**  
Underslab plumbing complete at Building 6



**Photo # 15**  
Detail of fire water stub near building 6



**Photo # 16**  
Forming of slab in progress at Building #7



**Photo # 17**  
View of established building pad 8



**Photo # 18**  
View of established building pad 9



**Photo # 19**  
Storm drainage pipe stored on site



**Photo # 20**  
Storm drainage manholes stored on site



**Photo # 21**  
PVC drainage pipe stored on site



**Photo # 22**  
PVC water pipe stored on site



**Photo # 23**  
Water hydrants and connections stored on site



**Photo # 24**  
Backfill gravel stored on site



## SITE OBSERVATION REPORT #6



Legacy Trail of Lindale  
Sunset Drive  
Lindale, Texas 75771

Prepared For:  
Regions Affordable Housing, LLC  
111 Great Neck Road, Suite 500  
Great Neck, New York 11021

May 3, 2019

May 3, 2019

Page 2

Mr. Dominick Accurso, Jr., R.A.  
Senior Development Risk Manager  
Regions Bank  
111 Great Neck Road, Suite 500  
Great Neck, New York 11021

Reference: Legacy Trails of Lindale  
Sunset Drive  
Lindale, Texas 75771

Dear Mr. Accurso,

In compliance with your request, and our agreement, we performed a site visit for the above-referenced project on April 23, 2019. The purpose of these visits was to review the progress of the project and verify the quantities of the in place work. A summary of the conditions observed during our site visit is shown on the following pages and attached project photographs. We appreciate the opportunity to provide these engineering services.

If you have any questions regarding the items discussed in our report or require additional information, please contact us at your earliest convenience.

Sincerely,



Jerry Klimcak  
Principal

Attachments:

May 3, 2019

Page 3

**General Information:**

Report Prepared By: BRIX-AL LLC

Observation Date: April 23, 2019

Attendees: Architect's Representative Eric Sanchez [esanchez@crossarchitects.com](mailto:esanchez@crossarchitects.com)  
Superintendents Mike Wolf and Tim Hightower  
BRIX-AL Representative Thomas Thurman

Application for Payment Number: 3

Date Received: May 1, 2019

Date: April 23, 2019

**Project Directory:**

Owner: SCS Lindale 17, LP; Chaz Garrett 903-450-1520

Contractor: Salem Clark Construction; Chaz Garrett 903-450-1520

Superintendents: Salem Clark Construction; Mike Wolf 903-268-5647  
and Tim Hightower 903-456-9949

Architect: Cross Architects, PLLC; Mark Leon 972-398-6644

Civil Engineer: Everett Griffith, Jr. & Associates; Rick Freeman 936-634-5528

Struct. Engineer: Douglas Structure, PLLC; Nathan Douglas 972-395-7557

MEP Engineer: PQR International, Chris Sutton 214-509-8263



**Budget Summary:**

The current Application for Payment is attached in the Appendix.

Percent Complete:	Salem Clark Construction
Current Percentage Complete - In Place and Stored	17%
Change This Period	3%

**Pay-Out Authorization:**

Application for Payment No. 5	Contractor's Application	Consultant's Recommendation
Period To:	April 20, 2019	March 29, 2019
Original Contract Sum	\$8,395,514.00	\$8,395,514.00
Change Orders	\$0.00	\$0.00
Contract Sum to Date	\$8,395,514.00	\$8,395,514.00
Total Completed & Stored	\$1,385,797.16	\$1,385,797.16
Retainage (10% per contract)	\$93,579.25	\$93,579.25
Total Earned (less Retainage)	\$1,292,217.91	\$1,292,217.91
Previous Payments	\$1,086,163.11	\$1,092,463.11
Current - <b>RECOMMENDED PAYMENT Due</b>	<b>\$206,054.80</b>	<b>\$199,754.80</b>
Balance to Complete Including Retainage	\$7,103,296.09	\$7,103,296.09

**Stored Materials:**

- Materials Currently Stored Onsite: \$ 40,000.00
- Materials Currently Stored Offsite: \$ 450,004.70

There currently appears to be adequate work areas available and stored materials on site to provide for continuous construction. Material stored on site include concrete forms, and PVC plumbing pipe & connections.

Offsite stored material include framing lumber and related materials. An invoice and insurance certificate have not been provided with request, recommended. Funding for Deposits and Offsite stored material is subject to review and approval by Regions Bank.

**Balance to Complete (including Retainage):**

<b>Salem Clark Construction</b>	
	\$7,103,296.09

The "Balance to Complete" is based on the Schedule of Values presented by the Contractor, **Salem Clark Construction**.

**Change Order Log:**

- No Change Orders to date.

<b>Change Order Log</b>				
CO#	Date	Description	Schedule Impact	CO Amount

**Pending / Potential Change Orders:**

- Pending / Potential Change Orders have been requested to be submitted with every monthly report. A Potential Change Order Log has not been provided with the Current Application for Payment.

<b>Potential Change Order Log</b>				
PCO#	Date	Description	Schedule Impact	CO Amount

**Contingency:**

	<b>Construction Contingency</b>
Original Construction Contingency	\$424,027.00
Contingency Expenditure to Date	\$0.00
Remaining Construction Contingency	<b>\$0.00</b>
Pending / Potential Change Orders	\$0.00
Potential Remaining Construction Contingency.	\$0.00

- The development budget provided during Plan & Cost Review showed no contingency, but the construction budget identifies a contingency of \$424,027.00.

**Schedule:**

- Notice to Proceed Date: **November 12, 2018**
- Scheduled Placed-in Service Date: **December 31, 2019**  
**36 units in October 2019 and 40 units in November 2019**
- Substantial Completion by Contract (365 days): **November 12, 2019**
- Current Estimated Date of Substantial Completion (**overall**): **January 26, 2020**
- Based on the original schedule provided by contractor and work in place, BRIX-AL estimate that Building 1 will be substantially complete on December 28, 2019; Buildings 2&3 on January 4, 2020; Buildings 4&5 on January 11, 2020; Buildings 6&7 on January 18, 2020 and Buildings 8&9 on January 25, 2020.

**Project is progressing at a Slow pace, and appears to be approximately 75 days behind original contracted schedule. This information is based on the original schedule. An updated schedule have been requested but not provided to date.**

**Quality of Work:**

We believe that the overall quality of in place work is consistent with generally accepted industry standards for this type of project, at this stage of construction. Note that this statement is limited to our select involvement in the project, and should not be interpreted as an ongoing daily review of work being performed. Soils and concrete testing is provided by Professional Service Industries, Inc., (PSI). We requested all testing data and inspection reports be provided for our review. All data provided to date is included as exhibit to this report. We also requested log of non-compliant items, if any, from the material testing and inspection reports be provided for our review as well as the reviewing Engineer’s contact information. All data will be attached to future reports.

**Open Issues/Documentation:**

- We have requested to be kept informed of the results of inspections, scope of work outlines, and any changes in scope of work. Contractor reported that soils testing is ongoing and performed tests met or exceeded project specifications. Test results have been submitted per request.
- Building, Grading Permits and Notice to Proceed were provided for our review.
- Updated Construction Schedule was requested for our file but has not been provided to date (May 2, 2019)
- Contractor reported 60 rain days since the beginning of construction.

**General Comments:**

The proposed project is to construct the Legacy Trails of Lindale; an apartment complex containing 8-each 1-story apartment buildings (Type-B buildings) and 1-each 2-story apartment building (Type-A building), housing 76 total apartment units. A clubhouse is to be built within the southeast corner on the 1<sup>st</sup> floor of the 2-story Type-A building; and a gazebo is to be constructed off the northwest corner of the detention pond, across the parking lot and south of the clubhouse. The apartment buildings are to have a gross square-footage of 65,560 square feet (SF), with the apartment units occupying 63,500 SF and the clubhouse 2,060 SF.

Clear weather with temperatures in the sixties were experienced during our site visit. We have interviewed the site superintendents Mike Wolf 903.268.5647 and Tim Hightower 903.456.9949 about project progress.

A site contractor has mobilized to the site with a trailer. Erosion control measures are in-place.

Clearing and grubbing is mostly complete. Building pads 1 through 9 have been established. Excavation of detention pond is complete as well. Future parking areas and entry drive are near or at sub grade elevations.

Placement of storm drainage from Lindale Cemetery Road to detention pond utilizing RCP is near complete. Contractor also completed drainage lines from detention pond to the parking lot. Storm drainage is estimated at 99% complete with tie-ins remaining.

Underground sanitary line have been placed, backfilled and connected to the sewer main at Lindale Cemetery Road. Placement of the underground domestic water lines is nearing completion with tie-ins remaining. Water valves have been installed along the access road. Placement of underground water is estimated at 99% complete.

Contractor completed placement of the under slab plumbing for Buildings 2-9. Slab forms have been placed at Buildings 2-9. Footings have been excavated for buildings 4-6. Concrete pours are scheduled for buildings 4-6 this week.

May 3, 2019

Page 8

The discussion at the meeting revealed elevator pits will need to be made approximately 2 inches wider but will not effect the overall completion date. Framing is scheduled to begin on May 15th.

Application for Payment #3 is a Draft copy and is not signed by Contractor or Architect. We recommend that this and all future copies be signed by contractor and project architect.

Lien Waiver from General Contractor **Salem Clark Construction** has not been included with request, recommended.

If you have any questions regarding the items discussed in our report or require additional information, please contact us at your earliest convenience.

Sincerely,

Jerry Klimcak

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

Jerry Klimcak  
Principal

Attachments:



**Photo # 1**  
Utility tie-ins in-progress



**Photo # 2**  
Site entrance overview



**Photo # 3**  
Draining of storm drain utilities in-progress



**Photo # 4**  
Backfill of storm utilities underway



**Photo # 5**  
Forms placed for futures driveway pours



**Photo # 6**  
Storm drain backfill expected soon



**Photo # 7**  
Detention pond overview



**Photo # 8**  
Completed manhole and ström drain nearing completion



**Photo # 9**  
Future Driveway Near detention pond - form placement to occur soon



**Photo # 10**  
Building pad 1 overview - staking has occurred



**Photo # 11**  
North end of building pad 1 shaping for water run-off in-progress



**Photo # 12**  
Building pad 2 overview- underground plumbing complete and forms set



**Photo # 13**  
Building pad 3 overview - form boards set  
and underground plumbing complete



**Photo # 14**  
Installed fire hydrant



**Photo # 15**  
Building pad 4 - Footings excavated



**Photo # 16**  
Building pad 5 - Footings excavated



**Photo # 17**  
Building pad 6 - Footings excavated



**Photo # 18**  
Building pad 7 - Form boards set and  
underground plumbing complete





**Photo # 19**  
Building pad 8 - Form boards set and  
underground plumbing complete

**Photo # 20**  
Building pad 9 - Form boards set and  
underground plumbing complete



## SITE OBSERVATION REPORT #7

Legacy Trail of Lindale



Sunset Drive  
Lindale, Texas 75771

Prepared For:  
Regions Affordable Housing, LLC  
111 Great Neck Road, Suite 500  
Great Neck, New York 11021

June 5, 2019

June 5, 2019

Page 2

Mr. Dominick Accurso, Jr., R.A.  
Senior Development Risk Manager  
Regions Bank  
111 Great Neck Road, Suite 500  
Great Neck, New York 11021

Reference: Legacy Trails of Lindale  
Sunset Drive  
Lindale, Texas 75771

Dear Mr. Accurso,

In compliance with your request, and our agreement, we performed a site visit for the above-referenced project on May 22, 2019. The purpose of these visits was to review the progress of the project and verify the quantities of the in place work. A summary of the conditions observed during our site visit is shown on the following pages and attached project photographs. Current draw request and soils and concrete testing data for this pay period are also attached. We appreciate the opportunity to provide these engineering services.

If you have any questions regarding the items discussed in our report or require additional information, please contact us at your earliest convenience.

Sincerely,



Jerry Klimcak  
Principal

Attachments:

**General Information:**

Report Prepared By: BRIX-AL LLC

Observation Date: May 22, 2019

Attendees: Architect's Representative Eric Sanchez [esanchez@crossarchitects.com](mailto:esanchez@crossarchitects.com)  
Superintendents Mike Wolf and Tim Hightower  
BRIX-AL Representative Thomas Thurman

Application for Payment Number: 4

Date Received: June 3, 2019

Report Prepared: June 5, 2019

**Project Description:** The proposed project is to construct the Legacy Trails of Lindale; an apartment complex containing 8-each 1-story apartment buildings (Type-B buildings) and 1-each 2-story apartment building (Type-A building), housing 76 total apartment units. A clubhouse is to be built within the southeast corner on the 1<sup>st</sup> floor of the 2-story Type-A building; and a gazebo is to be constructed off the northwest corner of the detention pond, across the parking lot and south of the clubhouse. The apartment buildings are to have a gross square-footage of 65,560 square feet (SF), with the apartment units occupying 63,500 SF and the clubhouse 2,060 SF.

**Project Directory:**

Owner: SCS Lindale 17, LP; Chaz Garrett 903-450-1520

Contractor: Salem Clark Construction; Chaz Garrett 903-450-1520

Superintendents: Salem Clark Construction; Mike Wolf 903-268-5647  
and Tim Hightower 903-456-9949

Architect: Cross Architects, PLLC; Mark Leon 972-398-6644

Civil Engineer: Everett Griffith, Jr. & Associates; Rick Freeman 936-634-5528

Struct. Engineer: Douglas Structure, PLLC; Nathan Douglas 972-395-7557

MEP Engineer: PQR International, Chris Sutton 214-509-8263

Geotechnical Services: Intertek PSI, Mickey Lawson & Aaron Pulpaneck 214 330 9211

**Budget Summary:**

The current Application for Payment is attached in the Appendix.

Percent Complete:	Salem Clark Construction
Current Percentage Complete - In Place and Stored	25%
Change This Period	8%

**Pay-Out Authorization:**

Application for Payment No. 6	Contractor's Application	Consultant's Recommendation
Period To:	May 30, 2019	May 30, 2019
Original Contract Sum	\$8,395,514.00	\$8,395,514.00
Change Orders	\$0.00	\$0.00
Contract Sum to Date	\$8,395,514.00	\$8,395,514.00
Total Completed & Stored	\$2,101,618.62	\$2,101,618.62
Retainage (10% per contract) (7.9 in payment application)	\$165,161.19	\$165,161.19
Total Earned (less Retainage)	\$1,936,457.43	\$1,936,457.43
Previous Payments	\$1,292,217.91	\$1,292,217.91
Current - <b>RECOMMENDED PAYMENT Due</b>	<b>\$644,239.32</b>	<b>\$644,239.52</b>
Balance to Complete Including Retainage	\$6,459,056.57	\$6,459,056.57

Application for Payment #4 is a Draft copy and is not signed by Contractor or Architect. We recommend that this and all future copies be signed by contractor and project architect.

Lien Waiver from General Contractor **Salem Clark Construction** has not been included with request, recommended.

**Stored Materials:**

- Materials Currently Stored Onsite: \$ 35,000.00
- Materials Currently Stored Offsite: \$ 450,004.70

There currently appears to be adequate work areas available and stored materials on site to provide for continuous construction. Material stored on site include post-tensioned cables, forming lumber, el. conduits and under slab drainage piping.

Offsite stored material included framing lumber and related materials. An invoice and insurance certificate have not been provided with request, recommended. Funding for Deposits and Offsite stored material is subject to review and approval by Regions Bank.

**Change Order Log:**

- No Change Orders to date.

Change Order Log				
CO#	Date	Description	Schedule Impact	CO Amount

**Pending / Potential Change Orders:**

- Pending / Potential Change Orders have been requested to be submitted with every monthly report. A Potential Change Order Log has not been provided with the Current Application for Payment, however, contractor reported that retaining wall may be included near the bottom of the slope rear of Building 1.

Potential Change Order Log				
PCO#	Date	Description	Schedule Impact	CO Amount

**Contingency:**

	<b>Construction Contingency</b>
Original Construction Contingency	\$424,027.00
Contingency Expenditure to Date	\$0.00
Remaining Construction Contingency	<b>\$424,027.00</b>
Pending / Potential Change Orders	\$0.00
Potential Remaining Construction Contingency.	\$424,027.00

**Schedule:**

- Notice to Proceed Date: **November 12, 2018**
- Placed-in Service Deadline: **December 31, 2019**
- Placed-in Service Dates: **36 units in October 2019 and 40 units in November 2019**
- Substantial Completion by Contract (365 days): **November 12, 2019**
- Current Contractor's Date of Substantial Completion (**overall**): **January 1, 2020**
- Current Estimated Date of Substantial Completion by BRIX (**overall**): **February 5, 2020**
- Based on the revised schedule displayed in the construction trailer and work in place, BRIX-AL estimate that Building 1 will be substantially complete on Feb 5, 2020; Buildings 2&3 on January 29, 2020; Buildings 4&5 on January 8, 2020; Buildings 6&7 on January 15, 2020 and Buildings 8&9 on January 22, 2020.

**Project is progressing at a Slow pace, and appears to be approximately 2 3/4 months behind the original contracted schedule. This information is based on the updated schedule displayed in the construction trailer.**

**Quality of Work:**

We believe that the overall quality of in place work is consistent with generally accepted industry standards for this type of project, at this stage of construction. Note that this statement is limited to our select involvement in the project, and should not be interpreted as an ongoing daily review of work being performed. Soils and concrete testing has been provided by Professional Service Industries, Inc., (PSI) and are reviewed by Mickey Lawson. We requested all testing data and inspection reports be provided for our review. All data provided to date is included as an exhibit to this report. We also requested log of non-compliant items, if any, from the material testing and inspection reports be provided for our review as well as the reviewing Engineer's contact information. All data will be attached to future reports.

### **Open Issues/Documentation:**

- We have requested to be kept informed of the results of inspections, scope of work outlines, and any changes in scope of work. Test results have been submitted per request. No soil or concrete specimens have failed to date.
- Building, Grading Permits and Notice to Proceed were provided for our review.
- Updated Construction Schedule has been provided.
- Contractor reported 69 rain days since the beginning of construction.
- Concrete testing documents have been requested but not provided.
- Footing inspections have occurred and documentation has been requested but not provided.
- A copy of the framing contract has been requested but not yet received (recommended).
- BRIX-AL requested 2-week look ahead schedule from General Contractor to better understand near future project sequencing. The schedule has not been received to date.

### **General Comments:**

The proposed project is to construct the Legacy Trails of Lindale; an apartment complex containing 8-each 1-story apartment buildings (Type-B buildings) and 1-each 2-story apartment building (Type-A building), housing 76 total apartment units. A clubhouse is to be built within the southeast corner on the 1<sup>st</sup> floor of the 2-story Type-A building; and a gazebo is to be constructed off the northwest corner of the detention pond, across the parking lot and south of the clubhouse. The apartment buildings are to have a gross square-footage of 65,560 square feet (SF), with the apartment units occupying 63,500 SF and the clubhouse 2,060 SF.

Mostly cloudy weather with temperatures in the eighties were experienced during our site visit. We have interviewed the site superintendents Mike Wolf 903.268.5647 and Tim Hightower 903.456.9949 about project progress.

### **Site Work**

A site contractor has mobilized to the site with a trailer. Erosion control measures are in-place.

Clearing and grubbing is complete. Building pads 1 through 9 have been established. Excavation and grading of the detention pond is complete as well. Future parking areas and entry drive are at sub grade elevations.

Placement of storm drainage from Lindale Cemetery Road to detention pond utilizing RCP is complete. Contractor also completed drainage lines from detention pond to the parking lot. Storm drainage is estimated at 99% complete with punch list items remaining.



June 5, 2019

Page 8

Underground sanitary line have been placed, backfilled and connected to the sewer main at Lindale Cemetery Road. Placement of the underground domestic water lines is complete with fire hydrants in-place. Water valves have been installed along the access road. One section of the electrical conduit has been placed under sunset drive near the detention pond.

Paving from the end of the entrance driveway up to the detention pond is complete and saw cut as well as paving from the detention pond to building pad 1.

### **Building 1**

Building pad is at grade elevation.

### **Buildings 2 and 3**

Contractor completed placement of the under slab plumbing. Slab forms have been placed.

### **Buildings 4 and 5**

Underslab utilities are complete. Concrete slabs on grade are complete.

### **Buildings 6 and 7**

Underslab utilities are complete. Foundations are excavated and slab forms are installed. Contractor was progressing with install of post-tensioned cables.

### **Buildings 8 and 9**

Contractor completed placement of the under slab plumbing. Slab forms have been placed.

The discussion at the meeting revealed that the first delivery of framing lumber is to occur the day of the meeting.

If you have any questions regarding the items discussed in our report or require additional information, please contact us at your earliest convenience.

Sincerely,



Jerry Klimcak

Principal

Attachments:



**Photo # 1**  
Rebar and expansion joint rods in-place



**Photo # 2**  
Completed utility tie-ins at Lindale Cemetery Road



**Photo # 3**  
View of concrete paving at Sunset Drive



**Photo # 4**  
Pouring of curb inlets still required



**Photo # 5**  
View of concrete paving at Sunset Drive



**Photo # 6**  
Pouring of concrete paving in progress at Sunset Drive



**Photo # 7**  
Paving between building pads and detention pond complete



**Photo # 8**  
View of building pad 1 - Pad established



**Photo # 9**  
Building 1 - Contractor is contemplating install of retaining wall near the bottom of slope



**Photo # 10**  
Building 2 - Forms and under slab plumbing complete



**Photo # 11**  
Building 3 - Forms and under slab plumbing complete



**Photo # 12**  
Building 4 - Building slab complete



**Photo # 13**  
Building 5 - Building slab complete



**Photo # 14**  
Building 6 - Footings excavated and install of post-tensioned cables in-progress



**Photo # 15**  
Building 7 - Footings excavated and install of post-tensioned cables in-progress



**Photo # 16**  
Building 8 - Concrete forms and under slab plumbing complete



**Photo # 17**  
Building 9 - Concrete forms and under slab plumbing complete



**Photo # 18**  
Detention pond established with storm drain lines connected

**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**OCTOBER 10, 2019**

Presentation, discussion and possible action on a request for return and reallocation of tax credits under 10 TAC §11.6(5) related to Credit Returns Resulting from Force Majeure Events for Application 17736, Providence at Ted Trout Drive

**RECOMMENDED ACTION**

**WHEREAS**, an award of Competitive (9%) Housing Tax Credits in the amount of \$890,357 to 17736 Providence at Ted Trout Drive (the Development) was approved by the Board on July 27, 2017;

**WHEREAS**, staff executed a Carryover Allocation Agreement with the Development Owner on December 28, 2017, that included a certification from the Development Owner that each building for which the allocation was made would be placed in service by December 31, 2019;

**WHEREAS**, on September 5, 2019, the Department received from the Development Owner a request to extend the placement in service deadline under the requirements of 10 TAC §11.6(5) related to Credits Returns Resulting from Force Majeure Events;

**WHEREAS**, other than in situations covered by force majeure, the Department lacks authority to extend federal deadlines for placement in service; and

**WHEREAS**, the precipitating events described in the request do not meet the requirements for force majeure events described in 10 TAC §11.6(5);

**NOW, therefore, it is hereby**

**RESOLVED**, the request for treatment of Providence at Ted Trout Drive under an application of the force majeure rule is denied.

**BACKGROUND**

An award of \$890,357 in Competitive (9%) Housing Tax Credits to the Development was approved by the Board on July 27, 2017. The Development proposed the New Construction of 76 Units for an Elderly population in Hudson located in Angelina County. Staff executed a Carryover Allocation Agreement with the Development Owner on December 28, 2017, that included a certification from the Development Owner that, in order to satisfy the requirements of §42 of the Internal Revenue Code, each building for which the allocation was made would be placed in service by December 31, 2019.

On September 5, 2019, the Department received from the Development Owner a request to extend the placement in service deadline from December 31, 2019, to December 31, 2022, or an earlier date to be

determined by the Board<sup>1</sup>, under the requirements of 10 TAC §11.6(5) related to Credits Returns Resulting from Force Majeure Events. This rule allows a Development Owner to return issued credits within three years of award and have those credits re-allocated to the Development outside of the usual regional allocation system if all of the requirements of the subsection are met. Pursuant to 10 TAC §11.6(5), the Department's Governing Board may approve the execution of a current program year Carryover Allocation Agreement regarding the returned credits with the Development Owner that returned such credits only if:

(A) The credits were returned as a result of "Force Majeure" events that occurred after the start of construction and before issuance of Forms 8609. **Force Majeure events are the following sudden and unforeseen circumstances outside the control of the Development Owner:** acts of God such as fire, tornado, flooding, significant and unusual rainfall or subfreezing temperatures, or loss of access to necessary water or utilities as a direct result of significant weather events; explosion; vandalism; orders or acts of military authority; litigation; changes in law, rules, or regulations; national emergency or insurrection; riot; acts of terrorism; supplier failures; or materials or labor shortages. If a Force Majeure event is also a presidentially declared disaster, the Department may treat the matter under the applicable federal provisions. Force Majeure events must make construction activity impossible or materially impede its progress; (emphasis added)

Of the circumstances listed in the rule, the request indicates that force majeure might be triggered by acts of God related to Hurricane Harvey, including materials and labor shortages. The request also cites increased costs as a factor and mentions that "complications arose due to the tax reform that occurred at the end of 2017; investors were wary of new deals until more information as to the nature and long-term repercussions of the changes became available, causing further delays."

### **Materials and Labor Shortages and Costs**

In the request, the Development Owner states that "sudden and unforeseen circumstances due to the aftermath of Presidential declared disaster Hurricane Harvey" resulted in "significant cost increases of materials, labor and the decreased availability of contractors which have significantly affected the feasibility of the development, necessitating changes to the financing structure and requiring us to pursue measures to further reduce the gap in financing, including architectural changes."<sup>2</sup> Per the request, the Development was feasible at the time of award, "however, the availability and cost of both materials and labor were directly impacted by the immense scope of devastation in the aftermath of the storm, resulting in construction cost increases of approximately 15-20 percent." The request indicates that the Development Owner considered or took the following actions to reduce construction costs:

- "To accommodate for the increased pricing, we initially made adjustments in our financing structure and were able to receive more favorable terms and credit pricing. However, this did not reduce the gap to the extent needed to make the development financially viable."

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<sup>1</sup> The request asks for "2020 credits, which would effectively extend the placed in service deadline for this project until December 31, 2022." However, if approved, 2019 credits would be awarded and staff requests the Board determine a new placed in service deadline.

<sup>2</sup> The request notes that Angelina County, in which the Development Site is located, was not included in the Presidential declaration of August 25, 2017, but was included in the Governor's declaration on August 28, 2017.

- “We have considered and pursued several options, including proposed architectural design changes and a request for TDHCA Multifamily Direct Home Loan Funds.”
- “We considered and explored layering approximately 25 units with Section 8 Project Based Vouchers. This would have effectively increased our rental income and allowed additional leverage on the development. We pursued this option with the Deep East Texas Council of Government, however we were not able to get a commitment prior to the financial closing.”
- “We also attempted a [HUD Section 221] D4 loan with Davis Penn in order to help with the financing gap, which we were not able to secure due to the shortened time frame in which we would have had to receive HUD approval and complete the project.”<sup>3</sup>
- “The remaining option under consideration is the aforementioned architectural design change. However, we discovered that it would not save as much on costs as we had hoped, and we determined that we would have lost even more time in the process of having completely new plans drawn up and permitted. Once we determined that this plan was not a viable option – financially or time-wise – we re-evaluated the original architectural plans and began to value engineer in order to reduce costs where possible.”
- The request includes an “Exhibit C” detailing these design changes. Per the request, “these changes, for which we seek staff level approval in a separate letter, will not affect the quality of life for residents.”

Pursuant to 10 TAC §10.402(h) of the Asset Management Rules, all multifamily developments must submit a construction status report (CSR), due by the tenth day of the month following each reporting quarter's end (January, April, July, and October) and continue on a quarterly basis until the entire development is complete. The first CSR was due on October 10, 2018. The Development Owner informed staff that they had not closed on the loan by that date, and nothing was submitted. Each quarter until April 2019, the Development Owner informed staff that the loan had not closed and nothing could be submitted. The loan closed on April 15, 2019, and the Construction and Bridge Loan Agreement and prime subcontract were submitted on April 16, 2019. The Limited Partnership Agreement is dated May 29, 2019. The submitted Construction and Bridge Loan Agreement indicates a completion date of December 15, 2019. Staff requested that the Development Owner provide evidence that the lender has agreed to extend the completion deadline, and the Development Owner provided such.

Included with the CSRs reviewed for this Development is a single field report from CODA Consulting Group (CODA), which is included with this action item. Review of the report indicates that the notice to proceed with construction was issued on April 15, 2019. The CSRs indicate that the Contractor is Nautical Affordable Housing, Incorporated, a part of the Development Owner, and that ICON Builders, LLC, a subsidiary of the Development Owner, is the General Contractor. The Application indicates that ICON is also the Cost Estimator.

The single field report, dated June 10, 2019, of a May 30 site visit notes construction 1.5% complete.

- “Work schedule will be 7 day work weeks as requested by 80% of the subcontractors.”
- “Contractor will provide 2 site rotating superintendents to have site coverage 7 days a week.”

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<sup>3</sup> The FHA 221(d)(4) loan was shown as in place at the Department’s initial underwriting, so was already planned for the Development.

- “Clearing of the property has been completed.”
- “All demo of existing structures completed.”
- “Site grading is underway.”
- “Site utilities are being installed.”
- “Building pad layouts installations have begun.”
- “It was raining heavily before our site visit and the site was very muddy.”

Regarding the building contracts, the report states:

**“Subcontractor Contract:** The Subcontractor Contract subcontracts 100 percent of the work and fees to ICON Builders and binds them to the schedule and other provisions of the General Contractor Contract. The contract is draft and not signed.

**Sub-Subcontractor Contract:** The Sub-Subcontractor Contract apparently subcontracts 100 percent of the work and fees to Ewing Industrial Services and, we suspect, binds them to the schedule and other provisions of the General Contractor Contract and Subcontractor Contract. A copy of this contract was not provided.”

Staff notes that the Development Owner has submitted an amendment request seeking staff approval of “value engineering initiatives” to reduce the cost of the Development. The initial underwriting report cited “lower than typical building cost” as a strength/mitigating factor, and as a risk cited “higher building cost would make the development infeasible.” Real Estate Analysis and Asset Management have not evaluated the changes described in “Exhibit C” of the September 5, 2019, request letter, or the changes sent under separate cover.

Staff has determined that the Development Owner has not provided sufficient evidence that the Development has been affected by “sudden and unforeseen circumstances outside the control of the Development Owner” as described in 10 TAC §11.6(5), particularly materials and labor shortages caused by Hurricane Harvey. The request included statements from several articles written in the immediate aftermath of the hurricane describing how labor shortages and materials costs were exacerbated after the storm. However, the request did not explain how the Development Owner’s failure to close financing until nearly two years after the credits were awarded was a direct result of materials and labor shortages caused by Hurricane Harvey.

If the Board denies the request to consider this a force majeure event, the Development Owner will retain \$890,357 in credits and the date by which the Development must be placed in service will remain December 31, 2019. If the Development Owner returns the credits, the credits would first be made available in the subregion from which they were originally awarded, pursuant to 10 TAC §11.6(2), related to returned credits; in this case Region 5, Rural. There are no pending Applications on the 2019 waiting list from that subregion. Pursuant to 10 TAC §11.6, staff would apply the credits to the collapse and, if enough credits are available, award credits to the next Application on the waiting list.

If the Board grants the request to consider this a force majeure event, the Development Owner will return \$890,357 in credits. The credits will be returned to the Development Owner with a 2019 Carryover Allocation Agreement and the date for the Development to be placed in service will be as



determined by the Board, with the 2017 Qualified Allocation Plan and Uniform Multifamily Rules applicable to the Development.

Staff recommends the Board deny the request for treatment of Providence at Ted Trout Drive under an application of the force majeure rule.

17736

Providence at Ted Trout  
Drive

CSR Communications

**From:** [Miranda Sprague](#)  
**To:** [Kent Bedell](#)  
**Cc:** [Michelle Harder](#)  
**Subject:** Re: Construction Status Report for Providence at Ted Trout Drive  
**Date:** Friday, May 31, 2019 9:07:38 AM  
**Attachments:** [image002.png](#)  
[image003.png](#)  
[image.png](#)

---

Hi Kent - Attached is the Providence at Ted Trout Drive LPA that you had requested once we have it.

Miranda Sprague, Vice President of Real Estate Development



ITEX Group  
3735 Honeywood Court, Port Arthur, Texas 77642  
[Miranda.Sprague@itexgrp.com](mailto:Miranda.Sprague@itexgrp.com)  
Direct: 409.853.3681 | Cell: 409.720.7803 | Fax: 409.721.6603

On Wed, Apr 17, 2019 at 2:18 PM Kent Bedell <[kent.bedell@tdhca.state.tx.us](mailto:kent.bedell@tdhca.state.tx.us)> wrote:

Received, thank you.

### **Kent Bedell**

Asset Manager

Texas Department of Housing and Community Affairs

221 E. 11th Street | Austin, TX 78701

Office: 512.475.3882

Fax: 512.475.1895

*Any person receiving guidance from TDHCA staff should be mindful that, as set forth in [10 TAC Section 11.1\(b\)](#), there are important limitations and caveats (Also see [10 TAC §10.2\(b\)](#)).*

### **About TDHCA**

The Texas Department of Housing and Community Affairs administers a number of state and federal programs through for-profit, nonprofit, and local government partnerships to strengthen communities through affordable housing development, home ownership opportunities, weatherization, and community-based services for Texans in need. For more information, including current funding opportunities and information on local providers, please visit [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us).

**From:** Michelle Harder <[michelle.harder@itexgrp.com](mailto:michelle.harder@itexgrp.com)>  
**Sent:** Tuesday, April 16, 2019 11:19 AM  
**To:** Miranda Sprague <[miranda.sprague@itexgrp.com](mailto:miranda.sprague@itexgrp.com)>; Kent Bedell <[kent.bedell@tdhca.state.tx.us](mailto:kent.bedell@tdhca.state.tx.us)>  
**Subject:** Re: Construction Status Report for Providence at Ted Trout Drive

Kent,

The Construction Contract for this project has been uploaded to Serve-U.

image.png



**Michelle Harder**, Development Team



ITEX Group

3735 Honeywood Court, Port Arthur, Texas 77642

[Michelle.Harder@itexgrp.com](mailto:Michelle.Harder@itexgrp.com)

Cell: [409.201.4462](tel:409.201.4462)

On Tue, Apr 16, 2019 at 10:14 AM Michelle Harder <[michelle.harder@itexgrp.com](mailto:michelle.harder@itexgrp.com)> wrote:

Will do.

**Michelle Harder**, Development Team



ITEX Group

3735 Honeywood Court, Port Arthur, Texas 77642

[Michelle.Harder@itexgrp.com](mailto:Michelle.Harder@itexgrp.com)

Cell: [409.201.4462](tel:409.201.4462)

On Tue, Apr 16, 2019 at 9:22 AM Miranda Sprague <[miranda.sprague@itexgrp.com](mailto:miranda.sprague@itexgrp.com)> wrote:

Hi Michelle, can you upload for Kent?

Begin forwarded message:

**From:** Kent Bedell <[kent.bedell@tdhca.state.tx.us](mailto:kent.bedell@tdhca.state.tx.us)>  
**Date:** April 16, 2019 at 9:00:33 AM EDT  
**To:** Miranda Sprague <[miranda.sprague@itexgrp.com](mailto:miranda.sprague@itexgrp.com)>  
**Subject: RE: Construction Status Report for Providence at Ted Trout Drive**

Miranda,

Please upload to serve-u as I cannot access this link.

Regards,

### **Kent Bedell**

Asset Manager

Texas Department of Housing and Community Affairs

221 E. 11th Street | Austin, TX 78701

Office: 512.475.3882

Fax: 512.475.1895

*Any person receiving guidance from TDHCA staff should be mindful that, as set forth in [10 TAC Section 11.1\(b\)](#) there are important limitations and caveats (Also see [10 TAC §10.2\(b\)](#)).*

### **About TDHCA**

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**From:** Miranda Sprague <[miranda.sprague@itexgrp.com](mailto:miranda.sprague@itexgrp.com)>  
**Sent:** Tuesday, April 16, 2019 7:25 AM  
**To:** Kent Bedell <[kent.bedell@tdhca.state.tx.us](mailto:kent.bedell@tdhca.state.tx.us)>  
**Cc:** Michelle Harder <[michelle.harder@itexgrp.com](mailto:michelle.harder@itexgrp.com)>  
**Subject:** Re: Construction Status Report for Providence at Ted Trout Drive

Hi Kent - Due to the size, here is a link to the construction contract: <https://www.dropbox.com/s/oudta1grrbtu2fa/Providence%20at%20Ted%20Trout%20Prime%20Subcontract%20-%20Final%20-%2004.09.19%20Executed.pdf?dl=0>

If I need to upload to serv-u just let me know.

Miranda Sprague, Vice President of Real Estate Development



ITEX Group

3735 Honeywood Court, Port Arthur, Texas 77642

[Miranda.Sprague@itexgrp.com](mailto:Miranda.Sprague@itexgrp.com)

Direct: 409.853.3681 | Cell: 409.720.7803 | Fax: 409.721.6603

On Tue, Apr 16, 2019 at 7:22 AM Miranda Sprague <[miranda.sprague@itexgrp.com](mailto:miranda.sprague@itexgrp.com)> wrote:

Hi Kent -

We are closing Providence at Ted Trout Drive in two closings. Yesterday, we closed on the loan. Attached is the construction and bridge loan agreement. The equity closing will be in a couple weeks - I'll send the LPA then.

Miranda Sprague, Vice President of Real Estate Development



ITEX Group

3735 Honeywood Court, Port Arthur, Texas 77642

[Miranda.Sprague@itexgrp.com](mailto:Miranda.Sprague@itexgrp.com)

Direct: 409.853.3681 | Cell: 409.720.7803 | Fax: 409.721.6603

On Tue, Apr 9, 2019 at 1:56 PM Kent Bedell <[kent.bedell@tdhca.state.tx.us](mailto:kent.bedell@tdhca.state.tx.us)> wrote:

Miranda,

After you have closed, please send me the Partnership Agreement and Construction Contract and Loan Agreement once they are available. Then you will start submitting the AIA, Inspection Report, and Minority Owned Business Report with the July 10, 2019 Report.

Regards,

**Kent Bedell**

Asset Manager

Texas Department of Housing and Community Affairs

221 E. 11th Street | Austin, TX 78701

Office: 512.475.3882

Fax: 512.475.1895

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**From:** Miranda Sprague <[miranda.sprague@itexgrp.com](mailto:miranda.sprague@itexgrp.com)>  
**Sent:** Tuesday, April 09, 2019 1:15 PM  
**To:** Kent Bedell <[kent.bedell@tdhca.state.tx.us](mailto:kent.bedell@tdhca.state.tx.us)>  
**Cc:** Michelle Harder <[michelle.harder@itexgrp.com](mailto:michelle.harder@itexgrp.com)>  
**Subject:** Re: Construction Status Report for Providence at Ted Trout Drive

Hi Kent - How should we handle this deal's submittal? We are planning to close Friday or Monday, so therefore I do not have anything to provide at this time.

Miranda Sprague, Vice President of Real Estate Development



ITEX Group

3735 Honeywood Court, Port Arthur, Texas 77642

[Miranda.Sprague@itexgrp.com](mailto:Miranda.Sprague@itexgrp.com)

Direct: [409.853.3681](tel:409.853.3681) | Cell: [409.720.7803](tel:409.720.7803) | Fax: [409.721.6603](tel:409.721.6603)

On Tue, Apr 9, 2019 at 1:04 PM Kent Bedell <[kent.bedell@tdhca.state.tx.us](mailto:kent.bedell@tdhca.state.tx.us)> wrote:

Miranda,

I wanted to remind you that the construction status report for the above referenced development is due tomorrow, April 10, 2019.

Regards,

**Kent Bedell**

Asset Manager

Texas Department of Housing and Community Affairs

221 E. 11th Street | Austin, TX 78701

Office: 512.475.3882

Fax: 512.475.1895

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**From:** Miranda Sprague <[miranda.sprague@itexgrp.com](mailto:miranda.sprague@itexgrp.com)>  
**Sent:** Thursday, January 10, 2019 10:19 AM  
**To:** Kent Bedell <[kent.bedell@mail.tdhca.state.tx.us](mailto:kent.bedell@mail.tdhca.state.tx.us)>  
**Subject:** Re: Construction Status Report for Providence at Ted Trout Drive

We have not closed on Providence at Ted Trout Drive. We will at the end of this month.

Miranda Sprague, Vice President of Real Estate Development



ITEX Group

3735 Honeywood Court, Port Arthur, Texas 77642

[Miranda.Sprague@itexgrp.com](mailto:Miranda.Sprague@itexgrp.com)

Direct: 409.853.3681 | Cell: 409.720.7803 | Fax: 409.721.6603

On Thu, Jan 10, 2019 at 10:15 AM Kent Bedell <[kent.bedell@tdhca.state.tx.us](mailto:kent.bedell@tdhca.state.tx.us)> wrote:

Miranda,

Today is the due date for construction status reports. Have you closed on the construction loan for this Development yet?

Regards,

**Kent Bedell**

Asset Manager

Texas Department of Housing and Community Affairs

221 E. 11th Street | Austin, TX 78701

Office: 512.475.3882

Fax: 512.475.1895



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**From:** Miranda Sprague <[miranda.sprague@itexgrp.com](mailto:miranda.sprague@itexgrp.com)>  
**Sent:** Wednesday, October 10, 2018 2:50 PM  
**To:** Kent Bedell <[kent.bedell@mail.tdhca.state.tx.us](mailto:kent.bedell@mail.tdhca.state.tx.us)>  
**Cc:** Tracy Ambridge <[tracy.ambridge@itexgrp.com](mailto:tracy.ambridge@itexgrp.com)>  
**Subject:** Re: Construction Status Report for Providence at Ted Trout Drive

Hi Kent,

We have not closed on this deal yet. We are getting hard bids to price the deal out, and will keep you updated.

Thank you,

Miranda Sprague, Vice President of Real Estate Development



ITEX Group

3735 Honeywood Court, Port Arthur, Texas 77642

[Miranda.Sprague@itexgrp.com](mailto:Miranda.Sprague@itexgrp.com)

Direct: 409.853.3681 | Cell: 409.720.7803 | Fax: 409.721.6603

On Mon, Oct 8, 2018 at 4:28 PM Kent Bedell <[kent.bedell@tdhca.state.tx.us](mailto:kent.bedell@tdhca.state.tx.us)> wrote:

Miranda,

I just wanted to remind you that the construction status report for the above referenced development is due this Wednesday, October 10<sup>th</sup>.

Regards,

**Kent Bedell**

Asset Manager

Texas Department of Housing and Community Affairs

221 E. 11th Street | Austin, TX 78701

Office: 512.475.3882

Fax: 512.475.1895

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17736

Providence at Ted Trout  
Drive

Force Majeure Request

Application 17736  
Providence at Ted Trout Drive  
Force Majeure Event

Providence Ted Trout Drive, LP  
3735 Honeywood Court  
Port Arthur, Texas 77642

September 5, 2019

Texas Department of Housing and Community Affairs  
Attn: Kent Bedell  
221 E. 11<sup>th</sup> Street  
Austin, Texas 78701  
Via email: [Kent.Bedell@tdhca.state.tx.us](mailto:Kent.Bedell@tdhca.state.tx.us)

RE: TDHCA # 17736 Providence at Ted Trout Drive Force Majeure Event

Dear Mr. Bedell,

Providence Ted Trout Drive, LP respectfully submits this request for an exchange of 2017 tax credits for 2020 tax credits pursuant to 11.6(5) of the Qualified Allocation Plan ("QAP") based on Force Majeure events that could not be foreseen by the Owner.

Providence at Ted Trout Drive development, a new construction of 76 elderly (55+) units located in Hudson, Angelina County, Texas, received a commitment for an annual allocation of 2017 Housing Tax Credits which are required to be placed in service by December 31, 2019. The debt closing was April 12, 2019, allowing a notice to proceed to be issued on April 15, 2019, which is when construction commenced. Physical completion of the project is at approximately 39% based on AIA #5, dated August 23, 2019. Based upon the current status of the project, it is highly unlikely that the project will be placed in service by required placed in service date.

We believe that specific occurrences, since the application was awarded in July 2017, have resulted in a "Force Majeure" event:

There have been "sudden and unforeseen circumstances" due to the aftermath of Presidential declared disaster Hurricane Harvey resulting in significant cost increases of materials, labor and the decreased availability of contractors which have significantly affected the feasibility of the development, necessitating changes to the financing structure and requiring us to pursue measures to further reduce the gap in financing, including architectural changes.

### **Hurricane Harvey Disaster Proclamations**

**Exhibit A:** On August 23, 2017, Texas Governor Greg Abbott released a proclamation declaring a state of disaster to extend to 30 counties. On August 25, 2017, President Donald J. Trump declared a Major Disaster in Texas, prompting FEMA's response to release federal funding for

Providence Ted Trout Drive, LP  
3735 Honeywood Court  
Port Arthur, Texas 77642

recovery of a Major Disaster from an Incident Period of: August 23, 2017 through September 15, 2017 for 41 counties.

**Exhibit B:** While Angelina County received no designation within the boundaries of the Presidentially-declared disaster, it is immediately bordered by several counties inside of the disaster area, and has since been included in Governor Abbott's Proclamation under Section 418.014 of the Texas Government Code, which extended to include a total of 60 counties and was renewed on a monthly basis to evidence a continuing state of disaster through July 5, 2019

### **Widespread Economic Impacts of Harvey**

The adverse economic impact in the aftermath of Harvey spread throughout the state of Texas, and was even reflected nationwide as material and gas shortages in conjunction with increased demand caused prices to rise, and an already-tight labor pool surged to the storm-ravaged areas, abandoning other areas in which there had already been a labor shortage.

Phil Crone, head of the [Dallas Builders Association](#) stated that an already 20,000 construction worker shortage increased to a post-Harvey shortage of 38,500 despite wages rising 35 percent for most needed trades; Texas A&M Real Estate Center Chief Economist Dr. Jim Gaines conducted a post-Harvey study, concluding that the labor shortage was exacerbated by the aftermath of the storm, as reported by **Dallas News** (a), and **Gov Tech Emergency Management Newsletter** (b). Phil Crone is quoted by the Dallas Morning News as saying "More than 92 percent of our members cite the lack of labor as having a significant impact on their business" according to the **Texas GOP Vote Newsletter** (c).

Pia Orrenius, Vice President and Senior Economist for the Federal Reserve Bank of Dallas, said the anticipated bleed-off of construction workers to the damaged areas came at a time when hourly wages for construction workers were rising steadily. "Supply is not keeping up with demand and with a tightening labor pool, prices are just going to keep going up for all types of construction," Orrenius told the **Fort Worth Business Press**.

Ken Simonson Chief Economist for the Associated General Contractors of America reports that, in the wake of Harvey, two-thirds of the Texas workers reported they have the most difficulty finding concrete workers, well above the national average of 51 percent, followed by electricians at 61 percent, cement masons at 59 percent, carpenters at 57 percent, plumbers at 54 percent and installers at 52 percent as reported by the **Waco Tribune**.

Similar figures were reported by **CBS News**, citing a post-Harvey survey by the [National Association of Homebuilders](#), which found shortages of some construction trades are at their worst level since 2000. The trade group found more than 70 percent of builders reported difficulty in hiring carpenters, 63 percent had

Providence Ted Trout Drive, LP  
3735 Honeywood Court  
Port Arthur, Texas 77642

trouble in attracting masons and more than half experienced challenges in finding roofers, plumbers, painters, and electricians.

**The Thomas Index** calculates direct spending after the storm focused on procuring building and flood repair supplies, reflecting a spike in demand for construction materials. Increased activity post-Harvey was cited for plywood and drywall at 400 percent, doors at 1,200 percent, concrete, masonry and stone at 1,100 percent, and engineered wood products at 700 percent.

**Texas Comptroller** fiscal note #19 indicates the impact of the storm on the price of manufactured goods as significant. Upward pressure on prices increased in September following the storm. The raw materials prices index pushed up eight points to 34.5, its highest reading since July 2011. The finished goods prices index climbed seven points to 17.5.

**The Houston Chronicle** (a) reports: Hourly rates for construction workers rose on average 7.2 percent from September to November 2017, according to Xactware. Siding installers saw the biggest wage increase, 19.3 percent; followed by drywall installers, 11.8 percent; demolition labor, 11.2 percent; and carpenters, 11 percent. Material costs have risen by a more moderate 1.6 percent, **Xactware** (b) said.

**Wall Street Journal** reported a post-Harvey surge in lumber costs. Lumber futures for September 2017 delivery touched \$402.80 per 1,000 board of feet at the Chicago Mercantile Exchange, up 4% for the week and less than a dollar short of what would be the highest closing price in 12 years.

**Traders Community** commodities report, published in September of 2017 reflected that the most noted price increases were in lumber and gasoline, also noting the rising cost of wallboard. Prices had begun to increase prior to the storm, but were anticipated to rise further due to the increased demand, resulting in an annual inflation of 10% for 2017.

**NAOIP** released a commercial construction costs outlook in mid-September of 2017, reflecting that already rising construction costs throughout the year had seen a temporary disruption due to the storm, causing them to spike as well as exacerbating the already gaping shortage of skilled labor.

Providence at Ted Trout was priced prior to Hurricane Harvey and was financially feasible at the time of TDHCA underwriting and award in July 2017. Following Hurricane Harvey in August 2017, however, the availability and cost of both materials and labor were directly impacted by the immense scope of devastation in the aftermath of the storm, resulting in construction cost increases of approximately 15-20 percent.

To accommodate for the increased pricing, we initially made adjustments in our financing structure and were able to receive more favorable terms and credit pricing. However, this did not

Providence Ted Trout Drive, LP  
3735 Honeywood Court  
Port Arthur, Texas 77642

reduce the gap to the extent needed to make the development financially viable. In order to reduce the gap, we have considered and pursued several options, including proposed architectural design changes and a request for TDHCA Multifamily Direct Home Loan Funds. Simultaneously, we considered and explored layering approximately 25 units with Section 8 Project Based Vouchers. This would have effectively increased our rental income and allowed additional leverage on the development. We pursued this option with the Deep East Texas Council of Government, however we were not able to get a commitment prior to the financial closing. We also attempted a D4 loan with Davis Penn in order to help with the financing gap, which we were not able to secure due to the shortened time frame in which we would have had to receive HUD approval and complete the project. Additionally, complications arose due to the tax reform that occurred at the end of 2017; investors were wary of new deals until more information as to the nature and long-term repercussions of the changes became available, causing further delays.

As our other options have been exhausted, the remaining option under consideration is the aforementioned architectural design change. The initial architectural changes would have included revamping the entire design; rather than 19 residential fourplexes with a clubhouse, we sought plans for one building in which to combine all units hoping this would save on costs. However, we discovered that it would not save as much on costs as we had hoped, and we determined that we would have lost even more time in the process of having completely new plans drawn up and permitted. Once we determined that this plan was not a viable option – financially or time-wise – we re-evaluated the original architectural plans and began to value engineer in order to reduce costs where possible.

**Exhibit C:** These changes, for which we seek staff level approval in a separate letter, will not affect the quality of life for residents. These value engineering initiatives will reduce the costs of the development to be closer in line to that of initial underwritten.

**Exhibit D:** A cost comparison was completed between the Building Hard Costs submitted in the TDHCA application on the Development Hard Cost Schedule and the current Building Hard Costs, as broken down in the current Schedule of Values. While the comparison was done after the value engineering, a total cost increase of 15 percent is still reflected. This is largely due to the most notable increases, which were in the costs of concrete and mechanicals. Concrete site-work costs increased by 124 percent, concrete building costs by 149 percent, plumbing and HVAC by 55 percent, and electrical by 23 percent. The cost comparison reflects significant decreases in masonry and specialty items, as these were items that were part of our value engineering initiative as a way to offset other cost increases over which we had no control.

In light of the foregoing, we believe that it is in the best interest of the project and the LIHTC program to recognize the unforeseen circumstances which caused delays in the aftermath of Hurricane Harvey as a Force Majeure Event. As such, we hereby respectfully request that the TDHCA accept the return of the awarded tax credits for the Providence at Ted Trout Drive, and reissue an equal amount of 2020 credits, which would effectively extend the placed in service deadline for this project until December 31, 2022 or such other time period as the TDHCA may determine.



Providence Ted Trout Drive, LP  
3735 Honeywood Court  
Port Arthur, Texas 77642

Our team is deeply committed to utilizing every option available in order to ensure the feasibility of this project so that we may see it through to completion. Thank you in advance for your consideration and assistance with this matter.

Please feel free to contact us at [apps@itexgrp.com](mailto:apps@itexgrp.com) if you have any questions or concerns.

Sincerely,



Donald R. Ball  
Executive Director of the Sole Member of the General Partner

**Sources referenced above under the Widespread Economic Impacts of Harvey:**

1.
  - a. <https://www.dallasnews.com/business/economy/2018/08/20/desperate-can-texas-get-construction-labor-look-houston-after-hurricane-harvey>
  - b. <https://www.govtech.com/em/disaster/How-Desperate-can-Texas-get-for-Construction-Labor-Look-at-Houston-After-Hurricane-Harvey.html>
  - c. <https://www.texasgovvote.com/economy/hurricane-recovery-and-high-demand-worsen-labor-shortage-0010487>
2. [http://www.fortworthbusiness.com/collin\\_county\\_business\\_press/harvey-s-ripple-labor-shortages-likely-as-gulf-coast-rebuilds/article\\_4ad55966-94ed-11e7-9400-cfd658ff089b.html](http://www.fortworthbusiness.com/collin_county_business_press/harvey-s-ripple-labor-shortages-likely-as-gulf-coast-rebuilds/article_4ad55966-94ed-11e7-9400-cfd658ff089b.html)
3. [https://www.wacotrib.com/news/business/rebuilding-after-hurricane-harvey-to-create-construction-ripples-locally/article\\_59da766d-47a8-5577-b4a9-84bc38f9d658.html](https://www.wacotrib.com/news/business/rebuilding-after-hurricane-harvey-to-create-construction-ripples-locally/article_59da766d-47a8-5577-b4a9-84bc38f9d658.html)
4. <https://www.cbsnews.com/news/hurricane-harvey-houston-workers-to-rebuild/>
5. <https://www.supplychaindive.com/news/Harvey-sourcing-trends-ThomasNet-Thomas-Index-construction/505140/>
6. <https://comptroller.texas.gov/economy/fiscal-notes/2018/special-edition/endnotes.php#en19>
7.
  - a. <https://www.houstonchronicle.com/business/real-estate/article/Homeowners-feel-post-Harvey-pinch-in-construction-12379258.php>
  - b. <https://www.xactware.com/en-us/solutions/weather-analytics/respond/hurricane-harvey/>
8. <https://www.wsj.com/livecoverage/hurricane-irma/card/1504889661>
9. <https://traderscommunity.com/index.php/commodities/227-gypsum-and-sheetrock-market-price-pressures-follow-hurricanes>
10. <https://www.naiop.org/en/Magazine/2017/Winter-2017-2018/Business-Trends/Construction-Costs-Outlook>

## Exhibit A

**STATEMENTS & RELEASES**

# President Donald J. Trump Approves Texas Disaster Declaration

**LAND & AGRICULTURE**Issued on: **August 25, 2017**

Today, President Donald J. Trump declared that a major disaster exists in the State of Texas and ordered Federal aid to supplement State and local recovery efforts in the areas affected by Hurricane Harvey beginning on August 23, 2017, and continuing.

The President's action makes Federal funding available to affected individuals in the counties of Bee, Goliad, Kleberg, Nueces, San Patricio, and Refugio.

Assistance can include grants for temporary housing and home repairs, low-cost loans to cover uninsured property losses, and other programs to help individuals and business owners recover from the effects of the disaster.

Federal funding also is available to the State and to eligible local governments and certain private nonprofit organizations on a cost-sharing basis for emergency work in the counties of Bee, Goliad, Kleberg, Nueces, San Patricio, and Refugio Counties.

Federal funding is also available on a cost-sharing basis for hazard mitigation measures statewide.

Brock Long, Administrator, Federal Emergency Management Agency (FEMA), Department of Homeland Security, named Kevin L. Hannes as the Federal Coordinating Officer for Federal recovery operations in the affected areas.

Damage assessments are continuing in other areas, and more counties and additional forms of assistance may be designated after the assessments are fully completed.

Residents and business owners who sustained losses in the designated counties can begin applying for assistance tomorrow by registering online at <http://www.DisasterAssistance.gov> or by calling 1-800-621-FEMA(3362) or 1-800-462-7585 (TTY) for the hearing and speech impaired. The toll-free telephone numbers will operate from 7 a.m. to 10 p.m. (local time) seven days a week until further notice.

FOR FURTHER INFORMATION MEDIA SHOULD CONTACT THE FEMA NEWS DESK AT (202) 646-3272 OR [FEMA-NEWS-DESK@FEMA.DHS.GOV](mailto:FEMA-NEWS-DESK@FEMA.DHS.GOV) .



# FEMA <sup>(L)</sup> Initial Notice

Navigation

Search

Languages

Individual Assistance  
Declaration Factors  
(/individual-assistance-  
declaration-factors)

News  
(/disaster/notices/updates-  
blog-and-news)

## Date of Notice:

Friday, August 25, 2017

Billing Code 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4332-DR]

[Docket ID FEMA-2017-0001]

Texas; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Texas (FEMA-4332-DR), dated August 25, 2017, and related determinations.

DATE: The declaration was issued August 25, 2017.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20472, (202) 646-2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 25, 2017, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the State of Texas resulting from Hurricane Harvey beginning on August 23, 2017, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq. (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of Texas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and assistance for debris removal and emergency protective measures (Categories A and B) under the Public Assistance program in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate subject to completion of Preliminary Damage Assessments (PDAs). Direct Federal assistance is authorized.

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and Other Needs Assistance will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Kevin L. Hannes, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Texas have been designated as adversely affected by this major disaster:

Bee, Goliad, Kleberg, Nueces, Refugio, and San Patricio Counties for Individual Assistance.

Bee, Goliad, Kleberg, Nueces, Refugio, and San Patricio Counties for debris removal and emergency protective measures (Categories A and B), including direct federal assistance, under the Public Assistance program.

All areas within the State of Texas are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared

Disaster Assistance - Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households - Other Needs; 97.036, Disaster Grants - Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

/s/

Brock Long,

Administrator,

Federal Emergency Management Agency.

Last Updated: 08/26/2017 - 15:09

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(<https://twitter.com/intent/tweet?text=Initial+Notice&url=https://www.fema.gov/disaster/notices/initial-notice-7&via=fema>)



(<https://www.linkedin.com/shareArticle?mini=true&url=https://www.fema.gov/disaster/notices/initial-notice-7&title=Initial+Notice&summary=&source=>)



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[DisasterAssistance.gov \(/https://www.disasterassistance.gov/\)](#)





# FEMA <sup>(/)</sup> Initial Public Notice for DR-4332-TX

Navigation

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Individual Assistance  
Declaration Factors  
(/individual-  
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News  
(/disaster/notices/updates-  
blog-and-news)

## Date of Notice:

Wednesday, September 27, 2017

The Federal Emergency Management Agency (FEMA) hereby gives notice to the public of its intent to reimburse eligible applicants for eligible costs to repair and/or replace facilities damaged by Hurricane Harvey beginning August 23, 2017, and ending September 15, 2017. This notice applies to the Public Assistance (PA), Individual Assistance (IA), and Hazard Mitigation Grant (HMGP) programs implemented under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121-5207.

Under a major disaster declaration (FEMA 4332-DR-TX) signed by the President on August 25, 2017, and amended on August 27, 2017, August 30, 2017, September 1, 2017, September 2, 2017, September 4, 2017, September 12, 2017, September 15, 2017, September 18, 2017, and September 19, 2017 the following counties have been designated adversely affected by the disaster and eligible for PA: Aransas, Austin, Bastrop, Bee, Bexar, Brazoria, Burleson, Calhoun, Chambers, Colorado, Dallas, DeWitt, Fayette, Fort Bend, Galveston, Goliad, Gonzales, Grimes, Hardin, Harris, Jackson, Jasper, Jefferson, Karnes, Kleberg, Lavaca, Lee, Liberty, Madison, Matagorda, Montgomery, Newton, Nueces, Orange, Polk, Refugio, Sabine, San Jacinto, San Patricio, Tarrant, Travis, Tyler, Victoria, Walker, Waller, Washington, and Wharton. The following counties have been designated eligible for IA: Aransas, Austin, Bastrop, Bee, Brazoria, Calhoun, Chambers, Colorado, DeWitt, Fayette, Fort

Bend, Galveston, Goliad, Gonzales, Hardin, Harris, Jackson, Jasper, Jefferson, Karnes, Kleberg, Lavaca, Lee, Liberty, Matagorda, Montgomery, Newton, Nueces, Orange, Polk, Refugio, Sabine, San Jacinto, San Patricio, Tyler, Victoria, Walker, Waller, and Wharton. Additional counties may be designated at a later date. All counties in the State of Texas are eligible for HMGP.

This notice concerns activities that may affect historic properties, activities that are located in or affect wetland areas or the 100-year floodplain, and critical actions within the 500-year floodplain. Such activities may adversely affect the historic property, floodplain or wetland, or may result in continuing vulnerability to flood damage.

Presidential Executive Orders 11988 and 11990 require that all federal actions in or affecting the floodplain or wetlands be reviewed for opportunities to relocate, and evaluated for social, economic, historical, environmental, legal and safety considerations. Where there is no opportunity to relocate, FEMA is required to undertake a detailed review to determine what measures can be taken to minimize future damages. The public is invited to participate in the process of identifying alternatives and analyzing their impacts through this notification.

FEMA has determined that for certain types of facilities there are normally no alternatives to restoration in the floodplain/wetland. These are facilities that meet all of the following criteria: 1) FEMA's estimate of the cost of repairs is less than 50 percent of the cost to replace the entire facility, and is less than \$100,000; 2) the facility is not located in a floodway; 3) the facility has not sustained major structural damage in a previous

presidentially declared flooding disaster or emergency; and 4) the facility is not critical (e.g., the facility is not a hospital, generating plant, emergency operations center, or a facility that contains dangerous materials). FEMA intends to provide assistance for the restoration of these facilities to their pre-disaster condition, except that certain measures to mitigate the effects of future flooding or other hazards may be included in the work. For example, a bridge or culvert restoration may include a larger waterway opening to decrease the risk of future washouts.

For routine activities, this will be the only notice provided. Other activities and those involving facilities that do not meet the four criteria are required to undergo a more detailed review, including the study of alternate locations. Subsequent public notices regarding such projects will be published if necessary, as more specific information becomes available.

In many cases, an applicant may have started facility restoration before federal involvement. Even if the facility must undergo detailed review and analysis of alternate locations, FEMA will fund eligible restoration at the original location if the facility is functionally dependent on its floodplain location (e.g., bridges and piers), or the project facilitates an open-space use, or the facility is an integral part of a larger network that is impractical or uneconomical to relocate, such as a road. In such cases, FEMA must also examine the possible effects of not restoring the facility, minimize floodplain/wetland impacts, and determine both that an overriding public need for the facility clearly outweighs the Executive Order requirements to avoid the floodplain/wetland, and that the site is the only practicable alternative. The State of Texas and local officials will confirm to FEMA that proposed actions comply with all applicable state and local floodplain management and wetland protection requirements.

FEMA intends to provide IA program funding for disaster-related emergency housing. These actions may adversely affect a floodplain or wetland, or may result in continuing vulnerability to floods. These actions may include repair, restoration, or construction of housing or private bridges, purchase and placement of travel trailers or manufactured housing units, or repair of structures as minimum protective measures. This will be the only public notice concerning these actions.

FEMA also intends to provide HMGP funding to the State of Texas to mitigate future disaster damages. These projects may include construction of new facilities, modification of existing, undamaged facilities, relocation of facilities out of floodplains, demolition of structures, or other types of projects to mitigate future disaster damages. In the course of developing project proposals, subsequent public notices will be published if necessary, as more specific information becomes available.

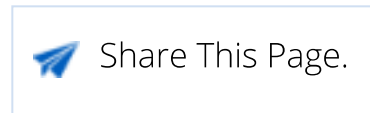
The National Historic Preservation Act requires federal agencies to take into account the effects of their undertakings on historic properties. Those actions or activities affecting buildings, structures, districts or objects 50 years or older or that affect archeological sites or undisturbed ground will require further review to determine if the property is eligible for listing in the National Register of Historic Places (Register).

If the property is determined to be eligible for the Register, and FEMA's undertaking will adversely affect it, FEMA will provide additional notices. For historic properties not adversely affected by FEMA's undertaking, this will be the only notice.

As noted, this may be the only notice regarding the above-described actions under the PA, IA, and HMGP programs. Interested persons may obtain information about these actions or a specific project by writing to Kevin Jaynes, Regional Environmental Officer, Federal Emergency Management Agency, Region 6, 800 North Loop 288, Denton, TX 76209 or by emailing

[FEMA-R6-EHP@fema.dhs.gov](mailto:FEMA-R6-EHP@fema.dhs.gov) (mailto:FEMA-R6-EHP@fema.dhs.gov). Comments should be sent in writing within 15 days of the date of this notice.

Last Updated: 09/26/2017 - 19:06



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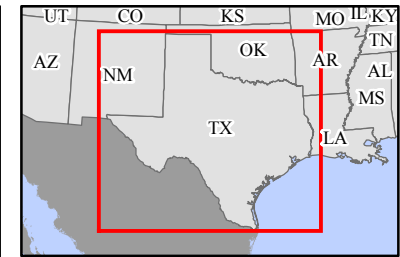
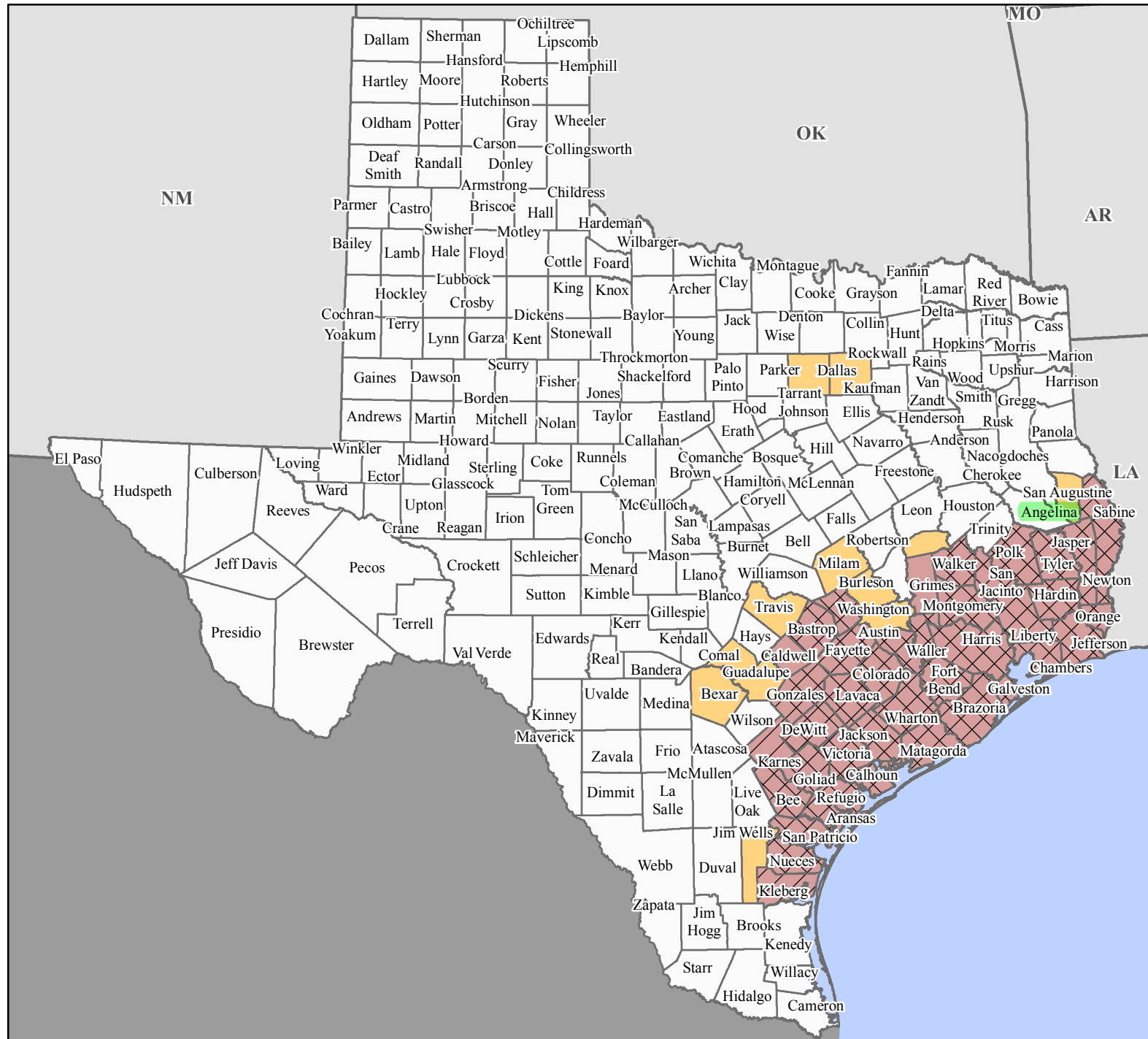
(<https://www.oig.dhs.gov/hotline>)

 Official website of the Department of Homeland Security

# FEMA-4332-DR, Texas Disaster Declaration as of 10/11/2017



FEMA

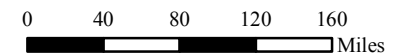
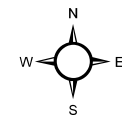


**Data Layer/Map Description:**  
The types of assistance that have been designated for selected areas in the State of Texas.

All designated areas in the State of Texas are eligible to apply for assistance under the Hazard Mitigation Grant Program.

**Designated Counties**

- No Designation
- Public Assistance
- Individual Assistance and Public Assistance
- Public Assistance (Category B)
- Individual Assistance and Public Assistance (Categories A and B)
- Individual Assistance and Public Assistance (Categories A - G)



**Data Sources:**  
FEMA, ESRI;  
Initial Declaration: 08/25/2017  
Disaster Federal Registry Notice:  
Amendment #10 - 10/11/2017  
Datum: North American 1983  
Projection: Lambert Conformal Conic

## Exhibit B

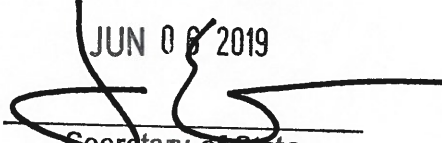


GOVERNOR GREG ABBOTT

June 6, 2019

FILED IN THE OFFICE OF THE  
SECRETARY OF STATE  
11:15 AM O'CLOCK

Mr. Joe Esparza  
Deputy Secretary of State  
State Capitol Room 1E.8  
Austin, Texas 78701

JUN 06 2019  
  
Secretary of State

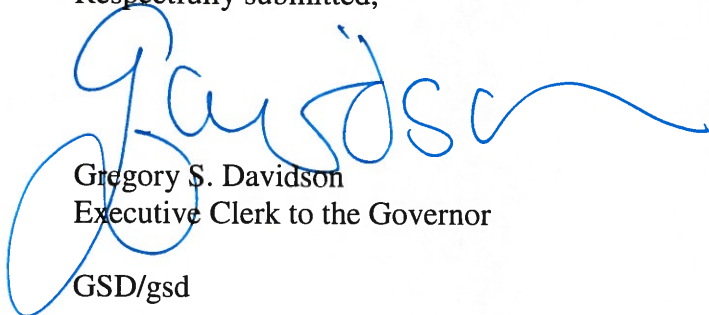
Dear Mr. Deputy Secretary:

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

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

The original proclamation is attached to this letter of transmittal.

Respectfully submitted,

  
Gregory S. Davidson  
Executive Clerk to the Governor  
GSD/gsd

Attachment



# PROCLAMATION

BY THE

## Governor of the State of Texas

---

---

TO ALL TO WHOM THESE PRESENTS SHALL COME:

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

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

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

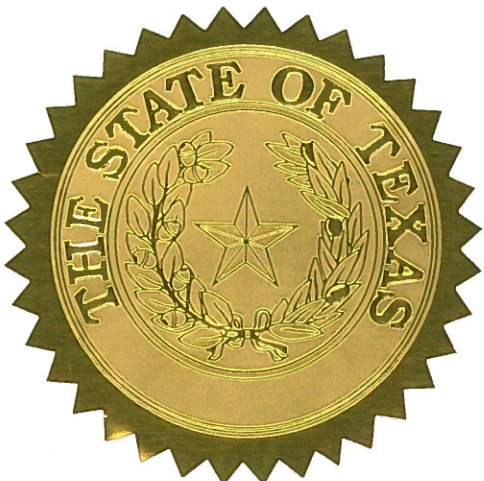
WHEREAS, due to the catastrophic damage caused by Hurricane Harvey, a state of disaster continues to exist in those same counties;

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

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

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

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



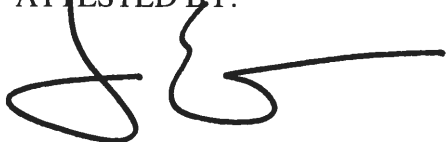
IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 6th day of June, 2019.

  
GREG ABBOTT  
Governor

FILED IN THE OFFICE OF THE  
SECRETARY OF STATE  
11:15 AM O'CLOCK

JUN 06 2019

ATTESTED BY:



---

JOE ESPARZA  
Deputy Secretary of State

FILED IN THE OFFICE OF THE  
SECRETARY OF STATE  
11:15 AM O'CLOCK

JUN 06 2019

## Exhibit C

**Project Name: Providence at Ted Trout Duplex Project**

**Value Engineering Items Incorporated into Revised Plans**

- 1 Reduce lime percentage at concrete paving from 6% to 5%
- 2 Lay fire line and water line in same ditch
- 3 Delete 1" service meter - 19 each
- 4 Delete 1.5" service meter - 1 each
- 5 Reduce size of leasing and community building from 4339 sf to 2060 sf.
- 6 Reduce Window Quantity per new VE drawings from Architect ( 98 total less windows )  
B unit - Delete (1) A window in each bedroom (2) B Windows from living room; A unit - Delete (1) A window in Bedroom and (1) B window in living room
- 7 Redesign site fencing and gates and extend fencing around detention pond and decrease to setback at west of clubhouse.
- 8 Change site sidewalks from 5 ft wide to 3 ft wide with turn pads.
- 9 Change unit ceramic tile floors to vinyl plank in unit bathrooms, utility/linen rooms.
- 10 Change ceramic wall tile in bath to prefabricated tub surround.
- 11 Change granite counter to plastic laminate
- 12 Change 2x6 wall framing to 2x4 framing.
- 13 Delete second vanity and second lavatory in unit B master bath.
- 14 Revise Clubhouse ceiling from 3 ceiling heights (14', 10' 4", and 9'4" for the drops) and 13 gables to 9 ft flat ceiling, no gables
- 15 Revise exterior doors and clubhouse interior doors from 8'0" to standard height 6'-8"
- 16 Delete cased openings in hallway, Change to gyp materials in 2 locations each in all units.
- 17 Remove exterior decorative millwork and brackets in all units and Clubhouse.
- 18 Delete crown molding in clubhouse and units
- 19 Replace wood base with vinyl base in all rooms of units and clubhouse.
- 20 Revise brick detail to reduce quantity of brick, at soilder course and butt edges.
- 21 Reduce downspout count from 160 to 80 - 4 per building.

## Exhibit D

	Pre-Harvey (Costs submitted with Application)	Post-Harvey (Costs from GC EWING SOV)	Difference	%
<b>Site Work</b>				
On-Site Concrete	\$110,200.00	\$247,601.00	\$137,401.00	124.68 %
On-Site Paving	\$570,000.00	\$528,797.00	-\$41,203.00	-7.23 %
Landscaping	\$114,000.00	\$129,000.00	\$15,000.00	13.16 %
Bumper Stops, stripping, signs	\$4,940.00	\$10,000.00	\$5,060.00	102.43 %
Rough Grading	\$106,400.00	\$108,000.00	\$1,600.00	1.50 %
Fencing	\$15,200.00	\$55,733.00	\$40,533.00	266.66 %
On-Site Electrical	\$42,560.00	\$50,000.00	\$7,440.00	17.48 %
On-Site Utilities	\$275,880.00	\$307,323.00	\$31,443.00	11.40 %
Trash Chutes, Courtyard	\$30,400.00	\$45,000.00	\$14,600.00	48.03 %

<b>Building Costs</b>				
Concrete	\$297,000.00	\$740,856.00	\$443,856.00	149.45 %
Masonry	\$342,000.00	\$243,800.00	-\$98,200.00	-28.71 %
Metals	\$53,200.00	\$40,509.00	-\$12,691.00	-23.86 %
Woods/Plastics	\$1,228,718.00	\$1,498,599.00	\$269,881.00	21.96 %
Thermal Moisture Protection	\$53,162.00	\$95,073.00	\$41,911.00	78.84 %
Roof Covering	\$279,098.00	\$294,656.00	\$15,558.00	5.57 %
Doors/Windows	\$197,600.00	\$201,504.00	\$3,904.00	1.98 %
Finishes	\$545,920.00	\$287,522.00	-\$258,398.00	-47.33 %
Specialties	\$152,000.00	\$96,455.00	-\$55,545.00	-36.54 %
Equipment	\$136,800.00		-\$136,800.00	-100.00 %
Furnishings	\$38,000.00		-\$38,000.00	-100.00 %
Mechanical (Plumbing & HVAC)	\$684,800.00	\$1,064,695.00	\$379,895.00	55.48 %
Electrical	\$532,000.00	\$657,184.00	\$125,184.00	23.53 %

<b>Total</b>	<b>\$5,809,878.00</b>	<b>\$6,702,307.00</b>	<b>\$892,429.00</b>	<b>15.36 %</b>
Total Site Work	\$1,269,580.00	\$1,481,454.00	\$211,874.00	16.69 %
Total Building Costs	\$4,540,298.00	\$5,220,853.00	\$680,555.00	14.99 %

Total SF **66452.00**

<b>Building Cost per sf</b>	<b>\$ 68.32</b>	<b>\$ 78.57</b>	<b>\$ 10.24</b>	<b>14.99 %</b>
-----------------------------	-----------------	-----------------	-----------------	----------------

<b>Contingency (TDHCA App)</b>	<b>\$ 290,494.00</b>			
JOB PROFIT (EWING)		<b>\$ 220,149.00</b>		
PROJECT OVERHEAD (EWING)		<b>\$ 141,386.00</b>		
GENERAL CONDITIONS (EWING)		<b>\$ 424,158.00</b>		
GENERAL OVERHEAD EXPENSES (EWING)		<b>\$ 50,000.00</b>		
Asbestos Abatement (EWING)		<b>\$ 12,000.00</b>		
<b>Total Hard Costs (TDHCA App)</b>	<b>\$ 6,100,372.00</b>			
Total Ewing Contract after VE		<b>\$ 7,550,000.00</b>		









**“Confidential”  
Revision 10**

March 22, 2019

The ITEX Group  
9 Greenway Plaza, Ste. 1250  
Houston, Texas 77046

VIA Email: [kevin.hardy@itexgrp.com](mailto:kevin.hardy@itexgrp.com)

**ATTENTION: Kevin Hardy**

**REFERENCE: Providence at Ted Trout Duplex Project**

We propose to furnish all necessary labor, materials, equipment, insurance, supervision and taxes necessary for completion of work on the above referenced project, per attachments.

**FOR THE LUMP SUM OF:       \$ 7,550,000.00**

We estimate our construction schedule to be approximately 300 days.

Attached to this proposal are the following supporting documents:

- Schedule of Values                      Page 2-3
- Clarifications, Exclusions            Page 4
- Value Engineering                      Page 5
- Alternate Pricing                        Page 6

We thank you for the opportunity to quote this project and look forward to working with you.

Sincerely,

EWING INDUSTRIAL SERVICES, LLC

Bill Ewing, Jr.  
Owner



Revision ten ( 10 )  
March 22 , 2019

"Confidential"

Project Name: Providence at Ted Trout Duplex Project

Schedule of Values			
Description:	Dollar Value	sub/vendor	Added to scope
SWPP - Permit (noi & plan )	\$ -	Hydrex	pre construction item
Swppp 3rd party inspections	\$ 4,180.00	Hydrex	added
disconnect existing utilities	\$ -		alternate
cap and plug water well	\$ 1,557.00	English water well service	per TCEQ & TNRCC
relocate transformer for residence	\$ -	Oncor	alternate
relocate gas meter for residence	\$ -	Center Point	alternate
testing of sitework and concrete	\$ -	Terracon	alternate
Earthwork-demo, lime , pad	\$ 346,570.00	Angelina	
Maintenance for Erosion Controls	\$ -	Angelina	
Asbestos abatement	\$ -	cap ce	alternate
Lead based paint	\$ -	cap ce	alternate
Site layout for utilities	\$ 27,000.00	Angelina	added back
Sanitary and lift station	\$ 121,988.00	Angelina	
Water Line	\$ 104,151.00	Angelina	
Storm Sewer	\$ 117,951.00	Angelina	
Site wood fencing	\$ 48,600.00	Southland	
Ornamental fence and gates	\$ 50,000.00	Southland	
Landscaping - Allowance	\$ 45,000.00	allowance	allowance
Irrigation - Allowance	\$ -	NIC	
BBQ Pit and Picnic tables	\$ -	Ewing	alternate
Site caulking	\$ -	Angelina	
Concrete paving	\$ 353,969.00	Angelina	added parking
light pole bases	\$ -	Hayes	
Sidewalks and sand cushion	\$ 116,046.00	Hayes	
Striping signage and wheel stops	\$ 9,308.00	Pro Seal	
Soil Treatment - termites	\$ -	NIC	
Concrete foundation	\$ 746,202.00	Hayes	
Rebar and cables	\$ -	Hayes	
Masonry and CMU at dumpster	\$ 273,900.00	kadex masonry	
Misc. steel	\$ -	NIC	
Erection & installation of metals	\$ -	NIC	
Wood framing package	\$ 232,518.00	stine	
Joist and trusses	\$ 133,500.00	sci	
Framing labor	\$ 482,225.00	escorpion	
Finish carpentry labor	\$ 65,400.00	phoenix	
Hardi plank siding	\$ 92,120.00	stine	
Casework	\$ 136,770.00	leedo	
Plastic laminate tops	\$ 32,040.00	leedo	
Sink bowls	\$ -	w/plumbing	
Insulation	\$ 77,500.00	Riteway	
Exterior caulking	\$ 6,000.00	Ewing	
Insulation liner system	\$ -	w/ zip syst.	
Roofing	\$ 182,550.00	Hostetler	
Gutter and down spouts	\$ -	w/above	
exterior doors	\$ 20,520.00	tri supply	
fire riser room hollow metal	\$ 16,999.00	tri supply	
Interior door package	\$ 57,871.00	tri supply	
Door hardware	\$ 18,528.00	décor syst	
trim package ( and shelving )	\$ 42,650.00	tri supply	
Windows	\$ 78,274.00	plygem	
Drywall & tape and float	\$ 393,800.00	faith	
LVT and Carpet in units	\$ 117,334.00	goldens	
LVT and Ceramic in clubhouse	\$ 15,697.00	goldens	
Sealed concrete flooring	\$ -	NIC	
Paint	\$ 191,545.00	bcp	
Bath accessories	\$ 10,374.00	décor	
Vanity mirror	\$ 14,537.00	décor	
Fire extinguishers	\$ 3,635.00	AFS	
Corner guards	\$ -	NIC	
Postal specialties	\$ 9,970.00	décor	
Appliances and laundry equipment	\$ 125,047.00	ge appiance	
Blinds	\$ 15,000.00	sytex	
specialty item installation	\$ -	with above	

Fire sprinkler,	\$	168,000.00	AFS
5 ft. OSB for sprinkler ( riser )	\$	25,900.00	AFS
Plumbing	\$	465,922.00	Loggins
tub surrounds prefab & shower	\$	43,649.00	Loggins
HVAC and Condensate and pads	\$	382,000.00	twa
Electrical	\$	456,000.00	SCE
Fire alarm	\$	47,500.00	afpg
Light fixture Package	\$	78,296.00	value
Security alarm system for units	\$	20,600.00	sce
security alarm system for clubhouse	\$	3,000.00	sce
Gate access controls	\$	4,000.00	w/ electrical
clubhouse audio system	\$	3,000.00	sce
Wind storm inspections	\$	-	NIC
Dumpster	\$	20,000.00	Ewing
General clean-housekeeping labor	\$	15,000.00	Ewing
Final clean	\$	16,000.00	Ewing
laydown area	\$	16,000.00	Ewing
General Conditions- Supervision and Insurance	\$	533,900.00	Ewing
<b>SUBTOTAL</b>	<b>\$</b>	<b>7,237,593.00</b>	
Material Tax (8%)	\$	-	
Profit and Overhead	\$	312,407.00	
	\$	-	
<b>TOTAL</b>	<b>\$</b>	<b>7,550,000.00</b>	

"Confidential"

**Project Name: Providence at Ted Trout Duplex Project**

**QUALIFICATIONS**

- 1) closet shelves are included
- 2) value engineering approved items are included on next page
- 3) capping of waterwell included
- 4) relocation of neighbor driveway is included
- 5) relocation of transformer is pending Oncor meeting.

**Exclusions**

- 1) Builders risk insurance
- 2) Permit and tap fees
- 3) Nurse call station
- 4) Surveying report required by HUD
- 5) Retaining wall
- 6) irrigation sleeves & irrigations
- 7) underground tv or cable service to each unit - provider not determined
- 8) medicine cabinets in units
- 9)

**Clarifications**

- 1) landscaping is an allowance
- 2) Wrought iron Fencing is redesigned by ewing for value engineering
- 3) picnic tables and bbq pit is an alternate
- 4) driveway relocation will need to be coordinated with neighbor occupying the residence
- 5) lead paint abatement has been added to alternates
- 6) gas line relocation for adjacent property owners residence is pending Center Point
- 7) one SCE is included
- 8) easement documents by ITEX and coordination and fees
- 9) prefabricated showers do not include seats
- 10) asbestos abatement if required is priced as an alternate
- 11) one water meter for project included
- 12) ITEX will provide sufficient informaiton to Ewing A.R. insurance carrier Euhler Hermes for policy.
- 13) added 23 additional parking spaces

"Confidential"

**Project Name: Providence at Ted Trout Duplex Project**

**Value Engineering Items included in Pricing Revisions**

- 1) Angelina Excavating Option 2 for on site fill, cut and balance and 2.5 ft of VFT
- 2) Reduce lime percentage at concrete paving from 6% to 5%
- 3) Better pricing on storm sewer materials and labor
- 4) lay fire line and water line in same ditch
- 5) Delete 1" service meter - 19 each
- 6) delete 1.5" service meter - 1 each
- 7) reduce concrete paving pricing
- 8) Reduce size of leasing and community building
- 9) Reduce Window Quantity per new VE drawings from Architect ( 98 total less windows )
- 10) Redesign site fencing and gates and extend fencing around detention pond and decrease to setback at west of clubhouse.
- 11) Change site sidewalks from 5 ft wide to 3 ft wide with turn pads.
- 12) change unit ceramic tile floors to vinyl plank.
- 13) change ceramic wall tile in bath to prefabricated tub surround.
- 14) change granite counter to plastic laminate
- 15) change 2x6 wall framing to 2x 4 framing.
- 16) delete second vanity and second lavatory in unit B master bath.
- 17) reduce square footage of clubhouse by ,1667 sf , with 9 ft flat ceiling, 2 gables only.
- 18) revise exterior doors and clubhouse interior doors to standard height = 6'-8"
- 19) delete cased openings in hallway, change to gyp materials
- 20) remove exterior decorative millwork and brackets
- 21) delete laundry equipment
- 22) delete crown molding in clubhouse and units
- 23) revise wood base to vinyl base
- 24) revise casing to 2 1/8" FJ
- 25) revise brick detail to reduce quantity of brick, at soilder course and butt edges.
- 26) revise plumbing fixtures, based on owner approval
- 27) revise hvac equipment based on owner approval
- 28) revise electrical fixture package based on owner approval
- 29) revise roof perimeter material from ice and water shield to standard synthetic felt
- 30) reduce downspout count from 160 to 80 - 4 per building.



Revision ten ( 10 )  
March 22, 2019

"Confidential"

**Project Name: Providence at Ted Trout Duplex Project**

**Alternate Pricing Options**

1)	Disconnect existing utilities - per Angelia not required at this time.	\$	2,241.00
2)	Testing of earthwork and concrete	\$	31,980.00
3)	asbestos abatement if required per report	\$	3,500.00
4)	lead based paint abatement if required per report	\$	9,950.00
5)	relocate gas meter for neighbor from Center Point on easement( price pending )	\$	-
6)	relocate transformer for neighbor for Oncor on easement ( price pending )	\$	-
7)		\$	-
8)	bbq pit and picnic tables for gazebo - allowance - no specs	\$	6,000.00
9)		\$	-
10)		\$	-
11)	funds control by suretec, if by ewing	\$	228,000.00
12)		\$	-
13)	add additional stabilized construction entrance if required for a total of 2	\$	3,800.00
14)	add cmu for dumpster fencing, 2 locations in lieu of wood barrier fence	\$	6,000.00
15)	add wood base in lieu of vinyl base	\$	18,000.00
16)	add Electrical permits to pricing	\$	11,000.00
17)	add Mechanical permits to pricing	\$	475.00
18)	make neighbors driveway 12 ft wide in lieu of 9 ft wide	\$	9,000.00
19)			
20)			
21)			
22)			
23)			
24)			
25)			
26)			
27)			
28)			
29)			
30)			

# CONTINUATION SHEET

AIA DOCUMENT G703

PAGE

OF

PAGES

AIA Document G702, APPLICATION AND CERTIFICATION FOR PAYMENT, containing Contractor's signed certification is attached.

APPLICATION NO:  
APPLICATION DATE:

~~In tabulations below, amounts are stated to the nearest dollar.~~

PERIOD TO:  
ARCHITECT'S PROJECT NO:

Use Column I on Contracts where variable retainage for line items may apply.

A ITEM NO.	B DESCRIPTION OF WORK	C SCHEDULED VALUE	D WORK COMPLETED		F MATERIALS PRESENTLY STORED (NOT IN D OR E)	G		H BALANCE TO FINISH (C - G)	I RETAINAGE (IF VARIABLE RATE)
			FROM PREVIOUS APPLICATION (D + E)	THIS PERIOD		TOTAL COMPLETED AND STORED TO DATE (D+E+F)	% (G ÷ C)		
1	EARTHWORK	\$355,601.00						\$355,601.00	
2	ASBESTOS ABATEMENT	\$12,000.00						\$12,000.00	
3									
4									
5									
6	LANDSCAPE & IRRIGATION	\$129,000.00						\$129,000.00	
7	SITE FENCING & GATES	\$100,733.00						\$100,733.00	
8	CONCRETE WORK SITE	\$528,797.00						\$528,797.00	
9	SITE UTILITIES	\$357,323.00						\$357,323.00	
10	CONCRETE WORK BUILDING	\$740,856.00						\$740,856.00	
11	GAZEBO	\$10,000.00						\$10,000.00	
12									
13	MASONRY	\$243,800.00						\$243,800.00	
14	STRUCTURAL STEEL FABRICATIONS								
15	ROUGH CARPENTRY MATERIALS	\$247,932.00						\$247,932.00	
16	ROUGH CARPENTRY LABOR	\$386,159.00						\$386,159.00	
17	WOOD TRUSSES & BEAMS	\$141,320.00						\$141,320.00	
18	TRIM CARPENTRY MATERIAL	\$36,332.00						\$36,332.00	
19	TRIM CARPENTRY LABOR	\$41,500.00						\$41,500.00	
20	WOOD CABINETS	\$133,241.00	\$1,498,599.00			\$1,498,599.00	1124.73%	(\$1,365,358.00)	\$149,859.90
21	LAMINATE COUNTERTOPS	\$39,565.00						\$39,565.00	
22	WATERPROOFING SIDING MATERIAL	\$95,073.00						\$95,073.00	
23	INSULATION	\$82,300.00						\$82,300.00	
24	ROOFING	\$185,471.00						\$185,471.00	
25	GUTTER & DOWNSPOUTS	\$26,885.00						\$26,885.00	
26			\$294,656.00			\$294,656.00		(\$294,656.00)	\$29,465.60
27	METAL DOORS & FRAMES	\$40,509.00						\$40,509.00	
28	WOOD DOORS & FRAMES	\$57,811.00						\$57,811.00	
29	DOOR HARDWARE	\$25,312.00						\$25,312.00	
30									

# CONTINUATION SHEET

AIA DOCUMENT G703

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OF

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			FROM PREVIOUS APPLICATION (D + E)	THIS PERIOD		TOTAL COMPLETED AND STORED TO DATE (D+E+F)	% (G ÷ C)		
31	WINDOWS	\$99,138.00	\$201,504.00					\$99,138.00	
32									
33	MIRRORS	\$14,121.00						\$14,121.00	
34									
35	DRYWALL	\$375,600.00						\$375,600.00	
36	CERAMIC TILE	\$47,242.00						\$47,242.00	
37	FLOORING - RESILIENT	\$96,950.00						\$96,950.00	
38	PAINTING DIRECT LABOR	\$161,582.00	\$287,522.00			\$287,522.00	177.94%	(\$125,940.00)	\$28,752.20
39									
40	TOILET PARTITIONS & ACCESSORIES	\$11,792.00						\$11,792.00	
41	SIGNAGE	\$10,000.00						\$10,000.00	
42									
43	FIRE EXTINGUISHERS	\$5,125.00	\$96,455.00					\$5,125.00	
44	MAILBOXES	\$8,175.00						\$8,175.00	
45									
46									
47									
48	RESIDENTIAL APPLIANCES	\$125,940.00						\$125,940.00	
49									
50	RECREATIONAL EQUIPMENT								
51									
52	WINDOW TREATMENTS	\$19,243.00						\$19,243.00	
53									
54									
55	FIRE SPRINKLER SYSTEM	\$171,000.00						\$171,000.00	
56	PLUMBING	\$475,000.00	\$1,064,695.00					\$475,000.00	
57	HEATING, COOLING & VENTILATION	\$418,695.00						\$418,695.00	
58									
59	ELECTRICAL SYSTEMS	\$456,000.00						\$456,000.00	
60	LIGHTING FIXTURES	\$83,594.00						\$83,594.00	
61	FIRE ALARM SYSTEM	\$49,000.00	\$657,184.00					\$49,000.00	



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			FROM PREVIOUS APPLICATION (D + E)	THIS PERIOD		TOTAL COMPLETED AND STORED TO DATE (D+E+F)	% (G ÷ C)		
62	SECURITY, AUDIO, VIDEO, ACCESS SYST.	\$68,590.00						\$68,590.00	
63	JOB PROFIT	\$220,149.00						\$220,149.00	
64	PROJECT OVERHEAD	\$141,386.00						\$141,386.00	
65	GENERAL CONDITIONS	\$424,158.00						\$424,158.00	
66	BONDS AND OTHER ASSOCIATED								
67	GENERAL OVERHEAD EXPENSES	\$50,000.00						\$50,000.00	
68									
69									
70									
71									
72									
73									
<b>GRAND TOTALS</b>		\$7,550,000.00	\$4,100,615.00	\$0.00	\$0.00	\$2,080,777.00		\$5,469,223.00	\$208,077.70

Users may obtain validation of this document by requesting of the license a completed AIA Document D401 - Certification of Document's Authenticity

**From:** [Kent Bedell](#)  
**To:** [Sharon Gamble](#)  
**Cc:** [Marni Holloway](#)  
**Subject:** FW: 17736 Providence at Ted Trout Drive - Request for TDHCA Staff and Board Review  
**Date:** Friday, September 27, 2019 3:04:55 PM

---

FYI...additional information regarding delays due to Hurricane Harvey.

Regards,

**Kent Bedell**

Asset Manager  
Texas Department of Housing and Community Affairs  
221 E. 11th Street | Austin, TX 78701  
Office: 512.475.3882  
Fax: 512.475.1895

*Any person receiving guidance from TDHCA staff should be mindful that, as set forth in [10 TAC Section 11.1\(b\)](#) there are important limitations and caveats (Also see [10 TAC §10.2\(b\)](#)).*

**About TDHCA**

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**From:** Michelle Harder <michelle.harder@itexgrp.com>  
**Sent:** Friday, September 27, 2019 2:18 PM  
**To:** Kent Bedell <kent.bedell@tdhca.state.tx.us>  
**Cc:** Miranda Sprague <Miranda.Sprague@itexgrp.com>; Bobken Simonians <bobken.simonians@itexgrp.com>; Ali Morris <ali.morris@itexgrp.com>; Tamea A. Dula <tdula@coatsrose.com>  
**Subject:** Re: 17736 Providence at Ted Trout Drive - Request for TDHCA Staff and Board Review

Mr. Bedell,

I just wanted to update you -- I have reviewed the specified financial tabs for our application, and they are currently being reviewed just to ensure accuracy.

In the meantime, I have put together a timeline with some additional information regarding the delays that kept us from closing the construction loan.

When Hurricane Harvey hit on August 25, 2017, it brought the entire area to a standstill, impacting residents and businesses alike, including many of

our employees; it was toward well into September, even early October 2017 before all of the roads were open, power and water restored to many surrounding areas, evacuees were able to return home, and businesses were back up and running at a normal pace. At this point, we became aware the labor shortage and the increased cost of materials; we began to reach out for new bids, understanding that our former bids would no longer be applicable and even that some of the former bidders were no longer available.

We completed a revised financial model in December 2017 based on these new bids; it was apparent that we were not in a good position with the financial viability of the project. In the first quarter of 2018, we pursued a second round of bids in hopes that, as time went on, the labor pool and the material costs may have begun to return to pre-Harvey prices. They did not.

Throughout the second and third quarters of 2018, we sought multiple ways to both reduce costs through complete architectural plan revisions and pursue additional funding sources including a request for TDHCA Multifamily Direct Home Loan Funds, Section 8 Project Based Vouchers with the Deep East Texas Council of Government, and D4 loan with Davis Penn in order to help with the financing gap. None of these efforts proved to be fruitful; the investors that we had secured began to withdraw their commitments, made wary by the impending time constraints and by the changes brought about by the newly implemented federal tax reform. By the last quarter of 2018, we understood that a complete plan revision would not reduce costs to any meaningful degree and would cause even further delays. We began to work with the architect to do Value Engineering and secure a new equity provider, which we had successfully completed by the end of 2018, allowing us to begin working toward a financial closing throughout the first quarter of 2019. We had our debt closing on April 12, 2019, and began construction on April 15, 2019.

I have put together a visual timeline to accompany this information. Please let me know if you have any questions.

Thank you for all of your assistance with this.

**Michelle Harder**

Development Team

Acquisitions & Development

■ [Direct 409.201.4462](tel:409.201.4462) | [Fax 409.721.6603](tel:409.721.6603)

■ [michelle.harder@itexgrp.com](mailto:michelle.harder@itexgrp.com)

■ [itexgrp.com](http://itexgrp.com)

■ 3735 Honeywood Court, Port Arthur, Texas 77642





On Fri, Sep 13, 2019 at 2:52 PM Kent Bedell <[kent.bedell@tdhca.state.tx.us](mailto:kent.bedell@tdhca.state.tx.us)> wrote:

Michelle,

Multifamily is currently reviewing the Force Majeure request and I am sure they will be in contact with you regarding any questions they have. Should the Force Majeure request be approved, one issue that may come up is that the Initial Construction Status Report was due on October 10, 2018. Per our rules you were required to request an extension and pay the \$2,500 fee, if it was not submitted by this date. Furthermore, our rules indicate that for each subsequent extension request on the same activity will increase by increments of \$500. Your first report was not submitted until April 16, 2019, which means you missed three reporting dates, which means you should have paid \$9,000 (\$2,500, \$3,000, and \$3,500) in extension fees. You do not need to do anything yet, but I just wanted put this on your radar.

Also, can you clarify why it took so long to close on the construction loan and submit your first construction status report? I know your Force Majeure letter addresses this to some degree, but could you address the delays specifically related to submitting the construction status reports?

Thanks,

**Kent Bedell**

Asset Manager  
Texas Department of Housing and Community Affairs  
221 E. 11th Street | Austin, TX 78701  
Office: 512.475.3882  
Fax: 512.475.1895

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**From:** Michelle Harder <[michelle.harder@itexgrp.com](mailto:michelle.harder@itexgrp.com)>

**Sent:** Tuesday, September 10, 2019 4:00 PM

**To:** Kent Bedell <[kent.bedell@tdhca.state.tx.us](mailto:kent.bedell@tdhca.state.tx.us)>

**Cc:** Miranda Sprague <[Miranda.Sprague@itexgrp.com](mailto:Miranda.Sprague@itexgrp.com)>; Bobken Simonians <[bobken.simonians@itexgrp.com](mailto:bobken.simonians@itexgrp.com)>; Ali Morris <[ali.morris@itexgrp.com](mailto:ali.morris@itexgrp.com)>; Tamea A. Dula <[tdula@coatsrose.com](mailto:tdula@coatsrose.com)>

**Subject:** Re: 17736 Providence at Ted Trout Drive - Request for TDHCA Staff and Board Review

Mr. Bedell,

Thank you for the clarification! I will work to get these docs over to you; the check that has been requested to go out this week. If I have any more questions, I will give you a call.

Thank you for your help!

**Michelle Harder**

Development Team

Acquisitions & Development

■ Direct [409.201.4462](tel:409.201.4462) | Fax [409.721.6603](tel:409.721.6603)

■ [michelle.harder@itexgrp.com](mailto:michelle.harder@itexgrp.com)

■ [itexgrp.com](http://itexgrp.com)

■ 3735 Honeywood Court, Port Arthur, Texas 77642



On Tue, Sep 10, 2019 at 3:57 PM Kent Bedell <[kent.bedell@tdhca.state.tx.us](mailto:kent.bedell@tdhca.state.tx.us)> wrote:

Michelle,

I got your voice message. I need you to submit the Development Cost Schedule, Rent Schedule, Utility Allowance Schedule, Annual Operating Expenses, 15 Year Pro forma, and Summary of Sources and Uses. For the Architectural plans, you do not need to submit the plans that show the value engineering necessarily. We just need to see what changed from the plans submitted from Application to now, which includes substantial changes to elevations.

I am available now if you want to give me a call.

Regards,

**Kent Bedell**

Asset Manager

Texas Department of Housing and Community Affairs

221 E. 11th Street | Austin, TX 78701

Office: 512.475.3882

Fax: 512.475.1895

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**From:** Michelle Harder <[michelle.harder@itexgrp.com](mailto:michelle.harder@itexgrp.com)>

**Sent:** Friday, September 06, 2019 8:56 AM

**To:** Kent Bedell <[kent.bedell@tdhca.state.tx.us](mailto:kent.bedell@tdhca.state.tx.us)>

**Cc:** Miranda Sprague <[Miranda.Sprague@itexgrp.com](mailto:Miranda.Sprague@itexgrp.com)>; Bobken Simonians <[bobken.simonians@itexgrp.com](mailto:bobken.simonians@itexgrp.com)>; Ali Morris <[ali.morris@itexgrp.com](mailto:ali.morris@itexgrp.com)>; Tamea A. Dula <[tdula@coatsrose.com](mailto:tdula@coatsrose.com)>

**Subject:** Re: 17736 Providence at Ted Trout Drive - Request for TDHCA Staff and Board Review

Thank you! We will get the additional items over to you so that you can process.

**Michelle Harder**

Development Team  
Acquisitions & Development

- [Direct 409.201.4462](tel:409.201.4462) | [Fax 409.721.6603](tel:409.721.6603)
- [michelle.harder@itexgrp.com](mailto:michelle.harder@itexgrp.com)
- [itexgrp.com](http://itexgrp.com)
- 3735 Honeywood Court, Port Arthur, Texas 77642



On Fri, Sep 6, 2019 at 9:34 AM Kent Bedell <[kent.bedell@tdhca.state.tx.us](mailto:kent.bedell@tdhca.state.tx.us)> wrote:

Michelle,

Multifamily will be handling the Force Majeure request and I will process the Amendment request. I will need you to submit revised Application financial exhibits, site plan, and architectural drawings for me to process this request. You will also need to submit the \$2,500 amendment fee as this will be a material amendment because there is a greater than

3% reduction in the square footage of the common areas. As of now, the amendment request will go to the November board meeting as we have already passed the deadline for the October meeting and REA will more than likely need to re-underwrite.

Please let me know if you have any questions.

Regards,

**Kent Bedell**

Asset Manager  
Texas Department of Housing and Community Affairs  
221 E. 11th Street | Austin, TX 78701  
Office: 512.475.3882  
Fax: 512.475.1895

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**From:** Michelle Harder <[michelle.harder@itexgrp.com](mailto:michelle.harder@itexgrp.com)>

**Sent:** Thursday, September 05, 2019 4:29 PM

**To:** Kent Bedell <[kent.bedell@tdhca.state.tx.us](mailto:kent.bedell@tdhca.state.tx.us)>

**Cc:** Miranda Sprague <[Miranda.Sprague@itexgrp.com](mailto:Miranda.Sprague@itexgrp.com)>; Bobken Simonians <[bobken.simonians@itexgrp.com](mailto:bobken.simonians@itexgrp.com)>; Ali Morris <[ali.morris@itexgrp.com](mailto:ali.morris@itexgrp.com)>; Tamea A. Dula <[tdula@coatsrose.com](mailto:tdula@coatsrose.com)>

**Subject:** Re: 17736 Providence at Ted Trout Drive - Request for TDHCA Staff and Board Review

Thank you!

I'll wait to hear back. Have a good evening!

**Michelle Harder**

Development Team  
Acquisitions & Development

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■ [itexgrp.com](http://itexgrp.com)  
■ 3735 Honeywood Court, Port Arthur, Texas 77642





On Thu, Sep 5, 2019 at 5:15 PM Kent Bedell <[kent.bedell@tdhca.state.tx.us](mailto:kent.bedell@tdhca.state.tx.us)> wrote:

Michelle,

I have received your request and need to get with Multifamily to discuss your request and will be back in contact with you shortly.

Regards

**Kent Bedell**

Asset Manager

Texas Department of Housing and Community Affairs

221 E. 11th Street | Austin, TX 78701

Office: 512.475.3882

Fax: 512.475.1895

*Any person receiving guidance from TDHCA staff should be mindful that, as set forth in [10 TAC Section 11.1\(b\)](#) there are important limitations and caveats (Also see [10 TAC §10.2\(b\)](#)).*

**About TDHCA**

The Texas Department of Housing and Community Affairs administers a number of state and federal programs through for-profit, nonprofit, and local government partnerships to strengthen communities through affordable housing development, home ownership opportunities, weatherization, and community-based services for Texans in need. For more information, including current funding opportunities and information on local providers, please visit [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us).

**From:** Michelle Harder <[michelle.harder@itexgrp.com](mailto:michelle.harder@itexgrp.com)>

**Sent:** Thursday, September 05, 2019 2:27 PM

**To:** Kent Bedell <[kent.bedell@tdhca.state.tx.us](mailto:kent.bedell@tdhca.state.tx.us)>

**Cc:** Miranda Sprague <[Miranda.Sprague@itexgrp.com](mailto:Miranda.Sprague@itexgrp.com)>; Bobken Simonians <[bobken.simonians@itexgrp.com](mailto:bobken.simonians@itexgrp.com)>; Ali Morris <[ali.morris@itexgrp.com](mailto:ali.morris@itexgrp.com)>; Tamea A. Dula <[tdula@coatsrose.com](mailto:tdula@coatsrose.com)>

**Subject:** 17736 Providence at Ted Trout Drive - Request for TDHCA Staff and Board Review

Good afternoon, Mr. Bedell.

Attached, you will find two letters of request, packaged with their referenced exhibits for Application 17736.



The first letter is a Force Majeure Request, in which we ask TDHCA to consider exchange of our 2017 awarded credits for that of 2020 credits, effectively extending our placed in service date. We would like this request to be placed on the October 10, 2019 TDHCA Board Agenda if this is possible.

The second letter is a Staff-Level Request for approval of architectural changes that were made to the plans.

Thank you for your time and consideration; if you have any questions or require any further documentation, please let me know.

Thank you, and have a wonderful day!

**Michelle Harder**

Development Team

Acquisitions & Development

■ [Direct 409.201.4462](tel:409.201.4462) | [Fax 409.721.6603](tel:409.721.6603)

■ [michelle.harder@itexgrp.com](mailto:michelle.harder@itexgrp.com)

■ [itexgrp.com](http://itexgrp.com)

■ 3735 Honeywood Court, Port Arthur, Texas 77642





17736

Providence at Ted Trout  
Drive  
Construction Status  
Report



Michelle Harder &lt;michelle.harder@itexgrp.com&gt;

---

## Requesting Permission for Use of 18-1897 CR Lufkin - Providence at Ted Trout Reports

---

David Ochs &lt;dochs@codaconsults.com&gt;

Thu, Sep 26, 2019 at 4:01 PM

To: Michelle Harder &lt;michelle.harder@itexgrp.com&gt;, Barbara Kubeczka &lt;bkubeczka@codaconsults.com&gt;

Cc: Shelly Peabody &lt;speabody@codaconsults.com&gt;

CODA consulting Group, LLC gives permission to TDHCA to use and rely on our monthly construction progress reports for the 18-1897 Providence at Ted Trout project in Lufkin, TX.

David N. Ochs, P.E. (TX)

CODA Consulting Group

2210 Hiline Drive

Bulverde, TX 78163

E-mail: DOchs@CODAConsults.com

Phone – Office: 832-302-9074

**From:** Michelle Harder [mailto:michelle.harder@itexgrp.com]**Sent:** Thursday, September 26, 2019 2:41 PM**To:** Barbara Kubeczka**Cc:** David Ochs; Shelly Peabody**Subject:** Requesting Permission for Use of 18-1897 CR Lufkin - Providence at Ted Trout Reports

Barbara,

We have requested an extension from TDHCA for our placed in service date for Providence at Ted Trout.

TDHCA would like to know if they have permission to use our latest construction status report in their upcoming board meeting as a reference point for our current construction completion.

Here was their exact request:

The site inspection report from CODA is marked "Privileged and Confidential" and the cover letter states that the report cannot be used by us without CODA's consent. In order to provide the best information to the Board regarding your force majeure request, we need to be able to provide the report to them, which means that we would have to post it in the board book.

We do not intend to include the information regarding contracts, agreements, and contractor requests and payments.

Please contact CODA and let them know how we intend to use the report. We would prefer to have something from them in writing acknowledging our use of the report. Feel free to have them contact me personally if they have any questions.

Would CODA be ok with TDHCA using the report in this manner?

**Michelle Harder**  
Development Team  
Acquisitions & Development

[Direct 409.201.4462](tel:409.201.4462) | [Fax 409.721.6603](tel:409.721.6603)

[michelle.harder@itexgrp.com](mailto:michelle.harder@itexgrp.com)

[itexgrp.com](http://itexgrp.com)

3735 Honeywood Court, Port Arthur, Texas 77642



[Quoted text hidden]

# REPORT OF CONSTRUCTION MONITORING



Site entrance with earth work in progress.

## REPORT NO. 1

**Providence at Ted Trout  
3602 Block of Ted Trout Drive  
Lufkin (Hudson), Texas 75904**

PREPARED FOR:

**Cedar Rapids Bank and Trust Company**  
500 1<sup>st</sup> Avenue NE  
Cedar Rapids, IA 52401

PREPARED BY:

CODA Consulting Group, LLC  
3023 S. University Drive, Suite 220  
Fort Worth, TX 76109

CODA Project No. 18-1897

June 2019

[www.codaconsults.com](http://www.codaconsults.com)

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TBPE # F-14460



June 10, 2019

Mr. Sam Kramer  
Cedar Rapids Bank and Trust Company  
500 1<sup>st</sup> Avenue NE  
Cedar Rapids, IA 52401

Subject: Monthly Construction Monitoring Report 1  
Providence at Ted Trout  
3602 Ted Trout Drive  
Lufkin, Texas 75904  
CODA Project No. 18-1897

Gentlemen:

CODA Consulting Group, LLC (CODA) is pleased to submit this report of the construction progress of the above referenced project. These services were provided in accordance with the scope of services and terms and conditions outlined in CODA's Proposal P19-3195 dated April 2, 2019 and authorized April 3, 2019.

The services included reviewing an Application for Payment prepared by the Developer which included the Contractor's Application for Payment (in AIA Documents G702 and G703 format) prepared by the general contractor, with attached supporting documentation. We also visited the site, met with representatives of the general contractor and visually toured the site to observe the progress and quality of construction. The attached report was prepared documenting our observations and conclusions for the previous month's construction progress and total work to date.

This report has been prepared on behalf of and exclusively for the use of Cedar Rapids Bank and Trust Company and AHP Housing Fund, LLC and their successors and assigns. Reliance on this report is governed by the scope of services and terms and conditions of the contract under which the work was performed. This report and the findings contained herein shall not, in whole or in part, be disseminated or conveyed to any other party or be used or relied upon by any other party, in whole or in part, without CODA's prior written consent.

CommunityBank of Texas/Boston Capital  
Providence at Ted Trout  
Lufkin, TX

We appreciate the opportunity to work with you on this project and trust the contents of this report are satisfactory. We would be pleased to discuss our findings and conclusions with you. If you have any questions, please do not hesitate to contact us.

Sincerely,

**CODA Consulting Group, LLC**



Mike Rogers  
Associate

*David N. Ochs*  
David N. Ochs, PE (TX)  
Senior Associate



Cc: Miranda Sprague, ITEX Group, ([Miranda.sprague@itexgrp.com](mailto:Miranda.sprague@itexgrp.com))



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**I. EXECUTIVE SUMMARY**

G.C. Application No.	01	Application Date:	5/25/19
Date Received:	5/31/19	Site Visit Date:	5/30/19
Requested Draw Amount:	\$99,324.00		
Recommended Approved Draw Amount:	\$99,324.00		
Commencement Date:	4/15/18 Est.	Substantial Completion Date:	12/01/19
NTP Date:	04/15/19 Loan Closing: 1/09/18	Estimated Completion Date:	12/01/19
Project on Schedule:	No Slightly behind		
Reported Finan. % Complete:	1.46%	Estimated Physical % Complete:	1.5%*
Building Permits:	Site Work, UG plumbing, Structural		

\*The billings include \$46,000 of Mobilization (100%), \$32,000 of General Conditions (6.35%) and \$9,360 of Profit (3%) which is in excess of the work completed (Estimated 1.5%) However Earthwork-Rough fill is billed at \$23,000 (6.64%) and we expect at least \$150,000 (43%) of this work is complete. We estimate overall project physical complete is 1.5%

**CONSTRUCTION SCHEDULE**

Note: Based on 3/21/19 Schedule provided. This schedule will be updated if an updated schedule is provided and will be included in construction phase monthly reports.

Construction Activity	Start	Finish	Actual Finish			
<b>SITE WORK</b>						
Demolition	4/01/19	4/09/19	4/19			
Grading	4/01/19	4/26/19				
Detention Pond	4/29/19	5/06/19				
Wet Utilities	4/29/19	5/23/19				
Paving	6/04/19	7/11/19				
<b>BUILDING WORK</b>	<b>Bldg. Pads / Slabs</b>		<b>Framing</b>		<b>Building TCO</b>	
	<b>Schedule Start</b>	<b>Actual Start</b>	<b>Schedule Start</b>	<b>Actual Start</b>	<b>Schedule Date</b>	<b>Actual Date</b>
Comm. Bldg.	4/12/18	5/19	5/06/19		8/28/19	
Bldg. 10, 9, 8	4/12/19	5/19	5/31/19		9/16/19	
Bldg. 11,12,13	5/02/19		5/23/19		10/17/19	
Bldg. 4,5,6,7	5/22/19	5/19	6/13/19		10/15/19	
Bldg. 14,15,16	6/12/19		7/03/19		11/27/19	
Bldg. 17,18,19	7/02/19		7/24/19		11/27/19	
Bldg. 1,2,3	7/23/19	5/19	8/13/19		11/29/19	

**Project Contacts**

Title	Name	Company	Phone No.
Developer Proj. Mgr.		Nautical Affordable Housing/ltex Development of Beaumont	

Title	Name	Company	Phone No.
Developer Administrator	Miranda Sprague	ITEX Group	409-853-3681
Non-Profit GC	Don Ball	Nautical Affordable Housing, Inc	409-988-1851
Arch. Const. PM		JHP Architecture of Dallas	
Prime Subcontractor	Tim Zehnder	Icon Builders, LLC	989-996-1071
Prime Sub-Subcontractor Mgr.	Bill Ewing	Ewing Industries, LLC	361-813-6525
Contractor Supt.	Zac Janca	Ewing Industries, LLC	
Tax Credit Syndicator	Sam Kramer	Cedar Rapids Bank & Trust Co.	319-743-7122
CODA Proj. Mgr.	David Ochs, PE	CODA Consulting Group	832-302-9074 C
CODA Field Inspector	Mike Rogers	CODA Consulting Group	281-635-3306 C

**Construction Contract:** The Construction Contract is in AIA A101 – 2017 Stipulated Sum format. The provided contract was not dated or signed. Also provided were Contract General Conditions – AIA A201-2007.

The Construction Contract information included:

Contractor: Nautical Affordable Housing, Inc.  
 Format: AIA A101 – 2017 Stipulated Sum  
 Date: Undated  
 Date of Commencement: Contract Date  
 Substantial Completion Date: 191 work days from Date of Commencement  
 Contract Sum: \$7,550,000  
 Contingency: \$377,500 (5% to be confirmed)  
 Payment Provisions: Monthly based on completed work and stored materials  
 Retainage Provisions: 10% on completed work.  
 Retainage Exclusions: Stored materials on- or off-site  
 Retainage Reductions: None listed  
 Penalty Provisions: \$1,000 per day per building for each day of TCO delay after dates listed:

Building No.	Date	Building No.	Date	Building No.	Date
Comm. Bldg.	8/28/19	7	10/15/19	16	11/27/19
8	9/16/19	11	10/17/19	17	11/27/19
9	9/16/19	12	10/17/19	18	11/27/19
10	9/16/19	13	10/17/19	1	11/29/19
4	10/15/19	17	11/27/19	2	11/29/19
5	10/15/19	14	11/27/19	3	11/29/19
6	10/15/19	15	11/27/19		

Incentive Provisions: None listed.  
 Payment and Performance Bonds: To be provided and paid from soft costs.

The contract provided was draft and not signed.

Attachments

1. Prime Subcontractor Agreement
2. Prime Subcontractor's Qualification Statement (A305-1986)
3. General Conditions of the Contract for Construction (AIA A201-2007)
4. Insurance Requirements
5. Compliance Provisions for Professional Services Contract
6. Construction Schedule
7. Insurance Certificate
8. Exclusions

**Subcontractor Contract:** The Subcontractor Contract subcontracts 100 percent of the work and fees to ICON Builders and binds them to the schedule and other provisions of the General Contractor Contract. The contract is draft and not signed.

**Sub-Subcontractor Contract:** The Sub-Subcontractor Contract apparently subcontracts 100 percent of the work and fees to Ewing Industrial Services and, we suspect, binds them to the schedule and other provisions of the General Contractor Contract and Subcontractor Contract. A copy of this contract was not provided.

**Tax Credit Application:** TDHCA Tax Credit Application provided. See table in Appendix A for Tax Credit Application required items versus provided construction features and amenities.

## **II. PROJECT DESCRIPTION**

The Providence at Ted Trout Drive apartments will include the construction of 76 senior apartments on 8.699 acres in Hudson, Texas. The site is about 3.5 miles west of downtown Lufkin, Texas in east Texas. The planned development includes 76 one- and two-bedroom apartments in 19 one-story four-plexes with a Community Center building at the front of the site. Parking will be provided along two drives that serve the buildings. Building construction will include post-tensioned slab-on-grade and grade beam foundations, wood framing with sloped shingle roofs and brick and fiber cement siding. The 4,339 square foot (SF) Community Center will include a Leasing Office, Community Room, Dining Room with kitchen, Business Center, Laundry, Maintenance Room, Tenant Mail Center and restrooms. Site amenities include perimeter fence and gates, barbeque/picnic areas and a gazebo with seating. Apartment amenities include covered entries, 9-foot ceilings, black appliances, Energy Star refrigerators with icemaker, range / oven, Energy Star dishwasher and microwave / hood combos.

## **III. STATUS OF CONSTRUCTION**

### **A. SITE VISIT**

Date: May 30, 2019  
Individual: Mike Rogers  
Company: CODA Consulting Group

CODA attends the on-site monthly Construction Progress Meetings. The Developer / Contractor informed us Construction Progress Meetings will be held the last Tuesday of the month, on site at 1:00pm.

Present	Name	Company	Function-Title
Yes	Bill Ewing	Ewing Industrial Services	Project Manager
Yes	Zac Janca	Ewing Industrial Services	Contractor-Supt.
Yes	John Schroeder	JHP Architecture of Dallas	Const. Proj. Mgr.
Yes	Tim Zehnder	ICON Construction	Project Manager
Yes	Mike Rogers	CODA Consulting Group	Construction Rep.

The provided information for this report included:

- Contractor’s Application and Certification for Payment, No. #1, AIA G702/G703 for **\$99,324.00** by Nautical Affordable Housing (the non-profit General Contractor), for work through 5/25/2019, signed and sealed 5/30/19 and approved by Architect.
- Conditional Waivers and Release on Progress Payment for **\$99,324.00** by Nautical Affordable Housing (the non-profit General Contractor) dated 5/30/19 signed and notarized.
- Contractor’s Application and Certification for Payment, No. #1, AIA G702/G703 for \$99,324.00 by Ewing Industrial Services, for work through 5/01/2019, signed 4/30/19 and addressed to Providence Ted Trout Dr., LLP. **Note: Subcontractor Ewing Industries client is the General contractor, Nautical Affordable Housing and the Application should be addressed to them. We recommend this be corrected on future Applications for Payment**
- Conditional Waivers and Release on Progress Payment for **\$99,324.00** by Ewing Industrial Services dated 5/15/19 signed and notarized.

Items discussed with the superintendent included:

- The status of the buildings permits was discussed.
- The schedule of the construction was discussed and provided.
- Sub contracts have been issued.
- Work schedule will be 7 day work weeks as requested by 80% of the subcontractors.
- Contractor will provide 2 site rotating superintendents to have site coverage 7 days a week.
- Construction fencing will be installed to provide security and protect site and material storage.
- Leasing office/clubhouse will need to be relocated 20 foot further from the road in order to avoid water lines located outside the easement show on documents.
- Building 19 will move 2 ft for the same issue.

- Architect is reviewing plans & documents to determine if the planned building movements is a workable plan.
- Clearing of the property has been completed.
- All demo of existing structures completed.
- Site grading is underway.
- Site utilities are being installed.
- Building pad layouts installations have begun.

Note: It was raining heavily before our site visit and the site was very muddy. Photographs were taken only of the front portions of the site.

Photographs taken during the site visit are attached in Appendix B.

## **B. CONSTRUCTION PROGRESS**

### **Progress this Period:**

Considering the stage of construction, the geographic area, the time of year, the weather, site conditions and project staffing, was typical/expected construction progress made to date?: **YES.**

**If No – Why Not?:** NA

### **Progress to Date:**

#### **SITE WORK**

- Site clearing is complete.
- Erosion control fencing is in-place.
- Construction office trailer is set up.
- Site grading is in progress.
- Building pad installations is in progress.
- Storm sewer being installed.
- Sanitary sewer lines are in place with manholes being set.
- Storm water lines are being installed with drop inlet around Bldg. 3.
- Water lines and hydrants are staged at the site.

#### **PAVEMENTS AND SIDEWALKS**

- Work not started.

#### **BUILDING SHELL**

- Work not started.

#### **INTERIOR BUILD-OUT**

- Work not started.

#### **INTERIOR FINISHES**

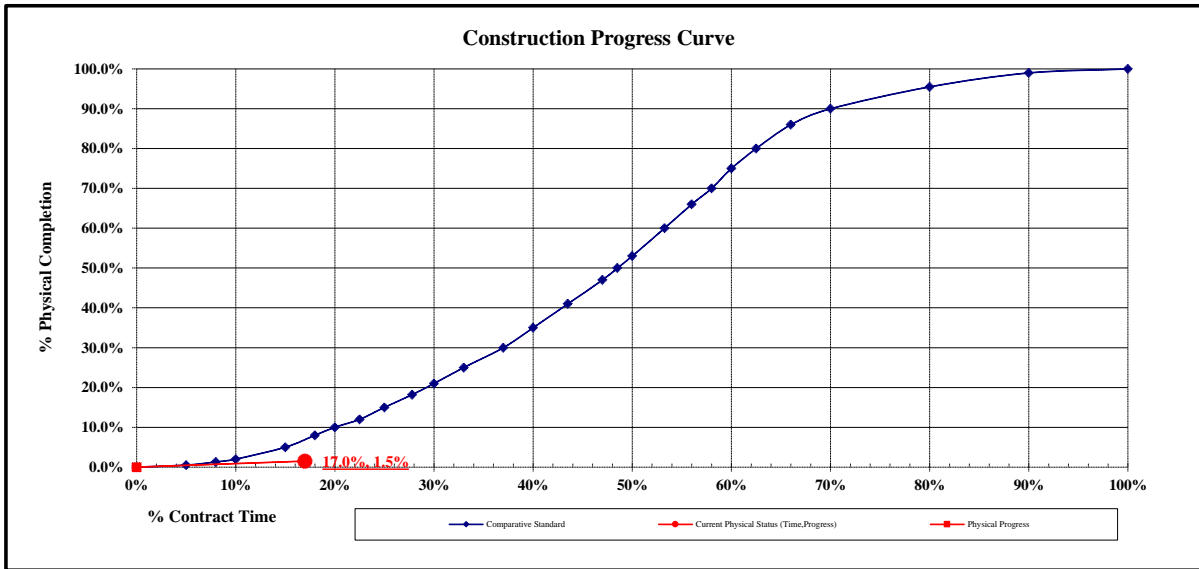
- Work not started.

#### **AMENITIES AND LANDSCAPING**

- Work not started.

**Construction Progress Graph**

Cedar Rapids Bank and Trust Company and AHP Housing Fund, LLC have requested that we track progress based on the construction start date and the expected completion date based on the contract duration. The Construction Progress Curve below compares the actual construction progress to the construction start date, a construction finish date based on the contract duration and the HUD Form 5372 theoretical progress curve. If the “Current Physical Status” point (red dot) is left of the corresponding point on the Comparative Standard S-curve (blue), the project is ahead of schedule by the % variance. Conversely, if the “Current Physical Status” point is right of the corresponding point on the S-curve, the project is behind schedule by the % variance:



Actual construction start date:	<b>4/15/18 Est.</b>
Based on the actual start date and the project progress, the project is:	<b>Slightly behind schedule</b>
The TDHCA Placed in service date for this project is:	<b>12/31/19</b>
Estimated completion date if rate of progress to date continues to completion:	<b>12/01/19</b>

The contract time is currently 17 percent complete and the work is 1.5 percent complete. Variable rainy weather has delayed the site preparation and infrastructure work.

**Construction Progress Tables:** CODA has prepared Construction Progress Tables for the Civil/Site Work and Building Construction which provide a more detailed summary of the construction progress. These tables are updated each month during our site visits and the current month’s information or progress is shown in **dark type**. The tables are included in Appendix A.

**Stored Materials:** The contractor is not requesting separate payment for stored materials this application. We observed the following stored materials on-site.

Storm water piping, Drop inlets, Sanitary manholes, Domestic water piping, Hydrants

**Percent Complete:** Based on our experience, the project schedule of values, the provided Application for Payment and our observations on-site, we estimate the project construction percent complete as:

**Reported Financial Percent Complete: 1.46%**

**Estimated Physical Percent Complete: 1.5%**

**Photographs:** Photographs documenting the site conditions and construction progress during our site visit are included in Appendix B.

#### **IV. QUALITY OF CONSTRUCTION**

##### **A. TESTING LABORATORY**

Name: Terracon  
City, State: Lufkin, TX  
Phone No.: 936-634-5400  
Contact Person: Zachary Dubberly

##### **B. GEOTECHNICAL REPORT RECOMMENDATIONS**

A Geotechnical Report was provided from Science Engineering of Nederland, Texas. The borings encountered 0 to 2 feet of silty sand underlain by plastic (expansive) clay to depths of 6 feet and then underlain to low plasticity clay to depths of 13 to 20 feet. The potential vertical rise (PVR), which is the surface movement of the soils between periods of drought followed by a period of wet weather, was not estimated.

**Foundations:** The original Geotechnical Report recommended the building pad areas be undercut 24 inches and backfilled with compacted “select fill”, with a Liquid Limit of 36 percent or less and a Plasticity Index (Liquid Limit minus Plastic Limit) of 10 to 20, to a depth of 30 inches. The upper on-site soils did not meet the requirements of “select fill” so the “select fill” was expected to need to be off-site soils. An addendum Geotechnical Report evaluated the soils to be excavated from the planned detention pond and concluded the excavated soil could be used as building pad and pavement fill if the upper four feet of silty sand soils was mixed with the lower low plasticity clay soils. The PVR of the prepared building pads was estimated at less than one inch. Foundations are recommended as post-tensioned slab-on-grade and grade beams with a maximum bearing pressure of 1,800 psf. Grade beam minimum widths and depths recommendations were not provided.

**Pavements:** Pavement areas should be excavated 24 inches and the exposed subgrade should be lime stabilized to a depth of 8-inches. Compacted select fill should then be installed to pavement subgrade level. If the thickness of select fill is less than 12 inches, the pavement subgrade should also be lime stabilized. Concrete pavement thickness should be 5 inches for parking areas and 7 inches for drives. Pavement reinforcing and jointing recommendations were not provided.



**C. GEOTECHNICAL RECOMMENDATIONS AND TESTING LAB RESULTS**

10 reports received through 6/05/19: Reports including 2 fill samples, Proctor, Liquid Limit and Plastic Limit tests on the 2 fill soil samples, 3 building subgrade proof-rolling reports and 3 reports of soil density testing. All results were acceptable

Based on our observations on-site, conversations with the superintendent and/or grading contractor, review of test reports and/or conversations with the testing laboratory, we concluded:

Site Preparation

- Per the project superintendent, excavation, back fill and density tests are being monitored and performed daily by the testing laboratory. Building pads are being installed to above existing grade level. The building pad areas are being over excavated in the three to five-foot range to result in final building pad thicknesses of 5 feet or more. Building pad subgrade soils are being proof-rolled before filling begins. Select fill is being used to backfill the excavated building pad areas and is being compacted. Density tests on the select fill are reportedly being performed during the filling operations. Reports to date include:
  - Proof-rolling of subgrades for Clubhouse and Buildings 3, 5, 7, & 10.
  - Density tests for Clubhouse and Buildings 3, 5, 6 and 7

Foundations

- Work not started

Pavements

- Work not started

**D. CONFIRMATION OF AMENITIES, EQUIPMENT, MATERIALS AND FHAA**

During our construction site visits, CODA completes Confirmation of Amenities, Equipment, Materials and Fair Housing Amendments (FHAA) forms to document the construction. The forms are included in Appendix A.

To our knowledge, based on information provided to date, all amenities listed on the amenities schedule are planned to be provided.

**E. QUALITY STATEMENT**

Based on our experience, our observations on-site, and documents provided for our review, in our opinion, the work completed to date is in general compliance with the scope of work shown on the construction documents reviewed and meets accepted standards of good quality workmanship.

**V. FINANCIAL CONSIDERATIONS**

**A. PROVIDED DOCUMENTS**

Contractor Application for Payment	
Application	Listed Amount
Original Contract Sum	\$ 7,550,000.00
Change Orders to Date	\$ 0.00

<b>Contractor Application for Payment</b>	
<b>Application</b>	<b>Listed Amount</b>
Contract sum to Date	\$ 7,550,000.00
Total Completed & Stored to Date	\$ 110,360.00
Retainage	\$ 11,036.00
Total Earned Less Retainage	\$ 99,324.00
Less Previous Certificates for Payment	\$ 0.00
Current Payment Requested	\$ <b>99,324.00</b>
Balance to Finish, Including Retainage	\$ 7,450,676.00

We recommend approval of the Listed Amounts unless otherwise shown.

**Hard Cost Change Orders, Modifications or Reallocations**

<b>Previous Months</b>		
<b>No.</b>	<b>\$ Amount</b>	<b>Description</b>
		None
<b>This Month</b>		
		None
	\$0.00	Total to Date
<b>Future Projected</b>		
<b>No.</b>	<b>\$ Amount</b>	<b>Description</b>
		None discussed

**Contingency**

Original Contingency Amount: \$ 355,000  
 % Contingency Remaining: \$ 355,000 (100%)

**B. LIEN WAIVERS AND RELEASES OF LIEN**

**General Contractor Lien Waiver and Release of Lien**

Waivers for Progress Payments were provided for:

\$99,324.00 – Conditional for the requested draw amount  
 \$NA – Unconditional – No previous Applications.

**C. RECOMMENDATION**

Based on our review of the construction documents, the provided application and our observations on-site of the work in-place and stored materials, we recommend the requested payment be approved:

**Recommended Approved Payment: \$ 99,324.00**

In our opinion, based on the original schedule of values and the project progress to date, there are adequate funds remaining to complete the construction of this project.

## **VI. FOLLOW-UP ITEMS**

### **A. DOCUMENT AND DESIGN REVIEW PHASE**

The following items were identified during the Document and Design Review phase or are typical construction phase requested items and will be confirmed during construction. Several of these items are the result of Value Engineering to reduce costs or Developer agreed upon changes based on follow-up items after a document review by CODA. These items may, or may not, be reflected on the Construction Documents. Items may be removed from the list after they are confirmed.

This list will be provided to the Developer / Contractor / Designer team at the start of construction.

1. **Submittals:** CODA requests that we be added to the distribution list for approved Submittals. Our Clients ask us to confirm that the equipment, appliances and materials being incorporate into the project comply with the project documents and with the Tax Credit Application requirements for this project and the Submittals allow us to check compliance before the items are incorporated in the project.  
**Status:**
2. **TDHCA Tax Credit Requirements:** CODA uses Checklists to confirm compliance with project design and TDHCA Tax Credit Amenity requirements and for materials, equipment and appliances. The checklists we plan to use for determining compliance for this project are attached. We suggest these checklists be provided to the Contractor project management personnel and to the person who orders materials, equipment and appliances for this project.  
**Status:** Typically on-going item during construction.
3. **Testing Lab Reports:** CODA requests that we be added to the distribution list for the Testing Lab Reports. Our Clients ask us to confirm the required testing is being performed and the results generally comply with project requirements. This generally includes soils testing, concrete testing and post-tensioning monitoring. We request the Testing Lab company name and contact person and phone number. We also request the Contractor or Owner inform the Testing Lab it is OK for CODA to receive the reports and we will contact the Testing Lab to add CODA to the Distribution list for reports.  
**Status:** CODA is receiving Testing Lab reports. **Resolved**
4. **Building Pads and Pavement Subgrades:** The Geotechnical Report recommended that the building pads have 30 inches of select fill and the pavement subgrades have 24 inches of select fill. Select fill is to have a Liquid Limit less than 36% and a Plasticity Index (Liquid Limit less Plastic Limit) of 10 to 20. The Geotechnical engineer stated the retention pond excavated soils “could” meet this requirement if the upper 4 feet of sandy soils are mixed with the lower clayey soils. Laboratory testing will need to be performed on mixed retention pond excavated soils or off site soils to confirm meeting the requirements of select fill.  
**Status:** Off-site fill meeting Geotechnical Engineer recommended properties for building pad fill is being used. **Resolved**

5. **Retention Pond Fencing:** A fence is to be installed between the retention pond and the apartments. This is shown on the revised Architectural Site Plan. CODA also suggests the fence include a gate to provide access for future maintenance of the retention pond area.

**Status:**

6. **Fully Accessible Units:** Fully accessible units are to include:
- a. A kitchen work surface beside the stove that is a maximum 34 inches high and has a clear space below 30 inches high and 30 inches wide

**Status:**

- b. Kitchen and master bath sinks have a frontal approach. This requires that the under cabinet space be open or the cabinets have removable fronts with wall and floor finishes extending under the sinks.

**Status:**

7. **Building Code Required Special Inspections:** The Documents list Special Inspections required by the International Building Code. The Developer stated these inspections will be required by a “third party” inspector. Identify the firm to perform these inspections and prepare required reports for the Building Official.

**Status:**

8. **Developer Agreed Upon Tax Credit Items:** The Developer agreed that the following items will be provided to qualify for Tax Credit Amenity Points. If any of the below items are not provided, the project may not pass the post-construction TDHCA inspection and may not qualify for tax credits :

- a. Ceiling fans will be Energy Star (Not originally specified)

**Status:**

- b. Recessed or track LED lighting in apartment kitchens and living room areas.

**Status:**

- c. Energy Star certified insulation products. We expect this will need to be confirmed in writing by a third party.

**Status:**

- d. Communication outlets in apartment dining areas.

**Status:**

- e. Healthy finish materials (paints, stains, adhesives and sealants). Architect must confirm this item in writing at the completion of construction.

**Status:**

- f. All roof decks to include radiant barrier.

**Status:**

**B. CONSTRUCTION PHASE**

The following items need to be resolved:

1. Applications for Payment and Lien Waivers. The documents CODA reviewed before closing included contracts for Nautical Affordable Housing as the non-profit General Contractor and subcontracts for ICON Builders and Ewing Industrial Services. We assumed Nautical Affordable Housing would bill the Owner, ICON Builders would bill Nautical Affordable Housing and Ewing Industrial Services would bill ICON Builders.

For Application 1, both Nautical Affordable Housing and Ewing Industrial Services billed the Owner which is not correct. An Application from ICON Builders was not provided. If all three contractors are involved on this project, billings should be as noted above. If ICON Builders is not involved, Ewing Industrial Services should bill Nautical Affordable Housing. CODA suggests the payment for the first Application be approved but the companies being billed be corrected for future Applications.

2. Mobilization Fee: The Application includes billing for \$46,000 for Mobilization that was not included on the Schedule of Values we reviewed before closing. We assume this charge was approved.

**APPENDIX A  
CONSTRUCTION PROGRESS FORMS**

**CIVIL/SITE DEVELOPMENT PROGRESS  
PROVIDENCE AT TED TROUT  
LUFKIN (HUDSON), TEXAS**

**Report No. : 1.0**

Legend: "blank" = Not Started    P = Partial Completion    X = Substantially Completed  
"dark type" = Current Period Item

Description	Status	Comments
<b>Demolition</b>	<b>X</b>	
3 Residences & outbuildings	<b>X</b>	
Existinbg Pavements	<b>X</b>	
Asbestos & Lead Paint Abatement		Assumed completed
<b>Construction</b>		
Clearing/Erosion Control	<b>X</b>	
Grading	<b>P</b>	
Structural Fill/Building Pads	<b>P</b>	Clubhouse & Bldgs 3, 4, 5, 7 &10
Site Storm Sewer System	<b>P</b>	
Site Sanitary Sewer System	<b>P</b>	
Site Fire/Water Lines		
Site Electric System		
Site Telephone System		
Detention Pond (NW Corner)		
Pavement Compacted Subgrade		
Concrete Pavement - Site		
Concrete Private Drive		
Pavement Clean & Stripe		
Sidewalks		
Finish Grading		
Landscaping		
Landscape Irrigation (deleted)		
Monument Sign @ main entrance		
Site Signage		

**CIVIL/SITE DEVELOPMENT PROGRESS  
PROVIDENCE AT TED TROUT  
LUFKIN (HUDSON), TEXAS**

**Report No. : 1.0**

Legend: "blank" = Not Started    P = Partial Completion    X = Substantially Completed  
**"dark type"** = Current Period Item

Description	Status	Comments
Site Lighting		
Community Building		
Community Room		
Dining Room w/kitchen		
Business Center		
Tenant Mail Center		
2 Picnic Tables & grills		
Gazebo w/sitting area		
Maintenance Room (23'x12') - in Comm Bldg. w/garage door & personnel door to exterior		
Laundry - 3 W & 3 D in Comm Bldg., has exterior access		
Trash Dumpster/Enclosures (2), one at front, one at rear		
Perimeter Fences & Gates		
6' metal fence w/automatic auto gate @ main entrance. Emergency entrance/exit @ west entrance. Pedestrian gate adjacent to auto gate bside Comm Bldg. Sides & rear will have 6' wood privacy fence. An added wood fence will separate detention pond from Apt. Bldgs.		
4 fire hydrants along site driveway		











**BUILDING CONSTRUCTION PROGRESS  
PROVIDENCE AT TED TROUT  
LUFKIN (HUDSON), TEXAS**

**Report No. : 1.0**

Legend: "blank" = Not Started    P = Partial Completion    X = Substantially Completed

**"dark type"** = Current Period Item

Description	Buildings				Remarks
	4-Plex 16	4-Plex 17	4-Plex 18	4-Plex 19	
Foundation Pads					
Building Underground Utilities					
Foundation Forms & Reinforcing					
Foundation/Slab Concrete					
Floor/Wall Framing/Sheathing					
Roof Framing/Sheathing					
Draftstops/Fire Blocking					
Roofing					
Gutters & Downspouts					
Windows & Exterior Doors					
Brick (30%)					
Cementitious Siding in alternating vertical sections					
Stairs					
Balcony/Patio Railings - NA					
Porch @ each Apt Entrance					
Exterior Paint					
Electrical Rough-In					
Plumbing Rough-In					
Fire Sprinkler Rough In					
HVAC Rough-In & Equip.					
Tubs Set					
Wall Insulation					
Attic Insulation					
Drywall					
Interior Trim and Doors					
Interior Paint-textured & painted drywall					
Cabinets and Countertops					
Tub Surround					
Plumbing Fixtures					
Water Heaters					

**BUILDING CONSTRUCTION PROGRESS  
PROVIDENCE AT TED TROUT  
LUFKIN (HUDSON), TEXAS**

**Report No. : 1.0**

Legend: "blank" = Not Started    P = Partial Completion    X = Substantially Completed

**"dark type"** = Current Period Item

Description	Buildings				Remarks
	4-Plex 16	4-Plex 17	4-Plex 18	4-Plex 19	
Plumbing Finish					
Electrical Trim & Lights					
HVAC Trim, Thermostat					
Window Treatments					
Appliances					
Final Cleaning					
Building & Apt. Signs					
Final Punch List					
Certificate of Occupancy					
Tenant Move-In					

**FAIR HOUSING AMENDMENTS ACT  
PROVIDENCE AT TED TROUT  
LUFKIN (HUDSON), TEXAS**

Report No. : 1.0

"dark type" = Current Period Item

FAIR HOUSING AMENDMENTS ACT													
Unit Type	BR/BA	Apt No.	Electrical/Thermostat Mounting Heights (Inches Above Finished Floor Required/Measured)								Wood Blocking Provided (Yes/No)		
			Receptacles		Receptacles @ countertops		Switches		Thermostats		Apt No.	Tub	Toilet
			(min)		(max)		(max)		(max)				
A1	1/1		15"		46"		48"		48"				
B1	2/2		15"		46"		48"		48"				

Unit Type	BR/BA	Apt No.	30" x 48" Clear Floor Space Provided							Accessible Interior Doors $\geq$ 34" Wide		
			Sink	D/W	Refrigerator	Stove	Commode	Bath Sink	Bath Tub			
A1	1/1											
B1	2/2											

Accessible parking serving all ground floor entrances:

Accessible route to all first floor entrance doors:

Accessible entrance doors:

Width:

Threshold height:

Unit Type	Fully Accessible	Date Confirmed	Unit Type	Sensory Impaired	Date Confirmed
1 BR	Bldg 3-NW Corner		1 BR	Bldg 15 - SE Corner	
	Bldg 7-NW Corner		2 BR	Bldg 13 - SE Corner	
	Bldg 16-SW Corner				
2 BR	Bldg 12 - SE Corner				
Totals	4		Totals	2	

**CONFIRMATION OF EQUIPMENT  
PROVIDENCE AT TED TROUT  
LUFKIN (HUDSON), TEXAS**

**Report No. : 1.0**

**"dark type" = Current Period Item**

CONFIRMATION OF EQUIPMENT													
Unit Type	BR/BATH	Unit No.	HVAC (Avg Tons)		Refrigerator (Cubic Feet)		Water Heaters (Gallons)		GFCI (Y/N)		Arc-Fault	Main Electrical Breaker (amps)	
			Design	Checked	Design	Verified	Design	Verified	Bath	Kit	Bedrooms	Design	Verified
A1	1/1		1.5		18		38					100	
B1	2/2		2.0		18		45					100	
Community Bldg							50						



**CONFIRMATION OF MATERIALS  
PROVIDENCE AT TED TROUT  
LUFKIN (HUDSON), TEXAS**

Report No. : 1.0

"dark type" = Current Period Item

<b>CONFIRMATION OF MATERIALS</b>			
<b>ITEM</b>	<b>SPECIFIED</b>	<b>BUILDING</b>	<b>HOW CONFIRMED</b>
Window Frame	Vinyl framed, single hung, w/screens, Energy Star		
Window Glass	U=0.30 or less; SHGC = 0.25 or less, Energy Star		
Entrance Doors	Hollow metal insulated w/metal frames		
Interior Doors	Hardboard w/wood frame		
Door Hardware	All lever type		
Patio/Balcony Doors	NA		
Roof Shingle	Composition shingles. Shingles to be installed w/6 nails per shingle over 30 lb underlayment		
Shingle Warranty	30 year		
Roof Vents @ Ridge	Ridge vents & low profile vents		
Soffit Venting	2" continuous strip vents		
Cabinets	KCM approved, Mastercraft, shaker panel doors. White finish on uppers and wood stained finish on lowers		
Countertops	Plastic laminate		
Appliances - Tax Credit Units	Mfg. GE - Black		
· Refrigerators	18 CF, side-by-side, ice maker, Energy Star		
· Range	Electric, Slide-in, (not self clean oven per Developer)		
· MicrowaveHood Combo.	Vent to exterior, 1,000 watt, 1.6 CF, turntable		
· Dishwasher	EnergyStar		
· Disposal	1/3 HP		
· Washer	Connections		
· Dryer	Connections		
Kitchen Sink	Double bowl stainless steel, 1.5 gpm lever handles		
Bath Sink	Vitreous china, self rimming		
Toilet	Not specified, 1.28 gpf		

**CONFIRMATION OF MATERIALS  
PROVIDENCE AT TED TROUT  
LUFKIN (HUDSON), TEXAS**

Report No. : 1.0

"dark type" = Current Period Item

CONFIRMATION OF MATERIALS			
ITEM	SPECIFIED	BUILDING	HOW CONFIRMED
Tub/Shower	Fiberglass showers in master bathss and fiberglass tubs in 2nd baths		
Floor Coverings	Utility, linen, bath = ceramic tile w/option of LVT All other - LVT (luxury vinyl tile)		
Ceiling Fans	EnergyStar, w/light w/separate switch		
Window Treatments	2" wood look horizontal blinds		
Light Fixtures	LR Ceiling Fan = compact fluorescent. Kitchen & LR = LED strip or recessed. All other apt = LED		
Insulation, Ext. Wall	R-13, unfaced batt		
Party Walls Between Units	R-11, unfaced batt		
Roof	R-38, blown in		
Electrical Interior Wiring	not specified		
Plumbing Water Lines	CPVC		
Sanitary Lines	PVC		
Smoke Detectors	Hard Wired w/battery back up		
Fire Alarms	NFPA 72		
Fire Extinguishers	not specified		
Fire Sprinklers	NFPA 13 R		
HVAC - Common Bldg	3, 15 SEER, 8.2 HSPF, heat pump split systems		
HVAC - Maint Room & Laundry	15 SEER split systems		
Hose Bibbs	2 on each building 1st floor exterior		
GFI Outlets	Kitchens & baths		
Thermostats	not specified		

**TAX CREDIT APPLICATION REQUIREMENTS - CONSTRUCTION  
PROVIDENCE AT TED TROUT DRIVE, LUFKIN (HUDSON), TEXAS  
TDHCA Application 17736**

**Bold Type** = verified during construction

Item	How Verified Design	How Verified Construction	Comply Yes/No	Points
<b>Site Requirements</b>				
If located in 100-year flood plain	FEMA FIRM Flood Map		NA	
<ul style="list-style-type: none"> <li>Floor slabs <math>\geq</math> 1.0 foot above 100 year flood level</li> </ul>				
<ul style="list-style-type: none"> <li>Pavements <math>\leq</math> 6" below 100 year flood level</li> </ul>				
<ul style="list-style-type: none"> <li>Rehabilitation (excluding Reconstruction) projects with HUD or USDA existing funding are exempt from above requirements</li> </ul>				
<b>No Undesirable Site Features: Including:</b> See Design Phase Checklist or 2017 TDHCA regulations for description	Site Visit and Phase I Environmental Site Assessment	Site Visit and Phase I Environmental Site Assessment	Yes	
<b>No Undesirable Neighborhood Characteristics:</b> See Design Phase Checklist or 2017 TDHCA regulations for description	Site Visit and Phase I Environmental Site Assessment.	Site Visit and Phase I Environmental Site Assessment	Yes	
<b>Ineligible Developments:</b> See Design Phase Checklist or 2017 TDHCA regulations for description	Architectural Drawings		Yes	
<b>Development Size Limitations (Units)</b>				
Minimum – 16 units	76 Units Planned		Yes	
Rural areas – New Construction or Adaptive Reuse – Max. 80 units.	76 units planned		Yes	
<b>Rehabilitation Costs</b>				
Housing Tax Credit Rehabilitations	NA New construction			
Tax Exempt Bonds Rehabilitations	NA New construction			
<b>Accessibility Requirements</b>				
Fair Housing Amendments Act	Architectural Drawings		Yes	
Texas Accessibility Standards (TAS)	Architectural Drawings		Yes	
American's with Disabilities Act	Architectural Drawings		Yes	

Item	How Verified Design	How Verified Construction	Comply Yes/No	Points
Rehabilitation Act of 1973 – Section 504	Architectural Drawings		Yes	
5% Fully accessible units	>5%			
2% Modified for sensory impaired	>2%			
<b>Mandatory Development Unit Amenities</b>				
A. TV/Internet/Phone – RG – 6/U Coax or better and CAT3 phone cable or better, wired to each bedroom, dining room and living room.	Electrical Unit Plans and Developer confirmed in Dining Areas		Yes	
B. Laundry Connections	Architectural Unit Plans		Yes	
C. Exhaust/vent fans (vented to outside) in bathrooms	Mechanical Unit Plans		Yes	
D. Screens on all operable windows	Specifications		Yes	
E1. Disposal	Appliance List		Yes	
E2. Energy Star rated dishwasher	Appliance List		Yes	
E. Energy Star rated refrigerator	Appliance List		Yes	
G. Oven/Range	Architectural Unit Plans		Yes	
H. Blinds or window coverings on all windows	Specifications		Yes	
I. At least one Energy Star rated ceiling fan in unit	Developer confirmed Ceiling Fan in living room will be Energy Star		Yes	
J. Energy Star rated lighting fixtures (all). (May include compact fluorescent or LED bulbs)	Lighting Fixture Schedule		Yes	
K. Plumbing fixtures must meet standards of Texas Health and Safety Code, Chapter 372 (Requirements below)				
• Toilets –dual flush @ 1 full & 2 reduced flushes-ave. $\leq$ 1.28 gpf or single flush @ $\leq$ 1.28 gpf. Ave.	Plumbing Fixture Schedule		Yes	
• Faucets $\leq$ 2.2 gpm	Plumbing Fixture Schedule		Yes	

Item	How Verified Design	How Verified Construction	Comply Yes/No	Points
• Shower head $\leq$ 2.5 gpm	Plumbing Fixture Schedule		Yes	
L. All units must have central HVAC.	Mechanical Unit Plans		Yes	
M. Adequate parking per local code	Notes on Drawings. Variance granted for Seniors.		Yes	
<b>COMMON AMENITIES; Minimum required: 16 - 40 units = 4 points, 41-76 = 7, 77- 99 = 10, 100-149 = 14, 150-199 = 18, 200+ = 22 points.</b>	76 Units requires 7 points			
(i) Full perimeter fencing – 2 points	Note – Architectural site Plan		Yes	2
(ii) Controlled gate access – 2 points	Note – Architectural site Plan		Yes	2
(iii) Gazebo or covered pavilion w/sitting area – 1 point	Note – Architectural site Plan		Yes	1
(iv) Accessible walking/jogging path separate than normal sidewalk system – 1 point				
(v) Community laundry room with one washer/dryer set per 40 units (2 sets required) – 3 points	Clubhouse Floor Plan – 3 washers & 3 dryers		yes	3
(vi) Barbeque grill & picnic table –one set per 50 units (2 sets required) – 1 point	Note – Architectural site Plan		Yes	1
(vii) Swimming pool – 3 points				
(viii) Splash pad/water feature play area – 1 point				
(ix) Furnished fitness center (one piece commercial grade equipment per 40 units and 2 pieces of equipment minimum and maximum 5 pieces required) –(2 pieces required) - 2 points				

Item	How Verified Design	How Verified Construction	Comply Yes/No	Points
(x) Business center or computer learning center (1 computer/40 units & 5 computers maximum required), 1 printer and 1 scanner which may be integrated with printer) - 2 computers required – 2 points	Note – Architectural site Plan		Yes	2
(xi) Furnished Community Room – 2 points	Note – Architectural site Plan		Yes	2
(xii) Library with accessible sitting area(must be separate room) – 1 point				
(xiii) Enclosed common sun porch or covered common porch/patio – 1 point				
(xiv) Service Coordinator Office (in addition to Leasing Office) – 1 point				
(xv) Regularly staffed Service Provider Office in addition to leasing office – 3 points.				
(xvi) Activity Room(stocked with supplies for arts & crafts) – 2 points				
(xvii) Health Screening Room – 1 point				
(xviii) Secured Building Entry (only if all unit entries are accessed from building interior) – 1 point				
(xix) Horseshoe pit, putting green, shuffleboard court, pool table or video game consoles w/games & dedicated location – 1 point				
(xx) Community Dining Room with full or warming kitchen and adequate tables & chairs (to seat all tenants per TDHCA previous ruling) – 3 points	Dining Room provided but not large enough to seat all tenants in shifts for a meal			

Item	How Verified Design	How Verified Construction	Comply Yes/No	Points
(xxi) One Children's Playscape or one tot lot with shade canopy or awning – 2 points (cannot also select xxii)				
(xxii) Two Children's Playscapes or two tot lots or one each with shade canopy or awning (cannot also select xxi) – 4 points				
(xxiii) Sports Court (tennis, basketball or volleyball) – 2 points				
(xxiv) Furnished and staffed children's activity center with furnishings & equipment – must include after school & school vacations – 3 points				
(xxv) Community Theater Room with ≥ 52" screen, surround sound, DVD player & theatre seating – 3 points				
(xxvi) Dog Park – fully fenced <b>OR</b> dog wash station w/plumbing for hot and cold water connections and tub drainage – 1 point				
(xxvii) Common area Wi-Fi – 1 point				
(xxviii) 24 hour, 7 day monitored camera/security system in each building – 3 points				
(xxix) Bicycle parking in reasonable proximity to each building that allows bicycles to be secured with locks and reasonable number of spaces relative to facility size.(1 point)				
(xxx) Shaded rooftop or structural viewing deck of at least 500 SF. (2 points)				
(xxxii) Porte-cochere (1 point)				
(xxxii) <b>Green Building Features</b> (0 Minimum and Maximum 4 green points )				

Item	How Verified Design	How Verified Construction	Comply Yes/No	Points
I. Limited Green Amenities (6 of 22 items listed below must be provided) - 2 points			Yes	2
(a) Recycled rainwater or local "grey water" irrigation water.				
(b) Newly installed native landscaping & trees that reduce irrigation requirements & appropriate to site soil & microclimate and allows shading in summer & heat gain in winter	Note on Architectural Site Plan		Included	
(c) EPA WaterSense water conserving fixtures	Plumbing Fixture Notes		Included	
• Toilets $\leq$ 1.28 gpf	Plumbing Fixture Schedule			
• Bath faucets $\leq$ 1.5 gpm	Plumbing Fixture Schedule			
• Shower heads $\leq$ 2.0 gpm	Plumbing Fixture Schedule			
• Kitchen faucets – NA				
(d) EnergyStar hot water heaters or system				
(e) Individually metered or sub-metered utility meters for water and electricity. Allowed for Rehabilitation only if sub-meters do not already exist.	No water meters			
(f) Healthy finish materials (paints, stains, adhesives, sealants) per Green Seal 11 or other applicable Green Seal Standards	Note on Architectural Site Plan		Included	
(g) Daylight sensor, motion sensor or timers on exterior lighting (excludes lights required for 24 hour operation or security)	Note on Architectural Site Plan		Included	
(h) Recycle service throughout compliance period				



Item	How Verified Design	How Verified Construction	Comply Yes/No	Points
(i) Construction waste Management system by contractor that meets LEED standards.				
(j) Rehabilitation – clothes dryers vented to outside.				
(k) For developments $\leq 41$ units, $> 25\%$ by cost FSC certified salvaged wood products.				
(l) Locate all water fixtures within 20 feet of hot water heater.				
(m) Drip irrigate at non-turf areas.	No irrigation system			
(n) Radiant barrier decking for new construction or documented “cool” roofing materials.	Note on Architectural Site Plan		Included	
(o) Permanent shading devices for windows with solar orientation (does not include solar screens but may include permanent awnings).				
(p) EnergyStar certified insulation products. (all insulated areas for Rehabilitation Developments)	Note on Architectural Site Plan		Included	
(q) Full cavity spray foam insulation in walls.				
(r) EnergyStar rated windows.	Note on Architectural Site Plan & Specifications		Included	
(s) FloorScore certified vinyl flooring or Green Label certified carpet or resilient flooring.				
(t) Landscape sprinkler system with rain sensors.	No irrigation system			
(u) NAUF (No Added Urea Formaldehyde) cabinets				
(v) Solar screens on all windows (north facing windows may have insect screens only)				

Item	How Verified Design	How Verified Construction	Comply Yes/No	Points
II. Enterprise Green Community Certification – 4 points				
III. LEED Certified – 4 points				
IV. ICC 700 National Green Building Standard Certified – 4 points				
Common Amenities, Total Qualified Points	7 Points Required		Total Pts. Avail.	15 w/ 2 Green
<b>Unit Amenities – 7 Points Required (Direct Loan applications only require 4 points)</b>				
A. Minimum Unit Sizes				NA
(i) Efficiency – 500 SF				
(ii) 1 BR – 600 SF				
(iii) 2 BR – 800 SF				
(iv) 3 BR – 1,000 SF				
(v) 4 BR – 1,200 SF				
B. Development Features – Must be provided in all units to apply.				
Rehabilitation qualifies for 3 points credit				
(i.) Covered entries – 0.5 point	Entry Covered Porches		Yes	0.5
(ii.) 9' ceilings – living room & all bedrooms – 0.5 point	Wall Sections		Yes	0.5
(iii.) Microwave oven – 0.5 point	Specifications Schedule		Yes	0.5
(iv.) Self clean/continuous clean oven – 0.5 point	Deleted per Developer			
(v.) Refrigerator with icemaker – 0.5 point	Specifications		Yes	0.5
(vi.) Storage room or closet, app. 9 SF or greater, (not bedroom, entry or linen closet – may be on-site or outside unit) – 0.5 point				
(vii.) Energy Star washer & dryer in unit (front loading in accessible units) – 2 points				
(viii.) Covered patios or balconies – 0.5 point				
(ix.) Covered parking – 1 space per unit -1.5 points				

Item	How Verified Design	How Verified Construction	Comply Yes/No	Points
(x.) $\geq 14$ SEER HVAC <b>OR</b> radiant barrier in attic for Rehabilitation – 1.5 points	15 SEER Mechanical Schedules		Yes	1.5
(xi.) High-speed internet service (wired or wireless) in all units – 1.0 points				
(xii.) Recessed into wall computer nook – 0.5 points				
(xiii.) Recessed into the wall shelving unit - 0.5 points				
(xiv.) Recessed or track LED lighting in kitchen and living areas – 1 point	Confirmed by Developer		Yes	1.0
(xv) 30-year shingles or metal roof (excludes TPO roofing) – 0.5 point	Specifications		Yes	0.5
(xvi) $\geq 30\%$ stucco or masonry exterior (includes stone, cultured stone & brick & excludes cementitious and metal siding) on all building exteriors. Calculations may exclude glass areas. – 2 points	Building Elevations		Yes	2.0
(xvii) Breakfast Bar with seating – 0.5 points				
(xviii) Walk-in closet in master bedroom – 0.5 points	Architectural Unit Plans		Yes	0.5
Unit Amenities, Total Qualified Points	7 points required		Total Pts. Avail.	7.5

**APPENDIX B  
PHOTOGRAPHS**



**Photograph 1:** Site work at entrance.



**Photograph 2:** Site & pad work on Clubhouse.



**Photograph 3:** Site work towards neighboring house.



**Photograph 4:** Site work facing Building 1 pad.



**Photograph 5:** Site work towards rear of property.

**APPENDIX C  
PROVIDED DOCUMENTS**



# AIA Document G702™ – 1992

## Application and Certificate for Payment

<b>TO OWNER:</b> Providence Ted Trout Dr., LLP 9 Greenway Plaza, Ste. 1250 Houston, TX 77046	<b>PROJECT:</b> Providence at Ted Trout	<b>APPLICATION NO:</b> 001	<b>Distribution to:</b> OWNER: <input type="checkbox"/>
<b>FROM</b> Nautical Affordable Housing, Inc.	<b>VIA</b> JHP Architecture/Urban Design	<b>PERIOD TO:</b> May 25, 2019	ARCHITECT: <input type="checkbox"/>
<b>CONTRACTOR:</b> 1885 E Farragut Orange, TX 77630	<b>ARCHITECT:</b> 8340 Meadow Road, Suite 150 Dallas, Texas 75231-3766	<b>CONTRACT FOR:</b> General Construction	CONTRACTOR: <input type="checkbox"/>
		<b>CONTRACT DATE:</b> April 12, 2019	FIELD: <input type="checkbox"/>
		<b>PROJECT NOS:</b> pa / 1808 / tedtrout	OTHER: <input type="checkbox"/>

### CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703, is attached.

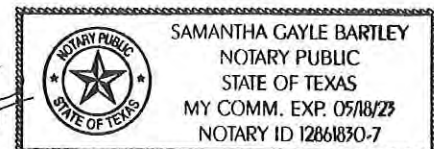
1. ORIGINAL CONTRACT SUM .....	\$7,550,000.00
2. NET CHANGE BY CHANGE ORDERS .....	\$0.00
3. CONTRACT SUM TO DATE (Line 1 ± 2) .....	\$7,550,000.00
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703) .....	\$110,360.00
5. RETAINAGE:	
a. <u>10.00</u> % of Completed Work (Column D + E on G703)	\$11,036.00
b. <u>0</u> % of Stored Material (Column F on G703)	\$0.00
Total Retainage (Lines 5a + 5b or Total in Column I of G703) .....	\$11,036.00
6. TOTAL EARNED LESS RETAINAGE .....	\$99,324.00
(Line 4 Less Line 5 Total)	
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT .....	\$0.00
(Line 6 from prior Certificate)	
8. CURRENT PAYMENT DUE .....	\$99,324.00
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6)	\$7,450,676.00

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	\$0.00	\$0.00
Total approved this Month	\$0.00	\$0.00
<b>TOTALS</b>	<b>\$0.00</b>	<b>\$0.00</b>
NET CHANGES by Change Order		\$0.00

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

**CONTRACTOR:** Signed by: \_\_\_\_\_ Date: 5/30/2019  
By: Don Ball

State of Texas  
County of: Jefferson  
Subscribed and sworn to before me this 30th day of May, 2019  
Notary Public: Samantha Gayle Bartley  
My Commission expires: 5/18/2023



### ARCHITECT'S CERTIFICATE FOR PAYMENT

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

AMOUNT CERTIFIED .....

\$99,324.00

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

**ARCHITECT:** Signed by: \_\_\_\_\_ Date: 5/31/2019  
By: Samantha Gayle Bartley, AIA

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


**AIA Document G703™ – 1992**
**Continuation Sheet**

AIA Document, G702™-1992, Application and Certification for Payment, or G736™-2009, Project Application and Project Certificate for Payment, Construction Manager as Adviser Edition, containing Contractor's signed certification is attached.  
 In tabulations below, amounts are in US dollars.  
 Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO: 001  
 APPLICATION DATE: May 25, 2019  
 PERIOD TO: May 25, 2019  
 ARCHITECT'S PROJECT NO: pa1808-tedtrout

A ITEM NO.	B DESCRIPTION OF WORK	C SCHEDULED VALUE	D WORK COMPLETED		F MATERIALS PRESENTLY STORED (NOT IN D OR E)	G TOTAL COMPLETED AND STORED TO DATE (D + E + F)		H BALANCE TO FINISH (C - G)	I RETAINAGE (IF VARIABLE RATE)
			FROM PREVIOUS APPLICATION (D + E)	THIS PERIOD		% (G ÷ C)			
017413	Continuous Cleanup	15,000.00	0.00	0.00	0.00	0.00	0.00%	15,000.00	0.00
017414	Final Cleanup	16,000.00	0.00	0.00	0.00	0.00	0.00%	16,000.00	0.00
017419	Dumpster	20,000.00	0.00	0.00	0.00	0.00	0.00%	20,000.00	0.00
021011	Mobilization	46,000.00	0.00	46,000.00	0.00	46,000.00	100.00%	0.00	4,600.00
021074	SWPPP	4,180.00	0.00	0.00	0.00	0.00	0.00%	4,180.00	0.00
021075	Earthwork-Rough/Fill	346,570.00	0.00	23,000.00	0.00	23,000.00	6.64%	323,570.00	2,300.00
022000	Site Utilities	27,000.00	0.00	0.00	0.00	0.00	0.00%	27,000.00	0.00
022010	Water Supply and Related	105,708.00	0.00	0.00	0.00	0.00	0.00%	105,708.00	0.00
022020	Sanitary Sewer	121,988.00	0.00	0.00	0.00	0.00	0.00%	121,988.00	0.00
022070	Storm Sewer and Drainage	117,951.00	0.00	0.00	0.00	0.00	0.00%	117,951.00	0.00
023020	Pavement	353,969.00	0.00	0.00	0.00	0.00	0.00%	353,969.00	0.00
023050	Misc (Stripping, Signs, Stops)	9,308.00	0.00	0.00	0.00	0.00	0.00%	9,308.00	0.00
024015	Hardscaping	116,046.00	0.00	0.00	0.00	0.00	0.00%	116,046.00	0.00
024020	Fences, Walls, Etc	98,600.00	0.00	0.00	0.00	0.00	0.00%	98,600.00	0.00
025030	Seeding, Sodding, Spigging	45,000.00	0.00	0.00	0.00	0.00	0.00%	45,000.00	0.00
030010	Concrete in Place	746,202.00	0.00	0.00	0.00	0.00	0.00%	746,202.00	0.00
040010	Masonry Cost	273,900.00	0.00	0.00	0.00	0.00	0.00%	273,900.00	0.00
061022	Framing Trusses	133,500.00	0.00	0.00	0.00	0.00	0.00%	133,500.00	0.00
061023	Framing Labor &	714,743.00	0.00	0.00	0.00	0.00	0.00%	714,743.00	0.00

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User Notes:

(3B9ADA78)

A ITEM NO.	B DESCRIPTION OF WORK	C SCHEDULED VALUE	D WORK COMPLETED		F MATERIALS PRESENTLY STORED (NOT IN D OR E)	G TOTAL COMPLETED AND STORED TO DATE (D + E + F)		H BALANCE TO FINISH (C - G)	I RETAINAGE (IF VARIABLE RATE)
			FROM PREVIOUS APPLICATION (D + E)	THIS PERIOD		% (G ÷ C)			
	Materials								
061024	Siding	92,120.00	0.00	0.00	0.00	0.00	0.00%	92,120.00	0.00
062003	Doors Int & Ext	113,918.00	0.00	0.00	0.00	0.00	0.00%	113,918.00	0.00
062012	Finish Carpentry -Trim	42,650.00	0.00	0.00	0.00	0.00	0.00%	42,650.00	0.00
062013	Finish Carpentry -Labor	65,400.00	0.00	0.00	0.00	0.00	0.00%	65,400.00	0.00
072010	Insulation	77,500.00	0.00	0.00	0.00	0.00	0.00%	77,500.00	0.00
073010	Roofing-Materials & Labor	182,550.00	0.00	0.00	0.00	0.00	0.00%	182,550.00	0.00
080040	Window-Materials	93,274.00	0.00	0.00	0.00	0.00	0.00%	93,274.00	0.00
092010	Sheetrock, t, f tx materials	393,800.00	0.00	0.00	0.00	0.00	0.00%	393,800.00	0.00
096010	Vinyl Flooring-Labor & M	133,031.00	0.00	0.00	0.00	0.00	0.00%	133,031.00	0.00
097010	Paint & Caulk	197,545.00	0.00	0.00	0.00	0.00	0.00%	197,545.00	0.00
100111	Fire Alarm/Security	81,735.00	0.00	0.00	0.00	0.00	0.00%	81,735.00	0.00
100112	Sprinkler System	193,900.00	0.00	0.00	0.00	0.00	0.00%	193,900.00	0.00
100116	Mailboxes	9,970.00	0.00	0.00	0.00	0.00	0.00%	9,970.00	0.00
112010	Cabinets & Materials and L	136,770.00	0.00	0.00	0.00	0.00	0.00%	136,770.00	0.00
112020	Cabinets-Countertops	32,040.00	0.00	0.00	0.00	0.00	0.00%	32,040.00	0.00
113010	Cost of Appliances	125,047.00	0.00	0.00	0.00	0.00	0.00%	125,047.00	0.00
151010	Plumbing-Materials & L	490,833.00	0.00	0.00	0.00	0.00	0.00%	490,833.00	0.00
151900	Tub Surround	43,649.00	0.00	0.00	0.00	0.00	0.00%	43,649.00	0.00
152010	HVAC-Materials & L	382,000.00	0.00	0.00	0.00	0.00	0.00%	382,000.00	0.00
160010	Electrical-Labor & M	456,000.00	0.00	0.00	0.00	0.00	0.00%	456,000.00	0.00
160011	Electrical-Lighting M	78,296.00	0.00	0.00	0.00	0.00	0.00%	78,296.00	0.00
911011	General Requirement	503,900.00	0.00	32,000.00	0.00	32,000.00	6.35%	471,900.00	3,200.00
917010	Builders Profit	312,407.00	0.00	9,360.00	0.00	9,360.00	3.00%	303,047.00	936.00
		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%	0.00	0.00

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User Notes:

(3B9ADA78)

A	B	C	D	E	F	G		H	I
ITEM NO.	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED		MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE (D + E + F)	% (G ÷ C)	BALANCE TO FINISH (C - G)	RETAINAGE (IF VARIABLE RATE)
			FROM PREVIOUS APPLICATION (D + E)	THIS PERIOD					
		0.00	0.00	0.00	0.00	0.00	0.00%	0.00	0.00
	<b>GRAND TOTAL</b>	<b>\$7,550,000.00</b>	<b>\$0.00</b>	<b>\$110,360.00</b>	<b>\$0.00</b>	<b>\$110,360.00</b>	<b>1.46%</b>	<b>\$7,439,640.00</b>	<b>\$11,036.00</b>



G702 & G703 Pay Application

Reference: Providence at Ted Trout Dr.

Subject: Recommendation of Approval of Ewing Industrial Services, LLC Pay Application #1 from April 15, 2019 to May 1, 2019.

This letter is to inform you that Ewing Industrial Services, LLC presented Pay Application # 1. It was reviewed in detail, signed by the Architect and Contractor. I have also reviewed and approved the attached Pay application amounts and percentages.

Approval of the attached Pay Application # 1 in the amount of \$99,324.00 is recommended.

Respectfully,

A handwritten signature in black ink, appearing to read 'Timothy W. Lehnder', written over a horizontal line.

Timothy W. Lehnder  
Assistant Supt. – Construction Manager

Attached: Ewing Industrial Services, LLC Pay Application #1, April 15, 2019 to May 1, 2019.

Contract Signed	Y
Insurance	
Certified Payroll	
Section 3	
Supplies Paid	

Icon Builders, LLC

Sub Contractor - Draw Submission

Contractor: Ewing Industrial Services, LLC  
 Project: Providence at Ted Trout  
 Job Code: pa1808-tedtrout  
 Retainage (Completed Work): 10%  
 Retainage (Store Material): 10%

Application Number: 1  
 Application Date: May-25-2019  
 Period To: May-25-2019  
 Contract #: pa1808  
 Invoice #: Draw 1  
 Vendor Invoice #: Draw 1

A Category	B Description of Item	C Estimate	D Work Completed		F Materials Presently Stored (Not in D or E)	G Total Completed and Stored to Date (D+E+F)	H % (G/C)	I Balance to Finish (C-G)
			From Previous Application (D+E)	This Period				
017413	Continuous Cleanup	\$ 15,000.00				\$0.00	0.00	\$15,000.00
017414	Final Cleanup	\$ 16,000.00				\$0.00	0.00	\$16,000.00
017419	Dumpster	\$ 20,000.00				\$0.00	0.00	\$20,000.00
021011	Mobilization	\$ 46,000.00		\$46,000.00		\$46,000.00	100.00	\$0.00
021074	SWPPP	\$ 4,180.00				\$0.00	0.00	\$4,180.00
021075	Earthwork-Rough/Fill	\$ 346,570.00		\$23,000.00		\$23,000.00	6.64	\$323,570.00
022000	Site Utilities	\$ 27,000.00				\$0.00	0.00	\$27,000.00
022010	Water supply & Related Items	\$ 105,708.00				\$0.00	0.00	\$105,708.00
022020	Sanitary Sewer & Related Items	\$ 121,988.00				\$0.00	0.00	\$121,988.00
022070	Storm Sewer & Drainage	\$ 117,951.00				\$0.00	0.00	\$117,951.00
023020	Pavement for Vehicular Area	\$ 353,969.00				\$0.00	0.00	\$353,969.00
023050	Misc.(Stripping, Signs, Stops)	\$ 9,308.00				\$0.00	0.00	\$9,308.00
024015	Hardscaping	\$ 116,046.00				\$0.00	0.00	\$116,046.00
024020	Fences, Walls, Etc.	\$ 98,600.00				\$0.00	0.00	\$98,600.00
025030	Seeding, Sodding, Sprigging	\$ 45,000.00				\$0.00	0.00	\$45,000.00
030010	Concrete in Place Labor & Mate	\$ 746,202.00				\$0.00	0.00	\$746,202.00
040010	Masonry Cost	\$ 273,900.00				\$0.00	0.00	\$273,900.00
061022	Framing-Trusses	\$ 133,500.00				\$0.00	0.00	\$133,500.00
061023	Framing Labor & Materials	\$ 714,743.00				\$0.00	0.00	\$714,743.00
061024	siding	\$ 92,120.00				\$0.00	0.00	\$92,120.00
062003	Doors Int. and Ext	\$ 113,918.00				\$0.00	0.00	\$113,918.00
062012	Finish Carpentry-Trim,Lockout	\$ 42,650.00				\$0.00	0.00	\$42,650.00
062013	Finish carpentry - labor	\$ 65,400.00				\$0.00	0.00	\$65,400.00
072010	Insulation	\$ 77,500.00				\$0.00	0.00	\$77,500.00
073010	Roofing-Materials & Labor	\$ 182,550.00				\$0.00	0.00	\$182,550.00
080040	Windows-Materials	\$ 93,274.00				\$0.00	0.00	\$93,274.00
092010	Sheetrock, t, f, tx materials	\$ 393,800.00				\$0.00	0.00	\$393,800.00
096010	Vinyl Flooring - Labor & Mater	\$ 133,031.00				\$0.00	0.00	\$133,031.00
097010	Paint & Caulk	\$ 197,545.00				\$0.00	0.00	\$197,545.00
100111	Fire Alarm/Security	\$ 81,735.00				\$0.00	0.00	\$81,735.00
100112	Sprinkler System	\$ 193,900.00				\$0.00	0.00	\$193,900.00
100116	Mailboxes	\$ 9,970.00				\$0.00	0.00	\$9,970.00
112010	Cabinets Materials and Labor	\$ 136,770.00				\$0.00	0.00	\$136,770.00
112020	Cabinets-Countertops	\$ 32,040.00				\$0.00	0.00	\$32,040.00
113010	Cost of Appliances	\$ 125,047.00				\$0.00	0.00	\$125,047.00
151010	Plumbing-Materials & Labor	\$ 490,833.00				\$0.00	0.00	\$490,833.00
151900	Tub Surround	\$ 43,649.00				\$0.00	0.00	\$43,649.00
152010	HVAC-Materials & Labor	\$ 382,000.00				\$0.00	0.00	\$382,000.00
160010	Electrical-Labor & Materials	\$ 456,000.00				\$0.00	0.00	\$456,000.00
160011	Electrical-Lighting Materials	\$ 78,296.00				\$0.00	0.00	\$78,296.00
911011	General Requirement	\$ 503,900.00		\$32,000.00		\$32,000.00	6.35	\$471,900.00
917010	Builders profit	\$ 312,407.00		\$9,360.00		\$9,360.00	3.00	\$303,047.00
	<b>Total</b>	<b>\$ 7,550,000.00</b>	<b>\$ -</b>	<b>\$ 110,360.00</b>	<b>\$ -</b>	<b>\$ 110,360.00</b>	<b>1.46%</b>	<b>\$ 7,439,640.00</b>
			<b>Retainage</b>	\$ 11,036.00	\$ -			
			<b>Total</b>	\$ 99,324.00	\$ -			

### APPLICATION AND CERTIFICATION FOR PAYMENT

AIA DOCUMENT G702

PAGE 1 OF 2 PAGES

**TO OWNER:**  
 Providence Ted Trout Dr., LLP.  
 9 Greenway Plaza, Ste. 1250  
 Houston, Texas 77046

**GENERAL CONTRACTOR**  
 ICON BUILDERS, LLC

**FROM SUBCONTRACTOR:**  
 Ewing Industrial Services, LLC  
 P.O. Box 4235  
 Corpus Christi, Texas 78469

**VIA ARCHITECT:**  
 JHP Architecture/Urban Design

**APPLICATION NO:** one

**PERIOD TO:** 05.01.2019

**PROJECT NOS:** Els -#1901

**Distribution to:**

OWNER

ARCHITECT

CONTRACTOR

**CONTRACT FOR:**

**CONTRACT DATE:**

### CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703, is attached.

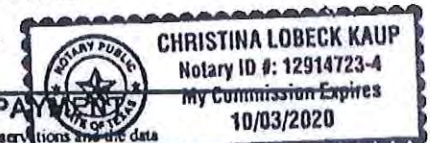
The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates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

1. ORIGINAL CONTRACT SUM	\$	<u>7,550,000.00</u>
2. Net change by Change Orders	\$	<u>0.00</u>
3. CONTRACT SUM TO DATE (Line 1 ± 2)	\$	<u>7,550,000.00</u>
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$	<u>110,360.00</u>
5. RETAINAGE:		
a. <u>10</u> % of Completed Work (Column D + E on G703)	\$	<u>11,038.00</u>
b. <u>10</u> % of Stored Material (Column F on G703)	\$	<u>          </u>
Total Retainage (Lines 5a + 5b or Total in Column I of G703)	\$	<u>11,038.00</u>
6. TOTAL EARNED LESS RETAINAGE (Line 4 Less Line 5 Total)	\$	<u>99,324.00</u>
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)	\$	<u>          </u>
8. CURRENT PAYMENT DUE	\$	<u>99,324.00</u>
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6)	\$	<u>7,450,676.00</u>

**CONTRACTOR:**

By: [Signature] Date: 4.30.19

State of: Texas County of: Nueces  
 day of  
 Notary Public: Christina Lobeck Kaup  
 My Commission expires: 10/03/20



### ARCHITECT'S CERTIFICATE FOR PAYMENT

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

AMOUNT CERTIFIED ..... \$ 99,324.00

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

ARCHITECT: [Signature] AIA / JHP Architecture Date: 5/24/19

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

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	\$0.00	\$0.00
Total approved this Month	\$0.00	\$0.00
<b>TOTALS</b>	\$0.00	\$0.00
<b>NET CHANGES by Change Order</b>	\$0.00	

# CONTINUATION SHEET

AIA DOCUMENT G703

PAGE 2 OF 2 PAGES

AIA Document G702, APPLICATION AND CERTIFICATION FOR PAYMENT, containing Contractor's signed certification is attached.

APPLICATION NO: one  
APPLICATION DATE: 04.30.19

PERIOD TO: 04.30.19

In tabulations below, amounts are stated to the nearest dollar.

ARCHITECT'S PROJECT NO:

Use Column I on Contracts where variable retainage for line items may apply.

A ITEM NO.	B DESCRIPTION OF WORK	C SCHEDULED VALUE	D WORK COMPLETED		F MATERIALS PRESENTLY STORED (NOT IN D OR E)	G		H BALANCE TO FINISH (C - G)	I RETAINAGE (IF VARIABLE RATE)
			D FROM PREVIOUS APPLICATION (D + E)	E THIS PERIOD		TOTAL COMPLETED AND STORED TO DATE (D+E+F)	% (G + C)		
	SWPPP 3rd Party Inspections	\$4,180.00	\$0.00	\$0.00			0.00%	\$4,180.00	\$0.00
	Cap and Plug Water Well	\$1,567.00	\$0.00	\$0.00			0.00%	\$1,567.00	\$0.00
	Earthwork - Demo, Lime, Pad, slit fence	\$348,570.00	\$0.00	\$23,000.00		\$23,000.00	6.64%	\$323,570.00	\$2,300.00
	Site Layout for Utilities	\$27,000.00	\$0.00	\$0.00			0.00%	\$27,000.00	\$0.00
	Sanitary and Lift Station	\$121,888.00	\$0.00	\$0.00			0.00%	\$121,888.00	\$0.00
	Water Line	\$104,151.00	\$0.00	\$0.00			0.00%	\$104,151.00	\$0.00
	Storm Sewer	\$117,951.00	\$0.00	\$0.00			0.00%	\$117,951.00	\$0.00
	Site Wood Fencing	\$48,600.00	\$0.00	\$0.00			0.00%	\$48,600.00	\$0.00
	Ornamental Fence and Gates	\$50,000.00	\$0.00	\$0.00			0.00%	\$50,000.00	\$0.00
	Landscaping - Allowance	\$45,000.00	\$0.00	\$0.00			0.00%	\$45,000.00	\$0.00
	Concrete Paving	\$353,969.00	\$0.00	\$0.00			0.00%	\$353,969.00	\$0.00
	Sidewalks and Sand Cushion	\$116,046.00	\$0.00	\$0.00			0.00%	\$116,046.00	\$0.00
	Striping Signage and Wheel Stops	\$9,306.00	\$0.00	\$0.00			0.00%	\$9,306.00	\$0.00
	Concrete Foundation labor	\$240,202.00	\$0.00	\$0.00			0.00%	\$240,202.00	\$0.00
	Concrete Foundation material	\$484,000.00	\$0.00	\$0.00			0.00%	\$484,000.00	\$0.00
	Concrete Foundation equipment	\$22,000.00	\$0.00	\$0.00			0.00%	\$22,000.00	\$0.00
	Masonry and CMU at Dumpster - labor	\$159,965.00	\$0.00	\$0.00			0.00%	\$159,965.00	\$0.00
	Masonry and CMU at Dumpster- materials	\$113,935.00	\$0.00	\$0.00			0.00%	\$113,935.00	\$0.00
	Wood Framing Package	\$232,518.00	\$0.00	\$0.00			0.00%	\$232,518.00	\$0.00
	Joist and Trusses	\$133,500.00	\$0.00	\$0.00			0.00%	\$133,500.00	\$0.00
	Framer equipment and fuel po	\$76,600.00	\$0.00	\$0.00			0.00%	\$76,600.00	\$0.00
	Framer Misc. Nails and Materials	\$20,000.00	\$0.00	\$0.00			0.00%	\$20,000.00	\$0.00
	Framing Labor framer one	\$200,000.00	\$0.00	\$0.00			0.00%	\$200,000.00	\$0.00
	Framing Labor framer two	\$185,625.00	\$0.00	\$0.00			0.00%	\$185,625.00	\$0.00
	Finish Carpentry Labor	\$65,400.00	\$0.00	\$0.00			0.00%	\$65,400.00	\$0.00
	Hardi Plank Siding	\$92,120.00	\$0.00	\$0.00			0.00%	\$92,120.00	\$0.00
	Casework	\$138,770.00	\$0.00	\$0.00			0.00%	\$138,770.00	\$0.00
	Plastic Laminate Tops	\$32,040.00	\$0.00	\$0.00			0.00%	\$32,040.00	\$0.00
	Insulation	\$77,500.00	\$0.00	\$0.00			0.00%	\$77,500.00	\$0.00

AIA Pay Application Providence EIS1901- SOV for approval G703



Exterior Caulking	\$6,000.00	\$0.00	\$0.00			0.00%	\$6,000.00	\$0.00
Roofing	\$182,550.00	\$0.00	\$0.00			0.00%	\$182,550.00	\$0.00
Exterior Doors	\$20,520.00	\$0.00	\$0.00			0.00%	\$20,520.00	\$0.00
Fire Riser Room Hollow Metal	\$18,999.00	\$0.00	\$0.00			0.00%	\$18,999.00	\$0.00
Interior Door Package	\$57,871.00	\$0.00	\$0.00			0.00%	\$57,871.00	\$0.00
Door Hardware	\$18,528.00	\$0.00	\$0.00			0.00%	\$18,528.00	\$0.00
Trim Package (and shelving)	\$42,650.00	\$0.00	\$0.00			0.00%	\$42,650.00	\$0.00
Windows	\$78,274.00	\$0.00	\$0.00			0.00%	\$78,274.00	\$0.00
Drywall & Tape and Float - materials	\$216,590.00	\$0.00	\$0.00			0.00%	\$216,590.00	\$0.00
Drywall & Tape and Float - labor	\$177,210.00	\$0.00	\$0.00			0.00%	\$177,210.00	\$0.00
LVT and Carpet in Units	\$117,334.00	\$0.00	\$0.00			0.00%	\$117,334.00	\$0.00
LVT and Ceramic in Clubhouse	\$15,697.00	\$0.00	\$0.00			0.00%	\$15,697.00	\$0.00
Paint	\$191,545.00	\$0.00	\$0.00			0.00%	\$191,545.00	\$0.00
Bath Accessories	\$10,374.00	\$0.00	\$0.00			0.00%	\$10,374.00	\$0.00
Vanity Mirror	\$14,537.00	\$0.00	\$0.00			0.00%	\$14,537.00	\$0.00
Fire Extinguishers	\$3,635.00	\$0.00	\$0.00			0.00%	\$3,635.00	\$0.00
Postal Specialties	\$9,970.00	\$0.00	\$0.00			0.00%	\$9,970.00	\$0.00
Appliances and Laundry Equipment	\$125,047.00	\$0.00	\$0.00			0.00%	\$125,047.00	\$0.00
Blinds	\$15,000.00	\$0.00	\$0.00			0.00%	\$15,000.00	\$0.00
Fire Sprinkler	\$168,000.00	\$0.00	\$0.00			0.00%	\$168,000.00	\$0.00
5 ft. OSB for Sprinkler (riser)	\$25,900.00	\$0.00	\$0.00			0.00%	\$25,900.00	\$0.00
Plumbing	\$465,922.00	\$0.00	\$0.00			0.00%	\$465,922.00	\$0.00
Tub Surrounds Prefab & Shower	\$43,649.00	\$0.00	\$0.00			0.00%	\$43,649.00	\$0.00
HVAC and Condensate and Pads	\$382,000.00	\$0.00	\$0.00			0.00%	\$382,000.00	\$0.00
Electrical	\$456,000.00	\$0.00	\$0.00			0.00%	\$456,000.00	\$0.00
Fire Alarm	\$47,500.00	\$0.00	\$0.00			0.00%	\$47,500.00	\$0.00
Light Fixture Package	\$78,296.00	\$0.00	\$0.00			0.00%	\$78,296.00	\$0.00
Security Alarm System for Units	\$20,600.00	\$0.00	\$0.00			0.00%	\$20,600.00	\$0.00
Security Alarm System for Clubhouse	\$3,000.00	\$0.00	\$0.00			0.00%	\$3,000.00	\$0.00
Gate Access Controls	\$4,000.00	\$0.00	\$0.00			0.00%	\$4,000.00	\$0.00
Clubhouse Audio System	\$3,000.00	\$0.00	\$0.00			0.00%	\$3,000.00	\$0.00
Dumpster	\$20,000.00	\$0.00	\$0.00			0.00%	\$20,000.00	\$0.00
General Clean-Housekeeping Labor	\$15,000.00	\$0.00	\$0.00			0.00%	\$15,000.00	\$0.00
Final Clean	\$18,000.00	\$0.00	\$0.00			0.00%	\$18,000.00	\$0.00
Laydown Area	\$18,000.00	\$0.00	\$16,000.00	\$18,000.00	100.00%	\$ 0.00	\$1,600.00	
Mobilization	\$30,000.00	\$0.00	\$30,000.00	\$30,000.00	100.00%	\$ 0.00	\$3,000.00	
General Conditions- Supervision and Insurance	\$503,900.00	\$0.00	\$32,000.00	\$32,000.00	6.35%	\$471,900.00	\$3,200.00	
Profit and Overhead	\$312,407.00	\$0.00	\$9,360.00	\$9,360.00	3.00%	\$303,047.00	\$936.00	
<b>TOTAL THIS PAGE</b>	<b>\$7,550,000.00</b>		<b>\$110,360.00</b>	<b>\$110,360.00</b>	<b>1.46%</b>	<b>\$7,439,640.00</b>	<b>\$11,036.00</b>	

Exhibit 7

CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

Project Providence at Ted Trout

Job No. EIS1901

On receipt by the signer of this document of a check from Icon Builders, LLC(maker of check) in the sum of \$99,324.00 payable to Ewing Industrial Services (payee or payees of check) and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the property of Providence at Ted Trout c/o Hex Group, LLC (owner) located at 2802 Ted Trout Dr. Hudson, TX 75804 (location) to the following extent: Pay App # 01 (job description).

This release covers a progress payment for all labor, services, equipment, or materials furnished to the property or to Icon Builders, LLC (person with whom signer contracted) as indicated in the attached statement(s) or progress payment request(s), except for unpaid retention, pending modifications and changes, or other items furnished.

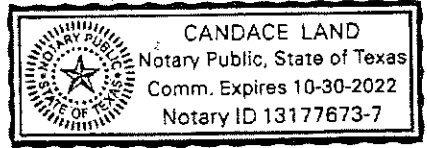
Before any recipient of this document relies on this document, the recipient should verify evidence of payment to the signer. The signer warrants that the signer has already paid or will use the funds received from this progress payment to promptly pay in full all of the signer's laborers, subcontractors,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

Company Name: Ewing Industrial Services Date 05/15/19  
By: Christina Lobeck Kaup  
Title: VP  
Signature: Christina Lobeck Kaup

STATE OF TEXAS  
COUNTY OF Wheeler

This instrument was acknowledged before me on the 15<sup>th</sup> day of May, 2019, by Christina Lobeck Kaup  
VP of Ewing Industrial Services for the consideration herein expressed, on behalf of same.

[Signature]  
Notary Public in and for the  
STATE OF TEXAS



Error! Unknown document property name.

BE

**Providence at Ted Trout Draw #1**  
**5/25/2019**

Hard Costs	-	Icon Builders	99,324.00

**Total Draw      \$99,324.00**

# AIA<sup>®</sup> Document G702<sup>™</sup> - 1992

## Application and Certificate for Payment

<b>TO OWNER:</b> Providence Ted Trout Dr., LLP 9 Greenway Plaza, Ste. 1250 Houston, TX 77046	<b>PROJECT:</b> Providence at Ted Trout	<b>APPLICATION NO:</b> 001	<b>Distribution to:</b> <input type="checkbox"/> OWNER: <input type="checkbox"/> ARCHITECT: <input type="checkbox"/> CONTRACTOR: <input type="checkbox"/> FIELD: <input type="checkbox"/> OTHER:
<b>FROM CONTRACTOR:</b> Nautical Affordable Housing, Inc. 1885 E Farragut Orange, TX 77630	<b>VIA ARCHITECT:</b> JHP Architecture/Urban Design 8340 Meadow Road, Suite 150 Dallas, Texas 75231-3766	<b>PERIOD TO:</b> May 25, 2019  <b>CONTRACT FOR:</b> General Construction <b>CONTRACT DATE:</b> April 12, 2019 <b>PROJECT NOS:</b> pa / 1808 / tedtrout	

### CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703, is attached.

1. ORIGINAL CONTRACT SUM .....	\$7,550,000.00
2. NET CHANGE BY CHANGE ORDERS .....	\$0.00
3. CONTRACT SUM TO DATE (Line 1 ± 2) .....	\$7,550,000.00
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703) .....	\$110,360.00
<b>5. RETAINAGE:</b>	
a. 10.00 % of Completed Work (Column D + E on G703) .....	\$11,036.00
b. 0 % of Stored Material (Column F on G703) .....	\$0.00
Total Retainage (Lines 5a + 5b or Total in Column I of G703) .....	\$11,036.00
6. TOTAL EARNED LESS RETAINAGE .....	\$99,324.00
(Line 4 Less Line 5 Total)	
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT .....	\$0.00
(Line 6 from prior Certificate)	
8. CURRENT PAYMENT DUE .....	\$99,324.00
9. BALANCE TO FINISH, INCLUDING RETAINAGE .....	\$7,450,676.00
(Line 3 less Line 6)	

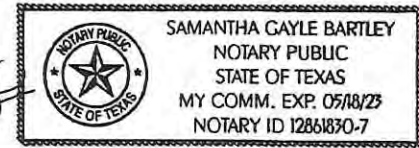
CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	\$0.00	\$0.00
Total approved this Month	\$0.00	\$0.00
<b>TOTALS</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>NET CHANGES by Change Order</b>		<b>\$0.00</b>

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

Contractor Signed by: Don Ball Date: 5/30/2019  
State of Texas

County of: Jefferson  
Subscribed and sworn to before me this 30<sup>th</sup> day of May, 2019

Notary Public: Samantha Gayle Bartley  
My Commission expires: 5/18/2023



### ARCHITECT'S CERTIFICATE FOR PAYMENT

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

AMOUNT CERTIFIED ..... \$99,324.00  
(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

Architect Signed by: \_\_\_\_\_ Date: 5/31/2019  
By: William J. Hall, AIA

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


**AIA Document G703™ – 1992**
**Continuation Sheet**

AIA Document, G702™–1992, Application and Certification for Payment, or G736™–2009, Project Application and Project Certificate for Payment, Construction Manager as Adviser Edition, containing Contractor's signed certification is attached.

In tabulations below, amounts are in US dollars.

Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO:

001

APPLICATION DATE:

May 25, 2019

PERIOD TO:

May 25, 2019

ARCHITECT'S PROJECT NO:

pa1808-tedtrout

A ITEM NO.	B DESCRIPTION OF WORK	C SCHEDULED VALUE	D WORK COMPLETED		F MATERIALS PRESENTLY STORED (NOT IN D OR E)	G TOTAL COMPLETED AND STORED TO DATE (D + E + F)		H BALANCE TO FINISH (C - G)	I RETAINAGE (IF VARIABLE RATE)
			FROM PREVIOUS APPLICATION (D + E)	THIS PERIOD		% (G ÷ C)			
017413	Continuous Cleanup	15,000.00	0.00	0.00	0.00	0.00	0.00%	15,000.00	0.00
017414	Final Cleanup	16,000.00	0.00	0.00	0.00	0.00	0.00%	16,000.00	0.00
017419	Dumpster	20,000.00	0.00	0.00	0.00	0.00	0.00%	20,000.00	0.00
021011	Mobilization	46,000.00	0.00	46,000.00	0.00	46,000.00	100.00%	0.00	4,600.00
021074	SWPPP	4,180.00	0.00	0.00	0.00	0.00	0.00%	4,180.00	0.00
021075	Earthwork-Rough/Fill	346,570.00	0.00	23,000.00	0.00	23,000.00	6.64%	323,570.00	2,300.00
022000	Site Utilities	27,000.00	0.00	0.00	0.00	0.00	0.00%	27,000.00	0.00
022010	Water Supply and Related	105,708.00	0.00	0.00	0.00	0.00	0.00%	105,708.00	0.00
022020	Sanitary Sewer	121,988.00	0.00	0.00	0.00	0.00	0.00%	121,988.00	0.00
022070	Storm Sewer and Drainage	117,951.00	0.00	0.00	0.00	0.00	0.00%	117,951.00	0.00
023020	Pavement	353,969.00	0.00	0.00	0.00	0.00	0.00%	353,969.00	0.00
023050	Misc (Stripping, Signs, Stops)	9,308.00	0.00	0.00	0.00	0.00	0.00%	9,308.00	0.00
024015	Hardscaping	116,046.00	0.00	0.00	0.00	0.00	0.00%	116,046.00	0.00
024020	Fences, Walls, Etc	98,600.00	0.00	0.00	0.00	0.00	0.00%	98,600.00	0.00
025030	Seeding, Sodding, Spirgging	45,000.00	0.00	0.00	0.00	0.00	0.00%	45,000.00	0.00
030010	Concrete in Place	746,202.00	0.00	0.00	0.00	0.00	0.00%	746,202.00	0.00
040010	Masonry Cost	273,900.00	0.00	0.00	0.00	0.00	0.00%	273,900.00	0.00
061022	Framing Trusses	133,500.00	0.00	0.00	0.00	0.00	0.00%	133,500.00	0.00
061023	Framing Labor &	714,743.00	0.00	0.00	0.00	0.00	0.00%	714,743.00	0.00

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User Notes:

(3B9ADA78)

A	B	C	D	E	F	G		H	I
ITEM NO.	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED		MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE (D + E + F)	% (G ÷ C)	BALANCE TO FINISH (C - G)	RETAINAGE (IF VARIABLE RATE)
			FROM PREVIOUS APPLICATION (D + E)	THIS PERIOD					
	Materials								
061024	Siding	92,120.00	0.00	0.00	0.00	0.00	0.00%	92,120.00	0.00
062003	Doors Int & Ext	113,918.00	0.00	0.00	0.00	0.00	0.00%	113,918.00	0.00
062012	Finish Carpentry -Trim	42,650.00	0.00	0.00	0.00	0.00	0.00%	42,650.00	0.00
062013	Finish Carpentry -Labor	65,400.00	0.00	0.00	0.00	0.00	0.00%	65,400.00	0.00
072010	Insulation	77,500.00	0.00	0.00	0.00	0.00	0.00%	77,500.00	0.00
073010	Roofing-Materials & Labor	182,550.00	0.00	0.00	0.00	0.00	0.00%	182,550.00	0.00
080040	Window-Materials	93,274.00	0.00	0.00	0.00	0.00	0.00%	93,274.00	0.00
092010	Shetrock, t, f tx materials	393,800.00	0.00	0.00	0.00	0.00	0.00%	393,800.00	0.00
096010	Vinyl Flooring-Labor & M	133,031.00	0.00	0.00	0.00	0.00	0.00%	133,031.00	0.00
097010	Paint & Caulk	197,545.00	0.00	0.00	0.00	0.00	0.00%	197,545.00	0.00
100111	Fire Alarm/Security	81,735.00	0.00	0.00	0.00	0.00	0.00%	81,735.00	0.00
100112	Sprinkler System	193,900.00	0.00	0.00	0.00	0.00	0.00%	193,900.00	0.00
100116	Mailboxes	9,970.00	0.00	0.00	0.00	0.00	0.00%	9,970.00	0.00
112010	Cabinets & Materials and L	136,770.00	0.00	0.00	0.00	0.00	0.00%	136,770.00	0.00
112020	Cabinets-Countertops	32,040.00	0.00	0.00	0.00	0.00	0.00%	32,040.00	0.00
113010	Cost of Appliances	125,047.00	0.00	0.00	0.00	0.00	0.00%	125,047.00	0.00
151010	Plumbing-Materials & L	490,833.00	0.00	0.00	0.00	0.00	0.00%	490,833.00	0.00
151900	Tub Surround	43,649.00	0.00	0.00	0.00	0.00	0.00%	43,649.00	0.00
152010	HVAC-Materials & L	382,000.00	0.00	0.00	0.00	0.00	0.00%	382,000.00	0.00
160010	Electrical-Labor & M	456,000.00	0.00	0.00	0.00	0.00	0.00%	456,000.00	0.00
160011	Electrical-Lighting M	78,296.00	0.00	0.00	0.00	0.00	0.00%	78,296.00	0.00
911011	General Requirement	503,900.00	0.00	32,000.00	0.00	32,000.00	6.35%	471,900.00	3,200.00
917010	Builders Profit	312,407.00	0.00	9,360.00	0.00	9,360.00	3.00%	303,047.00	936.00
		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%	0.00	0.00

A	B	C	D	E	F	G		H	I
ITEM NO.	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED		MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE (D + E + F)	% (G ÷ C)	BALANCE TO FINISH (C - G)	RETAINAGE (IF VARIABLE RATE)
			FROM PREVIOUS APPLICATION (D + E)	THIS PERIOD					
		0.00	0.00	0.00	0.00	0.00	0.00%	0.00	0.00
	GRAND TOTAL	\$7,550,000.00	\$0.00	\$110,360.00	\$0.00	\$110,360.00	1.46%	\$7,439,640.00	\$11,036.00

EXHIBIT D

**FORM OF LIEN WAIVERS CONTRACTOR REQUIRED TO USE  
CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT**

Project Providence at Ted Trout  
Job No. pa1808-tedtrout

On receipt by the signer of this document of a check from Providence Ted Trout Dr., LLP (maker of check) in the sum of \$ 99,324.00 payable to ICON Builders, LLC (payee or payees of check) and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the property of Providence Ted Trout Dr., LLP (owner) located at 3602 Ted Trout Drive, Hudson, TX 75904 (location) to the following extent: General Construction (job description).

This release covers a progress payment for all labor, services, equipment, or materials furnished to the property or to ICON Builders, LLC (person with whom signer contracted) as indicated in the attached statement(s) or progress payment request(s), except for unpaid retention, pending modifications and changes, or other items furnished.

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

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

Date 5/30/2019  
Nautica Affordable Housing (Company name)  
By Don Ball (Signature)  
Executive Director (Title)



STATE OF TEXAS )  
 )  
COUNTY OF Jefferson ) ss.

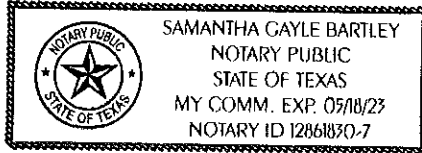
On this 30<sup>th</sup> day of May, 2019, before me, Samantha Bartley, personally appeared Don Ball, known to me or proven on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument, and acknowledged to me that he/she executed the same in his/her authorized capacity as the Exec Director of National Affordable Housing, and that by his/her signature on the instrument the entity on behalf of which he/she acted executed the instrument.

WITNESS my hand and official seal.

Samantha Gayle Bartley  
Notary

My Commission expires: 5/18/23

(SEAL)





G702 & G703 Pay Application

Reference: Providence at Ted Trout Dr.

Subject: Recommendation of Approval of Ewing Industrial Services, LLC Pay Application # 1 from April 15, 2019 to May 1, 2019.

This letter is to inform you that Ewing Industrial Services, LLC presented Pay Application # 1. It was reviewed in detail, signed by the Architect and Contractor. I have also reviewed and approved the attached Pay application amounts and percentages.

Approval of the attached Pay Application # 1 in the amount of \$99,324.00 is recommended.

Respectfully,

A handwritten signature in black ink, appearing to read 'Timothy W. Lehner', written over a horizontal line.

Timothy W. Lehner  
Assistant Supt. – Construction Manager

Attached: Ewing Industrial Services, LLC Pay Application # 1, April 15, 2019 to May 1, 2019.

Contract Signed	Y
Insurance	
Certified Payroll	
Section 3	
Supplies Paid	

Icon Builders, LLC

Sub Contractor - Draw Submission

Contractor: Ewing Industrial Services, LLC  
 Project: Providence at Ted Trout  
 Job Code: pa1808-tedtrout  
 Retainage (Completed Work): 10%  
 Retainage (Store Material): 10%

Application Number: 1  
 Application Date: May-25-2019  
 Period To: May-25-2019  
 Contract #: pa1808  
 Invoice #: Draw 1  
 Vendor Invoice #: Draw 1

A Category	B Description of Item	C Estimate	D Work Completed		F Materials Presently Stored (Not in D or E)	G Total Completed and Stored to Date (D+E+F)	H % (G/C)	I Balance to Finish (C-G)
			E From Previous Application (D + E)	F This Period				
017413	Continuous Cleanup	\$ 15,000.00				\$0.00	0.00	\$15,000.00
017414	Final Cleanup	\$ 16,000.00				\$0.00	0.00	\$16,000.00
017419	Dumpster	\$ 20,000.00				\$0.00	0.00	\$20,000.00
021011	Mobilization	\$ 46,000.00		\$46,000.00		\$46,000.00	100.00	\$0.00
021074	SWPPP	\$ 4,180.00				\$0.00	0.00	\$4,180.00
021075	Earthwork-Rough/Fill	\$ 346,570.00		\$23,000.00		\$23,000.00	6.64	\$323,570.00
022000	Site Utilities	\$ 27,000.00				\$0.00	0.00	\$27,000.00
022010	Water supply & Related Items	\$ 105,708.00				\$0.00	0.00	\$105,708.00
022020	Sanitary Sewer & Related Items	\$ 121,988.00				\$0.00	0.00	\$121,988.00
022070	Storm Sewer & Drainage	\$ 117,951.00				\$0.00	0.00	\$117,951.00
023020	Pavement for Vehicular Area	\$ 353,969.00				\$0.00	0.00	\$353,969.00
023050	Misc.(Stripping, Signs, Stops)	\$ 9,308.00				\$0.00	0.00	\$9,308.00
024015	Hardscaping	\$ 116,046.00				\$0.00	0.00	\$116,046.00
024020	Fences, Walls, Etc.	\$ 98,600.00				\$0.00	0.00	\$98,600.00
025030	Seeding, Sodding, Sprigging	\$ 45,000.00				\$0.00	0.00	\$45,000.00
030010	Concrete in Place Labor & Mate	\$ 746,202.00				\$0.00	0.00	\$746,202.00
040010	Masonry Cost	\$ 273,900.00				\$0.00	0.00	\$273,900.00
061022	Framing-Trusses	\$ 133,500.00				\$0.00	0.00	\$133,500.00
061023	Framing Labor & Materials	\$ 714,743.00				\$0.00	0.00	\$714,743.00
061024	siding	\$ 92,120.00				\$0.00	0.00	\$92,120.00
062003	Doors Int. and Ext	\$ 113,918.00				\$0.00	0.00	\$113,918.00
062012	Finish Carpentry-Trim,Lockout	\$ 42,650.00				\$0.00	0.00	\$42,650.00
062013	Finish carpentry - labor	\$ 65,400.00				\$0.00	0.00	\$65,400.00
072010	Insulation	\$ 77,500.00				\$0.00	0.00	\$77,500.00
073010	Roofing-Materials & Labor	\$ 182,550.00				\$0.00	0.00	\$182,550.00
080040	Windows-Materials	\$ 93,274.00				\$0.00	0.00	\$93,274.00
092010	Sheetrock, t, f, tx materials	\$ 393,800.00				\$0.00	0.00	\$393,800.00
096010	Vinyl Flooring - Labor & Mater	\$ 133,031.00				\$0.00	0.00	\$133,031.00
097010	Paint & Caulk	\$ 197,545.00				\$0.00	0.00	\$197,545.00
100111	Fire Alarm/Security	\$ 81,735.00				\$0.00	0.00	\$81,735.00
100112	Sprinkler System	\$ 193,900.00				\$0.00	0.00	\$193,900.00
100116	Maitboxes	\$ 9,970.00				\$0.00	0.00	\$9,970.00
112010	Cabinets Materials and Labor	\$ 136,770.00				\$0.00	0.00	\$136,770.00
112020	Cabinets-Countertops	\$ 32,040.00				\$0.00	0.00	\$32,040.00
113010	Cost of Appliances	\$ 125,047.00				\$0.00	0.00	\$125,047.00
151010	Plumbing-Materials & Labor	\$ 490,833.00				\$0.00	0.00	\$490,833.00
151900	Tub Surround	\$ 43,649.00				\$0.00	0.00	\$43,649.00
152010	HVAC-Materials & Labor	\$ 382,000.00				\$0.00	0.00	\$382,000.00
160010	Electrical-Labor & Materials	\$ 456,000.00				\$0.00	0.00	\$456,000.00
160011	Electrical-Lighting Materials	\$ 78,296.00				\$0.00	0.00	\$78,296.00
911011	General Requirement	\$ 503,900.00		\$32,000.00		\$32,000.00	6.35	\$471,900.00
917010	Builders profit	\$ 312,407.00		\$9,360.00		\$9,360.00	3.00	\$303,047.00
	<b>Total</b>	<b>\$ 7,550,000.00</b>	<b>\$ -</b>	<b>\$ 110,360.00</b>	<b>\$ -</b>	<b>\$ 110,360.00</b>	<b>1.46%</b>	<b>\$ 7,439,640.00</b>

Retainage \$ 11,036.00 \$ -  
 Total \$ 99,324.00 \$ -

**APPLICATION AND CERTIFICATION FOR PAYMENT**

AIA DOCUMENT G702

PAGE 1 OF 2 PAGES

**TO OWNER:**  
 Providence Ted Trout Dr., LLP.  
 9 Greenway Plaza, Ste. 1250  
 Houston, Texas 77046

**GENERAL CONTRACTOR**  
 ICON BUILDERS, LLC

**FROM SUBCONTRACTOR:**  
 Ewing Industrial Services, LLC  
 P.O. Box 4235  
 Corpus Christi, Texas 78469

**VIA ARCHITECT:**  
 JHP Architecture/Urban Design

**APPLICATION NO:** one

**PERIOD TO:** 05.01.2019

**PROJECT NOS:** Els #1901

**Distribution to:**

OWNER

ARCHITECT

CONTRACTOR

**CONTRACT FOR:**

**CONTRACT DATE:**

**CONTRACTOR'S APPLICATION FOR PAYMENT**

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703, is attached.

1. ORIGINAL CONTRACT SUM \$ 7,550,000.00

2. Net change by Change Orders \$ 0.00

3. CONTRACT SUM TO DATE (Line 1 ± 2) \$ 7,550,000.00

4. TOTAL COMPLETED & STORED TO DATE (Column G on G703) \$ 110,360.00

5. RETAINAGE:

a. 10 % of Completed Work \$ 11,036.00  
 (Column D + E on G703)

b. 10 % of Stored Material \$ \_\_\_\_\_  
 (Column F on G703)

Total Retainage (Lines 5a + 5b or Total in Column I of G703) \$ 11,036.00

6. TOTAL EARNED LESS RETAINAGE \$ 99,324.00  
 (Line 4 Less Line 5 Total)

7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate) \$ \_\_\_\_\_

8. CURRENT PAYMENT DUE \$ 99,324.00

9. BALANCE TO FINISH, INCLUDING RETAINAGE \$ 7,450,676.00  
 (Line 3 less Line 6)

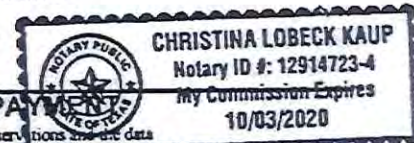
CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	\$0.00	\$0.00
Total approved this Month	\$0.00	\$0.00
<b>TOTALS</b>	\$0.00	\$0.00
<b>NET CHANGES by Change Order</b>	\$0.00	

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

**CONTRACTOR:**

By: [Signature] Date: 4.30.19

State of: Texas County of: Nueces  
 Subscribed and sworn to before me this day of  
 Notary Public: Christina Lobeck Kaup  
 My Commission expires: 10/03/20



**ARCHITECT'S CERTIFICATE FOR PAYMENT**

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

AMOUNT CERTIFIED ..... \$ 99,324.00

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

By: [Signature] AIA/JHP Architect Date: 5/24/19

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

# CONTINUATION SHEET

AIA DOCUMENT G703

PAGE 2 OF 2 PAGES

AIA Document G702, APPLICATION AND CERTIFICATION FOR PAYMENT, containing Contractor's signed certification is attached.

APPLICATION NO: one  
APPLICATION DATE: 04.30.19

In tabulations below, amounts are stated to the nearest dollar.

PERIOD TO: 04.30.19

Use Column I on Contracts where variable retainage for line items may apply.

ARCHITECT'S PROJECT NO:

A ITEM NO.	B DESCRIPTION OF WORK	C SCHEDULED VALUE	D WORK COMPLETED		F MATERIALS PRESENTLY STORED (NOT IN D OR E)	G TOTAL COMPLETED AND STORED TO DATE (D+E+F)	H % (G + C)	I BALANCE TO FINISH (C - G)	J RETAINAGE (IF VARIABLE RATE)
			FROM PREVIOUS APPLICATION (D + E)	THIS PERIOD					
	SWPPP 3rd Party Inspections	\$4,180.00	\$0.00	\$0.00			0.00%	\$4,180.00	\$0.00
	Cap and Plug Water Well	\$1,557.00	\$0.00	\$0.00			0.00%	\$1,557.00	\$0.00
	Earthwork - Demo, Lime, Pad, silt fence	\$348,570.00	\$0.00	\$23,000.00		\$23,000.00	6.64%	\$323,570.00	\$2,300.00
	Site Layout for Utilities	\$27,000.00	\$0.00	\$0.00			0.00%	\$27,000.00	\$0.00
	Sanitary and Lift Station	\$121,988.00	\$0.00	\$0.00			0.00%	\$121,988.00	\$0.00
	Water Line	\$104,151.00	\$0.00	\$0.00			0.00%	\$104,151.00	\$0.00
	Storm Sewer	\$117,951.00	\$0.00	\$0.00			0.00%	\$117,951.00	\$0.00
	Site Wood Fencing	\$48,600.00	\$0.00	\$0.00			0.00%	\$48,600.00	\$0.00
	Ornamental Fence and Gates	\$50,000.00	\$0.00	\$0.00			0.00%	\$50,000.00	\$0.00
	Landscaping - Allowance	\$45,000.00	\$0.00	\$0.00			0.00%	\$45,000.00	\$0.00
	Concrete Paving	\$353,969.00	\$0.00	\$0.00			0.00%	\$353,969.00	\$0.00
	Sidewalks and Sand Cushion	\$116,046.00	\$0.00	\$0.00			0.00%	\$116,046.00	\$0.00
	Striping Signage and Wheel Stops	\$9,308.00	\$0.00	\$0.00			0.00%	\$9,308.00	\$0.00
	Concrete Foundation labor	\$240,202.00	\$0.00	\$0.00			0.00%	\$240,202.00	\$0.00
	Concrete Foundation material	\$484,000.00	\$0.00	\$0.00			0.00%	\$484,000.00	\$0.00
	Concrete Foundation equipment	\$22,000.00	\$0.00	\$0.00			0.00%	\$22,000.00	\$0.00
	Masonry and CMU at Dumpster - labor	\$159,965.00	\$0.00	\$0.00			0.00%	\$159,965.00	\$0.00
	Masonry and CMU at Dumpster- materials	\$113,935.00	\$0.00	\$0.00			0.00%	\$113,935.00	\$0.00
	Wood Framing Package	\$232,518.00	\$0.00	\$0.00			0.00%	\$232,518.00	\$0.00
	Joist and Trusses	\$133,500.00	\$0.00	\$0.00			0.00%	\$133,500.00	\$0.00
	Framer equipment and fuel po	\$76,600.00	\$0.00	\$0.00			0.00%	\$76,600.00	\$0.00
	Framer Misc. Nails and Materials	\$20,000.00	\$0.00	\$0.00			0.00%	\$20,000.00	\$0.00
	Framing Labor framer one	\$200,000.00	\$0.00	\$0.00			0.00%	\$200,000.00	\$0.00
	Framing Labor framer two	\$185,625.00	\$0.00	\$0.00			0.00%	\$185,625.00	\$0.00
	Finish Carpentry Labor	\$65,400.00	\$0.00	\$0.00			0.00%	\$65,400.00	\$0.00
	Hardi Plank Siding	\$92,120.00	\$0.00	\$0.00			0.00%	\$92,120.00	\$0.00
	Casework	\$136,770.00	\$0.00	\$0.00			0.00%	\$136,770.00	\$0.00
	Plastic Laminate Tops	\$32,040.00	\$0.00	\$0.00			0.00%	\$32,040.00	\$0.00
	Insulation	\$77,500.00	\$0.00	\$0.00			0.00%	\$77,500.00	\$0.00

AIA Pay Application Providence EIS1901 - SOV for approval G703

Exterior Caulking	\$6,000.00	\$0.00	\$0.00		0.00%	\$6,000.00	\$0.00
Roofing	\$182,550.00	\$0.00	\$0.00		0.00%	\$182,550.00	\$0.00
Exterior Doors	\$20,520.00	\$0.00	\$0.00		0.00%	\$20,520.00	\$0.00
Fire Riser Room Hollow Metal	\$16,999.00	\$0.00	\$0.00		0.00%	\$16,999.00	\$0.00
Interior Door Package	\$57,871.00	\$0.00	\$0.00		0.00%	\$57,871.00	\$0.00
Door Hardware	\$18,528.00	\$0.00	\$0.00		0.00%	\$18,528.00	\$0.00
Trim Package (and shelving)	\$42,650.00	\$0.00	\$0.00		0.00%	\$42,650.00	\$0.00
Windows	\$78,274.00	\$0.00	\$0.00		0.00%	\$78,274.00	\$0.00
Drywall & Tape and Float - materials	\$216,590.00	\$0.00	\$0.00		0.00%	\$216,590.00	\$0.00
Drywall & Tape and Float - labor	\$177,210.00	\$0.00	\$0.00		0.00%	\$177,210.00	\$0.00
LVT and Carpet in Units	\$117,334.00	\$0.00	\$0.00		0.00%	\$117,334.00	\$0.00
LVT and Ceramic in Clubhouse	\$15,697.00	\$0.00	\$0.00		0.00%	\$15,697.00	\$0.00
Paint	\$191,545.00	\$0.00	\$0.00		0.00%	\$191,545.00	\$0.00
Bath Accessories	\$10,374.00	\$0.00	\$0.00		0.00%	\$10,374.00	\$0.00
Vanity Mirror	\$14,537.00	\$0.00	\$0.00		0.00%	\$14,537.00	\$0.00
Fire Extinguishers	\$3,635.00	\$0.00	\$0.00		0.00%	\$3,635.00	\$0.00
Postal Specialties	\$9,970.00	\$0.00	\$0.00		0.00%	\$9,970.00	\$0.00
Appliances and Laundry Equipment	\$125,047.00	\$0.00	\$0.00		0.00%	\$125,047.00	\$0.00
Blinds	\$15,000.00	\$0.00	\$0.00		0.00%	\$15,000.00	\$0.00
Fire Sprinkler	\$168,000.00	\$0.00	\$0.00		0.00%	\$168,000.00	\$0.00
5 ft. OSB for Sprinkler (riser)	\$25,900.00	\$0.00	\$0.00		0.00%	\$25,900.00	\$0.00
Plumbing	\$465,922.00	\$0.00	\$0.00		0.00%	\$465,922.00	\$0.00
Tub Surrounds Prefab & Shower	\$43,649.00	\$0.00	\$0.00		0.00%	\$43,649.00	\$0.00
HVAC and Condensate and Pads	\$382,000.00	\$0.00	\$0.00		0.00%	\$382,000.00	\$0.00
Electrical	\$456,000.00	\$0.00	\$0.00		0.00%	\$456,000.00	\$0.00
Fire Alarm	\$47,500.00	\$0.00	\$0.00		0.00%	\$47,500.00	\$0.00
Light Fixture Package	\$78,296.00	\$0.00	\$0.00		0.00%	\$78,296.00	\$0.00
Security Alarm System for Units	\$20,600.00	\$0.00	\$0.00		0.00%	\$20,600.00	\$0.00
Security Alarm System for Clubhouse	\$3,000.00	\$0.00	\$0.00		0.00%	\$3,000.00	\$0.00
Gate Access Controls	\$4,000.00	\$0.00	\$0.00		0.00%	\$4,000.00	\$0.00
Clubhouse Audio System	\$3,000.00	\$0.00	\$0.00		0.00%	\$3,000.00	\$0.00
Dumpster	\$20,000.00	\$0.00	\$0.00		0.00%	\$20,000.00	\$0.00
General Clean-Housekeeping Labor	\$15,000.00	\$0.00	\$0.00		0.00%	\$15,000.00	\$0.00
Final Clean	\$16,000.00	\$0.00	\$0.00		0.00%	\$16,000.00	\$0.00
Laydown Area	\$16,000.00	\$0.00	\$16,000.00	\$16,000.00	100.00%	\$ 0.00	\$1,600.00
Mobilization	\$30,000.00	\$0.00	\$30,000.00	\$30,000.00	100.00%	\$ 0.00	\$3,000.00
General Conditions- Supervision and Insurance	\$503,800.00	\$0.00	\$32,000.00	\$32,000.00	6.35%	\$471,900.00	\$3,200.00
Profit and Overhead	\$312,407.00	\$0.00	\$9,360.00	\$9,360.00	3.00%	\$303,047.00	\$936.00
<b>TOTAL THIS PAGE</b>	<b>\$7,550,000.00</b>		<b>\$110,360.00</b>	<b>\$110,360.00</b>	<b>1.46%</b>	<b>\$7,439,640.00</b>	<b>\$11,036.00</b>

Exhibit 7

CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

Project Providence at Ted Trout

Job No. EIS1901

On receipt by the signer of this document of a check from Icon Builders, LLC(maker of check) in the sum of \$99,324.00 payable to Ewing Industrial Services (payee or payees of check) and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the property of Providence at Ted Trout c/o Ilax Group, LLC (owner) located at 2802 Ted Trout Dr. Hudson, TX 75904 (location) to the following extent: Pay App# 01 (job description).

This release covers a progress payment for all labor, services, equipment, or materials furnished to the property or to Icon Builders, LLC (person with whom signer contracted) as indicated in the attached statement(s) or progress payment request(s), except for unpaid retention, pending modifications and changes, or other items furnished.

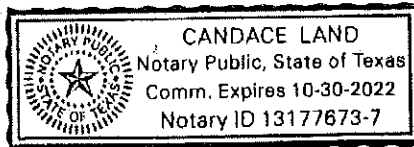
Before any recipient of this document relies on this document, the recipient should verify evidence of payment to the signer. The signer warrants that the signer has already paid or will use the funds received from this progress payment to promptly pay in full all of the signer's laborers, subcontractors,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

Company Name: Ewing Industrial Services Date 05/15/19  
By: Christina Lobeck Kaup  
Title: VP  
Signature: Christina Lobeck Kaup

STATE OF TEXAS §  
COUNTY OF Nueces §  
§

This instrument was acknowledged before me on the 15<sup>th</sup> day of May, 2019, by Christina Lobeck Kaup  
VP of Ewing Industrial Services for the consideration herein expressed, on behalf of same.

[Signature]  
Notary Public in and for the  
STATE OF TEXAS



**Tab 5**

**Minority Owned Business Report**





# Construction Status Report – Minority Owned Business Report (HTC Only)

**TDHCA Asset Management Division - P.O. Box 13941, Austin, Texas 78711-3941 [www.tdhca.state.tx.us/asset-management](http://www.tdhca.state.tx.us/asset-management)**

As of 2017, this report must be provided every 90 days in coordination with the construction status reports for all HTC developments as required by Tex. Gov't Code §2306.6734 to demonstrate the Owner's attempt to ensure that at least 30% of the construction and management businesses with which the Owner contracts in connection with the development are minority-owned businesses.

TDHCA File No.: 17736

Development Name: Pines at Allen Street

### NAME and ADDRESS of OWNERSHIP ENTITY

Name of Ownership Entity: Providence at Ted Trout Dr.

Contact Name: Michelle Harder

Mailing Address: 3735 Honeywood Court

City: Port Arthur, State: TX Zip: 77642

Phone: (409) 724-0020

Email: apps@itexgrp.com

In accordance with Texas Government Code, I, the Owner, as agreed in the Owner's Certification submitted with the Housing Tax Credit Application for the above named Development, have attempted to ensure that at least 30% of the construction and management businesses with which I contract in connection with the Development identified above are Minority Owned Businesses. I understand that a Minority Owned Business is defined by Section 2306.6734 as a business entity that is 51% owned, managed, and controlled by members of a minority group in its daily operations (for purposes of this report, Section 2306.6734 defines "minority group" as women, African Americans, American Indians, Asian Americans, Mexican Americans, and other Americans of Hispanic origin).

As of today, the percentage of businesses with which I, the Owner, have contracted that qualify as Minority Owned Businesses is as follows:

PERCENTAGE OF CONTRACTED MINORITY OWNED BUSINESSES
CONSTRUCTION: 0 %
MANAGEMENT: 0 %

Back up documentation will be provided to the Department in the event such documentation is requested to confirm the contracted percentages referenced above.

By: Donald R. Ball  
Signature of Owner Representative

7/3/2019  
Date

DONALD R. BALL  
Printed Name of Owner Representative

Submit this form in accordance with the instructions related to Construction Status Reports in the Post Award Activities Manual. Construction Status Reports begin with an initial report and are received every 90 days via the applicant's FTP account. Please contact your Asset Manager or the general Asset Management inbox ([asset.management@tdhca.state.tx.us](mailto:asset.management@tdhca.state.tx.us)) with questions.

8b

**BOARD ACTION ITEM**  
**MULTIFAMILY FINANCE DIVISION**  
**OCTOBER 10, 2019**

Presentation, discussion, and possible action on a timely filed appeal of the expiration of a Commitment of Housing Tax Credits for 19223 Bamboo Estates Apartments

**RECOMMENDED ACTION**

**WHEREAS**, the appeal relates to Competitive Housing Tax Credit (HTC) application 19223 Bamboo Estates Apartments, which was submitted to the Department by the Full Application Delivery Date;

**WHEREAS**, a Competitive HTC Commitment was provided to the Applicant on August 16, 2019, confirming that the Board had approved the Application and stating the Department's commitment to make a Housing Credit Allocation to the Development Owner;

**WHEREAS**, the Development Owner did not return the executed Commitment and did not pay the required fees within 30 days from the effective date as clearly required by the Commitment Notice, and because of that lack of response the Commitment expired;

**WHEREAS**, the Applicant timely filed an appeal; and

**WHEREAS**, the Executive Director denied the appeal;

**NOW, therefore, it is hereby**

**RESOLVED**, that the appeal to reinstate the Commitment for 19223 Bamboo Estates Apartments is hereby denied.

**BACKGROUND**

The Application proposes the New Construction of 79 units for a General population in Progreso. The proposed Development would consist of single family homes and duplex units.

On August 16, 2019, Department staff issued Commitment notices for 2019 competitive HTC awardees. As in previous years, the notices were uploaded to each awardee's "ServU" folder, and an email announcing the issuance and providing instructions for returning the Commitment and related documents was sent to the first and second contact of each awardee (see Exhibit A). 10 TAC §10.402(a) of the 2019 Uniform Multifamily Rules, related to Commitments, identifies the required actions a Development Owner must take after receiving a Commitment from the Department:

The Commitment shall expire on the date specified therein, which shall be 30 calendar days from the effective date, unless the Development Owner indicates acceptance by executing the Commitment, pays the required fee specified in §11.901 of this chapter (relating to Fee Schedule, Appeals, and other Provisions), and satisfies any conditions set forth therein by the Department. The Commitment expiration date may not be extended.

On September 16, 2019, the day the Commitment was due, Alma Martinez-Botello, a representative of the Special Limited Partner, contacted staff to provide information that might satisfy the single underwriting condition that was to be cleared by the Commitment deadline. Ms. Martinez-Botello sent the last email of the conversation at 4:22 p.m. on September 16, 2019, and staff heard no more from the Development Owner until the appeal 8 days later.

The appeal, received September 24, 2019, states, “(w)e had all the intentions to submit all documents and comply with all the requirements of TDHCA. All documents including the checks were ready to be submitted, inadvertently the documents were not uploaded to TDHCA USERV on time and checks overnighted to TDHCA.” The appeal indicates that as of September 24, 2019, all required documents were provided through the ServU account, and that appropriate fees were submitted via overnight delivery. Per 10 TAC §10.402(a) of the 2019 Uniform Multifamily Rules, related to Commitments:

The Commitment shall expire on the date specified therein, which shall be 30 calendar days from the effective date, unless the Development Owner indicates acceptance by executing the Commitment, pays the required fee specified in §11.901 of this chapter (relating to Fee Schedule, Appeals, and other Provisions), and satisfies any conditions set forth therein by the Department. The Commitment expiration date may not be extended.

The Commitment expired on September 16, 2019. While not required by the rule, staff did review the documents that were submitted late on September 24, 2019, and determined that the Application Verification and Compliance Review Form was not submitted and the Section 811 PRA Program Agreement was not provided. Both documents were not uploaded to the “ServU” folder as was announced in the attached email announcement. The correct fee payments were received on September 25 – nine days after the expiration of the Commitment. In short, the required documentation and fee payment were not received within 30 calendar days from the effective date. Allowing the late submission of the executed Commitment, documentation, and fee payment would be tantamount to extending the Commitment expiration date, which is specifically prohibited by 10 TAC §10.402(a). If the denial of this appeal is upheld, the credits in the amount of \$1,300,000 will first be made available in the subregion from which they were originally awarded, pursuant to 10 TAC §11.6(2), related to returned credits; in this case Region 11, Rural. There is one Application on the 2019 waiting list from that subregion which requests \$928,404. Staff would award the credits to 19028 Casitas Lantana, and the balance of the credits would go into the statewide collapse. Staff will award credits to award the next Application on the waiting list if there are enough credits remaining to do so.

Staff recommends the Board deny the appeal.

**From:** [Jason Burr](#)  
**To:** [Sharon Gamble](#); [Nicole Fisher](#); [Liz Cline](#); [Spencer Duran](#)  
**Cc:** [Aiglesias@GHDevelopment.com](#); [amay.inamdar@magellandev.com](#); [apadilla@mcaha.org](#); [art@sgba.com](#); [bbowling4@tropicahomes.com](#); [ben@stoneleafcompanies.com](#); [bforslund@cri.bz](#); [bkimes@jesholdings.com](#); [Brian.McGeady@mvaahpartners.com](#); [bsanders@gardnercapital.com](#); [bshields@stemdf.org](#); [cindym@prosperahcs.org](#); [cmancha@hacb.us](#); [consulting@bonnecarrington.com](#); [doak@thebrownstonegroup.net](#); [donna@dwrdevelopment.com](#); [dpbaker@lcjcompanies.com](#); [dsulakhe@omhousing.com](#); [dwilson@apcompanies.com](#); [henry@madhousedevlopment.net](#); [hflores@madhousedevlopment.net](#); [ina.spokas@kcgcompanies.com](#); [JanineS@dmacompanies.com](#); [jarechiga@nrpgroup.com](#); [jgarcia@hamiltoncorporation.com](#); [jmooney@mrecapital.com](#); [jweatherly@tmo.com](#); [jwilliams@housingforhouston.com](#); [khance@hslawmail.com](#); [les@kildayco.net](#); [lisa@saigebrook.com](#); [megan@o-sda.com](#); [mfogel@4cornersdevelopmentllc.com](#); [mgrouppinc@sbcglobal.net](#); [murraycalhoun@mac-rellc.com](#); [nkelley@blazerbuilding.com](#); [rcombs@gardnercapital.com](#); [rdeyoe@realtextdevelopment.com](#); [rlopez@ibitoday.com](#); [sally@ovpgroup.com](#); [sarah@structuretexas.com](#); [sfairfield@covenantneighborhoods.org](#); [ssmith@belmontdev.com](#); [steve@texasgreyoaks.com](#); [tbowyer@hermankittle.com](#); [tdeloye@hacep.org](#); [tfine@nationalchurchresidences.org](#); [walter.moreau@foundcom.org](#); [acobb@realtextdevelopment.com](#); [ajcarpen@gmail.com](#); [bfisher@gardnercapital.com](#); [bradfordmc@prosperahcs.org](#); [bvillanueva@cri.bz](#); [casey@bonnecarrington.com](#); [cfarmer@belmontdev.com](#); [cgast@hermankittle.com](#); [Chris.Applequist@GHDevelopment.com](#); [djimenez@tropicahomes.com](#); [doak@thebrownstonegroup.net](#); [donna@marqueconsultants.com](#); [edisonartsfoundation@gmail.com](#); [evon@holleman-associates.com](#); [ewalker@blazerbuilding.com](#); [executiveoffice@saha.org](#); [jbihousing@ibitoday.com](#); [jamie@marqueconsultants.com](#); [jhenderson@blazerbuilding.com](#); [jmarkel@jesholdings.com](#); [johnkenny@saht.org](#); [jrabalais@mac-rellc.com](#); [justin.gregory@mvaahpartners.com](#); [labadie@gchp.net](#); [lwong@apcompanies.com](#); [mherrera@hacb.us](#); [mike@stoneleafcompanies.com](#); [mstrange@callhsa.com](#); [nfreiberg@pennrose.com](#); [NicoleM@dmacompanies.com](#); [oelizando@sbcglobal.net](#); [psefeldt@kildayco.net](#); [ranner@lcjcompanies.com](#); [rebecca@structuretexas.com](#); [rj.pasquesi@kcgcompanies.com](#); [rzent@tmo.com](#); [sabrina.butler@foundcom.org](#); [sarah@structuretexas.com](#); [skphillip@stchd.org](#); [sycamorestrategies@gmail.com](#); [tdula@coatsrose.com](#); [twilliams@madhousedevlopment.net](#)  
**Subject:** 2019 9% HTC Commitment Packages  
**Date:** Friday, August 16, 2019 4:20:44 PM

This email serves as notice that your 2019 Housing Tax Credit Commitment has been uploaded to your Serv-U account. You will need to login to your account in order to download the Commitment Notice. The Application Verification and Compliance Review form and 811 agreements have also been uploaded to Serv-U. If you find any incorrect information, please strike through and correct. We will not be reissuing these forms. At this time, commitments have only been issued to awardees with a completed Real Estate Analysis underwriting report.

Upload the Completed Commitment Notice Package to your Serv-U account.  
**TDHCA DOES NOT NEED ORIGINAL SIGNATURES.**

Submit **separate checks** for the Commitment Fee and the Inspection Fee. Mail, overnight or drop off the checks to complete the submission by the deadline noted on the Commitment Notice. All submissions must be accompanied by a completed payment receipt form, which has also been uploaded to your Serv-U account.

If you have any questions about:

the Commitment process, please contact Nicole Fisher at [nicole.fisher@tdhca.state.tx.us](mailto:nicole.fisher@tdhca.state.tx.us).

the Application Verification and Compliance Review form, please contact Jason Burr at [jason.burr@tdhca.state.tx.us](mailto:jason.burr@tdhca.state.tx.us).

811 agreements, please contact Spencer Duran at [spencer.duran@tdhca.state.tx.us](mailto:spencer.duran@tdhca.state.tx.us).

Serv-U accounts, please contact Liz Cline at [liz.cline@tdhca.state.tx.us](mailto:liz.cline@tdhca.state.tx.us).

Thanks,

**Jason Burr**

Multifamily Finance Database Administrator  
Texas Department of Housing and Community Affairs  
221 E. 11th Street | Austin, TX 78701  
Office: 512.475.3986  
Fax: 512.475.1895

**About TDHCA**

The Texas Department of Housing and Community Affairs administers a number of state and federal programs through for-profit, nonprofit, and local government partnerships to strengthen communities through affordable housing development, home ownership opportunities, weatherization, and community-based services for Texans in need. For more information, including current funding opportunities and information on local providers, please visit [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us).

*Any person receiving guidance from TDHCA staff should be mindful that, as set forth in 10 TAC Section 11.1(b) there are important limitations and caveats (Also see 10 TAC §10.2(b)).*



**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**

[www.tdhca.state.tx.us](http://www.tdhca.state.tx.us)

Greg Abbott  
GOVERNOR

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**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**  
HOUSING TAX CREDIT PROGRAM  
COMMITMENT

This Housing Tax Credit Commitment (the "**Commitment**") in connection with an award of Housing Tax Credits from the 2019 State Housing Credit Ceiling, as defined in 10 TAC §11.1(d)(119), is made and entered into by and between the **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**, a public and official agency of the State of Texas (the "**Department**"), and **BAMBOO ESTATES, LP**, (the "**Development Owner**"), herein collectively referred to as the "**Parties**." This Commitment does not constitute an "allocation" for purposes of Section 42 of the Internal Revenue Code.

**RECITALS**

**WHEREAS**, Development Owner agrees to carry out the new construction (including adaptive re-use), rehabilitation, and/or reconstruction of the Development as more fully described in TDHCA application number **19223** (the "Application") and in accordance with all representations made in the Application, as may be amended from time to time in accordance with the Department's rules, and as required to adhere to Chapter 2306 of the Texas Government Code ("Chapter 2306"); Title 10 of the Texas Administrative Code ("10 TAC") Chapter 1 ("Administration"), Chapter 10 ("Uniform Multifamily Rules"), and Chapter 11 ("Qualified Allocation Plan"); Section 42 of the Internal Revenue Code ("Section 42"), all applicable Internal Revenue Service ("IRS") notices and revenue rulings, all applicable Regulations and Decisions of the United States Department of the Treasury, and all other applicable state and federal laws, rules, regulations, and other requirements, all collectively referred to herein as the "Legal Authorities"; and

**WHEREAS**, Department has reviewed the Application, and on July 25, 2019, the Governing Board of the Department approved both an award of Housing Tax Credits and the establishment of a waitlist for possible further awards of Housing Tax Credits, the waitlist to be administered in accordance with the Legal Authorities;

**NOW, THEREFORE**, for and in consideration of the premises herein expressed, and the mutual benefits derived and to be derived, the Parties hereto, each intending to be legally bound, do by their execution hereof agree as follows:



**TERMS**

The following terms shall have the meanings specified:

<b>Development</b>	<b>BAMBOO ESTATES APARTMENTS</b>
<b>Development Owner</b>	<b>Bamboo Estates, LP</b>
<b>Development Address</b>	<b>NE FARM TO MARKET ROAD 1015 AND HWY 281 PROGRESO, TX 78579</b>
<b>Building Identification Numbers</b>	<b>TX 19-22301 - 19-22399</b>
<b>Set-Asides</b>	<b>NONPROFIT</b>
<b>Allocation Category</b>	<b>NEW CONSTRUCTION</b>
<b>Annual Tax Credit Commitment Amount</b>	<b>\$1,300,000</b>
<b>Contact Person</b>	<b>BRAD SHIELDS</b>
<b>Contact Address</b>	<b>PO BOX 359 LA FERIA, TX 78559-</b>
<b>Contact Phone/Email</b>	<b>(956) 797-2357 BSHIELDS@STEMDF.ORG</b>
<b>Effective Date of Commitment</b>	<b>August 16, 2019</b>
<b>Expiration Date of Commitment</b>	<b>September 16, 2019</b>

**CONDITIONS**

The Annual Tax Credit Commitment Amount reflected in the Commitment is the maximum amount of tax credits awarded by the Board. It is subject to downward (but not upward) adjustment in accordance with applicable laws, rules, and regulations concerning the issuance of IRS Form 8609 for each building so as to ensure, among other things, that no more credits than necessary are provided and ultimately allocated. In issuing this Commitment, the Department has relied upon the information submitted by the Development Owner to be accurate and complete in all material respects. The Department reserves the right to revoke, modify, or terminate this Commitment if the Department determines, in accordance with any applicable Legal Authorities, that the Development Owner has provided erroneous, misleading, incomplete, false, or fraudulent information to the Department or other parties for which the Legal Authorities require notification in connection with the Application for Housing Tax Credits or has in a material manner failed to comply with any state or federal requirement applicable to the Application for and awarding of Housing Tax Credits, and such failure cannot be cured or waived.

Pursuant to 10 TAC §10.402(a) of the Uniform Multifamily Rules, unless sooner terminated in accordance with applicable Legal Authorities, this Commitment shall expire on the date specified herein below in paragraph A unless the Development Owner indicates acceptance by executing the Commitment, paying the required fees specified in 10 TAC §11.901 of the Qualified Allocation Plan, and timely and fully



satisfying any and all other conditions set forth herein, imposed by the Department's Board in the making of the award, or in the Uniform Multifamily Rules. As provided for in 10 TAC §10.402(a), the Commitment expiration noted in paragraph A below may not be extended. Without limitation, failure to submit the documentation in sections A.1.-6. below, by the specified submission dates, may result in the termination of the award documented in this Commitment:

A. Not later than **September 16, 2019**, which is the expiration date of this Commitment, the Development Owner must provide in form and substance satisfactory to the Department in its reasonable judgment all of the following items.(if not already provided):

1. This Commitment, accepted and agreed to by the Development Owner, as evidenced by the original signature of an individual duly represented as being authorized to act on behalf of the Development Owner without need of joinder or approval by anyone else;
2. In accordance with 10 TAC §11.901(6) of the Qualified Allocation Plan, a check for the Commitment Fee in the amount of **\$52,000**;
3. In accordance with 10 TAC §11.901(8) of the Qualified Allocation Plan, a check for the Building Inspection Fee in the amount of **\$750**;
4. In accordance with 10 TAC §10.402(d) of the Uniform Multifamily Rules, each and all of the following documents must be submitted by the Development Owner and failure to provide these documents may cause this Commitment to be rescinded:
  - a. For entities organized under the laws of the State of Texas, a copy of the Certificate of Filing for the Certificate of Formation and a Certificate of Fact from the Office of the Secretary of State. For entities organized under the laws of a jurisdiction other than the State of Texas, a Certificate of Application for foreign qualification in Texas and a Certificate of Fact from the Texas Secretary of State. If the entity is newly formed and a Certificate of Fact is not available, a statement is provided to that effect;
  - b. A current statement of Franchise Tax Account Status issued by the Texas Comptroller of Public Accounts or, if the entity is newly formed and no status is available, a statement by the Development Owner must be provided to that effect;
  - c. Evidence that the signer(s) of the Commitment has (have) the authority to sign on behalf of the Applicant in the form of a certified corporate resolution which indicates the person or sub-entity in Control consistent with the entity contemplated and described in the Application and that those Person(s) signing the Commitment constitute all Persons required to sign or submit such documents; if intervening persons or entities are involved in any such execution, certified resolutions as to the authority of each and all persons executing or executing on behalf of any entity must also be provided;
  - d. Evidence of final approval of any zoning that is required or was proposed or needed to be changed pursuant to the Development plan;

e. Evidence of satisfaction of any conditions identified in the Credit Underwriting Analysis Report, in the conditions approved by the Board from the Executive Award Review and Advisory Committee as provided for in 10 TAC Chapter 1, Subchapter C (relating to Previous Participation Review), in the conditions approved by the Board regarding 10 TAC §11.101(a)(2) related to Undesirable Site Features, in the conditions approved by the Board regarding 10 TAC §11.101(a)(3) related to Neighborhood Risk Factors, or any other conditions of the award required to be met at the time of Commitment;

f. Documentation of any changes to representations made in the Application subject to 10 TAC §10.405 of the Uniform Multifamily Rules (relating to Amendments and Extensions); and

g. For Applications underwritten with a property tax exemption, documentation must be submitted in the form of a letter from an attorney identifying the statutory basis for the exemption and indicating that the exemption is reasonably achievable subject to appraisal district review. Additionally, any Development with a proposed Payment in Lieu of Taxes agreement or similar agreement, however designated (PILOT) must provide evidence regarding the statutory basis for the PILOT and its terms.

5. If the Applicant proposes to relocate existing units in an otherwise qualifying At-Risk Development, provide evidence that the affordability restrictions and any At-Risk eligible subsidies are approved to be transferred to the Development Site.
6. If the Applicant is participating in the Section 811 Project Rental Assistance Program under 10 TAC §11.9(c)(6) of the 2019 Qualified Allocation Plan, the Applicant must include the executed Section 811 Project Rental Assistance Owner Participation Agreement.

B. In accordance with 10 TAC §10.402(f) of the Uniform Multifamily Rules, all documents outlined in the Carryover Manual, including for USDA-funded developments, documentation of the submission of a complete Preliminary Assessment Tool to the USDA, relating to the execution of a **Carryover Allocation Agreement** pursuant to §42(h)(1) of the Internal Revenue Code and Treasury Regulations §1.42-6 must be submitted to the Department no later than 5:00 p.m. Austin local time on **November 1, 2019**, unless such date has been extended in writing by Department. Requested extensions made after that time and date will not be considered by staff.

C. In accordance with 10 TAC §10.402(g) of the Uniform Multifamily Rules and pursuant to §42(h)(1)(E)(i) and (ii) of the Internal Revenue Code, all documents outlined in the Post Carryover Activities Manual relating to the 10% Test must be submitted to the Department no later than 5:00 p.m. Austin local time on **July 1, 2020**, unless extended in writing by Department. Requested extensions made after that time and date will not be considered by staff.

D. In accordance with §42(h)(1)(E)(i) of the Internal Revenue Code, all Buildings in the Development must be placed in service no later than **December 31, 2021**.

E. Extensions to the deadlines itemized in paragraphs B and C, to the extent permitted under the Legal Authorities, must be requested in accordance with 10 TAC §10.405(c) of the Uniform Multifamily Rules and must be submitted prior to the date for which an extension is being requested. The Department may

require documentation relating to the need for any extension and staff may recommend and the Board may assess point deductions on other current or future applications in accordance with Tex. Gov't Code §2306.6710(b)(2).

F. Subsequent to the allocation of tax credits, should any terms of the proposed capital structure change or if there are material changes to the overall development plan or costs, the analysis must be re-evaluated and adjustment to the credit allocation and/or terms of other TDHCA funds may be warranted. If additional funds are required to ensure financial feasibility there can be no assurance that additional funds or other financial assistance will be available from the Department. In no event will the amount of Housing Tax Credits be increased.

This Commitment is subject to the following Development-specific conditions as reflected in the Department's published Credit Underwriting Analysis Report. Unless otherwise stated within the specific condition (which may not conflict with any of the Legal Authorities), the documentation required to demonstrate satisfaction of each condition must be submitted to the Department not later than 5:00 p.m. Austin local time on **September 16, 2019**.

**1 Receipt and acceptance by Commitment:**

- **Receipt of MAP Invitation Letter for FHA 221(d)(4) loan, or letter from Lender indicating the date that the HUD concept meeting was held, and confirmation that based on that meeting the Lender intends to proceed with submitting the application to HUD.**

**2 Receipt and acceptance by 10% test:**

**a: Final site plan clearly depicting the reduced/final acreage as will be encumbered by LURA after dedication for Road Right of Ways and easements for utilities.**

**b: Documentation that a noise study has been completed, and Architect certification that all recommendations from the noise study are incorporated into the development plans.**

**3 Receipt and acceptance by Cost Certification:**

- **Architect certification that all noise assessment recommendations were implemented and the Development is compliant with HUD noise guidelines.**

G. This Commitment is also subject to the following Development-specific conditions as recommended by the Executive Award and Review Advisory Committee (EARAC), and imposed by the Board. Unless otherwise stated within the specific condition (which may not conflict with any of the Legal Authorities), the documentation required to demonstrate satisfaction of each condition must be submitted to the Department not later than 5:00 p.m. Austin local time on **September 16, 2019**.

**NA**

H. This Commitment is also subject to the following Development-specific conditions as imposed by the Board regarding 10 TAC §11.101(a)(2) related to Undesirable Site Features

**NA**

I. This Commitment is also subject to the following Development-specific conditions as imposed by the Board regarding 10 TAC §11.101(a)(3) related to Neighborhood Risk Factors

**NA**

J. Included with this Commitment is the "Application Verification and Compliance Review" form. This review form contains representations from the Application, changes during the Application process, and the Application as underwritten and approved by the Board. Please review the attachment for accuracy and identify any errors by marking the corrected information in red. This is solely to facilitate a detailed review of said representations and the legal obligations they have created and does not constitute an opportunity to change, modify, abrogate, or otherwise alter any such representation or the enforceability thereof. The Application Verification and Compliance Review form, initialed and signed by a person with full authority to act on behalf of the Development Owner, must be submitted with this Commitment.

K. In addition to the requirements of the Legal Authorities, Development Owner hereby agrees and acknowledges that all assurances, pledges, conditions, restrictions, representations, or obligations, however designated, which the Development Owner (including any of its affiliates) undertook in applying for Housing Tax Credits will be incorporated into a Land Use Restriction Agreement (LURA) or other applicable document with respect to the Development. Such LURA or document will also incorporate provisions requiring compliance with Section 42 and with Chapter 2306, including but not limited to requirements for: annual reporting and periodic inspections; payment of the fees, charges, and expenses of the Department in connection with monitoring and compliance activities; management, operating, maintenance, and repair standards; tenant selection and income certification; limitations on rents, charges, and fees payable by tenants; cost controls and management selection; and a minimum thirty-year affordability period, or such longer period as elected and set forth in the Application. If any liens (other than mechanics' or materialmen's liens for which construction bonds are in place or other provisions made to ensure discharge) have been recorded against the Development prior to the recording of the LURA, the Development Owner shall also obtain and submit to the Department the subordination of the rights of any such lienholder, or other effective consent, to the survival of certain obligations contained in the LURA following the foreclosure of any such lien.

L. If participating in the **Multifamily Direct Loan Program**, Development Owner acknowledges that this Commitment does not represent a commitment of any funds awarded under the Multifamily Direct Loan Program; award Letters and specific Direct Loan Conditions for Multifamily Direct Loans will be issued separately from this Commitment Notice. However, those Development Owners awarded Multifamily Direct Loans composed of HOME funds from the Department are cautioned against taking any choice-limiting action as described and addressed in CPD Notice 01-11, including but not limited to any transfers or assignments of the property, in anticipation of the Federal commitment but prior to receiving Federal environmental clearance from the Department. Development Owners expecting to ultimately receive a commitment of any such funds from the Department are encouraged to familiarize themselves in detail with the HUD environmental review process and, if applicable, submit their request for Federal environmental clearance as soon as possible, **but in no event later than October 25, 2019**, in accordance with 10 TAC §13.11(c). Choice-limiting activities as described in 10 TAC §13.2(2) may result in the termination or rescission of any related funding commitment and potentially lead to the revocation of

this Commitment as a result of the financial infeasibility created by the loss of such funds and further penalties pursuant to 10 TAC §13.11(b) and 10 TAC §11.9(f).

M. If participating in the **Section 811 Project Rental Assistance Program**, Development Owner hereby agrees to execute a Section 811 Project Rental Assistance Owner Participation Agreement **no later than September 16, 2019**, for either the Development listed under the Terms section of this Commitment or a Department Approved Existing Development. Development Owner acknowledges that this Commitment does not represent a commitment of any Section 811 Project Rental Assistance to the Development. Development Owners are encouraged to review the Owner Participation Agreement, the Section 811 Project Rental Assistance Cooperative Agreement in its entirety, and the Project Rental Assistance Program Rules at 10 TAC Chapter 8. Development Owner agrees that if requested by the Department, the Development Owner will record the Section 811 PRA Program Use Agreement (form HUD-92238-PRA) and sign a Rental Assistance Contract (form HUD-92235-PRA and form HUD 92237-PRA).

On behalf of the Department:

By: \_\_\_\_\_

Margaret Holloway, Multifamily Finance Director

8/16/19  
\_\_\_\_\_

Date

I (We), Development Owner, hereby acknowledge and agree to abide by all terms and conditions stated in this Commitment and any referenced documentation contained herein.

I (We), on behalf of the Development Owner, hereby acknowledge and agree that pursuant to 10 TAC §10.406 of the Rules, the transfer of an allocation of Housing Tax Credits or ownership of a Development supported with an allocation of Housing Tax Credits to any person including an Affiliate of the Development Owner shall not occur unless the Development Owner obtains the Department's prior, written approval of the transfer.

I (We) hereby acknowledge that failure to comply with this Commitment, the Legal Authorities, as applicable, and any referenced documentation contained therein may result in a refusal by the Department to issue IRS Form(s) 8609 for purposes of Housing Tax Credits as well as its exercise of other remedies, including revocation of this Commitment.

I (we) hereby acknowledge that the Development will be constructed in compliance with the 2010 ADA Standards (with the HUD exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" *Federal Register* 79 FR 29671, if relevant) and as further amended by 10 TAC Chapter 1, Subchapter B.

\_\_\_\_\_  
Development Owner

\_\_\_\_\_  
Employee Identification Number

\_\_\_\_\_  
Authorized Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Authorized Representative (Printed Name, Title)

19223

Bamboo Estates

Notice of Commitment  
Expiration



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

[www.tdhca.state.tx.us](http://www.tdhca.state.tx.us)

Greg Abbott  
GOVERNOR

**BOARD MEMBERS**

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Leslie Bingham-Escareño, *Vice Chair*  
Paul A. Braden, Member  
Asusena Reséndiz, Member  
Sharon Thomason, Member  
Leo Vasquez, Member

September 24, 2019

*Writer's direct dial: 512/475-1676*  
*Email: [marni.holloway@tdhca.state.tx.us](mailto:marni.holloway@tdhca.state.tx.us)*

Brad Shields  
South Texas Emerging Markets  
Development Fund  
P.O. Box 359  
La Feria, Texas 78559-5002

RE: EXPIRATION OF COMMITMENT - 2019 COMPETITIVE HOUSING TAX CREDIT APPLICATION 19223 BAMBOO VILLAGE, PROGRESO

Dear Mr. Shields:

On August 16, 2019, the Texas Department of Housing and Community Affairs (the Department) issued a Commitment to the Development Owner of the above named Development which confirmed that the Board has approved the Application and stated the Department's commitment to make a Housing Credit Allocation to the Development Owner. Per 10 TAC §10.402(a) of the 2019 Uniform Multifamily Rules, related to Commitments:

The Commitment shall expire on the date specified therein, which shall be 30 calendar days from the effective date, unless the Development Owner indicates acceptance by executing the Commitment, pays the required fee specified in §11.901 of this chapter (relating to Fee Schedule, Appeals, and other Provisions), and satisfies any conditions set forth therein by the Department. The Commitment expiration date may not be extended.

While staff is aware that there was an effort to satisfy the conditions of the Commitment, the Development Owner did not provide the executed Commitment to the Department, and did not pay the specified fees. Because the Development Owner did not meet the requirements of the Commitment Notice, the Commitment of the housing tax credit has expired, pending the Applicant's ability to appeal.

An appeal process exists for the Housing Tax Credit Program. The restrictions and requirements related to the filing of an appeal can be found in 10 TAC §11.902 of the 2019 QAP. Should you choose to appeal this decision to the Executive Director, you must file your appeal, in writing, with the Department not later than seven (7) calendar days after the date of this letter. If you are not satisfied with the






decision of the Executive Director or if the Executive Director does not respond, you may file a further appeal with the Board of Directors of the Texas Department of Housing and Community Affairs. Please review §11.902 of the 2019 QAP for full instructions on the appeals process.

If you have any questions or concerns, please contact me at 512-475-1676 or by email at [marni.holloway@tdhca.state.tx.us](mailto:marni.holloway@tdhca.state.tx.us).

Sincerely,

A handwritten signature in black ink, appearing to read 'Marni Holloway', written over the printed name.

Marni Holloway  
Director of Multifamily Finance

19223

Bamboo Estates

Appeal Documents

**South Texas Emerging Markets  
Development Fund, Inc.**

*A Non-Profit Fostering Economic Development*



September 24, 2019

Mr. Bobby Wilkinson, Executive Director  
Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup> Street  
Austin, Texas 78711-3941

With Copy to:

Ms. Marni Holloway, Director of Multifamily Finance  
Texas Department of Housing and Community Affairs  
221 East 11th Street  
Austin, Texas 78711-3941

Re: Bamboo Estates Apartments  
TDHCA #19223  
Appeal – Expiration of Commitment

Dear Mr. Wilkinson:

Bamboo Estates Apartments is sponsored by South Texas Emerging Markets Development Fund, a community based 501 (c) (3) non-profit entity. The South Texas Collaborative for Housing Development, a non-profit entity is the primary developer and guarantor assisting the sponsor.

The appeal pertains to the notice of expiration of commitment from TDHCA.

The TDHCA letter of September 24, 2019 states that the applicant made effort to satisfy the conditions of the commitment. We had all the intentions to submit all documents and comply with all the requirements of TDHCA. All documents including the checks were ready to be submitted, inadvertently the documents were not uploaded to TDHCA USERV on time and checks overnighted to TDHCA. The following is a list of items that was to be submitted to TDHCA and the status of each item.

A.

1. Executed copy of TDHCA Housing Tax Credit Program Commitment – Uploaded to TDHCA site.
2. Commitment fee in the amount of \$52,000.00 – Sent by overnight main on 9-24-2019
3. Building Inspection fee in the amount of \$750.00 – Sent by overnight main on 9-24-2019
4. Certificate of filing with the Secretary of State for following entities – Completed in advance

P.O. Box 359  
La Feria, Texas 78559-5002  
Phone: (956) 797-2357 Fax: (956) 277-0242

- a. Bamboo Estates, LP – EIN number was submitted as part of Carry Forward Questionnaire. Copies of Secretary of State Filing is uploaded as part of the package.  
General Partner – STEMBE-GP, LLC - Copies of Secretary of State Filing is uploaded as part of the package.  
Class B Special Limited Partner – STCHDBE-SLP, LLC - Copies of Secretary of State Filing is uploaded as part of the package.
  - c. Resolution of South Texas Emerging Markets Development Fund showing authority to sign documents – This item was submitted to TDHCA as part of the Carry Forward Questionnaire and now uploaded as part of the package.
  - d. Evidence of Zoning Letter – This item was submitted during the application review process and now uploaded as part of the package.
  - e. Not applicable
  - f. Not applicable
  - g. Not applicable
5. Not applicable
6. The agreement will be executed once it is offered by TDHCA.

F

1. Items due along with the Commitment
  - a. Proof of MAP Invitation – This item was submitted as part of the Carry forward questionnaire and now uploaded as part of the package.

All pertinent information was submitted to TDHCA except the signed copy of the Commitment Agreement and fee on time. The plans and specifications are 100% complete. The third-party reviewer completed their plan review and cost estimates. The lender has completed the underwriting and HUD 221(d)(4) application will be submitted within few days. The equity provider has ordered all third reports and is underwriting the development. All other items required to keep the development moving is in place.

Mr. Wilkinson, we seek your discretion to accept the Commitment Agreement and fees and allow us to continue with the development. We sincerely apologize for the extra effort requested of TDHCA and staff due to our oversight on two documents. If you have any questions or need any additional information, please call us at (956) 797-2357 or (956) 778-7030.

Sincerely,



Brad Shields, Manager  
Bamboo Estates, LP and  
President, South Texas Emerging Markets Development Fund, Inc.

**BAMBOO ESTATES APARTMENTS  
TDHCA #19223**

**HOUSING TAX CREDIT PROGRAM COMMITMENT DOCUMENTS**

**A.**

- 1. Executed copy of TDHCA Housing Tax Credit Program Commitment**
- 2. Commitment fee in the amount of \$52,000.00**
- 3. Building Inspection fee in the amount of \$750.00**
- 4. Certificate of filing with the Secretary of State for following entities:**
  - a. Bamboo Estates, LP**  
**General Partner – STEMBE-GP, LLC**  
**Class B Special Limited Partner – STCHDBE-SLP, LLC**
  - c. Resolution of South Texas Emerging Markets Development Fund showing authority to sign documents**
  - d. Evidence of Zoning Letter**
  - e. Not applicable**
  - f. Not applicable**
  - g. Not applicable**
- 5. Not applicable**
- 6. This will be executed once received from TDHCA**

**F**

- 1. Items due along with the Commitment**
  - a. Proof of MAP Invitation**



**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**

[www.tdhca.state.tx.us](http://www.tdhca.state.tx.us)

Greg Abbott  
GOVERNOR

**BOARD MEMBERS**

J.B. Goodwin, *Chair*  
Leslie Bingham-Escareño, *Vice Chair*  
Paul A. Braden, *Member*  
Asusena Reséndiz, *Member*  
Sharon Thomason, *Member*  
Leo Vasquez, *Member*

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
HOUSING TAX CREDIT PROGRAM  
COMMITMENT**

This Housing Tax Credit Commitment (the "**Commitment**") in connection with an award of Housing Tax Credits from the 2019 State Housing Credit Ceiling, as defined in 10 TAC §11.1(d)(119), is made and entered into by and between the **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**, a public and official agency of the State of Texas (the "**Department**"), and **BAMBOO ESTATES, LP**, (the "**Development Owner**"), herein collectively referred to as the "**Parties**." This Commitment does not constitute an "allocation" for purposes of Section 42 of the Internal Revenue Code.

**RECITALS**

**WHEREAS**, Development Owner agrees to carry out the new construction (including adaptive re-use), rehabilitation, and/or reconstruction of the Development as more fully described in TDHCA application number **19223** (the "**Application**") and in accordance with all representations made in the Application, as may be amended from time to time in accordance with the Department's rules, and as required to adhere to Chapter 2306 of the Texas Government Code ("**Chapter 2306**"); Title 10 of the Texas Administrative Code ("**10 TAC**") Chapter 1 ("**Administration**"), Chapter 10 ("**Uniform Multifamily Rules**"), and Chapter 11 ("**Qualified Allocation Plan**"); Section 42 of the Internal Revenue Code ("**Section 42**"), all applicable Internal Revenue Service ("**IRS**") notices and revenue rulings, all applicable Regulations and Decisions of the United States Department of the Treasury, and all other applicable state and federal laws, rules, regulations, and other requirements, all collectively referred to herein as the "**Legal Authorities**"; and

**WHEREAS**, Department has reviewed the Application, and on July 25, 2019, the Governing Board of the Department approved both an award of Housing Tax Credits and the establishment of a waitlist for possible further awards of Housing Tax Credits, the waitlist to be administered in accordance with the Legal Authorities;

**NOW, THEREFORE**, for and in consideration of the premises herein expressed, and the mutual benefits derived and to be derived, the Parties hereto, each intending to be legally bound, do by their execution hereof agree as follows:



**TERMS**

The following terms shall have the meanings specified:

<b>Development</b>	<b>BAMBOO ESTATES APARTMENTS</b>
<b>Development Owner</b>	<b>Bamboo Estates, LP</b>
<b>Development Address</b>	<b>NE FARM TO MARKET ROAD 1015 AND HWY 281 PROGRESO, TX 78579</b>
<b>Building Identification Numbers</b>	<b>TX 19-22301 - 19-22399</b>
<b>Set-Asides</b>	<b>NONPROFIT</b>
<b>Allocation Category</b>	<b>NEW CONSTRUCTION</b>
<b>Annual Tax Credit Commitment Amount</b>	<b>\$1,300,000</b>
<b>Contact Person</b>	<b>BRAD SHIELDS</b>
<b>Contact Address</b>	<b>PO BOX 359 LA FERIA, TX 78559-</b>
<b>Contact Phone/Email</b>	<b>{956} 797-2357 BSHIELDS@STEMDF.ORG</b>
<b>Effective Date of Commitment</b>	<b>August 16, 2019</b>
<b>Expiration Date of Commitment</b>	<b>September 16, 2019</b>

**CONDITIONS**

The Annual Tax Credit Commitment Amount reflected in the Commitment is the maximum amount of tax credits awarded by the Board. It is subject to downward (but not upward) adjustment in accordance with applicable laws, rules, and regulations concerning the issuance of IRS Form 8609 for each building so as to ensure, among other things, that no more credits than necessary are provided and ultimately allocated. In issuing this Commitment, the Department has relied upon the information submitted by the Development Owner to be accurate and complete in all material respects. The Department reserves the right to revoke, modify, or terminate this Commitment if the Department determines, in accordance with any applicable Legal Authorities, that the Development Owner has provided erroneous, misleading, incomplete, false, or fraudulent information to the Department or other parties for which the Legal Authorities require notification in connection with the Application for Housing Tax Credits or has in a material manner failed to comply with any state or federal requirement applicable to the Application for and awarding of Housing Tax Credits, and such failure cannot be cured or waived.

Pursuant to 10 TAC §10.402(a) of the Uniform Multifamily Rules, unless sooner terminated in accordance with applicable Legal Authorities, this Commitment shall expire on the date specified herein below in paragraph A unless the Development Owner indicates acceptance by executing the Commitment, paying the required fees specified in 10 TAC §11.901 of the Qualified Allocation Plan, and timely and fully

satisfying any and all other conditions set forth herein, imposed by the Department's Board in the making of the award, or in the Uniform Multifamily Rules. As provided for in 10 TAC §10.402(a), the Commitment expiration noted in paragraph A below may not be extended. Without limitation, failure to submit the documentation in sections A.1.-6. below, by the specified submission dates, may result in the termination of the award documented in this Commitment:

A. Not later than **September 16, 2019**, which is the expiration date of this Commitment, the Development Owner must provide in form and substance satisfactory to the Department in its reasonable judgment all of the following items.(if not already provided):

1. This Commitment, accepted and agreed to by the Development Owner, as evidenced by the original signature of an individual duly represented as being authorized to act on behalf of the Development Owner without need of joinder or approval by anyone else;
2. In accordance with 10 TAC §11.901(6) of the Qualified Allocation Plan, a check for the Commitment Fee in the amount of **\$52,000**;
3. In accordance with 10 TAC §11.901(8) of the Qualified Allocation Plan, a check for the Building Inspection Fee in the amount of **\$750**;
4. In accordance with 10 TAC §10.402(d) of the Uniform Multifamily Rules, each and all of the following documents must be submitted by the Development Owner and failure to provide these documents may cause this Commitment to be rescinded:
  - a. For entities organized under the laws of the State of Texas, a copy of the Certificate of Filing for the Certificate of Formation and a Certificate of Fact from the Office of the Secretary of State. For entities organized under the laws of a jurisdiction other than the State of Texas, a Certificate of Application for foreign qualification in Texas and a Certificate of Fact from the Texas Secretary of State. If the entity is newly formed and a Certificate of Fact is not available, a statement is provided to that effect;
  - b. A current statement of Franchise Tax Account Status issued by the Texas Comptroller of Public Accounts or, if the entity is newly formed and no status is available, a statement by the Development Owner must be provided to that effect;
  - c. Evidence that the signer(s) of the Commitment has (have) the authority to sign on behalf of the Applicant in the form of a certified corporate resolution which indicates the person or sub-entity in Control consistent with the entity contemplated and described in the Application and that those Person(s) signing the Commitment constitute all Persons required to sign or submit such documents; if intervening persons or entities are involved in any such execution, certified resolutions as to the authority of each and all persons executing or executing on behalf of any entity must also be provided;
  - d. Evidence of final approval of any zoning that is required or was proposed or needed to be changed pursuant to the Development plan;



e. Evidence of satisfaction of any conditions identified in the Credit Underwriting Analysis Report, in the conditions approved by the Board from the Executive Award Review and Advisory Committee as provided for in 10 TAC Chapter 1, Subchapter C (relating to Previous Participation Review), in the conditions approved by the Board regarding 10 TAC §11.101(a)(2) related to Undesirable Site Features, in the conditions approved by the Board regarding 10 TAC §11.101(a)(3) related to Neighborhood Risk Factors, or any other conditions of the award required to be met at the time of Commitment;

f. Documentation of any changes to representations made in the Application subject to 10 TAC §10.405 of the Uniform Multifamily Rules (relating to Amendments and Extensions); and

g. For Applications underwritten with a property tax exemption, documentation must be submitted in the form of a letter from an attorney identifying the statutory basis for the exemption and indicating that the exemption is reasonably achievable subject to appraisal district review. Additionally, any Development with a proposed Payment in Lieu of Taxes agreement or similar agreement, however designated (PILOT) must provide evidence regarding the statutory basis for the PILOT and its terms.

5. If the Applicant proposes to relocate existing units in an otherwise qualifying At-Risk Development, provide evidence that the affordability restrictions and any At-Risk eligible subsidies are approved to be transferred to the Development Site.
6. If the Applicant is participating in the Section 811 Project Rental Assistance Program under 10 TAC §11.9(c)(6) of the 2019 Qualified Allocation Plan, the Applicant must include the executed Section 811 Project Rental Assistance Owner Participation Agreement.

B. In accordance with 10 TAC §10.402(f) of the Uniform Multifamily Rules, all documents outlined in the Carryover Manual, including for USDA-funded developments, documentation of the submission of a complete Preliminary Assessment Tool to the USDA, relating to the execution of a **Carryover Allocation Agreement** pursuant to §42(h)(1) of the Internal Revenue Code and Treasury Regulations §1.42-6 must be submitted to the Department no later than 5:00 p.m. Austin local time on **November 1, 2019**, unless such date has been extended in writing by Department. Requested extensions made after that time and date will not be considered by staff.

C. In accordance with 10 TAC §10.402(g) of the Uniform Multifamily Rules and pursuant to §42(h)(1)(E)(i) and (ii) of the Internal Revenue Code, all documents outlined in the Post Carryover Activities Manual relating to the 10% Test must be submitted to the Department no later than 5:00 p.m. Austin local time on **July 1, 2020**, unless extended in writing by Department. Requested extensions made after that time and date will not be considered by staff.

D. In accordance with §42(h)(1)(E)(i) of the Internal Revenue Code, all Buildings in the Development must be placed in service no later than **December 31, 2021**.

E. Extensions to the deadlines itemized in paragraphs B and C, to the extent permitted under the Legal Authorities, must be requested in accordance with 10 TAC §10.405(c) of the Uniform Multifamily Rules and must be submitted prior to the date for which an extension is being requested. The Department may

require documentation relating to the need for any extension and staff may recommend and the Board may assess point deductions on other current or future applications in accordance with Tex. Gov't Code §2306.6710(b)(2).

F. Subsequent to the allocation of tax credits, should any terms of the proposed capital structure change or if there are material changes to the overall development plan or costs, the analysis must be re-evaluated and adjustment to the credit allocation and/or terms of other TDHCA funds may be warranted. If additional funds are required to ensure financial feasibility there can be no assurance that additional funds or other financial assistance will be available from the Department. In no event will the amount of Housing Tax Credits be increased.

This Commitment is subject to the following Development-specific conditions as reflected in the Department's published Credit Underwriting Analysis Report. Unless otherwise stated within the specific condition (which may not conflict with any of the Legal Authorities), the documentation required to demonstrate satisfaction of each condition must be submitted to the Department not later than 5:00 p.m. Austin local time on **September 16, 2019**.

**1 Receipt and acceptance by Commitment:**

- **Receipt of MAP Invitation Letter for FHA 221(d)(4) loan, or letter from Lender indicating the date that the HUD concept meeting was held, and confirmation that based on that meeting the Lender intends to proceed with submitting the application to HUD.**

**2 Receipt and acceptance by 10% test:**

a: **Final site plan clearly depicting the reduced/final acreage as will be encumbered by LURA after dedication for Road Right of Ways and easements for utilities.**

b: **Documentation that a noise study has been completed, and Architect certification that all recommendations from the noise study are incorporated into the development plans.**

**3 Receipt and acceptance by Cost Certification:**

- **Architect certification that all noise assessment recommendations were implemented and the Development is compliant with HUD noise guidelines.**

G. This Commitment is also subject to the following Development-specific conditions as recommended by the Executive Award and Review Advisory Committee (EARAC), and imposed by the Board. Unless otherwise stated within the specific condition (which may not conflict with any of the Legal Authorities), the documentation required to demonstrate satisfaction of each condition must be submitted to the Department not later than 5:00 p.m. Austin local time on **September 16, 2019**.

**NA**

H. This Commitment is also subject to the following Development-specific conditions as imposed by the Board regarding 10 TAC §11.101(a)(2) related to Undesirable Site Features

**NA**

I. This Commitment is also subject to the following Development-specific conditions as imposed by the Board regarding 10 TAC §11.101(a)(3) related to Neighborhood Risk Factors

NA

J. Included with this Commitment is the "Application Verification and Compliance Review" form. This review form contains representations from the Application, changes during the Application process, and the Application as underwritten and approved by the Board. Please review the attachment for accuracy and identify any errors by marking the corrected information in red. This is solely to facilitate a detailed review of said representations and the legal obligations they have created and does not constitute an opportunity to change, modify, abrogate, or otherwise alter any such representation or the enforceability thereof. The Application Verification and Compliance Review form, initialed and signed by a person with full authority to act on behalf of the Development Owner, must be submitted with this Commitment.

K. In addition to the requirements of the Legal Authorities, Development Owner hereby agrees and acknowledges that all assurances, pledges, conditions, restrictions, representations, or obligations, however designated, which the Development Owner (including any of its affiliates) undertook in applying for Housing Tax Credits will be incorporated into a Land Use Restriction Agreement (LURA) or other applicable document with respect to the Development. Such LURA or document will also incorporate provisions requiring compliance with Section 42 and with Chapter 2306, including but not limited to requirements for: annual reporting and periodic inspections; payment of the fees, charges, and expenses of the Department in connection with monitoring and compliance activities; management, operating, maintenance, and repair standards; tenant selection and income certification; limitations on rents, charges, and fees payable by tenants; cost controls and management selection; and a minimum thirty-year affordability period, or such longer period as elected and set forth in the Application. If any liens (other than mechanics' or materialmen's liens for which construction bonds are in place or other provisions made to ensure discharge) have been recorded against the Development prior to the recording of the LURA, the Development Owner shall also obtain and submit to the Department the subordination of the rights of any such lienholder, or other effective consent, to the survival of certain obligations contained in the LURA following the foreclosure of any such lien.

L. If participating in the **Multifamily Direct Loan Program**, Development Owner acknowledges that this Commitment does not represent a commitment of any funds awarded under the Multifamily Direct Loan Program; award Letters and specific Direct Loan Conditions for Multifamily Direct Loans will be issued separately from this Commitment Notice. However, those Development Owners awarded Multifamily Direct Loans composed of HOME funds from the Department are cautioned against taking any choice-limiting action as described and addressed in CPD Notice 01-11, including but not limited to any transfers or assignments of the property, in anticipation of the Federal commitment but prior to receiving Federal environmental clearance from the Department. Development Owners expecting to ultimately receive a commitment of any such funds from the Department are encouraged to familiarize themselves in detail with the HUD environmental review process and, if applicable, submit their request for Federal environmental clearance as soon as possible, **but in no event later than October 25, 2019**, in accordance with 10 TAC §13.11(c). Choice-limiting activities as described in 10 TAC §13.2(2) may result in the termination or rescission of any related funding commitment and potentially lead to the revocation of

this Commitment as a result of the financial infeasibility created by the loss of such funds and further penalties pursuant to 10 TAC §13.11(b) and 10 TAC §11.9(f).

M. If participating in the **Section 811 Project Rental Assistance Program**, Development Owner hereby agrees to execute a Section 811 Project Rental Assistance Owner Participation Agreement **no later than September 16, 2019**, for either the Development listed under the Terms section of this Commitment or a Department Approved Existing Development. Development Owner acknowledges that this Commitment does not represent a commitment of any Section 811 Project Rental Assistance to the Development. Development Owners are encouraged to review the Owner Participation Agreement, the Section 811 Project Rental Assistance Cooperative Agreement in its entirety, and the Project Rental Assistance Program Rules at 10 TAC Chapter 8. Development Owner agrees that if requested by the Department, the Development Owner will record the Section 811 PRA Program Use Agreement (form HUD-92238-PRA) and sign a Rental Assistance Contract (form HUD-92235-PRA and form HUD 92237-PRA).

On behalf of the Department:

By:   
Margaret Holloway, Multifamily Finance Director

  
Date

I (We), Development Owner, hereby acknowledge and agree to abide by all terms and conditions stated in this Commitment and any referenced documentation contained herein.

I (We), on behalf of the Development Owner, hereby acknowledge and agree that pursuant to 10 TAC §10.406 of the Rules, the transfer of an allocation of Housing Tax Credits or ownership of a Development supported with an allocation of Housing Tax Credits to any person including an Affiliate of the Development Owner shall not occur unless the Development Owner obtains the Department's prior, written approval of the transfer.

I (We) hereby acknowledge that failure to comply with this Commitment, the Legal Authorities, as applicable, and any referenced documentation contained therein may result in a refusal by the Department to issue IRS Form(s) 8609 for purposes of Housing Tax Credits as well as its exercise of other remedies, including revocation of this Commitment.

I (we) hereby acknowledge that the Development will be constructed in compliance with the 2010 ADA Standards (with the HUD exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" *Federal Register* 79 FR 29671, if relevant) and as further amended by 10 TAC Chapter 1, Subchapter B.

Bamboo Estates, LP

Development Owner

84-2050177

Employee Identification Number



Authorized Representative

09/13/2019

Date

Brad Shields, Manager

Authorized Representative (Printed Name, Title)

Corporations Section  
P O Box 13697  
Austin, Texas 78711-3697



David Whitley  
Secretary of State

## Office of the Secretary of State

May 12, 2019

Attn Law Office of Richard S Talbert  
Law Office of Richard S Talbert  
612 S Texas  
Weslaco, TX 78596 USA

RE BAMBOO ESTATES, LP  
File Number 803314113

It has been our pleasure to file the certificate of formation for the referenced limited partnership. This letter evidences the existence of the domestic entity as of the effective date noted on the certificate.

Unless exempted, limited partnerships are subject to state tax laws, including franchise tax laws. Shortly, the Comptroller of Public Accounts will be contacting the partnership at its registered office for information that will assist the Comptroller in setting up the franchise tax account for the partnership. Information about franchise tax, and contact information for the Comptroller's office, is available on their web site at <http://window.state.tx.us/taxinfo/franchise/index.html>.

Limited partnerships do not file annual reports with the Secretary of State. However, a limited partnership that is not required to file a public information report under the Tax Code is subject to periodic reporting requirements with the Secretary of State. It is important for the partnership to continuously maintain a registered agent and office in Texas as this is the address to which the Secretary of State will send a request to file a periodic report. Failure to maintain a registered agent or office in Texas, failure to file a change to the agent or office information, or failure to file a periodic report when requested may result in the involuntary termination of the limited partnership.

If we can be of further service at any time, please let us know.

Sincerely,

Corporations Section  
Business & Public Filings Division  
(512) 463-5555  
Enclosure

*Come visit us on the internet at <http://www.sos.state.tx.us>*

Phone (512) 463-5555  
Prepared by Carol Covey

Fax (512) 463-5709  
TID 10284

Dial 7-1-1 for Relay Services  
Document 888128640002



**Office of the Secretary of State**

**CERTIFICATE OF FILING  
OF**

**BAMBOO ESTATES, LP  
File Number. 803314113**

The undersigned, as Secretary of State of Texas, hereby certifies that a Certificate of Formation for the above named Domestic Limited Partnership (LP) has been received in this office and has been found to conform to the applicable provisions of law

ACCORDINGLY, the undersigned, as Secretary of State, and by virtue of the authority vested in the secretary by law, hereby issues this certificate evidencing filing effective on the date shown below

The issuance of this certificate does not authorize the use of a name in this state in violation of the rights of another under the federal Trademark Act of 1946, the Texas trademark law, the Assumed Business or Professional Name Act, or the common law

Dated 05/09/2019

Effective 05/09/2019



A handwritten signature in black ink, appearing to read "David Whitley".

David Whitley  
Secretary of State

Form 207

Secretary of State  
P.O. Box 13697  
Austin, TX 78711-3897  
FAX: 512/463-5709



**Certificate of Formation  
Limited Partnership**

Filed in the Office of the  
Secretary of State of Texas  
Filing #: 803314113 05/09/2019  
Document #: 888128640002  
Image Generated Electronically  
for Web Filing

Filing Fee: \$750

**Article 1 - Entity Name and Type**

The filing entity being formed is a limited partnership. The name of the entity is:

**BAMBOO ESTATES, LP**

The name must contain the words "Limited Partnership" or "Limited," or the abbreviation "L.P.," "LP," or "Ltd." The name must not be the same as deceptively similar to or similar to that of an existing corporate, limited liability company, or limited partnership name on file with the secretary of state. A preliminary check for "name availability" is recommended.

**Article 2 - Principal Office**

The address of the principal office in the United States where records of the partnership are to be kept or made available is set forth below:

**118 N. Main, La Feria, TX, USA 78559-0002**

**Article 3 - Registered Agent and Registered Office**

A. The initial registered agent is an organization (cannot be limited partnership named above) by the name of:

OR

B. The initial registered agent is an individual resident of the state whose name is set forth below:

Name:

**Alma Martinez**

C. The business address of the registered agent and the registered office address is:

Street Address:

**118 N. Main La Feria TX 78559-0002**

**Consent of Registered Agent**

A. A copy of the consent of registered agent is attached.

OR

B. The consent of the registered agent is maintained by the entity.

**Article 4 - General Partner Information**

The name and address of each general partner are as follows:

General Partner 1 (Business Name) **STEMBE-GP, LLC**

Address **118 N. Main La Feria TX, USA 78559-0002**

**Supplemental Provisions / Information**

[The attached addendum, if any, is incorporated herein by reference.]

**Effectiveness of Filing**

A. This document becomes effective when the document is filed by the secretary of state.

OR



B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of its signing. The delayed effective date is:

Execution

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

Signature of General Partner 1 **Brad Shields, Manager of STEMBE-GP, LLC**

FILING OFFICE COPY

Corporations Section  
P.O. Box 13697  
Austin, Texas 78711-3697



David Whitley  
Secretary of State

## Office of the Secretary of State

May 10, 2019

Attn: Law Office of Richard S Talbert

Law Office of Richard S Talbert  
612 S Texas  
Weslaco, TX 78596 USA

RE: STEMBE-GP, LLC  
File Number: 803313870

It has been our pleasure to file the certificate of formation and issue the enclosed certificate of filing evidencing the existence of the newly created domestic limited liability company (llc).

Unless exempted, the entity formed is subject to state tax laws, including franchise tax laws. Shortly, the Comptroller of Public Accounts will be contacting the entity at its registered office for information that will assist the Comptroller in setting up the franchise tax account for the entity. Information about franchise tax, and contact information for the Comptroller's office, is available on their web site at <http://window.state.tx.us/taxinfo/franchise/index.html>

The entity formed does not file annual reports with the Secretary of State. Documents will be filed with the Secretary of State if the entity needs to amend one of the provisions in its certificate of formation. It is important for the entity to continuously maintain a registered agent and office in Texas. Failure to maintain an agent or office or file a change to the information in Texas may result in the involuntary termination of the entity.

If we can be of further service at any time, please let us know.

Sincerely,

Corporations Section  
Business & Public Filings Division  
(512) 463-5555

Enclosure

[The attached addendum if any is incorporated herein by reference ]

**Organizer**

The name and address of the organizer are set forth below.

**Richard S. Talbert      612 S. Texas, Weslaco, TX 78596-6222**

**Effectiveness of Filing**

A. This document becomes effective when the document is filed by the secretary of state.

**OR**

B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of its signing. The delayed effective date is:

**Execution**

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

**Richard S. Talbert**

Signature of Organizer

FILING OFFICE COPY

**Sunny K. Philip**  
[skphilip@stchd.org](mailto:skphilip@stchd.org)  
**956.778.7030**

**Bamboo Estates, LP**

Type of entity – Limited Partnership  
Tax status – Taxable  
Fiscal year end – December 31  
Registered Agent – Alma Martinez  
Street Address -118 North Main, La Feria, Texas 78559  
General Partner - STEMBE-GP, LLC  
Manager of General Partner - Brad Shields  
Responsible Entity - South Texas Emerging Markets Development Fund, Inc.

Document attached - Secretary of State Filings

Assistance needed - Secure EIN Number  
Calendar to submit periodic reports

**STEMBE-GP, LLC**

Type of entity – Limited Liability Company  
Tax status – Taxable  
Fiscal year end – December 31  
Registered Agent – Alma Martinez  
Street Address -118 North Main, La Feria, Texas 78559  
Manager - Brad Shields  
Responsible Entity - South Texas Emerging Markets Development Fund, Inc.

Document attached - Secretary of State Filings

Assistance needed - Secure EIN Number  
Calendar to submit periodic reports

**STCHDBE-SLP, LLC**

Type of entity – Limited Liability Company  
Tax status – Taxable  
Fiscal year end – December 31  
Registered Agent – Alma Martinez  
Street Address -118 North Main, La Feria, Texas 78559  
Manager - Sunny K. Philip  
Responsible Entity - South Texas Collaborative for Housing Development, Inc.

Document attached - Secretary of State Filings

Assistance needed - Secure EIN Number  
Calendar to submit periodic reports

Corporations Section  
P.O. Box 13697  
Austin, Texas 78711-3697



David Whitley  
Secretary of State

## Office of the Secretary of State

May 10, 2019

Attn: Law Office of Richard S Talbert

Law Office of Richard S Talbert  
612 S Texas  
Weslaco, TX 78596 USA

RE: STCHDBE-SLP, LLC  
File Number: 803313881

\*\*\*\*  
It has been our pleasure to file the certificate of formation and issue the enclosed certificate of filing evidencing the existence of the newly created domestic limited liability company (llc).

Unless exempted, the entity formed is subject to state tax laws, including franchise tax laws. Shortly, the Comptroller of Public Accounts will be contacting the entity at its registered office for information that will assist the Comptroller in setting up the franchise tax account for the entity. Information about franchise tax, and contact information for the Comptroller's office, is available on their web site at <http://window.state.tx.us/taxinfo/franchise/index.html>.

The entity formed does not file annual reports with the Secretary of State. Documents will be filed with the Secretary of State if the entity needs to amend one of the provisions in its certificate of formation. It is important for the entity to continuously maintain a registered agent and office in Texas. Failure to maintain an agent or office or file a change to the information in Texas may result in the involuntary termination of the entity.

If we can be of further service at any time, please let us know.

Sincerely,

Corporations Section  
Business & Public Filings Division  
(512) 463-5555

Enclosure



## Office of the Secretary of State

### CERTIFICATE OF FILING OF

STCHDBE-SLP, LLC  
File Number 803313881

The undersigned, as Secretary of State of Texas, hereby certifies that a Certificate of Formation for the above named Domestic Limited Liability Company (LLC) has been received in this office and has been found to conform to the applicable provisions of law.

ACCORDINGLY, the undersigned, as Secretary of State, and by virtue of the authority vested in the secretary by law, hereby issues this certificate evidencing filing effective on the date shown below.

The issuance of this certificate does not authorize the use of a name in this state in violation of the rights of another under the federal Trademark Act of 1946, the Texas trademark law, the Assumed Business or Professional Name Act, or the common law.

Dated: 05/09/2019

Effective: 05/09/2019



A handwritten signature in black ink, appearing to read "David Whitley".

David Whitley  
Secretary of State

Secretary of State  
P.O. Box 13897  
Austin, TX 78711-3697  
FAX: 512/463-5709

Filing Fee \$300



**Certificate of Formation  
Limited Liability Company**

Filed in the Office of the  
Secretary of State of Texas  
Filing #: 803313881 05/09/2019  
Document #: 888047120004  
Image Generated Electronically  
for Web Filing

**Article 1 - Entity Name and Type**

The filing entity being formed is a limited liability company. The name of the entity is:

**STCHDBE-SLP, LLC**

**Article 2 - Registered Agent and Registered Office**

A. The initial registered agent is an organization (cannot be company named above) by the name of:

**OR**

B. The initial registered agent is an individual resident of the state whose name is set forth below:

Name:

**Alma Martinez**

C. The business address of the registered agent and the registered office address is:

Street Address:

**118 N. Main La Feria TX 78559-0002**

**Consent of Registered Agent**

A. A copy of the consent of registered agent is attached.

**OR**

B. The consent of the registered agent is maintained by the entity.

**Article 3 - Governing Authority**

A. The limited liability company is to be managed by managers.

**OR**

B. The limited liability company will not have managers. Management of the company is reserved to the members. The names and addresses of the governing persons are set forth below:

Manager 1 **Sunny K. Philip**

Title: **Manager**

Address **118 N. Main La Feria TX, USA 78559-0002**

**Article 4 - Purpose**

The purpose for which the company is organized is for the transaction of any and all lawful business for which limited liability companies may be organized under the Texas Business Organizations Code.

[The attached addendum, if any, is incorporated herein by reference.]

**Organizer**

The name and address of the organizer are set forth below.

**Richard S. Talbert      612 S. Texas, Weslaco, TX 78596-6222**

**Effectiveness of Filing**

A. This document becomes effective when the document is filed by the secretary of state.

OR

B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of its signing. The delayed effective date is:

**Execution**

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

**Richard S. Talbert**

Signature of Organizer

FILING OFFICE COPY



**UNANIMOUS WRITTEN CONSENT OF DIRECTORS OF  
SOUTH TEXAS EMERGING MARKETS DEVELOPMENT FUND, INC.**


Pursuant to the provisions of the Texas Business Organizations Code, the *Certificate of Formation* and Paragraph 4.16 of the *Bylaws* of South Texas Emerging Markets Development Fund, Inc., a Texas Nonprofit Corporation (STEMDF), the undersigned, being all of the Directors of STEMDF, authorize by their signatures below, the following resolutions:


RESOLVED that STEMDF ratifies, confirms and approves the 2019 9% Low Income Housing Tax Credits application submitted to the Texas Department of Housing and Community Affairs to compete under the non-profit set aside for Bamboo Estates Apartments to be located at the Northeast Quadrant of FM 1015 and US Highway 281, Progreso, Texas (the Project).


RESOLVED that STEMDF ratifies, confirms and approves the pre-development funding grant application submitted to the Texas Department of Housing and Community Affairs for the development of the Project.


RESOLVED that STEMDF designates and authorizes its President or Vice President to take all action on such terms and conditions as they deem in the best interest of STEMDF and to execute all documents necessary for STEMDF to accept such funds or tax credits as may be awarded for the Project, to take all action and execute all documents related to entering into any development agreement, including but not limited to any agreement to designate SOUTH TEXAS COLLABORATIVE FOR HOUSING DEVELOPMENT, INC., as the Primary Developer, submitting applications for financing, creating any legal entities, executing contracts for the purchase or conveyance of land, retaining necessary accountants, legal counsel, consultants and related professional advisors, receiving and disbursing all funds and executing all documents pertaining to the funding and development of the Project and to take all such actions necessary, convenient, or appropriate to complete the Project and ensure performance of all other matters in connection therewith.


IN WITNESS WHEREOF, the undersigned hereto have signed their names as of the dates set forth below.

  
BRAD SHIELDS, Director/President  
Date: May 1, 2019

  
LORI WEAVER, Director/Vice President  
Date: May 1, 2019

  
OLGA OBERWETTER, Director  
and Secretary/Treasurer  
Date: May 1, 2019

  
JUAN M. MEDINA, Director  
Date: 5/1, 2019

  
JAVIER F. MARTINEZ, Director  
Date: 5-1-19, 2019

# *City of* **PROGRESO**

## *"Pride in the Community"*

*Mayor Gerardo Alanis  
Alderman Raul Martinez Jr.*

*Mayor Pro-Tem Ruben Abundiz  
Alderman Armando Cavazos*

*Alderman Blas Medrano*

March 18, 2019

Ms. Sharon Gamble, Administrator  
9% Competitive Housing Tax Credit Program  
Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup> Street  
Austin, Texas 78711

Re: Bamboo Estates Apartments  
TDHCA #19223

Dear Ms. Gamble:

The proposed Bamboo Estate Apartments development site is located within the first block on the east side of Spur FM 1015; between US Military Highway 281 on the south side, and Gonzalez Road on the north side of the City of Progreso.

The current use of the property is Agricultural and is zoned as Class "B-2" Business District. Apartment Buildings and residential units are permitted uses within Class "B-2" Business District. Bamboo Estates, LP has the right to secure building permits from the City of Progreso for the construction of Bamboo Estates Apartments without any further rezoning. A copy of the Zoning Ordinance is included as evidence of appropriate zoning.

I trust the information provided herein confirms the fact that the development site has appropriate zoning in place for the development of Bamboo Estates apartments,

Sincerely,



Alfredo Espinosa  
City Administrator

CC: Brad Shields  
Bamboo Estates, LP  
P.O. Box 359  
La Feria, Texas 78559

Harper Capital Partners, LLC  
3 Columbus Circle, 15th Fl.  
New York, NY 10019



September 16, 2019

Brad Shields  
Bamboo Estates, LP  
PO Box 359  
La Feria, TX 78559

Dear Mr. Shields:

In accordance with HUD guidelines for LIHTC projects and because of the speed required to close on or before the last business day of November under the 'readiness to proceed in disaster impacted counties' rule, we have elected not to hold a concept meeting or to submit a pre-application. Our first submission to HUD will be the application for firm commitment.

In accordance with HUD's MAP Guide Chapter 4.2.B.1., concept meetings are optional for affordable transactions. As you are aware, the appraisal report, environmental, market study, plans, specifications, and other related documentations have been completed and the third-party reviewer is completing the plan and cost reviews. We are planning to submit that firm commitment application to HUD within the next 10 days.

Our team appreciates the opportunity to work with you. If you have any questions, comments, concerns, or suggestions, you should always feel free to contact me directly—by telephone at (347) 916-9758 or by email at [nathans@harpercap.com](mailto:nathans@harpercap.com).

Sincerely,

HARPER CAPITAL PARTNERS, LLC

A handwritten signature in blue ink, appearing to read 'Nathan Schuss', written over a light blue horizontal line.

By: Nathan Schuss  
Chief Executive Officer

19223

Bamboo Estates

Appeal Response



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

[www.tdhca.state.tx.us](http://www.tdhca.state.tx.us)

Greg Abbott  
GOVERNOR

**BOARD MEMBERS**  
J.B. Goodwin, *Chair*  
Leslie Bingham-Escareño, *Vice Chair*  
Paul A. Braden, Member  
Asusena Reséndiz, Member  
Sharon Thomason, Member  
Leo Vasquez, Member

September 30, 2019

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

Brad Shields  
South Texas Emerging Markets  
Development Fund  
P.O. Box 359  
La Feria, Texas 78559-5002

RE: APPEAL RESPONSE - 2019 COMPETITIVE HOUSING TAX CREDIT APPLICATION 19223 BAMBOO ESTATES APARTMENTS, PROGRESO

Dear Mr. Shields:

The Texas Department of Housing and Community Affairs (the Department) received your appeal letter dated September 24, 2019, regarding the application submission indicated above. Staff had informed you that the Commitment issued on August 16, 2019, was not returned with the associated documentation and fee payment by September 16, and had therefore expired, pending the Applicant's ability to appeal. The appeal states, "(w)e had all the intentions to submit all documents an comply with all the requirements of TDHCA. All documents including the checks were ready to be submitted, inadvertently the documents were not uploaded to TDHCA USERV on time and checks overnighted to TDHCA."

The appeal indicates that as of September 24, 2019, all required documents were provided through the ServU account, and that appropriate fees were submitted via overnight delivery. Per 10 TAC §10.402(a) of the 2019 Uniform Multifamily Rules, related to Commitments:

The Commitment shall expire on the date specified therein, which shall be 30 calendar days from the effective date, unless the Development Owner indicates acceptance by executing the Commitment, pays the required fee specified in §11.901 of this chapter (relating to Fee Schedule, Appeals, and other Provisions), and satisfies any conditions set forth therein by the Department. The Commitment expiration date may not be extended.

The Commitment expired on September 16, 2019. Furthermore, staff reviewed the documents that were submitted late on September 24, 2019, and determined that the Application Verification and Compliance



Review Form was not submitted and the Section 811 PRA Program Agreement was not provided. The correct fee payments were received on September 25 – nine days after the expiration of the Commitment. In short, the required documentation and fee payment were not received within 30 calendar days from the effective date. Allowing the late submission of the executed Commitment, documentation, and fee payment would be tantamount to extending the Commitment expiration date, which is specifically prohibited by 10 TAC §10.402(a).

I find that the rules do not provide me the authority to extend your Commitment deadline, and accordingly I must deny the appeal. If you are not satisfied with this decision, you may file a further appeal with the Governing Board of the Texas Department of Housing and Community Affairs. Please review §11.902 of the 2019 QAP for full instruction on the appeals process. Should you have any questions, please contact Sharon Gamble, Competitive Tax Credit Program Administrator, at [sharon.gamble@tdhca.state.tx.us](mailto:sharon.gamble@tdhca.state.tx.us) or by phone at 512-936-7834.

Sincerely,

A handwritten signature in black ink, appearing to read "Bobby Wilkinson II". The signature is stylized with a large, sweeping "W" and a distinct "II" at the end.

Bobby Wilkinson  
Executive Director

8c

**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**OCTOBER 10, 2019**

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

**RECOMMENDED ACTION**

**WHEREAS**, five applications, as further detailed below, were submitted to the Department for consideration of a Determination Notice of 4% Housing Tax Credits;

**WHEREAS**, the Executive Award and Review Advisory Committee (EARAC) considered the program requirements, underwriting requirements and compliance history associated with each application listed herein; and

**WHEREAS**, EARAC recommends each of the five applications for an award of 4% Housing Tax Credits, in the specific amounts noted herein, and subject to any underwriting conditions as noted in the Real Estate Analysis Report and any compliance conditions as reflected in Exhibit A, as applicable;

**NOW, therefore, it is hereby**

**RESOLVED**, that the issuance of Determination Notices in the respective amounts for each of the applications listed herein, subject to underwriting conditions as found in the Real Estate Analysis report posted to the Department's website, and subject to any compliance conditions as reflected in Exhibit A, is hereby approved in the form presented at this meeting.

**BACKGROUND**

The 4% Housing Tax Credit (HTC) program is considered a non-competitive program in that there is not a specific ceiling amount of HTCs that can be issued each year. Rather, the ceiling amount of HTCs to be issued is limited by the amount of Private Activity Bond volume cap available. The Texas Bond Review Board (BRB) administers the Private Activity Bond program for the State of Texas, and for the 2019 calendar year, the state received approximately \$3 billion in Private Activity Bond authority, of which approximately \$665 million is reserved for multifamily housing until August 15<sup>th</sup> of each year. After such date there may be more Private Activity Bond volume cap that goes towards multifamily housing.

Individual projects receive a Certification of Reservation from the BRB that allows for a statutory 150-day closing timeline. For those projects seeking 4% HTCs (as the majority of them do), they must



complete the Department's review process, the bond issuer's process and the Attorney General's process in order to close within the prescribed timeframe. The Department accepts applications on a monthly basis throughout the year. The year from which the Certificate of Reservation is issued is what determines the QAP to which the application must adhere. Included in this Board presentation as Exhibit B is a list of the 4% HTC applications staff has processed thus far for 2019 which illustrates the volume of applications that pursue the 4% HTC program as a funding source. The list reflects all applications received and includes a column that denotes the applications' status, specifically, those that have already closed, have been approved by the Board, are active and currently under review and those that are pre-applications that will utilize the Department as the bond issuer and an HTC application will be forthcoming.

The Certificates of Reservation from the Bond Review Board for the developments described herein were 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 (beyond the federal requirement). The AMFI levels proposed to be served for each of the projects are indicated in their respective summaries, below.

#### 19407 – Norwood Estates

Norwood Estates is proposed to be located at 916 and 918 Norwood Park Boulevard in Austin, Travis County, and involves the new construction of 228 units serving the general population. All of the units will be rent and income restricted at 60% of AMFI. A zoning change has been requested from the City of Austin to allow for the proposed development. Evidence of final zoning will be required at the time the Determination Notice is accepted and returned to the Department. The Certificate of Reservation was issued on August 16, 2019, and will expire on January 13, 2020. Austin Affordable PFC, Inc. is serving as the bond issuer.

Recommended HTC Amount: \$1,467,918

#### 19436 – Bridge at Granada

Bridge at Granada proposes the new construction of 258 units to be located at 414 East Wonsley Drive in Austin, Travis County. The site will serve the general population and conforms to current zoning requirements. The development proposes to offer 25 market rate units and 233 units will be rent and income restricted at 60% of AMFI. The Certificate of Reservation was issued on September 19, 2019, and will expire on February 16, 2020. Austin Affordable PFC, Inc. is serving as the bond issuer.

Recommended HTC Amount: \$1,441,515

#### 19440 – Ventura at Parmer

Ventura on Parmer Lane proposes the new construction of 216 units to be located at 8407 East Parmer Lane in the extraterritorial jurisdiction of Austin, Travis County. Despite the fact that the applicant represented an intent to pursue income averaging, all of the units will be rent and income restricted at 60% of AMFI. The development will serve the general population and the site conforms to current

zoning. The Certificate of Reservation was issued on September 19, 2019, and will expire on February 16, 2020. Austin Affordable PFC, Inc. is serving as the bond issuer.

Recommended HTC Amount: \$2,189,841

19441 – Decker Lofts

Decker Lofts proposes the new construction of 262 units to be located at 9000 Decker Lane in the extraterritorial jurisdiction of Austin, Travis County. The development will serve the general population and the site conforms to current zoning. The application represented an intent to pursue income averaging and of the 262 units, 46 of the units will be rent and income restricted at 40% of AMFI, 165 of the units at 60% of AMFI, 46 of the units at 80% of AMFI, and there will be five market rate units. The Certificate of Reservation was issued on August 16, 2019, and will expire on January 13, 2020. Strategic Housing Finance Corporation of Travis County is serving as the bond issuer.

Recommended HTC Amount: \$1,822,502

19437 – Residences at Stillwater

Residences of Stillwater proposes the new construction of 192 units to be located at 1401 Northeast Inner Loop in Georgetown, Williamson County. The development will serve the general population and the site conforms to current zoning. All of the units will be rent and income restricted at 60% of AMFI. The Certificate of Reservation was issued on August 16, 2019, and will expire on January 13, 2020. Capital Area Housing Finance Corporation is serving as the bond issuer.

There is a neighborhood risk factor and undesirable site feature associated with the proposed development site, relating to school performance and proximity to a railroad track that were brought before the Board for consideration at the Board meeting of January 18, 2018, however, the applicant did not pursue the development site in 2018. Such ineligibility items were subsequently brought before the Board for re-evaluation at the Board meeting of January 17, 2019, and based on the information presented, the development site was found eligible. Staff notes that with respect to the proximity to the railroad track, the Board action in January 2019 was conditioned upon the applicant providing a third party noise assessment and that the applicant commits to perform sound mitigation in accordance with HUD standards as if they were directly applicable to the development. Staff has confirmed that the noise assessment was provided with the application, and the award is conditioned upon implementation of the sound mitigation recommendations if required by HUD.

Recommended HTC Amount: \$1,154,635

**EXHIBIT A**  
**Previous Participation Results**

<b>Application Number</b>	<b>Development Name</b>	<b>Category</b>	<b>PPR Conditions</b>
19407	Norwood Estates	1	N/A
19436	Bridge at Granada	1	N/A
19440	Ventura at Parmer	2	N/A
19441	Decker Lofts	2	N/A
19437	Residences at Stillwater	1	N/A



## 4% (Non-Competitive) Housing Tax Credit Program 2019 Application Status Log

TDHCA #	Previous TDHCA #	Development Name	Development City	Board Meeting Date (MM/DD/YYYY)	Application Status	Total Units	Total Low-Income Units	Bond Reservation Amount	Requested HTC Amount	Recommend HTC Amount
19410	18435	Eisenhower	El Paso	10/11/2018	Closed	66	66	\$ 10,000,000	\$ 380,508	\$ 376,008
19602	18616	Park Yellowstone	Houston	12/6/2018	Closed	210	210	\$ 16,000,000	\$ 893,290	\$ 879,975
19427	18441	Lakeway Apartment Homes	Austin ETJ	12/6/2018	Closed	180	169	\$ 20,000,000	\$ 1,203,960	\$ 1,196,981
19408	18457	Mission Trail at Camino Real	San Marcos	1/17/2019	Closed	352	282	\$ 45,000,000	\$ 1,685,207	\$ 1,683,222
19401		Stallion Ridge	Fort Worth	3/21/2019	Closed	204	193	\$ 20,000,000	\$ 1,292,387	\$ 1,292,387
19416	18455	Alsbury Apartments	San Antonio	3/21/2019	Closed	240	240	\$ 20,000,000	\$ 1,392,094	\$ 1,392,094
19413	18445	The Wurzbach	San Antonio	3/21/2019	Closed	161	160	\$ 20,000,000	\$ 837,177	\$ 837,177
19402		Culebra Creek Apartments	San Antonio	3/21/2019	Closed	312	312	\$ 41,000,000	\$ 2,320,033	\$ 2,320,033
19600		Lago de Plata	Corsicana	4/25/2019	Closed	150	148	\$ 14,000,000	\$ 723,820	\$ 723,820
19603		Northgate Village	Dallas	5/23/2019	Closed	168	168	\$ 20,000,000	\$ 1,142,704	\$ 1,142,704
19404		Legacy Ranch at Dessau East	Austin	5/23/2019	Closed	232	186	\$ 31,000,000	\$ 973,468	\$ 973,468
19421	18402	Hampton Homes	Texarkana	5/23/2019	Closed	50	50	\$20,000,000 (portfolio)	\$ 192,386	\$ 192,386
19422	18403	HATT Scattered Sites	Texarkana	5/23/2019	Closed	42	42	-	\$ 123,946	\$ 123,946
19423	18404	Robison Terrace	Texarkana	5/23/2019	Closed	130	130	-	\$ 460,949	\$ 460,949
19424	18405	Williams Homes	Texarkana	5/23/2019	Closed	52	52	-	\$ 179,313	\$ 179,313
19425	18406	Bright Street	Texarkana	5/23/2019	Closed	20	20	-	\$ 80,615	\$ 80,615
19601	18603	McMullen Square	San Antonio	5/23/2019	Closed	100	100	\$ 10,100,000	\$ 426,577	\$ 425,285
19403		Mesa West Apartments	San Antonio	5/23/2019	Closed	280	280	\$ 35,000,000	\$ 2,079,535	\$ 2,079,535
19420		Pythian Manor	Dallas	6/27/2019	Closed	76	76	\$ 8,300,000	\$ 387,412	\$ 387,412
						<b>2,731</b>	<b>2,590</b>	<b>\$ 310,400,000</b>	<b>\$ 16,775,381</b>	<b>\$ 16,747,310</b>
19470	18456	Jackie Robinson Apartments	El Paso	1/17/2019	Approved	186	186	\$ 20,000,000	\$ 1,182,177	\$ 1,182,177
18424	17413	Flora Lofts	Dallas	2/21/2019	Approved	52	52	\$ 15,000,000	\$ 754,702	\$ 754,702
19409	18454	Grim Hotel	Texarkana	5/23/2019	Approved	93	93	\$ 15,000,000	\$ 1,006,241	\$ 1,006,241
19414	18433	Dewetter	El Paso	7/25/2019	Approved	98	98	\$ 13,000,000	\$ 971,651	\$ 1,017,745
19415	18434	Kathy White	El Paso	7/25/2019	Approved	78	78	\$ 11,000,000	\$ 454,747	\$ 478,404
19412		Majestic Ranch	San Antonio	9/5/2019	Approved	288	288	\$ 23,000,000	\$ 1,698,636	\$ 1,698,636
19417		Green Oaks Apartments	Houston	9/5/2019	Approved	177	175	\$ 20,000,000	\$ 995,271	\$ 995,271
19419		Pallidum Redbird	Dallas	9/5/2019	Approved	300	210	\$ 30,000,000	\$ 1,585,280	\$ 1,585,280
19434		Limestone Ridge Senior	Austin ETJ	9/5/2019	Approved	225	223	\$ 20,000,000	\$ 1,470,110	\$ 1,470,110
19430		Kyle Dacy	Kyle ETJ	9/5/2019	Approved	324	324	\$ 50,000,000	\$ 1,515,943	\$ 1,515,943
19431	18458	Scharbauer Flats	Midland	9/5/2019	Approved	300	300	\$ 40,000,000	\$ 2,667,296	\$ 2,667,296
19407		Norwood Estates	Austin	10/10/2019	Approved	228	228	\$ 35,000,000	\$ 1,467,918	\$ 1,467,918

19418		Bridge at Loyola Lofts	Austin	10/10/2019	Approved	204	200	\$	30,000,000	\$	1,382,246	TBD
19429	16453	Govalle Terrace	Austin	10/10/2019	Approved	97	96	\$	13,000,000	\$	829,570	\$ 829,570
19436		Bridge at Granada	Austin	10/10/2019	Approved	258	233	\$	26,000,000	\$	1,441,515	\$ 1,441,515
19437		Residences of Stillwater	Georgetown	10/10/2019	Approved	192	192	\$	35,000,000	\$	1,154,635	\$ 1,154,635
19440		Ventura at Parmer Lane	Austin ETJ	10/10/2019	Approved	216	216	\$	34,000,000	\$	2,189,841	\$ 2,189,841
19441		Decker Lofts	Austin ETJ	10/10/2019	Approved	262	257	\$	40,000,000	\$	1,822,502	\$ 1,822,502
19433		Wayman Manor Apartments	Temple	10/10/2019	Approved	160	160	\$	20,000,000	\$	868,166	\$ 863,123
						<b>3,738</b>	<b>3,609</b>	<b>\$</b>	<b>490,000,000</b>	<b>\$</b>	<b>25,458,447</b>	<b>\$ 24,140,909</b>

19428		Riverstone	San Marcos	11/7/2019	Active	336	336	\$	45,000,000	\$	2,349,942	\$ -
19406	17401	Primrose Village	Weslaco	11/7/2019	Active	242	242	\$	20,000,000	\$	1,356,390	\$ -
19604		Ventura at Hickory Tree	Balch Springs	11/7/2019	Active	216	216	\$	30,000,000	\$	1,864,306	\$ -
19411	17409	Bridge at Canyon View	Austin	11/7/2019	Active	215	215	\$	25,000,000	\$	1,565,360	\$ -
19607		Havens at Willow Creek	Houston ETJ	11/7/2019	Active	248	248	\$	18,000,000	\$	7,694,342	\$ -
19439		Estates at Shiloh	Dallas	11/7/2019	Active	264	239	\$	25,000,000	\$	1,496,016	\$ -
19426		The Montage	San Antonio ETJ	11/7/2019	Active	216	216	\$	20,000,000	\$	1,445,547	\$ -
19444	19605	Oaks on North Plaza	Austin	11/7/2019	Active	62	62	\$	15,000,000	\$	484,263	\$ -
19452		Las Palmas	La Feria	11/7/2019	Active	36	35	\$39,120,000 (portfolio)		\$	85,924	\$ -
19445		Brush Country Cottages	Dilley	11/7/2019	Active	28	28	-		\$	87,570	\$ -
19446		Chula Vista	San Diego	11/7/2019	Active	44	44	-		\$	153,301	\$ -
19447		Cielo Lindo	Edcouch	11/7/2019	Active	34	34	-		\$	101,022	\$ -
19448		La Estancia	Sebastian	11/7/2019	Active	32	32	-		\$	102,977	\$ -
19449		La Posada I & II	Ela	11/7/2019	Active	74	74	-		\$	216,612	\$ -
19450		La Reina	La Villa	11/7/2019	Active	30	30	-		\$	69,492	\$ -
19451		La Sombra	Donna	11/7/2019	Active	50	50	-		\$	128,293	\$ -
19453		Leuty Avenue	Justin	11/7/2019	Active	24	24	-		\$	81,046	\$ -
19454		Los Laureles	Edcouch	11/7/2019	Active	23	23	-		\$	88,432	\$ -
19455		Los Naranjos	Alton	11/7/2019	Active	30	30	-		\$	68,072	\$ -
19456		Oak Haven	Donna	11/7/2019	Active	24	24	-		\$	63,040	\$ -
19457		Raintree	Alamo	11/7/2019	Active	32	32	-		\$	82,925	\$ -
19458		Seagraves Gardens	Seagraves	11/7/2019	Active	32	32	-		\$	89,792	\$ -
19459		Silver Trail	Menard	11/7/2019	Active	24	24	-		\$	67,835	\$ -
19460		The Village	Tomball	11/7/2019	Active	64	64	-		\$	161,539	\$ -
19461		Valley View	Valley View	11/7/2019	Active	24	24	-		\$	77,060	\$ -
19462		Villa Vallarta	Rio Grande City	11/7/2019	Active	40	40	-		\$	115,954	\$ -
19463		Vista Verde	Cotulla	11/7/2019	Active	24	24	-		\$	81,980	\$ -
19464		Willowick	Gainesville	11/7/2019	Active	60	60	-		\$	181,382	\$ -
19465		Windmill	Giddings	11/7/2019	Active	28	28	-		\$	76,988	\$ -
19466		Windwood I & II	Kingsland	11/7/2019	Active	68	68	-		\$	156,223	\$ -
19438		Legacy Seniors	Round Rock	11/7/2019	Active	157	157	\$	20,000,000	\$	732,029	\$ -
19469		EMLI at Pecan Creek	Aubrey	11/7/2019	Active	254	254	\$	20,000,000	\$	1,484,333	\$ -
19468		The Walzem	San Antonio	11/7/2019	Active	200	200	\$	20,000,000	\$	1,333,427	\$ -
19608		Reserve at San Marcos	San Marcos	12/5/2019	Active	376	320	\$	41,000,000	\$	1,844,071	\$ -
19610		Fish Pond at Corpus Christi	Corpus Christi	12/5/2019	Active	112	111	\$	10,000,000	\$	675,744	\$ -
19400	18423	Villas del San Xavier	San Marcos	12/5/2019	Active	156	156	\$	25,000,000	\$	1,051,705	\$ -
19435		Echo East Apartments	San Antonio	12/5/2019	Active	192	192		TBD	\$	1,231,341	\$ -
19443		Spanish Park Apartments	Arlington	12/5/2019	Active	350	350	\$	35,000,000	\$	1,867,557	\$ -

19467		Auro Crossing	Austin ETJ	12/5/2019	Active	256	256	\$	45,000,000	\$	2,287,808	\$	-
19471		Austin Manor Apartment Homes	Austin ETJ	12/5/2019	Active	280	280	\$	35,000,000	\$	2,247,832	\$	-
19472		Franklin Park	Austin	12/5/2019	Active	163	163	\$	15,000,000	\$	749,966	\$	-
						<b>5,120</b>	<b>5,037</b>	<b>\$</b>	<b>464,000,000</b>	<b>\$</b>	<b>36,099,438</b>	<b>\$</b>	<b>-</b>
19606		Pecan Grove	Seguin	6/27/2019	Pre-Application	198	198	\$	26,000,000	\$	1,388,840	\$	-
19612		Scott Street Lofts	Houston	9/5/2019	Pre-Application	123	98	\$	18,000,000	\$	690,991	\$	-
19611		Granada Terrace Apartments	South Houston	10/10/2019	Pre-Application	156	156	\$	16,000,000	\$	983,071	\$	-
19613		333 Holly	The Woodlands	10/10/2019	Pre-Application	332	332	\$	50,000,000	\$	2,599,103	\$	-
19614		The Pines	The Woodlands	10/10/2019	Pre-Application	152	152	\$	30,000,000	\$	1,388,448	\$	-
19615		Oaks on Clark	San Antonio	10/10/2019	Pre-Application	80	80	\$	12,000,000	\$	520,610	\$	-
						<b>1,041</b>	<b>1,016</b>	<b>\$</b>	<b>152,000,000</b>	<b>\$</b>	<b>7,571,063</b>	<b>\$</b>	<b>-</b>
TBD	18619	Waters at Redbud	McKinney	N/A	Withdrawn	148	118	\$	-	\$	534,132	\$	-
19405		Patriot Pointe	Arlington	5/23/2019	Withdrawn	184	184	\$	-	\$	1,150,227	\$	-
						<b>332</b>	<b>302</b>	<b>\$</b>	<b>-</b>	<b>\$</b>	<b>1,684,359</b>	<b>\$</b>	<b>-</b>
					<b>TOTAL</b>	<b>12,630</b>	<b>12,252</b>	<b>\$</b>	<b>1,416,400,000</b>	<b>\$</b>	<b>85,904,329</b>	<b>\$</b>	<b>40,888,219</b>

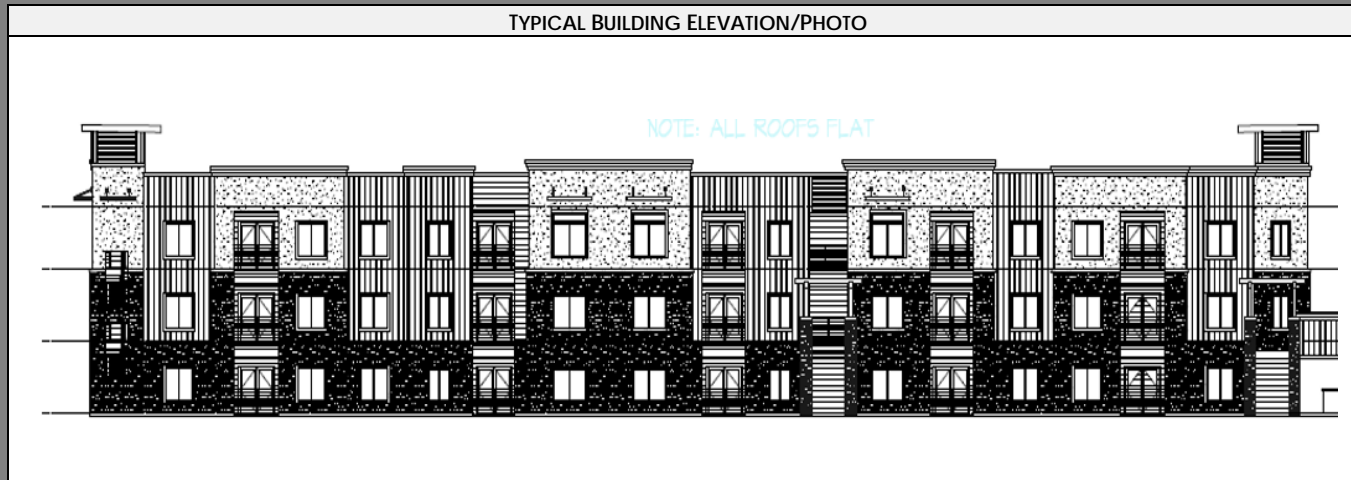
# 19407 Norwood Estates - Application Summary

REAL ESTATE ANALYSIS DIVISION

October 3, 2019

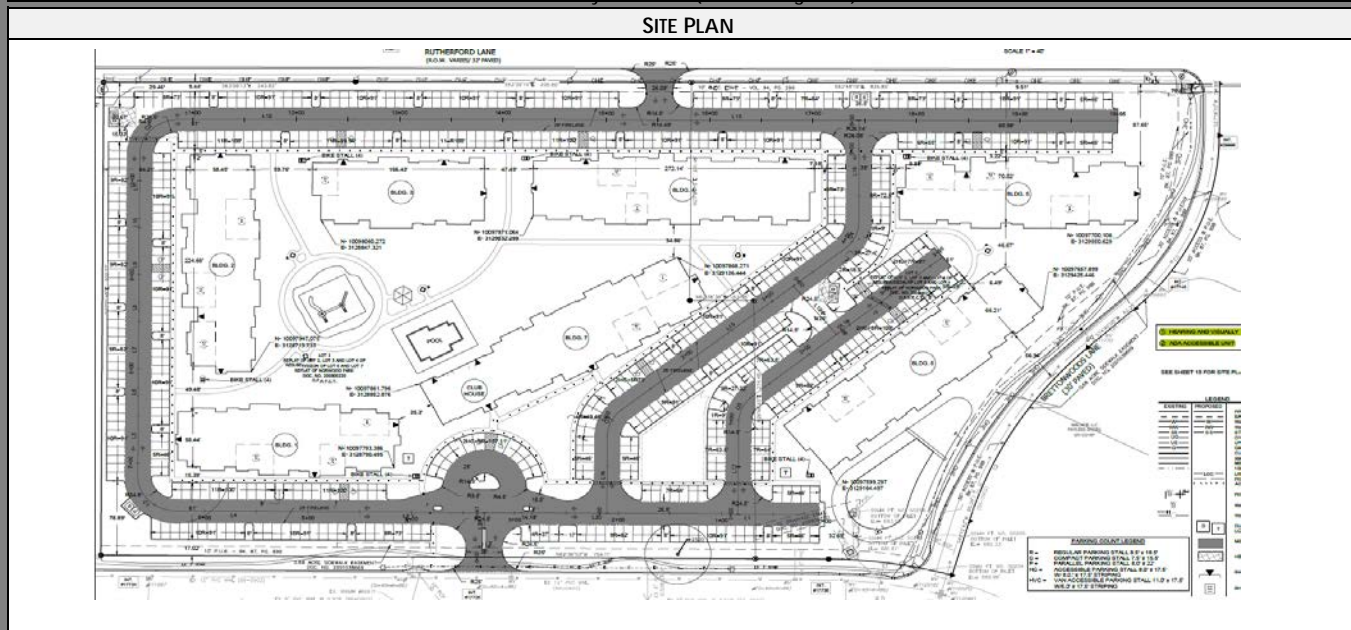
PROPERTY IDENTIFICATION		RECOMMENDATION			
Application #	19407	TDHCA Program	Request	Recommended	
Development	Norwood Estates	LIHTC (4% Credit)	\$1,467,918	\$1,467,918	\$6,438/Unit \$0.91
City / County	Austin / Travis				
Region/Area	7 / Urban				
Population	General				
Set-Aside	General				
Activity	New Construction				

KEY PRINCIPAL / SPONSOR		
LDG Multifamily, LLC Jason Trevino Justin Hartz Austin Housing Finance Corporation Michael Gerber		
Related Parties	Contractor - Yes	Seller - No



UNIT DISTRIBUTION			INCOME DISTRIBUTION		
# Beds	# Units	% Total	Income	# Units	% Total
Eff	-	0%	30%	-	0%
1	36	16%	40%	-	0%
2	108	47%	50%	-	0%
3	84	37%	60%	228	100%
4	-	0%	MR	-	0%
<b>TOTAL</b>	<b>228</b>	<b>100%</b>	<b>TOTAL</b>	<b>228</b>	<b>100%</b>

PRO FORMA FEASIBILITY INDICATORS			
Pro Forma Underwritten		Applicant's Pro Forma	
Debt Coverage	1.25	Expense Ratio	32.9%
Breakeven Occ.	80.0%	Breakeven Rent	\$1,079
Average Rent	\$1,250	B/E Rent Margin	\$171
Property Taxes	Exempt	Exemption/PILOT	100%
Total Expense	\$4,635/unit	Controllable	\$3,452/unit



MARKET FEASIBILITY INDICATORS			
Gross Capture Rate (10% Maximum)			5.4%
Highest Unit Capture Rate	17%	2 BR/60%	108
Dominant Unit Cap. Rate	17%	2 BR/60%	108
Premiums (↑60% Rents)	N/A		
Rent Assisted Units	N/A		

DEVELOPMENT COST SUMMARY			
Costs Underwritten		Applicant's Costs	
Avg. Unit Size	1,059 SF	Density	20.2/acre
Acquisition		\$20K/unit	\$4,500K
Building Cost	\$79.84/SF	\$85K/unit	\$19,284K
Hard Cost		\$103K/unit	\$23,594K
Total Cost		\$192K/unit	\$43,873K
Developer Fee	\$4,532K	(16% Deferred)	Paid Year: 2
Contractor Fee	\$3,139K	30% Boost	Yes

DEBT (Must Pay)					CASH FLOW DEBT / GRANT FUNDS					EQUITY / DEFERRED FEES		
Source	Term	Rate	Amount	DCR	Source	Term	Rate	Amount	DCR	Source	Amount	
R4CF	16/40	5.00%	\$29,790,000	1.25						R4 Capital LLC	\$13,355,384	
										LDG Multifamily, LLC	\$727,986	
										<b>TOTAL EQUITY SOURCES</b>	<b>\$14,083,370</b>	
										<b>TOTAL DEBT SOURCES</b>	<b>\$29,790,000</b>	
<b>TOTAL DEBT (Must Pay)</b>			<b>\$29,790,000</b>		<b>CASH FLOW DEBT / GRANTS</b>				<b>\$0</b>		<b>TOTAL CAPITALIZATION</b>	<b>\$43,873,370</b>

**CONDITIONS**

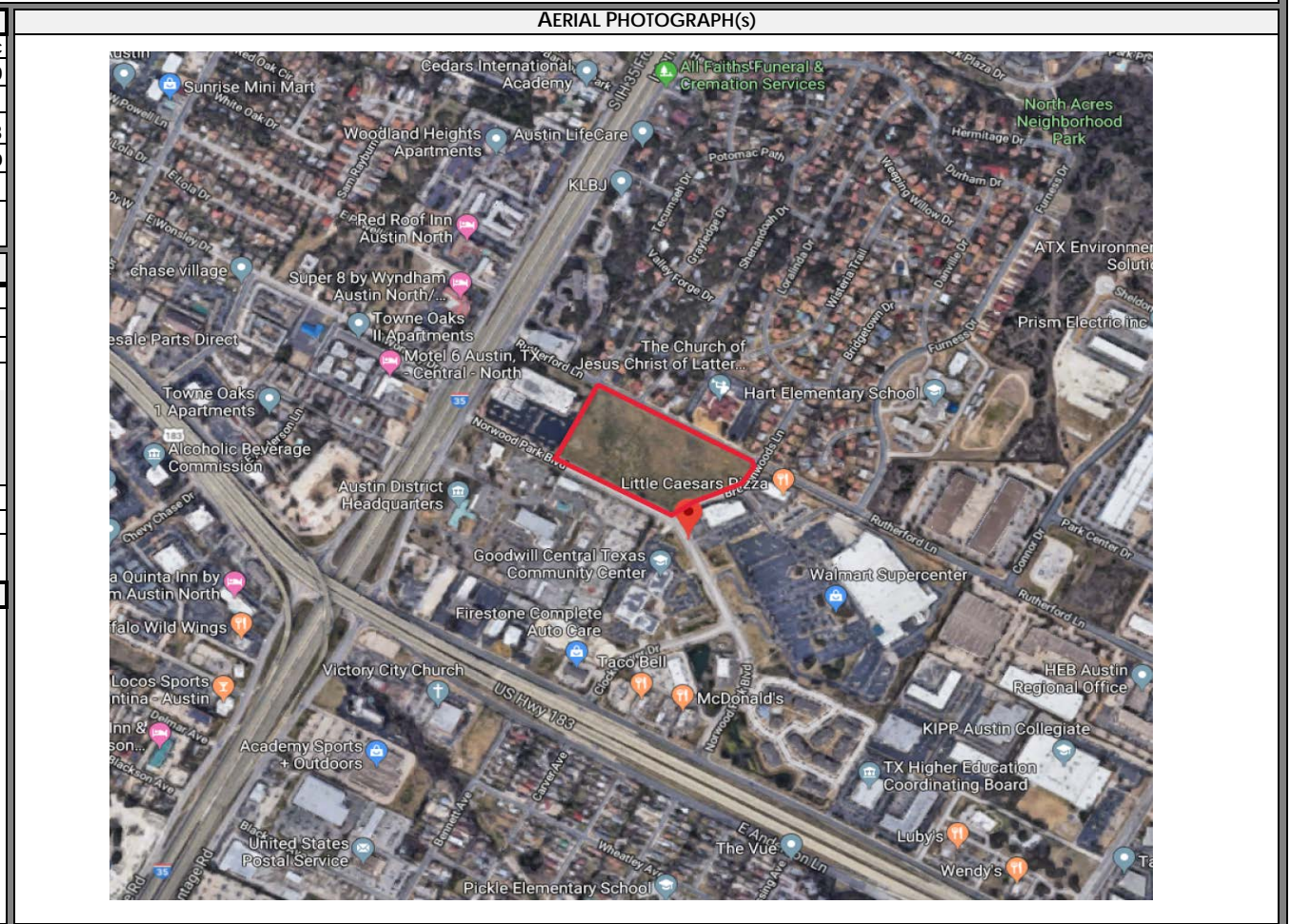
- Receipt and acceptance by Cost Certification:
  - a: Architect certification that a noise assessment was performed, and that all recommendations were implemented and the Development is compliant with HUD noise guidelines.
  - b: Architect certification that mitigation measures for HUD ASD guidelines were successfully implemented in the completion of the Development for any explosives hazards.

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

BOND RESERVATION / ISSUER	
Issuer	<b>Austin Affordable PFC, Inc</b>
Expiration Date	<b>1/13/2020</b>
Bond Amount	<b>\$35,000,000</b>
BRB Priority	<b>Priority 3</b>
Close Date	<b>TBD</b>
Bond Structure	<b>Private Placement</b>
% Financed with Tax-Exempt Bonds	<b>84.8%</b>

RISK PROFILE	
<b>STRENGTHS/MITIGATING FACTORS</b>	
▫ Experienced Developer	
▫ Strong feasibility indicators (expense ratio, break-even)	
▫ Close proximity to I-35	

WEAKNESSES/RISKS	
▫ High controllable expenses	
▫ Multiple nearby developments expected come online at the same time as the Subject	



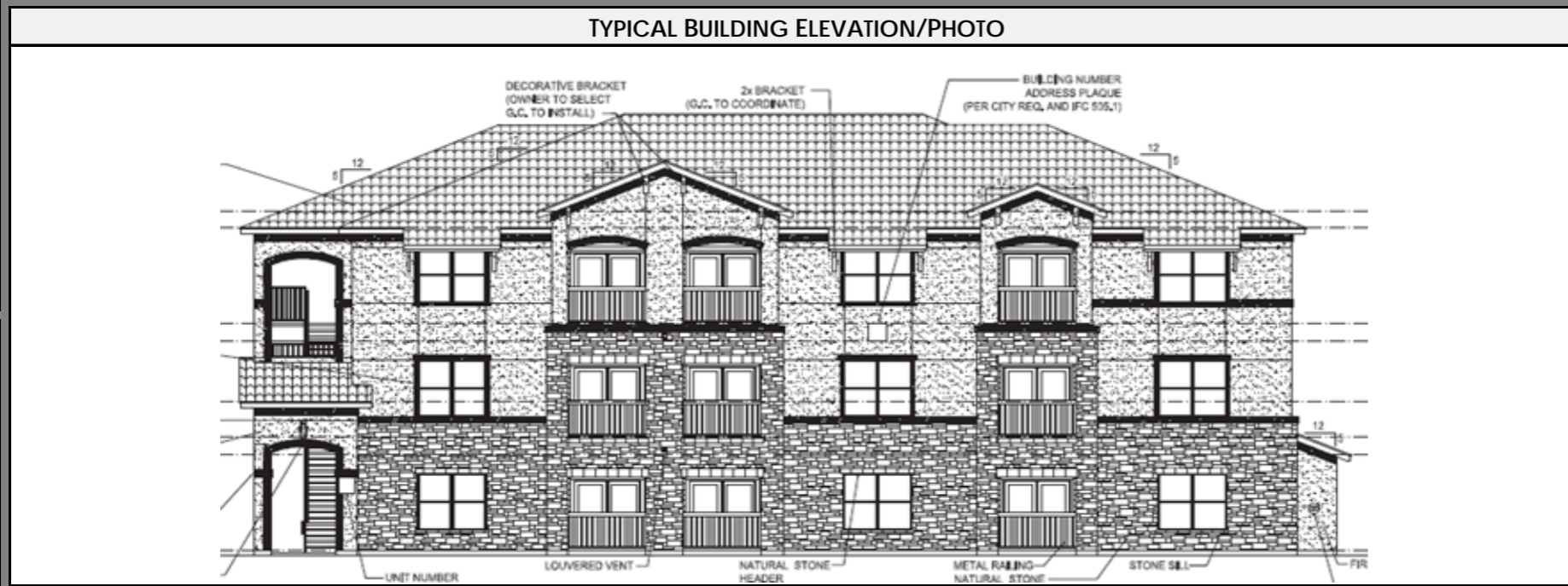


# 19436 Granada Apartments - Application Summary

PROPERTY IDENTIFICATION	
Application #	19436
Development	Granada Apartments
City / County	Austin / Travis
Region/Area	7 / Urban
Population	General
Set-Aside	General
Activity	New Construction

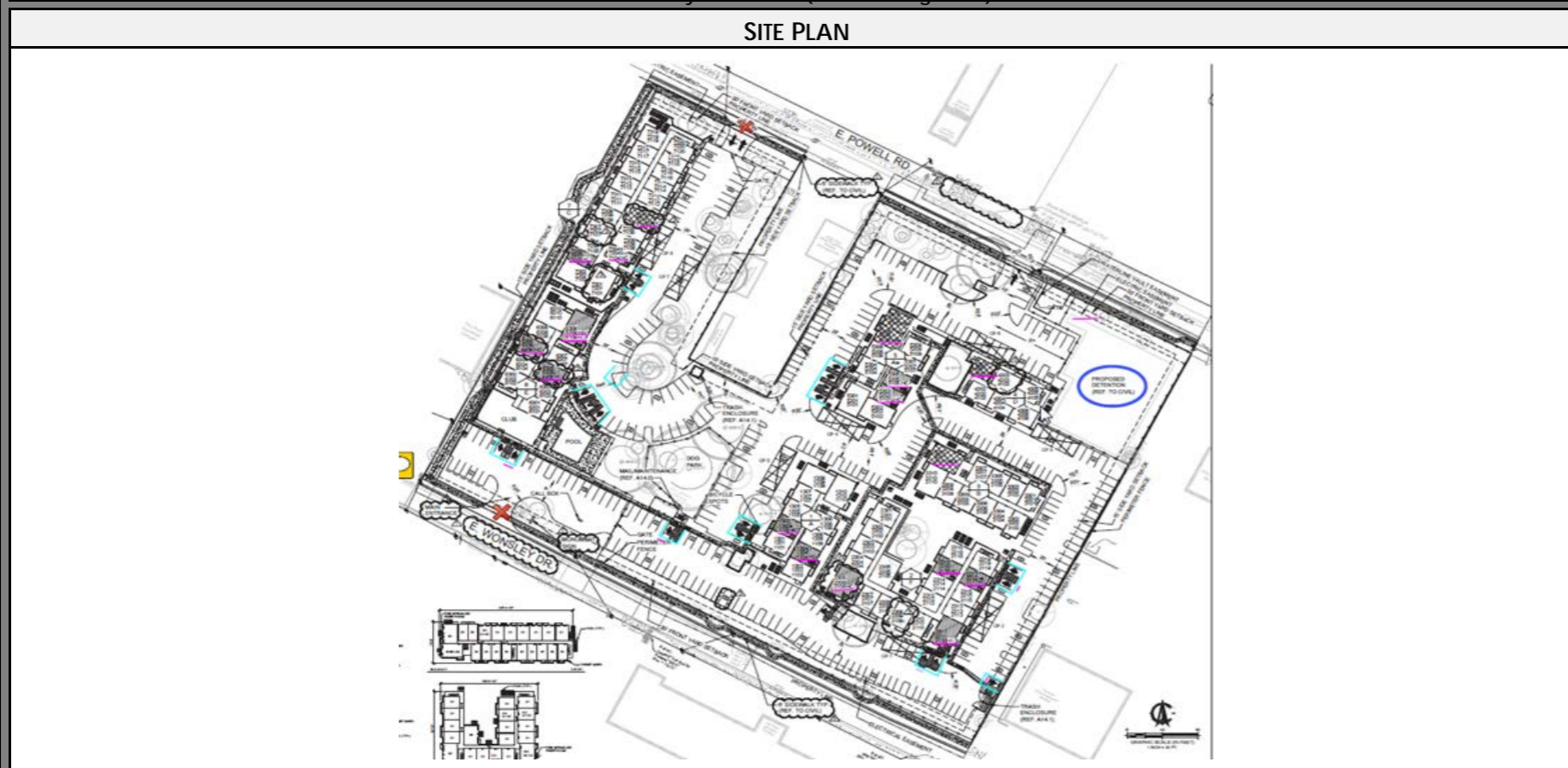
RECOMMENDATION				
TDHCA Program	Request	Recommended		
LIHTC (4% Credit)	\$1,441,515	\$1,441,515	\$5,587/Unit	\$0.89

KEY PRINCIPAL / SPONSOR		
Austin Affordable Housing Corp (AAHC) (MM)		
JCI Residential/Journeyman Construction/ Sam Kumar (SLP/Developer)		
Audrey Martin (Consultant)		
Related Parties	Contractor - Yes	Seller - Yes



UNIT DISTRIBUTION			INCOME DISTRIBUTION		
# Beds	# Units	% Total	Income	# Units	% Total
Eff	39	15%	30%	-	0%
1	180	70%	40%	-	0%
2	36	14%	50%	-	0%
3	3	1%	60%	233	90%
4	-	0%	MR	25	10%
<b>TOTAL</b>	<b>258</b>	<b>100%</b>	<b>TOTAL</b>	<b>258</b>	<b>100%</b>

PRO FORMA FEASIBILITY INDICATORS			
Pro Forma Underwritten		TDHCA's Pro Forma	
Debt Coverage	1.15	Expense Ratio	37.6%
Breakeven Occ.	84.7%	Breakeven Rent	\$976
Average Rent	\$1,067	B/E Rent Margin	\$91
Property Taxes	Exempt	Exemption/PILOT	100%
Total Expense	\$4,513/unit	Controllable	\$3,143/unit



MARKET FEASIBILITY INDICATORS			
Gross Capture Rate (10% Maximum)	5.1%		
Highest Unit Capture Rate	17%	1 BR/60%	162
Dominant Unit Cap. Rate	17%	1 BR/60%	162
Premiums (↑60% Rents)	Yes	\$357/Avg.	
Rent Assisted Units	N/A		

DEVELOPMENT COST SUMMARY			
Costs Underwritten		Applicant's Costs	
Avg. Unit Size	634 SF	Density	32.1/acre
Acquisition	\$15K/unit		\$3,857K
Building Cost	\$115.87/SF	\$73K/unit	\$18,949K
Hard Cost		\$92K/unit	\$23,794K
Total Cost		\$173K/unit	\$44,652K
Developer Fee	\$4,786K	(7% Deferred)	Paid Year: 2
Contractor Fee	\$3,113K	30% Boost	Yes

DEBT (Must Pay)					CASH FLOW DEBT / GRANT FUNDS					EQUITY / DEFERRED FEES	
Source	Term	Rate	Amount	DCR	Source	Term	Rate	Amount	DCR	Source	Amount
Mason Joseph (FHA 221(d)(4))	40/40	4.25%	\$30,739,000	1.15	Reinvestment of Bond Proceeds	0/0	1.70%	\$727,600	1.15	RBC Capital Markets	\$12,826,916
										Deferred Developer Fee	358625.38
<b>TOTAL DEBT (Must Pay)</b>			<b>\$30,739,000</b>		<b>CASH FLOW DEBT / GRANTS</b>			<b>\$727,600</b>		<b>TOTAL EQUITY SOURCES</b>	<b>\$13,185,541</b>
										<b>TOTAL DEBT SOURCES</b>	<b>\$31,466,600</b>
										<b>TOTAL CAPITALIZATION</b>	<b>\$44,652,141</b>

**CONDITIONS**

- Receipt and acceptance by Cost Certification:
  - a: Architect certification that all noise assessment recommendations were implemented and the Development is compliant with HUD noise guidelines.
  - b: Executed ground lease with Housing Authority of the City of Austin clearly specifying all terms and conditions, including who will retain ownership of land and improvements at the end of the lease.
  - c: Certification from Appraisal District that the property qualifies for property tax exemption.
  - d: Architect certification that all recommendations from the noise study are incorporated into the development plans.

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

BOND RESERVATION / ISSUER	
Issuer	Austin Affordable PFC, Inc
Expiration Date	2/16/2020
Bond Amount	\$26,000,000
BRB Priority	3
Close Date	TBD
Bond Structure	FHA 221(d)4
% Financed with Tax-Exempt Bonds	72.4%

RISK PROFILE	
STRENGTHS/MITIGATING FACTORS	
▫	Close proximity to I-35
▫	Small units leasing at developer's market property
▫	Feasibility indicators
WEAKNESSES/RISKS	
▫	U-shape site with inefficient parking
▫	Small unit sizes
▫	Proposed affordable property across I-35 with larger units
▫	Feasibility dependent on property tax exemption



**AERIAL PHOTOGRAPH(S)**



# 19440 Ventura at Parmer Lane - Application Summary

REAL ESTATE ANALYSIS DIVISION  
October 3, 2019

PROPERTY IDENTIFICATION	
Application #	19440
Development	Ventura at Parmer Lane
City / County	Austin / Travis
Region/Area	7 / Urban
Population	General
Set-Aside	General
Activity	New Construction

RECOMMENDATION				
TDHCA Program	Request	Recommended		
LIHTC (4% Credit)	\$2,189,841	\$2,189,841	\$10,138/Unit	\$0.93

KEY PRINCIPAL / SPONSOR		
Austin Affordable Housing Corporation Austin Leased Housing Associates - Jeffrey Spicer		
Related Parties	Contractor - Yes	Seller - No

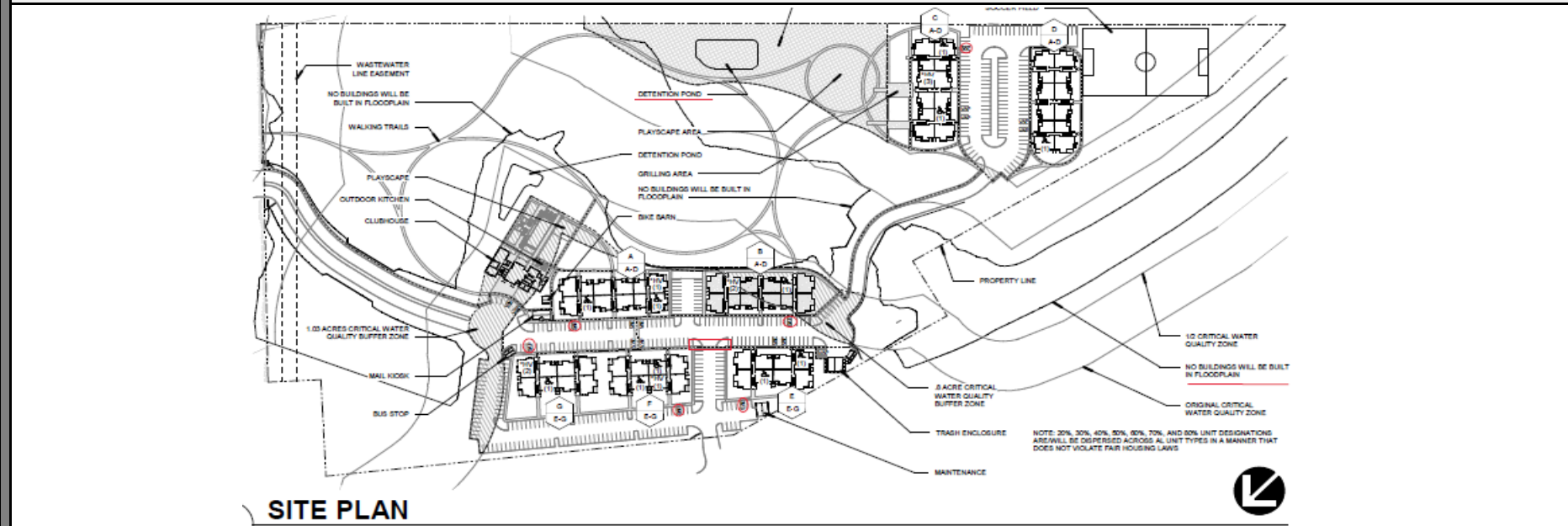
## TYPICAL BUILDING ELEVATION/PHOTO



UNIT DISTRIBUTION			INCOME DISTRIBUTION		
# Beds	# Units	% Total	Income	# Units	% Total
Eff	-	0%	30%	-	0%
1	48	22%	40%	-	0%
2	84	39%	50%	-	0%
3	84	39%	60%	216	100%
4	-	0%	MR	-	0%
<b>TOTAL</b>	<b>216</b>	<b>100%</b>	<b>TOTAL</b>	<b>216</b>	<b>100%</b>

PRO FORMA FEASIBILITY INDICATORS			
Pro Forma Underwritten		Applicant's Pro Forma	
Debt Coverage	1.17	Expense Ratio	29.6%
Breakeven Occ.	82.9%	Breakeven Rent	\$1,105
Average Rent	\$1,235	B/E Rent Margin	\$130
Property Taxes	Exempt	Exemption/PILOT	100%
Total Expense	\$4,119/unit	Controllable	\$2,835/unit

## SITE PLAN



MARKET FEASIBILITY INDICATORS			
Gross Capture Rate (15% Maximum)	13.5%		
Highest Unit Capture Rate	36%	2 BR/60%	84
Dominant Unit Cap. Rate	36%	2 BR/60%	84
Premiums (↑60% Rents)	N/A	N/A	
Rent Assisted Units	N/A		

DEVELOPMENT COST SUMMARY			
Costs Underwritten		Applicant's Costs	
Avg. Unit Size	1,045 SF	Density	6.9/acre
Acquisition		\$20K/unit	\$4,408K
Building Cost	\$105.15/SF	\$110K/unit	\$23,730K
Hard Cost		\$155K/unit	\$33,587K
Total Cost		\$272K/unit	\$58,802K
Developer Fee	\$6,510K	(81% Deferred)	Paid Year: 11
Contractor Fee	\$4,650K	30% Boost	Yes

DEBT (Must Pay)					CASH FLOW DEBT / GRANT FUNDS					EQUITY / DEFERRED FEES		
Source	Term	Rate	Amount	DCR	Source	Term	Rate	Amount	DCR	Source	Amount	
Feddie Mac Permanent Mortgage	15/35	4.17%	\$33,190,000	1.17						Alliant	\$20,365,523	
										Deferred Developer Fee	\$5,246,197	
<b>TOTAL DEBT (Must Pay)</b>			<b>\$33,190,000</b>		<b>CASH FLOW DEBT / GRANTS</b>				<b>\$0</b>		<b>TOTAL EQUITY SOURCES</b>	<b>\$25,611,720</b>
											<b>TOTAL DEBT SOURCES</b>	<b>\$33,190,000</b>
											<b>TOTAL CAPITALIZATION</b>	<b>\$58,801,720</b>

**CONDITIONS**

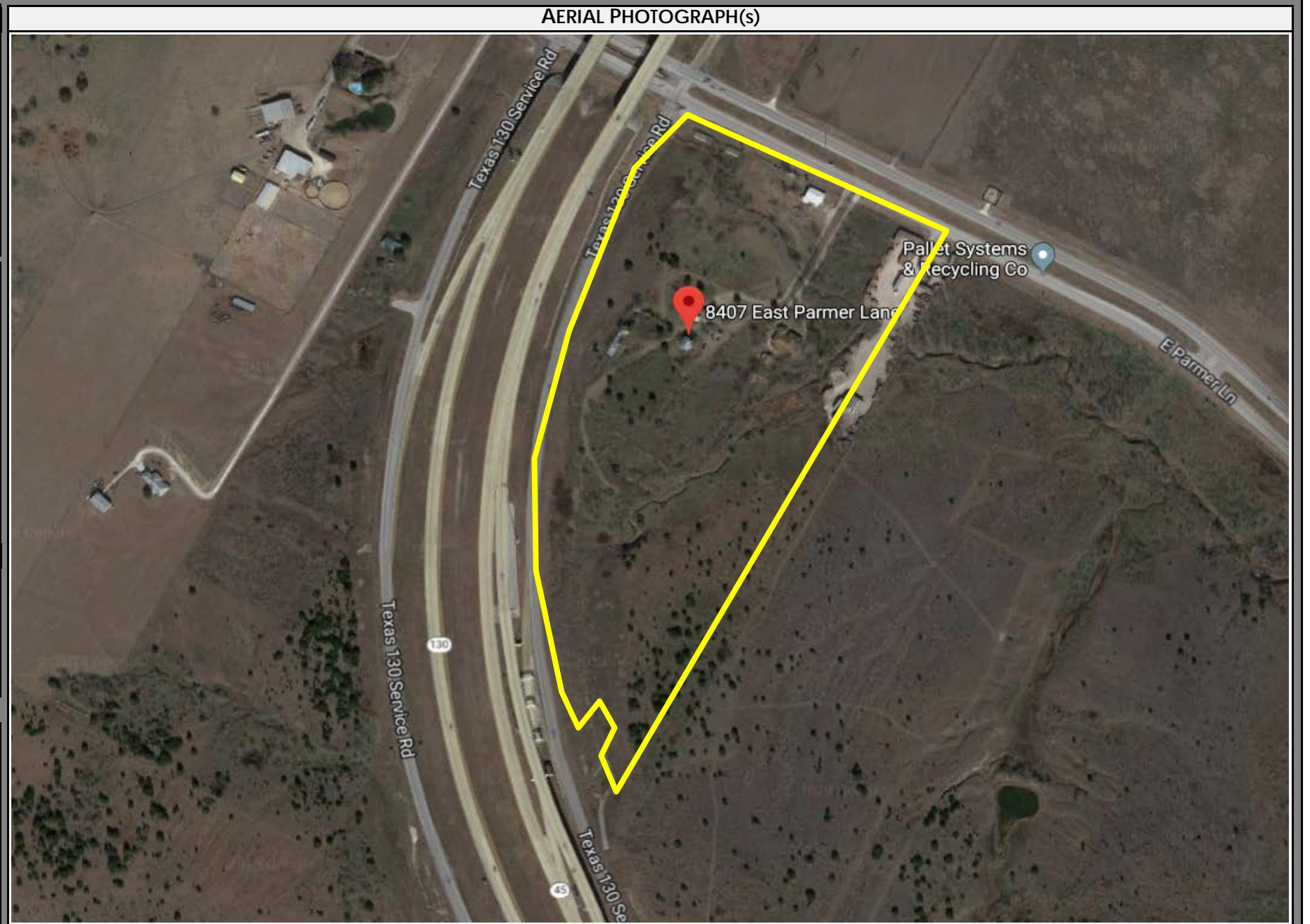
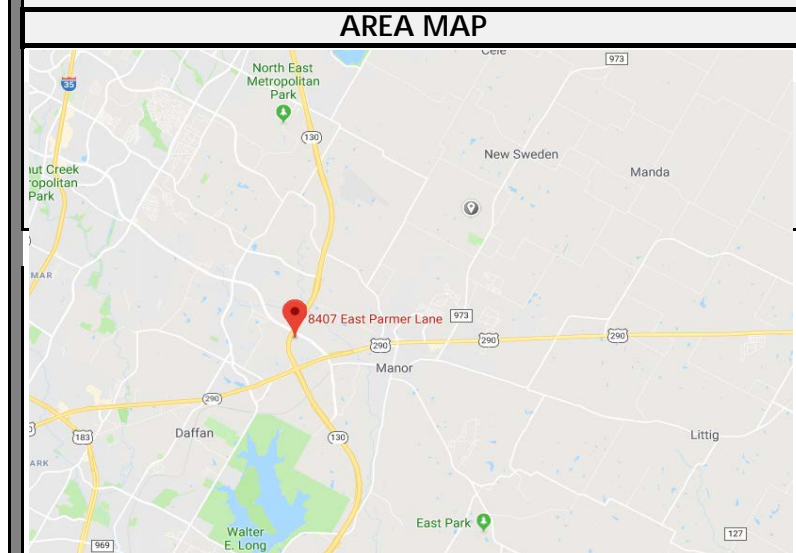
- Receipt and acceptance by Cost Certification:
  - a: Certification that testing for asbestos, lead-based paint, and radon was performed on the existing structures prior to demolition, and if necessary, a certification that any appropriate abatement procedures were implemented by a qualified abatement company.
  - b: Certification that all water well(s), septic system(s), chemicals and/or petroleum products, and other items observed stored/disposed on various parts of the Site (including utility poles, tires, appliances, wood debris, concrete debris, and various other items), were properly sealed/abandoned/removed/disposed of by licensed contractors in accordance with applicable regulations.
  - c: Architect certification that all noise assessment recommendations were implemented and the Development is compliant with HUD noise guidelines.

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

BOND RESERVATION / ISSUER	
Issuer	Austin Affordable PFC, Inc.
Expiration Date	2/16/2020
Bond Amount	\$34,000,000
BRB Priority	Priority 3
Close Date	TBD
Bond Structure	Private Placement
% Financed with Tax-Exempt Bonds	68.5%

RISK PROFILE	
STRENGTHS/MITIGATING FACTORS	
▫	Developer experience
▫	Housing Authority involvement
▫	Healthy Expense to Income Ratio (31.3%)
▫	Attractive design, should compete well in market

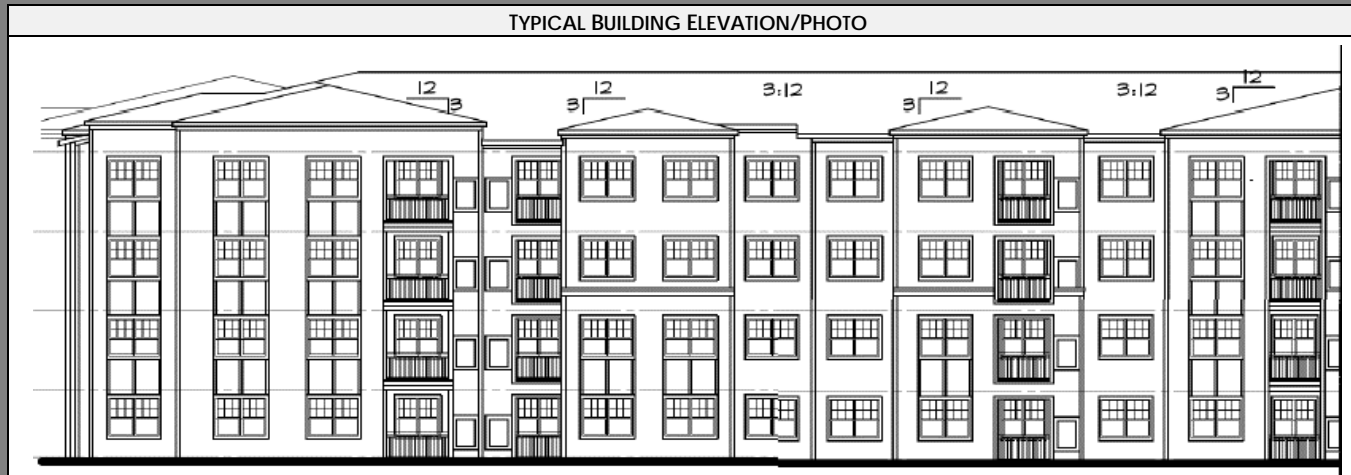
WEAKNESSES/RISKS	
▫	Feasibility dependent on property tax exemption



# 19441 Decker Lofts - Application Summary

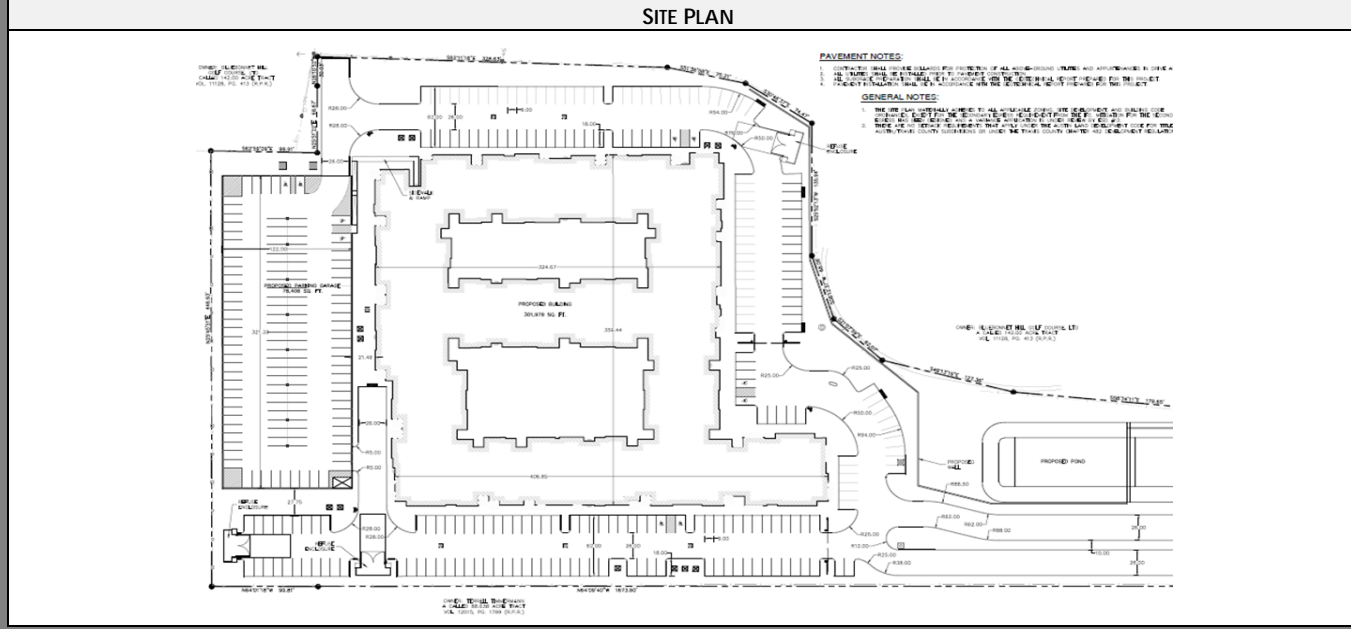
PROPERTY IDENTIFICATION		RECOMMENDATION			
Application #	19441	TDHCA Program	Request	Recommended	
Development	Decker Lofts	LIHTC (4% Credit)	\$1,822,502	\$1,822,502	\$6,956/Unit \$0.90
City / County	Austin / Travis				
Region/Area	7 / Urban				
Population	General				
Set-Aside	Income Averaging				
Activity	New Construction				

KEY PRINCIPAL / SPONSOR		
Strategic Housing Finance Corporation Robert Onion - Dir Real Estate Development		
NRP Group Dan Hull		
Related Parties	Contractor - No	Seller - No



UNIT DISTRIBUTION			INCOME DISTRIBUTION		
# Beds	# Units	% Total	Income	# Units	% Total
Eff	-	0%	30%	-	0%
1	10	4%	40%	46	18%
2	96	37%	60%	165	0%
3	132	50%	80%	46	63%
4	24	9%	MR	5	2%
<b>TOTAL</b>	<b>262</b>	<b>100%</b>	<b>TOTAL</b>	<b>262</b>	<b>100%</b>

PRO FORMA FEASIBILITY INDICATORS			
Pro Forma Underwritten		Applicant's Pro Forma	
Debt Coverage	1.16	Expense Ratio	31.1%
Breakeven Occ.	83.7%	Breakeven Rent	\$1,133
Average Rent	\$1,253	B/E Rent Margin	\$120
Property Taxes	Exempt	Exemption/PILOT	100%
Total Expense	\$4,372/unit	Controllable	\$3,085/unit



MARKET FEASIBILITY INDICATORS			
Gross Capture Rate (15% Maximum)	7.9%		
Highest Unit Capture Rate	35%	2 BR/60%	62
Dominant Unit Cap. Rate	35%	3 BR/60%	83
Premiums (↑60% Rents)	Yes	\$214/Avg.	
Rent Assisted Units	N/A		

DEVELOPMENT COST SUMMARY			
Costs Underwritten		Applicant's Costs	
Avg. Unit Size	1,080 SF	Density	22.6/acre
Acquisition		\$12K/unit	\$3,100K
Building Cost	\$75.33/SF	\$81K/unit	\$21,310K
Hard Cost		\$111K/unit	\$29,209K
Total Cost		\$213K/unit	\$55,909K
Developer Fee	\$5,709K	(26% Deferred)	Paid Year: 4
Contractor Fee	\$4,078K	30% Boost	Yes

DEBT (Must Pay)					CASH FLOW DEBT / GRANT FUNDS					EQUITY / DEFERRED FEES		
Source	Term	Rate	Amount	DCR	Source	Term	Rate	Amount	DCR	Source	Amount	
Key Bank	15/35	4.60%	\$38,105,000	1.16						Navistone	\$16,326,294	
										Deferred Developer Fee	\$1,477,262	
<b>TOTAL DEBT (Must Pay)</b>			<b>\$38,105,000</b>		<b>CASH FLOW DEBT / GRANTS</b>				<b>\$0</b>		<b>TOTAL EQUITY SOURCES</b>	<b>\$17,803,556</b>
											<b>TOTAL DEBT SOURCES</b>	<b>\$38,105,000</b>
											<b>TOTAL CAPITALIZATION</b>	<b>\$55,908,556</b>

**CONDITIONS**

- Documentation at Cost Certification clearing environmental issues identified in the ESA report, specifically:
  - Certification that testing for asbestos and lead-based paint was performed on the existing structure prior to demolition, and if necessary, a certification that any appropriate abatement procedures were implemented.

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

BOND RESERVATION / ISSUER	
Issuer	Strategic Housing HFC of Travis County
Expiration Date	1/13/2020
Bond Amount	\$40,000,000
BRB Priority	3
Close Date	1/13/2020
Bond Structure	Private Placement - Tax-Exempt Loan
% Financed with Tax-Exempt Bonds	85.7%

**RISK PROFILE**

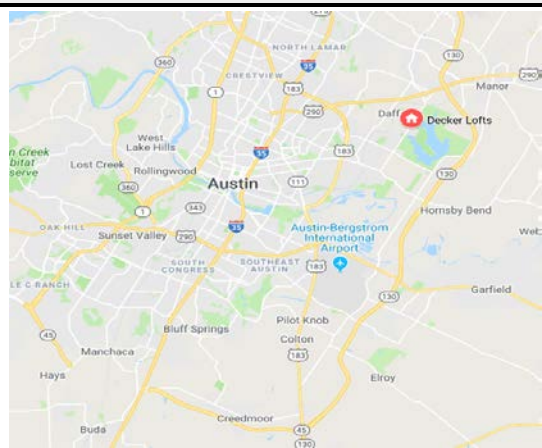
STRENGTHS/MITIGATING FACTORS

- Low expense-to-income ratio
- Favorable Gross Capture Rate for expanded MSA
- Low breakeven occupancy rate

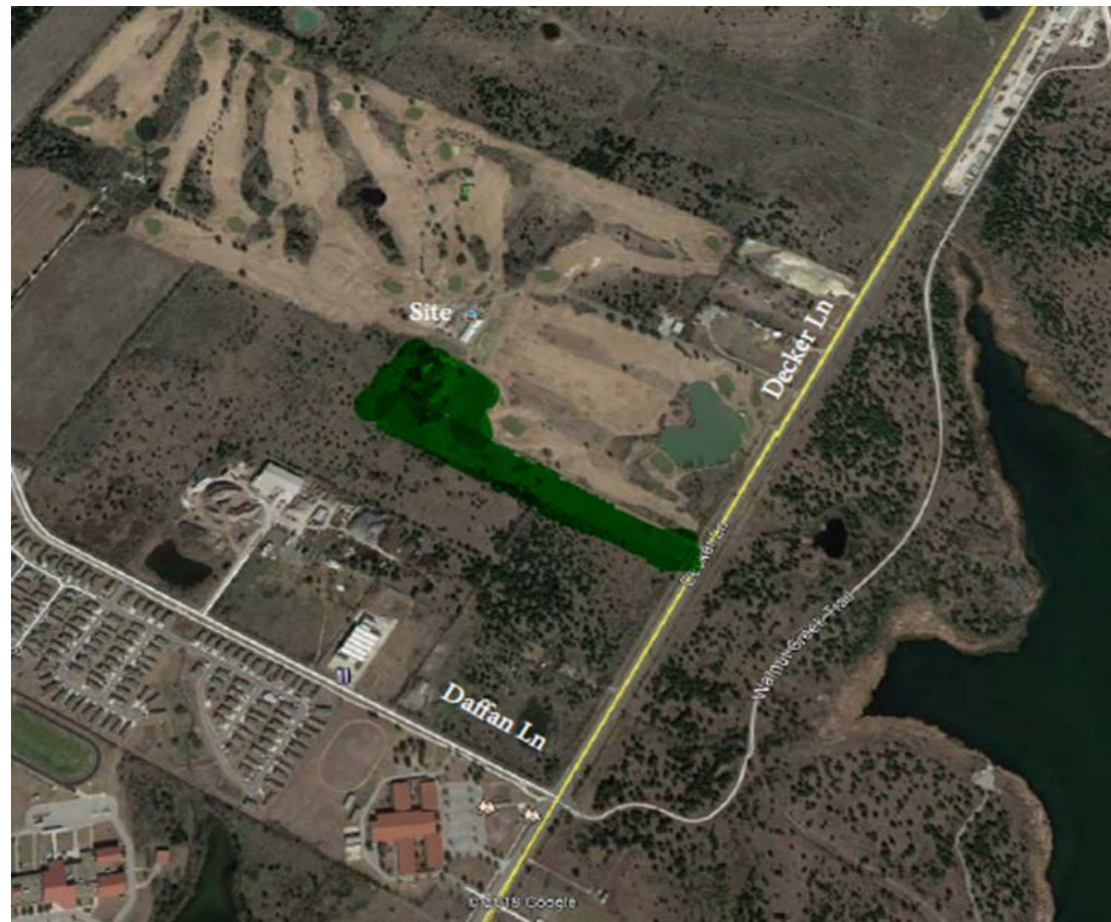
WEAKNESSES/RISKS

- Financial feasibility reliant on tax exemption
- High unit capture for 60% units
- Low DCR

**AREA MAP**



**AERIAL PHOTOGRAPH(s)**



# 19437 Residences of Stillwater - Application Summary

REAL ESTATE ANALYSIS DIVISION

October 2, 2019

PROPERTY IDENTIFICATION	
Application #	19437
Development	Residences of Stillwater
City / County	Georgetown / Williamson
Region/Area	7 / Urban
Population	General
Set-Aside	General
Activity	New Construction

RECOMMENDATION			
TDHCA Program	Request	Recommended	
LIHTC (4% Credit)	\$1,154,635	\$1,154,635	\$6,014/Unit \$0.94

KEY PRINCIPAL / SPONSOR		
Jean Latsha & Craig Lintner / Pedcor Investments, LLC		
Related Parties	Contractor - Yes	Seller - No

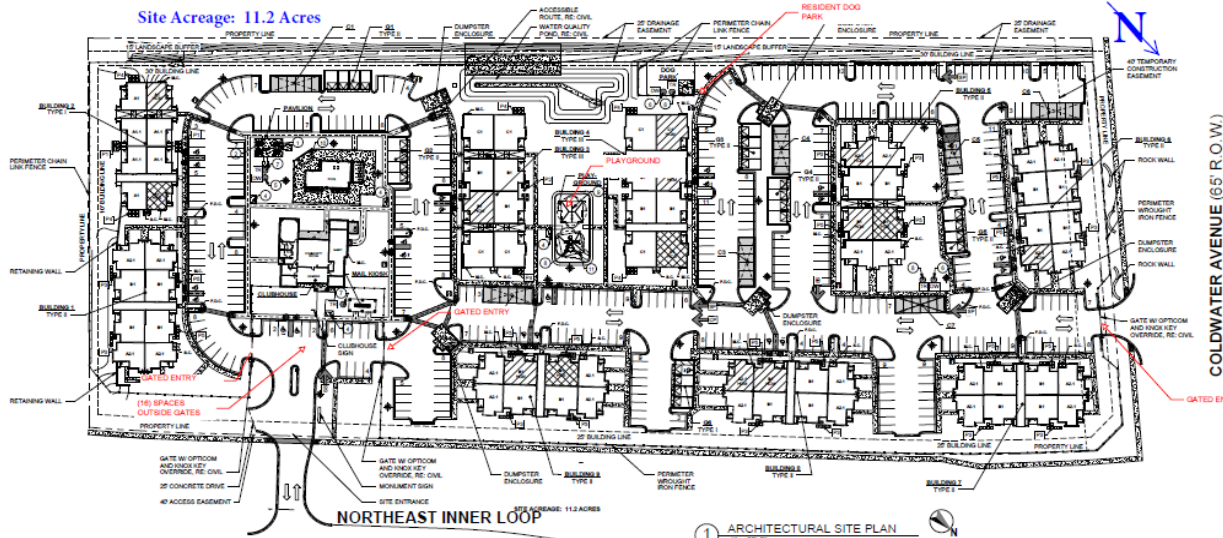
TYPICAL BUILDING ELEVATION/PHOTO



UNIT DISTRIBUTION			INCOME DISTRIBUTION		
# Beds	# Units	% Total	Income	# Units	% Total
Eff	-	0%	30%	-	0%
1	72	38%	40%	-	0%
2	96	50%	50%	-	0%
3	24	13%	60%	192	100%
4	-	0%	MR	-	0%
<b>TOTAL</b>	<b>192</b>	<b>100%</b>	<b>TOTAL</b>	<b>192</b>	<b>100%</b>

PRO FORMA FEASIBILITY INDICATORS			
Pro Forma Underwritten		Applicant's Pro Forma	
Debt Coverage	1.15	Expense Ratio	36.7%
Breakeven Occ.	84.7%	Breakeven Rent	\$1,001
Average Rent	\$1,095	B/E Rent Margin	\$94
Property Taxes	\$1,014/unit	Exemption/PILOT	0%
Total Expense	\$4,536/unit	Controllable	\$2,685/unit

SITE PLAN



MARKET FEASIBILITY INDICATORS			
Gross Capture Rate (10% Maximum)	7.7%		
Highest Unit Capture Rate	27%	2 BR/60%	96
Dominant Unit Cap. Rate	27%	2 BR/60%	96
Premiums (≥60% Rents)	N/A	N/A	
Rent Assisted Units	N/A	N/A	

DEVELOPMENT COST SUMMARY			
Costs Underwritten		Applicant's Costs	
Avg. Unit Size	938 SF	Density	17.1/acre
Acquisition		\$11K/unit	\$2,112K
Building Cost	\$92.32/SF	\$87K/unit	\$16,631K
Hard Cost		\$119K/unit	\$22,859K
Total Cost		\$208K/unit	\$39,943K
Developer Fee	\$4,716K	(9% Deferred)	Paid Year: 3
Contractor Fee	\$3,200K	30% Boost	No

DEBT (Must Pay)					CASH FLOW DEBT / GRANT FUNDS					EQUITY / DEFERRED FEES	
Source	Term	Rate	Amount	DCR	Source	Term	Rate	Amount	DCR	Source	Amount
Merchants Capital - 221(d)4	40/40	3.00%	\$28,700,000	1.15						Pedcor Funding Corp.	\$10,799,295
										Pedcor Development Associates	\$443,429
<b>TOTAL DEBT (Must Pay)</b>			<b>\$28,700,000</b>		<b>CASH FLOW DEBT / GRANTS</b>			<b>\$0</b>		<b>TOTAL EQUITY SOURCES</b>	<b>\$11,242,725</b>
										<b>TOTAL DEBT SOURCES</b>	<b>\$28,700,000</b>
										<b>TOTAL CAPITALIZATION</b>	<b>\$39,942,725</b>

**CONDITIONS**

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

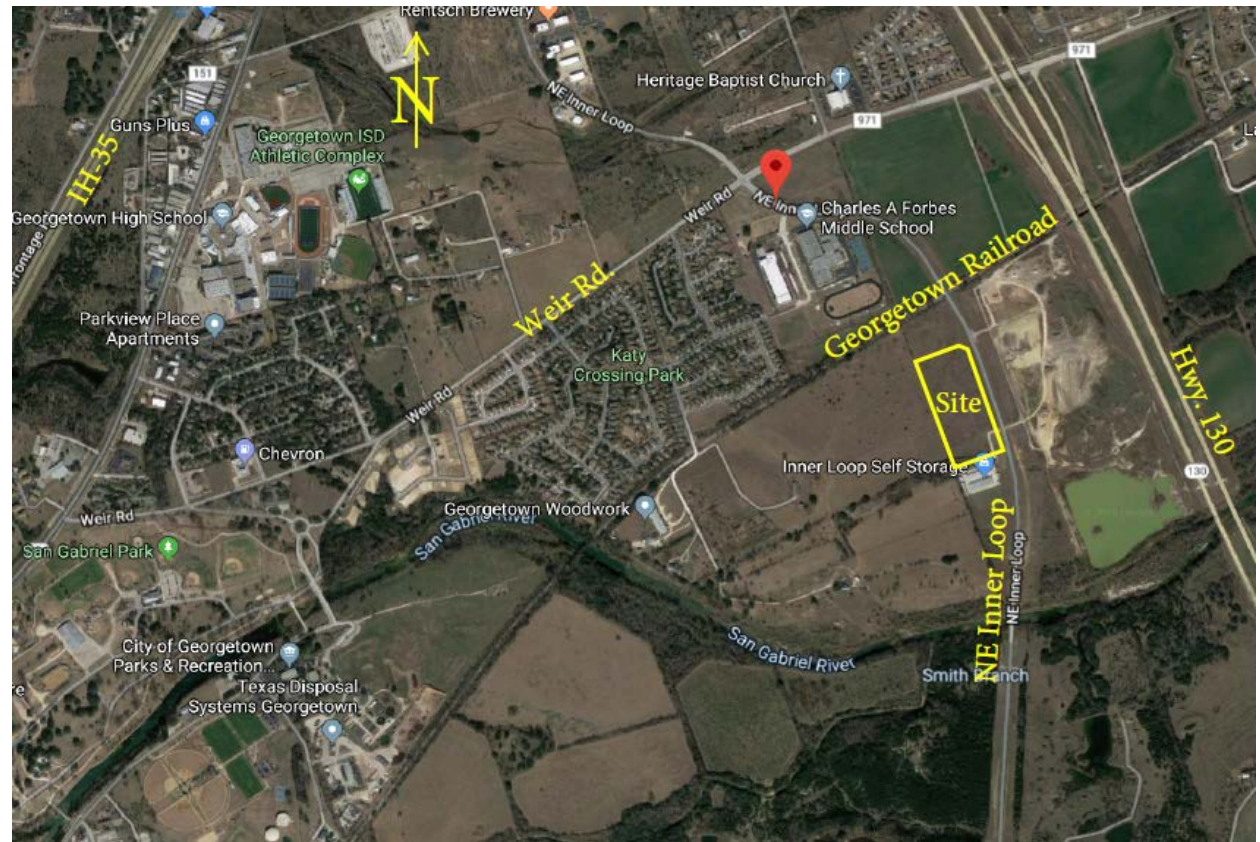
BOND RESERVATION / ISSUER	
<b>Issuer</b>	Capital Area Housing Finance Corporation
<b>Expiration Date</b>	1/13/2020
<b>Bond Amount</b>	\$35,000,000
<b>BRB Priority</b>	3
<b>Close Date</b>	TBD
<b>Bond Structure</b>	FHA 221(d)(4)
<b>% Financed with Tax-Exempt Bonds</b>	85.6%

RISK PROFILE	
STRENGTHS/MITIGATING FACTORS	
▫ Affordable properties still monitored in the PMA average 99% occupancy	
▫ Attractively designed new construction should enhance marketability	
▫ Developer experience with the cost and construction of similar projects	

WEAKNESSES/RISKS	
▫ Feasibility relies on a 3% Management Fee	
▫ Interest rate sensitivity	



**AERIAL PHOTOGRAPH(S)**





8d

**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**OCTOBER 10, 2019**

Presentation, discussion, and possible action regarding the issuance of Determination Notices for 4% Housing Tax Credit Applications and a determination of eligibility under 10 TAC §11.101 of the Qualified Allocation Plan

**RECOMMENDED ACTION**

**WHEREAS**, two applications, as further detailed below, were submitted to the Department for consideration of a Determination Notice of 4% Housing Tax Credits;

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

**WHEREAS**, one of the applications (Govalle Terrace) disclosed an Undesirable Site Feature relating to proximity to a railroad track and one of the applications (Wayman Manor) disclosed Neighborhood Risk Factors relating to the poverty rate that exceeds 40% for the census tract containing the development, and the middle school in the attendance zone of the development failed to achieve a Met Standard rating based on the 2018 Accountability Ratings by the Texas Education Agency (TEA);

**WHEREAS**, staff has conducted a further review of each of the proposed development sites and surrounding neighborhoods and based on the documentation provided and discussed herein relating to the applicable Undesirable Site Feature and Neighborhood Risk Factors, recommends the development sites be found eligible under 10 TAC §11.101 of the QAP;

**WHEREAS**, the Executive Award and Review Advisory Committee (EARAC) considered the program requirements, underwriting requirements, and compliance history associated with each application listed herein; and

**WHEREAS**, EARAC recommends each of the two applications for an award of 4% Housing Tax Credits, in the specific amounts noted herein, and subject to any underwriting conditions as noted in the Real Estate Analysis Report and any compliance conditions as reflected in Exhibit A, as applicable;

**NOW, therefore, it is hereby**

**RESOLVED**, that the issuance of Determination Notices in the respective amounts for each of the applications listed herein, subject to underwriting conditions as found in the Real Estate Analysis report posted to the Department's website, and subject to any compliance conditions as reflected in Exhibit A, is hereby approved in the form presented at this meeting.

### **BACKGROUND**

The 4% Housing Tax Credit (HTC) program is considered a non-competitive program in that there is not a specific ceiling amount of HTCs that can be issued each year. Rather, the ceiling amount of HTCs to be issued is limited by the amount of Private Activity Bond volume cap available. The Texas Bond Review Board (BRB) administers the Private Activity Bond program for the State of Texas, and for the 2019 calendar year, the state received approximately \$3 billion in Private Activity Bond authority, of which approximately \$665 million is reserved for multifamily housing until August 15<sup>th</sup> of each year. After such date there may be more Private Activity Bond volume cap that goes towards multifamily housing.

Individual projects receive a Certification of Reservation from the BRB that allows for a statutory 150-day closing timeline. For those projects seeking 4% HTCs (as the majority of them do), they must complete the Department's review process, the bond issuer's process, and the Attorney General's process in order to close within the prescribed timeframe. The Department accepts applications on a monthly basis throughout the year and the year from which the Certificate of Reservation is issued is what determines the QAP to which the application must adhere. Included in this Board presentation as Exhibit B is a list of the 4% HTC applications staff has processed thus far for 2019 which illustrates the volume of applications that pursue the 4% HTC program as a funding source. The list reflects all applications received and includes a column that denotes the applications' status, specifically, those that have already closed, have been approved by the Board, are active and currently under review and those that are pre-applications that will utilize the Department as the bond issuer and an HTC application will be forthcoming.

The Certificates of Reservation from the Bond Review Board for the developments described herein were 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 (beyond the federal requirement). The AMFI levels proposed to be served for each of the projects are indicated in their respective summary below.

#### **19429 – Govalle Terrace**

Govalle Terrace, proposed to be located at 5225 Jain Lane in Austin, Travis County, involves the new construction of 97 units that will serve the general population. The development site conforms to the current zoning. All of the units are proposed to be rent and income restricted at 60% of AMFI with the exception of one employee-occupied unit. The Certificate of Reservation was issued on July 3, 2019,

and will expire on November 30, 2019. Austin Housing Finance Corporation is serving as the bond issuer.

There is an Undesirable Site Feature associated with Govalle Terrace in that the project is proposed to be located less than 175 feet from an active railroad track. The 2019 QAP allows several exceptions for this Undesirable Site Feature that would allow for the development site to be considered eligible. An excerpt of §11.101(a)(E)(ii) of the QAP reads as follows:

*“...Development Sites located within 500 feet of active railroad tracks, measured from the closest rail to the boundary of the Development Site, unless: the Applicant has engaged a qualified Third Party to perform a noise assessment and the Applicant commits to perform sound mitigation in accordance with HUD standards as if they were directly applicable to the Development.”*

A noise assessment was conducted by SLR International Corporation, and it concluded that the train horn signals nearest to the project falls under the threshold for mitigation. The report concluded that the development site falls in the “Acceptable” category regarding exterior noise exposure for HUD and the Department. Staff believes the development site meets the requirement in the QAP, and should be considered eligible.

Recommended HTC Amount: \$829,570

### 19433 – Wayman Manor

Wayman Manor proposes the acquisition and rehabilitation of 160 units located at 1811 East Avenue K in Temple, Bell County. The apartments were originally built in 1971 and a renovation of two buildings, which contain 32 units, was recently completed due to wind and fire damage. A limited scope of work is planned for those 32 units while the remaining 128 units will receive a complete renovation. The development will serve the general population, and all of the units will be rent and income restricted at 60% of AMFI. The property also has an existing Project Based Section 8 Housing Assistance Payments (“HAP”) contract that is expected to continue for all 160 units. The site conforms to the current zoning requirements with the exception of the number of parking spaces, however, it is considered legally conforming by the City of Temple. The Certificate of Reservation was issued on August 12, 2019, and will expire on January 9, 2020. Bell County Housing Finance Corporation is serving as the bond issuer. There are two Neighborhood Risk Factors, relating to the poverty rate and the school in the attendance zone, associated with the Wayman Manor development and are further discussed below.

*Poverty:* The development is located in a census tract (208.00) that has a poverty rate of 49.9% which exceeds the threshold of 40% allowed under 10 TAC §11.101(a)(3). Using the Department’s Site Demographics Report, which is based on the American Community Survey (ACS) data, the census tract has seen an increase of approximately 7.6% in the poverty rate over the past five years.

The development is located approximately one mile from downtown in the southeastern part of the city, and in an area that the city has targeted for revitalization to help spur development.

Documents provided by the applicant to demonstrate the efforts by the city, including the City of Temple's adopted 2015-2019 CDBG Consolidated and 1-Year Action Plans, both of which include the Wayman Manor development within the targeted revitalization area. Under these plans, the city has demolished 15 blighted buildings, made street renovations that cover approximately 17 blocks and connect neighborhoods to employment, retail and other services, and provide incentives for single- and multi-family development that include, but are not limited to, fee waivers, demolition and lot clearing assistance. Moreover, adjacent to the Wayman Manor development the city has partnered in the construction of 13 duplexes to serve 26 homeless veteran households. The ground breaking for these homes took place in March 2018. Additional information provided by the applicant that reflects growth and development in the census tract is the construction of 64 single-family residential homes that is currently in the planning stages with the city. Although the applicant provided a list of other developments in various stages with the city, staff believes that these are further away from Wayman Manor (in another census tract and separated by railroad tracks), and are less likely to have an impact on the revitalization and characteristics of the Wayman Manor neighborhood.

The census tract is relatively large and contains mostly undeveloped land, with the exception of concentrated residential development in the western most portion of the tract closest to downtown. According to Neighborhood Scout, approximately 43% of the homes in this area were built between 1940-1969, demonstrating an established and older neighborhood. Wayman Manor is the only multifamily development in the tract, which contains 160 units that are subsidized with a Section 8 Housing Assistance Payment Contract. When compared to the other residential properties and population of the census tract, Wayman Manor comprises approximately 13% of the rental housing, according to the applicant. An assessment of the percentage of households in the census tract that have household incomes equal to or greater than the median household income for the Killen-Temple MSA (\$52,353) reflected an increase of 5% over the most recent 5-year period (2013 – 2017) along with a slight population increase over the same period.

Other information provided by the applicant considered as acceptable mitigation under the rule, addresses career training opportunities and job placement services in the area, through Workforce Solutions (in partnership with the Temple ISD) whereby over the past six months 46 students have been employed through a program that provides job experience and opportunity to allow them to further career opportunities post high school. Moreover, residents of Wayman Manor and the surrounding community can obtain assistance with writing resumes, doing mock-interviews, and have connections to local employers through Family Promise of East Bell County.

*School:* Travis Science Academy (Travis) is the middle school in the attendance zone of the development and was rated Improvement Required for 2018. The applicant provided a letter from the District Coordinator of School Improvement for Temple ISD, Karen Morgan. Ms. Morgan presented five examples of how staff at Travis have translated the Targeted Improvement Plan into impactful strategies and she shares that "data from local Curriculum Based Assessments and Benchmarks indicate that Travis is on track to earn an accountability rating of Met Standard for 2019-2020."

Despite an increase in the poverty rate over the past five years, staff believes all of the aforementioned factors, when taken together, provide sufficient mitigation under the rule to result in a

recommendation of eligibility under 10 TAC §11.101(a)(3) for both school and poverty risk factors. Moreover, crime data according to Neighborhood Scout, indicates a violent crime rate of 7.65 per 1,000 persons annually, which is well below the threshold in the rule of 18 per 1,000 persons. This illustrates that while the census tract has a poverty rate that exceeds the threshold in the rule, the neighborhood is not a high crime area. The neighborhood containing Wayman Manor has seen some improvements, with more on the way, has seen an increase in median household incomes over the past five years, and provides for access to career opportunities and job placement services. Even though the middle school did not achieve the Met Standard rating for 2018, those students are entering a high school that did achieve Met Standard, which speaks to the caliber of performance of the high school. With the census tract being relatively large with significant undeveloped land and boundaries that are on the perimeter of the city limits, it may require that the census tract undergo new growth and development, not just revitalization of the existing limited residential development before having an effect on the poverty rate, which could possibly be skewed as a result.

Recommended HTC Amount: \$868,166

**EXHIBIT A**  
**Previous Participation Results**

<b>Application Number</b>	<b>Development Name</b>	<b>Category</b>	<b>PPR Conditions</b>
19429	Govalle Terrace	2	N/A
19433	Wayman Manor	2	N/A



## 4% (Non-Competitive) Housing Tax Credit Program 2019 Application Status Log

TDHCA #	Previous TDHCA #	Development Name	Development City	Board Meeting Date (MM/DD/YYYY)	Application Status	Total Units	Total Low-Income Units	Bond Reservation Amount	Requested HTC Amount	Recommend HTC Amount
19410	18435	Eisenhower	El Paso	10/11/2018	Closed	66	66	\$ 10,000,000	\$ 380,508	\$ 376,008
19602	18616	Park Yellowstone	Houston	12/6/2018	Closed	210	210	\$ 16,000,000	\$ 893,290	\$ 879,975
19427	18441	Lakeway Apartment Homes	Austin ETJ	12/6/2018	Closed	180	169	\$ 20,000,000	\$ 1,203,960	\$ 1,196,981
19408	18457	Mission Trail at Camino Real	San Marcos	1/17/2019	Closed	352	282	\$ 45,000,000	\$ 1,685,207	\$ 1,683,222
19401		Stallion Ridge	Fort Worth	3/21/2019	Closed	204	193	\$ 20,000,000	\$ 1,292,387	\$ 1,292,387
19416	18455	Alsbury Apartments	San Antonio	3/21/2019	Closed	240	240	\$ 20,000,000	\$ 1,392,094	\$ 1,392,094
19413	18445	The Wurzbach	San Antonio	3/21/2019	Closed	161	160	\$ 20,000,000	\$ 837,177	\$ 837,177
19402		Culebra Creek Apartments	San Antonio	3/21/2019	Closed	312	312	\$ 41,000,000	\$ 2,320,033	\$ 2,320,033
19600		Lago de Plata	Corsicana	4/25/2019	Closed	150	148	\$ 14,000,000	\$ 723,820	\$ 723,820
19603		Northgate Village	Dallas	5/23/2019	Closed	168	168	\$ 20,000,000	\$ 1,142,704	\$ 1,142,704
19404		Legacy Ranch at Dessau East	Austin	5/23/2019	Closed	232	186	\$ 31,000,000	\$ 973,468	\$ 973,468
19421	18402	Hampton Homes	Texarkana	5/23/2019	Closed	50	50	\$20,000,000 (portfolio)	\$ 192,386	\$ 192,386
19422	18403	HATT Scattered Sites	Texarkana	5/23/2019	Closed	42	42	-	\$ 123,946	\$ 123,946
19423	18404	Robison Terrace	Texarkana	5/23/2019	Closed	130	130	-	\$ 460,949	\$ 460,949
19424	18405	Williams Homes	Texarkana	5/23/2019	Closed	52	52	-	\$ 179,313	\$ 179,313
19425	18406	Bright Street	Texarkana	5/23/2019	Closed	20	20	-	\$ 80,615	\$ 80,615
19601	18603	McMullen Square	San Antonio	5/23/2019	Closed	100	100	\$ 10,100,000	\$ 426,577	\$ 425,285
19403		Mesa West Apartments	San Antonio	5/23/2019	Closed	280	280	\$ 35,000,000	\$ 2,079,535	\$ 2,079,535
19420		Pythian Manor	Dallas	6/27/2019	Closed	76	76	\$ 8,300,000	\$ 387,412	\$ 387,412
						<b>2,731</b>	<b>2,590</b>	<b>\$ 310,400,000</b>	<b>\$ 16,775,381</b>	<b>\$ 16,747,310</b>
19470	18456	Jackie Robinson Apartments	El Paso	1/17/2019	Approved	186	186	\$ 20,000,000	\$ 1,182,177	\$ 1,182,177
18424	17413	Flora Lofts	Dallas	2/21/2019	Approved	52	52	\$ 15,000,000	\$ 754,702	\$ 754,702
19409	18454	Grim Hotel	Texarkana	5/23/2019	Approved	93	93	\$ 15,000,000	\$ 1,006,241	\$ 1,006,241
19414	18433	Dewetter	El Paso	7/25/2019	Approved	98	98	\$ 13,000,000	\$ 971,651	\$ 1,017,745
19415	18434	Kathy White	El Paso	7/25/2019	Approved	78	78	\$ 11,000,000	\$ 454,747	\$ 478,404
19412		Majestic Ranch	San Antonio	9/5/2019	Approved	288	288	\$ 23,000,000	\$ 1,698,636	\$ 1,698,636
19417		Green Oaks Apartments	Houston	9/5/2019	Approved	177	175	\$ 20,000,000	\$ 995,271	\$ 995,271
19419		Pallidum Redbird	Dallas	9/5/2019	Approved	300	210	\$ 30,000,000	\$ 1,585,280	\$ 1,585,280
19434		Limestone Ridge Senior	Austin ETJ	9/5/2019	Approved	225	223	\$ 20,000,000	\$ 1,470,110	\$ 1,470,110
19430		Kyle Dacy	Kyle ETJ	9/5/2019	Approved	324	324	\$ 50,000,000	\$ 1,515,943	\$ 1,515,943
19431	18458	Scharbauer Flats	Midland	9/5/2019	Approved	300	300	\$ 40,000,000	\$ 2,667,296	\$ 2,667,296
19407		Norwood Estates	Austin	10/10/2019	Approved	228	228	\$ 35,000,000	\$ 1,467,918	\$ 1,467,918



19418		Bridge at Loyola Lofts	Austin	10/10/2019	Approved	204	200	\$	30,000,000	\$	1,382,246	TBD
19429	16453	Govalle Terrace	Austin	10/10/2019	Approved	97	96	\$	13,000,000	\$	829,570	\$ 829,570
19436		Bridge at Granada	Austin	10/10/2019	Approved	258	233	\$	26,000,000	\$	1,441,515	\$ 1,441,515
19437		Residences of Stillwater	Georgetown	10/10/2019	Approved	192	192	\$	35,000,000	\$	1,154,635	\$ 1,154,635
19440		Ventura at Parmer Lane	Austin ETJ	10/10/2019	Approved	216	216	\$	34,000,000	\$	2,189,841	\$ 2,189,841
19441		Decker Lofts	Austin ETJ	10/10/2019	Approved	262	257	\$	40,000,000	\$	1,822,502	\$ 1,822,502
19433		Wayman Manor Apartments	Temple	10/10/2019	Approved	160	160	\$	20,000,000	\$	868,166	\$ 863,123
						<b>3,738</b>	<b>3,609</b>	<b>\$</b>	<b>490,000,000</b>	<b>\$</b>	<b>25,458,447</b>	<b>\$ 24,140,909</b>

19428		Riverstone	San Marcos	11/7/2019	Active	336	336	\$	45,000,000	\$	2,349,942	\$ -
19406	17401	Primrose Village	Weslaco	11/7/2019	Active	242	242	\$	20,000,000	\$	1,356,390	\$ -
19604		Ventura at Hickory Tree	Balch Springs	11/7/2019	Active	216	216	\$	30,000,000	\$	1,864,306	\$ -
19411	17409	Bridge at Canyon View	Austin	11/7/2019	Active	215	215	\$	25,000,000	\$	1,565,360	\$ -
19607		Havens at Willow Creek	Houston ETJ	11/7/2019	Active	248	248	\$	18,000,000	\$	7,694,342	\$ -
19439		Estates at Shiloh	Dallas	11/7/2019	Active	264	239	\$	25,000,000	\$	1,496,016	\$ -
19426		The Montage	San Antonio ETJ	11/7/2019	Active	216	216	\$	20,000,000	\$	1,445,547	\$ -
19444	19605	Oaks on North Plaza	Austin	11/7/2019	Active	62	62	\$	15,000,000	\$	484,263	\$ -
19452		Las Palmas	La Feria	11/7/2019	Active	36	35	\$39,120,000 (portfolio)		\$	85,924	\$ -
19445		Brush Country Cottages	Dilley	11/7/2019	Active	28	28	-		\$	87,570	\$ -
19446		Chula Vista	San Diego	11/7/2019	Active	44	44	-		\$	153,301	\$ -
19447		Cielo Lindo	Edcouch	11/7/2019	Active	34	34	-		\$	101,022	\$ -
19448		La Estancia	Sebastian	11/7/2019	Active	32	32	-		\$	102,977	\$ -
19449		La Posada I & II	Ela	11/7/2019	Active	74	74	-		\$	216,612	\$ -
19450		La Reina	La Villa	11/7/2019	Active	30	30	-		\$	69,492	\$ -
19451		La Sombra	Donna	11/7/2019	Active	50	50	-		\$	128,293	\$ -
19453		Leuty Avenue	Justin	11/7/2019	Active	24	24	-		\$	81,046	\$ -
19454		Los Laureles	Edcouch	11/7/2019	Active	23	23	-		\$	88,432	\$ -
19455		Los Naranjos	Alton	11/7/2019	Active	30	30	-		\$	68,072	\$ -
19456		Oak Haven	Donna	11/7/2019	Active	24	24	-		\$	63,040	\$ -
19457		Raintree	Alamo	11/7/2019	Active	32	32	-		\$	82,925	\$ -
19458		Seagraves Gardens	Seagraves	11/7/2019	Active	32	32	-		\$	89,792	\$ -
19459		Silver Trail	Menard	11/7/2019	Active	24	24	-		\$	67,835	\$ -
19460		The Village	Tomball	11/7/2019	Active	64	64	-		\$	161,539	\$ -
19461		Valley View	Valley View	11/7/2019	Active	24	24	-		\$	77,060	\$ -
19462		Villa Vallarta	Rio Grande City	11/7/2019	Active	40	40	-		\$	115,954	\$ -
19463		Vista Verde	Cotulla	11/7/2019	Active	24	24	-		\$	81,980	\$ -
19464		Willowick	Gainesville	11/7/2019	Active	60	60	-		\$	181,382	\$ -
19465		Windmill	Giddings	11/7/2019	Active	28	28	-		\$	76,988	\$ -
19466		Windwood I & II	Kingsland	11/7/2019	Active	68	68	-		\$	156,223	\$ -
19438		Legacy Seniors	Round Rock	11/7/2019	Active	157	157	\$	20,000,000	\$	732,029	\$ -
19469		EMLI at Pecan Creek	Aubrey	11/7/2019	Active	254	254	\$	20,000,000	\$	1,484,333	\$ -
19468		The Walzem	San Antonio	11/7/2019	Active	200	200	\$	20,000,000	\$	1,333,427	\$ -
19608		Reserve at San Marcos	San Marcos	12/5/2019	Active	376	320	\$	41,000,000	\$	1,844,071	\$ -
19610		Fish Pond at Corpus Christi	Corpus Christi	12/5/2019	Active	112	111	\$	10,000,000	\$	675,744	\$ -
19400	18423	Villas del San Xavier	San Marcos	12/5/2019	Active	156	156	\$	25,000,000	\$	1,051,705	\$ -
19435		Echo East Apartments	San Antonio	12/5/2019	Active	192	192		TBD	\$	1,231,341	\$ -
19443		Spanish Park Apartments	Arlington	12/5/2019	Active	350	350	\$	35,000,000	\$	1,867,557	\$ -

19467		Auro Crossing	Austin ETJ	12/5/2019	Active	256	256	\$	45,000,000	\$	2,287,808	\$	-
19471		Austin Manor Apartment Homes	Austin ETJ	12/5/2019	Active	280	280	\$	35,000,000	\$	2,247,832	\$	-
19472		Franklin Park	Austin	12/5/2019	Active	163	163	\$	15,000,000	\$	749,966	\$	-
						<b>5,120</b>	<b>5,037</b>	<b>\$</b>	<b>464,000,000</b>	<b>\$</b>	<b>36,099,438</b>	<b>\$</b>	<b>-</b>
19606		Pecan Grove	Seguin	6/27/2019	Pre-Application	198	198	\$	26,000,000	\$	1,388,840	\$	-
19612		Scott Street Lofts	Houston	9/5/2019	Pre-Application	123	98	\$	18,000,000	\$	690,991	\$	-
19611		Granada Terrace Apartments	South Houston	10/10/2019	Pre-Application	156	156	\$	16,000,000	\$	983,071	\$	-
19613		333 Holly	The Woodlands	10/10/2019	Pre-Application	332	332	\$	50,000,000	\$	2,599,103	\$	-
19614		The Pines	The Woodlands	10/10/2019	Pre-Application	152	152	\$	30,000,000	\$	1,388,448	\$	-
19615		Oaks on Clark	San Antonio	10/10/2019	Pre-Application	80	80	\$	12,000,000	\$	520,610	\$	-
						<b>1,041</b>	<b>1,016</b>	<b>\$</b>	<b>152,000,000</b>	<b>\$</b>	<b>7,571,063</b>	<b>\$</b>	<b>-</b>
TBD	18619	Waters at Redbud	McKinney	N/A	Withdrawn	148	118	\$	-	\$	534,132	\$	-
19405		Patriot Pointe	Arlington	5/23/2019	Withdrawn	184	184	\$	-	\$	1,150,227	\$	-
						<b>332</b>	<b>302</b>	<b>\$</b>	<b>-</b>	<b>\$</b>	<b>1,684,359</b>	<b>\$</b>	<b>-</b>
					<b>TOTAL</b>	<b>12,630</b>	<b>12,252</b>	<b>\$</b>	<b>1,416,400,000</b>	<b>\$</b>	<b>85,904,329</b>	<b>\$</b>	<b>40,888,219</b>

# 19429 Govalle Terrace - Application Summary

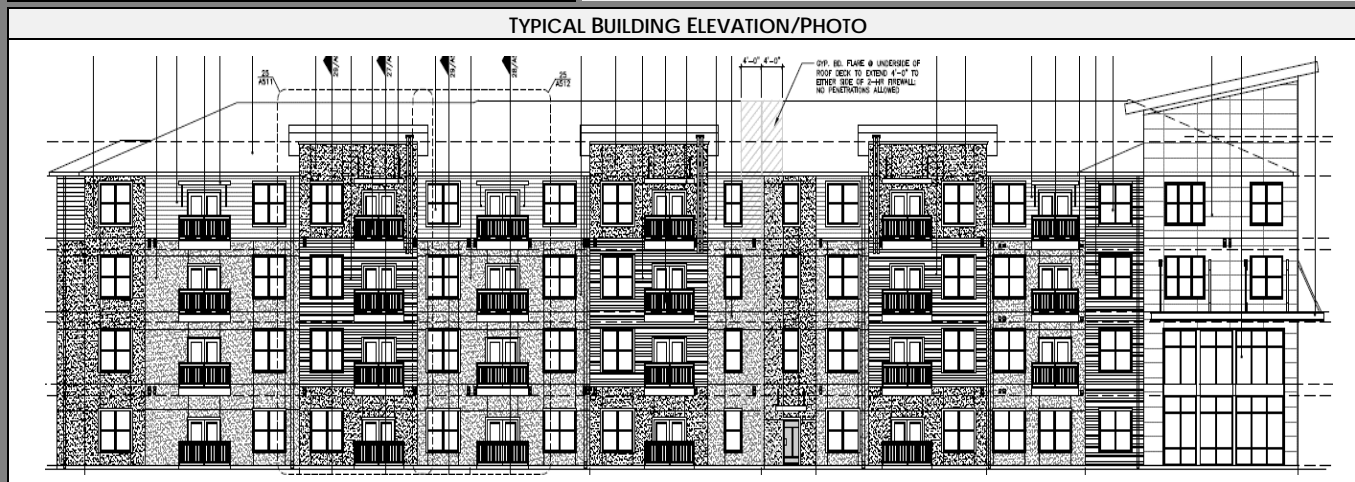
REAL ESTATE ANALYSIS DIVISION

October 3, 2019

PROPERTY IDENTIFICATION	
Application #	19429
Development	Govalle Terrace
City / County	Austin / Travis
Region/Area	7 / Urban
Population	General
Set-Aside	General
Activity	New Construction

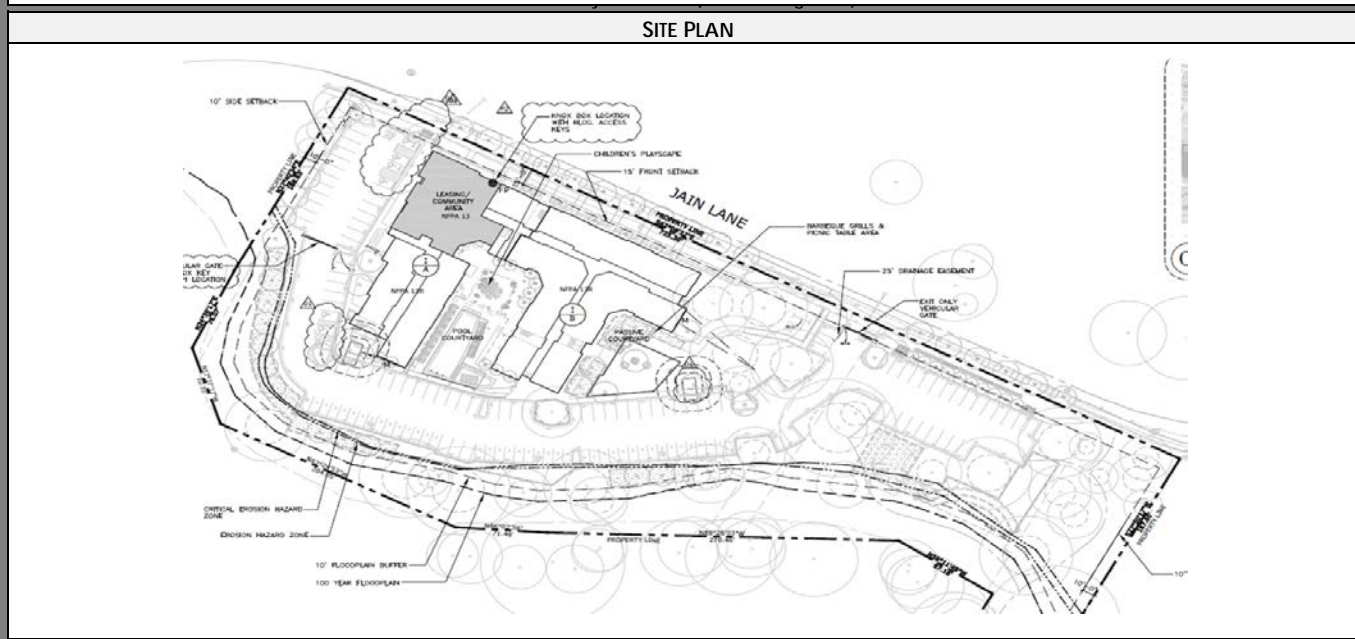
RECOMMENDATION				
TDHCA Program	Request	Recommended		
LIHTC (4% Credit)	\$829,570	\$829,570	\$8,552/Unit	\$0.91

KEY PRINCIPAL / SPONSOR		
Cesar Chavez Foundation Paul Chavez, President		
Rufino Contreras Affordable Housing Corporation Paul F. Chavez, President		
Related Parties	Contractor - Yes	Seller - No



UNIT DISTRIBUTION			INCOME DISTRIBUTION		
# Beds	# Units	% Total	Income	# Units	% Total
Eff	10	10%	30%	-	0%
1	34	35%	40%	-	0%
2	39	40%	50%	-	0%
3	14	14%	60%	96	99%
4	-	0%	EO	1	1%
<b>TOTAL</b>	<b>97</b>	<b>100%</b>	<b>TOTAL</b>	<b>97</b>	<b>100%</b>

PRO FORMA FEASIBILITY INDICATORS			
Pro Forma Underwritten		Applicant's Pro Forma	
Debt Coverage	1.15	Expense Ratio	54.9%
Breakeven Occ.	87.0%	Breakeven Rent	\$920
Average Rent	\$978	B/E Rent Margin	\$58
Property Taxes	\$1,670/unit	Exemption/PILOT	0%
Total Expense	\$5,908/unit	Controllable	\$2,821/unit



MARKET FEASIBILITY INDICATORS			
Gross Capture Rate (10% Maximum)	5.0%		
Highest Unit Capture Rate	30%	1 BR/60%	10
Dominant Unit Cap. Rate	6%	1 BR/50%	24
Premiums (↑60% Rents)			
Rent Assisted Units	66	68% Total Units	

DEVELOPMENT COST SUMMARY			
Costs Underwritten		Applicant's Costs	
Avg. Unit Size	740 SF	Density	18.5/acre
Acquisition		\$18K/unit	\$1,733K
Building Cost	\$122.01/SF	\$90K/unit	\$8,762K
Hard Cost		\$135K/unit	\$13,100K
Total Cost		\$235K/unit	\$22,779K
Developer Fee	\$2,525K	(36% Deferred)	Paid Year: 10
Contractor Fee	\$1,728K	30% Boost	Yes

DEBT (Must Pay)					CASH FLOW DEBT / GRANT FUNDS					EQUITY / DEFERRED FEES	
Source	Term	Rate	Amount	DCR	Source	Term	Rate	Amount	DCR	Source	Amount
Citi Bank	15/35	3.95%	\$7,964,000	1.10						NEF	\$7,512,178
Rufino Contreras Aff Housing - GOB	0/40	0.00%	\$5,158,000	1.15						Deferred Developer Fee	\$920,045
					GP Capital	0/0	0.00%	\$100	1.15		\$0
<b>TOTAL DEBT (Must Pay)</b>			<b>\$14,347,000</b>		<b>CASH FLOW DEBT / GRANTS</b>			<b>\$100</b>		<b>TOTAL EQUITY SOURCES</b>	<b>\$8,432,223</b>
										<b>TOTAL DEBT SOURCES</b>	<b>\$14,347,100</b>
										<b>TOTAL CAPITALIZATION</b>	<b>\$22,779,323</b>

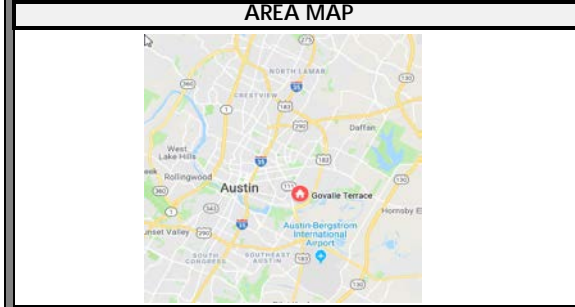
**CONDITIONS**

- 1 Receipt and acceptance by Cost Certification:
  - a: CPA prepared schedule allocating the CDBG-DR funds to costs that are tax credit basis eligible and non-tax credit basis eligible. If any CDBG-DR funds are used for tax credit basis eligible costs, indicate how those funds are being treated with respect to eligible basis. If any funds are being treated as bona fide debt and not deducted from eligible basis, provide an attorney opinion confirming that the debt is determined to be bona fide debt with a reasonable expectation that it will be repaid in full.
  - b: Receipt of contract or land use restriction agreement reflecting the preference for 4 units to be at 30% rent restriction and for the designated purpose of youth "aging out" of foster care.
- 2 Documentation at Cost Certification clearing environmental issues identified in the ESA report, specifically:
  - a: Certification that soil treatment and vapor barrier protections were implemented as specified in the ESA, and that any recommended mitigation measures were fully implemented.
  - b: Certification that exposure to and use of groundwater has been restricted as specified in the ESA, and that any recommended mitigation measures were implemented.

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

BOND RESERVATION / ISSUER	
Issuer	<b>Austin Housing Finance Corp</b>
Expiration Date	<b>11/30/2019</b>
Bond Amount	<b>\$13,000,000</b>
BRB Priority	<b>Priority 3</b>
Close Date	<b>11/30/2019</b>
Bond Structure	<b>Citibank Tax-Exempt Loan (TEL)</b>
% Financed with Tax-Exempt Bonds	<b>69.1%</b>

RISK PROFILE	
STRENGTHS/MITIGATING FACTORS	
<input type="checkbox"/>	Experienced developer
<input type="checkbox"/>	Support from Austin Housing Finance Authority
<input type="checkbox"/>	Low Gross Capture Rate
WEAKNESSES/RISKS	
<input type="checkbox"/>	Small average unit size
<input type="checkbox"/>	Inefficient parking
<input type="checkbox"/>	Only one elevator to serve 97 units on four stories



**AERIAL PHOTOGRAPH(s)**

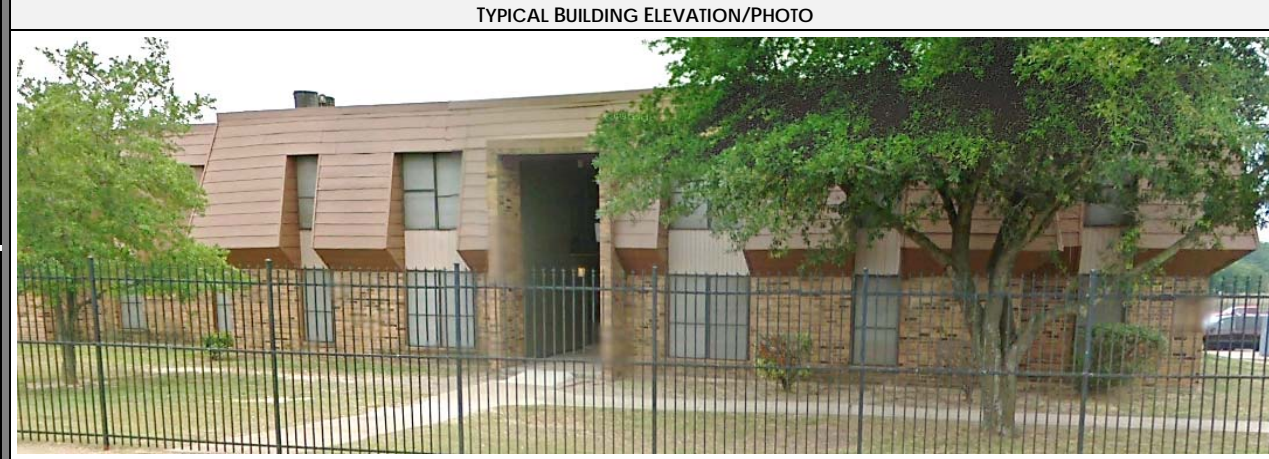


# 19433 Wayman Manor Apartments - Application Summary

REAL ESTATE ANALYSIS DIVISION  
October 3, 2019

PROPERTY IDENTIFICATION		RECOMMENDATION				
Application #	19433	TDHCA Program	Request	Recommended		
Development	Wayman Manor Apartments	LIHTC (4% Credit)	\$868,166	\$868,166	\$5,426/Unit	\$0.93
City / County	Temple / Bell					
Region/Area	8 / Urban					
Population	General					
Set-Aside	General					
Activity	Acquisition/Rehab (Built in 1971)					

KEY PRINCIPAL / SPONSOR		
Steele Properties - Chad Asarch The Bell County Housing Finance Corporation		
Related Parties	Contractor - No	Seller - No



UNIT DISTRIBUTION			INCOME DISTRIBUTION		
# Beds	# Units	% Total	Income	# Units	% Total
Eff	-	0%	30%	-	0%
1	32	20%	40%	-	0%
2	96	60%	50%	-	0%
3	32	20%	60%	160	100%
4	-	0%	MR	-	0%
<b>TOTAL</b>	<b>160</b>	<b>100%</b>	<b>TOTAL</b>	<b>160</b>	<b>100%</b>

**PRO FORMA FEASIBILITY INDICATORS**

Pro Forma Underwritten		Applicant's Pro Forma	
Debt Coverage	1.15	Expense Ratio	43.4%
Breakeven Occ.	87.9%	Breakeven Rent	\$995
Average Rent	\$1,076	B/E Rent Margin	\$81
Property Taxes	Exempt	Exemption/PILOT	100%
Total Expense	\$5,349/unit	Controllable	\$3,448/unit



**MARKET FEASIBILITY INDICATORS**

Gross Capture Rate (10% Maximum)	2.2%
Highest Unit Capture Rate	6% 2 BR/50% 96
Dominant Unit Cap. Rate	6% 2 BR/50% 96
Premiums (↑60% Rents)	N/A
Rent Assisted Units	160 100% Total Units

**DEVELOPMENT COST SUMMARY**

Costs Underwritten	TDHCA's Costs - Based on PCA	
Avg. Unit Size	828 SF	Density 16.9/acre
Acquisition	\$77K/unit	\$12,280K
Building Cost	\$39.50/SF	\$33K/unit \$5,232K
Hard Cost	\$38K/unit	\$6,073K
Total Cost	\$164K/unit	\$26,230K
Developer Fee	\$3,118K (10% Deferred)	Paid Year: 2
Contractor Fee	\$779K	30% Boost Yes

**REHABILITATION COSTS / UNIT**

Site Work	\$1K 2%	Finishes/Fixtures	\$14K 36%
Building Shell	\$14K 36%	Amenities	\$1K 3%
HVAC	\$4K 10%	Total Exterior	\$16K 45%
Appliances	\$2K 4%	Total Interior	\$19K 55%

DEBT (Must Pay)					CASH FLOW DEBT / GRANT FUNDS					EQUITY / DEFERRED FEES	
Source	Term	Rate	Amount	DCR	Source	Term	Rate	Amount	DCR	Source	Amount
Redstone Private Placement	17/40	4.65%	\$17,650,000	1.13	Net Operating Income	0/0	0.00%	\$554,241	1.15	NEF	\$8,073,135
Adjustment to Debt Per §10.302(c)	17/40	4.65%	(\$350,000)	1.15						Steele Properties III LLC	\$303,109
<b>TOTAL DEBT (Must Pay)</b>			<b>\$17,300,000</b>		<b>CASH FLOW DEBT / GRANTS</b>			<b>\$554,241</b>		<b>TOTAL EQUITY SOURCES</b>	<b>\$8,376,244</b>
										<b>TOTAL DEBT SOURCES</b>	<b>\$17,854,241</b>
										<b>TOTAL CAPITALIZATION</b>	<b>\$26,230,485</b>

**CONDITIONS**

1 Receipt and acceptance before Determination Notice:

a: HUD approval of the assignment and renewal of the HAP Contract, including approval of the HAP Contract with rents no less than the underwritten rents.

b: Statement from the ESA provider explaining why the lead in the water test results do not warrant more comprehensive testing throughout the entire property.

2 Receipt and acceptance by Cost Certification:

a: Certification of comprehensive testing for asbestos and lead-based paint; that any appropriate abatement procedures were implemented by a qualified abatement company; and that any remaining asbestos-containing materials or lead-based paint are being managed in accordance with an acceptable Operations and Maintenance (O&M) program.

b: Certification of repeat short-term testing for radon within units Unit 501, Unit 503, as well as the for the invalid test conditions for Unit 203 and Unit 1011.

c: Certification that a Mold/Moisture Plan (MMP) has been implemented.

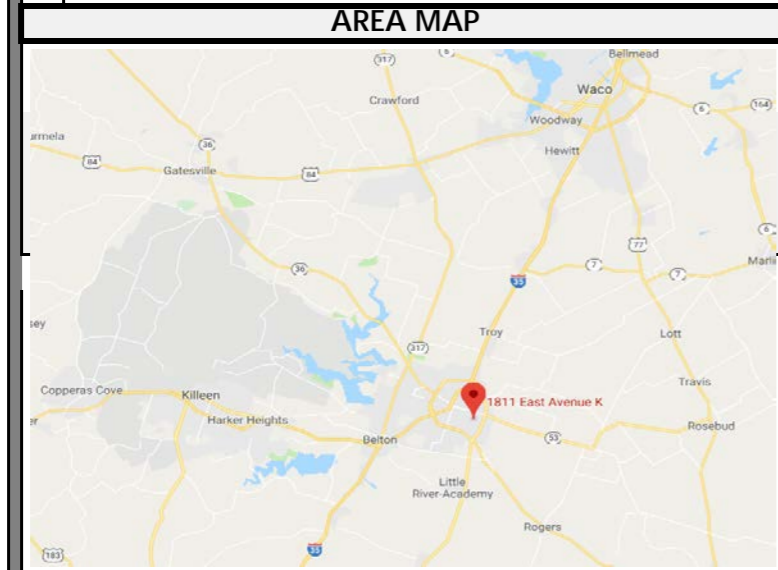
d: Certification that all plumbing components and fixtures associated within Unit 815 have been assessed by a licensed plumber, and any older components have been replaced.

e: HUD approval of the HAP Contract with rents no less than the underwritten rents.

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

BOND RESERVATION / ISSUER	
Issuer	The Bell County HFC
Expiration Date	1/9/2020
Bond Amount	\$20,000,000
BRB Priority	3
Close Date	TBD
Bond Structure	Private Placement
% Financed with Tax-Exempt Bonds	83.5%

RISK PROFILE	
STRENGTHS/MITIGATING FACTORS	
▫	100% Section 8 HAP assisted
▫	High area occupancy
▫	Gross Capture Rate
WEAKNESSES/RISKS	
▫	Applicant's Pro Forma First year DCR at 1.15
▫	Feasibility dependent on 100% tax exemption



8e

**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**OCTOBER 10, 2019**

Presentation, discussion and possible action regarding eligibility under 10 TAC §11.101(a)(3) related to Neighborhood Risk Factors for Bridge at Canyon View (#19411) in Austin

**RECOMMENDED ACTION**

**WHEREAS**, pursuant to 10 TAC §11.101(a)(3) of the 2019 Qualified Allocation Plan (QAP) related to Neighborhood Risk Factors, if a development site has any such factors, the applicant must disclose the presence of each such factor at the time the application is submitted to the Department;

**WHEREAS**, the applicant has disclosed the presence of a Neighborhood Risk Factor, specifically the proposed development is located in the attendance zone of a school that does not have a Met Standard rating;

**WHEREAS**, Consuelo Mendez Middle School has had an Improvement Required rating by the Texas Education Agency (TEA) from 2014 – 2018;

**WHEREAS**, pursuant to 10 TAC §11.101(a)(3), a school that has been Improvement Required for three consecutive years shall be unable to mitigate unless there is a clear trend indicating imminent compliance, due to the potential for school closure as an administrative remedy pursuant to Chapter 39 of the Texas Education Code;

**WHEREAS**, documentation has not been submitted to evidence a clear trend indicating imminent compliance despite a five year Improvement Required status;

**WHEREAS**, SB 1882, adopted during the 85<sup>th</sup> Legislative Session, allowed school districts to request a two-year reprieve on TEA Accountability Ratings if the district partners with a state-approved group to develop a turnaround plan for the campus;

**WHEREAS**, the Austin ISD approved a partnership with T-STEM to help with the accountability rating for Mendez Middle School;

**WHEREAS**, the first year under the T-STEM partnership resulted in a 2019 TEA Accountability Rating of “F”;

**WHEREAS**, it is unclear to staff what action TEA will take if, at the end of the second year under the T-STEM partnership, Mendez Middle School, has not achieved an accountability rating acceptable to TEA; and

**WHEREAS**, based on the aforementioned facts and as further discussed herein, staff does not believe it has the discretion under the rule to find the Bridge at Canyon View eligible;



**NOW, therefore, it is hereby,**

**RESOLVED**, that the site for Bridge at Canyon View is ineligible based on the aforementioned factors and information specific to Mendez Middle School, as noted herein.

### **BACKGROUND**

Bridge at Canyon View is proposed to be located at 4506 East William Cannon Drive, in Austin, Travis County. It proposes the new construction of 215 units, all of which will be rent and income restricted at 60% of the Area Median Family Income and serving the general population.

The proposed development is in the attendance zone of Consuelo Mendez Middle School (Mendez), which does not have a Met Standard rating. The applicant provided TEA Accountability reports for 2016, 2017 and 2018 as part of the application, and according to the TEA website Mendez was also rated as Improvement Required in 2015 and 2014. Pursuant to 10 TAC §11.101(a)(3)(B)(iv):

*“The Development Site is located within the attendance zones of an elementary school, a middle school or a high school that does not have a Met Standard rating by the Texas Education Agency. Any school in the attendance zone that has not achieved Met Standard for three consecutive years and has failed by at least one point in the most recent year, unless there is a clear trend indicating imminent compliance, shall be unable to mitigate due to the potential for school closure as an administrative remedy pursuant to Chapter 39 of the Texas Education Code....” (emphasis added)*

Staff notes that a previous application, Eastern Oaks (#18503), was brought before the Board at the November 2018 meeting for the same Neighborhood Risk Factor relating to Mendez Middle School. Eastern Oaks was different from the subject application in that it involved the acquisition and rehabilitation of an existing development. Although staff recommended the site be found ineligible, the Board determined the site eligible, and worth noting, are the following comments from the Board as reflected in the attached transcript indicated *“...if this were a new development, new units, then that would be a really serious consideration...”* (emphasis added)

Information provided previously by the applicant for Eastern Oaks indicated that in May 2018, the Austin Independent School District (AISD) announced that they would partner with the University of Texas Tyler to create a STEM program at the school, in order to avoid closure under Chapter 39 of the Texas Education Code. Senate Bill 1882, passed during the 85<sup>th</sup> Legislative Session in 2017, gives a school district the authority to partner with an open-enrollment charter school to operate a district campus. Under SB 1882 a two-year reprieve from state accountability ratings would be granted meaning TEA would still provide accountability ratings; however, they would not be able to impose sanctions based on those ratings for two years. The newly enacted bill also allowed for the school to receive grant funding opportunities and an increased funding rate per student to assist with transforming the school. Moreover, Mendez Middle School was to be operated by a separate governing board, which would have full control of the school. The TEA Accountability Ratings for 2019 have moved from a Met Standard/Improvement Required system to a letter-grade system that rates schools A, B, C, D, and F.

Staff notes that the 2019 TEA Accountability Ratings, released in August 2019, reflected a grade of “F” for Mendez Middle School, which TEA defines as “Unacceptable Performance,” and is the first year under the T-STEM partnership.

While the letter dated July 2018 from the Superintendent of the AISD, submitted with the Eastern Oaks application, described the STEM program and Senate Bill 1882, it did not state there was a reasonable expectation that Mendez Middle School will have a Met Standard rating by the time the Eastern Oaks rehabilitation is complete, nor did it explain what action TEA could take against Mendez Middle School if the T-STEM partnership is not successful at the end of the second year. The application for Bridge at Canyon View includes a letter dated February 2019, from the Director of Mendez Middle School, which describes the STEM program; however, it did not indicate that the program has had the effect of turning around other schools after implementation.

Pursuant to 10 TAC §11.101(a)(3), there has been no information provided to staff that reflects a “clear trend indicating imminent compliance” and is compounded by the recently released 2019 TEA Accountability Rating of “F” given the first year under the STEM partnership. And, although the rule does not contemplate legislative changes that could affect a determination of eligibility, staff does not believe it has the discretion to consider SB 1882 as mitigation considering the school’s performance the first year under the plan, what actions TEA could take if the second year under the partnership produces the same results, and given prior Board comments that differentiated a rehabilitation with existing residents from building newly constructed units in the Mendez Middle School attendance zone. Bridge at Canyon View would be under construction with 215 units at a time when the fate of Mendez Middle School would be unknown.

Staff notes that although this application is being evaluated under the 2019 QAP, which allows for mitigation so long as the “clear trend indicating imminent compliance” is present, or if not, the Board is provided with an opportunity to determine eligibility. The Draft 2020 QAP states that schools rated “F” in 2019 and Improvement Required in 2018 would be considered ineligible with no opportunity to mitigate. This particular provision in the 2020 Draft QAP is intended to allow those areas the time necessary to improve school performance, and not place the Department in the position of placing affordable housing in areas that have trends of performance that are unacceptable by TEA standards.

# 2019 TEA Rating



Accountability Data    Performance    Participation    Attendance and Graduation

Postsecondary Readiness    Profile    KG Readiness    Postsecondary Outcomes

Finance Data

Search

## Texas Education Agency 2019 Accountability Ratings Overall Summary MENDEZ MIDDLE (227901058) - AUSTIN ISD

### Accountability Rating Summary

	Component Score	Scaled Score	Rating
<b>Overall</b>		50	F
<b>Student Achievement</b>		50	F
<a href="#">STAAR Performance</a>	21	50	
<a href="#">College, Career and Military Readiness</a>			
<a href="#">Graduation Rate</a>			
<b>School Progress</b>		53	F
<a href="#">Academic Growth</a>	45	51	F
<a href="#">Relative Performance (Eco Dis: 90.6%)</a>	21	53	F
<a href="#">Closing the Gaps</a>	4	42	F

### Identification of Schools for Improvement

This campus is a comprehensive support and improvement reidentified school.

### Distinction Designations

ELA/Reading	Not Earned
Mathematics	Not Earned
Science	Not Earned
Social Studies	Not Earned
Comparative Academic Growth	Not Earned
Postsecondary Readiness	Not Earned
Comparative Closing the Gaps	Not Earned

Texas Education Agency | Governance and Accountability |  
Performance Reporting

August 2019

# **Materials Provided by Applicant**

# Mendez Middle School Turnaround:

## Introduction

The Texas STEM Coalition serves as the Lead Partnering Entity managing Consuelo Mendez Middle School to meet and ultimately exceed state accountability standards in partnership with the Mendez community, Communities in Schools Central Texas, and UTeach Institute. The Partnership is implementing the research-based T-STEM Academy model at Mendez. Communities in Schools (CISCT) enhances its Integrated Student Supports at Mendez, including parent engagement, teacher supports and training, partnerships development, and community mentor coordination.

## Section 1: Educational Program Design

It is our intention to transition Mendez Middle School (MMS) from a low-performing campus to a high performing Texas STEM Academy (T-STEM). The T-STEM Academy is one of several turnaround models promoted by the Texas Education Agency over the past decade. The T-STEM program is focused on developing college- and career-ready students.

This model also builds a school learning culture that mirrors the workplace to build students' 21<sup>st</sup> century skills, including collaboration, communication, creativity, and critical thinking.

T-STEM Academies focus on preparing economically disadvantaged students for college and career.

*The Academies use the T-STEM Design Blueprint, Rubric, and Glossary as a guidepost to build and sustain T-STEM schools that address the seven benchmarks:*

- 1) Mission driven leadership*
- 2) School culture and design*
- 3) Student outreach, recruitment, and retention*
- 4) Teacher selection, development and retention*
- 5) Curriculum, instruction, and assessment*
- 6) Strategic alliances*
- 7) Academy advancement and sustainability*

## Educational Plan

Mendez Middle School will adopt the T-STEM Academy Blueprint. The TEKS serve as the basis for curriculum in every class. Projects will be developed around the TEKS. A scope and sequence will be developed that covers the TEKS and is aligned to the STAAR, EOC, and the Career and College Readiness Standards.

### A. Curriculum & Delivery Methods of Core Instruction

Mendez will implement the Blueprint as designed.

### Curriculum, Instruction, and Assessment

### B. School Culture and Climate

The T-STEM Academy Blueprint provides guidance on building a school culture that supports learning at a high level. Communities in Schools (CIS) will play a greater role in enhancing a healthy school climate, particularly in the area of student voice and developing a positive school culture through trust building activities and teacher training on recognizing and responding to signs of trauma as well as the Search Institute Developmental Relationships model.

## **STEM Academy Culture and Design**

### **C. Performance Assessments and School Wide Monitoring**

#### **Diagnostic Review**

In addition to meeting Benchmark 5.6 on assessment described in the education plan above, the Texas STEM Coalition Partnership team will conduct an ongoing diagnostic/planning process, which will produce a meaningful and actionable document that drives the school's work and resource allocation

The team will produce a report that includes findings, recommendations, and areas for strategic intervention with the goal of meeting standard and working towards recommended performance. Communities in Schools will closely partner on the last three indicators.

#### **Action Plan**

Based on the diagnostic report, the T-STEM Coalition will develop an action plan that addresses the following:

- Student success: Accelerating all students to be at grade level or meet STAAR/EOC Indices.
- Specific scope and sequence
- School leadership: Plan for ensuring that the school has an effective principal who buys into the model and assist in developing processes to support teacher leaders; continuing support for the principal's leadership development.
- Teacher-led professional learning communities (PLCs): Time and support for grade- or subject-based PLCs that focus on data analysis to support effective Tier I instruction aligned with standards.
- Annual performance targets for student outcomes and leading indicators of progress aligned with meeting state standards under the accountability system.

The Action Plan will include the specific actions and steps the partnership team will take to support the improvements.

### **D. Professional Development**

The Blueprint also provides guidance on the hiring of new teachers (including retraining veteran teachers), their professional development, and their retention.

## **Teacher Selection, Development, and Retention**

### **E. Student Recruiting and Marketing**

It is our goal to reestablish Mendez as the school of choice for the Dove Springs community. Over the past five years, a significant number of students have transferred to other middle schools. We will implement the Blueprint for student recruitment and marketing. Students in the Mendez attendance

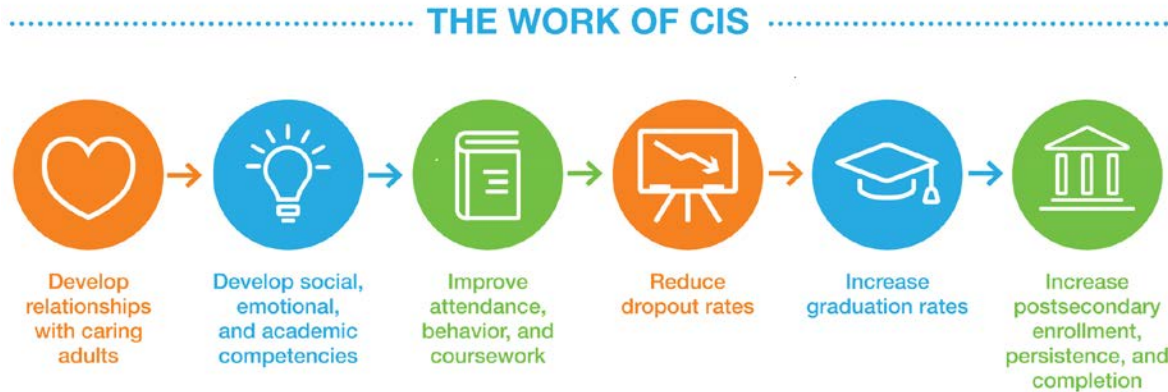


zone will be a priority. Over time, we hope to establish Mendez Middle School as the model other schools in AISD want to emulate.

## Student Outreach, Recruitment, and Retention

### Our Partners

CIS has a 32 year history of working with schools in AISD to support students and families with more than 20 years serving Mendez M.S. The graphic below illustrates the work of CIS.



Communities In Schools of Central Texas surrounds students with a community of support, empowering them to stay in school and achieve in life. At Communities In Schools, we work directly in schools to identify and address the immediate needs of our students, from basic needs such as food and clothing, to more complex needs like counseling, mentoring, and navigating complex healthcare and other systems.



### The UTeach Institute

UTeach’s mission is to increase the number, diversity, and academic achievement of students pursuing STEM disciplines and careers. As a result of this work, the Institute has developed a comprehensive approach to the development, implementation, evaluation, and scaling of educational programs. The Institute’s work to strengthen STEM education is informed by both the fundamental UTeach approach to STEM teaching and learning as well as our experience developing and managing educational programs at scale.

## Mendez Middle School Turnaround:



### Introduction



The Texas STEM Coalition serves as the Lead Partnering Entity managing Consuelo Mendez Middle School to meet and ultimately exceed state accountability standards in partnership with the Mendez community, Communities in Schools

Central Texas, and UTeach Institute. The Partnership is implementing the research-based T-STEM Academy model at Mendez. Communities in Schools (CISCT) enhances its Integrated Student Supports at Mendez, including parent engagement, teacher supports and training, partnerships development, and community mentor coordination.

### Section 1: Educational Program Design

It is our intention to transition Mendez Middle School (MMS) from a low-performing campus to a high performing Texas STEM Academy (T-STEM). The T-STEM Academy is one of several turnaround models promoted by the Texas Education Agency over the past decade. The T-STEM program is focused on developing college- and career-ready students. Austin has become the Silicon Valley of Texas and students completing a STEM program will be better prepared to take advantage of many thousands of career opportunities available here. Transitioning to a T-STEM Academy goes beyond simply trying to “Meet Standard.” Too often, turnaround programs simply provide supports that only focus on passing the STAAR and EOC. These programs are problematic since they do not take into account future changes in the accountability system. They are often reactive, focusing on attendance, tutoring, and test preparation. These programs do not build teacher and student capacity to become self-led learners and productive team members and often create a negative school culture.



At schools implementing the T-STEM model, students do not only focus on STEM. Rather, the goal of the STEM Academy model is to prepare students in STEM in at a deeper level, as well as prepare them well in the traditional core subjects, to maximize their future learning and earning opportunities. This model also builds a school learning culture that mirrors the workplace to build students' 21<sup>st</sup> century skills, including collaboration, communication, creativity, and critical thinking. This approach is in stark contrast to turnaround models that focus primarily on test preparation. Another rationale for using the T-STEM Model is its alignment with the two high schools that Mendez students will attend. Travis High School is an Early College High School and Akins High School includes a T-STEM Academy. The T-STEM model aligns to both the these established programs.

The T-STEM model follows a Blueprint. The T-STEM Blueprint (TEA, 2015), is similar to the Early College High School model (ECHS). T-STEM Academies focus on preparing economically disadvantaged students for college and career. Unlike the ECHS model, there is a strong focus on STEM. The T-STEM Blueprint includes seven research-based benchmarks that help guide a school to becoming high achieving. The following is an excerpt from TEA concerning the T-STEM Academy approach.

*The Texas Education Agency (TEA) and Educate Texas support T-STEM Academies in order to concentrate state and local efforts for improving math and science achievement among Texas students. The T-STEM initiative ensures Texas students thrive in the 21st Century economy by studying and entering into STEM fields. The cornerstone of T-STEM Academy learning is student engagement and exposure to innovation and design in STEM-focused instruction and learning that models real-world contexts. T-STEM Academies serve as demonstration sites to inform math and science teaching and learning statewide. The T-STEM initiative aims to closely align high school curriculum with admission requirements of competitive colleges and the STEM qualifications for 21st century jobs. The Academies use the T-STEM Design Blueprint, Rubric, and Glossary as a guidepost to build and sustain T-STEM schools that address the seven benchmarks:*

- 1) Mission driven leadership*
- 2) School culture and design*
- 3) Student outreach, recruitment, and retention*
- 4) Teacher selection, development and retention*
- 5) Curriculum, instruction, and assessment*
- 6) Strategic alliances*
- 7) Academy advancement and sustainability*

*T-STEM Academies are demonstration schools and learning labs that develop innovative methods to improve STEM-related instruction. TAC §102.1093 also instituted the requirement for an annual application and designation process for any school wishing to become/retain T-STEM designation in the State of Texas. In early 2015, the T-STEM Blueprint underwent a third revision to include language specific to middle school T-STEM Academies and House Bill 5 graduation requirements.*

Achievement data from students in 2011 showed T-STEM Academies outperform peer schools, meeting college-readiness benchmarks at a 12 percent higher rate and achieving a 21 percent higher completion rate in dual credit and advanced placement courses (Fitzpatrick, 2012). Another study concluded that participation in a STEM academic program positively impacted eighth grade students' academic achievement in mathematics, science, and reading (Olivarez, 2012). The T-STEM Blueprint has also proven effective as a school turnaround model (Odell, 2017; Odell & Pedersen, 2018). Excerpts from the

T-STEM Academy Design Blueprint are highlighted in blue throughout this document. In addition, the complete Blueprint is included in the appendices.

## Educational Plan

Mendez Middle School will adopt the T-STEM Academy Blueprint. T-STEM Academies are implemented at the middle school and high school. The Blueprint provides design criteria for the entire school enterprise. The TEKS serve as the basis for curriculum in every class. Projects will be developed around the TEKS. A scope and sequence will be developed that covers the TEKS and is aligned to the STAAR, EOC, and the Career and College Readiness Standards.

### A. Curriculum & Delivery Methods of Core Instruction

Mendez will implement the Blueprint as designed. The Blueprint includes high school language that aligns to high school programming. We chose to leave in those elements for the proposal readers as the Mendez curriculum will prepare students for those pathways if they choose STEM or ECHS in high school. We will also maintain the Project Lead the Way (PLTW) Gateway program and expand PLTW. Benchmark 5 of the T-STEM Blueprint focuses on Curriculum, Instruction and Assessment.

#### **BLUEPRINT: BENCHMARK 5: Curriculum, Instruction, and Assessment**

##### **5.1 Program Requirement: Rigor**

5.1.A Aligns curriculum, instruction, and assessment (such as, but not limited to, THECB CCRS, national and state standards, content, context, culture, cognitive level, competencies, skills, processes, 21st century skills, and STEM synthesis).

5.1.B Develops a scope, sequence, and pacing guide for a vertically and horizontally aligned curriculum centered on state standards, career and college readiness standards, STEM integration, and industry expectations.

5.1.C Develops an assessment and intervention plan to address gaps in student achievement and areas for extension.

5.1.D Supports and encourages all students to be ready to successfully complete four years of mathematics, four years of science, four years of STEM electives, and at least one Endorsement in STEM, Business and Industry, Public Services, or Arts and Humanities, with a primary focus on a STEM Endorsement; and earn a Distinguished Level of Achievement as well as a Performance Acknowledgement in order to graduate college ready.

5.1.E Offers dual credit, articulated concurrent enrollment, AP or IB courses so that all students will graduate with 12-30 college credit hours. **(MS- Provides foundation for these offerings in HS)**

5.1.F Establishes curriculum expectations, monitoring, and accountability mechanisms that are reflectively revised to ensure a constancy of mission purpose (aligned resource allocation, integrated STEM curriculum development, teacher professional growth, and student results).

##### **5.2 Program Requirement: STEM-focused Curriculum**

5.2.A Delivers innovative STEM programs that are well-defined, embed critical thinking and problem solving, innovation, and invention, and are aligned to state, and/or national standards, and industry expectations.

5.2.B Supports and encourages students to complete three years of STEM electives at middle school and four years of STEM electives at high school.

5.2.C Develops performance-based and project-based assessments aligned to these innovative programs and state/national/industry standards.

5.2.D Develops and implements a plan for supporting accelerated student achievement for students with demonstrated deficiencies or proficiencies in mathematics and science, to promote all students graduating ready for enrollment in credit-bearing postsecondary courses (e.g. Algebra I enrollment by 8th grade).

5.2.E Incorporates into the curriculum work-based, contextual learning with a global perspective.

5.2.F Participates in extra-curricular academic activities centered on science, technology, engineering, and mathematics; i.e. STEM field experiences, clubs, and competitions.

5.2.G Develops 6th – 8th students’ portfolios of interest in: STEM capstone projects, STEM extracurricular opportunities, and global STEM college, degree, and career explorations.

### **5.3 Program Requirements: Instructional Practices**

5.3.A Incorporates data-driven instruction.

5.3.B Creates an environment for shared teacher responsibility and accountability for student learning across programs, content areas, and classrooms.

5.3.C Organizes instruction expectations around problem-based and project-based learning with clearly defined learning outcomes for students and teachers that address state and national performance standards, college and career readiness standards, and industry expectations.

5.3.D Ensures teachers’ use of the aligned scope and sequence and integration across the disciplines.

5.3.E Ensures teachers’ use of high-quality curricular materials aligned with state and national standards, college and career readiness standards, and industry standards.

5.3.F Provides opportunities for students to exercise choice and voice within a relevant and rigorous context.

### **5.4 Program Requirements: STEM Education Integration**

5.4.A Promotes instructional strategies that challenge students to think critically, innovate, and invent to solve real-world, contextual problems.

5.4.B Exposes students to critical readings in STEM related fields and requires students to demonstrate their understanding of STEM disciplines in a work-based, contextual environment.

5.4.C Offers standards-based STEM programs that incorporate integrative STEM literacy and innovative instructional tools.

5.4.D Promotes applied and collaborative learning, and provides students with opportunities to present/defend their work to peers, community, industry, and university leaders.

5.4.E Promotes a technology rich culture of natural use of current technologies to enhance instruction, curriculum, teaching, and learning, and STEM literacy.

### **5.5 Program Requirements: Literacy**

5.5.A Promotes technologically proficient and scientifically literate students with highly developed academic vocabulary and STEM technical vocabulary.

5.5.B Graduates 21st Century literate students proficient in: English, reading, speaking, writing, numeracy, arts, health, sciences, and world languages; government, civics, history, and geography; environmental science; global awareness; information, communications, and media technology; financial, economic, business, and entrepreneurship.

5.5.C Selects appropriate STEM curriculum and culturally relevant instructional materials that foster widespread use of literacy strategies within the STEM curriculum.

5.5.D Provides opportunities for students to demonstrate the relevancy of the content through reading, writing, speaking, and presenting.

## 5.6 Program Requirements: Assessment

- 5.6.A Uses diagnostic, ongoing, and vertically and horizontally aligned formative and summative assessments for all students to drive instructional decisions.
- 5.6.B Uses state and national standards, college and career readiness standards, industry standards, and STEM program requirements to develop common benchmark assessments.
- 5.6.C Employs student readiness assessments or diagnostics to identify and address gaps in learning.
- 5.6.D Tracks and reports student progress using student information systems.
- 5.6.E Uses performance-based assessments that allow students to demonstrate their understandings of STEM concepts.

## B. School Culture and Climate



The T-STEM Academy Blueprint provides guidance on building a school culture that supports learning at a high level. Mendez will meet the following benchmarks for School Culture and Climate. Mendez will be

decorated to reflect a PBL School that promotes high academic standards and a positive school culture. College pennants will be placed in every hall. Displays for student products will be created throughout the building. Personalization is a major factor in building a positive school culture and leads to relationships that build trust between students and teachers.

Communities in Schools (CIS) will play a greater role in enhancing a healthy school climate, particularly in the area of student voice and developing a positive school culture through trust building activities and teacher training on recognizing and responding to signs of trauma as well as the Search Institute Developmental Relationships model.

## 2. BENCHMARK: STEM Academy Culture and Design

### 2.1 Program Requirement: Personalization

- 2.1.A Addresses in Annual Action Plan and strategic plan the details for remaining small, allowing for personalization, and maintaining collaborative learning communities of students.
- 2.1.B Plans and implements a non-graded student advisory program that is regularly scheduled, noted in the master calendar/schedule, and focuses on personalizing the student experience, (builds relationships with students and parents, develops character, and fosters global literacy).
- 2.1.C Develops a process for hearing and responding to student voice.
- 2.1.D Arranges for a flexible school day with blocks of time that support student learning (tutorials, collaboration, meetings).
- 2.1.E Celebrates high quality student work through student exhibits on-site, web-based, and/or in state and national forums.

2.1.F Provides every 6th – 8th student with an individualized STEM-focused high school graduation plan that addresses: four years of math and science; an Endorsement in STEM, Business and Industry, Public Service, or Arts and Humanities; identifies target areas for Performance Acknowledgements; and is at least annually reviewed and revised with the counselor, student, and family.

## **2.2 Program Requirement: Culture**

2.2.A Collaborates with stakeholders to develop a new handbook or modify the existing handbook with clear procedures, policies, and consequences that support the development of a strong T-STEM culture.

2.2.B Involves all stakeholders in developing a culture of respect, responsibility, trust, and meaningful adult and peer relationships throughout the Academy in order to foster positive student identities.

2.2.C Creates a professional learning community environment of collaboration, teaming, and high expectations among administrators, teachers, and stakeholders, with a focus on and a commitment to the learning of each student.

## **2.3 Program Requirement: Postsecondary Success (College and Career)**

2.3.A Prepares students (to enter High School) who graduate for post-secondary coursework and careers in science, technology, engineering, and mathematics through the integration of the Governor’s economic workforce clusters and Achieve Texas STEM cluster: semiconductor industry, information and computer technology, micro-electromechanical systems, manufactured energy systems, nanotechnology, biotechnology, chemist, and engineering: aerospace, electronic, mechanical, environmental, and biomedical.

2.3.B Regularly engages 6th – 8th students and parents in high school and college transition planning, STEM Career Exploration, College Exploration, and College Readiness preparation.

2.3.C Develops a plan for student success on post-secondary entrance exams.

2.3.D Creates higher education partnerships to provide mentoring, college-level courses/dual credit, professional development and technical assistance, and to foster a college-going culture.

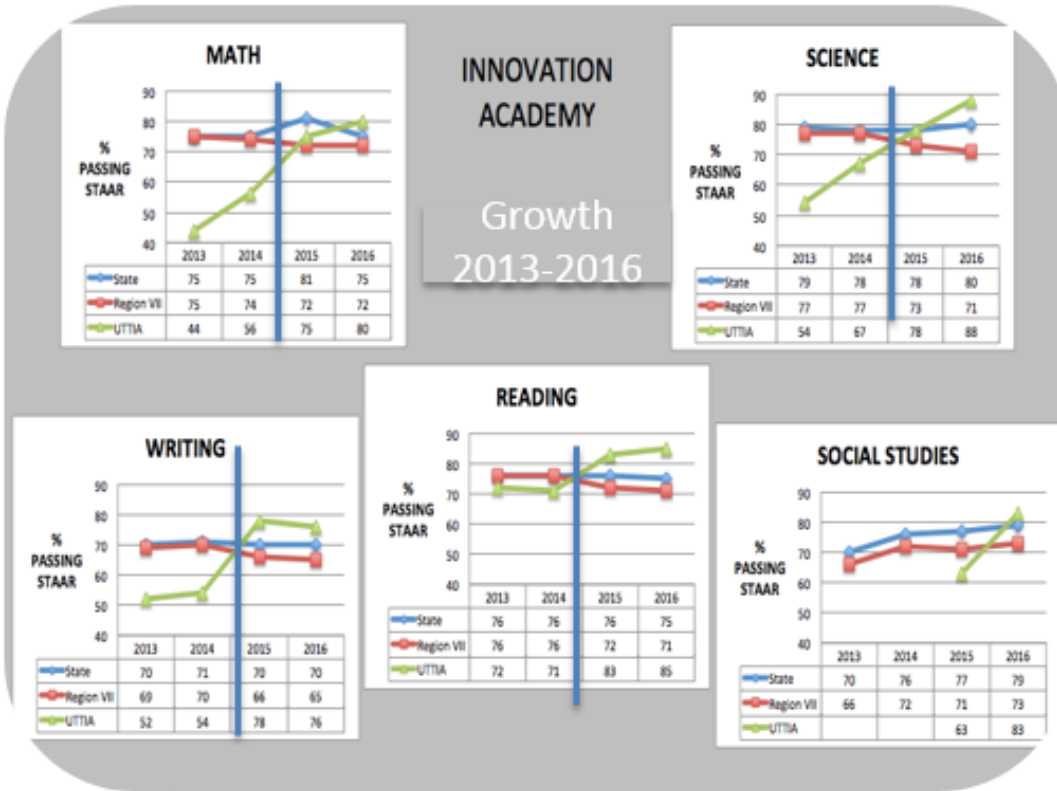
## **C. Performance Assessments and School Wide Monitoring**

### **Diagnostic Review**

In addition to meeting Benchmark 5.6 on assessment described in the education plan above, the Texas STEM Coalition Partnership team will conduct an ongoing diagnostic/planning process, which will produce a meaningful and actionable document that drives the school’s work and resource allocation. In addition to focused interventions, T-STEM Coalition staff are well versed in the Texas Accountability Intervention System to create sustainable transformation. We know from our own experience in managing charter schools the importance of developing a data-driven school culture that is student centered. The diagnostic review and planning efforts focus on school leadership, the turnaround conditions, current level of social trust, the alignment of instruction and assessment to standards, and processes for teachers to work together to improve instruction and encourage the sense of urgency required for turnaround. It is also imperative that leadership work well with community stakeholders and students. Personnel have experience in turning around schools. Figure 1 provides data from an IR district. **The IC intervention model not only transformed the schools from IR to Met Standard, but they have continued to increase scores even though state and regional scores have remained flat or decreased. It should also be noted that significant growth occurred in ALL subjects, not just STEM.**

Figure 1: Turnaround Data for IR School

## Quantitative Evidence:



— - Represents year interventions were implemented

### Elements of the school diagnostic process

The IC diagnostic team will implement the following activities as soon as this partnership is selected and data access is granted:

- Review of student performance data (disaggregated along many lines)
- Observations and assessment of classroom instruction (TTESS and UTOP observations)
- Observation of collaborative teacher planning of instruction, i.e., PLCs
- Assessment of principal and teacher leadership
- Assessment of school culture
- Interviews with district leadership regarding turnaround conditions, finance and budget, and school governance
- Assessment of the level of social trust based on a survey of teachers, parents, administrators, and students
- Focus groups with teachers, parents, community members, and (in high schools) students
- Assess the assessments of data driven practices and define the process

The team will produce a report that includes findings, recommendations, and areas for strategic intervention with the goal of meeting standard and working towards recommended performance. Communities in Schools will closely partner on the last three indicators.

### Action Plan



Based on the diagnostic report, the T-STEM Coalition will develop an action plan that addresses the following:

- Student success: Accelerating all students to be at grade level or meet STAAR/EOC Indices.
- Specific scope and sequence
- School leadership: Plan for ensuring that the school has an effective principal who buys into the model and assist in developing processes to support teacher leaders; continuing support for the principal's leadership development.
- Teacher-led professional learning communities (PLCs): Time and support for grade- or subject-based PLCs that focus on data analysis to support effective Tier I instruction aligned with standards.
- Annual performance targets for student outcomes and leading indicators of progress aligned with meeting state standards under the accountability system.

The Action Plan will include the specific actions and steps the partnership team will take to support the improvements.

### **Teacher-led Processes to Continually Improve Tier 1 Instruction**

The project team will develop a detailed plan for engaging teachers in the process of continually improving Tier 1 instruction through the use of grade- or subject-level professional learning communities facilitated by instructional coaches. The IC has developed a model for PLCs that includes



intensive instructional coaching. The coaching model can be implemented with minimal expense. Campuses must provide for the time, training, and support needed to build robust professional learning communities for teachers in the school. The coaching includes use of the UTeach Teaching Observation Protocol (U-TOP) instrument to assist teachers and administrators on focusing instruction utilizing research-based instructional strategies, TEKS coverage, College and Career Readiness Standards (CCRS) alignment, and content at the appropriate rigor/depth of knowledge. Teachers also learn to use the protocol to evaluate videos of their own teaching.

Based on the data and monitoring plan, the project team utilizes a rubric modified from the T-STEM Blueprint Rubric of research-based interventions in helping schools meet acceptable ratings that include but are not limited to:

- Maximizing leadership and staff capacity through the establishment of collaborative leadership designs and professional learning communities
- Strategies and practices for personalizing the school environment that result in improved student performance
- Instructional strategies that promote high levels of student engagement in meaningful classroom activities
- Ongoing monitoring of student progress toward mastery of state standards
- Instructional coaching for teachers
- Coaching of administrators to recognize and document meaningful instruction and student learning
- Creation of a climate conducive to learning in both the classroom and the building
- Delivery of a guaranteed and viable curriculum that includes a logical scope and sequence
- Resource alignment and utilization for whole school improvement

- Strategies to address safety, discipline and engagement
- Rigorous school curriculum delivered with the goal of meeting higher standards
- Communicating and working with a wide variety of education stakeholders including the board of trustees, superintendent, central office, principals, teachers, community members, and parents in a coordinated effort to provide whole school reform
- On-site delivery of individualized coaching with teachers, students, and leaders directly through formal professional development programs and individual coaching
- Robust diagnostic reviews utilizing student data in both aggregated and disaggregated reports to not only identify student performance but provide insight into teacher performance
- Creation of plans noting specific action steps to support improvements
- Support for the key improvement areas within the school, including:
  - Development of strong leaders
  - Teacher-led processes to continually improve instruction aligned to standards and supporting student engagement
- Effective PLCs with a focus on data analysis to inform instruction
- Monitoring progress through adherence to plan implementation with a focus on its impact on student achievement and student outcomes.

#### **D. Professional Development**

We view teacher professional development in terms of recruitment and retention. We go beyond typical district requirements for PD. Teachers must commit to 3-4 weeks of paid PD each summer so that the model can be implemented effectively and with fidelity. The Blueprint also provides guidance on the hiring of new teachers (including retraining veteran teachers), their professional development, and their retention.

### **4. BENCHMARK: Teacher Selection, Development, and Retention**

#### **4.1 Program Requirement: Highly Qualified Teachers**

4.1.A Recruits and selects highly qualified faculty who possess extensive subject knowledge, are willing to incorporate project based learning (PBL), and integrative STEM pedagogy.

4.1.B Recruits and selects highly qualified faculty who utilize relational knowledge in developing culturally responsive classrooms that successfully build self- efficacy with traditionally underrepresented students.

4.1.C Develops teacher job descriptions and requirements that incorporate integrative content practice and research-based actions/strategies that demonstrate commitment to success for underrepresented students.

4.1.D Uses a collaborative recruitment and selection process that includes Academy leaders, teachers, key stakeholders, T-STEM Centers, and T-STEM Coaches.

4.1.E Designs or employs innovative programs to support the recruitment and selection of highly qualified STEM teachers. Note: we plan to take advantage of the UTeach to recruit and prepare high quality teachers. We also plan to host clinical students from UTeach to help support Mendez students.

#### **4.2 Program Requirement: Teacher Support and Development**

4.2.A Develops a PD plan for a sustained professional development model of continuous learning based on student results, teacher development, and the short- and long-term goals of the Academy.

4.2.B Adopts a systemic professional development model of continuous learning that addresses prioritized needs as informed and evaluated by multiple sets of quantitative and qualitative data

(student assessment data, instructional/classroom evaluations, technological developments, workforce demands, demographic changes, and community/societal expectations and needs).

4.2.C Sustains a Professional Learning Community (PLC) by instituting job-embedded ongoing opportunities for continuous learning, peer coaching/mentoring, STEM externships, and participation in STEM Teacher and Leader cadres for teachers and administrators (research-based practices, content competence, new instructional strategies, project-based learning, technology integration, reflective inquiry, and student artifact analysis).

4.2.D Provides ongoing professional development for counselors, teachers, staff, and parents on strategies that support students to ensure success in a rigorous course of study, such as: IGP, interventions, and interpersonal and academic success strategies.

4.2.E Ensures that on-staff, integrative STEM coaches are available and accessible to support both teachers and students in research-based practices, content competence, interdisciplinary STEM teaching and learning, reflective inquiry, college readiness standards, and state standards integrated with STEM industry expectations.

4.2.F Collaboratively builds 6th – 12th teacher and administrator expertise in developing, teaching, learning, and assessing STEM cross-content curriculum.

#### **4.3 Program Requirement: Teacher Retention**

4.3.A Provides for flexibility (within PBL model) in instructional practices to promote creativity and innovation while maintaining accountability.

4.3.B Provides a common planning time, within the structure of the school day, for teachers to support results-driven, team-focused professional learning, and cross-curricular collaboration.

4.3.C Adopts and implements a plan for new teachers to include orientation, induction, acculturation, mentoring, professional development, and administrative support.

4.3.D Provides opportunities for ongoing professional development to improve teachers' content knowledge, technology embedded instruction, integrative STEM pedagogy, college and career readiness standards, instructional strategies for ensuring a successful P-20 pipeline, and leadership capacity.

4.3.E Annual Action Plan includes a creative teacher incentive plan that provides release time and other incentives, such as stipends or bonuses, for teachers to contribute to and lead T-STEM education efforts (journal articles, conference presentations, attend T-STEM trainings and regional meetings, contribute to T-STEM newsletter, and populate Academy press releases).

## **E. Student Recruiting and Marketing**



It is our goal to reestablish Mendez as the school of choice for the Dove Springs community. Over the past five years, a significant number of students have transferred to other middle schools. We will implement the Blueprint for student recruitment and marketing. Students in the Mendez attendance zone will be a priority. Over time, we hope to establish Mendez Middle School as the model other schools in AISD want to emulate.

### **3. BENCHMARK: Student Outreach, Recruitment, and Retention**

#### **3.1 Program Requirement: Recruitment**

3.1.A Develops structures and processes for marketing and recruitment to encourage participation from underserved students and families (transportation or plans for transportation to the school, child care for family events, and translation of all recruitment and marketing materials).

3.1.B Actively partners with feeder elementary schools to develop student interest in STEM education and to increase advancement rates from middle school STEM to high school STEM.

3.1.C Develops a systemic recruitment plan that includes students, parents, counselors, teachers, district, and community.

#### **3.2 Program Requirement: Open Access**

3.2.A Develops an admission policy to include an open-access, lottery-based selection process that encourages applications from all students. The application will not be based on state assessment scores, discipline history, teacher recommendation, minimum GPA, or other requirements that would be used to limit selection.

3.2.B Consists of a population that is 50% or greater economically disadvantaged and underrepresented students.

#### **3.3 Program Requirement: Student Support and Retention**

3.3.A Develops and implements systemic, tiered strategies for student support and retention (outreach, early intervention strategies, mentoring, tutoring, counseling, and other supports for academic and socio-emotional growth).

3.3.B Hosts 5th – 6th and 8th – 9th orientation session(s) and summer bridge program(s) to facilitate successful student transitions and retention into a STEM-focused, college preparatory, project-based learning environment.

3.3.C Provides all students with opportunities and the expectation to assume roles of responsibility within the classroom, Academy, and community.

3.3.D Supports and monitors 6th – 8th student participation in STEM activities both within and outside

the classroom to ensure that all students engage in STEM clubs, STEM competitions, and STEM field experiences.

3.3.E Hosts parent seminars to develop deep understanding and commitment to the rigor of college readiness and the high expectations of a STEM Academy.

## **F. Special Populations**

The school will follow all applicable state and federal laws for Special Education, 504, Gifted and Talented, and ESL/Bilingual students to ensure a meaningful education in an inclusive environment. It is our belief that students should be in the classroom and pull-out interventions should be minimized so students do not miss instruction.

### **Special Education:**

We plan to contract with AISD for Special Education services. This is in the best interest of the students to avoid any disruption of services.

### **Gifted and Talented:**

The Project-based Learning (PBL) approach to instruction allows for significant differentiation. It is our intention to integrate GT approaches for all students, supporting a creative learning environment for all, not just a select few.

### **ESL/Bilingual Students**

The partnership will provide supports to ESL/Bilingual students. We have significant experience in TESOL. Our ESL approach is Sheltered Instruction. Our ELL Model is **content-based ESL**. In the content-based approach, ELLs are served by a full-time ESL certified teacher who provides supplementary instruction for all content areas. Content-based ESL programs focus on the learning of a second language (English) while using the language as a medium to learn core academic subjects.

It is also our understanding that there may be a community wish to maintain a dual language approach. The partnership team is open to this approach. If this is a community priority, students could receive instruction in both English and Spanish. Courses taught in Spanish would be limited to non-tested subjects since the STAAR and EOC at the middle school level are written in English. The following classes would be in English since they are tested. Other subjects would be possible candidates for Spanish instruction.

- 6<sup>th</sup> Grade: English Language Arts and Mathematics
- 7<sup>th</sup> Grade: English Language Arts and Mathematics
- 8<sup>th</sup> Grade: English Language Arts, Mathematics, Social Studies, and Science

### **G. Plan for 5<sup>th</sup>-6<sup>th</sup> Grade and 8<sup>th</sup>-9<sup>th</sup> Grade Transition**

The Blueprint also provides guidance on transitions.

33.3.B Hosts 5<sup>th</sup>-6<sup>th</sup> and 8<sup>th</sup>-9<sup>th</sup> orientation session(s) and summer bridge program(s) to facilitate successful student transitions and retention into a STEM-focused, college preparatory, project-based learning environment.

3.3.E Hosts parent seminars to develop deep understanding and commitment to the rigor of college readiness and the high expectations of a STEM Academy.

**Summer Bridge:** Each summer we will work with our feeder elementary schools and our high schools to develop summer bridge programs.



5<sup>th</sup>-6<sup>th</sup> grade will include a STEM day camp facilitated by UTeach Outreach, which has been providing camps for students in Austin for several years. Length of camps will vary based on camp focus and available resources.

We will work with the two high schools to ensure Mendez students are ready to transition to high school. 8<sup>th</sup>-9<sup>th</sup> grade will include bridge programs and Texas Success Initiative (TSI) readiness preparation. These bridge programs will also assist students in choosing HS pathways in collaboration with HS counselors.

**School Year Feeder Collaborations:** As a project-based school, we will work with Mendez students to provide meaningful programming to elementary students at the feeder campuses. This programming will be designed in collaboration with elementary administration and provide “buddies” and projects that enhance the educational experience of all involved. In addition, we will work with the two high schools to allow 8<sup>th</sup> graders to participate in HS programming. This could be extracurricular such as HS mentors for Mendez Students for robotics.

## Section 2 – Governance, Operations Plan, & Capacity

### A. Partner/provider capacity, including other partners who will be part of this partnership

The Texas STEM Coalition is a 501c3 non-profit. The coalition was established by the T-STEM Centers that were designated by the Texas Education Agency to support T-STEM Academies across Texas.

The Texas Science, Technology, Engineering and Mathematics (STEM) Centers address the challenges of tomorrow’s technology-driven economy by researching, developing, and supporting best practices in STEM education for K-12 schools. The Texas STEM Coalition, comprised of the T-STEM Centers and other members, work with 105 T-STEM Academies as well as all Texas schools to transform teaching and learning methods, improve achievement in STEM education, and ensure all students are college-ready, career-ready, and life-ready.

Mission



The Mission of the Texas STEM Coalition is to work with educators to ultimately prepare all Texas students to thrive in the 21st Century global economy by leveraging its extensive network of expertise, partnerships, resources and experience

to:

- transform teaching and learning,
- promote the implementation of innovative, research- and standards-based STEM practices that align with College and Career Readiness objectives, and
- facilitate its dissemination through an effective state-wide alliance.

**The T-STEM Coalition Current Center Members includes:**

- **The Ingenuity Center**
- **Institute of Instructional Excellence**
- **Transformation Central Texas STEM Center in Austin, TX**
- **STEM@ESC20 in San Antonio, TX**
- **Southeast Regional TSTEM Center in Galveston, TX**
- **STEM Center of South Texas in the Rio Grande Valley**

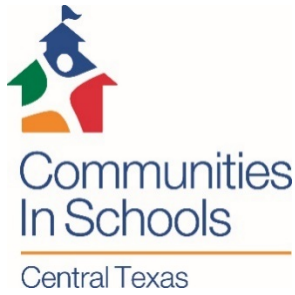
The T-STEM Coalition will provide personnel on-site to oversee the school and its transformation into a STEM Academy.

T-STEM Coalition members have experience in managing schools and implementing the T-STEM Blueprint. For example, the Ingenuity Center (T-STEM Center) has significant expertise in managing schools and in school turnaround. Texas T-STEM Centers provide technical assistance, professional development, and other support to academies statewide. TSTEM is affiliated with Project Lead the Way (a current Mendez STEM program) and provider of extracurricular programs that would be available to support Mendez. The Innovation Academies (UTTIA) will serve as the T-STEM model for Mendez. TSTEM personnel will assist in implementing the model and provide technical assistance in managing the school. We are aware that the T-STEM Blueprint has been streamlined and recently updated. That said, we plan to go beyond the new blueprint and continue implementing aspects of the 2015 Blueprint that have proven effective.

It is our goal that Mendez will also become a demonstration site in the future. It is our mission that students will leave Mendez TSI-ready within three years of academy implementation. Mendez already implements PLTW, a proven STEM program. This program will be strengthened to support Mendez students. Through world-class K–12 curriculum, PLTW helps students develop the skills needed to succeed in the global economy. Mendez currently implements **PLTW Gateway**, providing STEM curriculum for middle school students that challenges, inspires, and offers schools variety and flexibility. Students get rigorous and relevant experiences through activity-, project-, and problem-based learning. They use industry-leading technology to solve problems while gaining skills in communication, collaboration, critical thinking, and creativity. Mendez will implement a rigorous teacher professional learning community model that includes a comprehensive coaching model to support teachers and students to be successful.

Members from the TSTEM Coalition Center (IC) have experience in school turnaround and the Teacher and Student Support Model mirrors the CIS Model. We follow best practices as outlined by [TEA Turnaround](#) guidance. There is no “silver bullet” approach. It is important to be immersed in the community and school to understand the unique needs of the school. This requires the following process for the school including teachers and students. 1) Needs assessment (data driven); 2) Planning based on data; and 3) Integrated student and teacher supports; 4) Monitor, coach, and adjust, and 5) Evaluate and Process Outcomes.

## Our Partners



CIS has a 32 year history of working with schools in AISD to support students and families with more than 20 years serving Mendez M.S. The graphic below illustrates the work of CIS.

### ..... THE WORK OF CIS .....



An affiliate in good standing of Communities In Schools' national organization, CISCT is considered among the best in the country in delivering student supports, integrated into the school environment so that all children may learn at their potential.

Research shows that kids who stay in school are more likely to achieve in life, so CISCT surrounds students with a community of support proven to decrease dropout rates and increase high school graduation for students who face a variety of barriers to their education. This is accomplished through programs that support individual students, targeted populations, and the schools as a whole, creating a measurable impact on student success. In just the last three years, the percentage of students in our programs who are on track to graduate has increased by almost 20 percent.



## OUR UNIQUE MODEL



**Our Mission:** Communities In Schools of Central Texas surrounds students with a community of support, empowering them to stay in school and achieve in life. At Communities In Schools, we work directly in schools to identify and address the immediate needs of our students, from basic needs such as food and clothing, to more complex needs like counseling, mentoring, and navigating complex healthcare and other systems. We're inside schools and in students' lives, because when

students have caring adults supporting them, they see new possibilities. We surround students with a support system that fosters health, builds confidence, and empowers students to succeed. By partnering with the community, we bring relationships to the school campus that make a meaningful difference in children's lives, and help get them the services that they need. CIS also provides services to four of the five feeder elementary schools and Travis High School, where many Mendez students will enroll upon leaving 8<sup>th</sup> grade.

Communities In Schools of Central Texas currently provides the full CIS model at 66 schools in six school districts, 43 of which are in Austin ISD (including Mendez). Our long history with the Austin district is characterized by trusting relationships, active supports for students and faculty, and measurement of impact through pre-and post-data on student academics, behavior, and attendance as well as promotion or graduation. Believing that student and family needs should be met as early as possible, CIS serves many elementary schools so that students may progress to middle school ready for a new level of rigor, organization, and behavioral expectations.

Communities In Schools has received a number of awards over the years—Best Place to Work (Austin Business Journal), Wellness Workplace (City of Austin), Large Nonprofit of the Year (Mission Capital) and Mid-sized Business Best Executive Leader (Austin Chamber of Commerce).

The Board of Directors of CIS of Central Texas includes education, business, and nonprofit leaders. Christopher Kennedy, Executive Director of Leadership Austin, is our Board Chair, and highly dedicated individuals fill out our governing and oversight committees. The CIS board includes a former staff

member, a former CIS student, and a school administrator who has had CIS on his campus. Alongside the leadership of CEO Suki Steinhauser, MBA, the board is highly dedicated to the success of students of all backgrounds throughout Central Texas. This partnership for a T-STEM Academy would be the first of its kind for our organization and it is exciting to think that we will be part of a bright new future for Mendez Middle School.



### **The UTeach Institute**

As part of this initiative, the UTeach Institute will provide instructional coaching, professional development, data collection, and program evaluation, and STEM programming for student camps

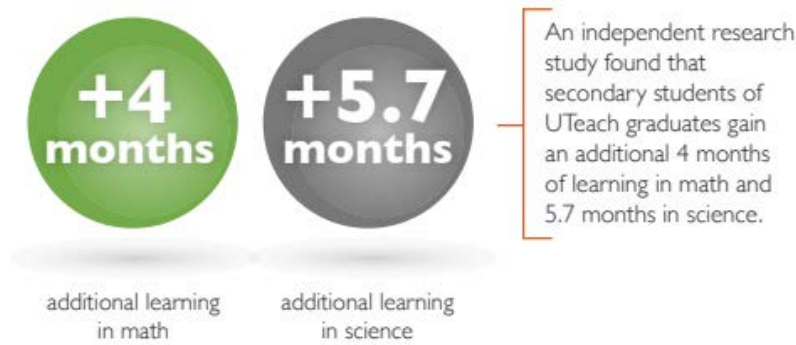
In addition, Mendez will become a natural school for UTeach to pilot the middle school lessons used in its early field experience courses, and to place student teachers interested in pursuing middle school teaching. UTeach will also facilitate a Maker program for Mendez.

UTeach's mission is to increase the number, diversity, and academic achievement of students pursuing STEM disciplines and careers. UTeach is well known as a highly successful secondary STEM teacher preparation program, begun at UT Austin in 1997 and currently operating at 45 universities nationwide. The UTeach Institute was created 11 years ago to expand the UTeach program nationwide and serves as the hub of this national network of UTeach programs. As a result of this work, the Institute has developed a comprehensive approach to the development, implementation, evaluation, and scaling of educational programs. The Institute's work to strengthen STEM education is informed by both the fundamental UTeach approach to STEM teaching and learning as well as our experience developing and managing educational programs at scale.

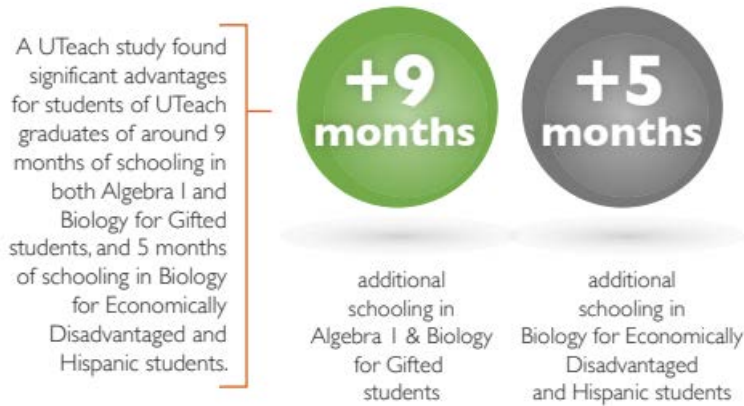
UTeach brings decades of experience in effective STEM teaching and learning, including: teacher development; effective STEM instructional design and curriculum development; STEM programming for K–12 students; assessing STEM teaching and learning; educational program design, implementation, and support; development of professional learning and networked improvement communities; sophisticated educational data analysis; and program evaluation.

UTeach's approach to preparing highly effective STEM teachers (Figure 2) has proven to be effective as demonstrated by two recent studies. Backes et al. (2016) found that secondary students of UTeach graduates gain an additional four months of learning in math and 5.7 months in science over the course of one academic year. Marder and Hamrock (2016) found significant advantages for students of UTeach graduates of nine months (Figure 3) of schooling in both Algebra I and Biology for Gifted students and five months of learning in Biology for economically disadvantaged and Hispanic students. These studies supply clear evidence that UTeach prepares teachers to successfully design learning environments that respect and acknowledge cultural and individual student learning differences while raising achievement for all students.

**Figure 2: Student Gains in STEM when taught by UTeach Graduates**



**Figure 3: Economically Disadvantaged Student Gains**



Hallmarks of the UTeach program include an emphasis on the development of deep content knowledge and developing inquiry- and project-based approaches to learning that engage ALL students in STEM.

UTeach also provides an array of professional development programs, customized to meet the needs of local schools and districts. UTeach Professional Development programs draw upon current research to promote the use of:

- inquiry-based learning methods,
- content-specific instructional practices that recognize the diverse resources learners bring to the learning experience,
- personalizing student learning,
- the meaningful integration of technology, and
- a variety of authentic assessment methods to inform instructional decisions and adjustments.

UTeach has significant experience providing professional development to middle school teachers, including teachers from Mendez M.S.

UTeach employs a team of evaluators, data specialists, and educational researchers. Dr. Michael Marder, in particular, devotes a significant amount of his time to educational data analysis.

UTeach's approach to teacher professional development and to program development and implementation support relies heavily on the role that professional learning and networked improvement communities play in program improvement. We have extensive experience coordinating professional learning communities for a variety of improvement purposes, from local groups of teachers at a single school to a nationwide network of more than 700 university faculty.

#### **Potential Partner Austin Interfaith**

Communities In Schools and Austin Interfaith are exploring ways to collaborate to engage and support the Mendez community. That group has deep experience in engaging communities through community walks, evening meetings, and other information sharing and empowerment opportunities. CIS has served a number of schools that were also Interfaith Alliance members, always working cooperatively. Alliance Schools, studied by Rand Foundation and Annenberg Institute, have been shown to increase student outcomes.

#### **Communities In Schools' Many Community Partners**

In addition to the UT academic partners, Communities In Schools will continue to partner with other social service agencies to serve students directly; community mentors; corporations that provide materials, donations, and time; and with the School of Social Work and other university departments to engage interns to work with students who need additional supports (emotional, academic, etc). Through the partnership for Mendez, CIS will hire additional staff to coordinate partnerships of value to the Mendez STEM goals as well as to meet the great variety of needs our students present.

CIS has worked with the following corporations recently or currently: IBM, Silicon Labs, Apple Computers, Samsung, UShip, the GAP, Target, 3M, Compass Learning, Seton Hospitals, HEB, and AMD.

CIS works closely with LifeWorks, SAFE, Girl Scouts, YWCA, Austin Center for Grief & Loss, Amala Foundation, Goodwill, OutYouth, GenAustin, Seedling Foundation, 100 Black Men, and several UT service organizations and multiple university departments who provide interns to work with our case managed students.

#### **B. Plan to meet requirements set by TEA in 19 TAC Chapter 97, including the role of the governance board, the school community, and the district in this process**

The partnership includes personnel with experience from the Ingenuity Center. Ingenuity Center personnel founded three T-STEM Academies, the Innovation Academies in Tyler, Longview, and Palestine. Ingenuity Center personnel have experience in managing three successful academies. The partners understand the requirements set by TEA in 19 TAC Chapter 97. The team includes the superintendent of the Innovation Academies along with other members who have expertise in school governance. Select individuals will closely monitor and provide guidance, ensuring the academy remains accredited. In addition, the academy will obtain membership with The Texas Charter School Association. This membership provides access to resources, materials, and legal specialists to support compliance with all TEA policies and mandates.

### **C. Plan to include current staff, leadership, and community in operational and managerial decisions on the campus**

The T-STEM Blueprint specifies how AISD personnel and community members are involved in school decision making. We believe effective school leaders must work collaboratively with stakeholders to support the success of the school. The model described supports ongoing collaborative decision making from all stakeholders. Stakeholders will be regularly included in the decision-making process. One of the most beneficial aspects of involving stakeholders is to gain different perspectives. Stakeholders have unique points of view based on their individual experiences. When a group comes together with a common goal, they are able to explore all the options more in-depth. Shared decisions are not rushed and allow enough time for personal and group reflection that allows full consideration of the pros and cons of each option thoroughly, and ultimately make a decision that will produce the greatest outcomes with the least resistance. Better decisions yield better results: a top priority for every school is to maximize student potential.

We enter into this project fully expecting to retain current high performing staff at Mendez who are willing to embrace and commit to the T-STEM model and the non-negotiable components. Some of the non-negotiable requirements include attending additional, extensive professional development, implementing the T-STEM Blueprint through a project-based learning model with fidelity, and involvement in campus and community activities and events. Staff should anticipate additional work hours and compensation in order to implement the new model. While we hope all eligible staff will choose to make this commitment, we understand it may not be the best fit for some. We have been informed that any current staff member eligible for reemployment with AISD who does not desire to remain at Mendez, or is not selected to stay, will be offered a position on a different AISD campus. It is important to note that any current Mendez employees who are currently on a professional growth plan or have received any other warnings related to performance or conduct during the 2017–2018 school year will not be eligible to remain at Mendez in the future. If we are serious about Mendez becoming a high performing school, the team must be “all in”.

All personnel, with the exception of the Executive Director for Mendez, will remain AISD employees. However, we will maintain final authority in making decisions over the hiring, dismissal, reassignment, and evaluation of all Mendez staff in accordance with AISD employment practices.

The leadership plan is outlined in the T-STEM Blueprint:

#### **1. BENCHMARK: Mission-Driven Leadership**

##### **1.1 Program Requirement: Mission and Vision**

1.1.A Develops a shared mission and vision, which is aligned with the T-STEM mission and vision, and which reflects a consensus among Charter provider, board members, design team, staff, students, parents, and community/business partners on how the Academy promotes STEM-literate graduates to support the Texas Science Technology Engineering and Mathematics Initiative.

1.1.B Develops an *Annual Action Plan* (AAP) of goals and resources aligned to the Academy’s mission and vision, the T-STEM Blueprint, and STEM-literacy; with the AAP regularly monitored and assessed.

##### **1.2 Program Requirement: Leadership and Governance**

1.2.A Establishes a Design Team and defines the role the team plays in the planning and development of the T-STEM Academy prior to implementation.

1.2.B Develops an Academy Leadership Team and identifies the internal role each member will play in the design, governance, operations, accountability, curriculum development, professional development, etc., as well as their external role in collaborating with the design team, outreach, and other key interest groups for continuous monitoring and improvement of the T-STEM Academy plan.

1.2.C Develops and demonstrates support from an Advisory Board consisting of representatives from the Academy, school board, district, community, higher education, and STEM businesses to support and guide facility requirements, resource acquisition, curriculum development, internships, externships, and student/community outreach to ensure a successful 6th-20th STEM academic and career pipeline.

1.2.D Incorporates into Annual Action Plan goals for participation and leadership of students, teachers, parents, business and community partners, institutions of higher education, and T-STEM Coaches and Centers.

1.2.E Delineates a mission-driven decision-making structure and organization chart that is clear and understood by all stakeholders.

1.2.F Defines the academy leader's level of autonomy in supervising the Academy.

1.2.G Uses data to inform all leadership decisions and to annually review and revise the mission-driven T-STEM Academy Annual Action Plan.

### **1.3 Program Requirement: Program Review and Evaluation**

1.3.A Integrates and assesses the level of mission-driven and data-driven decision making evident in the daily work of the Academy.

1.3.B Implements a process for program review and formative evaluation to achieve mission goals that includes metrics such as attendance, demographics, and student achievement.

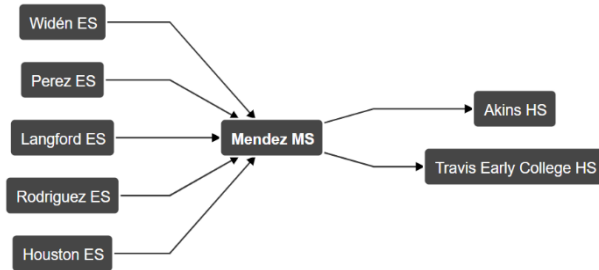
### **1.4 Program Requirement: Leadership Development and Collaboration**

1.4.A For 6th – 12th campuses, middle school and high school leadership teams regularly collaborate to advance 6-12 alignment and student retention in STEM.

1.4.B Participates and collaborates with the T-STEM Centers and T-STEM Coaches to support the transformation of STEM teaching methods, teacher preparation, and instruction to support continuous development and the achievement of long-term T-STEM goals.

1.4.C Actively participates in the T-STEM Network by collaborating with other T-STEM Academies, engaging in leadership development opportunities, utilizing T-STEM Centers' resources, and promoting broad dissemination of promising practices to improve student achievement.

#### D. Plan for the inclusion of the elementary feeder campuses in data review, gap analysis, and alignment of curriculum and instructional programming



The figure at left shows the feeder pattern from elementary to high school. Mendez has five elementary feeder schools. We have already examined the STAAR results from each of the feeder elementary schools. All five campuses meet standard. That said, three campuses struggle with meeting Index 1. This will be problematic moving forward as the new A-F accountability is more

rigorous. CIS already serves all of the feeder elementary schools except Houston. We will work with administration at each campus to develop vertical alignment. Where feasible we will provide data workshops and professional development to the feeder elementary schools to address gaps and assure smooth transitions, including summer bridge camps for fifth graders transitioning to Mendez in sixth grade.

#### E. Plan for the management of a governing board, including your vision and plan for the appointments and makeup of this board in partnership with the District

The governance structure will be tailored to the school's vision, mission, and goals. The Board has the responsibility to develop its own structure, policies, and procedures consistent with applicable laws, requirements of the Academy's authorizing body, and the governance philosophy of the academy school leaders. The Board will commit to the following:

- Adopt a structure that reflects the school's mission, goals, and objectives
- Design a structure that reflects the state charter law
- Provide ongoing communication with all stakeholders
- Establish shared decision making
- Support the involvement of a variety of stakeholders in the governing board or in committees/councils
- Provide board training seminars, conferences, and/or retreats
- Focus on generating a vision and plan for school improvement

Development of an effective governing board is an essential component of building an effective T-STEM Academy. The steps in the development of an effective governing board include:

- Nominations and recruitment — the process of identifying the right individuals to meet the needs of the school, helping them understand their roles and responsibilities, and attracting them to become part of the board.
- Orientation — the steps taken to give new board directors the information they need to carry out their roles and responsibilities effectively.
- Training — the regular, ongoing efforts to build new skills and knowledge among the existing board directors to enhance performance.

The Academy will be legally incorporated entity governed by state statutes and IRS regulations governing nonprofit, tax-exempt organizations. The Board is responsible for governing the school, having a personal fiduciary duty to look out for the long-term well-being of the school. The Board is not involved in handling the day-to-day details of running the school, dealing with specific personnel issues,

or addressing individual student needs. The Board delegates the responsibility for running the charter school and implementing the Board's policies to the school leader.

### **Design Teams**

As outlined in the Blueprint, stakeholders have the opportunity to serve on Design Teams. The Design Teams will be established upon contract being initiated. These teams are intended and employed for a high degree of engagement in various topics to come to recommendations/decisions on a wide variety of topics. In addition to teachers, students, parents, and CISCT staff, Design Teams may include Austin Interfaith representatives or staff, other community members or City/County staff with interest or expertise in the topic area. Examples of topics tackled by Design Teams are: School Culture and Climate; Out of School Time; Calendar and Bell Schedule; Student Health.

***1.2.A Establishes a Design Team and defines the role the team plays in the planning and development of the T-STEM Academy prior to implementation.***

***In addition, the Blueprint requires an advisory board from the community.***

***1.2.C. Develops and demonstrates support from an Advisory Board consisting of representatives from the Academy, school board, district, community, higher education, and STEM businesses to support and guide facility requirements, resource acquisition, curriculum development, internships, externships, and student/community outreach to ensure a successful 6th-20th STEM academic and career pipeline. As outlined in the Blueprint, all stakeholders have the opportunity to serve on the Design Teams. The Design Teams will be established upon contract being initiated.***

***1.2.A Establishes a Design Team and defines the role the team plays in the planning and development of the T-STEM Academy prior to implementation.***

In addition, the Blueprint requires an advisory board from the community.

***1.2.C. Develops and demonstrates support from an Advisory Board consisting of representatives from the Academy, school board, district, community, higher education, and STEM businesses to support and guide facility requirements, resource acquisition, curriculum development, internships, externships, and student/community outreach to ensure a successful 6th-20th STEM academic and career pipeline.***

### **F. Staffing and management plan for the campus**

The operating partners enter into this process with the understanding that many of the current staff will be choose to stay at Mendez. We will also conduct a curriculum and program audit for alignment to the model and cost-benefit analyses. We are eager to work with current teachers, staff, and administrators who wish to remain at Mendez.

The process for staffing includes:

1. Meet with all personnel and explain the T-STEM Academy model and the commitment needed to implement the model successfully.
2. Meet with all personnel individually and discuss the model, PD requirements, outside requirements, etc.



3. Provide commitment letters to personnel who are selected to remain. It is our understanding that personnel who do not want to stay will work with AISD to be placed in positions elsewhere in the district.
4. Once personnel staying at Mendez STEM Academy are identified, we will post announcements for needed faculty and support positions.
5. In addition to school funded positions, we will work with the UTeach Austin program to place preservice teachers at Mendez. This will increase the number of adults that can assist individual students in meeting their learning needs.

CIS and its partners will provide a process for staffing the school, which supports opportunities for current staff to remain on the campus. We will also conduct a curriculum and program audit for alignment to the model and cost-benefit analyses.

### **G. Plan for the selection of a campus leader, and plan for their authority over assignment of district staff at the campus**

The T-STEM Coalition will appoint an Executive Director for the school turnaround to meet individually with the existing administrative team to determine if they possess the institutional knowledge, academic capacity, interpersonal communications skills, commitment to students, command and respect of teachers and staff by exhibiting a servant leadership style, and perhaps most importantly, exhibit a “no excuses” approach and tireless work ethic to drive the T-STEM Academy work on a daily basis. While full consideration will be given to the existing administrative team and community input is always valued, the Executive Director will retain final hiring and assignment authority for the campus leadership team. The administrative skills referenced above are consistent with the T-STEM leadership model..

#### **1.2 Program Requirement: Leadership and Governance**

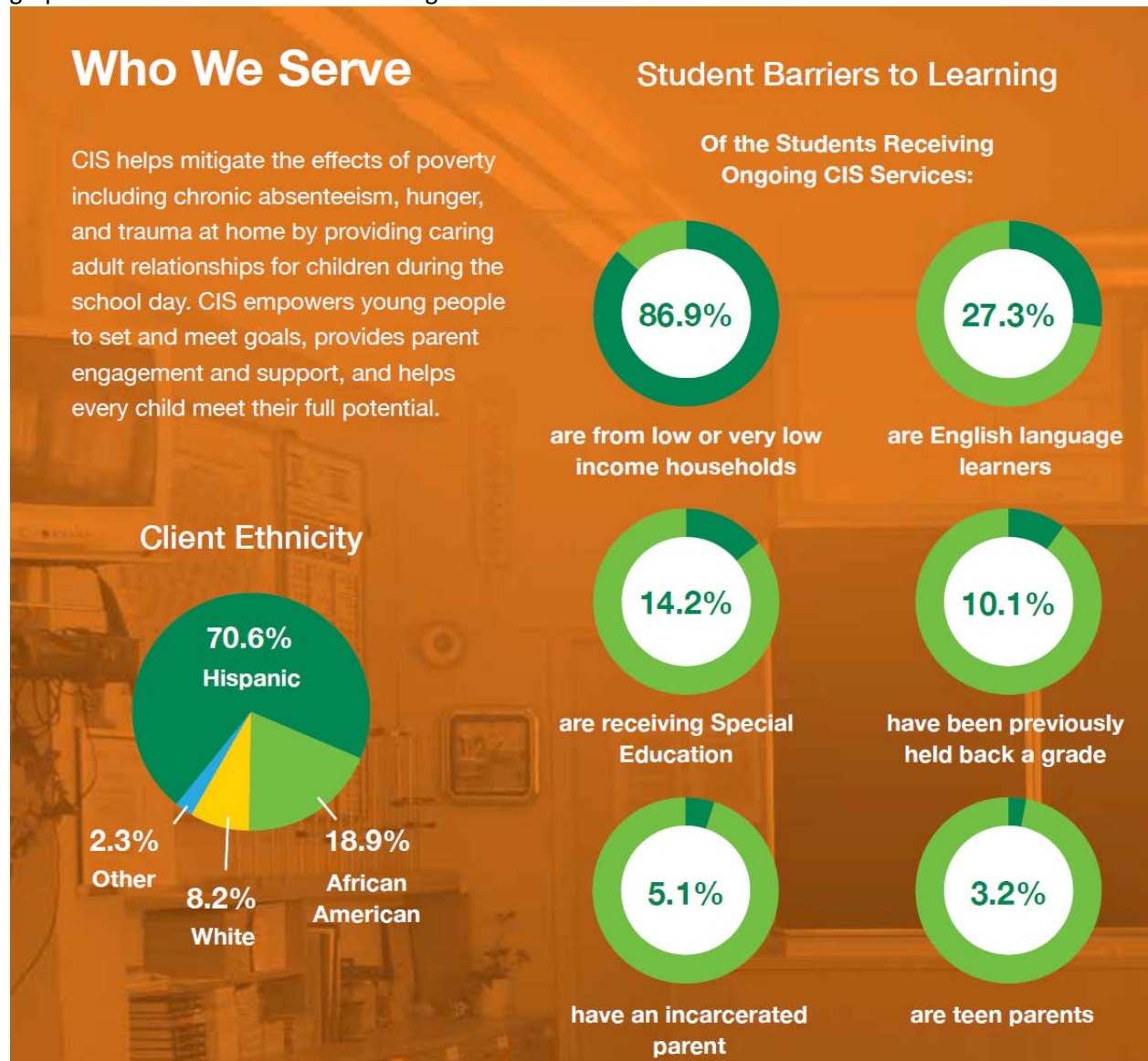
- 1.2.A Establishes a Design Team and defines the role the team plays in the planning and development of the T-STEM Academy prior to implementation.
- 1.2.B Develops an Academy Leadership Team and identifies the internal role each member will play in the design, governance, operations, accountability, curriculum development, professional development, etc., as well as their external role in collaborating with the design team, outreach, and other key interest groups for continuous monitoring and improvement of the T-STEM Academy plan.
- 1.2.C Develops and demonstrates support from an Advisory Board consisting of representatives from the Academy, school board, district, community, higher education, and STEM businesses to support and guide facility requirements, resource acquisition, curriculum development, internships, externships, and student/community outreach to ensure a successful 6th-20th STEM academic and career pipeline.
- 1.2.D Incorporates into Annual Action Plan goals for participation and leadership of students, teachers, parents, business and community partners, institutions of higher education, and T-STEM Coaches and Centers.
- 1.2.E Delineates a mission-driven decision-making structure and organization chart that is clear and understood by all stakeholders.
- 1.2.F Defines the academy leader’s level of autonomy in supervising the Academy.
- 1.2.G Uses data to inform all leadership decisions and to annually review and revise the mission-driven T-STEM Academy Annual Action Plan.

The school will be reorganized to include a semi-autonomous curriculum, instruction, and assessment (CIA) that will work with the principal to assure that teacher and student interventions are provided. The CIA team will develop Professional Learning Communities, provide coaching, and recommend additional professional development. The CIA Team will also work with the principal to analyze data to develop interventions for teachers and students. The campus leader will work with school administration to make staffing assignments.

## Community and Parental Involvement

### Introduction

CIS has a long history of working in the community and over 20 years at Mendez Middle School as the Integrated Student Supports Provider. CIS provides supports to students and families. The following graphic illustrates students case management services.



The T-STEM Blueprint requires community and parental involvement. These indicators can be found throughout the document and are presented below:

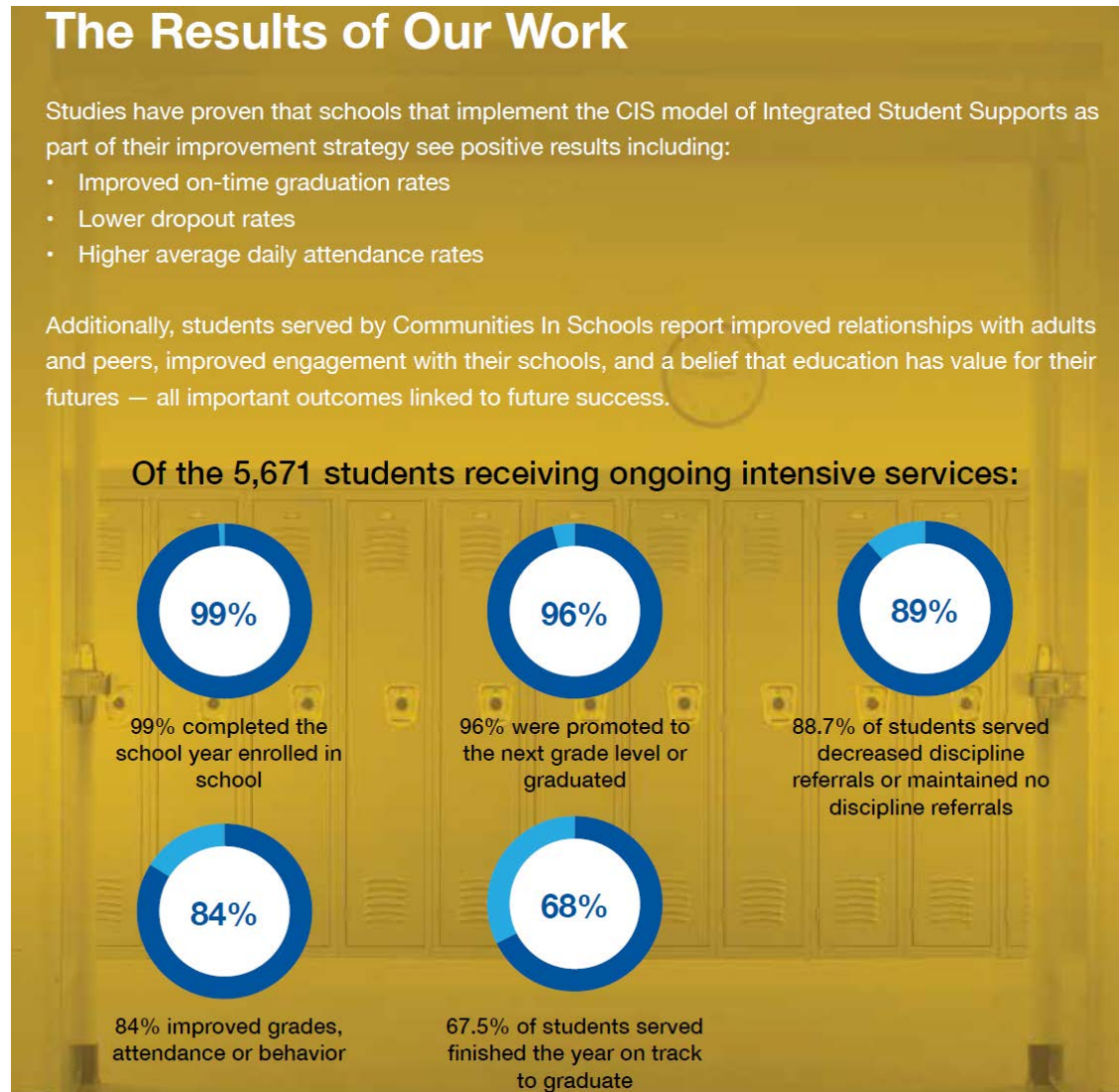
- 1.1.A Develops a shared mission and vision, which is aligned with the T-STEM mission and vision, and which reflects a consensus among superintendent, board members, design team, staff, students, parents, and community/business partners on how the Academy promotes STEM-literate graduates to support the Texas Science Technology Engineering and Mathematics Initiative.
- 1.2.A Establishes a Design Team and defines the role the team plays in the planning and development of the T-STEM Academy prior to implementation.
- 1.2.C Develops and demonstrates support from an Advisory Board consisting of representatives from the Academy, school board, district, community, higher education, and STEM businesses to support and guide facility requirements, resource acquisition, curriculum development, internships, externships, and student/community outreach to ensure a successful 6th-20th STEM academic and career pipeline.
- 2.2.B Involves all stakeholders in developing a culture of respect, responsibility, trust, and meaningful adult and peer relationships throughout the Academy in order to foster positive student identities.
- 3.1.A Develops structures and processes for marketing and recruitment to encourage participation from underserved students and families (transportation or plans for transportation to the school, child care for family events, and translation of all recruitment and marketing materials).
- 3.1.B Actively partners with feeder middle and/or elementary schools to develop student interest in STEM education and to increase advancement rates from middle school STEM to high school STEM.
- 3.1.C Develops a systemic recruitment plan that includes students, parents, counselors, teachers, district, and community.
- 3.3.E Hosts parent seminars to develop deep understanding and commitment to the rigor of college readiness and the high expectations of a STEM Academy.
- 6.1.A Includes in the Annual Action Plan a school/family/student partnership plan that is culturally responsive in reflecting the needs and demographics of the student population.
- 6.1.B Provides opportunities to educate students/parents on STEM Academy expectations such as parental engagement, college connections, scholarship opportunities, mentorships, etc.
- 6.1.C Establishes multiple pathways of parental communication with the Academy such as regularly scheduled parent conferences, newsletters, websites, campus visits, etc.
- 6.1.D Provides opportunities for parents to share responsibility for high student performance and school decision making.
- 6.2.A Identifies and secures key business, industry, and community partners to support STEM Academy efforts (mentorships, service learning projects, etc.).
- 6.2.B Develops, implements, monitors, evaluates, and revises Annual Action Plan to introduce, inform, and engage business and community partners.
- 6.2.C Identifies and secures key business and industry partners to provide STEM-related job shadowing, internships, and externships for students and teachers.
- 6.3.C Develops crosswalk partnerships to support a college going culture and to provide STEM graduates access to college support services (college trips, college entrance aid, and P-20 initiatives).
- 7.1.B Develops strategic plan in collaboration with design team, T-STEM Centers, T-STEM Network, T-STEM Coach, district personnel, etc.

7.1.C Provides annual analysis, review, and revision of strategic plan and Annual Action Plan with key stakeholders

7.3.D Preserves the components of the small learning community (student voice, PLC for staff, parent/community/industry/higher education involvement, etc.).

### Results of CIS Initiatives

Students and families are the overwhelming beneficiary of CIS services.



Examples of the supports CIS provides to students across Central Texas are:

- Academic Assistance
- Basic Needs
- Behavioral Interventions
- College & Career Prep
- Community and Service Learning Projects

- Learning Enrichment
- Family Engagement
- Life Skills
- Emotional and Mental Health
- Physical Health

Austin Interfaith has deep experience in engaging communities through community walks, evening meetings, and other information sharing and empowerment opportunities. The CIS Model is grounded in leveraging high impact partners for the community. CIS has served a number of schools that were also Interfaith Alliance members. Communities In Schools and **Austin Interfaith** are exploring ways in which we can collaborate to engage and support the Mendez community at a higher impact level.

Some of their most successful initiatives are:

**1. Alliance School Initiative**

A partnership with the Austin Independent School District and individual schools to restructure relationships among staff, parents, and community in order to build a more relational culture as well as a constituency to support public education

**2. ESL Program**

An adult English as a Second Language program funding by the City of Austin and administered through Austin ISD

**3. Prime Time After School Program**

Austin ISD's after-school enrichment program funded by the City of Austin and Travis County.

**4. Summer Youth Employment Program**

A summer job-training and placement program funded and administered by Travis County.

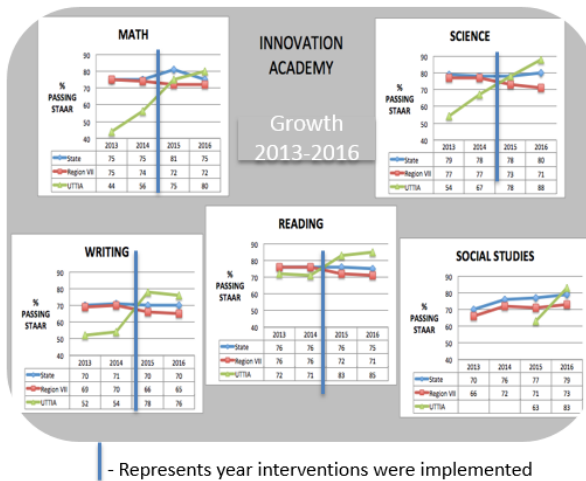
## Section 5 – Experience and Qualifications

### A. Current data from previous experiences and evidence in success in serving populations similar to Mendez

The T-STEM Coalition Partnership team has significant experience in school turnaround.

**Dr. David Simmons** is a veteran school leader with 36 years of experience as a teacher, principal, assistant superintendent, and superintendent of five Texas school districts including Presidio ISD, Wimberley ISD, Texas City ISD, Tyler ISD, and Richardson ISD. During his tenure as superintendent, each of the five school districts increased their accountability ratings and reduced the number of low performing campus while increasing the number of high performing campuses. He is currently serving as a TEA assigned Conservator, a Professional Service Provider (PSP) in three school districts and serves as interim superintendent for a school district in East Texas. Dr. Simmons has a proven track record in school improvement and turnaround by increasing student performance in schools with similar student populations to Mendez.

## Quantitative Evidence:



Dr. J. Simmons and TSTEM personnel work collaboratively to turn around the Innovation Academy, taking the district from IR to one of the highest achieving districts in East Texas. The Longview IA is one of the top achieving T-STEM Academies in the state and is being studied as a model school by TEA. Not only did the IA meet standard within two years of intervention, a process of continuous improvement based on the T-STEM Blueprint and research-based practices was implemented. Almost all school districts provide some level of instructional coaching. The IC/IA coaching model provides supports to teachers and students to increase accountability scores that exceed the state averages in all

subject areas. The coaching model combined with high quality PLC and dedicated teacher planning supported by coaches and administration has created a learning environment rarely experienced by most teachers and students. The model is designed to be high-touch and collaborative. 80% of eighth graders leave TSI ready in Reading and Writing.

Mendez Middle School has the potential to become a strong STEM Academy. The school has a number of elements already in place. These include an outdoor science program and the PLTW Gateway Curriculum. PLTW Gateway is also utilized by the Innovation Academies as well close to 50% of all T-STEM Academies statewide. The partnership team has experience with these established STEM programs. These programs can serve as established anchors to build upon.

## B. Vision, Mission, & Core Values

The T-STEM Blueprint outlines the process for developing a vision and mission for the Academy.

### 1.1 Program Requirement: Mission and Vision

1.1.A Develops a shared mission and vision, which is aligned with the T-STEM mission and vision, and which reflects a consensus among superintendent, board members, design team, staff, students, parents, and community/business partners on how the Academy promotes STEM-literate graduates to support the Texas Science Technology Engineering and Mathematics Initiative.

1.1.B Develops an *Annual Action Plan* (AAP) of goals and resources aligned to the Academy's mission and vision, the T-STEM Blueprint, and STEM-literacy; with the AAP regularly monitored and assessed.

As outlined in the Blueprint, we will work with stakeholders to develop a shared mission and vision for the academy that aligns to T-STEM.

As a partnership, we hold a number of core values. These include: CIS's Five Basics, which state that each child deserves:

- **A one-on-one relationship with a caring adult**
- **A safe place to learn and grow**
- **A healthy start and a healthy future**
- **A marketable skill to use upon graduation**

- **A chance to give back to peers and the community**

In addition, this Partnership aims for

- **All students to have the opportunity to learn high quality curriculum that opens doors to college and careers.** Unfortunately, high quality curriculum is often only offered in affluent schools.

**Partner Organization Expertise:**

Partnership organization expertise has been addressed throughout the document. Below is some additional expertise information that may be useful to the review committee.

**CIS** staff are trained in restorative practices, Trauma -informed care, Relationship development, social emotional learning, and a wide variety of social work topics.

**UTeach** brings expertise in Teacher Preparation and professional development and can provide a pool of future PBL trained teachers as the school grows and needs additional personnel.

**TSTEM Coalition:** The Coalition expertise in STEM (Specifically implementing the Blueprint) Bilingual/ESL in the traditional context and in the context of STEM. The T-STEM Coalition works with T-STEM Academies statewide to facilitate implementation of the T-STEM Blueprint. The coalition has been engaged in this work since 2005.

### E. Past clients

SB 1882 is a new program. Turnaround programs in the past did not require a school takeover

<b>Client</b>	<b>Service</b>	<b>Outcome</b>
<b>Tyler ISD</b> Jones Elementary Ramey Elementary Bonner Elementary	Professional Service Provider(PSP)	Schools Improved to "Met Standard"
<b>Tyler ISD</b> Boulter MS	TTIPS	School Improved to "Met Standard"
<b>Laneville ISD</b> Laneville HS	Professional Service Provider(PSP)	School Improved to "Met Standard"
<b>Mt. Enterprise ISD</b> Mt. Enterprise Elementary	Professional Service Provider(PSP)	School Improved to "Met Standard"
<b>Marshall ISD</b> Crockett Elementary G.W. Carver Elementary J. H. Moore Elementary Robert E. Lee Elementary	Professional Service Provider(PSP)	Schools Improved to "Met Standard"
<b>Ft. Worth ISD</b> Stripling MS	Math Intervention	School Improved to "Met Standard"
<b>Bullard ISD</b> Bullard Intermediate	Professional Service Provider(PSP)	School Improved to "Met Standard"
<b>Eustace ISD</b> Eustace HS Eustace MS	Math Intervention	School Improved to "Met Standard"
<b>Greenville ISD</b> Greenville HS Greenville MS	Math Intervention	School Improved to "Met Standard"
<b>Innovation Academy</b> Longview IA Palestine IA Tyler IA	Superintendent	Schools Improved to "Met Standard"
<b>Pineywoods Community Academy</b> Pineywoods Community Academy High School	Professional Service Provider	School Improved to "Met Standard"
Timpson Independent School District	Professional Service Provider	School Improved to "Met Standard"
<b>Nacogdoches Independent School District</b> Thomas J Rusk Academy of Fine Arts Emeline Carpenter Academy of Technology and Science Fredonia Elementary School McMichael Middle School	Professional Service Provider	Schools Improved to "Met Standard"
<b>Union Hill Independent School District</b> Union Hill Elementary School	Professional Service Provider	School Improved to "Met Standard"
<b>Etoile Independent School District</b> Etoile School K-8	Professional Service Provider	2018 STAAR Data Pending
<b>Cumberland Charter School District</b>	TEA Monitor	Improved, Released from Sanctions
<b>Sam Houston State University Charter School</b>	Charter School Mentor	
<b>Trivium Academy Charter</b>	Charter School Mentor	2018 STAAR Data Pending
<b>The Lawson Academy Charter</b>	Charter School Mentor	2018 STAAR Data Pending
<b>Trinity Environmental Academy</b>	Charter School Mentor	2018 STAAR Data Pending



## G. How would you measure success of the Partnership

Communities In Schools measures academics, behavior, and attendance before and after our interventions with all of our case managed students – well over 5,000 students across the six districts we serve. In addition, we monitor students’ “on track indicators” based on the Everyone Graduates Center at Johns Hopkins. The on-track indicators are: passing all four core classes, attending school 90% of the time or more and student is engaged in learning. If all three are met, these indicators predict high school graduation. We utilize an instrument measuring engagement in learning that has been validated and was provided by the research division of the CIS National Office. At intake, only 5% of CISCT students are “on track” to graduation, but by the time they are exited at the end of the school year, 67% are “on track.” We have data tracking capacity and will examine our outcomes at Mendez separately. The Blueprint provides guidance for evaluating the school and includes a rubric for evaluating success of the academy.

### 7.2 Program Requirements: Continuous Improvement and Evaluation

7.2.A Annually reviews strategic plan and Annual Action Plan to ensure Academy meets high expectations across a broad range of performance measures as indicated by Academy mission and vision, and STEM Blueprint Program Requirements.

7.2.B Annually reviews instructional and intervention plan to ensure continual growth on all of the required state accountability measures.

7.2.C Develops internal indicators and checklists unique to the Academy to measure continuous improvement towards student performance goals and the state of the Academy.

The partnership will base success on a number of metrics. These include:

- Success as measured by the Texas Education Agency Accountability Performance
- Percent of students meeting TSI at the end of 8<sup>th</sup> grade
- Percent of students who achieve “meets” or “masters” on accountability
- Student engagement (attendance, referral rates, etc.)
- Students enrolled in Algebra and other HS Courses in 8<sup>th</sup> grade
- Enrollment and retention
- Student-led climate survey and/or focus groups
- Growth of student population

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8f

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

8g

**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**OCTOBER 10, 2019**

Presentation, discussion, and possible action regarding a determination of eligibility under 10 TAC §13.5(d)(2) of the 2018 Multifamily Direct Loan Rule

**RECOMMENDED ACTION**

**WHEREAS**, the Board previously authorized release of the 2018-1 Multifamily Direct Loan Notice of Funding Availability (2018-1 NOFA) for up to \$28,862,745 with the application acceptance period beginning on January 4, 2018;

**WHEREAS**, the NOFA has since been amended several times to increase the amount available to \$62,304,276, and was subsequently closed on November 30, 2018;

**WHEREAS**, Application #18509, which requested \$1,140,000 in Direct Loan funds for El Sereno Apartments (previously known as Borgfeld Manor), is a Priority 3 application under the 2018-1 NOFA that was previously awarded 9% housing tax credits (9% HTC) in July 2016;

**WHEREAS**, 10 TAC §13.5(d)(2)<sup>1</sup> requires Applications for Developments previously awarded funds by the Department (regardless of fund source, and if they are not proposing acquisition and rehabilitation) to be found eligible by the Board;

**WHEREAS**, this Application has provided evidence of adverse factors, including increased costs related to increased city code requirements not known until the project was under plan review by the City of Cibolo as well as abnormal weather-related delays, beyond the Applicant's control;

**WHEREAS**, the increased costs as a result of these adverse factors have been absorbed by advances made by the General Partner (GP) in accordance with the Limited Partnership Agreement;

**WHEREAS**, the Applicant has not provided documentation that the aforementioned adverse factors could materially impair their ability to provide affordable housing as a criteria for the Board to consider in affirming their eligibility; and

**WHEREAS**, staff recommends that this Application be found ineligible in accordance with 10 TAC §13.5(d)(2) because evidence that the adverse factors

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<sup>1</sup> All 10 TAC Chapter 13 rule references, herein, are to the Chapter as it existed at the time of application in 2018. Currently, this rule substantively appears at 10 TAC §13.5(h)(2).

materially impair the Applicant's ability to provide affordable housing has not been provided;

**NOW, therefore, it is hereby**

**RESOLVED**, that Application #18509 is hereby found ineligible in accordance with 10 TAC §13.5(d)(2).

### **BACKGROUND**

On December 14, 2017, the Board approved issuance of a NOFA for up to \$28,862,745. That NOFA was subsequently amended to increase the amount available to \$62,304,276 within three set-asides:

- \$22,324,041 in Supportive Housing/ Soft Repayment set-aside, composed of \$3.3 million in TCAP RF and \$19,024,041 in National Housing Trust Fund,
- \$8,215,058 of HOME funds under the CHDO set-aside, and  
\$31,765,177 in the General set-aside, composed of \$17,318,946 in HOME, \$5 million in NSP1 Program Income and \$9,446,231 in TCAP RF.

El Sereno Apartments (formerly Borgfeld Manor) was awarded an allocation of 9% HTC on July 28, 2016, which proposed new construction of 136 one- and two-bedroom units for an Elderly population in Cibolo. The Applicant subsequently encountered circumstances beyond their control that could not have been prevented or foreseen, including the City of Cibolo changing their energy code requirements to 2016 energy code requirements while the project was under plan review by the City in early 2017. Construction started in July 2017, with Hurricane Harvey hitting the Texas coast the following month, which resulted in Guadalupe County – the county in which the Development Site is located – being granted Public Assistance status under FEMA disaster declaration FEMA-4332-DR. Additionally, the City of Cibolo closed access to Borgfeld Road, the only access to the site, during a repaving project around this time. In total, these unforeseen events resulted in over \$1 million in additional costs, which the applicant has represented were paid for through advances made by the General Partner (GP).

On December 6, 2018, the Board granted approval to change the ownership structure to bring a nonprofit into the ownership in order to qualify for a 50% property tax exemption, thereby helping to ensure the long-term feasibility of the Development. The Applicant has stated that while that action helped, it did not resolve the issue of ensuring the GP advances were paid off. Real Estate Analysis staff has found that the GP advances could be paid off within 15 years. However, should the GP advances not be paid off within that time, the amount remaining that has not been paid off would be treated as capital contributions in accordance with the Amended and Restated Limited Partnership Agreement.

Despite requesting documentation for multiple months namely: (1) contemporaneous documentation of the “bridge loan” between the GP and the Development; and (2) documentation evidencing the inability to close on permanent financing until further loan

proceeds have been achieved to cover the “bridge loan” amounts, staff has not been provided documentation from the Applicant that would substantiate the claim that, without the requested Direct Loan funds, their ability to provide affordable housing would be materially impaired.

For the reasons stated herein, staff recommend that Application #18509 be found ineligible in accordance with 10 TAC §13.5(d)(2).





**Addendum to Underwriting Report**

TDHCA Application #: **16128** Program(s): **9% HTC**

**El Sereno**

Address/Location: NW of W. Borgfeld Road and Dobie Road

City: Cibolo County: Guadalupe Zip: 78108

APPLICATION HISTORY	
Report Date	PURPOSE
09/30/19	MDL Loan Application
11/17/16	Carryover Memo
06/20/16	Allocation

**ALLOCATION**

TDHCA Program	Previous Allocation				RECOMMENDATION				
	Amount	Rate	Amort	Term	Amount	Rate	Amort	Term	Lien
HOME Activity Funds	\$0	0.00%	0	0	\$0	0.00%	0	0	1
LIHTC (Annual)	\$1,500,000				\$1,500,000				

**CONDITIONS STATUS**

- : Receipt and acceptance by Cost Certification:
    - a: Certification that the on-site structures were surveyed for Asbestos-Containing Materials and Lead-Based Paint and appropriate mitigation methods were followed prior to their demolition.
    - b: Submission of Amendment related to the change in site acreage noted above (if needed).
- Should any terms of the proposed capital structure change or if there are material changes to the overall development plan or costs, the analysis must be re-evaluated and adjustment to the credit allocation and/or terms of other TDHCA funds may be warranted.

## ANALYSIS

El Sereno (formerly Borgfield Manor) is requesting a Multifamily Direct Loan in the amount of \$1,140,000 at 0% for 16 year term and 35 year amortization. As part of the MDL request, the Applicant is proposing to add in eight 30%/30% HOME units. The project has received a temporary Certificate of Occupancy. Development is fully built and operational, with the grand opening recently.

The Developer is requesting this loan as reimbursement for the increases in costs that were incurred as a result of City Planning requirements and Hurricane Harvey. There is a question of whether this development is eligible for funds under 10 TAC § 13.5 (h)(2). Whether the Development qualifies is a question to be addressed by the Board. Irrespective of eligibility, this report assesses the feasibility of the Development under the currently proposed financial structure.

### **Operating Pro Forma**

All LIHTC rents being pro forma at the 2019 max program rents.

Applicant's submission shows market rents of \$930 for all 1BR market units and \$1,050 for all 2BR units. Applicant has begun leasing the market rate units and receiving a rent of \$930 for 1BR 60% AMI units and \$930 to \$1,050 for the 2BR 60% AMI units. Applicant plans on increasing all the market units to the max market rents in the coming year. The market rents along with the increases in the 2019 program rents represent a total increase of \$133K in rental income.

Applicant's pro forma is within 5% of Underwriter's estimate, therefore Applicant's pro forma will be used.

### **Development Cost**

Building costs have increase by \$1.797M since application. The increase in costs is attributable to two reasons: 1) City of Cibolo Building Department adopted the 2016 energy code that required upgraded windows, doors, mechanical, plumbing, and electrical (\$863K increase) and weather related delays from Hurricane Harvey that delayed the construction schedule by 29 days. Applicant submitted a monthly rainfall total at the development site that showed rainfall at 5 times the normal amount in August of 2017. The building costs increases are documented by a construction contract.

Other cost increases include \$500K in Soft Costs and \$184K in Reserves. Developer fee is still constant from Application. Total Development Costs have increased by \$2.78M.

### **Sources of Funds**

Senior debt at application was \$4.28M at 6% interest rate at 35 years amortization and 18 year term through a different lender. The new lender is Bank of America and the senior debt has increased to \$5.195M at 35 year amortization and 16 year term.

Applicant is requesting \$1.14M in MDL funds to reimburse part of the funds that the General Partner has put into the development to keep it moving in the construction process. Applicant has a General Partner advance of \$410K as a source of funds which they expect to get paid from cash flow.

Description	Amount
Construction - Residential	\$863,191
Taxes	\$83,085
Insurance	\$45,163
Construction Loan Extension Fee	\$89,736
Lender Legal	\$25,000
Survey Engineering	\$33,825
<b>Total</b>	<b>\$1,140,000</b>

**Conclusion**

As submitted, the increase in development cost and corresponding revisions to capital structure do not affect the feasibility conclusion.

Applicant General Partner advance has been presented to the Department as a loan that will be paid out from cash flow.

If the Direct Loan funds are not awarded, debt coverage would be 1.42. The Underwriter would assume an increase in the primary debt by \$270,000 to \$5,465,859. This would require deferral of 80% of the developer fee, which could be repaid within 11 years of operation.

Per the 2018-1 NOFA "Awards to refinance or of supplemental financing will not exceed an amount necessary to replace lost funding or maintain original anticipated levels of feasibility as determined by staff." If the Direct Loan funds are awarded, in order to maintain the previous underwriting DCR of 1.21, the recommended loan terms would be \$1,140,000 at 2.80% interest, 16 year term, and 30 year amortization. Deferred Developer Fee would be \$1,210,426 and would be repayable within 11 years.

In both situations, the Development is feasible and the tax credit request and recommendation of \$1.5M annual credits remains the same as original underwriting.

Underwriter: Duc Nguyen

Manager of Real Estate Analysis: Thomas Cavanagh

Director of Real Estate Analysis: Brent Stewart

**UNIT MIX/RENT SCHEDULE**  
*El Sereno, Cibolo, 9% HTC #18509*

LOCATION DATA	
CITY:	Cibolo
COUNTY:	Guadalupe
PROGRAM REGION:	9

UNIT DISTRIBUTION						
# Beds	# Units	% Total	Income	# Units	% Total	Assisted
Eff	-	0.0%	30%	12	8.8%	0
1	99	72.8%	40%	-	0.0%	0
2	37	27.2%	50%	48	35.3%	0
3	-	0.0%	60%	59	43.4%	0
4	-	0.0%	MR	17	12.5%	0
<b>TOTAL</b>	<b>136</b>	<b>100.0%</b>	<b>TOTAL</b>	<b>136</b>	<b>100.0%</b>	<b>-</b>

Applicable Programs
9% Housing Tax Credits
9% Housing Tax Credits

Pro Forma ASSUMPTIONS	
Revenue Growth	2.00%
Expense Growth	3.00%
Basis Adjust	130%
Applicable Fraction	87.50%
APP % Acquisition	3.37%
APP % Construction	9.00%
Average Unit Size	740 sf

UNIT MIX / MONTHLY RENT SCHEDULE																						
HTC		TDHCA Direct Loan Program		UNIT MIX				APPLICABLE PROGRAM RENT			APPLICANT'S PRO FORMA RENTS				TDHCA PRO FORMA RENTS				MARKET RENTS			
Type	Gross Rent	Type	Gross Rent	# Units	# Beds	# Baths	NRA	Gross Rent	Utility Allow	Max Net Program Rent	Delta to Max	Rent psf	Net Rent per Unit	Total Monthly Rent	Total Monthly Rent	Rent per Unit	Rent psf	Delta to Max	Underwritten	Mrkt Analyst		
TC 30%	\$399			8	1	1	675	\$399	\$67	\$332	\$0	\$0.49	\$332	\$2,656	\$2,656	\$332	\$0.49	\$0	\$752	\$1.11	\$860	
TC 50%	\$665			12	1	1	675	\$665	\$67	\$598	\$0	\$0.89	\$598	\$7,176	\$7,176	\$598	\$0.89	\$0	\$752	\$1.11	\$860	
TC 60%	\$798			30	1	1	675	\$798	\$67	\$731	\$0	\$1.08	\$731	\$21,930	\$21,930	\$731	\$1.08	\$0	\$752	\$1.11	\$860	
MR				9	1	1	675	\$0	\$67		NA	\$1.38	\$930	\$8,370	\$8,370	\$930	\$1.38	NA	\$752	\$1.11	\$860	
TC 30%	\$479			1	2	1	916	\$479	\$83	\$396	\$0	\$0.43	\$396	\$396	\$396	\$396	\$0.43	\$0	\$903	\$0.99	\$960	
TC 50%	\$798			2	2	1	916	\$798	\$83	\$715	\$0	\$0.78	\$715	\$1,430	\$1,430	\$715	\$0.78	\$0	\$903	\$0.99	\$960	
TC 60%	\$958			14	2	1	916	\$958	\$83	\$875	\$0	\$0.96	\$875	\$12,250	\$12,250	\$875	\$0.96	\$0	\$903	\$0.99	\$960	
MR				2	2	1	916	\$0	\$83		NA	\$1.15	\$1,050	\$2,100	\$2,100	\$1,050	\$1.15	NA	\$903	\$0.99	\$960	
TC 50%	\$665	30%/30%	\$400	6	1	1	675	\$400	\$67	\$333	\$0	\$0.49	\$333	\$1,998	\$1,998	\$333	\$0.49	\$0	\$752	\$1.11	\$860	
TC 50%	\$798	30%/30%	\$480	2	2	1	916	\$480	\$83	\$397	\$0	\$0.43	\$397	\$794	\$794	\$397	\$0.43	\$0	\$903	\$0.99	\$960	
TC 30%	\$399			3	1	1	675	\$399	\$67	\$332	\$0	\$0.49	\$332	\$996	\$996	\$332	\$0.49	\$0	\$752	\$1.11	\$860	
TC 50%	\$665			8	1	1	675	\$665	\$67	\$598	\$0	\$0.89	\$598	\$4,784	\$4,784	\$598	\$0.89	\$0	\$752	\$1.11	\$860	
TC 60%	\$798			7	1	1	675	\$798	\$67	\$731	\$0	\$1.08	\$731	\$5,117	\$5,117	\$731	\$1.08	\$0	\$752	\$1.11	\$860	
MR				4	1	1	675	\$0	\$67		NA	\$1.38	\$930	\$3,720	\$3,720	\$930	\$1.38	NA	\$752	\$1.11	\$860	
TC 50%	\$665			12	1	1	676	\$665	\$67	\$598	\$0	\$0.88	\$598	\$7,176	\$7,176	\$598	\$0.88	\$0	\$903	\$1.34	\$860	
TC 50%	\$798			6	2	1	914	\$798	\$83	\$715	\$0	\$0.78	\$715	\$4,290	\$4,290	\$715	\$0.78	\$0	\$903	\$0.99	\$960	
TC 60%	\$958			5	2	1	919	\$958	\$83	\$875	\$0	\$0.95	\$875	\$4,375	\$4,375	\$875	\$0.95	\$0	\$903	\$0.98	\$960	
TC 60%	\$958			3	2	1	910	\$958	\$83	\$875	\$0	\$0.96	\$875	\$2,625	\$2,625	\$875	\$0.96	\$0	\$903	\$0.99	\$960	
MR				2	2	1	911	\$0	\$83		NA	\$1.15	\$1,050	\$2,100	\$2,100	\$1,050	\$1.15	NA	\$903	\$0.99	\$960	
<b>TOTALS/AVERAGES:</b>				<b>136</b>				<b>100,704</b>				<b>\$0</b>	<b>\$0.94</b>	<b>\$693</b>	<b>\$94,283</b>	<b>\$94,283</b>	<b>\$693</b>	<b>\$0.94</b>	<b>\$0</b>	<b>\$806</b>	<b>\$1.09</b>	<b>\$887</b>

<b>ANNUAL POTENTIAL GROSS RENT:</b>	<b>\$1,131,396</b>	<b>\$1,131,396</b>
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**STABILIZED PRO FORMA**

*El Sereno, Cibolo, 9% HTC #18509*

**STABILIZED FIRST YEAR PRO FORMA**

	COMPARABLES		APPLICANT				PRIOR REPORT		TDHCA			VARIANCE		
	Database	Local Deals	% EGI	Per SF	Per Unit	Amount	Applicant	TDHCA	Amount	Per Unit	Per SF	% EGI	%	\$
<b>POTENTIAL GROSS RENT</b>				\$0.94	\$693	\$1,131,396	\$971,796	\$971,796	\$1,131,396	\$693	\$0.94		0.0%	\$0
Application Fees, NSF, Late Fees						\$5.83	\$9,515	24,480						
Total Secondary Income						\$5.83		24,480	\$9,515	\$5.83			0.0%	\$0
<b>POTENTIAL GROSS INCOME</b>						\$1,140,911	\$996,276	\$996,276	\$1,140,911				0.0%	\$0
Vacancy & Collection Loss				7.5% PGI		(85,568)	(74,721)	(74,721)	(85,568)	7.5% PGI			0.0%	-
Rental Concessions						-			-				0.0%	-
<b>EFFECTIVE GROSS INCOME</b>						\$1,055,342	\$921,555	\$921,555	\$1,055,342				0.0%	\$0

General & Administrative	\$46,163	\$339/Unit	\$69,748	\$513	4.19%	\$0.44	\$325	\$44,200	\$33,200	\$33,200	\$46,163	\$339	\$0.46	4.37%	-4.3%	(1,963)
Management	\$50,141	4.8% EGI	\$40,107	\$295	4.79%	\$0.50	\$372	\$50,583	\$45,674	\$46,078	\$52,767	\$388	\$0.52	5.00%	-4.1%	(2,184)
Payroll & Payroll Tax	\$164,904	\$1,213/Unit	\$191,910	\$1,411	15.66%	\$1.64	\$1,215	\$165,242	\$148,670	\$148,670	\$164,904	\$1,213	\$1.64	15.63%	0.2%	338
Repairs & Maintenance	\$99,361	\$731/Unit	\$120,139	\$883	8.66%	\$0.91	\$672	\$91,432	\$74,800	\$81,600	\$81,600	\$600	\$0.81	7.73%	12.0%	9,832
Electric/Gas	\$26,178	\$192/Unit	\$26,441	\$194	3.71%	\$0.39	\$288	\$39,197	\$40,800	\$31,782	\$35,403	\$260	\$0.35	3.35%	10.7%	3,794
Water, Sewer, & Trash	\$84,722	\$623/Unit	\$63,915	\$470	4.72%	\$0.49	\$367	\$49,847	\$74,120	\$68,757	\$48,571	\$357	\$0.48	4.60%	2.6%	1,276
Property Insurance	\$38,005	\$0.38/sf	\$44,502	\$327	2.51%	\$0.26	\$195	\$26,520	\$25,346	\$25,346	\$26,520	\$195	\$0.26	2.51%	0.0%	-
Property Tax (@ 50%) 2.3393	\$65,717	\$483/Unit	\$10,606	\$78	5.75%	\$0.60	\$446	\$60,662	\$70,540	\$75,285	\$59,403	\$437	\$0.59	5.63%	2.1%	1,259
Reserve for Replacements	\$36,901	\$271/Unit	\$35,870	\$264	3.22%	\$0.34	\$250	\$34,000	\$40,800	\$40,800	\$34,000	\$250	\$0.34	3.22%	0.0%	-
Supportive Services				\$0	0.00%	\$0.00	\$0	\$0	\$0	\$0	\$0	\$0	\$0.00	0.00%	0.0%	-
TDHCA LIHTC/HOME Compliance Fees			-	\$0	0.54%	\$0.06	\$42	\$5,712	\$4,760	\$4,760	\$5,712	\$42	\$0.06	0.54%	0.0%	-
TDHCA Bond Compliance Fee			-	\$0	0.00%	\$0.00	\$0	\$0			\$0	\$0	\$0.00	0.00%	0.0%	-
Security			-	\$0	0.77%	\$0.08	\$59	\$8,091	\$8,400	\$8,400	\$8,091	\$59	\$0.08	0.77%	0.0%	-
describe			-	\$0	0.00%	\$0.00	\$0	\$0			\$0	\$0	\$0.00	0.00%	0.0%	-
describe			-	\$0	0.00%	\$0.00	\$0	\$0			\$0	\$0	\$0.00	0.00%	0.0%	-
<b>TOTAL EXPENSES</b>					<b>54.53%</b>	<b>\$5.71</b>	<b>\$4,232</b>	<b>\$ 575,486</b>	<b>\$567,110</b>	<b>\$564,678</b>	<b>\$ 563,134</b>	<b>\$4,141</b>	<b>\$5.59</b>	<b>53.36%</b>	<b>2.2%</b>	<b>\$ 12,352</b>
<b>NET OPERATING INCOME ("NOI")</b>					<b>45.47%</b>	<b>\$4.77</b>	<b>\$3,528</b>	<b>\$479,856</b>	<b>\$354,445</b>	<b>\$356,877</b>	<b>\$492,208</b>	<b>\$3,619</b>	<b>\$4.89</b>	<b>46.64%</b>	<b>-2.5%</b>	<b>\$ (12,352)</b>

CONTROLLABLE EXPENSES								\$2,867/Unit								\$2,769/Unit
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**CAPITALIZATION / TOTAL DEVELOPMENT BUDGET / ITEMIZED BASIS**

*El Sereno, Cibolo, 9% HTC #18509*

DEBT / GRANT SOURCES																		
APPLICANT'S PROPOSED DEBT/GRANT STRUCTURE										AS UNDERWRITTEN DEBT/GRANT STRUCTURE								
DEBT (Must Pay)	MIP	Cumulative DCR		Pmt	Rate	Amort	Term	Principal	Prior Underwriting		Principal	Term	Amort	Rate	Pmt	Cumulative		
		UW	App						Applicant	TDHCA						DCR	LTC	
Bank of America		1.44	1.40	\$341,717	5.60%	35	16	\$5,195,859	\$4,280,000	\$4,280,000	\$5,195,859	16	35	5.60%	\$338,927	1.42	23.8%	
Adjustment to Debt Per §10.302(c)(2)		1.44	1.40		0.00%	0	0	\$0			\$270,000	16	35	5.60%	\$17,612	1.35	1.2%	
<b>CASH FLOW DEBT / GRANTS</b>																		
City of Cibolo EDC		1.44	1.40		0.00%	0	0	\$250	\$250	\$250	\$250	0	0	0.00%		1.35	0.0%	
TDHCA MDL Loan		1.44	1.40		0.00%	35	16	\$1,140,000			\$0	16	30	2.80%		1.35	0.0%	
GP advance		1.44	1.40		0.00%	0	0	\$410,426			\$410,426	0	0	0.00%		1.35	1.9%	
Applicant Match (GP Loan)		1.44	1.40		0.00%	0	0	\$61,960			\$61,960	0	0	0.00%		1.35	0.3%	
				\$341,717	<b>TOTAL DEBT / GRANT SOURCES</b>				\$6,808,495	\$4,280,250	\$5,938,495	<b>TOTAL DEBT SERVICE</b>				\$356,539	1.35	27.2%

<b>NET CASH FLOW</b>	\$150,491	\$138,139	<b>APPLICANT NET OPERATING INCOME</b>										\$479,856	\$123,317	<b>NET CASH FLOW</b>
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EQUITY SOURCES													
APPLICANT'S PROPOSED EQUITY STRUCTURE						AS UNDERWRITTEN EQUITY STRUCTURE							
EQUITY / DEFERRED FEES	DESCRIPTION	% Cost	Annual Credit	Credit Price	Amount	Prior Underwriting		Amount	Credit Price	Annual Credit	% Cost	Annual Credits per Unit	Allocation Method
						Applicant	TDHCA						
Bank of America	LIHTC Equity	65.2%	\$1,500,000	0.95	\$14,229,407	\$14,248,575	\$14,248,575	\$14,229,407	\$0.9486	\$1,500,000	65.2%	\$11,029	Applicant Request
Deferred Developer Fee	Deferred Developer Fees	3.7%	(38% Deferred)		\$800,000	\$531,529	\$528,419			(80% Deferred)	0.0%		Total Developer Fee: \$2,082,746
Additional (Excess) Funds Req'd		0.0%			\$0	(\$3,110)	\$0	\$1,670,000			7.6%		
<b>TOTAL EQUITY SOURCES</b>		68.8%			\$15,029,407	\$14,776,994	\$14,776,994	\$15,899,407			72.8%		

<b>TOTAL CAPITALIZATION</b>	\$21,837,902	\$19,057,244	\$19,057,244	\$21,837,902	15-Yr Cash Flow after Deferred Fee:			\$595,008
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DEVELOPMENT COST / ITEMIZED BASIS														
APPLICANT COST / BASIS ITEMS					TDHCA COST / BASIS ITEMS				COST VARIANCE					
	Eligible Basis		Total Costs		Prior Underwriting		Total Costs		Eligible Basis					
	Acquisition	New Const. Rehab			Applicant	TDHCA			New Const. Rehab	Acquisition				
Land Acquisition			\$16,534 / Unit	\$2,248,602	\$2,197,602	\$2,197,602	\$2,248,602	\$16,534 / Unit				0.0%	\$0	
Building Acquisition	\$0		\$ / Unit	\$0	\$0	\$0	\$0	\$ / Unit			\$0	0.0%	\$0	
Off-Sites			\$1,368 / Unit	\$186,000	\$204,000	\$204,000	\$186,000	\$1,368 / Unit			\$0	0.0%	\$0	
Site Work		\$1,295,819	\$10,096 / Unit	\$1,373,069	\$1,836,000	\$1,836,000	\$1,373,070	\$10,096 / Unit		\$1,295,819		0.0%	(\$1)	
Site Amenities		\$553,026	4066.367647	\$553,026	\$340,000	\$340,000	\$540,876	\$3,977 / Unit		\$553,026		2.2%	\$12,150	
Building Cost		\$10,209,717	\$101.38 /sf	\$75,071/Unit	\$10,209,717	\$7,409,250	\$7,890,975	\$10,127,218	\$74.465/Unit	\$100.56 /sf	\$10,127,218	0.8%	\$82,499	
Contingency		\$1,454	0.01%	0.01%	\$1,454	\$489,463	\$513,549	\$19,000	0.16%	0.16%	\$19,000	-92.3%	(\$17,546)	
Contractor Fees		\$1,162,171	9.64%	9.43%	\$1,162,171	\$1,409,060	\$1,409,060	\$1,239,275	9.49%	9.69%	\$1,239,275	-6.2%	(\$77,104)	
Soft Costs	0	\$1,945,228	\$16,759 / Unit	\$2,279,211	\$1,779,163	\$1,409,060	\$2,279,211	\$16,759 / Unit		\$1,945,228	\$0	0.0%	\$0	
Financing	0	\$779,273	\$8,227 / Unit	\$1,118,855	\$874,809	\$874,809	\$1,118,855	\$8,227 / Unit		\$779,273	\$0	0.0%	\$0	
Developer Fee	\$0	\$2,082,746	13.06%	12.85%	\$2,082,746	\$2,082,746	\$2,082,476	\$2,082,746	12.85%	13.05%	\$2,082,746	\$0	0.0%	\$0
Reserves			\$4,559 / Unit	\$620,051	\$435,151	\$428,764	\$427,992	\$3,147 / Unit				44.9%	\$192,059	
<b>TOTAL HOUSING DEVELOPMENT COST (UNADJUSTED BASIS)</b>		\$0	\$18,029,434	\$160,573 / Unit	\$21,837,902	\$19,057,244	\$19,186,295	\$21,645,845	\$159,161 / Unit	\$18,041,585	\$0	0.9%	\$192,057	
Acquisition Cost	\$0			\$0										
Contingency		\$0		\$0										
Contractor's Fee		\$0		\$0										
Interim Interest		\$0		\$0										
Developer Fee	\$0	\$0		\$0										
Reserves				\$0										
<b>ADJUSTED BASIS / COST</b>		\$0	\$18,029,434	\$160,573/unit	\$21,837,902	\$19,057,244	\$19,186,295	\$21,645,845	\$159,161/unit	\$18,041,585	\$0	0.9%	\$192,057	

<b>TOTAL HOUSING DEVELOPMENT COSTS (Applicant's Uses are within 5% of TDHCA Estimate):</b>	\$21,837,902												
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**CAPITALIZATION / DEVELOPMENT COST BUDGET / ITEMIZED BASIS ITEMS**

*El Sereno, Cibola, 9% HTC #18509*

CREDIT CALCULATION ON QUALIFIED BASIS				
	Applicant		TDHCA	
	Acquisition	Construction Rehabilitation	Acquisition	Construction Rehabilitation
<b>ADJUSTED BASIS</b>	\$0	\$18,029,434	\$0	\$18,041,585
Deduction of Federal Grants	\$0	\$0	\$0	\$0
<b>TOTAL ELIGIBLE BASIS</b>	\$0	\$18,029,434	\$0	\$18,041,585
High Cost Area Adjustment		130%		130%
<b>TOTAL ADJUSTED BASIS</b>	\$0	\$23,438,264	\$0	\$23,454,061
Applicable Fraction	87.50%	87.50%	87.50%	87.50%
<b>TOTAL QUALIFIED BASIS</b>	\$0	\$20,508,481	\$0	\$20,522,303
Applicable Percentage	3.37%	9.00%	3.37%	9.00%
<b>ANNUAL CREDIT ON BASIS</b>	\$0	\$1,845,763	\$0	\$1,847,007
<b>CREDITS ON QUALIFIED BASIS</b>		\$1,845,763		\$1,847,007

Method	ANNUAL CREDIT CALCULATION BASED ON APPLICANT BASIS		FINAL ANNUAL LIHTC ALLOCATION		
	Annual Credits	Proceeds	Credit Price \$0.9486	Variance to Request	
			Credit Allocation	Credits	Proceeds
<b>Eligible Basis</b>	\$1,845,763	\$17,509,412	----	----	----
<b>Needed to Fill Gap</b>	\$1,676,044	\$15,899,407	----	----	----
<b>Applicant Request</b>	\$1,500,000	\$14,229,407	<b>\$1,500,000</b>	<b>\$0</b>	<b>\$0</b>

	Development Cost/SF	
	Application	TDHCA
Acquisition & Hard Costs	\$116.75	\$133.91
Hard Costs	\$116.75	\$133.91
Building Costs	\$74.00	\$100.56
<b>Total Points Claimed:</b>		<b>12</b>

BUILDING COST ESTIMATE				
CATEGORY	FACTOR	UNITS/SF	PER SF	AMOUNT
Base Cost:	Wrap Style (3 or 4-story)	100,704 SF	\$65.10	6,556,159
Adjustments				
Exterior Wall Finish	3.52%		2.29	\$230,777
Eldery	3.00%		1.95	196,685
9-Ft. Ceilings	3.44%		2.24	225,532
Roof Adjustment(s)			1.94	195,000
Subfloor			(0.15)	(15,441)
Floor Cover			2.56	257,802
Breezeways	\$0.00	0	0.00	0
Balconies	\$27.52	10,205	2.79	280,874
Plumbing Fixtures	\$990	-295	-2.90	(292,050)
Rough-ins	\$485	195	0.94	94,575
Built-In Appliances	\$1,725	136	2.33	234,600
Exterior Stairs	\$2,250	8	0.18	18,000
Heating/Cooling			2.14	215,507
Enclosed Corridors	\$57.12	21,248	12.05	1,213,755
Carports	\$11.94	0	0.00	0
Garages		0	0.00	0
Comm &/or Aux Bldgs	\$78.33	7,045	5.48	551,821
Elevators	\$102,250	2	2.03	204,500
<b>Other:</b>			0.00	0
Fire Sprinklers	\$2.47	128,997	3.16	318,623
<b>SUBTOTAL</b>			<b>104.13</b>	<b>10,486,717</b>
Current Cost Multiplier	0.99		(1.04)	(104,867)
Local Multiplier	0.88		(12.50)	(1,258,406)
<b>TOTAL BUILDING COSTS</b>			<b>90.60</b>	<b>\$9,123,444</b>
Plans, specs, survey, bldg permits	3.30%		(2.99)	(301,074)
Contractor's OH & Profit	11.50%		(10.42)	(1,049,196)
<b>NET BUILDING COSTS</b>		\$57.156/unit	\$77.19/sf	\$7,773,174

## Long-Term Pro Forma

*El Sereno, Cibolo, 9% HTC #18509*

	Growth Rate	Year 1	Year 2	Year 3	Year 4	Year 5	Year 10	Year 15	Year 20	Year 30	Year 35
EFFECTIVE GROSS INCOME	2.00%	\$1,055,342	\$1,076,449	\$1,097,978	\$1,119,938	\$1,142,336	\$1,261,232	\$1,392,502	\$1,537,434	\$1,874,124	\$2,069,184
TOTAL EXPENSES	3.00%	\$575,486	\$592,245	\$609,496	\$627,255	\$645,536	\$745,331	\$860,706	\$994,110	\$1,326,796	\$1,533,162
<b>NET OPERATING INCOME ("NOI")</b>		<b>\$479,856</b>	<b>\$484,204</b>	<b>\$488,482</b>	<b>\$492,683</b>	<b>\$496,801</b>	<b>\$515,901</b>	<b>\$531,796</b>	<b>\$543,324</b>	<b>\$547,328</b>	<b>\$536,022</b>
<b>MUST -PAY DEBT SERVICE</b>											
Bank of America		\$338,927	\$338,927	\$338,927	\$338,927	\$338,927	\$338,927	\$338,927	\$338,927	\$338,927	\$338,927
TDHCA MDL Loan											
TOTAL DEBT SERVICE		\$356,539	\$356,539	\$356,539	\$356,539	\$356,539	\$356,539	\$356,539	\$356,539	\$356,539	\$356,539
<b>ANNUAL CASH FLOW</b>		<b>\$123,317</b>	<b>\$127,665</b>	<b>\$131,943</b>	<b>\$136,144</b>	<b>\$140,262</b>	<b>\$159,362</b>	<b>\$175,256</b>	<b>\$186,785</b>	<b>\$190,789</b>	<b>\$179,483</b>
Deferred Developer Fee Balance		\$1,546,683	\$1,419,018	\$1,287,075	\$1,150,931	\$1,010,669	\$250,982	\$0	\$0	\$0	\$0
<b>CUMULATIVE NET CASH FLOW</b>		<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$595,008</b>	<b>\$1,507,885</b>	<b>\$3,422,501</b>	<b>\$4,346,817</b>
DEBT COVERAGE RATIO		1.35	1.36	1.37	1.38	1.39	1.45	1.49	1.52	1.54	1.50
EXPENSE/INCOME RATIO		54.5%	55.0%	55.5%	56.0%	56.5%	59.1%	61.8%	64.7%	70.8%	74.1%





August 23, 2019

Andrew Sinnott  
Multifamily Programs Administrator  
Texas Department of Housing and Community Affairs  
221 E. 11th Street  
Austin, TX 78701

RE: TDHCA #18509 El Sereno Senior Apartments

Dear Mr. Sinnott,

The purpose of this letter is to set forth the reasoning for Direct Loan eligibility and to summarize the unforeseen cost increases at the El Sereno Senior Apartments community (the "Development").

Firstly, and, in accord with Section 13.3(d) of the Multifamily Direct Loan Rule, the Development is a distressed project previously funded by TDHCA. Further, the Development encountered adverse factors beyond the development team's control that materially impaired its ability to provide affordable housing (Section 13.5(f)(2)).

Unforeseen Events

Two unforeseen factors impaired the Development's ability to provide affordable housing: City-Related Cost Increases and Delays; Weather-Related Cost Increases and Delays.

*City-Related*

In early 2017, while in plan check with the City of Cibolo Building Department, the City adopted the 2016 energy code. This triggered requirements for upgraded windows, doors, mechanical, plumbing and electrical. The architect and engineers revised the plans and the construction contract was revised in June 2018 to reflect these changes (see 'Woods and Plastics', 'Doors and Windows', and 'Mechanical (HVAC)' and 'Electrical' line-items in the Development Cost Schedule.

In addition, the City of Cibolo closed access to Borgfeld Road, the only access to the site, during an August 2017 re-paving project. This resulted in 18 lost work days.

*Weather Related*

As described the December 6 TDHCA Notice of Board Decision (attached as Exhibit 1), the Development requested and received a 120-day place in service extension in relation to the October 2017 FEMA Notice of Major Disaster Declaration (FEMA-4332-DR).

As a direct result of Hurricane Harvey, the Development incurred direct construction schedule delays of

approximately 29 days. Unusually heavy rainfall continued from August through December 2017. Specifically, August 2017 saw 13.73 inches of rainfall including over 5 inches on one day. The inundation severely impacted the project schedule as it prevented the foundation pour in the lead-up to winter months. All told, 81 days of rainfall resulted in a change order to extend the construction contract by 148 days (see change orders, delay log and USGS Rainfall Data attached as Exhibit 2).

Specifically, the water-logged site led to sub-contractor work and testing delays. Further, the contractor was forced to re-specify and re-order materials such as concrete flatwork, masonry, any petroleum products. There was such a labor shortage during this time that only larger and more expensive sub-contractors and suppliers were able to fill orders. Again, cost increases were felt across the board on materials and labor, but particularly in 'Woods and Plastics' and 'Finishes'.

Timing and Amount

As a result of the unforeseen events, the construction lender's budget has been modified three times:

Modification #1	June 2018	\$667,137
Modification #2	February 2019	\$348,290
Modification #3	May 2019	\$313,969
Total		\$1,329,396

The three budget modification draws are attached as Exhibit 3. The construction sources in our Direct Loan Application reflects a gap of \$1,329,396. The Direct Loan request of \$1,140,000 in permanent funds reduces the gap to \$779,395. The deeper affordability costs the Development approximately \$200,000 in permanent loan proceeds

Mitigants prior to DL Request

After fully deferring its remaining Developer Fee, the development team undertook extensive measures to mitigate the adverse factors: 1) Ownership Change/Tax Exemption; 2) Increased Permanent Loan; 3) Reduced GC Fee

1. In December 2018, the Development sought and received approval to admit a non-profit general partner. This enabled the Development to qualify for a 50% property tax exemption.
2. As a result, the Development received a term sheet from the lender for an increased permanent loan of \$900,000.
3. As part of the lender's budget modification process, the General Contractor reduced its fee by \$425,000.

MFDL Eligibility

As noted above, TDHCA's rules indicate that "MFDL may be used to assist distressed developments previously funded by the Department when approved by specific action of the Department's Governing Board." (Section 13.3(d)) Finding this Development to be eligible for a multifamily direct loan, as requested, would be consistent with the Board's action for other distressed properties:

- Golden Trails - May 2019. Approved a multifamily direct loan to address soils problems that led to increased costs.
- Avanti at Siena Palms Legacy – May 2019. Approved a multifamily direct loan to cover gap caused by increase in interest rates.
- Mistletoe Station – March 2019. Approved a multifamily direct loan to address increased costs associated with new city storm water infrastructure requirements.
- Freedom's Path at Kerrville – December 2017. Approved a multifamily direct loan to assist with increased costs after the owner was unable to obtain a Federal Home Loan Bank grant.
- Live Oak Trails – July 2017. Approved a multifamily direct loan to replace a Federal Home Loan Bank grant that was not received as expected.

Thus, we request that the Board determine this Development is eligible for a multifamily direct loan award, in accordance with Section 13.5(h)(2), as we have shown that the circumstances were beyond the control of the owner.

The multifamily direct loan will be used to pay for costs for which there is no other permanent source of financing, and there are no additional cost increases expected, now that construction is complete. Staff has suggested that a waiver of Section 13.3(c)(14) may be required for the Board to proceed with the MFDL award. This section states that "costs ineligible for reimbursement with Direct Loan funds in accordance with 24 CFR Part 91, Part 92, Part 93, Part 570, and 2 CFR Part 200, as federally required or identified in the NOFA include but are not limited to . . . costs that have been allocated to or paid by another fund source." Given that the applicant is seeking TCAP funds, none of 24 CFR Parts 91, 92, 93, or 570 are applicable to this award. Only 2 CFR Part 200 is applicable, and there is nothing in that federal regulation that would deem this Development to be ineligible for funding. Staff notes that the phrase "fund source" is undefined and can be interpreted broadly. However, it is only logical that, since a MFDL is awarded with a long-term maturity as a permanent source, an understanding of "another fund source" should refer to other permanent sources. As explained in our correspondence with the Department, the funds that were provided to cover the gap caused by the cost increase were provided as a bridge and not intended to be a permanent source. We believe the Development should not be deemed ineligible for a MFDL because it covered the funding gap with a bridge loan, based upon a common sense interpretation. If a waiver of the rule is actually needed, we respectfully request the Board grant the waiver required to make this award. The need for the waiver was not reasonably foreseeable and preventable; granting the waiver furthers TDHCA's statutory purposes by ensuring financial stability for an affordable housing property that was materially adversely impacted by disaster-related conditions and changes is governmental regulation.

Please direct any questions to Simon Fraser, Project Manager, at 424-258-2914 or [simon.fraser@housingpartners.com](mailto:simon.fraser@housingpartners.com).

Sincerely,

*Mohannad H. Mohanna*

Mohannad H. Mohanna  
Its Managing Member



June 26, 2019

Andrew Sinnott  
Multifamily Programs Administrator  
Texas Department of Housing and Community Affairs  
221 E. 11th Street  
Austin, TX 78701

RE: TDHCA #18509 El Sereno Senior Apartments

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In addition, the City of Cibola closed access to Borgfeld Road, the only access to the site, during an August 2017 re-paving project. This resulted in 18 lost work days.

*Weather Related*

As described the December 6 TDHCA Notice of Board Decision (attached as Exhibit 1), the Development requested and received a 120-day place in service extension in relation to the October 2017 FEMA Notice of Major Disaster Declaration (FEMA-4332-DR).

As a direct result of Hurricane Harvey, the Development incurred direct construction schedule delays of

approximately 29 days. Unusually heavy rainfall continued from August through December 2017. Specifically, August 2017 saw 13.73 inches of rainfall including over 5 inches on one day. The inundation severely impacted the project schedule as it prevented the foundation pour in the lead-up to winter months. All told, 81 days of rainfall resulted in a change order to extend the construction contract by 148 days (see change orders, delay log and USGS Rainfall Data attached as Exhibit 2).

Specifically, the water-logged site led to sub-contractor work and testing delays. Further, the contractor was forced to re-specify and re-order materials such as concrete flatwork, masonry, any petroleum products. There was such a labor shortage during this time that only larger and more expensive sub-contractors and suppliers were able to fill orders. Again, cost increases were felt across the board on materials and labor, but particularly in 'Woods and Plastics' and 'Finishes'.

Timing and Amount

As a result of the unforeseen events, the construction lender's budget has been modified three times:

Modification #1	June 2018	\$667,137
Modification #2	February 2019	\$348,290
Modification #3	May 2019	\$313,969
Total		\$1,329,396

The three budget modification draws are attached as Exhibit 3. The construction sources in our Direct Loan Application reflects a gap of \$1,329,396. The Direct Loan request of \$1,140,000 in permanent funds reduces the gap to \$779,395.

Please direct any questions to Simon Fraser, Project Manager, at 424-258-2914 or [simon.fraser@housingpartners.com](mailto:simon.fraser@housingpartners.com).

Sincerely,



Mohannad H. Mohanna  
Its Managing Member

# EXHIBIT 1 - PIS EXTENSION



## Texas Department of Housing and Community Affairs

### Housing Tax Credit Program

U.S. Mailing Address: P.O. Box 13941, Austin, Texas 78711-3941

Private Carrier Delivery: 221 East 11th Street, Austin, Texas 78701

Telephone: (512) 475-3340 Telecopier: (512) 475-1895

To: Cynthia Bast, Locke Lord

### NOTICE OF BOARD DECISION - PIS DEADLINE EXTENSION REQUEST HEARD ON 12/6/2018

#### HTC 16128, CMTS ID 5219, El Sereno ("the Development")

El Sereno was approved for a 9% Housing Tax Credit ("HTC") award in 2016. The Development is an elderly limitation new construction project located in Cibolo, Guadalupe County. On November 13, 2018, the Owner's representative, Cynthia L. Bast (attorney at Locke Lord LLP), submitted a letter requesting a 120 day extension to the date that the Owner is required to place each building in service in accordance with IRC §42(h)(1) and the Development's Carryover Allocation Agreement. The Owner is seeking the relief under IRS Revenue 2014-49, relating to Owners of low-income buildings and housing credit agencies of States in major disaster areas declared by the President. The letter also requests an additional extension of up to 60 days at the Acting Director's discretion.

The Owner submitted evidence that Guadalupe County is included in the area that is eligible for public assistance. Staff verified that Amendment No. 10 of the FEMA Notice of Major Disaster Declaration (FEMA-4332-DR) issued on October 11, 2017, confirms the President's issuing of a major disaster declaration due to damage in the State of Texas resulting from Hurricane Harvey beginning on August 23, 2017. The Owner indicated that, as a direct result of Hurricane Harvey, the Development incurred direct construction schedule delays of approximately 29 days. After Hurricane Harvey, unusual rainfall continued through December 2017, accompanied by delays from the City. In all, 81 days of rainfall resulted in a change order to extend the construction contract by 148 days as evidenced by change orders, a delay log, and USGS Rainfall Data for September through December 2017. In accordance with IRS Revenue Procedure 2014-49, Section 6.03, as an Owner affected by a Presidentially-declared disaster, the Owner is requesting the Department's approval for the carryover allocation relief. The Department, as directed by the Procedure, may approve such relief only for projects whose Owners cannot reasonably satisfy the deadlines of §42(h)(1)(E) because of an event or series of events that led to a major disaster declaration under the Stafford Act.

Development Name: El Sereno  
City: Cibolo  
County: Guadalupe  
Owner: Borgfeld Housing, LP  
Region: 9  
Units: 136  
Year of Allocation: 2016

Staff recommended approval of the extension from December 31, 2018 to April 30, 2019.

**THE REQUEST ABOVE WAS APPROVED, WITHOUT PENALTIES, AT THE BOARD MEETING OF DECEMBER 6, 2018. THE APPROVAL WILL BE CONFIRMED BY THE MINUTES AS APPROVED AND RECORDED IN A SUBSEQUENT BOARD MEETING.**

*Dee C Patience*

Dee Copeland Patience  
Asset Manager



# EXHIBIT 3 - BUDGET MODIFICATIONS MODIFICATION #1

Limit input to YELLOW CELLS

**BUDGET DRAW TEMPLATE**

Clear ALL Prior Entries for New Draw

BORROWER: **BORGFELD HOUSING LP**

REPORT DATE: **6/29/2018**

PROJECT DESCRIPTION: **EL SERENO APTS - 136 UNITS**

HIDE Blank Line Item Rows (normal status)

UNHIDE Blank Line Item Rows (to add new line item)

**Uses**

Description	Original Budget	Total Prior Adjustments	Current Changes	Revised Budget	Total Previous Drawn	Amount This Draw	Total Drawn Including This Draw	Undisbursed After This Draw	% Funded	Deferred (Unavailable)
<b>LAND</b>										
Land Value	2,248,602.00	0.00		2,248,602.00	2,248,602.00		2,248,602.00	0.00	100%	
<b>TOTAL LAND</b>	<b>2,248,602.00</b>	<b>0.00</b>	<b>0.00</b>	<b>2,248,602.00</b>	<b>2,248,602.00</b>	<b>0.00</b>	<b>2,248,602.00</b>	<b>0.00</b>	<b>100%</b>	
<b>HARD COSTS</b>										
Demolition	50,000.00	0.00		50,000.00	45,000.00		45,000.00	5,000.00	90%	
Site Work	986,807.00	0.00		986,807.00	765,737.82		765,737.82	221,069.18	78%	
Off Site Improvements	205,000.00	0.00		205,000.00	125,100.00		125,100.00	79,900.00	61%	
Construction - Residential	9,532,894.00	0.00		9,532,894.00	1,160,490.60	659,924.10	1,820,414.70	7,712,479.30	19%	
General Requirements	602,338.00	112,354.00		714,692.00	237,560.93	26,424.16	263,985.09	450,706.91	37%	
Contractor Overhead and Profit	830,868.00	0.00		830,868.00	149,556.25	57,444.52	207,000.77	623,867.23	25%	
Sub Total Contracts	12,207,907.00	112,354.00	0.00	12,320,261.00	2,483,445.60	743,792.78	3,227,238.38	9,093,022.62	26%	
Construction Contingency	610,395.00	554,783.00		1,165,178.00	0.00		0.00	1,165,178.00	0%	
Personal Property - Development Budget	150,000.00	0.00		150,000.00	0.00		0.00	150,000.00	0%	
<b>TOTAL HARD COSTS</b>	<b>12,968,302.00</b>	<b>667,137.00</b>	<b>0.00</b>	<b>13,635,439.00</b>	<b>2,483,445.60</b>	<b>743,792.78</b>	<b>3,227,238.38</b>	<b>10,408,200.62</b>	<b>24%</b>	
<b>SOFT COSTS</b>										
Const Loan Inspection	16,500.00	0.00		16,500.00	10,650.00	2,775.00	13,425.00	3,075.00	81%	
Const Loan Origination Fee	179,473.00	0.00		179,473.00	179,472.98		179,472.98	0.02	100%	
Const Title & Recording	105,216.00	0.00		105,216.00	103,661.47		103,661.47	1,554.53	99%	
Perm Loan Origination Fee	49,500.00	0.00		49,500.00	49,500.00		49,500.00	0.00	100%	
Perm Conversion Fee - Deferred	10,000.00	0.00		10,000.00	0.00		0.00	10,000.00	0%	YES
Perm Title & Recording - Deferred	10,000.00	0.00		10,000.00	0.00		0.00	10,000.00	0%	YES
B of A Lender Legal	40,000.00	0.00		40,000.00	40,000.00		40,000.00	0.00	100%	
T.Credit Application & Monitoring Fees	67,740.00	0.00		67,740.00	67,740.00		67,740.00	0.00	100%	
Marketing	125,000.00	0.00	(400.00)	124,600.00	2,351.82	2,000.00	4,351.82	120,248.18	3%	
Accounting	22,500.00	0.00		22,500.00	5,500.00		5,500.00	17,000.00	24%	
Operating Reserve - Deferred	433,175.00	0.00		433,175.00	0.00		0.00	433,175.00	0%	YES
Developer Fees	290,001.00	0.00		290,001.00	290,000.00		290,000.00	1.00	100%	
Developer Fees - Deferred	2,030,003.00	0.00		2,030,003.00	0.00		0.00	2,030,003.00	0%	YES
Insurance	45,163.00	0.00		45,163.00	44,983.00		44,983.00	180.00	100%	
Taxes	93,497.00	0.00		93,497.00	0.00		0.00	93,497.00	0%	
Legal	80,772.00	37,894.96	400.00	118,666.96	118,666.96	400.00	119,066.96	0.00	100%	
Architect	420,000.00	0.00	(1,394.36)	418,605.62	402,335.73	3,865.00	406,200.73	12,404.89	97%	
Survey & Engineering	143,600.00	60,906.43	1,394.38	205,900.81	204,506.43	1,394.38	205,900.81	0.00	100%	
Appraisal & Mkt Study	23,630.00	0.00		23,630.00	23,575.00		23,575.00	55.00	100%	
Soils Investigation	5,700.00	0.00		5,700.00	5,700.00		5,700.00	0.00	100%	
Impact Fees	990,435.00	(66,002.55)		924,432.45	924,432.45		924,432.45	0.00	100%	
Environmental Surveys	6,570.00	0.00		6,570.00	6,570.00		6,570.00	0.00	100%	
Soft Cost Contingency	86,003.00	(32,798.84)		53,204.16	1,000.00		1,000.00	52,204.16	2%	
Sub Total Misc	5,274,478.00	0.00	0.00	5,274,478.00	2,480,645.84	10,434.38	2,491,080.22	2,783,397.78	47%	
Interest Reserve	835,532.00	0.00		835,532.00	161,720.80		161,720.80	673,811.20	19%	
Sub Total Int Res	835,532.00	0.00	0.00	835,532.00	161,720.80	0.00	161,720.80	673,811.20	19%	
Sub Total Op Def	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0%	
<b>TOTAL SOFT COSTS</b>	<b>6,110,010.00</b>	<b>0.00</b>	<b>0.00</b>	<b>6,110,010.00</b>	<b>2,642,366.64</b>	<b>10,434.38</b>	<b>2,652,801.02</b>	<b>3,457,208.98</b>	<b>43%</b>	
<b>TOTAL PROJECT USES</b>	<b>21,326,914.00</b>	<b>667,137.00</b>	<b>0.00</b>	<b>21,994,051.00</b>	<b>7,374,414.24</b>	<b>754,227.16</b>	<b>8,128,641.40</b>	<b>13,865,409.60</b>	<b>37%</b>	<b>2,483,178.00</b>

**Sources**

Description	Original Budget	Total Prior Adjustments	Current Changes	Revised Budget	Total Previous Drawn	Amount This Draw	Total Drawn Including This Draw	Undisbursed After This Draw	% Funded	Deferred/Unavail?
Loan Funds	17,947,298.00	0.00		17,947,298.00	6,477,976.24	87,090.16	6,565,066.40	11,382,231.60	37%	
<b>SUB-TOTAL LOAN PROCEEDS</b>	<b>17,947,298.00</b>	<b>0.00</b>	<b>0.00</b>	<b>17,947,298.00</b>	<b>6,477,976.24</b>	<b>87,090.16</b>	<b>6,565,066.40</b>	<b>11,382,231.60</b>	<b>37%</b>	
ILP at Closing	896,438.00	0.00		896,438.00	896,438.00		896,438.00	0.00	100%	
Completion/Conversion - Deferred	2,483,178.00	0.00		2,483,178.00	0.00		0.00	2,483,178.00	0%	YES
Out of Balance - Borrowers Funds		667,137.00		667,137.00	0.00	667,137.00	667,137.00	0.00	100%	
<b>SUB-TOTAL EQUITY/OTHER</b>	<b>3,379,616.00</b>	<b>667,137.00</b>	<b>0.00</b>	<b>4,046,753.00</b>	<b>896,438.00</b>	<b>667,137.00</b>	<b>1,563,575.00</b>	<b>2,483,178.00</b>	<b>39%</b>	
<b>TOTAL PROJECT SOURCES</b>	<b>21,326,914.00</b>	<b>667,137.00</b>	<b>0.00</b>	<b>21,994,051.00</b>	<b>7,374,414.24</b>	<b>754,227.16</b>	<b>8,128,641.40</b>	<b>13,865,409.60</b>	<b>37%</b>	<b>2,483,178.00</b>

USE/SOURCE VERIFICATIONS:

OK OK OK OK OK OK OK OK OK OK



5. The following are attached hereto and form a part hereof:  
Contractor's APPLICATION AND CERTIFICATE FOR PAYMENT (AIA Document G702), Conditional and Unconditional Lien Waivers  
and accounts payable listing is preferred for soft costs.

Date: 6/29/2018

BORROWER:

**BORGFELD HOUSING, L.P.,**

a Texas limited partnership

By: Highridge Costa Housing, LLC,  
a Delaware limited liability company  
Its: Managing General Partner



Name: Mohannad H. Mohanna  
Title: President





**CHANGE ORDER LOG**

2506- Cibolo

HCHP CONTRACTORS, LP

CHANGE ORDER REQUEST SUBMITTED					Description	OWNER CHANGE ORDER ISSUED				
COR No.	Date Submitted	Date Approved	Amount	Delay Days		Change Order Issued	CO No.	Amount	Delay Days	
1	04/10/17	04/10/17	72,837.19	0	Increase for Additional Insurance Requirement	04/10/17	1	72,837.19	0	
2	01/04/18	01/12/18	0.00	148	Increase construction time by 148 working days		2	0.00	148	
3	01/11/18	01/12/18	43,626.00	0	Increase General Conditions Contract Amount because of CO2	01/11/18	3	43,626.00	0	
4	01/11/18	01/12/18	68,728.00	0	Increase GL Insurance & Builder's Risk because of CO2	01/11/18	4	68,728.00	0	
<b>TOTAL</b>			<b>185,191.19</b>	<b>148</b>				<b>185,191.19</b>	<b>148</b>	

Project Name: El Sereno Apartments (Cibolo TX)  
 Construction Loan - Draw 11 Invoice Summary

<u>Line Item</u>	<u>Vendor</u>	<u>Invoice Date</u>	<u>Invoice #</u>	<u>Description</u>	<u>Check #</u>	<u>Check Date</u>	<u>Invoice Amount</u>	<u>Total</u>
Hard Cost:								
HC: Construction Contract	HCHP Contractors, LP	05/25/18	Pay Application No. 10	Pay Application No. 10 - Period thru 05/25/2018			<u>743,792.78</u>	743,792.78
Soft Cost:								
Construction Loan Inspection	CA Partners, Inc.	03/19/18	Inv 17170-9	Progress and Funding Disbursement Report	To Be Paid	TBA	925.00	2,775.00
	CA Partners, Inc.	04/18/18	Inv 17170-10	Progress and Funding Disbursement Report	To Be Paid	TBA	925.00	
	CA Partners, Inc.	05/24/18	Inv 17170-111	Progress and Funding Disbursement Report	To Be Paid	TBA	<u>925.00</u>	
Architect	Humphreys & Architects, L.P.	06/18/18	Inv 66844	Architect Services	To Be Paid	TBA	<u>3,865.00</u>	3,865.00
Survey & Engineering	HP Civil Engineering	05/31/18	Inv 00022558	Engineering Consulting	To Be Paid	TBA	646.88	1,394.38
	Sherwood Surveying & S.U.E.	06/09/18	Inv 5639	Engineering Consulting	To Be Paid	TBA	<u>747.50</u>	
Marketing	TruLight 127 Ministries, Inc.	05/16/18		Marketing	To Be Paid	TBA	<u>2,000.00</u>	2,000.00
Legal	Hubacher & ames, PLLC	06/04/18	Inv 6766	Legal Services	To Be Paid	TBA	<u>400.00</u>	400.00
TOTAL								<u>\$ 754,227.16</u>
Less Interest Reserve								\$ -
Sources:								
LIP at Closing								\$ -
Loan Proceeds								\$ 87,090.16
Borrower's Fund								\$ <u>667,137.00</u>
TOTAL Requested								<u>\$ 754,227.16</u>

# HARD COSTS

**APPLICATION AND CERTIFICATION FOR PAYMENT**

AIA DOCUMENT G702

PAGE ONE OF

PAGES

TO OWNER: PROJECT: APPLICATION NO: 10  
 BORGFIELD HOUSING, L.P. DATE: 5/25/18  
 330 WEST VICTORIA STREET, GARDENA CA 90248  
 FROM CONTRACTOR: VIA ARCHITECT: PERIOD TO: 5/25/18  
 HCHP CONTRACTORS, L.P. HUMPREYS & PARTNERS  
 330 WEST VICTORIA STREET 5339 ALPHA ROAD, SUITE 300  
 GARDENA CA 90248 DALLAS TX 75240  
 CONTRACT FOR: THE HEIGHTS, EDINBURG, TX (GENERAL CONSTRUCTION) CONTRACT DATE 4/10/2017

Distribution to:

<input checked="" type="checkbox"/>	OWNER
<input checked="" type="checkbox"/>	ARCHITECT
<input checked="" type="checkbox"/>	CONTRACTOR
<input type="checkbox"/>	
<input type="checkbox"/>	


**CONTRACTOR'S APPLICATION FOR PAYMENT**

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703, is attached.

1. ORIGINAL CONTRACT SUM	\$	12,135,069.00
2. Net change by Change Orders	\$	185,192.00
3. CONTRACT SUM TO DATE (Line 1 ± 2)	\$	12,320,261.00
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$	3,420,888.03
5. RETAINAGE:		
a. 10 % of Completed Work (Column D + E on G703)	\$	326,399.66
b. % of Stored Material (Column F on G703)	\$	0.00
Total Retainage (Lines 5a + 5b or Total in Column I of G703)	\$	326,399.66
6. TOTAL EARNED LESS RETAINAGE (Line 4 Less Line 5 Total)	\$	3,094,488.37
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)	\$	2,350,695.59
8. CURRENT PAYMENT DUE	\$	743,792.78
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6)	\$	9,225,772.63

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	\$185,192.00	
Total approved this Month		
<b>TOTALS</b>	\$185,192.00	\$0.00
<b>NET CHANGES by Change Order</b>	\$185,192.00	

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

CONTRACTOR:   
 By: \_\_\_\_\_ Date: 6-27-18  
 State of: \_\_\_\_\_ County of: \_\_\_\_\_  
 Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_  
 Notary Public: *See attached jurat JMR*  
 My Commission expires: \_\_\_\_\_

**ARCHITECT'S CERTIFICATE FOR PAYMENT**

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

AMOUNT CERTIFIED ..... \$ 743,792.78

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

ARCHITECT:   
 By: \_\_\_\_\_ Date: 06/29/2018

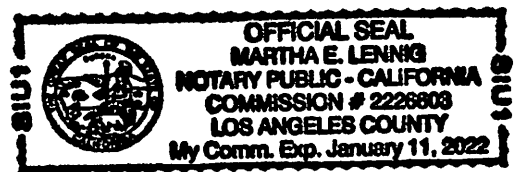
This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of **Los Angeles**

Subscribed and sworn to (or affirmed) before me on this 27th day of June 2018, by Pierre Harispuru proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Signature Martha E. Lennig  
Notary Public



(Seal)



Cost Coding	Description	Budget (A)	Contract Amount (B)	Previously Approved Contract Changes (C)	Current Contract Changes (D)	Adjusted Contract Totals (E)	Retention % (F)	Previous Request			Current Request			Total Gross Completed To date (G)+(J) (M)	Total Amount Paid To Date (I)+(L) (N)	Total % Paid To Date (N)/(E) (O)	Total % Complete To Date (M)/(E) (P)	Total Retention To Date (H)+(K) (Q)	Balance Remaining (E)-(M) (R)
								Prior Gross Amount Requested (G)	Less Prior Held Retention (H)	Net Amt Paid (I)	Gross Amount Requested (J)	Less Retention (K)	Net Amount Requested (L)						
<b>DEMOLITION</b>																			
22-02-221	Demolition	50,000.00	50,000.00	0.00		50,000.00	10.00%	50,000.00	5,000.00	45,000.00	0.00	0.00	0.00	50,000.00	45,000.00	90.00%	100.00%	5,000.00	0.00
<b>DEMOLITION TOTAL</b>		<b>50,000.00</b>	<b>50,000.00</b>	<b>0.00</b>	<b>0.00</b>	<b>50,000.00</b>		<b>50,000.00</b>	<b>5,000.00</b>	<b>45,000.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>50,000.00</b>	<b>45,000.00</b>	<b>90.00%</b>	<b>100.00%</b>	<b>5,000.00</b>	<b>0.00</b>
<b>ON-SITES</b>																			
24-01-571	Dust Control	40,000.00	40,000.00	0.00		40,000.00	10.00%	40,000.00	4,000.00	36,000.00	0.00	0.00	0.00	40,000.00	36,000.00	90.00%	100.00%	4,000.00	0.00
24-02-056	Import/Export Soils	50,000.00	50,000.00	0.00		50,000.00	10.00%	50,000.00	5,000.00	45,000.00	0.00	0.00	0.00	50,000.00	45,000.00	90.00%	100.00%	5,000.00	0.00
24-02-231	Clearing/Grubbing	45,000.00	45,000.00	0.00		45,000.00	10.00%	45,000.00	4,500.00	40,500.00	0.00	0.00	0.00	45,000.00	40,500.00	90.00%	100.00%	4,500.00	0.00
24-02-311	Rough Grading (on-site)	50,000.00	50,000.00	0.00		50,000.00	10.00%	33,750.00	3,375.00	30,375.00	0.00	0.00	0.00	33,750.00	30,375.00	60.75%	67.50%	3,375.00	16,250.00
24-02-312	Finish Grading (on-site)	5,000.00	5,000.00	0.00		5,000.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00%	0.00%	0.00	5,000.00
24-02-341	Lime Soil Stabilization	45,000.00	45,000.00	0.00		45,000.00	10.00%	45,000.00	4,500.00	40,500.00	0.00	0.00	0.00	45,000.00	40,500.00	90.00%	100.00%	4,500.00	0.00
24-02-361	Termite Soil Treatment	5,000.00	5,000.00	0.00		5,000.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00%	0.00%	0.00	5,000.00
24-02-371	Erosion Control	40,000.00	40,000.00	0.00		40,000.00	10.00%	40,000.00	4,000.00	36,000.00	0.00	0.00	0.00	40,000.00	36,000.00	90.00%	100.00%	4,000.00	0.00
24-02-511	Water Distribution (on-site)	80,000.00	80,000.00	0.00		80,000.00	10.00%	80,000.00	8,000.00	72,000.00	0.00	0.00	0.00	80,000.00	72,000.00	90.00%	100.00%	8,000.00	0.00
24-02-531	Sewer Distribution (on-site)	50,000.00	50,000.00	0.00		50,000.00	10.00%	50,000.00	5,000.00	45,000.00	0.00	0.00	0.00	50,000.00	45,000.00	90.00%	100.00%	5,000.00	0.00
24-02-551	Electrical Distribution (on-site)(Primary)	90,807.00	90,807.00	0.00		90,807.00	10.00%	90,807.00	9,080.70	81,726.30	0.00	0.00	0.00	90,807.00	81,726.30	90.00%	100.00%	9,080.70	0.00
24-02-551	Electrical Distribution (on-site) (Secondary)	40,000.00	40,000.00	0.00		40,000.00	10.00%	26,262.80	2,626.28	23,636.52	0.00	0.00	0.00	26,262.80	23,636.52	59.09%	65.66%	2,626.28	13,737.20
24-02-582	Telephone Distribution (on-site)(Primary)	5,000.00	5,000.00	0.00		5,000.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00%	0.00%	0.00	5,000.00
24-02-621	Site Area Drains	20,000.00	20,000.00	0.00		20,000.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00%	0.00%	0.00	20,000.00
24-02-631	Storm Drainage (on-site)	60,000.00	60,000.00	0.00		60,000.00	10.00%	60,000.00	6,000.00	54,000.00	0.00	0.00	0.00	60,000.00	54,000.00	90.00%	100.00%	6,000.00	0.00
24-02-741	Asphalt Pavement (on-site)	120,000.00	120,000.00	0.00		120,000.00	10.00%	84,000.00	8,400.00	75,600.00	0.00	0.00	0.00	84,000.00	75,600.00	63.00%	70.00%	8,400.00	36,000.00
24-02-751	Concrete Pavement (on-site)	90,000.00	90,000.00	0.00		90,000.00	10.00%	63,000.00	6,300.00	56,700.00	0.00	0.00	0.00	63,000.00	56,700.00	63.00%	70.00%	6,300.00	27,000.00
24-02-761	Pavement Stripping/Tactile (On-site)	20,000.00	20,000.00	0.00		20,000.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00%	0.00%	0.00	20,000.00
24-02-771	Concrete Curbs & Gutters (On-site)	60,000.00	60,000.00	0.00		60,000.00	10.00%	42,000.00	4,200.00	37,800.00	0.00	0.00	0.00	42,000.00	37,800.00	63.00%	70.00%	4,200.00	18,000.00
24-02-821	Perimeter Fences & Gates (Tubular Steel)	5,000.00	5,000.00	0.00		5,000.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00%	0.00%	0.00	5,000.00
24-02-841	Parking Bumpers	6,000.00	6,000.00	0.00		6,000.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00%	0.00%	0.00	6,000.00
24-04-221	Concrete Masonry Units (On-site)	60,000.00	60,000.00	0.00		60,000.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00%	0.00%	0.00	60,000.00
<b>ONSITE TOTAL</b>		<b>986,807.00</b>	<b>986,807.00</b>	<b>0.00</b>	<b>0.00</b>	<b>986,807.00</b>		<b>749,819.80</b>	<b>74,981.98</b>	<b>674,837.82</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>749,819.80</b>	<b>674,837.82</b>	<b>68.39%</b>	<b>75.98%</b>	<b>74,981.98</b>	<b>236,987.20</b>
<b>OFF-SITES</b>																			
26-02-311	Rough Grading (Off-site)	10,000.00	10,000.00	0.00		10,000.00	10.00%	10,000.00	1,000.00	9,000.00	0.00	0.00	0.00	10,000.00	9,000.00	90.00%	100.00%	1,000.00	0.00
26-02-312	Finish Grading (Off-site)	10,000.00	10,000.00	0.00		10,000.00	10.00%	10,000.00	1,000.00	9,000.00	0.00	0.00	0.00	10,000.00	9,000.00	90.00%	100.00%	1,000.00	0.00
26-02-313	Fine Grading (Off-site)	10,000.00	10,000.00	0.00		10,000.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00%	0.00%	0.00	10,000.00
26-02-511	Water Distribution (Off-site)	30,000.00	30,000.00	0.00		30,000.00	10.00%	30,000.00	3,000.00	27,000.00	0.00	0.00	0.00	30,000.00	27,000.00	90.00%	100.00%	3,000.00	0.00
26-02-531	Sewer Distribution (Off-site)	20,000.00	20,000.00	0.00		20,000.00	10.00%	20,000.00	2,000.00	18,000.00	0.00	0.00	0.00	20,000.00	18,000.00	90.00%	100.00%	2,000.00	0.00
26-02-541	Gas Distribution (Off-site)	10,000.00	10,000.00	0.00		10,000.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00%	0.00%	0.00	10,000.00
26-02-551	Electrical Distribution (Off-site)	20,000.00	20,000.00	0.00		20,000.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00%	0.00%	0.00	20,000.00
26-02-631	Storm Drainage (Off-site)	15,000.00	15,000.00	0.00		15,000.00	10.00%	15,000.00	1,500.00	13,500.00	0.00	0.00	0.00	15,000.00	13,500.00	90.00%	100.00%	1,500.00	0.00
26-02-741	Asphalt Pavement (Off-site)	25,000.00	25,000.00	0.00		25,000.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00%	0.00%	0.00	25,000.00
26-02-761	Pavement Stripping/Tactile (Off-site)	10,000.00	10,000.00	0.00		10,000.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00%	0.00%	0.00	10,000.00
26-02-771	Concrete Curbs & Gutters (Off-site)	15,000.00	15,000.00	0.00		15,000.00	10.00%	7,500.00	750.00	6,750.00	0.00	0.00	0.00	7,500.00	6,750.00	45.00%	50.00%	750.00	7,500.00
26-02-776	Concrete Sidewalks (Off-site)	10,000.00	10,000.00	0.00		10,000.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00%	0.00%	0.00	10,000.00
26-02-891	Traffic Signs & Signals	20,000.00	20,000.00	0.00		20,000.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00%	0.00%	0.00	20,000.00
<b>OFFSITE TOTAL</b>		<b>205,000.00</b>	<b>205,000.00</b>	<b>0.00</b>	<b>0.00</b>	<b>205,000.00</b>		<b>92,500.00</b>	<b>9,250.00</b>	<b>83,250.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>92,500.00</b>	<b>83,250.00</b>	<b>40.61%</b>	<b>45.12%</b>	<b>9,250.00</b>	<b>112,500.00</b>
<b>BASE CONSTRUCTION</b>																			
28-01-741	Final Cleaning	40,000.00	40,000.00	0.00		40,000.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00%	0.00%	0.00	40,000.00
28-03-201	Concrete Reinforcement	10,000.00	10,000.00	0.00		10,000.00	10.00%	10,000.00	1,000.00	9,000.00	0.00	0.00	0.00	10,000.00	9,000.00	90.00%	100.00%	1,000.00	0.00
28-03-311	Structural Concrete	400,000.00	400,000.00	0.00		400,000.00	10.00%	400,000.00	40,000.00	360,000.00	0.00	0.00	0.00	400,000.00	360,000.00	90.00%	100.00%	40,000.00	0.00
28-03-481	Precast Concrete Stair Tread	20,000.00	20,000.00	0.00		20,000.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00%	0.00%	0.00	20,000.00
28-03-541	Lightweight Concrete Underlay	130,000.00	130,000.00	0.00		130,000.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00%	0.00%	0.00	130,000.00
28-04-731	Simulated Stone Veneer	250,000.00	250,000.00	0.00		250,000.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00%	0.00%	0.00	250,000.00
28-05-121	Structural Steel	30,000.00	30,000.00	0.00		30,000.00	10.00%	29,893.00	2,989.30	26,903.70	0.00	0.00	0.00	29,893.00	26,903.70	89.68%	99.64%	2,989.30	107.00
28-05-511	Metal Stairs	140,000.00	140,000.00	0.00		140,000.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00%	0.00%	0.00	140,000.00
28-05-521	M																		



Borrower **BORGELD HOUSING, L.P.**

Community **El Sereno in Cibolo, TX**

Request # **10**

Period to **05/25/18**

Cost Coding	Description	Budget (A)	Contract Amount (B)	Previously Approved Contract Changes (C)	Current Contract Changes (D)	Adjusted Contract Totals (E)	Retention % (F)	Previous Request			Current Request			Total Gross Completed To date (G)+(J) (M)	Total Amount Paid To Date (I)+(L) (N)	Total % Paid To Date (N)/(E) (O)	Total % Complete To Date (M)/(E) (P)	Total Retention To Date (H)+(K) (Q)	Balance Remaining (E)-(M) (R)
								Prior Gross Amount Requested (G)	Less Prior Held Retention (H)	Net Amont Paid (I)	Gross Amount Requested (J)	Less Retention (K)	Net Amount Requested (L)						
30-16-521	Exterior Site Lighting-Fixtures	15,000.00	15,000.00	0.00		15,000.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00%	0.00%	0.00	15,000.00
<b>EXT. COMMON AREA TOTAL</b>		<b>225,000.00</b>	<b>225,000.00</b>	<b>0.00</b>	<b>0.00</b>	<b>225,000.00</b>		<b>15,000.00</b>	<b>1,500.00</b>	<b>13,500.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>15,000.00</b>	<b>13,500.00</b>	<b>6.00%</b>	<b>6.67%</b>	<b>1,500.00</b>	<b>210,000.00</b>
<b>GENERAL CONDITIONS</b>																			
	Insurance	10,000.00	10,000.00	141,566.00	0.00	151,566.00	0.00%	132,951.20	0.00	132,951.20	0.00	0.00	0.00	132,951.20	132,951.20	87.72%	87.72%	0.00	18,614.80
	City License	6,000.00	6,000.00	0.00		6,000.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00%	0.00%	0.00	6,000.00
32-01-100	General Requirements	0.00	0.00	0.00		0.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	#DIV/0!	#DIV/0!	0.00	0.00
32-01-312	Project Manager	120,000.00	120,000.00	43,626.00		163,626.00	10.00%	72,000.00	7,200.00	64,800.00	12,000.00	1,200.00	10,800.00	84,000.00	75,600.00	46.20%	51.34%	8,400.00	79,626.00
32-01-313	Project Superintendent	80,000.00	80,000.00	0.00		80,000.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00%	0.00%	0.00	80,000.00
32-01-314	Assistant Project Superintendent	50,000.00	50,000.00	0.00		50,000.00	10.00%	24,996.00	2,499.60	22,496.40	4,166.00	416.60	3,749.40	29,162.00	26,245.80	52.49%	58.32%	2,916.20	20,838.00
44-99-152	Survey	0.00	0.00	0.00		0.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	#DIV/0!	#DIV/0!	0.00	0.00
32-01-317	General Labor	40,000.00	40,000.00	0.00		40,000.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00%	0.00%	0.00	40,000.00
32-01-451	Testing, Inspections, Laboratory (By Owner)	10,000.00	10,000.00	0.00		10,000.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00%	0.00%	0.00	10,000.00
32-01-512	Temporary Fire Protection (monitoring)	5,000.00	5,000.00	0.00		5,000.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00%	0.00%	0.00	5,000.00
32-01-514	Temporary Electric (Distributed)	10,000.00	10,000.00	0.00		10,000.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00%	0.00%	0.00	10,000.00
32-01-514	Temporary Electric (Usage)	20,000.00	20,000.00	0.00		20,000.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00%	0.00%	0.00	20,000.00
32-01-518	Temporary Water	10,000.00	10,000.00	0.00		10,000.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00%	0.00%	0.00	10,000.00
32-01-521	Contractor Tools/Supplies	20,000.00	20,000.00	0.00		20,000.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00%	0.00%	0.00	20,000.00
32-01-522	First Aid Kit	500.00	500.00	0.00		500.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00%	0.00%	0.00	500.00
32-01-524	Field Office	10,000.00	10,000.00	0.00		10,000.00	10.00%	4,998.01	499.80	4,498.21	833.00	83.30	749.70	5,831.01	5,247.91	52.48%	58.31%	583.10	4,168.99
32-01-524	Leasing Office Trailer	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	#DIV/0!	#DIV/0!	0.00	0.00
32-01-525	Job Office Supplies	8,000.00	8,000.00	0.00		8,000.00	0.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00%	0.00%	0.00	8,000.00
32-01-526	Trash Bins	40,000.00	40,000.00	0.00		40,000.00	0.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00%	0.00%	0.00	40,000.00
32-01-319	Preavailing Wage Monitor	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	#DIV/0!	#DIV/0!	0.00	0.00
32-01-528	Temporary Toilet	10,000.00	10,000.00	0.00		10,000.00	0.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00%	0.00%	0.00	10,000.00
32-01-561	Security	30,000.00	30,000.00	0.00		30,000.00	0.00%	12,815.12	0.00	12,815.12	11,125.06	0.00	11,125.06	23,940.18	23,940.18	79.80%	79.80%	(0.00)	6,059.82
32-01-562	Storage Bin	15,000.00	15,000.00	0.00		15,000.00	0.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00%	0.00%	0.00	15,000.00
32-01-564	Temporary Fencing	10,000.00	10,000.00	0.00		10,000.00	0.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00%	0.00%	0.00	10,000.00
32-01-742	Site Maintenance	25,000.00	25,000.00	0.00		25,000.00	0.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00%	0.00%	0.00	25,000.00
32-01-600	Liability Insurance		0.00	0.00		0.00	0.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	#DIV/0!	#DIV/0!	0.00	0.00
<b>GEN. CONDITIONS TOTAL</b>		<b>529,500.00</b>	<b>529,500.00</b>	<b>185,192.00</b>	<b>0.00</b>	<b>714,692.00</b>		<b>247,760.33</b>	<b>10,199.40</b>	<b>237,560.93</b>	<b>28,124.06</b>	<b>1,699.90</b>	<b>26,424.16</b>	<b>275,884.39</b>	<b>263,985.09</b>	<b>36.94%</b>	<b>38.60%</b>	<b>11,899.30</b>	<b>438,807.61</b>
56-99-280	<b>CONTRACTOR'S FEE</b>	<b>830,868.00</b>	<b>830,868.00</b>	<b>0.00</b>		<b>830,868.00</b>	<b>10.00%</b>	<b>166,173.60</b>	<b>16,617.36</b>	<b>149,556.24</b>	<b>63,827.24</b>	<b>6,382.72</b>	<b>57,444.52</b>	<b>230,000.84</b>	<b>207,000.76</b>	<b>24.91%</b>	<b>27.68%</b>	<b>23,000.08</b>	<b>600,867.16</b>
<b>TOTAL OVERHEAD</b>		<b>0.00</b>	<b>0.00</b>	<b>0.00</b>		<b>0.00</b>	<b>10.00%</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>#DIV/0!</b>	<b>#DIV/0!</b>	<b>0.00</b>	<b>0.00</b>
<b>Total</b>		<b>12,135,069.00</b>	<b>12,135,069.00</b>	<b>185,192.00</b>	<b>0.00</b>	<b>12,320,261.00</b>		<b>2,595,687.73</b>	<b>244,992.14</b>	<b>2,350,695.59</b>	<b>825,200.30</b>	<b>81,407.52</b>	<b>743,792.78</b>	<b>3,420,888.03</b>	<b>3,094,488.37</b>	<b>25.12%</b>	<b>27.77%</b>	<b>326,399.66</b>	<b>8,899,372.97</b>

=====

**CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT**

Project: El Sereno (Cibolo TX)

Job No. \_\_\_\_\_

On receipt by the signer of this document of a check from Borgfeld Housing, LP (maker of check) in the sum of \$ 743,792.78 payable to HCHP Contractors, L.P. (payee or payees of check) and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the property of Borgfeld Housing, L.P. (owner) located at Cibolo, TX (location) to the following extent: El Sereno (job description).

This release covers a progress payment for all labor, services, equipment, or materials furnished to the property or to April 25, 2018 (person with whom signer contracted) as indicated in the attached statement(s) or progress payment request(s), except for unpaid retention, pending modifications and changes, or other items furnished.

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

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

Date: 6-27-18

HCHP Contractors, L.P. (Company name)

By  (Signature)

Pierre Harispuru, Vice President (Title)

=====

**NOTE:** Section 53.281(b)(2), Texas Property Code, requires that the above form be notarized. See Chapter 121, Texas Civil Practice & Remedies Code, regarding Acknowledgments & Proofs of Written Instruments, or consult an attorney. For short acknowledgement forms that might be suitable, see Section 121.008 in Chapter 121. Click [here](#) to go there.

## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of Los Angeles

On June 27, 2018 before me Martha E. Lennig, Notary Public personally appeared Pierre Harispuru who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature   
Notary Public, State of California

Print Name: Martha E. Lennig  
My commission expires: January 11, 2022



(Seal)

=====

**NOTICE:**

This document waives rights unconditionally and states that you have been paid for giving up those rights. It is prohibited for a person to require you to sign this document if you have not been paid the payment amount set forth below. If you have not been paid, use a conditional release form.

**UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT**

Project El Sereno (Cibolo TX)

Job No. \_\_\_\_\_

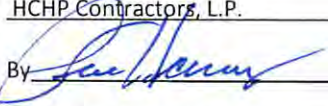
The signer of this document has been paid and has received a progress payment in the sum of \$ 950,555.46 for all labor, services, equipment, or materials furnished to the property or to \_\_\_\_\_ (person with whom signer contracted) on the property of Borgfeld Housing, L.P. (owner) located at Cibolo, TX (location) to the following extent: El Sereno (job description). The signer therefore waives and releases any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the above referenced project to the following extent:

This release covers a progress payment for all labor, services, equipment, or materials furnished to the property or to April 25, 2018 (person with whom signer contracted) as indicated in the attached statement(s) or progress payment request(s), except for unpaid retention, pending modifications and changes, or other items furnished.

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

Date 6.27.18

HCHP Contractors, L.P. (Company name)

By  (Signature)

Pierre Harispuru, Vice President (Title)

=====

**NOTE:** Section 53.281(b)(2), Texas Property Code, requires that the above form be notarized. See Chapter 121, Texas Civil Practice & Remedies Code, regarding Acknowledgments & Proofs of Written Instruments, or consult an attorney. For short acknowledgement forms that might be suitable, see Section 121.008 in Chapter 121. Click [here](#) to go there.

## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of Los Angeles

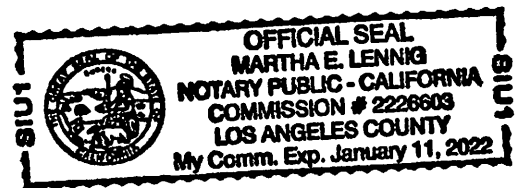
On June 27, 2018 before me Martha E. Lennig, Notary Public personally appeared Pierre Harispuru who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature *Martha E. Lennig*  
Notary Public, State of California

Print Name: Martha E. Lennig  
My commission expires: January 11, 2022



(Seal)

# BUDGET MODIFICATION #2

5. The following are attached hereto and form a part hereof:

Contractor's APPLICATION AND CERTIFICATE FOR PAYMENT (AIA Document G702), Conditional and Unconditional Lien Waivers and accounts payable listing is preferred for soft costs.

Date: 03/01/2019

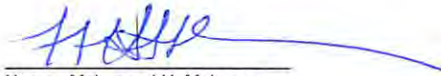
BORROWER:

**BORGFELD HOUSING, L.P.,**

a Texas limited partnership

By: Highridge Costa Housing, LLC,  
a Delaware limited liability company

Its: Managing General Partner



Name: Mohannad H. Mohanna  
Title: President



Limit input to YELLOW CELLS

**BUDGET DRAW TEMPLATE**

Clear ALL Prior Entries for New Draw

BORROWER: **BORGFELD HOUSING LP**

REPORT DATE: **2/27/2019**

PROJECT DESCRIPTION: **EL SERENO APTS - 136 UNITS**

HIDE Blank Line Item Rows (normal status)

UNHIDE Blank Line Item Rows (to add new line item)

**Uses**

Description	Original Budget	Total Prior Adjustments	Current Changes	Revised Budget	Total Previous Drawn	Amount This Draw	Total Drawn Including This Draw	Undisbursed After This Draw	% Funded	Deferred (Unavailable)
<b>LAND</b>										
Land Value	2,248,602.00	0.00		2,248,602.00	2,248,602.00		2,248,602.00	0.00	100%	
Other Acquisition Costs		3,000.00		3,000.00	0.00		0.00	3,000.00	0%	
<b>TOTAL LAND</b>	<b>2,248,602.00</b>	<b>3,000.00</b>	<b>0.00</b>	<b>2,251,602.00</b>	<b>2,248,602.00</b>	<b>0.00</b>	<b>2,248,602.00</b>	<b>3,000.00</b>	<b>100%</b>	
<b>HARD COSTS</b>										
Demolition	50,000.00	27,000.00		77,000.00	69,300.00		69,300.00	7,700.00	90%	
Site Work	986,807.00	309,262.80		1,296,069.80	861,587.82		861,587.82	434,481.98	66%	
Off Site Improvements	205,000.00	75,000.00		280,000.00	83,250.00		83,250.00	196,750.00	30%	
Construction - Residential	9,532,894.00	1,229,849.92		10,762,743.92	8,282,920.97	1,292,396.31	9,575,317.28	1,187,426.64	89%	
General Requirements	602,338.00	136,937.00		739,275.00	591,075.09	129,195.50	720,270.59	19,004.41	97%	
Contractor Overhead and Profit	830,868.00	(425,518.00)		405,350.00	207,000.77	141,642.50	348,643.27	56,706.73	86%	
Sub Total Contracts	12,207,907.00	1,352,531.72	0.00	13,560,438.72	10,095,134.65	1,563,234.31	11,658,368.96	1,902,069.76	86%	
Construction Contingency	610,395.00	(610,394.72)		0.28	0.00		0.00	0.28	0%	
Personal Property - Development Budget	150,000.00	218.46		150,218.46	150,218.46		150,218.46	0.00	100%	
<b>TOTAL HARD COSTS</b>	<b>12,968,302.00</b>	<b>742,355.46</b>	<b>0.00</b>	<b>13,710,657.46</b>	<b>10,245,353.11</b>	<b>1,563,234.31</b>	<b>11,808,587.42</b>	<b>1,902,070.04</b>	<b>86%</b>	
<b>SOFT COSTS</b>										
Const Loan Inspection	16,500.00	4,919.50		21,419.50	19,569.50	1,850.00	21,419.50	0.00	100%	
Const Loan Origination Fee	179,473.00	0.00		179,473.00	179,472.98		179,472.98	0.02	100%	
Const Title & Recording	105,216.00	0.00		105,216.00	103,775.47	200.00	103,975.47	1,240.53	99%	
Perm Loan Origination Fee	49,500.00	0.00		49,500.00	49,500.00		49,500.00	0.00	100%	
Perm Conversion Fee - Deferred	10,000.00	0.00		10,000.00	0.00		0.00	10,000.00	0%	YES
Perm Title & Recording - Deferred	10,000.00	0.00		10,000.00	0.00		0.00	10,000.00	0%	YES
B of A Lender Legal	40,000.00	25,000.00		65,000.00	40,000.00		40,000.00	25,000.00	62%	
T.Credit Application & Monitoring Fees	67,740.00	10,000.00		77,740.00	67,740.00		67,740.00	10,000.00	87%	
Marketing	125,000.00	(400.00)	10,429.20	135,029.20	118,529.20	16,500.00	135,029.20	0.00	100%	
Accounting	22,500.00	0.00		22,500.00	5,500.00	750.00	6,250.00	16,250.00	28%	
Operating Reserve - Deferred	433,175.00	0.00		433,175.00	0.00		0.00	433,175.00	0%	YES
Developer Fees	290,001.00	0.00		290,001.00	290,000.00		290,000.00	1.00	100%	
Developer Fees - Deferred	2,030,003.00	0.00		2,030,003.00	0.00		0.00	2,030,003.00	0%	YES
Insurance	45,163.00	37,922.00		83,085.00	44,983.00	9,303.81	54,286.81	28,798.19	65%	
Taxes	93,497.00	(719.00)		92,778.00	33,224.34		33,224.34	59,553.66	36%	
Legal	80,772.00	77,467.42		158,239.42	120,739.42	8,764.50	129,503.92	28,735.50	82%	
Architect	420,000.00	8,062.64	5,475.97	433,538.61	428,061.64	5,476.97	433,538.61	0.00	100%	
Survey & Engineering	143,600.00	64,067.13		207,667.13	207,667.13		207,667.13	0.00	100%	
Appraisal & Mkt Study	23,630.00	6,945.00		30,575.00	24,075.00		24,075.00	6,500.00	79%	
Soils Investigation	5,700.00	0.00		5,700.00	5,700.00		5,700.00	0.00	100%	
Impact Fees	990,435.00	(66,002.55)		924,432.45	924,432.45		924,432.45	0.00	100%	
Environmental Surveys	6,570.00	0.00		6,570.00	6,570.00		6,570.00	0.00	100%	
Soft Cost Contingency	86,003.00	(49,426.60)	(15,905.17)	20,671.23	1,000.00		1,000.00	19,671.23	5%	
Misc. Soft Costs		0.00		0.00	0.00		0.00	0.00	0%	
Construction Loan Ext Fee - Deferred		89,736.00		89,736.00	0.00		0.00	89,736.00	0%	YES
B of A Lender Legal - Deferred		25,000.00		25,000.00	0.00		0.00	25,000.00	0%	YES
Legal - Deferred		37,500.00		37,500.00	0.00		0.00	37,500.00	0%	YES
Sub Total Misc	5,274,478.00	270,071.54	0.00	5,544,549.54	2,670,540.13	42,845.28	2,713,385.41	2,831,164.13	49%	
Interest Reserve	835,532.00	0.00		835,532.00	439,842.52		439,842.52	395,689.48	53%	
Sub Total Int Res	835,532.00	0.00	0.00	835,532.00	439,842.52	0.00	439,842.52	395,689.48	53%	
Sub Total Op Def	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0%	
<b>TOTAL SOFT COSTS</b>	<b>6,110,010.00</b>	<b>270,071.54</b>	<b>0.00</b>	<b>6,380,081.54</b>	<b>3,110,382.65</b>	<b>42,845.28</b>	<b>3,153,227.93</b>	<b>3,226,853.61</b>	<b>49%</b>	
<b>TOTAL PROJECT USES</b>	<b>21,326,914.00</b>	<b>1,015,427.00</b>	<b>0.00</b>	<b>22,342,341.00</b>	<b>15,604,337.76</b>	<b>1,606,079.59</b>	<b>17,210,417.35</b>	<b>5,131,923.65</b>	<b>77%</b>	<b>2,635,414.00</b>

**Sources**

Description	Original Budget	Total Prior Adjustments	Current Changes	Revised Budget	Total Previous Drawn	Amount This Draw	Total Drawn Including This Draw	Undisbursed After This Draw	% Funded	Deferred/Unavail?
Loan Funds	17,947,298.00	0.00		17,947,298.00	14,040,762.76	1,410,025.59	15,450,788.35	2,496,509.65	86%	
<b>SUB-TOTAL LOAN PROCEEDS</b>	<b>17,947,298.00</b>	<b>0.00</b>	<b>0.00</b>	<b>17,947,298.00</b>	<b>14,040,762.76</b>	<b>1,410,025.59</b>	<b>15,450,788.35</b>	<b>2,496,509.65</b>	<b>86%</b>	
ILP at Closing	896,438.00	0.00		896,438.00	896,438.00		896,438.00	0.00	100%	
Completion/Conversion - Deferred	2,483,178.00	152,236.00		2,635,414.00	0.00		0.00	2,635,414.00	0%	YES
Out of Balance - Borrowers Funds		863,191.00		863,191.00	667,137.00	196,054.00	863,191.00	0.00	100%	
<b>SUB-TOTAL EQUITY/OTHER</b>	<b>3,379,616.00</b>	<b>1,015,427.00</b>	<b>0.00</b>	<b>4,395,043.00</b>	<b>1,563,575.00</b>	<b>196,054.00</b>	<b>1,759,629.00</b>	<b>2,635,414.00</b>	<b>40%</b>	
<b>TOTAL PROJECT SOURCES</b>	<b>21,326,914.00</b>	<b>1,015,427.00</b>	<b>0.00</b>	<b>22,342,341.00</b>	<b>15,604,337.76</b>	<b>1,606,079.59</b>	<b>17,210,417.35</b>	<b>5,131,923.65</b>	<b>77%</b>	<b>2,635,414.00</b>

Project Name: El Sereno Apartments (Cibolo TX)  
 Construction Loan - Draw 18 Invoice Summary

<u>Line Item</u>	<u>Vendor</u>	<u>Invoice Date</u>	<u>Invoice #</u>	<u>Description</u>	<u>Check #</u>	<u>Check Date</u>	<u>Invoice Amount</u>	<u>Total</u>
Hard Cost:								
HC: Construction Contract	HCHP Contractors, LP	12/25/19	Pay Application No. 17	Pay Application No. 17 - Period thru 12/25/2018	TBA	To Be Paid	<u>1,563,234.31</u>	1,563,234.31
Soft Cost:								
Construction Title & Recording	Chicago Title Insurance Company	01/25/19		Downdate Endorsements	TBA	To Be Paid	<u>200.00</u>	200.00
Construction Loan Inspection	CA Partners, Inc. CA Partners, Inc.	01/14/19	Inv. 17170-18	Progress and Funding Disbursement Report	TBA	To Be Paid	925.00	1,850.00
		02/08/19	Inv. 17170-19	Progress and Funding Disbursement Report	TBA	To Be Paid	<u>925.00</u>	
Architect	Humphrey & Partners Architects, LP Humphrey & Partners Architects, LP	01/14/19	Inv. 68793	Architect Svcs	TBA	To Be Paid	4,790.14	5,476.97
		02/06/19	Inv. 68967	Architect Svcs	TBA	To Be Paid	<u>686.83</u>	
Accounting	Novogradac & Company, LLP	01/30/19	Inv. 10435716	Accounting Services	TBA	To Be Paid	<u>750.00</u>	750.00
Marketing	UAH Property Management, LP	02/22/19	No. 3	UAH Lease Up Activies	TBA	To Be Paid	<u>16,500.00</u>	16,500.00
Insurance	Edgewood Insurance Partners Center Edgewood Insurance Partners Center	11/29/18	Inv. 280690	Insurance	Ck 11115	12/12/2018	3,891.00	9,303.81
		01/09/19		Insurance	TBA	To Be Paid	<u>5,412.81</u>	
Legal	Locke Lord, LLP Chernove & Associates, Inc. Locke Lord, LLP	12/11/18	Inv. 1464145	Legal Services	TBA	To Be Paid	5,760.00	8,764.50
		12/31/18	Inv. 1218-2457	Legal Services	Ck 11129	2/13/2019	522.50	
		01/29/19	Inv. 1473285	Legal Services	TBA	To Be Paid	<u>2,482.00</u>	
TOTAL							<u>\$ 1,606,079.59</u>	
Less Interest Reserve							\$	-
Sources:								
LIP at Closing							\$	-
Loan Proceeds							\$	1,410,025.59
Borrower's Fund							\$	196,054.00
TOTAL Requested							<u>\$</u>	<u>1,606,079.59</u>

# HARD COSTS

**APPLICATION AND CERTIFICATION FOR PAYMENT**

AIA DOCUMENT G702

PAGE ONE OF

PAGES

TO OWNER: PROJECT: APPLICATION NO 17  
 BORGFELD HOUSING, L.P. DATE: 12/25/18  
 330 WEST VICTORIA STREET, GARDENA CA 90248  
 FROM CONTRACTOR: VIA ARCHITECT:  
 HCHP CONTRACTORS, L.P. HUMPREYS & PARTNERS  
 330 WEST VICTORIA STREET 5339 ALPHA ROAD, SUITE 300  
 GARDENA CA 90248 DALLAS TX 75240  
 CONTRACT FOR: THE HEIGHTS, EDINBURG, TX (GENERAL CONSTRUCTION) CONTRACT DATE 4/10/2017

PERIOD TO: 12/25/18  
 PROJECT NO: 2506  
 CONTRACT DATE 4/10/2017

Distribution to:  
 OWNER  
 ARCHITECT  
 CONTRACTOR

**CONTRACTOR'S APPLICATION FOR PAYMENT**

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703, is attached.

1. ORIGINAL CONTRACT SUM	\$	12,135,069.00
2. Net change by Change Orders	\$	1,350,369.72
3. CONTRACT SUM TO DATE (Line 1 + 2)	\$	13,485,438.72
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$	12,910,263.30
5. RETAINAGE:		
a. 10 % of Completed Work (Column D + E on G703)	\$	1,251,894.37
b. % of Stored Material (Column F on G703)	\$	0.00
Total Retainage (Lines 5a + 5b or Total in Column I of G703)	\$	1,251,894.37
6. TOTAL EARNED LESS RETAINAGE (Line 4 Less Line 5 Total)	\$	11,658,368.94
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)	\$	10,095,134.63
8. CURRENT PAYMENT DUE	\$	1,563,234.30
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6)	\$	1,827,069.79

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	\$1,350,369.72	
Total approved this Month	\$0.00	
TOTALS	\$1,350,369.72	\$0.00
NET CHANGES by Change Order	\$1,350,369.72	

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

CONTRACTOR  
 By: [Signature] Date: 3-1-19  
 State of \_\_\_\_\_ County of \_\_\_\_\_  
 Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_  
 Notary Public: See attached  
 My Commission expires \_\_\_\_\_

**ARCHITECT'S CERTIFICATE FOR PAYMENT**

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

AMOUNT CERTIFIED \$ 1,563,234.30

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

ARCHITECT  
 By: [Signature] - HPA Date: 03/05/19

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

## CALIFORNIA JURAT

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A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of Los Angeles ss.

Subscribed and sworn to (or affirmed) before me on this 1<sup>st</sup> day of, March 2019,  
by Pierre Harispuru, proved to me on the basis of satisfactory evidence to be  
the person(s) who appeared before me.



(seal)

*Lashon S. Gilbreath*

Signature of Notary

Cost Coding	Description	Budget (A)	Contract Amount (B)	Previously Approved Contract Changes (C)	Current Contract Changes (D)	Pay Appl No. 11 Line Item Transfers	Pay Appl No. 13 Line Item Transfers	Pay Appl No. 14 Line Item Transfers	Pay Appl No. 15 Line Item Transfers	Pay Appl No. 16 Line Item Transfers	Pay Appl No. 17 Line Item Transfers	Adjusted Contract Totals (E)	Retention % (F)	Prior Gross Amount Requested (G)	Previous Request		Gross Amount Requested (J)	Current Request		Total Gross Completed To date (M)	Total Amount Paid To Date (N)	Total % Paid To Date (O)	Total % Complete To Date (P)	Total Retention To Date (Q)	Balance Remaining (R)	
															Less Prior Held Retention (H)	Net Amort Paid (I)		Less Retention (K)	Net Amount Requested (L)							
<b>DEMOLITION</b>																										
22-02-221	Demolition	50,000.00	50,000.00	27,000.00	0.00							77,000.00	10.00%	77,000.00	7,700.00	69,300.00	0.00	0.00	0.00	77,000.00	69,300.00	90.00%	100.00%	7,700.00	0.00	
<b>DEMOLITION TOTAL</b>		<b>50,000.00</b>	<b>50,000.00</b>	<b>27,000.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>77,000.00</b>		<b>77,000.00</b>	<b>7,700.00</b>	<b>69,300.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>77,000.00</b>	<b>69,300.00</b>	<b>90.00%</b>	<b>100.00%</b>	<b>7,700.00</b>	<b>0.00</b>	
<b>ON-SITES</b>																										
24-01-571	Dust Control	40,000.00	40,000.00	0.00	0.00							40,000.00	10.00%	40,000.00	4,000.00	36,000.00	0.00	0.00	0.00	40,000.00	36,000.00	90.00%	100.00%	4,000.00	0.00	
24-02-056	Import/Export Soils	50,000.00	50,000.00	0.00	0.00							50,000.00	10.00%	50,000.00	5,000.00	45,000.00	0.00	0.00	0.00	50,000.00	45,000.00	90.00%	100.00%	5,000.00	0.00	
24-02-231	Clearing/Grubbing	45,000.00	45,000.00	0.00	0.00							45,000.00	10.00%	45,000.00	4,500.00	40,500.00	0.00	0.00	0.00	45,000.00	40,500.00	90.00%	100.00%	4,500.00	0.00	
24-02-311	Rough Grading (on-site)	50,000.00	50,000.00	0.00	0.00	(16,250.00)						33,750.00	10.00%	33,750.00	3,375.00	30,375.00	0.00	0.00	0.00	33,750.00	30,375.00	90.00%	100.00%	3,375.00	0.00	
24-02-312	Finish Grading (on-site)	5,000.00	5,000.00	97,807.00	0.00	26,250.00						129,057.00	10.00%	80,000.00	8,000.00	72,000.00	0.00	0.00	0.00	80,000.00	72,000.00	55.79%	61.99%	8,000.00	49,057.00	
24-02-313	Fine Grading	0.00	0.00	116,193.00	0.00	11,000.00						127,193.00	10.00%	70,000.00	7,000.00	63,000.00	0.00	0.00	0.00	70,000.00	63,000.00	49.53%	55.03%	7,000.00	57,193.00	
24-02-341	Lime Soil Stabilization	45,000.00	45,000.00	0.00	0.00							45,000.00	10.00%	45,000.00	4,500.00	40,500.00	0.00	0.00	0.00	45,000.00	40,500.00	90.00%	100.00%	4,500.00	0.00	
24-02-361	Termite Soil Treatment	5,000.00	5,000.00	0.00	0.00	(5,000.00)						0.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	#DIV/0!	#DIV/0!	0.00	0.00	
24-02-371	Erosion Control	40,000.00	40,000.00	0.00	0.00							40,000.00	10.00%	40,000.00	4,000.00	36,000.00	0.00	0.00	0.00	40,000.00	36,000.00	90.00%	100.00%	4,000.00	0.00	
24-02-511	Water Distribution (on-site)	80,000.00	80,000.00	0.00	0.00							80,000.00	10.00%	80,000.00	8,000.00	72,000.00	0.00	0.00	0.00	80,000.00	72,000.00	90.00%	100.00%	8,000.00	0.00	
24-02-531	Sewer Distribution (on-site)	50,000.00	50,000.00	0.00	0.00							50,000.00	10.00%	50,000.00	5,000.00	45,000.00	0.00	0.00	0.00	50,000.00	45,000.00	90.00%	100.00%	5,000.00	0.00	
24-02-551	Electrical Distribution (on-site)(Primary)	90,807.00	90,807.00	0.00	0.00							90,807.00	10.00%	90,807.00	9,080.70	81,726.30	0.00	0.00	0.00	90,807.00	81,726.30	90.00%	100.00%	9,080.70	0.00	
24-02-551	Electrical Distribution (on-site)(Secondary)	40,000.00	40,000.00	0.00	0.00	(13,737.20)						26,262.80	10.00%	26,262.80	2,626.28	23,636.52	0.00	0.00	0.00	26,262.80	23,636.52	90.00%	100.00%	2,626.28	0.00	
24-02-582	Telephone Distribution (on-site)(Primary)	5,000.00	5,000.00	0.00	0.00	(5,000.00)						0.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	#DIV/0!	#DIV/0!	0.00	0.00	
24-02-621	Site Area Drains	20,000.00	20,000.00	0.00	0.00							20,000.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00%	0.00%	0.00	20,000.00
24-02-631	Storm Drainage (on-site)	60,000.00	60,000.00	0.00	0.00							60,000.00	10.00%	60,000.00	6,000.00	54,000.00	0.00	0.00	0.00	60,000.00	54,000.00	90.00%	100.00%	6,000.00	0.00	
24-02-741	Asphalt Pavement (on-site)	120,000.00	120,000.00	0.00	0.00							120,000.00	10.00%	84,000.00	8,400.00	75,600.00	0.00	0.00	0.00	84,000.00	75,600.00	70.00%	70.00%	8,400.00	36,000.00	
24-02-751	Concrete Pavement (on-site)	90,000.00	90,000.00	89,000.00	0.00							179,000.00	10.00%	120,500.00	12,050.00	108,450.00	0.00	0.00	0.00	120,500.00	108,450.00	60.59%	67.32%	12,050.00	58,500.00	
24-02-761	Pavement Stripping/Tactile (On-site)	20,000.00	20,000.00	6,262.80	0.00	13,737.20						40,000.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00%	0.00%	0.00	40,000.00	
24-02-771	Concrete Curbs & Gutters (On-site)	60,000.00	60,000.00	0.00	0.00	60,000.00						120,000.00	10.00%	42,000.00	4,200.00	37,800.00	0.00	0.00	0.00	42,000.00	37,800.00	31.50%	35.00%	4,200.00	78,000.00	
24-02-781	Precast Concrete Pavers (On-site)	0.00	0.00	0.00	0.00							0.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	#DIV/0!	#DIV/0!	0.00	0.00	
24-02-821	Perimeter Fences & Gates (Tubular Steel)	5,000.00	5,000.00	0.00	0.00	(5,000.00)						0.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	#DIV/0!	#DIV/0!	0.00	0.00	
24-02-822	Perimeter Fences & Gates (Wood) (On-site)	0.00	0.00	0.00	0.00							0.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	#DIV/0!	#DIV/0!	0.00	0.00	
24-02-823	Perimeter Fence & Gate (Chain-link) (On-site)	0.00	0.00	0.00	0.00							0.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	#DIV/0!	#DIV/0!	0.00	0.00	
24-02-831	Retaining Walls (On-site)	0.00	0.00	0.00	0.00							0.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	#DIV/0!	#DIV/0!	0.00	0.00	
24-02-841	Parking Bumpers	6,000.00	6,000.00	0.00	0.00	(6,000.00)						0.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	#DIV/0!	#DIV/0!	0.00	0.00	
24-04-221	Concrete Masonry Units (On-site)	60,000.00	60,000.00	0.00	0.00	(60,000.00)						0.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	#DIV/0!	#DIV/0!	0.00	0.00	
<b>ONSITE TOTAL</b>		<b>986,807.00</b>	<b>986,807.00</b>	<b>309,262.80</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>1,296,069.80</b>		<b>957,319.80</b>	<b>95,731.98</b>	<b>861,587.82</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>957,319.80</b>	<b>861,587.82</b>	<b>66.48%</b>	<b>73.86%</b>	<b>95,731.98</b>	<b>338,750.00</b>	
<b>OFF-SITES</b>																										
26-02-311	Rough Grading (Off-site)	10,000.00	10,000.00	0.00	0.00							10,000.00	10.00%	10,000.00	1,000.00	9,000.00	0.00	0.00	0.00	10,000.00	9,000.00	90.00%	100.00%	1,000.00	0.00	
26-02-312	Finish Grading (Off-site)	10,000.00	10,000.00	0.00	0.00							10,000.00	10.00%	10,000.00	1,000.00	9,000.00	0.00	0.00	0.00	10,000.00	9,000.00	90.00%	100.00%	1,000.00	0.00	
26-02-313	Fine Grading (Off-site)	10,000.00	10,000.00	0.00	0.00	(10,000.00)						0.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	#DIV/0!	#DIV/0!	0.00	0.00	
26-02-511	Water Distribution (Off-site)	30,000.00	30,000.00	0.00	0.00							30,000.00	10.00%	30,000.00	3,000.00	27,000.00	0.00	0.00	0.00	30,000.00	27,000.00	90.00%	100.00%	3,000.00	0.00	
26-02-531	Sewer Distribution (Off-site)	20,000.00	20,000.00	0.00	0.00							20,000.00	10.00%	20,000.00	2,000.00	18,000.00	0.00	0.00	0.00	20,000.00	18,000.00	90.00%	100.00%	2,000.00	0.00	
26-02-541	Gas Distribution (Off-site)	10,000.00	10,000.00	0.00	0.00	(10,000.00)						0.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	#DIV/0!	#DIV/0!	0.00	0.00	
26-02-551	Electrical Distribution (Off-site)	20,000.00	20,000.00	0.00	0.00	(20,000.00)						0.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	#DIV/0!	#DIV/0!	0.00	0.00	
26-02-582	Telephone Distribution (Off-site)	0.00	0.00	0.00	0.00							0.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	#DIV/0!	#DIV/0!	0.00	0.00	
26-02-583	CATV Distribution (Off-site)	0.00	0.00	0.00	0.00							0.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	#DIV/0!	#DIV/0!	0.00	0.00	
26-02-631	Storm Drainage (Off-site)	15,000.00	15,000.00	0.00	0.00							15,000.00	10.00%	15,000.00	1,500.00	13,500.00	0.00	0.00	0.00	15,000.00	13,500.00	90.00%	100.00%	1,500.00	0.00	
26-02-741	Asphalt Pavement (Off-site)	25,000.00	25,000.00	0.00	0.00	(25,000.00)						0.00	10.00%	0.00	0.00	0.00	0.00									

Borrower

BORGELD HOUSING, L.P.

Community El Sereno in Cibolo, TX

Request # 17
Period to 12/25/18

Table with columns: Budget, Contract Amount, Previously Approved Contract Changes, Current Contract Changes, Pay Appl No. 11-17, Adjusted Contract Totals, Retention %, Prior Gross Amount Requested, Previous Request Less Prior Held Retention, Net Amount Paid, Current Request Gross Amount Requested, Current Request Less Retention, Net Amount Requested, Total Gross Completed To date, Total Amount Paid To date, Total % Paid To date, Total % Complete To date, Total Retention To date, Balance Remaining. Rows include items like Siding, Flashing & Sheet Metal, Standing Seam Roofing, etc.

Borrower

BORGELD HOUSING, L.P.

Community El Sereno in Cibolo, TX

Request # 17

Period to 12/25/18

Cost Coding	Description	Budget (A)	Contract Amount (B)	Previously Approved Contract Changes (C)	Current Contract Changes (D)	Pay Appl No. 11 Line Item Transfers	Pay Appl No. 13 Line Item Transfers	Pay Appl No. 14 Line Item Transfers	Pay Appl No. 15 Line Item Transfers	Pay Appl No. 16 Line Item Transfers	Pay Appl No. 17 Line Item Transfers	Adjusted Contract Totals (E)	Retention % (F)	Previous Request			Current Request			Total Gross Completed To date (G)+(J) (M)	Total Amount Paid To Date (I)+(L) (N)	Total % Paid To Date (N)/(E) (O)	Total % Complete To Date (M)/(E) (P)	Total Retention To Date (H)+(K) (Q)	Balance Remaining (E)-(M) (R)
														Prior Gross Amount Requested (G)	Less Prior Held Retention (H)	Net Amount Paid (I)	Gross Amount Requested (J)	Less Retention (K)	Net Amount Requested (L)						
32-01-100	General Requirements	0.00	0.00	0.00	0.00							0.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	#DIV/0!	#DIV/0!	0.00	0.00
32-01-312	Project Manager	120,000.00	120,000.00	0.00	0.00	(36,000.00)			100,000.00			26,838.00	10.00%	184,000.00	18,400.00	165,600.00	26,838.00	2,683.80	24,154.20	210,838.00	189,754.20	90.00%	100.00%	21,083.80	0.00
32-01-313	Project Superintendent	80,000.00	80,000.00	0.00	0.00	(80,000.00)						0.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	#DIV/0!	#DIV/0!	0.00	0.00
32-01-314	Assistant Project Superintendent	50,000.00	50,000.00	0.00	0.00	(20,838.00)						29,162.00	10.00%	29,162.00	2,916.20	26,245.80	0.00	0.00	0.00	29,162.00	26,245.80	90.00%	100.00%	2,916.20	0.00
32-01-315	Supervision	0.00	0.00	0.00	0.00	136,838.00			(116,660.12)		(10,177.88)	10,000.00	10.00%	10,000.00	1,000.00	9,000.00	0.00	0.00	0.00	10,000.00	9,000.00	90.00%	100.00%	1,000.00	0.00
44-99-152	Survey	0.00	0.00	0.00	0.00							0.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	#DIV/0!	#DIV/0!	0.00	0.00
32-01-317	General Labor	40,000.00	40,000.00	0.00	0.00							6,958.89	10.00%	30,000.00	3,000.00	27,000.00	16,958.89	1,000.00	15,958.89	46,958.89	42,958.89	91.48%	100.00%	4,000.00	0.00
32-01-451	Testing, Inspections, Laboratory (By Owner)	10,000.00	10,000.00	0.00	0.00		(10,000.00)					0.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	#DIV/0!	#DIV/0!	0.00	0.00
32-01-512	Temporary Fire Protection (monitoring)	5,000.00	5,000.00	0.00	0.00							5,000.00	10.00%	5,000.00	500.00	4,500.00	0.00	0.00	0.00	5,000.00	4,500.00	90.00%	100.00%	500.00	0.00
32-01-514	Temporary Electric (Distributed)	10,000.00	10,000.00	0.00	0.00							10,000.00	10.00%	9,500.00	950.00	8,550.00	500.00	50.00	450.00	10,000.00	9,000.00	90.00%	100.00%	1,000.00	0.00
32-01-514	Temporary Electric (Usage)	20,000.00	20,000.00	0.00	0.00				(5,000.00)	5,000.00		20,000.00	10.00%	10,000.00	1,000.00	9,000.00	10,000.00	1,000.00	9,000.00	20,000.00	18,000.00	90.00%	100.00%	2,000.00	0.00
32-01-518	Temporary Water	10,000.00	10,000.00	0.00	0.00			(8,385.09)	8,385.09			10,000.00	10.00%	0.00	0.00	0.00	10,000.00	1,000.00	9,000.00	10,000.00	9,000.00	90.00%	100.00%	1,000.00	0.00
32-01-521	Contractor Tools/Supplies	20,000.00	20,000.00	0.00	0.00				(5,000.00)	5,000.00		20,000.00	10.00%	5,000.00	500.00	4,500.00	15,000.00	1,500.00	13,500.00	20,000.00	18,000.00	90.00%	100.00%	2,000.00	0.00
32-01-522	First Aid Kit	500.00	500.00	0.00	0.00				(500.00)	500.00		500.00	10.00%	0.00	0.00	0.00	500.00	50.00	450.00	500.00	450.00	90.00%	100.00%	50.00	0.00
32-01-524	Field Office	10,000.00	10,000.00	0.00	0.00					1.00		10,001.00	10.00%	6,664.01	666.40	5,997.61	3,336.99	333.70	3,003.29	10,001.00	9,000.90	90.00%	100.00%	1,000.10	0.00
32-01-524	Leasing Office Trailer	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	#DIV/0!	#DIV/0!	0.00	0.00
32-01-525	Job Office Supplies	8,000.00	8,000.00	0.00	0.00					(724.33)	724.33	8,000.00	0.00%	0.00	0.00	0.00	8,000.00	0.00	8,000.00	8,000.00	8,000.00	100.00%	100.00%	0.00	0.00
32-01-526	Trash Bins	40,000.00	40,000.00	0.00	0.00							40,000.00	0.00%	25,000.00	0.00	25,000.00	15,000.00	0.00	15,000.00	40,000.00	40,000.00	100.00%	100.00%	0.00	0.00
32-01-319	Prevailing Wage Monitor	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	#DIV/0!	#DIV/0!	0.00	0.00
32-01-528	Temporary Toilet	10,000.00	10,000.00	0.00	0.00							10,000.00	0.00%	5,000.00	0.00	5,000.00	5,000.00	0.00	5,000.00	10,000.00	10,000.00	100.00%	100.00%	0.00	0.00
32-01-561	Security	30,000.00	30,000.00	0.00	0.00	0.00	22,321.03	8,385.09	8,275.03	11,224.33	7,000.15	87,205.63	0.00%	80,205.48	0.00	80,205.48	7,000.15	0.00	7,000.15	87,205.63	87,205.63	100.00%	100.00%	0.00	0.00
32-01-562	Storage Bin	15,000.00	15,000.00	0.00	0.00		(6,321.03)					8,678.97	0.00%	0.00	0.00	0.00	8,678.97	0.00	8,678.97	8,678.97	8,678.97	100.00%	100.00%	0.00	0.00
32-01-564	Temporary Fencing	10,000.00	10,000.00	0.00	0.00							10,000.00	0.00%	5,000.00	0.00	5,000.00	5,000.00	0.00	5,000.00	10,000.00	10,000.00	100.00%	100.00%	0.00	0.00
32-01-742	Site Maintenance	25,000.00	25,000.00	0.00	0.00							25,000.00	0.00%	20,000.00	0.00	20,000.00	5,000.00	0.00	5,000.00	25,000.00	25,000.00	100.00%	100.00%	0.00	0.00
32-01-600	Liability Insurance		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	#DIV/0!	#DIV/0!	0.00	0.00
	<b>GEN. CONDITIONS TOTAL</b>	<b>529,500.00</b>	<b>529,500.00</b>	<b>209,775.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>17,545.69</b>	<b>756,820.69</b>		<b>620,007.69</b>	<b>28,932.60</b>	<b>591,075.09</b>	<b>136,813.00</b>	<b>7,617.50</b>	<b>129,195.50</b>	<b>756,820.69</b>	<b>720,270.59</b>	<b>95.17%</b>	<b>100.00%</b>	<b>36,550.10</b>	<b>0.00</b>
	<b>56-99-280 CONTRACTOR'S FEE</b>	<b>830,868.00</b>	<b>830,868.00</b>	<b>(330,868.00)</b>	<b>0.00</b>		<b>(94,650.00)</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>405,350.00</b>	<b>10.00%</b>	<b>230,008.84</b>	<b>23,000.08</b>	<b>207,008.76</b>	<b>157,380.55</b>	<b>15,738.06</b>	<b>141,642.50</b>	<b>387,381.39</b>	<b>348,643.25</b>	<b>86.01%</b>	<b>95.57%</b>	<b>38,738.14</b>	<b>17,968.61</b>
	<b>TOTAL OVERHEAD</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>							<b>0.00</b>	<b>10.00%</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>#DIV/0!</b>	<b>#DIV/0!</b>	<b>0.00</b>	<b>0.00</b>
	<b>92-99-500 Buy-Out Contingency</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>19,000.00</b>						<b>(17,545.69)</b>	<b>1,454.31</b>	<b>10.00%</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00%</b>	<b>0.00%</b>	<b>0.00</b>	<b>1,454.31</b>
	<b>Total</b>	<b>12,135,069.00</b>	<b>12,135,069.00</b>	<b>1,350,369.72</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>13,485,438.72</b>		<b>11,180,073.85</b>	<b>1,084,939.22</b>	<b>10,095,134.63</b>	<b>1,730,189.45</b>	<b>166,955.15</b>	<b>1,563,234.30</b>	<b>12,910,263.30</b>	<b>11,658,368.94</b>	<b>86.45%</b>	<b>95.73%</b>	<b>1,251,894.37</b>	<b>575,175.42</b>



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**CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT**

Project: El Sereno (Cibolo TX)

Job No. \_\_\_\_\_

On receipt by the signer of this document of a check from Borgfeld Housing, LP (maker of check) in the sum of \$ 1,563,234.30 payable to HCHP Contractors, L.P. (payee or payees of check) and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the property of Borgfeld Housing, L.P. (owner) located at Cibolo, TX (location) to the following extent: El Sereno (job description).

This release covers a progress payment for all labor, services, equipment, or materials furnished to the property or to December 25, 2018 (person with whom signer contracted) as indicated in the attached statement(s) or progress payment request(s), except for unpaid retention, pending modifications and changes, or other items furnished.

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

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

Date: 3-1-19

HCHP Contractors, L.P. (Company name)

By  (Signature)

Pierre Harispuru, Vice President (Title)

=====

**NOTE:** Section 53.281(b)(2), Texas Property Code, requires that the above form be notarized. See Chapter 121, Texas Civil Practice & Remedies Code, regarding Acknowledgments & Proofs of Written Instruments, or consult an attorney. For short acknowledgement forms that might be suitable, see Section 121.008 in Chapter 121. Click [here](#) to go there.

## CALIFORNIA ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of Los Angeles )

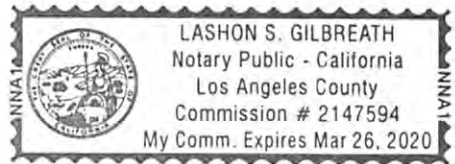
On March 1, 2019 before me, LaShon S. Gilbreath, Notary Public  
(insert name and title of the officer)

personally appeared Pierre Harispuru,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature LaShon S. Gilbreath (Seal)



=====

**NOTICE:**

This document waives rights unconditionally and states that you have been paid for giving up those rights. It is prohibited for a person to require you to sign this document if you have not been paid the payment amount set forth below. If you have not been paid, use a conditional release form.

**UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT**

Project El Sereno (Cibolo TX)

Job No. \_\_\_\_\_

The signer of this document has been paid and has received a progress payment in the sum of \$518,394.25 for all labor, services, equipment, or materials furnished to the property or to \_\_\_\_\_ (person with whom signer contracted) on the property of Borgfeld Housing, L.P. (owner) located at Cibolo, TX (location) to the following extent: El Sereno (job description). The signer therefore waives and releases any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the above referenced project to the following extent:

This release covers a progress payment for all labor, services, equipment, or materials furnished to the property or to December 25, 2018 (person with whom signer contracted) as indicated in the attached statement(s) or progress payment request(s), except for unpaid retention, pending modifications and changes, or other items furnished.

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

Date 3-1-19

HCHP Contractors, L.P. (Company name)

By  (Signature)

Pierre Harispuru, Vice President (Title)

=====

**NOTE:** Section 53.281(b)(2), Texas Property Code, requires that the above form be notarized. See Chapter 121, Texas Civil Practice & Remedies Code, regarding Acknowledgments & Proofs of Written Instruments, or consult an attorney. For short acknowledgement forms that might be suitable, see Section 121.008 in Chapter 121. Click [here](#) to go there.

## CALIFORNIA ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of Los Angeles

On March 1, 2019 before me, LaShon S. Gilbreath, Notary Public  
(insert name and title of the officer)

personally appeared Pierre Harispuru,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature LaShon S. Gilbreath (Seal)



## LINE ITEM TRANSFER - #10

Note: Page 1 - Decreases, Page 2 - Increases

**From:** **HCHP Contractor, LP**  
330 W. Victoria Street  
Gardena, CA 90248

**PHONE:** 424-258-2800  
**FAX:** 424-258-2801

**To:** **BORGFELD HOUSING, LP**  
330 W. Victoria Street  
Gardena, CA 90248

**PROJECT:** Borgfeld Manor  
**PROJECT #:** 2506  
**STATE:** TEXAS  
**CITY:** CIBOLO

**DATE:** 02/20/19  
**CONTRACT DATE:** 04/10/17

**PHONE:** 424-258-2800  
**FAX:** 424-258-2801

### LINE ITEM TRANSFER DECREASES

Code	Description	Beginning Balance	Decrease	Ending Balance	Transfer To Code	Description
24-02-621	Deck Drains	9,000.00	9,000.00	0.00	28-15-101	Plumbing
28-01-741	Final Cleaning	40,000.00	2,809.10	37,190.90	28-05-511	Metal Stairs
28-01-741	Final Cleaning	37,190.90	5,014.90	32,176.00	28-06-201	Finish Carpentry
28-06-411	Cabinets	349,000.00	15,500.00	333,500.00	28-06-201	Finish Carpentry
28-07-311	Asphalt Shingle Roofing	128,250.00	750.00	127,500.00	28-10-521	Fire Extinguishers
28-07-611	Standing Seam Roof	44,600.00	17,065.00	27,535.00	28-06-201	Finish Carpentry
28-07-711	Roof Accessories, Gutters & Downspouts	21,500.00	3,939.67	17,560.33	28-06-201	Finish Carpentry
28-07-711	Roof Accessories, Gutters & Downspouts	17,560.33	3,739.83	13,820.50	28-09-221	Fiberglass Doors
28-08-101	Metal Doors & Frames	84,158.00	4,400.00	79,758.00	28-09-221	Fiberglass Doors
28-08-831	Mirrors	21,020.00	200.00	20,820.00	28-09-221	Fiberglass Doors
28-09-601	Floor Covering	223,685.08	21,060.82	202,624.26	28-09-221	Exterior Plaster
28-09-601	Floor Covering	202,624.26	1,015.74	201,608.52	28-15-701	HVAC
28-10-801	Toilet Bath Accessories	10,000.00	5,400.45	4,599.55	28-09-221	Exterior Plaster
28-12-491	Window Treatments - units only	53,550.00	31,375.92	22,174.08	28-09-221	Exterior Plaster
28-12-491	Window Treatments - rec bldg only	7,950.00	3,959.98	3,990.02	28-09-221	Exterior Plaster
28-12-491	Window Treatments - rec bldg only	3,990.02	3,484.26	505.76	28-15-701	HVAC
28-12-491	Window Treatments - rec bldg only	505.76	505.76	0.00	30-02-776	Concrete Sidewalks / Pool Decks
28-16-511	Electrical Fixtures	180,000.00	3,864.84	176,135.16	30-02-776	Concrete Sidewalks / Pool Decks
28-16-511	Electrical Fixtures	176,135.16	3,414.70	172,720.46	30-02-811	Irrigation Systems
28-16-511	Electrical Fixtures	172,720.46	12,999.95	159,720.51	30-02-901	Landscape Planting (Materials/Labor)
28-16-511	Electrical Fixtures	159,720.51	365.51	159,355.00	30-13-151	Pool
30-02-791	Recreation Amenities (Horse Shoe Pit..)	10,000.00	717.25	9,282.75	30-02-811	Irrigation Systems
30-02-823	Dog Park Fence	10,000.00	179.69	9,820.31	30-02-811	Irrigation Systems
30-02-871	Outdoor Furniture (Benches...)	12,000.00	611.47	11,388.53	30-02-811	Irrigation Systems
30-04-222	Trash Enclosures (CMU)	19,000.00	735.31	18,264.69	30-13-151	Pool
30-06-103	Trellis/Pergolas	34,000.00	713.12	33,286.88	30-13-151	Pool
30-10-401	Signage Directory	5,000.00	5,000.00	0.00	30-13-151	Pool
30-10-431	Ext Monument Signage	11,000.00	175.00	10,825.00	30-13-151	Pool
30-11-452	BBQ Equipment / Outdoor Kitchen	20,000.00	122.56	19,877.44	30-13-151	Pool

**Total Decrease: 158,120.83**

## LINE ITEM TRANSFER - #10

Note: Page 1 - Decreases, Page 2 - Increases

**From:** **HCHP Contractor, LP**  
330 W. Victoria Street  
Gardena, CA 90248

**PROJECT:** Borgfeld Manor  
**PROJECT #:** 2506  
**STATE:** TEXAS  
**CITY:** CIBOLO

**PHONE:** 424-258-2800  
**FAX:** 424-258-2801

**DATE:** 02/20/19  
**CONTRACT DATE:** 04/10/17

**To:** **BORGFELD HOUSING, LP**  
330 W. Victoria Street  
Gardena, CA 90248

**PHONE:** 424-258-2800  
**FAX:** 424-258-2801

### LINE ITEM TRANSFER INCREASES

Code	Description	Beginning Balance	Increase	Ending Balance	Increase From Code	Description
28-05-511	Metal Stairs	102,313.29	2,809.10	105,122.39	28-01-741	Final Cleaning
28-06-201	Finish Carpentry	460,222.00	5,014.90	465,236.90	28-01-741	Final Cleaning
28-06-201	Finish Carpentry	465,236.90	15,500.00	480,736.90	28-06-411	Cabinets
28-06-201	Finish Carpentry	480,736.90	17,065.00	497,801.90	28-07-611	Standing Seam Room
28-06-201	Finish Carpentry	497,801.90	3,939.67	501,741.57	28-07-711	Roof Accessories, Gutters & Downspouts
28-09-221	Exterior Plaster	545,000.00	3,739.83	548,739.83	28-07-711	Roof Accessories, Gutters & Downspouts
28-09-221	Exterior Plaster	548,739.83	4,400.00	553,139.83	28-08-101	Metal Doors & Frames
28-09-221	Exterior Plaster	553,139.83	200.00	553,339.83	28-08-831	Mirrors
28-09-221	Exterior Plaster	553,339.83	21,060.82	574,400.65	28-09-601	Floor Covering
28-09-221	Exterior Plaster	574,400.65	5,400.45	579,801.10	28-10-801	Toilet Bath Accessories
28-09-221	Exterior Plaster	579,801.10	31,375.92	611,177.02	28-12-491	Window Treatments - units only
28-09-221	Exterior Plaster	611,177.02	3,959.98	615,137.00	28-12-491	Window Treatments - rec bldg only
28-10-521	Fire Extinguishers	11,000.00	750.00	11,750.00	28-07-311	Asphalt Shingle Roofing
28-15-101	Plumbing	855,000.00	9,000.00	864,000.00	24-02-621	Deck Drains
28-15-701	HVAC	705,500.00	1,015.74	706,515.74	28-09-601	Floor Covering
28-15-701	HVAC	706,515.74	3,484.26	710,000.00	28-12-491	Window Treatments - rec bldg only
30-02-776	Concrete Sidewalks / Pool Decks	59,633.06	505.76	60,138.82	28-12-491	Window Treatments - rec bldg only
30-02-776	Concrete Sidewalks / Pool Decks	60,138.82	3,864.84	64,003.66	28-16-511	Electrical Fixtures
30-02-811	Irrigation Systems	45,897.92	3,414.70	49,312.62	28-16-511	Electrical Fixtures
30-02-811	Irrigation Systems	49,312.62	717.25	50,029.87	30-02-791	Recreation Amenities (Horse Shoe Pit...
30-02-811	Irrigation Systems	50,029.87	179.69	50,209.56	30-02-823	Dog Park Fence
30-02-811	Irrigation Systems	50,209.56	611.47	50,821.03	30-02-871	Outdoor Furniture (Benches,...
30-02-901	Landscape Planting (M/L)	187,537.52	12,999.95	200,537.47	28-16-511	Electrical Fixtures
30-13-151	Pool	78,500.00	365.51	78,865.51	28-16-511	Electrical Fixtures
30-13-151	Pool	78,865.51	735.31	79,600.82	30-04-222	Trash Enclosure (CMU)
30-13-151	Pool	79,600.82	713.12	80,313.94	30-06-103	Trellis / Pergolas
30-13-151	Pool	80,313.94	5,000.00	85,313.94	30-10-401	Signage Directory
30-13-151	Pool	85,313.94	175.00	85,488.94	30-10-431	Ext Monument Signage
30-13-151	Pool	85,488.94	122.56	85,611.50	30-11-452	BBQ Equipment / Outdoor Kitchen

**Total Increase: 158,120.83**

#### CONTRACTOR APPROVAL

**Approved By:**   
Pierre Harispuru, Vice President Construction

**Date:** January 29, 2019

FM

# LINE ITEM TRANSFER - #11

Note:

**From:** **HCHP Contractor, LP**  
330 W. Victoria Street  
Gardena, CA 90248

**PROJECT:** Borgfeld Manor  
**PROJECT #:** 2506  
**STATE:** TEXAS  
**CITY:** CIBOLO

**PHONE:** 424-258-2800  
**FAX:** 424-258-2801

**DATE:** 02/20/19  
**CONTRACT DATE:** 04/10/17

**To:** **BORGFELD HOUSING, LP**  
330 W. Victoria Street  
Gardena, CA 90248

**PHONE:** 424-258-2800  
**FAX:** 424-258-2801

### LINE ITEM TRANSFER DECREASES

Code	Description	Beginning Balance	Decrease	Ending Balance	Transfer To Code	Description
32-01-315	Supervision	201,177.88	10,177.88	191,000.00	32-01-312	Project Manager
32-01-600	Insurance	219,775.00	16,660.12	203,114.88	32-01-312	Project Manager
32-01-600	Insurance	203,114.88	6,958.89	196,155.99	32-01-317	General Labor
32-01-600	Insurance	196,155.99	500.00	195,655.99	32-01-522	First Aid Kit
32-01-600	Insurance	195,655.99	1.00	195,654.99	32-01-524	Field Office
32-01-600	Insurance	195,654.99	178.79	195,476.20	32-01-525	Job Office Supplies
92-99-500	Buy-Out Contingency	19,000.00	545.54	18,454.46	32-01-525	Job Office Supplies
92-99-500	Buy-Out Contingency	18,454.46	7,000.15	11,454.31	32-01-564	Security
92-99-500	Buy-Out Contingency	11,454.31	5,000.00	6,454.31	32-01-514	Temp Electric
92-99-500	Buy-Out Contingency	6,454.31	5,000.00	1,454.31	32-02-521	Contrator Tools and Supplies

**Total Decrease: 52,022.37**

### LINE ITEM TRANSFER INCREASES

Code	Description	Beginning Balance	Increase	Ending Balance	Increase From Code	Description
32-01-312	Project Manager	184,000.00	10,177.88	194,177.88	32-01-315	Supervision
32-01-312	Project Manager	194,177.88	16,660.12	210,838.00	32-01-600	Insurance
32-01-317	General Labor	40,000.00	6,958.89	46,958.89	32-01-600	Insurance
32-01-522	First Aid Kit	0.00	500.00	500.00	32-01-600	Insurance
32-01-524	Field Office	10,000.00	1.00	10,001.00	32-01-600	Insurance
32-01-525	Job Office Supplies	7,275.67	178.79	7,454.46	32-01-600	Insurance
32-01-525	Job Office Supplies	7,454.46	545.54	8,000.00	92-99-500	Buy-Out Contingency
32-01-564	Security	80,205.48	7,000.15	87,205.63	92-99-500	Buy-Out Contingency
32-01-514	Temp Electric	15,000.00	5,000.00	20,000.00	92-99-500	Buy-Out Contingency
32-02-521	Contrator Tools and Supplies	15,000.00	5,000.00	20,000.00	92-99-500	Buy-Out Contingency

**Total Increase: 52,022.37**

### CONTRACTOR APPROVAL

**Approved By:**   
**Pierre Harisuru, Vice President Construction**

**Date:** February 20, 2019





## CHANGE ORDER LOG

2506- Cibolo

HCHP CONTRACTORS, LP

CHANGE ORDER REQUEST SUBMITTED					OWNER CHANGE ORDER ISSUED				
COR No.	Date Submitted	Date Approved	Amount	Delay Days	Description	Change Order Issued	CO No.	Amount	Delay Days
1	04/10/17	04/10/17	72,838.00	0	Increase for Additional Insurance Requirement	04/10/17	1	72,838.00	0
2	01/04/18	01/12/18	0.00	148	Increase construction time by 148 working days	01/11/18	2	0.00	148
3	01/11/18	01/12/18	43,626.00	0	Increase General Conditions Contract Amount because of CO2	01/11/18	3	43,626.00	0
4	01/11/18	01/12/18	68,728.00	0	Increase GL Insurance & Builder's Risk because of CO2	01/11/18	4	68,728.00	0
5	06/29/18	07/02/18	1,165,177.72	0	Increase line items - weather issues, labor and material costs	07/05/18	5	1,165,177.72	0
<b>TOTAL</b>			<b>1,350,369.72</b>	<b>148</b>				<b>1,350,369.72</b>	<b>148</b>

# BUDGET MODIFICATION #3

5. The following are attached hereto and form a part hereof:

Contractor's APPLICATION AND CERTIFICATE FOR PAYMENT (AIA Document G702), Conditional and Unconditional Lien Waivers and accounts payable listing is preferred for soft costs.

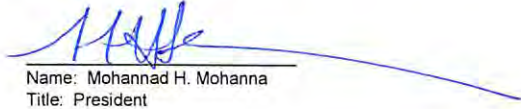
Date: 05/24/2019

BORROWER:

**BORGFELD HOUSING, L.P.,**

a Texas limited partnership

By: Highridge Costa Housing, LLC,  
a Delaware limited liability company  
Its: Managing General Partner

  
Name: Mohannad H. Mohanna  
Title: President

Limit input to YELLOW CELLS

**BUDGET DRAW TEMPLATE**

Clear ALL Prior Entries for New Draw

BORROWER: **BORGFELD HOUSING LP**

REPORT DATE: **5/23/2019**

PROJECT DESCRIPTION: **EL SERENO APTS - 136 UNITS**

HIDE Blank Line Item Rows (normal status)

UNHIDE Blank Line Item Rows (to add new line item)

**Uses**

Description	Original Budget	Total Prior Adjustments	Current Changes	Revised Budget	Total Previous Drawn	Amount This Draw	Total Drawn Including This Draw	Undisbursed After This Draw	% Funded	Deferred (Unavailable)
<b>LAND</b>										
Land Value	2,248,602.00	0.00		2,248,602.00	2,248,602.00		2,248,602.00	0.00	100%	
Other Acquisition Costs		3,000.00		3,000.00	0.00		0.00	3,000.00	0%	
<b>TOTAL LAND</b>	<b>2,248,602.00</b>	<b>3,000.00</b>	<b>0.00</b>	<b>2,251,602.00</b>	<b>2,248,602.00</b>	<b>0.00</b>	<b>2,248,602.00</b>	<b>3,000.00</b>	<b>100%</b>	
<b>HARD COSTS</b>										
Demolition	50,000.00	27,000.00		77,000.00	69,300.00		69,300.00	7,700.00	90%	
Site Work	986,807.00	309,262.80	63,744.59	1,359,814.39	861,587.82	341,283.87	1,202,871.69	156,942.70	88%	
Off Site Improvements	205,000.00	75,000.00	(94,000.00)	186,000.00	83,250.00	84,150.00	167,400.00	18,600.00	90%	
Construction - Residential	9,532,894.00	1,229,849.92	192,620.11	10,955,364.03	9,575,317.28	213,257.39	9,788,574.67	1,166,789.36	89%	
General Requirements	602,338.00	136,937.00	110,150.30	849,425.30	720,270.59	78,148.29	798,418.88	51,006.42	94%	
Contractor Overhead and Profit	830,868.00	(425,518.00)		405,350.00	348,643.27	16,171.75	364,815.02	40,534.98	90%	
Sub Total Contracts	12,207,907.00	1,352,531.72	272,515.00	13,832,953.72	11,658,368.96	733,011.30	12,391,380.26	1,441,573.46	90%	
Construction Contingency	610,395.00	(610,394.72)	21,454.03	21,454.31	0.00		0.00	21,454.31	0%	
Personal Property - Development Budget	150,000.00	218.46		150,218.46	150,218.46		150,218.46	0.00	100%	
<b>TOTAL HARD COSTS</b>	<b>12,968,302.00</b>	<b>742,355.46</b>	<b>293,969.03</b>	<b>14,004,626.49</b>	<b>11,808,587.42</b>	<b>733,011.30</b>	<b>12,541,598.72</b>	<b>1,463,027.77</b>	<b>90%</b>	
<b>SOFT COSTS</b>										
Const Loan Inspection	16,500.00	4,919.50	2,775.00	24,194.50	21,419.50	2,775.00	24,194.50	0.00	100%	
Const Loan Origination Fee	179,473.00	0.00		179,473.00	179,472.98		179,472.98	0.02	100%	
Const Title & Recording	105,216.00	0.00		105,216.00	103,975.47	50.00	104,025.47	1,190.53	99%	
Perm Loan Origination Fee	49,500.00	0.00		49,500.00	49,500.00		49,500.00	0.00	100%	
Perm Conversion Fee - Deferred	10,000.00	0.00		10,000.00	0.00		0.00	10,000.00	0%	YES
Perm Title & Recording - Deferred	10,000.00	0.00		10,000.00	0.00		0.00	10,000.00	0%	YES
B of A Lender Legal	40,000.00	25,000.00		65,000.00	40,000.00		40,000.00	25,000.00	62%	
T.Credit Application & Monitoring Fees	67,740.00	10,000.00		77,740.00	67,740.00		67,740.00	10,000.00	87%	
Marketing	125,000.00	10,029.20	20,000.00	155,029.20	135,029.20		135,029.20	20,000.00	87%	
Accounting	22,500.00	0.00		22,500.00	6,250.00		6,250.00	16,250.00	28%	
Operating Reserve - Deferred	433,175.00	0.00		433,175.00	0.00		0.00	433,175.00	0%	YES
Developer Fees	290,001.00	0.00		290,001.00	290,000.00		290,000.00	1.00	100%	
Developer Fees - Deferred	2,030,003.00	0.00		2,030,003.00	0.00		0.00	2,030,003.00	0%	YES
Insurance	45,163.00	37,922.00		83,085.00	54,286.81		54,286.81	28,798.19	65%	
Taxes	93,497.00	(719.00)	3,317.83	96,095.83	33,224.34	62,871.49	96,095.83	0.00	100%	
Legal	80,772.00	77,467.42		158,239.42	129,503.92	28,477.92	157,981.84	257.58	100%	
Architect	420,000.00	13,538.61	3,162.19	436,700.80	433,538.61	3,162.19	436,700.80	0.00	100%	
Survey & Engineering	143,600.00	64,067.13		207,667.13	207,667.13		207,667.13	0.00	100%	
Appraisal & Mkt Study	23,630.00	6,945.00	375.00	30,950.00	24,075.00	6,875.00	30,950.00	0.00	100%	
Soils Investigation	5,700.00	0.00		5,700.00	5,700.00		5,700.00	0.00	100%	
Impact Fees	990,435.00	(66,002.55)		924,432.45	924,432.45		924,432.45	0.00	100%	
Environmental Surveys	6,570.00	0.00		6,570.00	6,570.00		6,570.00	0.00	100%	
Soft Cost Contingency	86,003.00	(65,331.77)	(9,630.02)	11,041.21	1,000.00		1,000.00	10,041.21	9%	
Misc. Soft Costs		0.00		0.00	0.00		0.00	0.00	0%	
Construction Loan Ext Fee - Deferred		89,736.00		89,736.00	0.00		0.00	89,736.00	0%	YES
B of A Lender Legal - Deferred		25,000.00		25,000.00	0.00		0.00	25,000.00	0%	YES
Legal - Deferred		37,500.00		37,500.00	0.00		0.00	37,500.00	0%	YES
Sub Total Misc	5,274,478.00	270,071.54	20,000.00	5,564,549.54	2,713,385.41	104,211.60	2,817,597.01	2,746,952.53	51%	
Interest Reserve	835,532.00	0.00		835,532.00	604,863.83		604,863.83	230,668.17	72%	
Sub Total Int Res	835,532.00	0.00	0.00	835,532.00	604,863.83	0.00	604,863.83	230,668.17	72%	
Sub Total Op Def	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0%	
<b>TOTAL SOFT COSTS</b>	<b>6,110,010.00</b>	<b>270,071.54</b>	<b>20,000.00</b>	<b>6,400,081.54</b>	<b>3,318,249.24</b>	<b>104,211.60</b>	<b>3,422,460.84</b>	<b>2,977,620.70</b>	<b>53%</b>	
<b>TOTAL PROJECT USES</b>	<b>21,326,914.00</b>	<b>1,015,427.00</b>	<b>313,969.03</b>	<b>22,656,310.03</b>	<b>17,375,438.66</b>	<b>837,222.90</b>	<b>18,212,661.56</b>	<b>4,443,648.47</b>	<b>80%</b>	<b>2,635,414.00</b>

**Sources**

Description	Original Budget	Total Prior Adjustments	Current Changes	Revised Budget	Total Previous Drawn	Amount This Draw	Total Drawn Including This Draw	Undisbursed After This Draw	% Funded	Deferred/Unavail?
Loan Funds	17,947,298.00	0.00		17,947,298.00	15,615,809.66	523,253.87	16,139,063.53	1,808,234.47	90%	
<b>SUB-TOTAL LOAN PROCEEDS</b>	<b>17,947,298.00</b>	<b>0.00</b>	<b>0.00</b>	<b>17,947,298.00</b>	<b>15,615,809.66</b>	<b>523,253.87</b>	<b>16,139,063.53</b>	<b>1,808,234.47</b>	<b>90%</b>	
ILP at Closing	896,438.00	0.00		896,438.00	896,438.00		896,438.00	0.00	100%	
Completion/Conversion - Deferred	2,483,178.00	152,236.00		2,635,414.00	0.00		0.00	2,635,414.00	0%	YES
Out of Balance - Borrowers Funds		863,191.00	313,969.03	1,177,160.03	863,191.00	313,969.03	1,177,160.03	0.00	100%	
<b>SUB-TOTAL EQUITY/OTHER</b>	<b>3,379,616.00</b>	<b>1,015,427.00</b>	<b>313,969.03</b>	<b>4,709,012.03</b>	<b>1,759,629.00</b>	<b>313,969.03</b>	<b>2,073,598.03</b>	<b>2,635,414.00</b>	<b>44%</b>	
<b>TOTAL PROJECT SOURCES</b>	<b>21,326,914.00</b>	<b>1,015,427.00</b>	<b>313,969.03</b>	<b>22,656,310.03</b>	<b>17,375,438.66</b>	<b>837,222.90</b>	<b>18,212,661.56</b>	<b>4,443,648.47</b>	<b>80%</b>	<b>2,635,414.00</b>

Project Name: El Sereno Apartments (Cibolo TX)  
 Construction Loan - Draw 19 Invoice Summary

<u>Line Item</u>	<u>Vendor</u>	<u>Invoice Date</u>	<u>Invoice #</u>	<u>Description</u>	<u>Check #</u>	<u>Check Date</u>	<u>Invoice Amount</u>	<u>Total</u>
Hard Cost:								
HC: Construction Contract	HCHP Contractors, LP	04/25/19	Pay Application No. 18	Pay Application No. 18 - Period thru 4/25/2019	TBA	To Be Paid	<u>733,011.30</u>	733,011.30
Soft Cost:								
Construction Title & Recording	Chicage Title Insurance Company	03/12/19		Downdate Endorsements	TBA	To Be Paid	<u>50.00</u>	50.00
Construction Loan Inspection	CA Partners, Inc.	02/27/19	Inv. 17170-20	Progress and Funding Disbursement Report	TBA	To Be Paid	925.00	2,775.00
	CA Partners, Inc.	03/26/19	Inv. 17170-21	Progress and Funding Disbursement Report	TBA	To Be Paid	925.00	
	CA Partners, Inc.	04/29/19	Inv. 17170-22	Progress and Funding Disbursement Report	TBA	To Be Paid	<u>925.00</u>	
Architect	Humphrey & Partners Architects, LP	03/14/19	Inv. 69331	Architect Svcs	TBA	To Be Paid	750.00	3,162.19
	Accessibility Check	03/20/19	Inv. 086-18	Architect Svcs	TBA	To Be Paid	1,108.80	
	Humphrey & Partners Architects, LP	05/09/19	Inv. 69771	Architect Svcs	TBA	To Be Paid	<u>1,303.39</u>	
Appraisal & Market Study	Bank of America	05/10/19		Appraisal Due Diligence Fee	TBA	To Be Paid	<u>6,875.00</u>	6,875.00
Legal	Locke Lord, LLP	03/20/19	Inv. 1484301	Legal Services	TBA	To Be Paid	9,110.65	28,477.92
	Locke Lord, LLP	04/17/19	Inv. 1490549	Legal Services	TBA	To Be Paid	14,868.52	
	Locke Lord, LLP	05/15/19	Inv. 1497050	Legal Services	TBA	To Be Paid	<u>4,498.75</u>	
Taxes	Office of Daryl John Tax Assessor-Collector Guadalupe Tax Office	04/21/19		Property Tax	Ck 11143	4/25/2019	<u>62,871.49</u>	62,871.49
TOTAL							<u>\$ 837,222.90</u>	
Less Interest Reserve							\$	-
Sources:								
LIP at Closing							\$	-
Loan Proceeds							\$	523,253.87
Borrower's Fund							\$	313,969.03
TOTAL Requested							<u>\$</u>	<u>837,222.90</u>

# HARD COSTS

**APPLICATION AND CERTIFICATION FOR PAYMENT**

AIA DOCUMENT G702

PAGE ONE OF

PAGES

TO OWNER:  
**BORGFELD HOUSING, L.P.**  
 330 WEST VICTORIA STREET, GARDENA CA 90248

PROJECT:  
 VIA ARCHITECT:  
**HCHP CONTRACTORS, L.P.** **HUMPREYS & PARTNERS**  
 330 WEST VICTORIA STREET 5339 ALPHA ROAD, SUITE 300  
 GARDENA CA 90248 DALLAS TX 75240

CONTRACT FOR: **THE HEIGHTS, EDINBURG, TX (GENERAL CONSTRUCTION)**

APPLICATION NO **18**  
 DATE: **4/25/19**  
 PERIOD TO: **4/25/19**  
 PROJECT NO: **2506**  
 CONTRACT DATE **4/10/2017**

Distribution to:  
 OWNER  
 ARCHITECT  
 CONTRACTOR

**CONTRACTOR'S APPLICATION FOR PAYMENT**

Application is made for payment, as shown below, in connection with the Contract Continuation Sheet, AIA Document G703, is attached.

1. ORIGINAL CONTRACT SUM	\$	12,135,069.00
2. Net change by Change Orders	\$	1,719,339.03
3. CONTRACT SUM TO DATE (Line 1 + 2)	\$	13,854,408.03
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$	13,723,493.33
5. RETAINAGE:		
a. 10 % of Completed Work (Column D + E on G703)	\$	1,332,113.09
b. % of Stored Material (Column F on G703)	\$	0.00
Total Retainage (Lines 5a + 5b or Total in Column I of G703)	\$	1,332,113.09
6. TOTAL EARNED LESS RETAINAGE (Line 4 Less Line 5 Total)	\$	12,391,380.24
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)	\$	11,658,368.94
8. CURRENT PAYMENT DUE	\$	733,011.30
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6)	\$	1,463,027.79

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	\$1,350,369.72	
Total approved this Month	\$368,969.31	
TOTALS	\$1,719,339.03	\$0.00
NET CHANGES by Change Order	\$1,719,339.03	

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

CONTRACTOR:

By: [Signature] Date: 5-23-19  
 State of: \_\_\_\_\_ County of: \_\_\_\_\_ day of \_\_\_\_\_  
 Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_  
 Notary Public: Please See California Notarization Attached [Signature]  
 My Commission expires: \_\_\_\_\_

**ARCHITECT'S CERTIFICATE FOR PAYMENT**

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

AMOUNT CERTIFIED ..... \$ 733,011.30

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

ARCHITECT: [Signature] - HPA Date: 5/28/19

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

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of Los Angeles

Subscribed and sworn to (or affirmed) before me on this 23rd  
day of May, 2019, by Pierre Harispuru

proved to me on the basis of satisfactory evidence to be the  
person~~(s)~~ who appeared before me.



(Seal)

Signature

A handwritten signature in blue ink, appearing to read 'Lori L. Ruiz', written over a horizontal line.

Cost Coding	Description	Budget (A)	Contract Amount (B)	Previously Approved Contract Changes (C)	Current Contract Changes (D)	Pay Appl No. 11 Line Item Transfers	Pay Appl No. 13 Line Item Transfers	Pay Appl No. 14 Line Item Transfers	Pay Appl No. 15 Line Item Transfers	Pay Appl No. 16 Line Item Transfers	Pay Appl No. 17 Line Item Transfers	Pay Appl No. 18 Line Item Transfers	Adjusted Contract Totals (E)	Retention % (F)	Prior Gross Amount Requested (G)	Previous Request			Current Request			Total Gross Completed To Date (M)	Total Amount Paid To Date (N)	Total % Paid To Date (O)	Total % Complete To Date (P)	Total Retention To Date (Q)	Balance Remaining (R)
																Less Prior Held Retention (H)	Net Amt Paid (I)	Gross Amount Requested (J)	Less Retention (K)	Net Amount Requested (L)							
<b>DEMOLITION</b>																											
22-02-221	Demolition	50,000.00	50,000.00	27,000.00	0.00								77,000.00	10.00%	77,000.00	7,700.00	69,300.00	0.00	0.00	0.00	77,000.00	69,300.00	90.00%	100.00%	7,700.00	0.00	
<b>DEMOLITION TOTAL</b>		<b>50,000.00</b>	<b>50,000.00</b>	<b>27,000.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>77,000.00</b>		<b>77,000.00</b>	<b>7,700.00</b>	<b>69,300.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>77,000.00</b>	<b>69,300.00</b>	<b>90.00%</b>	<b>100.00%</b>	<b>7,700.00</b>	<b>0.00</b>	
<b>ON-SITES</b>																											
24-01-671	Dust Control	40,000.00	40,000.00	0.00	0.00								40,000.00	10.00%	40,000.00	4,000.00	36,000.00	0.00	0.00	0.00	40,000.00	36,000.00	90.00%	100.00%	4,000.00	0.00	
24-02-056	Import/Export Soils	50,000.00	50,000.00	0.00	0.00								50,000.00	10.00%	50,000.00	5,000.00	45,000.00	0.00	0.00	0.00	50,000.00	45,000.00	90.00%	100.00%	5,000.00	0.00	
24-02-231	Clearing/Grubbing	45,000.00	45,000.00	0.00	0.00								45,000.00	10.00%	45,000.00	4,500.00	40,500.00	0.00	0.00	0.00	45,000.00	40,500.00	90.00%	100.00%	4,500.00	0.00	
24-02-311	Rough Grading (on-site)	50,000.00	50,000.00	0.00	0.00	(16,250.00)							33,750.00	10.00%	33,750.00	3,375.00	30,375.00	0.00	0.00	0.00	33,750.00	30,375.00	90.00%	100.00%	3,375.00	0.00	
24-02-312	Finish Grading (on-site)	5,000.00	5,000.00	97,807.00	0.00	26,250.00						(49,057.00)	80,000.00	10.00%	80,000.00	8,000.00	72,000.00	0.00	0.00	0.00	80,000.00	72,000.00	90.00%	100.00%	8,000.00	0.00	
24-02-313	Fine Grading	0.00	0.00	116,193.00	0.00	11,000.00							127,193.00	10.00%	70,000.00	7,000.00	63,000.00	57,193.00	5,719.30	51,473.70	127,193.00	114,473.70	90.00%	100.00%	12,719.30	0.00	
24-02-341	Lime Soil Stabilization	45,000.00	45,000.00	0.00	0.00								45,000.00	10.00%	45,000.00	4,500.00	40,500.00	0.00	0.00	0.00	45,000.00	40,500.00	90.00%	100.00%	4,500.00	0.00	
24-02-361	Termite Soil Treatment	5,000.00	5,000.00	0.00	0.00	(5,000.00)							0.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	#DIV/0!	#DIV/0!	0.00	0.00	
24-02-371	Erosion Control	40,000.00	40,000.00	0.00	0.00								40,000.00	10.00%	40,000.00	4,000.00	36,000.00	0.00	0.00	0.00	40,000.00	36,000.00	90.00%	100.00%	4,000.00	0.00	
24-02-511	Water Distribution (on-site)	80,000.00	80,000.00	0.00	0.00								80,000.00	10.00%	80,000.00	8,000.00	72,000.00	0.00	0.00	0.00	80,000.00	72,000.00	90.00%	100.00%	8,000.00	0.00	
24-02-531	Sewer Distribution (on-site)	50,000.00	50,000.00	0.00	0.00								50,000.00	10.00%	50,000.00	5,000.00	45,000.00	0.00	0.00	0.00	50,000.00	45,000.00	90.00%	100.00%	5,000.00	0.00	
24-02-551	Electrical Distribution (on-site)(Primary)	90,807.00	90,807.00	0.00	0.00								90,807.00	10.00%	90,807.00	9,080.70	81,726.30	0.00	0.00	0.00	90,807.00	81,726.30	90.00%	100.00%	9,080.70	0.00	
24-02-551	Electrical Distribution (on-site) (Secondary)	40,000.00	40,000.00	0.00	0.00	(13,737.20)							26,262.80	10.00%	26,262.80	2,626.28	23,636.52	0.00	0.00	0.00	26,262.80	23,636.52	90.00%	100.00%	2,626.28	0.00	
24-02-582	Telephone Distribution (on-site)(Primary)	5,000.00	5,000.00	0.00	0.00	(5,000.00)							0.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	#DIV/0!	#DIV/0!	0.00	0.00	
24-02-621	Site Area Drains	20,000.00	20,000.00	0.00	0.00								20,000.00	10.00%	0.00	0.00	0.00	20,000.00	2,000.00	18,000.00	20,000.00	18,000.00	90.00%	100.00%	2,000.00	0.00	
24-02-631	Storm Drainage (on-site)	60,000.00	60,000.00	0.00	0.00								60,000.00	10.00%	60,000.00	6,000.00	54,000.00	0.00	0.00	0.00	60,000.00	54,000.00	90.00%	100.00%	6,000.00	0.00	
24-02-631	Manhole/Whitney Wall/Silt Fence	0.00	0.00	0.00	16,884.00								16,884.00	10.00%	0.00	0.00	0.00	16,884.00	1,688.40	15,195.60	16,884.00	15,195.60	90.00%	100.00%	1,688.40	0.00	
24-02-741	Asphalt Pavement (on-site)	120,000.00	120,000.00	0.00	0.00								120,000.00	10.00%	84,000.00	8,400.00	75,600.00	36,000.00	3,600.00	32,400.00	120,000.00	108,000.00	90.00%	100.00%	12,000.00	0.00	
24-02-751	Concrete Pavement (on-site)	90,000.00	90,000.00	89,000.00	4,342.43						67,812.55		250,954.98	10.00%	120,500.00	12,050.00	108,450.00	130,454.98	13,045.50	117,409.48	250,954.98	225,859.48	90.00%	100.00%	25,095.50	0.00	
24-02-761	Pavement Stripping/Tackle (On-site)	20,000.00	20,000.00	6,262.80	1,098.62	13,737.20							(19,051.50)	10.00%	0.00	0.00	0.00	22,047.12	2,204.71	19,842.41	20,000.00	19,842.41	90.00%	100.00%	2,204.71	0.00	
24-02-771	Concrete Curbs & Gutters (On-site)	60,000.00	60,000.00	0.00	41,419.54	60,000.00							161,915.49	10.00%	42,000.00	4,200.00	37,800.00	96,625.20	9,662.52	86,962.68	138,625.20	124,762.68	77.05%	85.62%	13,862.52	23,290.29	
24-02-781	Precast Concrete Pavers (On-site)	0.00	0.00	0.00	0.00								0.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	#DIV/0!	#DIV/0!	0.00	0.00	
24-02-821	Perimeter Fences & Gates (Tubular Steel)	5,000.00	5,000.00	0.00	0.00	(5,000.00)							0.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	#DIV/0!	#DIV/0!	0.00	0.00	
24-02-822	Perimeter Fences & Gates (Wood) (On-site)	0.00	0.00	0.00	0.00								0.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	#DIV/0!	#DIV/0!	0.00	0.00	
24-02-823	Perimeter Fence & Gate (Chain-link) (On-site)	0.00	0.00	0.00	0.00								0.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	#DIV/0!	#DIV/0!	0.00	0.00	
24-02-831	Retaining Walls (On-site)	0.00	0.00	0.00	0.00								0.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	#DIV/0!	#DIV/0!	0.00	0.00	
24-02-841	Parking Bumpers	6,000.00	6,000.00	0.00	0.00	(6,000.00)							0.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	#DIV/0!	#DIV/0!	0.00	0.00	
24-04-221	Concrete Masonry Units (On-site)	60,000.00	60,000.00	0.00	0.00	(60,000.00)							0.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	#DIV/0!	#DIV/0!	0.00	0.00	
<b>ONSITE TOTAL</b>		<b>986,807.00</b>	<b>986,807.00</b>	<b>309,262.80</b>	<b>63,744.59</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>(0.00)</b>	<b>1,359,814.39</b>		<b>957,319.80</b>	<b>95,731.98</b>	<b>861,587.82</b>	<b>379,204.30</b>	<b>37,920.43</b>	<b>341,283.87</b>	<b>1,336,524.10</b>	<b>1,202,871.69</b>	<b>88.46%</b>	<b>98.29%</b>	<b>133,652.41</b>	<b>23,290.29</b>	
<b>OFF-SITES</b>																											
26-02-311	Rough Grading (Off-site)	10,000.00	10,000.00	0.00	0.00								10,000.00	10.00%	10,000.00	1,000.00	9,000.00	0.00	0.00	0.00	10,000.00	9,000.00	90.00%	100.00%	1,000.00	0.00	
26-02-312	Finish Grading (Off-site)	10,000.00	10,000.00	0.00	0.00								10,000.00	10.00%	10,000.00	1,000.00	9,000.00	0.00	0.00	0.00	10,000.00	9,000.00	90.00%	100.00%	1,000.00	0.00	
26-02-313	Fine Grading (Off-site)	10,000.00	10,000.00	0.00	0.00	(10,000.00)							0.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	#DIV/0!	#DIV/0!	0.00	0.00	
26-02-511	Water Distribution (Off-site)	30,000.00	30,000.00	0.00	0.00								30,000.00	10.00%	30,000.00	3,000.00	27,000.00	0.00	0.00	0.00	30,000.00	27,000.00	90.00%	100.00%	3,000.00	0.00	
26-02-531	Sewer Distribution (Off-site)	20,000.00	20,000.00	0.00	0.00								20,000.00	10.00%	20,000.00	2,000.00	18,000.00	0.00	0.00	0.00	20,000.00	18,000.00	90.00%	100.00%	2,000.00	0.00	
26-02-541	Gas Distribution (Off-site)	10,000.00	10,000.00	0.00	0.00	(10,000.00)							0.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	#DIV/0!	#DIV/0!	0.00	0.00	
26-02-551	Electrical Distribution (Off-site)	20,000.00	20,000.00	0.00	0.00	(20,000.00)							0.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	#DIV/0!	#DIV/0!	0.00	0.00	
26-02-582	Telephone Distribution (Off-site)	0.00	0.00	0.00	0.00								0.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	#DIV/0!	#DIV/0!	0.00	0.00	
26-02-583	CATV Distribution (Off-site)	0.00	0.00	0.00	0.00																						



Table with columns: Cost Coding, Description, Budget (A), Contract Amount (B), Previously Approved Contract Changes (C), Current Contract Changes (D), Pay Appl No. 11 Transfers, Pay Appl No. 13 Line Item Transfers, Pay Appl No. 14 Line Item Transfers, Pay Appl No. 15 Line Item Transfers, Pay Appl No. 16 Line Item Transfers, Pay Appl No. 17 Line Item Transfers, Pay Appl No. 18 Line Item Transfers, Adjusted Contract Totals (E), Retention % (F), Prior Gross Amount Requested (G), Previous Request Less Prior Held Retention (H), Net Amont Paid (I), Current Request Gross Amount Requested (J), Less Retention (K), Net Amount Requested (L), Total Gross Completed To date (M), Total Amount Paid To Date (N), Total % Paid To Date (O), Total % Complete To Date (P), Total Retention To Date (Q), Balance Remaining (E)-(M) (R).

Cost Coding	Description	Budget (A)	Contract Amount (B)	Previously Approved Contract Changes (C)	Current Contract Changes (D)	Pay Appl No. 11 Line Item Transfers	Pay Appl No. 13 Line Item Transfers	Pay Appl No. 14 Line Item Transfers	Pay Appl No. 15 Line Item Transfers	Pay Appl No. 16 Line Item Transfers	Pay Appl No. 17 Line Item Transfers	Pay Appl No. 18 Line Item Transfers	Adjusted Contract Totals (E)	Retention % (F)	Prior Gross Amount Requested (G)	Previous Request			Current Request			Total Gross Completed To date (M)	Total Amount Paid To Date (N)	Total % Paid To Date (O)	Total % Complete To Date (P)	Total Retention To Date (Q)	Balance Remaining (R)	
																Less Prior Held Retention (H)	Net Amont Paid (I)	Gross Amount Requested (J)	Less Retention (K)	Net Amount Requested (L)								
32-01-451	Testing, Inspections, Laboratory (By Owner)	10,000.00	10,000.00	0.00	0.00		(10,000.00)						0.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	#DIV/0!	#DIV/0!	0.00	0.00
32-01-512	Temporary Fire Protection (monitoring)	5,000.00	5,000.00	0.00	0.00								5,000.00	10.00%	5,000.00	500.00	4,500.00	0.00	0.00	0.00	5,000.00	4,500.00	90.00%	100.00%	500.00	0.00		
32-01-514	Temporary Electric (Distributed)	10,000.00	10,000.00	0.00	500.00								10,500.00	10.00%	10,000.00	1,000.00	9,000.00	500.00	50.00	450.00	10,500.00	9,450.00	90.00%	100.00%	1,050.00	0.00		
32-01-514	Temporary Electric (Usage)	20,000.00	20,000.00	0.00	0.00								20,000.00	10.00%	20,000.00	2,000.00	18,000.00	0.00	0.00	0.00	20,000.00	18,000.00	90.00%	100.00%	2,000.00	0.00		
32-01-518	Temporary Water	10,000.00	10,000.00	0.00	10,000.00			(8,385.09)	8,385.09				20,000.00	10.00%	10,000.00	1,000.00	9,000.00	10,000.00	1,000.00	9,000.00	20,000.00	18,000.00	90.00%	100.00%	2,000.00	0.00		
32-01-521	Contractor Tools/Supplies	20,000.00	20,000.00	0.00	5,000.00								25,000.00	10.00%	20,000.00	2,000.00	18,000.00	5,000.00	500.00	4,500.00	25,000.00	22,500.00	90.00%	100.00%	2,500.00	0.00		
32-01-522	First Aid Kit	500.00	500.00	0.00	500.00								1,000.00	10.00%	500.00	50.00	450.00	500.00	50.00	450.00	1,000.00	900.00	90.00%	100.00%	100.00	0.00		
32-01-524	Field Office	10,000.00	10,000.00	0.00	0.01								10,001.01	10.00%	10,001.01	1,000.10	9,000.90	0.01	0.00	0.01	10,001.01	9,000.91	90.00%	100.00%	1,000.10	0.00		
32-01-524	Leasing Office Trailer	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	#DIV/0!	#DIV/0!	0.00	0.00	
32-01-525	Job Office Supplies	8,000.00	8,000.00	0.00	724.33								8,724.33	0.00%	8,000.00	0.00	8,000.00	724.33	0.00	724.33	8,724.33	8,724.33	100.00%	100.00%	0.00	0.00		
32-01-526	Trash Bins	40,000.00	40,000.00	0.00	0.00								40,000.00	0.00%	40,000.00	0.00	40,000.00	0.00	0.00	0.00	40,000.00	40,000.00	100.00%	100.00%	0.00	0.00		
32-01-319	Prevailing Wage Monitor	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	#DIV/0!	#DIV/0!	0.00	0.00	
32-01-528	Temporary Toilet	10,000.00	10,000.00	0.00	0.00								10,000.00	0.00%	10,000.00	0.00	10,000.00	0.00	0.00	0.00	10,000.00	10,000.00	100.00%	100.00%	0.00	0.00		
32-01-561	Security	30,000.00	30,000.00	0.00	0.00	0.00	22,321.03	8,385.09	8,275.03	11,224.33	7,000.15	0.00	96,088.93	0.00%	87,205.63	0.00	87,205.63	1,883.15	0.00	1,883.15	89,088.78	89,088.78	92.71%	92.71%	0.00	7,000.15		
32-01-562	Storage Bin	15,000.00	15,000.00	0.00	0.00		(6,321.03)						8,678.97	0.00%	8,678.97	0.00	8,678.97	0.00	0.00	0.00	8,678.97	8,678.97	100.00%	100.00%	0.00	0.00		
32-01-564	Temporary Fencing	10,000.00	10,000.00	0.00	0.00								10,000.00	0.00%	10,000.00	0.00	10,000.00	0.00	0.00	0.00	10,000.00	10,000.00	100.00%	100.00%	0.00	0.00		
32-01-742	Site Maintenance	25,000.00	25,000.00	0.00	5,320.97								30,320.97	0.00%	25,000.00	0.00	25,000.00	5,320.97	0.00	5,320.97	30,320.97	30,320.97	100.00%	100.00%	0.00	0.00		
32-01-600	Liability Insurance	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	#DIV/0!	#DIV/0!	0.00	0.00	
<b>GEN. CONDITIONS TOTAL</b>		<b>529,500.00</b>	<b>529,500.00</b>	<b>209,775.00</b>	<b>92,604.61</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>17,545.69</b>	<b>0.00</b>	<b>849,425.30</b>		<b>756,820.69</b>	<b>36,550.10</b>	<b>720,270.59</b>	<b>85,604.46</b>	<b>7,456.17</b>	<b>78,148.29</b>	<b>842,425.15</b>	<b>798,418.88</b>	<b>94.00%</b>	<b>99.18%</b>	<b>44,006.27</b>	<b>7,000.15</b>		
56-99-280	CONTRACTOR'S FEE	830,868.00	830,868.00	(330,868.00)	0.00		(94,650.00)	0.00	0.00	0.00	0.00	0.00	405,350.00	10.00%	387,381.39	38,738.14	348,643.25	17,968.61	1,796.86	16,171.75	405,350.00	364,815.00	90.00%	100.00%	40,535.00	0.00		
<b>TOTAL OVERHEAD</b>		<b>0.00</b>	<b>0.00</b>	<b>0.00</b>									<b>0.00</b>	<b>10.00%</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>#DIV/0!</b>	<b>#DIV/0!</b>	<b>0.00</b>	<b>0.00</b>	
92-99-500	Buy-Out Contingency	0.00	0.00	0.00	20,000.00	19,000.00							(17,545.69)		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00%	0.00%	0.00	21,454.31		
<b>Total</b>		<b>12,135,069.00</b>	<b>12,135,069.00</b>	<b>1,350,369.72</b>	<b>368,969.31</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>(0.00)</b>	<b>13,854,406.03</b>		<b>12,910,263.30</b>	<b>1,251,894.36</b>	<b>11,658,368.94</b>	<b>813,230.03</b>	<b>80,218.73</b>	<b>733,011.30</b>	<b>13,723,493.33</b>	<b>12,391,380.24</b>	<b>89.44%</b>	<b>99.06%</b>	<b>1,332,113.09</b>	<b>130,914.70</b>		

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**CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT**

Project: El Sereno (Cibolo TX)

Job No. \_\_\_\_\_

On receipt by the signer of this document of a check from Borgfeld Housing, LP (maker of check) in the sum of \$ 733,011.30 payable to HCHP Contractors, L.P. (payee or payees of check) and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the property of Borgfeld Housing, L.P. (owner) located at Cibolo, TX (location) to the following extent: El Sereno (job description).

This release covers a progress payment for all labor, services, equipment, or materials furnished to the property or to April 25, 2019 (person with whom signer contracted) as indicated in the attached statement(s) or progress payment request(s), except for unpaid retention, pending modifications and changes, or other items furnished.

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

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

Date: 5-23-19

HCHP Contractors, L.P. (Company name)

By  (Signature)

Pierre Harispuru, Vice President (Title)

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**NOTE:** Section 53.281(b)(2), Texas Property Code, requires that the above form be notarized. See Chapter 121, Texas Civil Practice & Remedies Code, regarding Acknowledgments & Proofs of Written Instruments, or consult an attorney. For short acknowledgement forms that might be suitable, see Section 121.008 in Chapter 121. Click [here](#) to go there.

## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of Los Angeles )

On May 23, 2019 before me, Lori L. Ruiz, Notary Public  
(insert name and title of the officer)

personally appeared Pierre Harispuru,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~-  
subscribed to the within instrument and acknowledged to me that he/~~she~~/~~they~~ executed the same in  
his/~~her~~/~~their~~ authorized capacity(~~ies~~), and that by his/~~her~~/~~their~~ signature(s) on the instrument the  
person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature  (Seal)



=====

**NOTICE:**

This document waives rights unconditionally and states that you have been paid for giving up those rights. It is prohibited for a person to require you to sign this document if you have not been paid the payment amount set forth below. If you have not been paid, use a conditional release form.

**UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT**

Project El Sereno (Cibolo TX)

Job No. \_\_\_\_\_

The signer of this document has been paid and has received a progress payment in the sum of \$ 1,563,234.30 for all labor, services, equipment, or materials furnished to the property or to \_\_\_\_\_ (person with whom signer contracted) on the property of Borgfeld Housing, L.P. (owner) located at Cibolo, TX (location) to the following extent: El Sereno (job description). The signer therefore waives and releases any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the above referenced project to the following extent:

This release covers a progress payment for all labor, services, equipment, or materials furnished to the property or to April 325, 2019 (person with whom signer contracted) as indicated in the attached statement(s) or progress payment request(s), except for unpaid retention, pending modifications and changes, or other items furnished.

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

Date 5-23-19

HCHP Contractors, L.P. (Company name)

By  (Signature)

Pierre Harispuru, Vice President (Title)

=====

**NOTE:** Section 53.281(b)(2), Texas Property Code, requires that the above form be notarized. See Chapter 121, Texas Civil Practice & Remedies Code, regarding Acknowledgments & Proofs of Written Instruments, or consult an attorney. For short acknowledgement forms that might be suitable, see Section 121.008 in Chapter 121. Click [here](#) to go there.

## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of Los Angeles )

On May 23, 2019 before me, Lori L. Ruiz, Notary Public  
(insert name and title of the officer)

personally appeared Pierre Harispuru,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in  
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the  
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing  
paragraph is true and correct.

WITNESS my hand and official seal.



Signature  (Seal)

# **AIA<sup>®</sup>**

# **Document G701<sup>™</sup> – 2017**

## **Change Order**

**PROJECT:** *(Name and address)*  
 Borgfeld Manor  
 213 Somerset Avenue  
 Cibolo, TX 78108

**CONTRACT INFORMATION:**  
 Contract For: General Construction  
 Date: April 10, 2017

**CHANGE ORDER INFORMATION:**  
 Change Order Number: 006  
 Date: May 22, 2019

**OWNER:** *(Name and address)*  
 Borgfeld Housing, LP  
 330 West Victoria Street  
 Gardena, CA 90248

**ARCHITECT:** *(Name and address)*  
 Humphreys & Partners Architects, L.P.  
 5339 Alpha Road, Suite 300  
 Dallas, TX 75240

**CONTRACTOR:** *(Name and address)*  
 HCHP Contractors, LP  
 330 West Victoria Street, Gardena, CA  
 90248

**THE CONTRACT IS CHANGED AS FOLLOWS:**

*(Insert a detailed description of the change and, if applicable, attach or reference specific exhibits. Also include agreed upon adjustments attributable to executed Construction Change Directives.)*

Budget line item changes due to City of Cibolo Building Department, Fire Department, and Owner changes (additions) to construction project. See attached pending change order log.

The original Contract Sum was	\$ 12,135,069.00
The net change by previously authorized Change Orders	\$ 1,350,369.72
The Contract Sum prior to this Change Order was	\$ 13,485,438.72
The Contract Sum will be increased by this Change Order in the amount of	\$ 368,969.31
The new Contract Sum including this Change Order will be	\$ 13,854,408.03

The Contract Time will be increased by Zero (0) days.  
 The new date of Substantial Completion will be

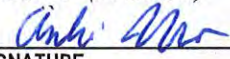
**NOTE:** This Change Order does not include adjustments to the Contract Sum or Guaranteed Maximum Price, or the Contract Time, that have been authorized by Construction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change Directive.

**NOT VALID UNTIL SIGNED BY THE ARCHITECT, CONTRACTOR AND OWNER.**

Humphreys & Partners Architects, L.P.  
 ARCHITECT *(Firm name)*

HCHP Contractors, LP  
 CONTRACTOR *(Firm name)*

Borgfeld Housing, LP  
 OWNER *(Firm name)*

  
 SIGNATURE

  
 SIGNATURE

  
 SIGNATURE

ANDRE WARREN,  
 PROJECT MANAGER  
 PRINTED NAME AND TITLE

Pierre Harispu Vice President,  
 Construction  
 PRINTED NAME AND TITLE

Mohannad H. Mohanna, Managing  
 Member  
 PRINTED NAME AND TITLE

5-23-19  
 DATE

5-22-19  
 DATE

5-22-19  
 DATE

Pending Change Order Log as of 5/22/2019

Change Order				Caused/Created by:						
Date Approved	CO #	Amount	Add'l Days	Description	Owner	Architect	Contractor	Subcontractor	Sub-Subcontractor	Other
	6	16,884.00		(24-02-631) Manhole/Whitney Wall/Silt Fence						City
	6	4,342.43		(24-02-751) Concrete Patching throughout Site						City
	6	1,098.62		(24-02-761) Crosswalk Striping	x					
	6	6,258.00		(24-02-771) Cleared Shrubs and Debris throughout Site						City
	6	11,801.47		(24-02-771) Install retaining wall with 3 to 1 slope						City
	6	1,503.37		(24-02-771) Install River Rock at AC area	x					
	6	1,040.80		(24-02-771) Install wheel stops at retaining wall with 3 to 1 slope						City
	6	20,815.90		(24-02-771) Retaining wall at AC area	x					
	6	9,828.74		(28-08-101) Repair Dented Doors	x					
	6	6,904.00		(28-08-101) Replace leasing office doors	x					
	6	7,191.00		(28-09-251) Repair Drywall	x					
	6	15,611.90		(28-09-601) Install quarter round in 92 units	x					
	6	26,358.00		(28-09-601) Vinyl Floor Repairs	x					
	6	29,448.00		(28-09-911) Paint Ceiling, Walls & Trim	x					
	6	16,574.00		(28-10-292) Mildew/Mold Remediation - Replace walls after heavy rains						City
	6	1,750.00		(28-10-521) Install Fire Extinguisher Cabinets						Fire Department
	6	3,166.50		(28-10-801) Tub Repairs	x					
	6	20,000.00		(28-13-702) Entry FOB System	x					
	6	6,500.00		(28-14-201) Elevators	x					
	6	1,417.00		(28-15-701) AC Lines	x					
	6	5,550.91		(28-15-701) Exterior Vent Sealing	x					
	6	32,003.00		(30-02-776) On-Site Concrete Repairs	x					
	6	738.00		(30-02-811) Repair Irrigation	x					
	6	8,856.06		(30-10-401) Fire Department Signage Changes						Fire Department
	6	723.00		(30-13-151) Fire Department requested additional 911 phone						Fire Department
	6	53,676.00		(32-01-312) Project Manager (Brendan)	x					
	6	8,000.00		(32-01-317) General Labor (Labor Finders)	x					
	6	500.00		(32-01-514) Temporary Electric (Distributed)	x					
	6	10,000.00		(32-01-518) Temporary Water	x					
	6	5,000.00		(32-01-521) Contractor Tools/Supplies	x					
	6	500.00		(32-01-522) First Aid Kit	x					
	6	0.01		(32-01-524) Field Office	x					
	6	724.33		(32-01-525) Job Office Supplies	x					
	6	8,883.30		(32-01-561) Security	x					
	6	5,320.97		(32-01-742) Trash Removal	x					
	6	20,000.00		Contingency	x					
		<b>368,969.31</b>	<b>0</b>							



## LINE ITEM TRANSFER - #12

Note:

From: **HCHP Contractor, LP**  
 330 W. Victoria Street  
 Gardena, CA 90248

PROJECT: Borgfeld Manor  
 PROJECT #: 2506  
 STATE: TEXAS  
 CITY: CIBOLO

PHONE: 424-258-2800  
 FAX: 424-258-2801

DATE: 03/27/19  
 CONTRACT DATE: 04/10/17

To: **BORGFELD HOUSING, LP**  
 330 W. Victoria Street  
 Gardena, CA 90248

PHONE: 424-258-2800  
 FAX: 424-258-2801

LINE ITEM TRANSFER DECREASES						
Code	Description	Beginning Balance	Decrease	Ending Balance	Transfer To Code	Description
24-02-312	Finish Grading	129,057.00	(49,057.00)	80,000.00	24-02-751	Concrete Pavement
24-02-761	On-Site: Pavement Striping/Tactile Warning	40,000.00	(19,142.12)	20,857.88	24-02-751	Concrete Pavement
26-02-761	Off-Site: Pavement Striping/Tactile Warning	20,000.00	(20,000.00)	0.00	26-02-771	Concrete Curbs & Gutters

Total Decrease: (88,199.12)

LINE ITEM TRANSFER INCREASES						
Code	Description	Beginning Balance	Increase	Ending Balance	Increase From Code	Description
24-02-751	Concrete Pavement	179,000.00	49,057.00	228,057.00	24-02-312	Finish Grading
24-02-751	Concrete Pavement	228,057.00	19,142.12	247,199.12	24-02-761	On-Site: Pavement Striping/Tactile Warning
26-02-771	Concrete Curbs & Gutters	71,000.00	20,000.00	91,000.00	26-02-761	Off-Site: Pavement Striping/Tactile Warning

Total Increase: 88,199.12

CONTRACTOR APPROVAL	
Approved By:  Pierre Harispu, Vice President Construction	Date: <u>5-23-19</u>

FM

## LINE ITEM TRANSFER - #13

Note:

From: **HCHP Contractor, LP**  
 330 W. Victoria Street  
 Gardena, CA 90248

PROJECT: Borgfeld Manor  
 PROJECT #: 2506  
 STATE: TEXAS  
 CITY: CIBOLO

PHONE: 424-258-2800  
 FAX: 424-258-2801

DATE: 05/16/19  
 CONTRACT DATE: 04/10/17

To: **BORGFELD HOUSING, LP**  
 330 W. Victoria Street  
 Gardena, CA 90248

PHONE: 424-258-2800  
 FAX: 424-258-2801


LINE ITEM TRANSFER DECREASES						
Code	Description	Beginning Balance	Decrease	Ending Balance	Transfer To Code	Description
24-02-751	Concrete Pavement	251,541.55	90.62	251,450.93	24-02-761	Pavement Striping / Tactile Warning
24-02-751	Concrete Pavement	251,450.93	495.95	250,954.98	24-02-771	Concrete Curbs & Gutters
26-02-891	Traffic Signs & Signals	19,000.00	19,000.00	0.00	30-16-521	Exterior Site Lighting (Fixtures)
28-08-101	Metal Doors & Frames	96,490.74	201.74	96,289.00	28-10-801	Toilet / Bath Accessories
28-09-601	Floor Covering - Rec Center	243,578.42	235.85	243,342.57	28-10-801	Toilet / Bath Accessories
28-15-701	HVAC	716,967.91	57.91	716,910.00	28-10-801	Toilet / Bath Accessories

Total Decrease: 20,082.07

LINE ITEM TRANSFER INCREASES						
Code	Description	Beginning Balance	Increase	Ending Balance	Increase From Code	Description
24-02-761	Pavement Striping / Tactile Warning	21,956.80	90.62	22,047.42	24-02-751	Concrete Pavement
24-02-771	Concrete Curbs & Gutters	161,419.54	495.95	161,915.49	24-02-751	Concrete Pavement
28-10-801	Toilet / Bath Accessories	7,766.06	201.74	7,967.80	28-08-101	Metal Doors & Frames
28-10-801	Toilet / Bath Accessories	7,967.80	235.85	8,203.65	28-09-601	Floor Covering - Rec Center
28-10-801	Toilet / Bath Accessories	8,203.65	57.91	8,261.56	28-15-701	HVAC
30-16-521	Exterior Site Lighting (Fixtures)	(19,000.00)	19,000.00	0.00	26-02-891	Traffic Signs & Signals

Total Increase: 20,082.07

### CONTRACTOR APPROVAL

Approved By:   
 Pierre Harispuru, Vice President Construction

Date: May 16, 2019

Change Order				Description	Caused/Created by:					
Date Approved	CO #	Amount	Add'l Days		Owner	Architect	Contractor	Subcontractor	Sub-Subcontractor	Other
05/22/19	6	16,884.00		(24-02-631) Manhole/Whitney Wall/Silt Fence						City
05/22/19	6	4,342.43		(24-02-751) Concrete Patching throughout Site						City
05/22/19	6	1,098.62		(24-02-761) Crosswalk Striping	x					
05/22/19	6	6,258.00		(24-02-771) Cleared Shrubs and Debris throughout Site						City
05/22/19	6	11,801.47		(24-02-771) Install retaining wall with 3 to 1 slope						City
05/22/19	6	1,503.37		(24-02-771) Install River Rock at AC area	x					
05/22/19	6	1,040.80		(24-02-771) Install wheel stops at retaining wall with 3 to 1 slope						City
05/22/19	6	20,815.90		(24-02-771) Retaining wall at AC area	x					
05/22/19	6	9,828.74		(28-08-101) Repair Dented Doors	x					
05/22/19	6	6,904.00		(28-08-101) Replace leasing office doors	x					
05/22/19	6	7,191.00		(28-09-251) Repair Drywall	x					
05/22/19	6	15,611.90		(28-09-601) Install quarter round in 92 units	x					
05/22/19	6	26,358.00		(28-09-601) Vinyl Floor Repairs	x					
05/22/19	6	29,448.00		(28-09-911) Paint Ceiling, Walls & Trim	x					
05/22/19	6	16,574.00		(28-10-292) Mildew/Mold Remediation - Replace walls after heavy rains						City
05/22/19	6	1,750.00		(28-10-521) Install Fire Extinguisher Cabinets						Fire Department
05/22/19	6	3,166.50		(28-10-801) Tub Repairs	x					
05/22/19	6	20,000.00		(28-13-702) Entry FOB System	x					
05/22/19	6	6,500.00		(28-14-201) Elevators	x					
05/22/19	6	1,417.00		(28-15-701) AC Lines	x					
05/22/19	6	5,550.91		(28-15-701) Exterior Vent Sealing	x					
05/22/19	6	32,003.00		(30-02-776) On-Site Concrete Repairs	x					
05/22/19	6	738.00		(30-02-811) Repair Irrigation	x					
05/22/19	6	8,856.06		(30-10-401) Fire Department Signage Changes						Fire Department
05/22/19	6	723.00		(30-13-151) Fire Department requested additional 911 phone						Fire Department
05/22/19	6	53,676.00		(32-01-312) Project Manager (Brendan)	x					
05/22/19	6	8,000.00		(32-01-317) General Labor (Labor Finders)	x					
05/22/19	6	500.00		(32-01-514) Temporary Electric (Distributed)	x					
05/22/19	6	10,000.00		(32-01-518) Temporary Water	x					
05/22/19	6	5,000.00		(32-01-521) Contractor Tools/Supplies	x					
05/22/19	6	500.00		(32-01-522) First Aid Kit	x					
05/22/19	6	0.01		(32-01-524) Field Office	x					
05/22/19	6	724.33		(32-01-525) Job Office Supplies	x					
05/22/19	6	8,883.30		(32-01-561) Security	x					
05/22/19	6	5,320.97		(32-01-742) Trash Removal	x					
05/22/19	6	20,000.00		Contingency	x					
		<b>368,969.31</b>	<b>0</b>							

CHANGE ORDER REQUEST SUBMITTED					OWNER CHANGE ORDER ISSUED				
COR No.	Date Submitted	Date Approved	Amount	Delay Days	Description	Change Order Issued	CO No.	Amount	Delay Days
1	04/10/17	04/10/17	72,838.00	0	Increase for Additional Insurance Requirement	04/10/17	1	72,838.00	0
2	01/04/18	01/12/18	0.00	148	Increase construction time by 148 working days	01/11/18	2	0.00	148
3	01/11/18	01/12/18	43,626.00	0	Increase General Conditions Contract Amount because of CO2	01/11/18	3	43,626.00	0
4	01/11/18	01/12/18	68,728.00	0	Increase GL Insurance & Builder's Risk because of CO2	01/11/18	4	68,728.00	0
5	06/29/18	07/02/18	1,165,177.72	0	Increase line items - weather issues, labor and material costs	07/05/18	5	1,165,177.72	0
6	05/22/19	05/22/19	368,969.31	0	Increase line items - City of Cibolo Building Dept, Fire Department and Owner changes to construction project.		6	368,969.31	0
<b>TOTAL</b>			<b>1,719,339.03</b>	<b>148</b>				<b>1,719,339.03</b>	<b>148</b>

### EXHIBIT 3 - RAINFALL DATA

Climatological Data for SEGUIN 1 SSW, TX - May 2017			
Date	Precipitation	New Snow	Snow Depth
2017-05-01	0.00	0.0	0
2017-05-02	0.00	0.0	0
2017-05-03	0.00	0.0	0
2017-05-04	0.00	0.0	0
2017-05-05	0.00	0.0	0
2017-05-06	0.00	0.0	0
2017-05-07	0.00	0.0	0
2017-05-08	0.00	0.0	0
2017-05-09	0.00	0.0	0
2017-05-10	0.05	0.0	0
2017-05-11	0.00	0.0	0
2017-05-12	0.00	0.0	0
2017-05-13	0.00	0.0	0
2017-05-14	0.00	0.0	0
2017-05-15	0.00	0.0	0
2017-05-16	0.00	0.0	0
2017-05-17	0.00	0.0	0
2017-05-18	0.12	0.0	0
2017-05-19	0.00	0.0	0
2017-05-20	0.00	0.0	0
2017-05-21	<b>0.50</b>	0.0	0
2017-05-22	0.42	0.0	0
2017-05-23	0.00	0.0	0
2017-05-24	0.00	0.0	0
2017-05-25	0.00	0.0	0
2017-05-26	0.00	0.0	0
2017-05-27	0.00	0.0	0
2017-05-28	0.00	0.0	0
2017-05-29	0.09	0.0	0
2017-05-30	0.00	0.0	0
2017-05-31	0.02	0.0	0
<b>Sum</b>	1.20	0.0	-
<b>Average</b>	-	-	0.0
<b>Normal</b>	3.54	0.0	-

<b>Observations for each day cover the 24 hours ending at the time given below (Local Standard Time).</b>
Precipitation : 7am
Snowfall : unknown
Snow Depth : unknown

**Climatological Data for SEGUIN 1 SSW, TX - June 2017**

<b>Date</b>	<b>Precipitation</b>	<b>New Snow</b>	<b>Snow Depth</b>
2017-06-01	0.19	0.0	0
2017-06-02	0.00	0.0	0
2017-06-03	0.00	0.0	0
2017-06-04	0.00	0.0	0
2017-06-05	0.55	0.0	0
2017-06-06	0.29	0.0	0
2017-06-07	0.00	0.0	0
2017-06-08	0.00	0.0	0
2017-06-09	0.00	0.0	0
2017-06-10	0.00	0.0	0
2017-06-11	0.00	0.0	0
2017-06-12	0.00	0.0	0
2017-06-13	0.00	0.0	0
2017-06-14	0.00	0.0	0
2017-06-15	0.00	0.0	0
2017-06-16	1.00	0.0	0
2017-06-17	0.00	0.0	0
2017-06-18	0.00	0.0	0
2017-06-19	0.00	0.0	0
2017-06-20	0.00	0.0	0
2017-06-21	0.00	0.0	0
2017-06-22	0.00	0.0	0
2017-06-23	0.00	0.0	0
2017-06-24	0.00	0.0	0
2017-06-25	0.00	0.0	0
2017-06-26	0.24	0.0	0
2017-06-27	0.15	0.0	0
2017-06-28	0.07	0.0	0
2017-06-29	0.00	0.0	0
2017-06-30	0.00	0.0	0
<b>Sum</b>	2.49	0.0	-
<b>Average</b>	-	-	0.0
<b>Normal</b>	4.05	0.0	-

**Observations for each day cover the 24 hours ending at the time given below (Local Standard Time).**

Precipitation : 7am

Snowfall : unknown

Snow Depth : unknown

**Climatological Data for SEGUIN 1 SSW, TX - July 2017**

<b>Date</b>	<b>Precipitation</b>	<b>New Snow</b>	<b>Snow Depth</b>
2017-07-01	0.00	0.0	0
2017-07-02	0.00	0.0	0
2017-07-03	0.00	0.0	0
2017-07-04	0.00	0.0	0
2017-07-05	0.00	0.0	0
2017-07-06	0.00	0.0	0
2017-07-07	0.00	0.0	0
2017-07-08	0.01	0.0	0
2017-07-09	0.01	0.0	0
2017-07-10	0.00	0.0	0
2017-07-11	0.00	0.0	0
2017-07-12	0.00	0.0	0
2017-07-13	0.00	0.0	0
2017-07-14	0.00	0.0	0
2017-07-15	0.00	0.0	0
2017-07-16	0.60	0.0	0
2017-07-17	0.00	0.0	0
2017-07-18	0.00	0.0	0
2017-07-19	0.00	0.0	0
2017-07-20	0.00	0.0	0
2017-07-21	0.00	0.0	0
2017-07-22	0.00	0.0	0
2017-07-23	0.00	0.0	0
2017-07-24	0.00	0.0	0
2017-07-25	0.00	0.0	0
2017-07-26	0.00	0.0	0
2017-07-27	0.00	0.0	0
2017-07-28	0.00	0.0	0
2017-07-29	0.00	0.0	0
2017-07-30	0.00	0.0	0
2017-07-31	0.00	0.0	0
<b>Sum</b>	0.62	0.0	-
<b>Average</b>	-	-	0.0
<b>Normal</b>	2.45	0.0	-

**Observations for each day cover the 24 hours ending  
at the time given below (Local Standard Time).**

Precipitation : 7am

Snowfall : unknown

Snow Depth : unknown

**Climatological Data for SEGUIN 1 SSW, TX - August 2017**

<b>Date</b>	<b>Precipitation</b>	<b>New Snow</b>	<b>Snow Depth</b>
2017-08-01	0.00	0.0	0
2017-08-02	0.00	0.0	0
2017-08-03	1.00	0.0	0
2017-08-04	0.00	0.0	0
2017-08-05	0.00	0.0	0
2017-08-06	0.00	0.0	0
2017-08-07	0.00	0.0	0
2017-08-08	2.81	0.0	0
2017-08-09	0.00	0.0	0
2017-08-10	0.00	0.0	0
2017-08-11	0.00	0.0	0
2017-08-12	0.00	0.0	0
2017-08-13	0.00	0.0	0
2017-08-14	0.00	0.0	0
2017-08-15	0.00	0.0	0
2017-08-16	0.00	0.0	0
2017-08-17	0.00	0.0	0
2017-08-18	0.00	0.0	M
2017-08-19	1.00	M	M
2017-08-20	0.00	0.0	0
2017-08-21	0.00	0.0	0
2017-08-22	0.00	0.0	0
2017-08-23	0.00	0.0	0
2017-08-24	0.40	0.0	0
2017-08-25	0.00	0.0	0
2017-08-26	1.43	0.0	0
2017-08-27	5.09	0.0	0
2017-08-28	2.00	0.0	0
2017-08-29	0.00	0.0	0
2017-08-30	0.00	0.0	0
2017-08-31	0.00	0.0	0
<b>Sum</b>	13.73	0.0	-
<b>Average</b>	-	-	0.0
<b>Normal</b>	2.66	0.0	-

**Observations for each day cover the 24 hours ending  
at the time given below (Local Standard Time).**

Precipitation : 7am

Snowfall : unknown

Snow Depth : unknown



**Climatological Data for SEGUIN 1 SSW, TX - September 2017**

<b>Date</b>	<b>Precipitation</b>	<b>New Snow</b>	<b>Snow Depth</b>
2017-09-01	0.00	0.0	0
2017-09-02	0.00	0.0	0
2017-09-03	0.00	0.0	0
2017-09-04	0.00	0.0	0
2017-09-05	0.00	0.0	0
2017-09-06	0.00	0.0	0
2017-09-07	0.00	0.0	0
2017-09-08	0.00	0.0	0
2017-09-09	0.00	0.0	0
2017-09-10	0.00	0.0	0
2017-09-11	0.00	0.0	0
2017-09-12	0.00	0.0	0
2017-09-13	0.00	0.0	0
2017-09-14	0.00	0.0	0
2017-09-15	0.00	0.0	0
2017-09-16	0.00	0.0	0
2017-09-17	0.00	0.0	0
2017-09-18	0.00	0.0	0
2017-09-19	0.00	0.0	0
2017-09-20	0.00	0.0	0
2017-09-21	0.00	0.0	0
2017-09-22	0.00	0.0	0
2017-09-23	0.00	0.0	0
2017-09-24	0.00	0.0	0
2017-09-25	0.00	0.0	0
2017-09-26	0.03	0.0	0
2017-09-27	2.48	0.0	0
2017-09-28	0.48	0.0	0
2017-09-29	0.47	0.0	0
2017-09-30	0.01	0.0	0
<b>Sum</b>	3.47	0.0	-
<b>Average</b>	-	-	0.0
<b>Normal</b>	2.76	0.0	-

**Observations for each day cover the 24 hours ending  
at the time given below (Local Standard Time).**

Precipitation : 7am

Snowfall : unknown

Snow Depth : unknown

**Climatological Data for SEGUIN 1 SSW, TX - September 2017**

<b>Date</b>	<b>Precipitation</b>	<b>New Snow</b>	<b>Snow Depth</b>
2017-09-01	0.00	0.0	0
2017-09-02	0.00	0.0	0
2017-09-03	0.00	0.0	0
2017-09-04	0.00	0.0	0
2017-09-05	0.00	0.0	0
2017-09-06	0.00	0.0	0
2017-09-07	0.00	0.0	0
2017-09-08	0.00	0.0	0
2017-09-09	0.00	0.0	0
2017-09-10	0.00	0.0	0
2017-09-11	0.00	0.0	0
2017-09-12	0.00	0.0	0
2017-09-13	0.00	0.0	0
2017-09-14	0.00	0.0	0
2017-09-15	0.00	0.0	0
2017-09-16	0.00	0.0	0
2017-09-17	0.00	0.0	0
2017-09-18	0.00	0.0	0
2017-09-19	0.00	0.0	0
2017-09-20	0.00	0.0	0
2017-09-21	0.00	0.0	0
2017-09-22	0.00	0.0	0
2017-09-23	0.00	0.0	0
2017-09-24	0.00	0.0	0
2017-09-25	0.00	0.0	0
2017-09-26	0.03	0.0	0
2017-09-27	2.48	0.0	0
2017-09-28	0.48	0.0	0
2017-09-29	0.47	0.0	0
2017-09-30	0.01	0.0	0
<b>Sum</b>	3.47	0.0	-
<b>Average</b>	-	-	0.0
<b>Normal</b>	2.76	0.0	-

**Observations for each day cover the 24 hours ending at the time given below (Local Standard Time).**

Precipitation : 7am

Snowfall : unknown

Snow Depth : unknown

**Climatological Data for SEGUIN 1 SSW, TX - October 2017**

<b>Date</b>	<b>Precipitation</b>	<b>New Snow</b>	<b>Snow Depth</b>
2017-10-01	0.00	0.0	0
2017-10-02	0.00	0.0	0
2017-10-03	0.00	0.0	0
2017-10-04	0.47	0.0	0
2017-10-05	0.00	0.0	0
2017-10-06	0.00	0.0	0
2017-10-07	0.00	0.0	0
2017-10-08	0.00	0.0	0
2017-10-09	0.00	0.0	0
2017-10-10	0.00	0.0	0
2017-10-11	0.00	0.0	0
2017-10-12	0.00	0.0	0
2017-10-13	0.00	0.0	0
2017-10-14	0.00	0.0	0
2017-10-15	0.00	0.0	0
2017-10-16	0.00	0.0	0
2017-10-17	0.00	0.0	0
2017-10-18	0.00	0.0	0
2017-10-19	0.00	0.0	0
2017-10-20	0.00	0.0	0
2017-10-21	0.00	0.0	0
2017-10-22	0.23	0.0	0
2017-10-23	0.00	0.0	0
2017-10-24	0.02	0.0	0
2017-10-25	0.00	0.0	0
2017-10-26	0.00	0.0	0
2017-10-27	0.00	0.0	0
2017-10-28	0.00	0.0	0
2017-10-29	0.00	0.0	0
2017-10-30	0.00	0.0	0
2017-10-31	0.00	0.0	0
<b>Sum</b>	0.72	0.0	-
<b>Average</b>	-	-	0.0
<b>Normal</b>	4.68	0.0	-

**Observations for each day cover the 24 hours ending at the time given below (Local Standard Time).**

Precipitation : 7am

Snowfall : unknown

Snow Depth : unknown

**Climatological Data for SEGUIN 1 SSW, TX - November 2017**

<b>Date</b>	<b>Precipitation</b>	<b>New Snow</b>	<b>Snow Depth</b>
2017-11-01	0.15	0.0	0
2017-11-02	0.00	0.0	0
2017-11-03	0.00	0.0	0
2017-11-04	0.00	0.0	0
2017-11-05	0.00	0.0	0
2017-11-06	0.00	0.0	0
2017-11-07	0.00	0.0	0
2017-11-08	0.00	0.0	0
2017-11-09	0.01	0.0	0
2017-11-10	0.00	0.0	0
2017-11-11	0.00	0.0	0
2017-11-12	0.02	0.0	0
2017-11-13	0.06	0.0	0
2017-11-14	0.00	0.0	0
2017-11-15	0.00	0.0	0
2017-11-16	0.00	0.0	0
2017-11-17	0.00	0.0	0
2017-11-18	0.00	0.0	0
2017-11-19	0.00	0.0	0
2017-11-20	0.00	0.0	0
2017-11-21	0.00	0.0	0
2017-11-22	0.00	0.0	0
2017-11-23	0.00	0.0	0
2017-11-24	0.00	0.0	0
2017-11-25	0.00	0.0	0
2017-11-26	0.00	0.0	0
2017-11-27	0.00	0.0	0
2017-11-28	0.00	0.0	0
2017-11-29	0.00	0.0	0
2017-11-30	0.00	0.0	0
<b>Sum</b>	0.24	0.0	-
<b>Average</b>	-	-	0.0
<b>Normal</b>	2.64	0.0	-

**Observations for each day cover the 24 hours ending  
at the time given below (Local Standard Time).**

Precipitation : 7am

Snowfall : unknown

Snow Depth : unknown

**Climatological Data for SEGUIN 1 SSW, TX - December 2017**

<b>Date</b>	<b>Precipitation</b>	<b>New Snow</b>	<b>Snow Depth</b>
2017-12-01	0.00	0.0	0
2017-12-02	0.00	0.0	0
2017-12-03	0.00	0.0	0
2017-12-04	0.00	0.0	0
2017-12-05	0.00	0.0	0
2017-12-06	0.26	0.0	0
2017-12-07	1.55	0.0	0
2017-12-08	0.50	M	M
2017-12-09	0.00	0.0	0
2017-12-10	0.00	0.0	0
2017-12-11	0.00	0.0	0
2017-12-12	0.00	0.0	0
2017-12-13	0.00	0.0	0
2017-12-14	0.00	0.0	0
2017-12-15	0.00	0.0	0
2017-12-16	0.00	0.0	0
2017-12-17	1.18	0.0	0
2017-12-18	0.01	0.0	0
2017-12-19	0.52	0.0	0
2017-12-20	0.08	0.0	0
2017-12-21	0.00	0.0	0
2017-12-22	0.00	0.0	0
2017-12-23	0.00	0.0	0
2017-12-24	0.00	0.0	0
2017-12-25	0.00	0.0	0
2017-12-26	0.00	0.0	0
2017-12-27	0.01	0.0	0
2017-12-28	0.01	0.0	0
2017-12-29	0.00	0.0	0
2017-12-30	0.00	0.0	0
2017-12-31	0.00	0.0	0
<b>Sum</b>	4.12	0.0	-
<b>Average</b>	-	-	0.0
<b>Normal</b>	2.26	0.0	-

**Observations for each day cover the 24 hours ending  
at the time given below (Local Standard Time).**

Precipitation : 7am

Snowfall : unknown

Snow Depth : unknown

**Climatological Data for SEGUIN 1 SSW, TX - January 2018**

<b>Date</b>	<b>Precipitation</b>	<b>New Snow</b>	<b>Snow Depth</b>
2018-01-01	0.00	0.0	0
2018-01-02	0.00	0.0	0
2018-01-03	0.00	0.0	0
2018-01-04	0.00	0.0	0
2018-01-05	0.00	0.0	0
2018-01-06	0.00	0.0	0
2018-01-07	0.00	0.0	0
2018-01-08	0.00	0.0	0
2018-01-09	0.00	0.0	0
2018-01-10	0.00	0.0	0
2018-01-11	0.00	0.0	0
2018-01-12	0.00	0.0	0
2018-01-13	0.00	0.0	0
2018-01-14	0.00	0.0	0
2018-01-15	0.00	0.0	0
2018-01-16	0.10	0.0	0
2018-01-17	T	T	T
2018-01-18	0.00	0.0	0
2018-01-19	0.00	0.0	0
2018-01-20	0.04	0.0	0
2018-01-21	0.01	0.0	0
2018-01-22	0.01	0.0	0
2018-01-23	0.00	0.0	0
2018-01-24	0.00	0.0	0
2018-01-25	0.00	0.0	0
2018-01-26	0.00	0.0	0
2018-01-27	0.02	0.0	0
2018-01-28	0.00	0.0	0
2018-01-29	0.00	0.0	0
2018-01-30	0.00	0.0	0
2018-01-31	0.00	0.0	0

**Observations for each day cover the 24 hours ending  
at the time given below (Local Standard Time).**

Precipitation : 7am

Snowfall : unknown

Snow Depth : unknown

**Climatological Data for SEGUIN 1 SSW, TX - February 2018**

<b>Date</b>	<b>Precipitation</b>	<b>New Snow</b>	<b>Snow Depth</b>
2018-02-01	0.00	0.0	0
2018-02-02	0.00	0.0	0
2018-02-03	0.00	0.0	0
2018-02-04	0.00	0.0	0
2018-02-05	0.00	0.0	0
2018-02-06	0.00	0.0	0
2018-02-07	0.15	0.0	0
2018-02-08	0.00	0.0	0
2018-02-09	0.00	0.0	0
2018-02-10	0.02	0.0	0
2018-02-11	0.00	0.0	0
2018-02-12	0.00	0.0	0
2018-02-13	T	0.0	0
2018-02-14	0.08	0.0	0
2018-02-15	0.01	0.0	0
2018-02-16	0.00	0.0	0
2018-02-17	0.00	0.0	0
2018-02-18	0.01	0.0	0
2018-02-19	0.00	0.0	0
2018-02-20	0.00	0.0	0
2018-02-21	0.01	0.0	0
2018-02-22	0.02	0.0	0
2018-02-23	0.09	0.0	0
2018-02-24	0.01	0.0	0
2018-02-25	0.40	0.0	0
2018-02-26	0.39	0.0	0
2018-02-27	0.01	0.0	0
2018-02-28	0.00	0.0	0
<b>Sum</b>	1.20	0.0	-
<b>Average</b>	-	-	0.0
<b>Normal</b>	2.08	0.0	-

**Observations for each day cover the 24 hours ending  
at the time given below (Local Standard Time).**

Precipitation : 7am

Snowfall : unknown

Snow Depth : unknown

**Climatological Data for SEGUIN 1 SSW, TX - March 2018**

<b>Date</b>	<b>Precipitation</b>	<b>New Snow</b>	<b>Snow Depth</b>
2018-03-01	0.00	0.0	0
2018-03-02	0.00	0.0	0
2018-03-03	0.00	0.0	0
2018-03-04	0.03	0.0	0
2018-03-05	0.00	0.0	0
2018-03-06	0.01	0.0	0
2018-03-07	0.00	0.0	0
2018-03-08	0.00	0.0	0
2018-03-09	0.00	0.0	0
2018-03-10	0.00	0.0	0
2018-03-11	0.00	0.0	0
2018-03-12	0.00	0.0	0
2018-03-13	0.00	0.0	0
2018-03-14	0.00	0.0	0
2018-03-15	0.00	0.0	0
2018-03-16	0.00	0.0	0
2018-03-17	0.00	0.0	0
2018-03-18	0.21	0.0	0
2018-03-19	0.00	0.0	0
2018-03-20	0.00	0.0	0
2018-03-21	0.00	0.0	0
2018-03-22	0.00	0.0	0
2018-03-23	0.00	0.0	0
2018-03-24	0.00	0.0	0
2018-03-25	0.00	0.0	0
2018-03-26	0.00	0.0	0
2018-03-27	0.00	0.0	0
2018-03-28	2.00	0.0	0
2018-03-29	2.72	0.0	0
2018-03-30	0.62	0.0	0
2018-03-31	0.00	0.0	0
<b>Sum</b>	5.59	0.0	-
<b>Average</b>	-	-	0.0
<b>Normal</b>	2.20	0.0	-

**Observations for each day cover the 24 hours ending  
at the time given below (Local Standard Time).**

Precipitation : 7am

Snowfall : unknown

Snow Depth : unknown



**Climatological Data for SEGUIN 1 SSW, TX - April 2018**

<b>Date</b>	<b>Precipitation</b>	<b>New Snow</b>	<b>Snow Depth</b>
2018-04-01	0.00	0.0	0
2018-04-02	0.00	0.0	0
2018-04-03	0.00	0.0	0
2018-04-04	0.08	0.0	0
2018-04-05	0.02	0.0	0
2018-04-06	0.00	0.0	0
2018-04-07	0.02	0.0	0
2018-04-08	0.00	0.0	0
2018-04-09	0.00	0.0	0
2018-04-10	0.02	0.0	0
2018-04-11	0.00	0.0	0
2018-04-12	0.00	0.0	0
2018-04-13	0.00	0.0	0
2018-04-14	0.29	0.0	0
2018-04-15	0.00	0.0	0
2018-04-16	0.00	0.0	0
2018-04-17	0.00	0.0	0
2018-04-18	0.00	0.0	0
2018-04-19	0.00	0.0	0
2018-04-20	0.00	0.0	0
2018-04-21	0.00	0.0	0
2018-04-22	0.30	0.0	0
2018-04-23	0.00	0.0	0
2018-04-24	0.00	0.0	0
2018-04-25	0.00	0.0	0
2018-04-26	<b>0.53</b>	0.0	0
2018-04-27	0.00	0.0	0
2018-04-28	0.00	0.0	0
2018-04-29	0.00	0.0	0
2018-04-30	0.00	0.0	0
<b>Sum</b>	1.26	0.0	-
<b>Average</b>	-	-	0.0
<b>Normal</b>	2.34	0.0	-

**Observations for each day cover the 24 hours ending  
at the time given below (Local Standard Time).**

Precipitation : 7am

Snowfall : unknown

Snow Depth : unknown

**Climatological Data for SEGUIN 1 SSW, TX - May 2018**

<b>Date</b>	<b>Precipitation</b>	<b>New Snow</b>	<b>Snow Depth</b>
2018-05-01	0.00	0.0	0
2018-05-02	0.00	0.0	0
2018-05-03	0.00	0.0	0
2018-05-04	0.00	0.0	0
2018-05-05	0.41	0.0	0
2018-05-06	0.00	0.0	0
2018-05-07	0.00	0.0	0
2018-05-08	0.00	0.0	0
2018-05-09	0.00	0.0	0
2018-05-10	0.00	0.0	0
2018-05-11	0.00	0.0	0
2018-05-12	0.00	0.0	0
2018-05-13	0.00	0.0	0
2018-05-14	0.00	0.0	0
2018-05-15	0.00	0.0	0
2018-05-16	0.00	0.0	0
2018-05-17	0.00	0.0	0
2018-05-18	0.00	0.0	0
2018-05-19	0.00	0.0	0
2018-05-20	0.00	0.0	0
2018-05-21	0.45	0.0	0
2018-05-22	0.00	0.0	0
2018-05-23	0.00	0.0	0
2018-05-24	0.00	0.0	0
2018-05-25	0.00	0.0	0
2018-05-26	0.00	0.0	0
2018-05-27	0.00	0.0	0
2018-05-28	0.00	0.0	0
2018-05-29	0.00	0.0	0
2018-05-30	0.00	0.0	0
2018-05-31	0.00	0.0	0
<b>Sum</b>	0.86	0.0	-
<b>Average</b>	-	-	0.0
<b>Normal</b>	3.54	0.0	-

**Observations for each day cover the 24 hours ending  
at the time given below (Local Standard Time).**

Precipitation : 7am

Snowfall : unknown

Snow Depth : unknown

**Climatological Data for SEGUIN 1 SSW, TX - June 2018**

<b>Date</b>	<b>Precipitation</b>	<b>New Snow</b>	<b>Snow Depth</b>
2018-06-01	0.00	0.0	0
2018-06-02	0.00	0.0	0
2018-06-03	0.00	0.0	0
2018-06-04	0.00	0.0	0
2018-06-05	0.00	0.0	0
2018-06-06	0.00	0.0	0
2018-06-07	0.00	0.0	0
2018-06-08	0.00	0.0	0
2018-06-09	0.00	0.0	0
2018-06-10	0.00	0.0	0
2018-06-11	0.00	0.0	0
2018-06-12	0.00	0.0	0
2018-06-13	0.00	0.0	0
2018-06-14	0.00	0.0	0
2018-06-15	0.00	0.0	0
2018-06-16	0.00	0.0	0
2018-06-17	0.19	0.0	0
2018-06-18	0.01	0.0	0
2018-06-19	0.07	0.0	0
2018-06-20	<b>0.90</b>	0.0	0
2018-06-21	0.14	0.0	0
2018-06-22	0.00	0.0	0
2018-06-23	0.00	0.0	0
2018-06-24	0.00	0.0	0
2018-06-25	0.00	0.0	0
2018-06-26	0.00	0.0	0
2018-06-27	0.00	0.0	0
2018-06-28	0.00	0.0	0
2018-06-29	0.00	0.0	0
2018-06-30	0.00	0.0	0
<b>Sum</b>	1.31	0.0	-
<b>Average</b>	-	-	0.0
<b>Normal</b>	4.05	0.0	-

**Observations for each day cover the 24 hours ending  
at the time given below (Local Standard Time).**

Precipitation : 7am

Snowfall : unknown

Snow Depth : unknown

**Climatological Data for SEGUIN 1 SSW, TX - July 2018**

<b>Date</b>	<b>Precipitation</b>	<b>New Snow</b>	<b>Snow Depth</b>
2018-07-01	0.00	0.0	0
2018-07-02	0.00	0.0	0
2018-07-03	0.00	0.0	0
2018-07-04	0.00	0.0	0
2018-07-05	0.94	0.0	0
2018-07-06	0.24	0.0	0
2018-07-07	0.02	0.0	0
2018-07-08	0.03	0.0	0
2018-07-09	0.00	0.0	0
2018-07-10	1.71	0.0	0
2018-07-11	0.00	0.0	0
2018-07-12	0.00	0.0	0
2018-07-13	0.00	0.0	0
2018-07-14	0.00	0.0	0
2018-07-15	0.00	0.0	0
2018-07-16	0.00	0.0	0
2018-07-17	0.00	0.0	0
2018-07-18	0.00	0.0	0
2018-07-19	0.00	0.0	0
2018-07-20	0.00	0.0	0
2018-07-21	0.00	0.0	0
2018-07-22	0.00	0.0	0
2018-07-23	0.00	0.0	0
2018-07-24	0.00	0.0	0
2018-07-25	0.00	0.0	0
2018-07-26	0.00	0.0	0
2018-07-27	0.00	0.0	0
2018-07-28	0.00	0.0	0
2018-07-29	0.00	0.0	0
2018-07-30	0.00	0.0	0
2018-07-31	0.00	0.0	0
<b>Sum</b>	2.94	0.0	-
<b>Average</b>	-	-	0.0
<b>Normal</b>	2.45	0.0	-

**Observations for each day cover the 24 hours ending  
at the time given below (Local Standard Time).**

Precipitation : 7am

Snowfall : unknown

Snow Depth : unknown

**Climatological Data for SEGUIN 1 SSW, TX - August 2018**

<b>Date</b>	<b>Precipitation</b>	<b>New Snow</b>	<b>Snow Depth</b>
2018-08-01	0.08	0.0	0
2018-08-02	0.00	0.0	0
2018-08-03	0.00	0.0	0
2018-08-04	0.00	0.0	0
2018-08-05	0.00	0.0	0
2018-08-06	0.00	0.0	0
2018-08-07	0.00	0.0	0
2018-08-08	0.02	0.0	0
2018-08-09	0.00	0.0	0
2018-08-10	0.00	0.0	0
2018-08-11	0.00	0.0	0
2018-08-12	0.07	0.0	0
2018-08-13	<b>0.85</b>	0.0	0
2018-08-14	0.00	0.0	0
2018-08-15	0.00	0.0	0
2018-08-16	0.00	0.0	0
2018-08-17	0.00	0.0	0
2018-08-18	0.00	0.0	0
2018-08-19	0.00	0.0	0
2018-08-20	0.00	0.0	0
2018-08-21	0.00	0.0	0
2018-08-22	0.00	0.0	0
2018-08-23	0.00	0.0	0
2018-08-24	0.00	0.0	0
2018-08-25	0.00	0.0	0
2018-08-26	0.00	0.0	0
2018-08-27	0.00	0.0	0
2018-08-28	0.00	0.0	0
2018-08-29	0.00	0.0	0
2018-08-30	0.00	0.0	0
2018-08-31	0.00	0.0	0
<b>Sum</b>	1.02	0.0	-
<b>Average</b>	-	-	0.0
<b>Normal</b>	2.66	0.0	-

**Observations for each day cover the 24 hours ending  
at the time given below (Local Standard Time).**

Precipitation : 7am

Snowfall : unknown

Snow Depth : unknown

**Climatological Data for SEGUIN 1 SSW, TX - September 2018**

<b>Date</b>	<b>Precipitation</b>	<b>New Snow</b>	<b>Snow Depth</b>
2018-09-01	0.00	0.0	0
2018-09-02	0.00	0.0	0
2018-09-03	0.00	0.0	0
2018-09-04	0.08	0.0	0
2018-09-05	0.00	0.0	0
2018-09-06	0.00	0.0	0
2018-09-07	0.00	0.0	0
2018-09-08	0.00	0.0	0
2018-09-09	1.08	0.0	0
2018-09-10	<b>1.40</b>	0.0	0
2018-09-11	0.60	0.0	0
2018-09-12	0.31	0.0	0
2018-09-13	0.38	0.0	0
2018-09-14	0.33	0.0	0
2018-09-15	1.10	0.0	0
2018-09-16	0.87	0.0	0
2018-09-17	0.10	0.0	0
2018-09-18	0.00	0.0	0
2018-09-19	0.00	0.0	0
2018-09-20	0.00	0.0	0
2018-09-21	0.10	0.0	0
2018-09-22	0.55	0.0	0
2018-09-23	0.19	0.0	0
2018-09-24	0.00	0.0	0
2018-09-25	0.00	0.0	0
2018-09-26	0.00	0.0	0
2018-09-27	0.00	0.0	0
2018-09-28	0.00	0.0	0
2018-09-29	0.00	0.0	0
2018-09-30	0.26	0.0	0
<b>Sum</b>	7.35	0.0	-
<b>Average</b>	-	-	0.0
<b>Normal</b>	2.76	0.0	-

**Observations for each day cover the 24 hours ending  
at the time given below (Local Standard Time).**

Precipitation : 7am

Snowfall : unknown

Snow Depth : unknown

**Climatological Data for SEGUIN 1 SSW, TX - October 2018**

<b>Date</b>	<b>Precipitation</b>	<b>New Snow</b>	<b>Snow Depth</b>
2018-10-01	0.00	0.0	0
2018-10-02	0.02	0.0	0
2018-10-03	0.00	0.0	0
2018-10-04	0.00	0.0	0
2018-10-05	0.00	0.0	0
2018-10-06	0.00	0.0	0
2018-10-07	0.05	0.0	0
2018-10-08	0.01	0.0	0
2018-10-09	0.77	0.0	0
2018-10-10	0.08	0.0	0
2018-10-11	0.00	0.0	0
2018-10-12	0.03	0.0	0
2018-10-13	0.00	0.0	0
2018-10-14	0.19	0.0	0
2018-10-15	0.83	0.0	0
2018-10-16	<b>1.05</b>	0.0	0
2018-10-17	0.20	0.0	0
2018-10-18	0.20	0.0	0
2018-10-19	0.48	0.0	0
2018-10-20	0.05	0.0	0
2018-10-21	0.00	0.0	0
2018-10-22	0.00	0.0	0
2018-10-23	0.40	0.0	0
2018-10-24	0.10	0.0	0
2018-10-25	0.65	0.0	0
2018-10-26	0.00	0.0	0
2018-10-27	0.00	0.0	0
2018-10-28	0.00	0.0	0
2018-10-29	0.00	0.0	0
2018-10-30	0.00	0.0	0
2018-10-31	0.00	0.0	0
<b>Sum</b>	5.11	0.0	-
<b>Average</b>	-	-	0.0
<b>Normal</b>	4.68	0.0	-

**Observations for each day cover the 24 hours ending  
at the time given below (Local Standard Time).**

Precipitation : 7am

Snowfall : unknown

Snow Depth : unknown

**Climatological Data for SEGUIN 1 SSW, TX - November 2018**

<b>Date</b>	<b>Precipitation</b>	<b>New Snow</b>	<b>Snow Depth</b>
2018-11-01	1.00	0.0	0
2018-11-02	0.00	0.0	0
2018-11-03	0.00	0.0	0
2018-11-04	0.18	0.0	0
2018-11-05	0.00	0.0	0
2018-11-06	0.00	0.0	0
2018-11-07	0.00	0.0	0
2018-11-08	0.01	0.0	0
2018-11-09	0.23	0.0	0
2018-11-10	0.19	0.0	0
2018-11-11	0.20	0.0	0
2018-11-12	0.02	0.0	0
2018-11-13	0.01	0.0	0
2018-11-14	0.00	0.0	0
2018-11-15	0.00	0.0	0
2018-11-16	0.00	0.0	0
2018-11-17	0.00	0.0	0
2018-11-18	0.02	0.0	0
2018-11-19	0.04	0.0	0
2018-11-20	0.00	0.0	0
2018-11-21	0.00	0.0	0
2018-11-22	0.08	0.0	0
2018-11-23	0.00	0.0	0
2018-11-24	0.00	0.0	0
2018-11-25	0.00	0.0	0
2018-11-26	0.00	0.0	0
2018-11-27	0.00	0.0	0
2018-11-28	0.00	0.0	0
2018-11-29	0.00	0.0	0
2018-11-30	0.00	0.0	0
<b>Sum</b>	1.98	0.0	-
<b>Average</b>	-	-	0.0
<b>Normal</b>	2.64	0.0	-

**Observations for each day cover the 24 hours ending  
at the time given below (Local Standard Time).**

Precipitation : 7am

Snowfall : unknown

Snow Depth : unknown



**Climatological Data for SEGUIN 1 SSW, TX - December 2018**

<b>Date</b>	<b>Precipitation</b>	<b>New Snow</b>	<b>Snow Depth</b>
2018-12-01	0.00	0.0	0
2018-12-02	0.00	0.0	0
2018-12-03	0.00	0.0	0
2018-12-04	0.00	0.0	0
2018-12-05	0.00	0.0	0
2018-12-06	0.00	0.0	0
2018-12-07	0.93	0.0	0
2018-12-08	1.95	0.0	0
2018-12-09	0.01	0.0	0
2018-12-10	0.00	0.0	0
2018-12-11	0.00	0.0	0
2018-12-12	0.00	0.0	0
2018-12-13	0.00	0.0	0
2018-12-14	0.00	0.0	0
2018-12-15	0.00	0.0	0
2018-12-16	0.00	0.0	0
2018-12-17	0.00	0.0	0
2018-12-18	0.00	0.0	0
2018-12-19	0.06	0.0	0
2018-12-20	0.00	0.0	0
2018-12-21	0.00	0.0	0
2018-12-22	0.00	0.0	0
2018-12-23	0.00	0.0	0
2018-12-24	0.00	0.0	0
2018-12-25	0.00	0.0	0
2018-12-26	0.04	0.0	0
2018-12-27	0.30	0.0	0
2018-12-28	0.00	0.0	0
2018-12-29	0.00	0.0	0
2018-12-30	0.00	0.0	0
2018-12-31	0.05	0.0	0
<b>Sum</b>	3.34	0.0	-
<b>Average</b>	-	-	0.0
<b>Normal</b>	2.26	0.0	-

**Observations for each day cover the 24 hours ending at the time given below (Local Standard Time).**

Precipitation : 7am

Snowfall : unknown

Snow Depth : unknown

**Climatological Data for SEGUIN 1 SSW, TX - January 2019**

<b>Date</b>	<b>Precipitation</b>	<b>New Snow</b>	<b>Snow Depth</b>
2019-01-01	0.00	0.0	0
2019-01-02	0.37	0.0	0
2019-01-03	<b>0.87</b>	0.0	0
2019-01-04	0.01	0.0	0
2019-01-05	0.00	0.0	0
2019-01-06	0.00	0.0	0
2019-01-07	0.00	0.0	0
2019-01-08	0.00	0.0	0
2019-01-09	0.00	0.0	0
2019-01-10	0.00	0.0	0
2019-01-11	0.00	0.0	0
2019-01-12	0.43	0.0	0
2019-01-13	0.00	0.0	0
2019-01-14	0.00	0.0	0
2019-01-15	0.00	0.0	0
2019-01-16	0.06	0.0	0
2019-01-17	0.07	0.0	0
2019-01-18	0.07	0.0	0
2019-01-19	0.04	0.0	0
2019-01-20	0.00	0.0	0
2019-01-21	0.00	0.0	0
2019-01-22	0.00	0.0	0
2019-01-23	0.27	0.0	0
2019-01-24	0.00	0.0	0
2019-01-25	0.00	0.0	0
2019-01-26	0.02	0.0	0
2019-01-27	0.68	0.0	0
2019-01-28	0.00	0.0	0
2019-01-29	0.00	0.0	0
2019-01-30	0.00	0.0	0
2019-01-31	0.00	0.0	0
<b>Sum</b>	2.89	0.0	-
<b>Average</b>	-	-	0.0
<b>Normal</b>	1.88	0.0	-

**Observations for each day cover the 24 hours ending at the time given below (Local Standard Time).**

Precipitation : 7am

Snowfall : 7am

Snow Depth : 7am

**Climatological Data for SEGUIN 1 SSW, TX - February 2019**

<b>Date</b>	<b>Precipitation</b>
2019-02-01	0.02
2019-02-02	0.01
2019-02-03	0.00
2019-02-04	0.00
2019-02-05	0.00
2019-02-06	T
2019-02-07	0.00
2019-02-08	0.00
2019-02-09	0.01
2019-02-10	0.11
2019-02-11	0.01
2019-02-12	0.01
2019-02-13	0.00
2019-02-14	0.00
2019-02-15	0.00
2019-02-16	0.00
2019-02-17	0.00
2019-02-18	0.00
2019-02-19	0.00
2019-02-20	<b>0.14</b>
2019-02-21	0.00
2019-02-22	0.00
2019-02-23	0.03
2019-02-24	0.00
2019-02-25	0.00
2019-02-26	0.12
2019-02-27	0.03
2019-02-28	0.00
<b>Sum</b>	<b>0.49</b>
<b>Average</b>	<b>-</b>
<b>Normal</b>	<b>2.08</b>

**Observations for each day cover the 24 hours ending  
at the time given below (Local Standard Time).**

Precipitation : 7am



# EXHIBIT 3 - BUDGET MODIFICATIONS MODIFICATION #1

Limit input to YELLOW CELLS

**BUDGET DRAW TEMPLATE**

BORROWER: **BORGFELD HOUSING LP**

REPORT DATE: **6/29/2018**

Clear ALL Prior Entries for New Draw

PROJECT DESCRIPTION: **EL SERENO APTS - 136 UNITS**

HIDE Blank Line Item Rows (normal status)

UNHIDE Blank Line Item Rows (to add new line item)

**Uses**

Description	Original Budget	Total Prior Adjustments	Current Changes	Revised Budget	Total Previous Drawn	Amount This Draw	Total Drawn Including This Draw	Undisbursed After This Draw	% Funded	Deferred (Unavailable)
<b>LAND</b>										
Land Value	2,248,602.00	0.00		2,248,602.00	2,248,602.00		2,248,602.00	0.00	100%	
<b>TOTAL LAND</b>	<b>2,248,602.00</b>	<b>0.00</b>	<b>0.00</b>	<b>2,248,602.00</b>	<b>2,248,602.00</b>	<b>0.00</b>	<b>2,248,602.00</b>	<b>0.00</b>	<b>100%</b>	
<b>HARD COSTS</b>										
Demolition	50,000.00	0.00		50,000.00	45,000.00		45,000.00	5,000.00	90%	
Site Work	986,807.00	0.00		986,807.00	765,737.82		765,737.82	221,069.18	78%	
Off Site Improvements	205,000.00	0.00		205,000.00	125,100.00		125,100.00	79,900.00	61%	
Construction - Residential	9,532,894.00	0.00		9,532,894.00	1,160,490.60	659,924.10	1,820,414.70	7,712,479.30	19%	
General Requirements	602,338.00	112,354.00		714,692.00	237,560.93	26,424.16	263,985.09	450,706.91	37%	
Contractor Overhead and Profit	830,868.00	0.00		830,868.00	149,556.25	57,444.52	207,000.77	623,867.23	25%	
Sub Total Contracts	12,207,907.00	112,354.00	0.00	12,320,261.00	2,483,445.60	743,792.78	3,227,238.38	9,093,022.62	26%	
Construction Contingency	610,395.00	554,783.00		1,165,178.00	0.00		0.00	1,165,178.00	0%	
Personal Property - Development Budget	150,000.00	0.00		150,000.00	0.00		0.00	150,000.00	0%	
<b>TOTAL HARD COSTS</b>	<b>12,968,302.00</b>	<b>667,137.00</b>	<b>0.00</b>	<b>13,635,439.00</b>	<b>2,483,445.60</b>	<b>743,792.78</b>	<b>3,227,238.38</b>	<b>10,408,200.62</b>	<b>24%</b>	
<b>SOFT COSTS</b>										
Const Loan Inspection	16,500.00	0.00		16,500.00	10,650.00	2,775.00	13,425.00	3,075.00	81%	
Const Loan Origination Fee	179,473.00	0.00		179,473.00	179,472.98		179,472.98	0.02	100%	
Const Title & Recording	105,216.00	0.00		105,216.00	103,661.47		103,661.47	1,554.53	99%	
Perm Loan Origination Fee	49,500.00	0.00		49,500.00	49,500.00		49,500.00	0.00	100%	
Perm Conversion Fee - Deferred	10,000.00	0.00		10,000.00	0.00		0.00	10,000.00	0%	YES
Perm Title & Recording - Deferred	10,000.00	0.00		10,000.00	0.00		0.00	10,000.00	0%	YES
B of A Lender Legal	40,000.00	0.00		40,000.00	40,000.00		40,000.00	0.00	100%	
T.Credit Application & Monitoring Fees	67,740.00	0.00		67,740.00	67,740.00		67,740.00	0.00	100%	
Marketing	125,000.00	0.00	(400.00)	124,600.00	2,351.82	2,000.00	4,351.82	120,248.18	3%	
Accounting	22,500.00	0.00		22,500.00	5,500.00		5,500.00	17,000.00	24%	
Operating Reserve - Deferred	433,175.00	0.00		433,175.00	0.00		0.00	433,175.00	0%	YES
Developer Fees	290,001.00	0.00		290,001.00	290,000.00		290,000.00	1.00	100%	
Developer Fees - Deferred	2,030,003.00	0.00		2,030,003.00	0.00		0.00	2,030,003.00	0%	YES
Insurance	45,163.00	0.00		45,163.00	44,983.00		44,983.00	180.00	100%	
Taxes	93,497.00	0.00		93,497.00	0.00		0.00	93,497.00	0%	
Legal	80,772.00	37,894.96	400.00	118,666.96	118,666.96	400.00	119,066.96	0.00	100%	
Architect	420,000.00	0.00	(1,394.36)	418,605.62	402,335.73	3,865.00	406,200.73	12,404.89	97%	
Survey & Engineering	143,600.00	60,906.43	1,394.38	205,900.81	204,506.43	1,394.38	205,900.81	0.00	100%	
Appraisal & Mkt Study	23,630.00	0.00		23,630.00	23,575.00		23,575.00	55.00	100%	
Soils Investigation	5,700.00	0.00		5,700.00	5,700.00		5,700.00	0.00	100%	
Impact Fees	990,435.00	(66,002.55)		924,432.45	924,432.45		924,432.45	0.00	100%	
Environmental Surveys	6,570.00	0.00		6,570.00	6,570.00		6,570.00	0.00	100%	
Soft Cost Contingency	86,003.00	(32,798.84)		53,204.16	1,000.00		1,000.00	52,204.16	2%	
Sub Total Misc	5,274,478.00	0.00	0.00	5,274,478.00	2,480,645.84	10,434.38	2,491,080.22	2,783,397.78	47%	
Interest Reserve	835,532.00	0.00		835,532.00	161,720.80		161,720.80	673,811.20	19%	
Sub Total Int Res	835,532.00	0.00	0.00	835,532.00	161,720.80	0.00	161,720.80	673,811.20	19%	
Sub Total Op Def	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0%	
<b>TOTAL SOFT COSTS</b>	<b>6,110,010.00</b>	<b>0.00</b>	<b>0.00</b>	<b>6,110,010.00</b>	<b>2,642,366.64</b>	<b>10,434.38</b>	<b>2,652,801.02</b>	<b>3,457,208.98</b>	<b>43%</b>	
<b>TOTAL PROJECT USES</b>	<b>21,326,914.00</b>	<b>667,137.00</b>	<b>0.00</b>	<b>21,994,051.00</b>	<b>7,374,414.24</b>	<b>754,227.16</b>	<b>8,128,641.40</b>	<b>13,865,409.60</b>	<b>37%</b>	<b>2,483,178.00</b>

**Sources**

Description	Original Budget	Total Prior Adjustments	Current Changes	Revised Budget	Total Previous Drawn	Amount This Draw	Total Drawn Including This Draw	Undisbursed After This Draw	% Funded	Deferred/Unavail?
Loan Funds	17,947,298.00	0.00		17,947,298.00	6,477,976.24	87,090.16	6,565,066.40	11,382,231.60	37%	
<b>SUB-TOTAL LOAN PROCEEDS</b>	<b>17,947,298.00</b>	<b>0.00</b>	<b>0.00</b>	<b>17,947,298.00</b>	<b>6,477,976.24</b>	<b>87,090.16</b>	<b>6,565,066.40</b>	<b>11,382,231.60</b>	<b>37%</b>	
ILP at Closing	896,438.00	0.00		896,438.00	896,438.00		896,438.00	0.00	100%	
Completion/Conversion - Deferred	2,483,178.00	0.00		2,483,178.00	0.00		0.00	2,483,178.00	0%	YES
Out of Balance - Borrowers Funds		667,137.00		667,137.00	0.00	667,137.00	667,137.00	0.00	100%	
<b>SUB-TOTAL EQUITY/OTHER</b>	<b>3,379,616.00</b>	<b>667,137.00</b>	<b>0.00</b>	<b>4,046,753.00</b>	<b>896,438.00</b>	<b>667,137.00</b>	<b>1,563,575.00</b>	<b>2,483,178.00</b>	<b>39%</b>	
<b>TOTAL PROJECT SOURCES</b>	<b>21,326,914.00</b>	<b>667,137.00</b>	<b>0.00</b>	<b>21,994,051.00</b>	<b>7,374,414.24</b>	<b>754,227.16</b>	<b>8,128,641.40</b>	<b>13,865,409.60</b>	<b>37%</b>	<b>2,483,178.00</b>

USE/SOURCE VERIFICATIONS:

OK OK OK OK OK OK OK OK OK OK

5. The following are attached hereto and form a part hereof:  
Contractor's APPLICATION AND CERTIFICATE FOR PAYMENT (AIA Document G702), Conditional and Unconditional Lien Waivers  
and accounts payable listing is preferred for soft costs.

Date: 6/29/2018

BORROWER:

**BORGFELD HOUSING, L.P.,**

a Texas limited partnership

By: Highridge Costa Housing, LLC,  
a Delaware limited liability company  
Its: Managing General Partner



Name: Mohannad H. Mohanna  
Title: President







## CHANGE ORDER LOG

2506- Cibolo  
HCHP CONTRACTORS, LP

CHANGE ORDER REQUEST SUBMITTED					Description	OWNER CHANGE ORDER ISSUED			
COR No.	Date Submitted	Date Approved	Amount	Delay Days		Change Order Issued	CO No.	Amount	Delay Days
1	04/10/17	04/10/17	72,837.19	0	Increase for Additional Insurance Requirement	04/10/17	1	72,837.19	0
2	01/04/18	01/12/18	0.00	148	Increase construction time by 148 working days		2	0.00	148
3	01/11/18	01/12/18	43,626.00	0	Increase General Conditions Contract Amount because of CO2	01/11/18	3	43,626.00	0
4	01/11/18	01/12/18	68,728.00	0	Increase GL Insurance & Builder's Risk because of CO2	01/11/18	4	68,728.00	0
<b>TOTAL</b>			<b>185,191.19</b>	<b>148</b>				<b>185,191.19</b>	<b>148</b>

Project Name: El Sereno Apartments (Cibolo TX)  
 Construction Loan - Draw 11 Invoice Summary

<u>Line Item</u>	<u>Vendor</u>	<u>Invoice Date</u>	<u>Invoice #</u>	<u>Description</u>	<u>Check #</u>	<u>Check Date</u>	<u>Invoice Amount</u>	<u>Total</u>
Hard Cost:								
HC: Construction Contract	HCHP Contractors, LP	05/25/18	Pay Application No. 10	Pay Application No. 10 - Period thru 05/25/2018			<u>743,792.78</u>	743,792.78
Soft Cost:								
Construction Loan Inspection	CA Partners, Inc.	03/19/18	Inv 17170-9	Progress and Funding Disbursement Report	To Be Paid	TBA	925.00	2,775.00
	CA Partners, Inc.	04/18/18	Inv 17170-10	Progress and Funding Disbursement Report	To Be Paid	TBA	925.00	
	CA Partners, Inc.	05/24/18	Inv 17170-111	Progress and Funding Disbursement Report	To Be Paid	TBA	<u>925.00</u>	
Architect	Humphreys & Architects, L.P.	06/18/18	Inv 66844	Architect Services	To Be Paid	TBA	<u>3,865.00</u>	3,865.00
Survey & Engineering	HP Civil Engineering	05/31/18	Inv 00022558	Engineering Consulting	To Be Paid	TBA	646.88	1,394.38
	Sherwood Surveying & S.U.E.	06/09/18	Inv 5639	Engineering Consulting	To Be Paid	TBA	<u>747.50</u>	
Marketing	TruLight 127 Ministries, Inc.	05/16/18		Marketing	To Be Paid	TBA	<u>2,000.00</u>	2,000.00
Legal	Hubacher & ames, PLLC	06/04/18	Inv 6766	Legal Services	To Be Paid	TBA	<u>400.00</u>	400.00
TOTAL								<u>\$ 754,227.16</u>
Less Interest Reserve								\$ -
Sources:								
LIP at Closing								\$ -
Loan Proceeds								\$ 87,090.16
Borrower's Fund								\$ <u>667,137.00</u>
TOTAL Requested								<u>\$ 754,227.16</u>

# HARD COSTS

**APPLICATION AND CERTIFICATION FOR PAYMENT**

AIA DOCUMENT G702

PAGE ONE OF

PAGES

TO OWNER: PROJECT: APPLICATION NO: 10  
 BORGFIELD HOUSING, L.P. DATE: 5/25/18  
 330 WEST VICTORIA STREET, GARDENA CA 90248  
 FROM CONTRACTOR: VIA ARCHITECT: PERIOD TO: 5/25/18  
 HCHP CONTRACTORS, L.P. HUMPREYS & PARTNERS  
 330 WEST VICTORIA STREET 5339 ALPHA ROAD, SUITE 300  
 GARDENA CA 90248 DALLAS TX 75240  
 CONTRACT FOR: THE HEIGHTS, EDINBURG, TX (GENERAL CONSTRUCTION) CONTRACT DATE 4/10/2017

Distribution to:

<input checked="" type="checkbox"/>	OWNER
<input checked="" type="checkbox"/>	ARCHITECT
<input checked="" type="checkbox"/>	CONTRACTOR
<input type="checkbox"/>	
<input type="checkbox"/>	


**CONTRACTOR'S APPLICATION FOR PAYMENT**

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703, is attached.

1. ORIGINAL CONTRACT SUM	\$	12,135,069.00
2. Net change by Change Orders	\$	185,192.00
3. CONTRACT SUM TO DATE (Line 1 ± 2)	\$	12,320,261.00
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$	3,420,888.03
5. RETAINAGE:		
a. 10 % of Completed Work (Column D + E on G703)	\$	326,399.66
b. % of Stored Material (Column F on G703)	\$	0.00
Total Retainage (Lines 5a + 5b or Total in Column I of G703)	\$	326,399.66
6. TOTAL EARNED LESS RETAINAGE (Line 4 Less Line 5 Total)	\$	3,094,488.37
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)	\$	2,350,695.59
8. CURRENT PAYMENT DUE	\$	743,792.78
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6)	\$	9,225,772.63

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	\$185,192.00	
Total approved this Month		
<b>TOTALS</b>	\$185,192.00	\$0.00
<b>NET CHANGES by Change Order</b>	\$185,192.00	

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

CONTRACTOR:   
 By: \_\_\_\_\_ Date: 6-27-18  
 State of: \_\_\_\_\_ County of: \_\_\_\_\_  
 Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_  
 Notary Public: *See attached jurat JMR*  
 My Commission expires: \_\_\_\_\_

**ARCHITECT'S CERTIFICATE FOR PAYMENT**

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

AMOUNT CERTIFIED ..... \$ 743,792.78

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

ARCHITECT:   
 By: \_\_\_\_\_ Date: 06/29/2018

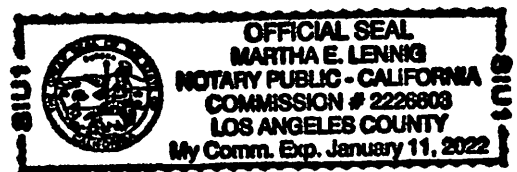
This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of **Los Angeles**

Subscribed and sworn to (or affirmed) before me on this 27th day of June 2018, by Pierre Harispuru proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Signature Martha E. Lennig  
Notary Public



(Seal)





Borrower **BORGELD HOUSING, L.P.**

Community **El Sereno in Cibolo, TX**

Request # **10**

Period to **05/25/18**

Cost Coding	Description	Budget (A)	Contract Amount (B)	Previously Approved Contract Changes (C)	Current Contract Changes (D)	Adjusted Contract Totals (E)	Retention % (F)	Previous Request			Current Request			Total Gross Completed To date (G)+(J) (M)	Total Amount Paid To Date (I)+(L) (N)	Total % Paid To Date (N)/(E) (O)	Total % Complete To Date (M)/(E) (P)	Total Retention To Date (H)+(K) (Q)	Balance Remaining (E)-(M) (R)
								Prior Gross Amount Requested (G)	Less Prior Held Retention (H)	Net Amt Paid (I)	Gross Amount Requested (J)	Less Retention (K)	Net Amount Requested (L)						
30-16-521	Exterior Site Lighting-Fixtures	15,000.00	15,000.00	0.00		15,000.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00%	0.00%	0.00	15,000.00
<b>EXT. COMMON AREA TOTAL</b>		<b>225,000.00</b>	<b>225,000.00</b>	<b>0.00</b>	<b>0.00</b>	<b>225,000.00</b>		<b>15,000.00</b>	<b>1,500.00</b>	<b>13,500.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>15,000.00</b>	<b>13,500.00</b>	<b>6.00%</b>	<b>6.67%</b>	<b>1,500.00</b>	<b>210,000.00</b>
<b>GENERAL CONDITIONS</b>																			
	Insurance	10,000.00	10,000.00	141,566.00	0.00	151,566.00	0.00%	132,951.20	0.00	132,951.20	0.00	0.00	0.00	132,951.20	132,951.20	87.72%	87.72%	0.00	18,614.80
	City License	6,000.00	6,000.00	0.00		6,000.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00%	0.00%	0.00	6,000.00
32-01-100	General Requirements	0.00	0.00	0.00		0.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	#DIV/0!	#DIV/0!	0.00	0.00
32-01-312	Project Manager	120,000.00	120,000.00	43,626.00		163,626.00	10.00%	72,000.00	7,200.00	64,800.00	12,000.00	1,200.00	10,800.00	84,000.00	75,600.00	46.20%	51.34%	8,400.00	79,626.00
32-01-313	Project Superintendent	80,000.00	80,000.00	0.00		80,000.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00%	0.00%	0.00	80,000.00
32-01-314	Assistant Project Superintendent	50,000.00	50,000.00	0.00		50,000.00	10.00%	24,996.00	2,499.60	22,496.40	4,166.00	416.60	3,749.40	29,162.00	26,245.80	52.49%	58.32%	2,916.20	20,838.00
44-99-152	Survey	0.00	0.00	0.00		0.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	#DIV/0!	#DIV/0!	0.00	0.00
32-01-317	General Labor	40,000.00	40,000.00	0.00		40,000.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00%	0.00%	0.00	40,000.00
32-01-451	Testing, Inspections, Laboratory (By Owner)	10,000.00	10,000.00	0.00		10,000.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00%	0.00%	0.00	10,000.00
32-01-512	Temporary Fire Protection (monitoring)	5,000.00	5,000.00	0.00		5,000.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00%	0.00%	0.00	5,000.00
32-01-514	Temporary Electric (Distributed)	10,000.00	10,000.00	0.00		10,000.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00%	0.00%	0.00	10,000.00
32-01-514	Temporary Electric (Usage)	20,000.00	20,000.00	0.00		20,000.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00%	0.00%	0.00	20,000.00
32-01-518	Temporary Water	10,000.00	10,000.00	0.00		10,000.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00%	0.00%	0.00	10,000.00
32-01-521	Contractor Tools/Supplies	20,000.00	20,000.00	0.00		20,000.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00%	0.00%	0.00	20,000.00
32-01-522	First Aid Kit	500.00	500.00	0.00		500.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00%	0.00%	0.00	500.00
32-01-524	Field Office	10,000.00	10,000.00	0.00		10,000.00	10.00%	4,998.01	499.80	4,498.21	833.00	83.30	749.70	5,831.01	5,247.91	52.48%	58.31%	583.10	4,168.99
32-01-524	Leasing Office Trailer	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	#DIV/0!	#DIV/0!	0.00	0.00
32-01-525	Job Office Supplies	8,000.00	8,000.00	0.00		8,000.00	0.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00%	0.00%	0.00	8,000.00
32-01-526	Trash Bins	40,000.00	40,000.00	0.00		40,000.00	0.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00%	0.00%	0.00	40,000.00
32-01-319	Prevailing Wage Monitor	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	#DIV/0!	#DIV/0!	0.00	0.00
32-01-528	Temporary Toilet	10,000.00	10,000.00	0.00		10,000.00	0.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00%	0.00%	0.00	10,000.00
32-01-561	Security	30,000.00	30,000.00	0.00		30,000.00	0.00%	12,815.12	0.00	12,815.12	11,125.06	0.00	11,125.06	23,940.18	23,940.18	79.80%	79.80%	(0.00)	6,059.82
32-01-562	Storage Bin	15,000.00	15,000.00	0.00		15,000.00	0.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00%	0.00%	0.00	15,000.00
32-01-564	Temporary Fencing	10,000.00	10,000.00	0.00		10,000.00	0.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00%	0.00%	0.00	10,000.00
32-01-742	Site Maintenance	25,000.00	25,000.00	0.00		25,000.00	0.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00%	0.00%	0.00	25,000.00
32-01-600	Liability Insurance		0.00	0.00		0.00	0.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	#DIV/0!	#DIV/0!	0.00	0.00
<b>GEN. CONDITIONS TOTAL</b>		<b>529,500.00</b>	<b>529,500.00</b>	<b>185,192.00</b>	<b>0.00</b>	<b>714,692.00</b>		<b>247,760.33</b>	<b>10,199.40</b>	<b>237,560.93</b>	<b>28,124.06</b>	<b>1,699.90</b>	<b>26,424.16</b>	<b>275,884.39</b>	<b>263,985.09</b>	<b>36.94%</b>	<b>38.60%</b>	<b>11,899.30</b>	<b>438,807.61</b>
56-99-280	<b>CONTRACTOR'S FEE</b>	<b>830,868.00</b>	<b>830,868.00</b>	<b>0.00</b>		<b>830,868.00</b>	<b>10.00%</b>	<b>166,173.60</b>	<b>16,617.36</b>	<b>149,556.24</b>	<b>63,827.24</b>	<b>6,382.72</b>	<b>57,444.52</b>	<b>230,000.84</b>	<b>207,000.76</b>	<b>24.91%</b>	<b>27.68%</b>	<b>23,000.08</b>	<b>600,867.16</b>
<b>TOTAL OVERHEAD</b>		<b>0.00</b>	<b>0.00</b>	<b>0.00</b>		<b>0.00</b>	<b>10.00%</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>#DIV/0!</b>	<b>#DIV/0!</b>	<b>0.00</b>	<b>0.00</b>
<b>Total</b>		<b>12,135,069.00</b>	<b>12,135,069.00</b>	<b>185,192.00</b>	<b>0.00</b>	<b>12,320,261.00</b>		<b>2,595,687.73</b>	<b>244,992.14</b>	<b>2,350,695.59</b>	<b>825,200.30</b>	<b>81,407.52</b>	<b>743,792.78</b>	<b>3,420,888.03</b>	<b>3,094,488.37</b>	<b>25.12%</b>	<b>27.77%</b>	<b>326,399.66</b>	<b>8,899,372.97</b>



=====

**CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT**

Project: El Sereno (Cibolo TX)

Job No. \_\_\_\_\_

On receipt by the signer of this document of a check from Borgfeld Housing, LP (maker of check) in the sum of \$ 743,792.78 payable to HCHP Contractors, L.P. (payee or payees of check) and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the property of Borgfeld Housing, L.P. (owner) located at Cibolo, TX (location) to the following extent: El Sereno (job description).

This release covers a progress payment for all labor, services, equipment, or materials furnished to the property or to April 25, 2018 (person with whom signer contracted) as indicated in the attached statement(s) or progress payment request(s), except for unpaid retention, pending modifications and changes, or other items furnished.

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

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

Date: 6-27-18

HCHP Contractors, L.P. (Company name)

By  (Signature)

Pierre Harispuru, Vice President (Title)

=====

**NOTE:** Section 53.281(b)(2), Texas Property Code, requires that the above form be notarized. See Chapter 121, Texas Civil Practice & Remedies Code, regarding Acknowledgments & Proofs of Written Instruments, or consult an attorney. For short acknowledgement forms that might be suitable, see Section 121.008 in Chapter 121. Click [here](#) to go there.

## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of Los Angeles

On June 27, 2018 before me Martha E. Lennig, Notary Public personally appeared Pierre Harispuru who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature   
Notary Public, State of California

Print Name: Martha E. Lennig  
My commission expires: January 11, 2022



(Seal)

=====

**NOTICE:**

This document waives rights unconditionally and states that you have been paid for giving up those rights. It is prohibited for a person to require you to sign this document if you have not been paid the payment amount set forth below. If you have not been paid, use a conditional release form.

**UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT**

Project El Sereno (Cibolo TX)

Job No. \_\_\_\_\_

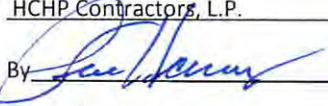
The signer of this document has been paid and has received a progress payment in the sum of \$ 950,555.46 for all labor, services, equipment, or materials furnished to the property or to \_\_\_\_\_ (person with whom signer contracted) on the property of Borgfeld Housing, L.P. (owner) located at Cibolo, TX (location) to the following extent: El Sereno (job description). The signer therefore waives and releases any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the above referenced project to the following extent:

This release covers a progress payment for all labor, services, equipment, or materials furnished to the property or to April 25, 2018 (person with whom signer contracted) as indicated in the attached statement(s) or progress payment request(s), except for unpaid retention, pending modifications and changes, or other items furnished.

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

Date 6.27.18

HCHP Contractors, L.P. (Company name)

By  (Signature)

Pierre Harispuru, Vice President (Title)

=====

**NOTE:** Section 53.281(b)(2), Texas Property Code, requires that the above form be notarized. See Chapter 121, Texas Civil Practice & Remedies Code, regarding Acknowledgments & Proofs of Written Instruments, or consult an attorney. For short acknowledgement forms that might be suitable, see Section 121.008 in Chapter 121. Click [here](#) to go there.

## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of Los Angeles

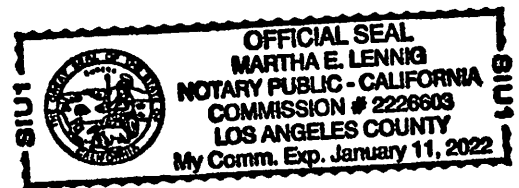
On June 27, 2018 before me Martha E. Lennig, Notary Public personally appeared Pierre Harispuru who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature *Martha E. Lennig*  
Notary Public, State of California

Print Name: Martha E. Lennig  
My commission expires: January 11, 2022



(Seal)

# BUDGET MODIFICATION #2

5. The following are attached hereto and form a part hereof:

Contractor's APPLICATION AND CERTIFICATE FOR PAYMENT (AIA Document G702), Conditional and Unconditional Lien Waivers and accounts payable listing is preferred for soft costs.

Date: 03/01/2019

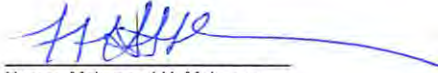
BORROWER:

**BORGFELD HOUSING, L.P.,**

a Texas limited partnership

By: Highridge Costa Housing, LLC,  
a Delaware limited liability company

Its: Managing General Partner



Name: Mohannad H. Mohanna  
Title: President

Limit input to YELLOW CELLS

**BUDGET DRAW TEMPLATE**

Clear ALL Prior Entries for New Draw

BORROWER: BORGFELD HOUSING LP

REPORT DATE: 2/27/2019

PROJECT DESCRIPTION: EL SERENO APTS - 136 UNITS

HIDE Blank Line Item Rows (normal status)

UNHIDE Blank Line Item Rows (to add new line item)

**Uses**

Description	Original Budget	Total Prior Adjustments	Current Changes	Revised Budget	Total Previous Drawn	Amount This Draw	Total Drawn Including This Draw	Undisbursed After This Draw	% Funded	Deferred (Unavailable)
<b>LAND</b>										
Land Value	2,248,602.00	0.00		2,248,602.00	2,248,602.00		2,248,602.00	0.00	100%	
Other Acquisition Costs		3,000.00		3,000.00	0.00		0.00	3,000.00	0%	
<b>TOTAL LAND</b>	<b>2,248,602.00</b>	<b>3,000.00</b>	<b>0.00</b>	<b>2,251,602.00</b>	<b>2,248,602.00</b>	<b>0.00</b>	<b>2,248,602.00</b>	<b>3,000.00</b>	<b>100%</b>	
<b>HARD COSTS</b>										
Demolition	50,000.00	27,000.00		77,000.00	69,300.00		69,300.00	7,700.00	90%	
Site Work	986,807.00	309,262.80		1,296,069.80	861,587.82		861,587.82	434,481.98	66%	
Off Site Improvements	205,000.00	75,000.00		280,000.00	83,250.00		83,250.00	196,750.00	30%	
Construction - Residential	9,532,894.00	1,229,849.92		10,762,743.92	8,282,920.97	1,292,396.31	9,575,317.28	1,187,426.64	89%	
General Requirements	602,338.00	136,937.00		739,275.00	591,075.09	129,195.50	720,270.59	19,004.41	97%	
Contractor Overhead and Profit	830,868.00	(425,518.00)		405,350.00	207,000.77	141,642.50	348,643.27	56,706.73	86%	
Sub Total Contracts	12,207,907.00	1,352,531.72	0.00	13,560,438.72	10,095,134.65	1,563,234.31	11,658,368.96	1,902,069.76	86%	
Construction Contingency	610,395.00	(610,394.72)		0.28	0.00		0.00	0.28	0%	
Personal Property - Development Budget	150,000.00	218.46		150,218.46	150,218.46		150,218.46	0.00	100%	
<b>TOTAL HARD COSTS</b>	<b>12,968,302.00</b>	<b>742,355.46</b>	<b>0.00</b>	<b>13,710,657.46</b>	<b>10,245,353.11</b>	<b>1,563,234.31</b>	<b>11,808,587.42</b>	<b>1,902,070.04</b>	<b>86%</b>	
<b>SOFT COSTS</b>										
Const Loan Inspection	16,500.00	4,919.50		21,419.50	19,569.50	1,850.00	21,419.50	0.00	100%	
Const Loan Origination Fee	179,473.00	0.00		179,473.00	179,472.98		179,472.98	0.02	100%	
Const Title & Recording	105,216.00	0.00		105,216.00	103,775.47	200.00	103,975.47	1,240.53	99%	
Perm Loan Origination Fee	49,500.00	0.00		49,500.00	49,500.00		49,500.00	0.00	100%	
Perm Conversion Fee - Deferred	10,000.00	0.00		10,000.00	0.00		0.00	10,000.00	0%	YES
Perm Title & Recording - Deferred	10,000.00	0.00		10,000.00	0.00		0.00	10,000.00	0%	YES
B of A Lender Legal	40,000.00	25,000.00		65,000.00	40,000.00		40,000.00	25,000.00	62%	
T.Credit Application & Monitoring Fees	67,740.00	10,000.00		77,740.00	67,740.00		67,740.00	10,000.00	87%	
Marketing	125,000.00	(400.00)	10,429.20	135,029.20	118,529.20	16,500.00	135,029.20	0.00	100%	
Accounting	22,500.00	0.00		22,500.00	5,500.00	750.00	6,250.00	16,250.00	28%	
Operating Reserve - Deferred	433,175.00	0.00		433,175.00	0.00		0.00	433,175.00	0%	YES
Developer Fees	290,001.00	0.00		290,001.00	290,000.00		290,000.00	1.00	100%	
Developer Fees - Deferred	2,030,003.00	0.00		2,030,003.00	0.00		0.00	2,030,003.00	0%	YES
Insurance	45,163.00	37,922.00		83,085.00	44,983.00	9,303.81	54,286.81	28,798.19	65%	
Taxes	93,497.00	(719.00)		92,778.00	33,224.34		33,224.34	59,553.66	36%	
Legal	80,772.00	77,467.42		158,239.42	120,739.42	8,764.50	129,503.92	28,735.50	82%	
Architect	420,000.00	8,062.64	5,475.97	433,538.61	428,061.64	5,476.97	433,538.61	0.00	100%	
Survey & Engineering	143,600.00	64,067.13		207,667.13	207,667.13		207,667.13	0.00	100%	
Appraisal & Mkt Study	23,630.00	6,945.00		30,575.00	24,075.00		24,075.00	6,500.00	79%	
Soils Investigation	5,700.00	0.00		5,700.00	5,700.00		5,700.00	0.00	100%	
Impact Fees	990,435.00	(66,002.55)		924,432.45	924,432.45		924,432.45	0.00	100%	
Environmental Surveys	6,570.00	0.00		6,570.00	6,570.00		6,570.00	0.00	100%	
Soft Cost Contingency	86,003.00	(49,426.60)	(15,905.17)	20,671.23	1,000.00		1,000.00	19,671.23	5%	
Misc. Soft Costs		0.00		0.00	0.00		0.00	0.00	0%	
Construction Loan Ext Fee - Deferred		89,736.00		89,736.00	0.00		0.00	89,736.00	0%	YES
B of A Lender Legal - Deferred		25,000.00		25,000.00	0.00		0.00	25,000.00	0%	YES
Legal - Deferred		37,500.00		37,500.00	0.00		0.00	37,500.00	0%	YES
Sub Total Misc	5,274,478.00	270,071.54	0.00	5,544,549.54	2,670,540.13	42,845.28	2,713,385.41	2,831,164.13	49%	
Interest Reserve	835,532.00	0.00		835,532.00	439,842.52		439,842.52	395,689.48	53%	
Sub Total Int Res	835,532.00	0.00	0.00	835,532.00	439,842.52	0.00	439,842.52	395,689.48	53%	
Sub Total Op Def	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0%	
<b>TOTAL SOFT COSTS</b>	<b>6,110,010.00</b>	<b>270,071.54</b>	<b>0.00</b>	<b>6,380,081.54</b>	<b>3,110,382.65</b>	<b>42,845.28</b>	<b>3,153,227.93</b>	<b>3,226,853.61</b>	<b>49%</b>	
<b>TOTAL PROJECT USES</b>	<b>21,326,914.00</b>	<b>1,015,427.00</b>	<b>0.00</b>	<b>22,342,341.00</b>	<b>15,604,337.76</b>	<b>1,606,079.59</b>	<b>17,210,417.35</b>	<b>5,131,923.65</b>	<b>77%</b>	<b>2,635,414.00</b>

**Sources**

Description	Original Budget	Total Prior Adjustments	Current Changes	Revised Budget	Total Previous Drawn	Amount This Draw	Total Drawn Including This Draw	Undisbursed After This Draw	% Funded	Deferred/Unavail?
Loan Funds	17,947,298.00	0.00		17,947,298.00	14,040,762.76	1,410,025.59	15,450,788.35	2,496,509.65	86%	
<b>SUB-TOTAL LOAN PROCEEDS</b>	<b>17,947,298.00</b>	<b>0.00</b>	<b>0.00</b>	<b>17,947,298.00</b>	<b>14,040,762.76</b>	<b>1,410,025.59</b>	<b>15,450,788.35</b>	<b>2,496,509.65</b>	<b>86%</b>	
ILP at Closing	896,438.00	0.00		896,438.00	896,438.00		896,438.00	0.00	100%	
Completion/Conversion - Deferred	2,483,178.00	152,236.00		2,635,414.00	0.00		0.00	2,635,414.00	0%	YES
Out of Balance - Borrowers Funds		863,191.00		863,191.00	667,137.00	196,054.00	863,191.00	0.00	100%	
<b>SUB-TOTAL EQUITY/OTHER</b>	<b>3,379,616.00</b>	<b>1,015,427.00</b>	<b>0.00</b>	<b>4,395,043.00</b>	<b>1,563,575.00</b>	<b>196,054.00</b>	<b>1,759,629.00</b>	<b>2,635,414.00</b>	<b>40%</b>	
<b>TOTAL PROJECT SOURCES</b>	<b>21,326,914.00</b>	<b>1,015,427.00</b>	<b>0.00</b>	<b>22,342,341.00</b>	<b>15,604,337.76</b>	<b>1,606,079.59</b>	<b>17,210,417.35</b>	<b>5,131,923.65</b>	<b>77%</b>	<b>2,635,414.00</b>

Project Name: El Sereno Apartments (Cibolo TX)  
 Construction Loan - Draw 18 Invoice Summary

<u>Line Item</u>	<u>Vendor</u>	<u>Invoice Date</u>	<u>Invoice #</u>	<u>Description</u>	<u>Check #</u>	<u>Check Date</u>	<u>Invoice Amount</u>	<u>Total</u>
Hard Cost:								
HC: Construction Contract	HCHP Contractors, LP	12/25/19	Pay Application No. 17	Pay Application No. 17 - Period thru 12/25/2018	TBA	To Be Paid	<u>1,563,234.31</u>	1,563,234.31
Soft Cost:								
Construction Title & Recording	Chicago Title Insurance Company	01/25/19		Downdate Endorsements	TBA	To Be Paid	<u>200.00</u>	200.00
Construction Loan Inspection	CA Partners, Inc. CA Partners, Inc.	01/14/19	Inv. 17170-18	Progress and Funding Disbursement Report	TBA	To Be Paid	925.00	1,850.00
		02/08/19	Inv. 17170-19	Progress and Funding Disbursement Report	TBA	To Be Paid	<u>925.00</u>	
Architect	Humphrey & Partners Architects, LP Humphrey & Partners Architects, LP	01/14/19	Inv. 68793	Architect Svcs	TBA	To Be Paid	4,790.14	5,476.97
		02/06/19	Inv. 68967	Architect Svcs	TBA	To Be Paid	<u>686.83</u>	
Accounting	Novogradac & Company, LLP	01/30/19	Inv. 10435716	Accounting Services	TBA	To Be Paid	<u>750.00</u>	750.00
Marketing	UAH Property Management, LP	02/22/19	No. 3	UAH Lease Up Activies	TBA	To Be Paid	<u>16,500.00</u>	16,500.00
Insurance	Edgewood Insurance Partners Center Edgewood Insurance Partners Center	11/29/18	Inv. 280690	Insurance	Ck 11115	12/12/2018	3,891.00	9,303.81
		01/09/19		Insurance	TBA	To Be Paid	<u>5,412.81</u>	
Legal	Locke Lord, LLP Chernove & Associates, Inc. Locke Lord, LLP	12/11/18	Inv. 1464145	Legal Services	TBA	To Be Paid	5,760.00	8,764.50
		12/31/18	Inv. 1218-2457	Legal Services	Ck 11129	2/13/2019	522.50	
		01/29/19	Inv. 1473285	Legal Services	TBA	To Be Paid	<u>2,482.00</u>	
TOTAL							<u>\$ 1,606,079.59</u>	
Less Interest Reserve							\$	-
Sources:								
LIP at Closing							\$	-
Loan Proceeds							\$	1,410,025.59
Borrower's Fund							\$	196,054.00
TOTAL Requested							<u>\$</u>	<u>1,606,079.59</u>

# HARD COSTS



**APPLICATION AND CERTIFICATION FOR PAYMENT**

AIA DOCUMENT G702

PAGE ONE OF

PAGES

TO OWNER: PROJECT: APPLICATION NO 17  
 BORGFELD HOUSING, L.P. DATE: 12/25/18  
 330 WEST VICTORIA STREET, GARDENA CA 90248  
 FROM CONTRACTOR: VIA ARCHITECT:  
 HCHP CONTRACTORS, L.P. HUMPREYS & PARTNERS  
 330 WEST VICTORIA STREET 5339 ALPHA ROAD, SUITE 300  
 GARDENA CA 90248 DALLAS TX 75240  
 CONTRACT FOR: THE HEIGHTS, EDINBURG, TX (GENERAL CONSTRUCTION) CONTRACT DATE 4/10/2017

PERIOD TO: 12/25/18  
 PROJECT NO: 2506  
 CONTRACT DATE 4/10/2017

Distribution to:  
 OWNER  
 ARCHITECT  
 CONTRACTOR

**CONTRACTOR'S APPLICATION FOR PAYMENT**

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703, is attached.

1. ORIGINAL CONTRACT SUM	\$	12,135,069.00
2. Net change by Change Orders	\$	1,350,369.72
3. CONTRACT SUM TO DATE (Line 1 + 2)	\$	13,485,438.72
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$	12,910,263.30
5. RETAINAGE:		
a. 10 % of Completed Work (Column D + E on G703)	\$	1,251,894.37
b. % of Stored Material (Column F on G703)	\$	0.00
Total Retainage (Lines 5a + 5b or Total in Column I of G703)	\$	1,251,894.37
6. TOTAL EARNED LESS RETAINAGE (Line 4 Less Line 5 Total)	\$	11,658,368.94
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)	\$	10,095,134.63
8. CURRENT PAYMENT DUE	\$	1,563,234.30
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6)	\$	1,827,069.79

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	\$1,350,369.72	
Total approved this Month	\$0.00	
TOTALS	\$1,350,369.72	\$0.00
NET CHANGES by Change Order	\$1,350,369.72	

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

CONTRACTOR  
 By: [Signature] Date: 3-1-19  
 State of \_\_\_\_\_ County of \_\_\_\_\_  
 Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_  
 Notary Public: See attached  
 My Commission expires \_\_\_\_\_

**ARCHITECT'S CERTIFICATE FOR PAYMENT**

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

AMOUNT CERTIFIED \$ 1,563,234.30

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

ARCHITECT  
 By: [Signature] - HPA Date: 03/05/19

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

## CALIFORNIA JURAT

.....

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of Los Angeles ss.

Subscribed and sworn to (or affirmed) before me on this 1<sup>st</sup> day of, March 2019,  
by Pierre Harispuru, proved to me on the basis of satisfactory evidence to be  
the person(s) who appeared before me.



(seal)

*Lashon S. Gilbreath*

Signature of Notary



Cost Coding	Description	Budget (A)	Contract Amount (B)	Previously Approved Contract Changes (C)	Current Contract Changes (D)	Pay Appl No. 11 Line Item Transfers	Pay Appl No. 13 Line Item Transfers	Pay Appl No. 14 Line Item Transfers	Pay Appl No. 15 Line Item Transfers	Pay Appl No. 16 Line Item Transfers	Pay Appl No. 17 Line Item Transfers	Adjusted Contract Totals (E)	Retention % (F)	Previous Request			Current Request			Total Gross Completed To date (G)+(J) (M)	Total Amount Paid To Date (H)+(L) (N)	Total % Paid To Date (I)+(E) (O)	Total % Complete To Date (J)+(E) (P)	Total Retention To Date (K)+(K) (Q)	Balance Remaining (E)-(M) (R)		
														Prior Gross Amount Requested (G)	Less Prior Held Retention (H)	Net Amount Paid (I)	Gross Amount Requested (J)	Less Retention (K)	Net Amount Requested (L)								
28-07-461	Siding	0.00	0.00	0.00	0.00							0.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	#DIV/0!	#DIV/0!	0.00	0.00	
28-07-601	Flashing & Sheet Metal	15,000.00	15,000.00	0.00	0.00	(15,000.00)						0.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	#DIV/0!	#DIV/0!	0.00	0.00
28-07-611	Standing Seam Roofing	30,000.00	30,000.00	0.00	0.00	14,600.00					(17,065.00)	27,535.00	10.00%	22,300.00	2,230.00	20,070.00	5,235.00	523.50	4,711.50	27,535.00	24,781.50	90.00%	100.00%	2,753.50	0.00		
28-07-711	Roof Accessories, Gutters & Downspouts	30,000.00	30,000.00	0.00	0.00	(8,500.00)					(7,679.50)	13,820.50	10.00%	0.00	0.00	0.00	13,820.50	1,382.05	12,438.45	13,820.50	12,438.45	90.00%	100.00%	1,382.05	0.00		
28-07-801	Fire/Smoke Protection	250,000.00	250,000.00	0.00	0.00	(20,000.00)						230,000.00	10.00%	188,500.00	18,850.00	169,650.00	41,500.00	4,150.00	37,350.00	230,000.00	207,000.00	90.00%	100.00%	23,000.00	0.00		
28-08-101	Metal Doors & Frames	30,000.00	30,000.00	0.00	0.00	54,158.00					(4,400.00)	79,758.00	10.00%	79,758.00	7,975.80	71,782.20	0.00	0.00	0.00	79,758.00	71,782.20	90.00%	100.00%	7,975.80	0.00		
28-08-211	Wood Doors	1,000.00	1,000.00	0.00	0.00	(1,000.00)						0.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	#DIV/0!	#DIV/0!	0.00	0.00
28-08-221	Fiberglass Doors	10,000.00	10,000.00	0.00	0.00	(10,000.00)						0.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	#DIV/0!	#DIV/0!	0.00	0.00
28-08-261	Sliding Wood/Plastic Doors	0.00	0.00	0.00	0.00							0.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	#DIV/0!	#DIV/0!	0.00	0.00
28-08-311	Specialty Doors	8,000.00	8,000.00	0.00	0.00	(8,000.00)						0.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	#DIV/0!	#DIV/0!	0.00	0.00
28-08-361	Overhead Garage Doors (National Contract)	0.00	0.00	0.00	0.00							0.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	#DIV/0!	#DIV/0!	0.00	0.00
28-08-501	Window/Sliding Glass Door	220,000.00	220,000.00	0.00	0.00							220,000.00	10.00%	220,000.00	22,000.00	198,000.00	0.00	0.00	0.00	220,000.00	198,000.00	90.00%	100.00%	22,000.00	0.00		
28-08-701	Finish Hardware	25,000.00	25,000.00	0.00	0.00	(25,000.00)						0.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	#DIV/0!	#DIV/0!	0.00	0.00
28-08-831	Mirrors	35,000.00	35,000.00	0.00	0.00	(13,980.00)					(200.00)	20,820.00	10.00%	20,820.00	2,082.00	18,738.00	0.00	0.00	0.00	20,820.00	18,738.00	90.00%	100.00%	2,082.00	0.00		
28-09-221	Exterior Plaster	475,000.00	475,000.00	57,499.00	0.00	12,501.00					70,137.00	615,137.00	10.00%	327,000.00	32,700.00	294,300.00	288,137.00	28,813.70	269,323.30	615,137.00	552,623.30	90.00%	100.00%	61,513.70	0.00		
28-09-251	Gypsum Board	560,000.00	560,000.00	0.00	0.00	120,000.00						680,000.00	10.00%	655,150.00	65,515.00	589,635.00	24,850.00	2,485.00	22,365.00	680,000.00	612,000.00	90.00%	100.00%	68,000.00	0.00		
28-09-311	Ceramic Tile-Rec Center	15,000.00	15,000.00	0.00	0.00	56,314.92						71,314.92	10.00%	71,314.92	7,131.49	64,183.43	0.00	0.00	0.00	71,314.92	64,183.43	90.00%	100.00%	7,131.49	0.00		
28-09-601	Floor Covering-Rec Center	10,000.00	10,000.00	0.00	0.00	213,685.08					(22,076.56)	201,608.52	10.00%	201,337.89	20,133.79	181,204.10	270.63	27.06	243.57	201,608.52	181,447.67	90.00%	100.00%	20,160.85	0.00		
28-09-651	Resilient Flooring-Units	85,000.00	85,000.00	0.00	0.00	(85,000.00)						0.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	#DIV/0!	#DIV/0!	0.00	0.00
28-09-681	Carpet-Units (Materials)	90,000.00	90,000.00	0.00	0.00	(90,000.00)						0.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	#DIV/0!	#DIV/0!	0.00	0.00
28-09-681	Carpet-Units (Labor)	95,000.00	95,000.00	0.00	0.00	(95,000.00)						0.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	#DIV/0!	#DIV/0!	0.00	0.00
28-09-911	Painting-Interior	197,000.00	197,000.00	25,500.00	0.00	2,500.00						225,000.00	10.00%	204,750.00	20,475.00	184,275.00	20,250.00	2,025.00	18,225.00	225,000.00	202,500.00	90.00%	100.00%	22,500.00	0.00		
28-09-912	Painting-Exterior	95,000.00	95,000.00	0.00	0.00	(2,500.00)						92,500.00	10.00%	85,675.00	8,567.50	77,107.50	26,825.00	2,682.50	24,142.50	92,500.00	83,250.00	90.00%	100.00%	9,250.00	0.00		
28-09-913	Wallcoverings-Rec Center	2,000.00	2,000.00	0.00	0.00	(2,000.00)						0.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	#DIV/0!	#DIV/0!	0.00	0.00
28-10-151	Tub/Shower Enclosures	0.00	0.00	0.00	0.00							0.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	#DIV/0!	#DIV/0!	0.00	0.00
28-10-306	Manufactured Fireplace	3,500.00	3,500.00	0.00	0.00	(3,500.00)						0.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	#DIV/0!	#DIV/0!	0.00	0.00
28-10-521	Fire Extinguishers	25,000.00	25,000.00	0.00	0.00	(14,000.00)					750.00	11,750.00	10.00%	11,000.00	1,100.00	9,900.00	750.00	75.00	675.00	11,750.00	10,575.00	90.00%	100.00%	1,175.00	0.00		
28-10-551	Mailboxes	6,000.00	6,000.00	0.00	0.00	8,000.00						14,000.00	10.00%	14,000.00	1,400.00	12,600.00	0.00	0.00	0.00	14,000.00	12,600.00	90.00%	100.00%	1,400.00	0.00		
28-10-801	Toilet/ Bath Accessories (National Contract)	10,000.00	10,000.00	0.00	0.00						(5,400.45)	4,599.55	10.00%	2,200.00	220.00	1,980.00	2,399.55	239.96	2,159.60	4,599.55	4,139.60	90.00%	100.00%	459.96	0.00		
28-11-451	Appliances Energy Star	255,000.00	255,000.00	7,941.00	0.00	13.00						262,954.00	10.00%	237,859.75	23,785.98	214,073.78	25,094.25	2,509.43	22,584.83	262,954.00	236,658.60	90.00%	100.00%	26,295.40	0.00		
28-12-491	Window Treatments - units only	30,000.00	30,000.00	0.00	0.00	23,550.00					(31,375.92)	22,174.08	10.00%	11,039.00	1,103.90	9,935.10	11,135.08	1,113.51	10,021.57	22,174.08	19,956.67	90.00%	100.00%	2,217.41	0.00		
28-12-491	Window Treatments - recreation bldg. only	4,000.00	4,000.00	0.00	0.00	3,950.00					(7,950.00)	0.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	#DIV/0!	#DIV/0!	0.00	0.00
28-13-701	Intrusion Alarm	8,000.00	8,000.00	0.00	0.00	(8,000.00)						0.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	#DIV/0!	#DIV/0!	0.00	0.00
28-13-851	Fire Alarm (DESIGN BUILD) - Fire Sprinkler	35,000.00	35,000.00	0.00	0.00	69,593.00						104,593.00	10.00%	100,792.88	10,079.29	90,713.59	3,800.12	380.01	3,420.11	104,593.00	94,133.70	90.00%	100.00%	10,459.30	0.00		
28-14-201	Elevators	150,000.00	150,000.00	0.00	0.00	(1,606.00)						148,394.00	10.00%	118,716.00	11,871.60	106,844.40	29,678.00	2,967.80	26,710.20	148,394.00	133,554.60	90.00%	100.00%	14,839.40	0.00		
28-14-561	Trash Chute	20,000.00	20,000.00	0.00	0.00	(20,000.00)						0.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	#DIV/0!	#DIV/0!	0.00	0.00
28-15-101	Plumbing	834,000.00	834,000.00	21,000.00	0.00	0.00					9,000.00	864,000.00	10.00%	686,500.00	68,650.00	617,850.00	177,500.00	17,750.00	159,750.00	864,000.00	777,600.00	90.00%	100.00%	86,400.00	0.00		
28-15-301	Fire Protection System	0.00	0.00	0.00	0.00							0.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	#DIV/0!	#DIV/0!	0.00	0.00
28-15-411	Garbage disposals	20,000.00	20,000.00	0.00	0.00	(20,000.00)						0.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	#DIV/0!	#DIV/0!	0.00	0.00
28-15-701	HVAC	520,000.00	520,000.00	90,850.00	0.00	0.00	94,650.00																				

Cost Coding	Description	Budget (A)	Contract Amount (B)	Previously Approved Contract Changes (C)	Current Contract Changes (D)	Pay Appl No. 11 Line Item Transfers	Pay Appl No. 13 Line Item Transfers	Pay Appl No. 14 Line Item Transfers	Pay Appl No. 15 Line Item Transfers	Pay Appl No. 16 Line Item Transfers	Pay Appl No. 17 Line Item Transfers	Adjusted Contract Totals (E)	Retention % (F)	Previous Request			Current Request			Total Gross Completed To date (G)+(J) (M)	Total Amount Paid To Date (I)+(L) (N)	Total % Paid To Date (N)/(E) (O)	Total % Complete To Date (M)/(E) (P)	Total Retention To Date (H)+(K) (Q)	Balance Remaining (E)-(M) (R)				
														Prior Gross Amount Requested (G)	Less Prior Held Retention (H)	Net Amount Paid (I)	Gross Amount Requested (J)	Less Retention (K)	Net Amount Requested (L)										
32-01-100	General Requirements	0.00	0.00	0.00	0.00							0.00	10.00%	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	0.00	0.00
32-01-312	Project Manager	120,000.00	120,000.00	0.00	0.00	(36,000.00)			100,000.00			26,838.00	10.00%	184,000.00	18,400.00	165,600.00	26,838.00	2,683.80	24,154.20	210,838.00	189,754.20	90.00%	100.00%	21,083.80	0.00				
32-01-313	Project Superintendent	80,000.00	80,000.00	0.00	0.00	(80,000.00)						0.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	#DIV/0!	#DIV/0!	0.00	0.00				
32-01-314	Assistant Project Superintendent	50,000.00	50,000.00	0.00	0.00	(20,838.00)						29,162.00	10.00%	29,162.00	2,916.20	26,245.80	0.00	0.00	0.00	29,162.00	26,245.80	90.00%	100.00%	2,916.20	0.00				
32-01-315	Supervision	0.00	0.00	0.00	0.00	136,838.00		(116,660.12)			(10,177.88)	10,000.00	10.00%	10,000.00	1,000.00	9,000.00	0.00	0.00	0.00	10,000.00	9,000.00	90.00%	100.00%	1,000.00	0.00				
44-99-152	Survey	0.00	0.00	0.00	0.00							0.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	#DIV/0!	#DIV/0!	0.00	0.00				
32-01-317	General Labor	40,000.00	40,000.00	0.00	0.00							6,958.89	10.00%	30,000.00	3,000.00	27,000.00	16,958.89	1,000.00	15,958.89	46,958.89	42,958.89	91.48%	100.00%	4,000.00	0.00				
32-01-451	Testing, Inspections, Laboratory (By Owner)	10,000.00	10,000.00	0.00	0.00		(10,000.00)					0.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	#DIV/0!	#DIV/0!	0.00	0.00				
32-01-512	Temporary Fire Protection (monitoring)	5,000.00	5,000.00	0.00	0.00							5,000.00	10.00%	5,000.00	500.00	4,500.00	0.00	0.00	0.00	5,000.00	4,500.00	90.00%	100.00%	500.00	0.00				
32-01-514	Temporary Electric (Distributed)	10,000.00	10,000.00	0.00	0.00							10,000.00	10.00%	9,500.00	950.00	8,550.00	500.00	50.00	450.00	10,000.00	9,000.00	90.00%	100.00%	1,000.00	0.00				
32-01-514	Temporary Electric (Usage)	20,000.00	20,000.00	0.00	0.00				(5,000.00)	5,000.00		20,000.00	10.00%	10,000.00	1,000.00	9,000.00	10,000.00	1,000.00	9,000.00	20,000.00	18,000.00	90.00%	100.00%	2,000.00	0.00				
32-01-518	Temporary Water	10,000.00	10,000.00	0.00	0.00			(8,385.09)	8,385.09			10,000.00	10.00%	0.00	0.00	0.00	10,000.00	1,000.00	9,000.00	10,000.00	9,000.00	90.00%	100.00%	1,000.00	0.00				
32-01-521	Contractor Tools/Supplies	20,000.00	20,000.00	0.00	0.00				(5,000.00)	5,000.00		20,000.00	10.00%	5,000.00	500.00	4,500.00	15,000.00	1,500.00	13,500.00	20,000.00	18,000.00	90.00%	100.00%	2,000.00	0.00				
32-01-522	First Aid Kit	500.00	500.00	0.00	0.00					(500.00)	500.00	500.00	10.00%	0.00	0.00	0.00	500.00	50.00	450.00	500.00	450.00	90.00%	100.00%	50.00	0.00				
32-01-524	Field Office	10,000.00	10,000.00	0.00	0.00						1.00	10,001.00	10.00%	6,664.01	666.40	5,997.61	3,336.99	333.70	3,003.29	10,001.00	9,000.90	90.00%	100.00%	1,000.10	0.00				
32-01-524	Leasing Office Trailer	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	#DIV/0!	#DIV/0!	0.00	0.00				
32-01-525	Job Office Supplies	8,000.00	8,000.00	0.00	0.00					(724.33)	724.33	8,000.00	0.00%	0.00	0.00	0.00	8,000.00	0.00	8,000.00	8,000.00	8,000.00	100.00%	100.00%	0.00	0.00				
32-01-526	Trash Bins	40,000.00	40,000.00	0.00	0.00							40,000.00	0.00%	25,000.00	0.00	25,000.00	15,000.00	0.00	15,000.00	40,000.00	40,000.00	100.00%	100.00%	0.00	0.00				
32-01-319	Prevailing Wage Monitor	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	#DIV/0!	#DIV/0!	0.00	0.00				
32-01-528	Temporary Toilet	10,000.00	10,000.00	0.00	0.00							10,000.00	0.00%	5,000.00	0.00	5,000.00	5,000.00	0.00	5,000.00	10,000.00	10,000.00	100.00%	100.00%	0.00	0.00				
32-01-561	Security	30,000.00	30,000.00	0.00	0.00	0.00	22,321.03	8,385.09	8,275.03	11,224.33	7,000.15	87,205.63	0.00%	80,205.48	0.00	80,205.48	7,000.15	0.00	7,000.15	87,205.63	87,205.63	100.00%	100.00%	0.00	0.00				
32-01-562	Storage Bin	15,000.00	15,000.00	0.00	0.00		(6,321.03)					8,678.97	0.00%	0.00	0.00	0.00	8,678.97	0.00	8,678.97	8,678.97	8,678.97	100.00%	100.00%	0.00	0.00				
32-01-564	Temporary Fencing	10,000.00	10,000.00	0.00	0.00							10,000.00	0.00%	5,000.00	0.00	5,000.00	5,000.00	0.00	5,000.00	10,000.00	10,000.00	100.00%	100.00%	0.00	0.00				
32-01-742	Site Maintenance	25,000.00	25,000.00	0.00	0.00							25,000.00	0.00%	20,000.00	0.00	20,000.00	5,000.00	0.00	5,000.00	25,000.00	25,000.00	100.00%	100.00%	0.00	0.00				
32-01-600	Liability Insurance		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	#DIV/0!	#DIV/0!	0.00	0.00				
<b>GEN. CONDITIONS TOTAL</b>		<b>529,500.00</b>	<b>529,500.00</b>	<b>209,775.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>17,545.69</b>	<b>756,820.69</b>		<b>620,007.69</b>	<b>28,932.60</b>	<b>591,075.09</b>	<b>136,813.00</b>	<b>7,617.50</b>	<b>129,195.50</b>	<b>756,820.69</b>	<b>720,270.59</b>	<b>95.17%</b>	<b>100.00%</b>	<b>36,550.10</b>	<b>0.00</b>				
56-99-280	CONTRACTOR'S FEE	830,868.00	830,868.00	(330,868.00)	0.00		(94,650.00)	0.00	0.00	0.00	0.00	405,350.00	10.00%	230,000.84	23,000.08	207,000.76	157,380.55	15,738.06	141,642.50	387,381.39	348,643.25	86.01%	95.57%	38,738.14	17,968.61				
<b>TOTAL OVERHEAD</b>		<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>							<b>0.00</b>	<b>10.00%</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>#DIV/0!</b>	<b>#DIV/0!</b>	<b>0.00</b>	<b>0.00</b>				
92-99-500	Buy-Out Contingency	0.00	0.00	0.00	0.00	19,000.00						(17,545.69)	1,454.31	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00%	0.00%	0.00	1,454.31				
<b>Total</b>		<b>12,135,069.00</b>	<b>12,135,069.00</b>	<b>1,350,369.72</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>13,485,438.72</b>		<b>11,180,073.85</b>	<b>1,084,939.22</b>	<b>10,095,134.63</b>	<b>1,730,189.45</b>	<b>166,955.15</b>	<b>1,563,234.30</b>	<b>12,910,263.30</b>	<b>11,658,368.94</b>	<b>86.45%</b>	<b>95.73%</b>	<b>1,251,894.37</b>	<b>575,175.42</b>				

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**CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT**

Project: El Sereno (Cibolo TX)

Job No. \_\_\_\_\_

On receipt by the signer of this document of a check from Borgfeld Housing, LP (maker of check) in the sum of \$ 1,563,234.30 payable to HCHP Contractors, L.P. (payee or payees of check) and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the property of Borgfeld Housing, L.P. (owner) located at Cibolo, TX (location) to the following extent: El Sereno (job description).

This release covers a progress payment for all labor, services, equipment, or materials furnished to the property or to December 25, 2018 (person with whom signer contracted) as indicated in the attached statement(s) or progress payment request(s), except for unpaid retention, pending modifications and changes, or other items furnished.

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

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

Date: 3-1-19

HCHP Contractors, L.P. (Company name)

By  (Signature)

Pierre Harispuru, Vice President (Title)

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**NOTE:** Section 53.281(b)(2), Texas Property Code, requires that the above form be notarized. See Chapter 121, Texas Civil Practice & Remedies Code, regarding Acknowledgments & Proofs of Written Instruments, or consult an attorney. For short acknowledgement forms that might be suitable, see Section 121.008 in Chapter 121. Click [here](#) to go there.

## CALIFORNIA ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of Los Angeles )

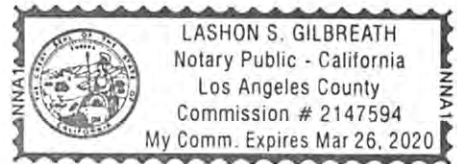
On March 1, 2019 before me, LaShon S. Gilbreath, Notary Public  
(insert name and title of the officer)

personally appeared Pierre Harispuru,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature LaShon S. Gilbreath (Seal)



=====

**NOTICE:**

This document waives rights unconditionally and states that you have been paid for giving up those rights. It is prohibited for a person to require you to sign this document if you have not been paid the payment amount set forth below. If you have not been paid, use a conditional release form.

**UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT**

Project El Sereno (Cibolo TX)

Job No. \_\_\_\_\_

The signer of this document has been paid and has received a progress payment in the sum of \$518,394.25 for all labor, services, equipment, or materials furnished to the property or to \_\_\_\_\_ (person with whom signer contracted) on the property of Borgfeld Housing, L.P. (owner) located at Cibolo, TX (location) to the following extent: El Sereno (job description). The signer therefore waives and releases any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the above referenced project to the following extent:

This release covers a progress payment for all labor, services, equipment, or materials furnished to the property or to December 25, 2018 (person with whom signer contracted) as indicated in the attached statement(s) or progress payment request(s), except for unpaid retention, pending modifications and changes, or other items furnished.

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

Date 3-1-19

HCHP Contractors, L.P. (Company name)

By  (Signature)

Pierre Harispuru, Vice President (Title)

=====

**NOTE:** Section 53.281(b)(2), Texas Property Code, requires that the above form be notarized. See Chapter 121, Texas Civil Practice & Remedies Code, regarding Acknowledgments & Proofs of Written Instruments, or consult an attorney. For short acknowledgement forms that might be suitable, see Section 121.008 in Chapter 121. Click [here](#) to go there.



## CALIFORNIA ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of Los Angeles

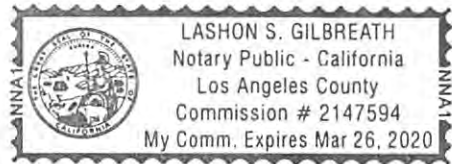
On March 1, 2019 before me, LaShon S. Gilbreath, Notary Public  
(insert name and title of the officer)

personally appeared Pierre Harispuru,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature LaShon S. Gilbreath (Seal)



## LINE ITEM TRANSFER - #10

Note: Page 1 - Decreases, Page 2 - Increases

**From:** **HCHP Contractor, LP**  
330 W. Victoria Street  
Gardena, CA 90248

**PROJECT:** Borgfeld Manor  
**PROJECT #:** 2506  
**STATE:** TEXAS  
**CITY:** CIBOLO

**PHONE:** 424-258-2800  
**FAX:** 424-258-2801

**DATE:** 02/20/19  
**CONTRACT DATE:** 04/10/17

**To:** **BORGFELD HOUSING, LP**  
330 W. Victoria Street  
Gardena, CA 90248

**PHONE:** 424-258-2800  
**FAX:** 424-258-2801

### LINE ITEM TRANSFER DECREASES

Code	Description	Beginning Balance	Decrease	Ending Balance	Transfer To Code	Description
24-02-621	Deck Drains	9,000.00	9,000.00	0.00	28-15-101	Plumbing
28-01-741	Final Cleaning	40,000.00	2,809.10	37,190.90	28-05-511	Metal Stairs
28-01-741	Final Cleaning	37,190.90	5,014.90	32,176.00	28-06-201	Finish Carpentry
28-06-411	Cabinets	349,000.00	15,500.00	333,500.00	28-06-201	Finish Carpentry
28-07-311	Asphalt Shingle Roofing	128,250.00	750.00	127,500.00	28-10-521	Fire Extinguishers
28-07-611	Standing Seam Roof	44,600.00	17,065.00	27,535.00	28-06-201	Finish Carpentry
28-07-711	Roof Accessories, Gutters & Downspouts	21,500.00	3,939.67	17,560.33	28-06-201	Finish Carpentry
28-07-711	Roof Accessories, Gutters & Downspouts	17,560.33	3,739.83	13,820.50	28-09-221	Fiberglass Doors
28-08-101	Metal Doors & Frames	84,158.00	4,400.00	79,758.00	28-09-221	Fiberglass Doors
28-08-831	Mirrors	21,020.00	200.00	20,820.00	28-09-221	Fiberglass Doors
28-09-601	Floor Covering	223,685.08	21,060.82	202,624.26	28-09-221	Exterior Plaster
28-09-601	Floor Covering	202,624.26	1,015.74	201,608.52	28-15-701	HVAC
28-10-801	Toilet Bath Accessories	10,000.00	5,400.45	4,599.55	28-09-221	Exterior Plaster
28-12-491	Window Treatments - units only	53,550.00	31,375.92	22,174.08	28-09-221	Exterior Plaster
28-12-491	Window Treatments - rec bldg only	7,950.00	3,959.98	3,990.02	28-09-221	Exterior Plaster
28-12-491	Window Treatments - rec bldg only	3,990.02	3,484.26	505.76	28-15-701	HVAC
28-12-491	Window Treatments - rec bldg only	505.76	505.76	0.00	30-02-776	Concrete Sidewalks / Pool Decks
28-16-511	Electrical Fixtures	180,000.00	3,864.84	176,135.16	30-02-776	Concrete Sidewalks / Pool Decks
28-16-511	Electrical Fixtures	176,135.16	3,414.70	172,720.46	30-02-811	Irrigation Systems
28-16-511	Electrical Fixtures	172,720.46	12,999.95	159,720.51	30-02-901	Landscape Planting (Materials/Labor)
28-16-511	Electrical Fixtures	159,720.51	365.51	159,355.00	30-13-151	Pool
30-02-791	Recreation Amenities (Horse Shoe Pit..)	10,000.00	717.25	9,282.75	30-02-811	Irrigation Systems
30-02-823	Dog Park Fence	10,000.00	179.69	9,820.31	30-02-811	Irrigation Systems
30-02-871	Outdoor Furniture (Benches...)	12,000.00	611.47	11,388.53	30-02-811	Irrigation Systems
30-04-222	Trash Enclosures (CMU)	19,000.00	735.31	18,264.69	30-13-151	Pool
30-06-103	Trellis/Pergolas	34,000.00	713.12	33,286.88	30-13-151	Pool
30-10-401	Signage Directory	5,000.00	5,000.00	0.00	30-13-151	Pool
30-10-431	Ext Monument Signage	11,000.00	175.00	10,825.00	30-13-151	Pool
30-11-452	BBQ Equipment / Outdoor Kitchen	20,000.00	122.56	19,877.44	30-13-151	Pool

**Total Decrease: 158,120.83**

## LINE ITEM TRANSFER - #10

Note: Page 1 - Decreases, Page 2 - Increases

**From:** **HCHP Contractor, LP**  
330 W. Victoria Street  
Gardena, CA 90248

**PROJECT:** Borgfeld Manor  
**PROJECT #:** 2506  
**STATE:** TEXAS  
**CITY:** CIBOLO

**PHONE:** 424-258-2800  
**FAX:** 424-258-2801

**DATE:** 02/20/19  
**CONTRACT DATE:** 04/10/17

**To:** **BORGFELD HOUSING, LP**  
330 W. Victoria Street  
Gardena, CA 90248

**PHONE:** 424-258-2800  
**FAX:** 424-258-2801

### LINE ITEM TRANSFER INCREASES

Code	Description	Beginning Balance	Increase	Ending Balance	Increase From Code	Description
28-05-511	Metal Stairs	102,313.29	2,809.10	105,122.39	28-01-741	Final Cleaning
28-06-201	Finish Carpentry	460,222.00	5,014.90	465,236.90	28-01-741	Final Cleaning
28-06-201	Finish Carpentry	465,236.90	15,500.00	480,736.90	28-06-411	Cabinets
28-06-201	Finish Carpentry	480,736.90	17,065.00	497,801.90	28-07-611	Standing Seam Room
28-06-201	Finish Carpentry	497,801.90	3,939.67	501,741.57	28-07-711	Roof Accessories, Gutters & Downspouts
28-09-221	Exterior Plaster	545,000.00	3,739.83	548,739.83	28-07-711	Roof Accessories, Gutters & Downspouts
28-09-221	Exterior Plaster	548,739.83	4,400.00	553,139.83	28-08-101	Metal Doors & Frames
28-09-221	Exterior Plaster	553,139.83	200.00	553,339.83	28-08-831	Mirrors
28-09-221	Exterior Plaster	553,339.83	21,060.82	574,400.65	28-09-601	Floor Covering
28-09-221	Exterior Plaster	574,400.65	5,400.45	579,801.10	28-10-801	Toilet Bath Accessories
28-09-221	Exterior Plaster	579,801.10	31,375.92	611,177.02	28-12-491	Window Treatments - units only
28-09-221	Exterior Plaster	611,177.02	3,959.98	615,137.00	28-12-491	Window Treatments - rec bldg only
28-10-521	Fire Extinguishers	11,000.00	750.00	11,750.00	28-07-311	Asphalt Shingle Roofing
28-15-101	Plumbing	855,000.00	9,000.00	864,000.00	24-02-621	Deck Drains
28-15-701	HVAC	705,500.00	1,015.74	706,515.74	28-09-601	Floor Covering
28-15-701	HVAC	706,515.74	3,484.26	710,000.00	28-12-491	Window Treatments - rec bldg only
30-02-776	Concrete Sidewalks / Pool Decks	59,633.06	505.76	60,138.82	28-12-491	Window Treatments - rec bldg only
30-02-776	Concrete Sidewalks / Pool Decks	60,138.82	3,864.84	64,003.66	28-16-511	Electrical Fixtures
30-02-811	Irrigation Systems	45,897.92	3,414.70	49,312.62	28-16-511	Electrical Fixtures
30-02-811	Irrigation Systems	49,312.62	717.25	50,029.87	30-02-791	Recreation Amenities (Horse Shoe Pit...
30-02-811	Irrigation Systems	50,029.87	179.69	50,209.56	30-02-823	Dog Park Fence
30-02-811	Irrigation Systems	50,209.56	611.47	50,821.03	30-02-871	Outdoor Furniture (Benches,...
30-02-901	Landscape Planting (M/L)	187,537.52	12,999.95	200,537.47	28-16-511	Electrical Fixtures
30-13-151	Pool	78,500.00	365.51	78,865.51	28-16-511	Electrical Fixtures
30-13-151	Pool	78,865.51	735.31	79,600.82	30-04-222	Trash Enclosure (CMU)
30-13-151	Pool	79,600.82	713.12	80,313.94	30-06-103	Trellis / Pergolas
30-13-151	Pool	80,313.94	5,000.00	85,313.94	30-10-401	Signage Directory
30-13-151	Pool	85,313.94	175.00	85,488.94	30-10-431	Ext Monument Signage
30-13-151	Pool	85,488.94	122.56	85,611.50	30-11-452	BBQ Equipment / Outdoor Kitchen

**Total Increase: 158,120.83**

#### CONTRACTOR APPROVAL

**Approved By:**   
Pierre Harispuru, Vice President Construction

**Date:** January 29, 2019

FM

# LINE ITEM TRANSFER - #11

Note:

**From:** **HCHP Contractor, LP**  
330 W. Victoria Street  
Gardena, CA 90248

**PROJECT:** Borgfeld Manor  
**PROJECT #:** 2506  
**STATE:** TEXAS  
**CITY:** CIBOLO

**PHONE:** 424-258-2800  
**FAX:** 424-258-2801

**DATE:** 02/20/19  
**CONTRACT DATE:** 04/10/17

**To:** **BORGFELD HOUSING, LP**  
330 W. Victoria Street  
Gardena, CA 90248

**PHONE:** 424-258-2800  
**FAX:** 424-258-2801

### LINE ITEM TRANSFER DECREASES

Code	Description	Beginning Balance	Decrease	Ending Balance	Transfer To Code	Description
32-01-315	Supervision	201,177.88	10,177.88	191,000.00	32-01-312	Project Manager
32-01-600	Insurance	219,775.00	16,660.12	203,114.88	32-01-312	Project Manager
32-01-600	Insurance	203,114.88	6,958.89	196,155.99	32-01-317	General Labor
32-01-600	Insurance	196,155.99	500.00	195,655.99	32-01-522	First Aid Kit
32-01-600	Insurance	195,655.99	1.00	195,654.99	32-01-524	Field Office
32-01-600	Insurance	195,654.99	178.79	195,476.20	32-01-525	Job Office Supplies
92-99-500	Buy-Out Contingency	19,000.00	545.54	18,454.46	32-01-525	Job Office Supplies
92-99-500	Buy-Out Contingency	18,454.46	7,000.15	11,454.31	32-01-564	Security
92-99-500	Buy-Out Contingency	11,454.31	5,000.00	6,454.31	32-01-514	Temp Electric
92-99-500	Buy-Out Contingency	6,454.31	5,000.00	1,454.31	32-02-521	Contrator Tools and Supplies

**Total Decrease: 52,022.37**

### LINE ITEM TRANSFER INCREASES

Code	Description	Beginning Balance	Increase	Ending Balance	Increase From Code	Description
32-01-312	Project Manager	184,000.00	10,177.88	194,177.88	32-01-315	Supervision
32-01-312	Project Manager	194,177.88	16,660.12	210,838.00	32-01-600	Insurance
32-01-317	General Labor	40,000.00	6,958.89	46,958.89	32-01-600	Insurance
32-01-522	First Aid Kit	0.00	500.00	500.00	32-01-600	Insurance
32-01-524	Field Office	10,000.00	1.00	10,001.00	32-01-600	Insurance
32-01-525	Job Office Supplies	7,275.67	178.79	7,454.46	32-01-600	Insurance
32-01-525	Job Office Supplies	7,454.46	545.54	8,000.00	92-99-500	Buy-Out Contingency
32-01-564	Security	80,205.48	7,000.15	87,205.63	92-99-500	Buy-Out Contingency
32-01-514	Temp Electric	15,000.00	5,000.00	20,000.00	92-99-500	Buy-Out Contingency
32-02-521	Contrator Tools and Supplies	15,000.00	5,000.00	20,000.00	92-99-500	Buy-Out Contingency

**Total Increase: 52,022.37**

### CONTRACTOR APPROVAL

**Approved By:**   
**Pierre Harisuru, Vice President Construction**

**Date:** February 20, 2019



## CHANGE ORDER LOG

2506- Cibolo

HCHP CONTRACTORS, LP

CHANGE ORDER REQUEST SUBMITTED					OWNER CHANGE ORDER ISSUED				
COR No.	Date Submitted	Date Approved	Amount	Delay Days	Description	Change Order Issued	CO No.	Amount	Delay Days
1	04/10/17	04/10/17	72,838.00	0	Increase for Additional Insurance Requirement	04/10/17	1	72,838.00	0
2	01/04/18	01/12/18	0.00	148	Increase construction time by 148 working days	01/11/18	2	0.00	148
3	01/11/18	01/12/18	43,626.00	0	Increase General Conditions Contract Amount because of CO2	01/11/18	3	43,626.00	0
4	01/11/18	01/12/18	68,728.00	0	Increase GL Insurance & Builder's Risk because of CO2	01/11/18	4	68,728.00	0
5	06/29/18	07/02/18	1,165,177.72	0	Increase line items - weather issues, labor and material costs	07/05/18	5	1,165,177.72	0
<b>TOTAL</b>			<b>1,350,369.72</b>	<b>148</b>				<b>1,350,369.72</b>	<b>148</b>

# BUDGET MODIFICATION #3

5. The following are attached hereto and form a part hereof:

Contractor's APPLICATION AND CERTIFICATE FOR PAYMENT (AIA Document G702), Conditional and Unconditional Lien Waivers and accounts payable listing is preferred for soft costs.

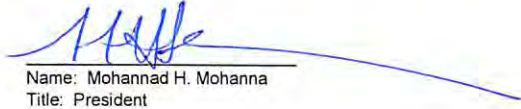
Date: 05/24/2019

BORROWER:

**BORGFELD HOUSING, L.P.,**

a Texas limited partnership

By: Highridge Costa Housing, LLC,  
a Delaware limited liability company  
Its: Managing General Partner

  
Name: Mohannad H. Mohanna  
Title: President

Limit input to YELLOW CELLS

**BUDGET DRAW TEMPLATE**

Clear ALL Prior Entries for New Draw

BORROWER: BORGFELD HOUSING LP

REPORT DATE: 5/23/2019

PROJECT DESCRIPTION: EL SERENO APTS - 136 UNITS

HIDE Blank Line Item Rows (normal status)

UNHIDE Blank Line Item Rows (to add new line item)

**Uses**

Description	Original Budget	Total Prior Adjustments	Current Changes	Revised Budget	Total Previous Drawn	Amount This Draw	Total Drawn Including This Draw	Undisbursed After This Draw	% Funded	Deferred (Unavailable)
<b>LAND</b>										
Land Value	2,248,602.00	0.00		2,248,602.00	2,248,602.00		2,248,602.00	0.00	100%	
Other Acquisition Costs		3,000.00		3,000.00	0.00		0.00	3,000.00	0%	
<b>TOTAL LAND</b>	<b>2,248,602.00</b>	<b>3,000.00</b>	<b>0.00</b>	<b>2,251,602.00</b>	<b>2,248,602.00</b>	<b>0.00</b>	<b>2,248,602.00</b>	<b>3,000.00</b>	<b>100%</b>	
<b>HARD COSTS</b>										
Demolition	50,000.00	27,000.00		77,000.00	69,300.00		69,300.00	7,700.00	90%	
Site Work	986,807.00	309,262.80	63,744.59	1,359,814.39	861,587.82	341,283.87	1,202,871.69	156,942.70	88%	
Off Site Improvements	205,000.00	75,000.00	(94,000.00)	186,000.00	83,250.00	84,150.00	167,400.00	18,600.00	90%	
Construction - Residential	9,532,894.00	1,229,849.92	192,620.11	10,955,364.03	9,575,317.28	213,257.39	9,788,574.67	1,166,789.36	89%	
General Requirements	602,338.00	136,937.00	110,150.30	849,425.30	720,270.59	78,148.29	798,418.88	51,006.42	94%	
Contractor Overhead and Profit	830,868.00	(425,518.00)		405,350.00	348,643.27	16,171.75	364,815.02	40,534.98	90%	
Sub Total Contracts	12,207,907.00	1,352,531.72	272,515.00	13,832,953.72	11,658,368.96	733,011.30	12,391,380.26	1,441,573.46	90%	
Construction Contingency	610,395.00	(610,394.72)	21,454.03	21,454.31			0.00	21,454.31	0%	
Personal Property - Development Budget	150,000.00	218.46		150,218.46	150,218.46		150,218.46	0.00	100%	
<b>TOTAL HARD COSTS</b>	<b>12,968,302.00</b>	<b>742,355.46</b>	<b>293,969.03</b>	<b>14,004,626.49</b>	<b>11,808,587.42</b>	<b>733,011.30</b>	<b>12,541,598.72</b>	<b>1,463,027.77</b>	<b>90%</b>	
<b>SOFT COSTS</b>										
Const Loan Inspection	16,500.00	4,919.50	2,775.00	24,194.50	21,419.50	2,775.00	24,194.50	0.00	100%	
Const Loan Origination Fee	179,473.00	0.00		179,473.00	179,472.98		179,472.98	0.02	100%	
Const Title & Recording	105,216.00	0.00		105,216.00	103,975.47	50.00	104,025.47	1,190.53	99%	
Perm Loan Origination Fee	49,500.00	0.00		49,500.00	49,500.00		49,500.00	0.00	100%	
Perm Conversion Fee - Deferred	10,000.00	0.00		10,000.00	0.00		0.00	10,000.00	0%	YES
Perm Title & Recording - Deferred	10,000.00	0.00		10,000.00	0.00		0.00	10,000.00	0%	YES
B of A Lender Legal	40,000.00	25,000.00		65,000.00	40,000.00		40,000.00	25,000.00	62%	
T.Credit Application & Monitoring Fees	67,740.00	10,000.00		77,740.00	67,740.00		67,740.00	10,000.00	87%	
Marketing	125,000.00	10,029.20	20,000.00	155,029.20	135,029.20		135,029.20	20,000.00	87%	
Accounting	22,500.00	0.00		22,500.00	6,250.00		6,250.00	16,250.00	28%	
Operating Reserve - Deferred	433,175.00	0.00		433,175.00	0.00		0.00	433,175.00	0%	YES
Developer Fees	290,001.00	0.00		290,001.00	290,000.00		290,000.00	1.00	100%	
Developer Fees - Deferred	2,030,003.00	0.00		2,030,003.00	0.00		0.00	2,030,003.00	0%	YES
Insurance	45,163.00	37,922.00		83,085.00	54,286.81		54,286.81	28,798.19	65%	
Taxes	93,497.00	(719.00)	3,317.83	96,095.83	33,224.34	62,871.49	96,095.83	0.00	100%	
Legal	80,772.00	77,467.42		158,239.42	129,503.92	28,477.92	157,981.84	257.58	100%	
Architect	420,000.00	13,538.61	3,162.19	436,700.80	433,538.61	3,162.19	436,700.80	0.00	100%	
Survey & Engineering	143,600.00	64,067.13		207,667.13	207,667.13		207,667.13	0.00	100%	
Appraisal & Mkt Study	23,630.00	6,945.00	375.00	30,950.00	24,075.00	6,875.00	30,950.00	0.00	100%	
Soils Investigation	5,700.00	0.00		5,700.00	5,700.00		5,700.00	0.00	100%	
Impact Fees	990,435.00	(66,002.55)		924,432.45	924,432.45		924,432.45	0.00	100%	
Environmental Surveys	6,570.00	0.00		6,570.00	6,570.00		6,570.00	0.00	100%	
Soft Cost Contingency	86,003.00	(65,331.77)	(9,630.02)	11,041.21	1,000.00		1,000.00	10,041.21	9%	
Misc. Soft Costs		0.00		0.00	0.00		0.00	0.00	0%	
Construction Loan Ext Fee - Deferred		89,736.00		89,736.00	0.00		0.00	89,736.00	0%	YES
B of A Lender Legal - Deferred		25,000.00		25,000.00	0.00		0.00	25,000.00	0%	YES
Legal - Deferred		37,500.00		37,500.00	0.00		0.00	37,500.00	0%	YES
Sub Total Misc	5,274,478.00	270,071.54	20,000.00	5,564,549.54	2,713,385.41	104,211.60	2,817,597.01	2,746,952.53	51%	
Interest Reserve	835,532.00	0.00		835,532.00	604,863.83		604,863.83	230,668.17	72%	
Sub Total Int Res	835,532.00	0.00	0.00	835,532.00	604,863.83	0.00	604,863.83	230,668.17	72%	
Sub Total Op Def	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0%	
<b>TOTAL SOFT COSTS</b>	<b>6,110,010.00</b>	<b>270,071.54</b>	<b>20,000.00</b>	<b>6,400,081.54</b>	<b>3,318,249.24</b>	<b>104,211.60</b>	<b>3,422,460.84</b>	<b>2,977,620.70</b>	<b>53%</b>	
<b>TOTAL PROJECT USES</b>	<b>21,326,914.00</b>	<b>1,015,427.00</b>	<b>313,969.03</b>	<b>22,656,310.03</b>	<b>17,375,438.66</b>	<b>837,222.90</b>	<b>18,212,661.56</b>	<b>4,443,648.47</b>	<b>80%</b>	<b>2,635,414.00</b>

**Sources**

Description	Original Budget	Total Prior Adjustments	Current Changes	Revised Budget	Total Previous Drawn	Amount This Draw	Total Drawn Including This Draw	Undisbursed After This Draw	% Funded	Deferred/Unavail?
Loan Funds	17,947,298.00	0.00		17,947,298.00	15,615,809.66	523,253.87	16,139,063.53	1,808,234.47	90%	
<b>SUB-TOTAL LOAN PROCEEDS</b>	<b>17,947,298.00</b>	<b>0.00</b>	<b>0.00</b>	<b>17,947,298.00</b>	<b>15,615,809.66</b>	<b>523,253.87</b>	<b>16,139,063.53</b>	<b>1,808,234.47</b>	<b>90%</b>	
ILP at Closing	896,438.00	0.00		896,438.00	896,438.00		896,438.00	0.00	100%	
Completion/Conversion - Deferred	2,483,178.00	152,236.00		2,635,414.00	0.00		0.00	2,635,414.00	0%	YES
Out of Balance - Borrowers Funds		863,191.00	313,969.03	1,177,160.03	863,191.00	313,969.03	1,177,160.03	0.00	100%	
<b>SUB-TOTAL EQUITY/OTHER</b>	<b>3,379,616.00</b>	<b>1,015,427.00</b>	<b>313,969.03</b>	<b>4,709,012.03</b>	<b>1,759,629.00</b>	<b>313,969.03</b>	<b>2,073,598.03</b>	<b>2,635,414.00</b>	<b>44%</b>	
<b>TOTAL PROJECT SOURCES</b>	<b>21,326,914.00</b>	<b>1,015,427.00</b>	<b>313,969.03</b>	<b>22,656,310.03</b>	<b>17,375,438.66</b>	<b>837,222.90</b>	<b>18,212,661.56</b>	<b>4,443,648.47</b>	<b>80%</b>	<b>2,635,414.00</b>



Project Name: El Sereno Apartments (Cibolo TX)  
 Construction Loan - Draw 19 Invoice Summary

<u>Line Item</u>	<u>Vendor</u>	<u>Invoice Date</u>	<u>Invoice #</u>	<u>Description</u>	<u>Check #</u>	<u>Check Date</u>	<u>Invoice Amount</u>	<u>Total</u>
Hard Cost:								
HC: Construction Contract	HCHP Contractors, LP	04/25/19	Pay Application No. 18	Pay Application No. 18 - Period thru 4/25/2019	TBA	To Be Paid	<u>733,011.30</u>	733,011.30
Soft Cost:								
Construction Title & Recording	Chicage Title Insurance Company	03/12/19		Downdate Endorsements	TBA	To Be Paid	<u>50.00</u>	50.00
Construction Loan Inspection	CA Partners, Inc.	02/27/19	Inv. 17170-20	Progress and Funding Disbursement Report	TBA	To Be Paid	925.00	2,775.00
	CA Partners, Inc.	03/26/19	Inv. 17170-21	Progress and Funding Disbursement Report	TBA	To Be Paid	925.00	
	CA Partners, Inc.	04/29/19	Inv. 17170-22	Progress and Funding Disbursement Report	TBA	To Be Paid	<u>925.00</u>	
Architect	Humphrey & Partners Architects, LP	03/14/19	Inv. 69331	Architect Svcs	TBA	To Be Paid	750.00	3,162.19
	Accessibility Check	03/20/19	Inv. 086-18	Architect Svcs	TBA	To Be Paid	1,108.80	
	Humphrey & Partners Architects, LP	05/09/19	Inv. 69771	Architect Svcs	TBA	To Be Paid	<u>1,303.39</u>	
Appraisal & Market Study	Bank of America	05/10/19		Appraisal Due Diligence Fee	TBA	To Be Paid	<u>6,875.00</u>	6,875.00
Legal	Locke Lord, LLP	03/20/19	Inv. 1484301	Legal Services	TBA	To Be Paid	9,110.65	28,477.92
	Locke Lord, LLP	04/17/19	Inv. 1490549	Legal Services	TBA	To Be Paid	14,868.52	
	Locke Lord, LLP	05/15/19	Inv. 1497050	Legal Services	TBA	To Be Paid	<u>4,498.75</u>	
Taxes	Office of Daryl John Tax Assessor-Collector Guadalupe Tax Office	04/21/19		Property Tax	Ck 11143	4/25/2019	<u>62,871.49</u>	62,871.49
TOTAL							<u>\$ 837,222.90</u>	
Less Interest Reserve							\$	-
Sources:								
LIP at Closing							\$	-
Loan Proceeds							\$	523,253.87
Borrower's Fund							\$	313,969.03
TOTAL Requested							<u>\$</u>	<u>837,222.90</u>

# HARD COSTS

**APPLICATION AND CERTIFICATION FOR PAYMENT**

AIA DOCUMENT G702

PAGE ONE OF

PAGES

TO OWNER:  
**BORGFELD HOUSING, L.P.**  
 330 WEST VICTORIA STREET, GARDENA CA 90248

PROJECT:  
 VIA ARCHITECT:  
**HCHP CONTRACTORS, L.P.** **HUMPREYS & PARTNERS**  
 330 WEST VICTORIA STREET 5339 ALPHA ROAD, SUITE 300  
 GARDENA CA 90248 DALLAS TX 75240

CONTRACT FOR: **THE HEIGHTS, EDINBURG, TX (GENERAL CONSTRUCTION)**

APPLICATION NO **18**  
 DATE: **4/25/19**  
 PERIOD TO: **4/25/19**  
 PROJECT NO: **2506**  
 CONTRACT DATE **4/10/2017**

Distribution to:  
 OWNER  
 ARCHITECT  
 CONTRACTOR

**CONTRACTOR'S APPLICATION FOR PAYMENT**

Application is made for payment, as shown below, in connection with the Contract Continuation Sheet, AIA Document G703, is attached.

1. ORIGINAL CONTRACT SUM	\$	12,135,069.00
2. Net change by Change Orders	\$	1,719,339.03
3. CONTRACT SUM TO DATE (Line 1 + 2)	\$	13,854,408.03
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$	13,723,493.33
5. RETAINAGE:		
a. 10 % of Completed Work (Column D + E on G703)	\$	1,332,113.09
b. % of Stored Material (Column F on G703)	\$	0.00
Total Retainage (Lines 5a + 5b or Total in Column I of G703)	\$	1,332,113.09
6. TOTAL EARNED LESS RETAINAGE (Line 4 Less Line 5 Total)	\$	12,391,380.24
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)	\$	11,658,368.94
8. CURRENT PAYMENT DUE	\$	733,011.30
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6)	\$	1,463,027.79

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	\$1,350,369.72	
Total approved this Month	\$368,969.31	
TOTALS	\$1,719,339.03	\$0.00
NET CHANGES by Change Order	\$1,719,339.03	

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

CONTRACTOR:

By: [Signature] Date: 5-23-19  
 State of: \_\_\_\_\_ County of: \_\_\_\_\_ day of \_\_\_\_\_  
 Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_  
 Notary Public: Please See California Notarization Attached [Signature]  
 My Commission expires: \_\_\_\_\_

**ARCHITECT'S CERTIFICATE FOR PAYMENT**

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

AMOUNT CERTIFIED ..... \$ 733,011.30

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

ARCHITECT: [Signature] - HPA Date: 5/28/19

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

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of Los Angeles

Subscribed and sworn to (or affirmed) before me on this 23rd  
day of May, 2019, by Pierre Harispuru

proved to me on the basis of satisfactory evidence to be the  
person~~(s)~~ who appeared before me.



Signature *Lori L. Ruiz*

Cost Coding	Description	Budget (A)	Contract Amount (B)	Previously Approved Contract Changes (C)	Current Contract Changes (D)	Pay Appl No. 11 Line Item Transfers	Pay Appl No. 13 Line Item Transfers	Pay Appl No. 14 Line Item Transfers	Pay Appl No. 15 Line Item Transfers	Pay Appl No. 16 Line Item Transfers	Pay Appl No. 17 Line Item Transfers	Pay Appl No. 18 Line Item Transfers	Adjusted Contract Totals (E)	Retention % (F)	Previous Request			Current Request			Total Gross Completed To Date (G)+(J) (M)	Total Amount Paid To Date (I)+(L) (N)	Total % Paid To Date (O)+(P) (Q)	Total Retention To Date (H)+(K) (R)	Balance Remaining (S) (E)-(M)							
															Prior Gross Amount Requested (G)	Less Prior Held Retention (H)	Net Amount Paid (I)	Gross Amount Requested (J)	Less Retention (K)	Net Amount Requested (L)												
<b>DEMOLITION</b>																																
22-02-221	Demolition	50,000.00	50,000.00	27,000.00	0.00																											
	<b>DEMOLITION TOTAL</b>	<b>50,000.00</b>	<b>50,000.00</b>	<b>27,000.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>77,000.00</b>	<b>10.00%</b>	<b>77,000.00</b>	<b>7,700.00</b>	<b>69,300.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>77,000.00</b>	<b>69,300.00</b>	<b>90.00%</b>	<b>100.00%</b>	<b>7,700.00</b>	<b>0.00</b>			
<b>ON-SITES</b>																																
24-01-671	Dust Control	40,000.00	40,000.00	0.00	0.00																											
24-02-056	Import/Export Soils	50,000.00	50,000.00	0.00	0.00																											
24-02-231	Clearing/Grubbing	45,000.00	45,000.00	0.00	0.00																											
24-02-311	Rough Grading (on-site)	50,000.00	50,000.00	0.00	0.00																											
24-02-312	Finish Grading (on-site)	5,000.00	5,000.00	97,807.00	0.00		16,250.00																									
24-02-313	Fine Grading	0.00	0.00	116,193.00	0.00		11,000.00																									
24-02-341	Lime Soil Stabilization	45,000.00	45,000.00	0.00	0.00																											
24-02-361	Termite Soil Treatment	5,000.00	5,000.00	0.00	0.00		(5,000.00)																									
24-02-371	Erosion Control	40,000.00	40,000.00	0.00	0.00																											
24-02-511	Water Distribution (on-site)	80,000.00	80,000.00	0.00	0.00																											
24-02-531	Sewer Distribution (on-site)	50,000.00	50,000.00	0.00	0.00																											
24-02-551	Electrical Distribution (on-site)(Primary)	90,807.00	90,807.00	0.00	0.00																											
24-02-551	Electrical Distribution (on-site) (Secondary)	40,000.00	40,000.00	0.00	0.00		(13,737.20)																									
24-02-582	Telephone Distribution (on-site)(Primary)	5,000.00	5,000.00	0.00	0.00		(5,000.00)																									
24-02-621	Site Area Drains	20,000.00	20,000.00	0.00	0.00																											
24-02-631	Storm Drainage (on-site)	60,000.00	60,000.00	0.00	0.00																											
24-02-631	Manhole/Whitney Wall/Silt Fence			0.00	16,884.00																											
24-02-741	Asphalt Pavement (on-site)	120,000.00	120,000.00	0.00	0.00																											
24-02-751	Concrete Pavement (on-site)	90,000.00	90,000.00	89,000.00	4,342.43							67,612.55	250,954.98	10.00%																		
24-02-761	Pavement Stripping/Tackle (On-site)	20,000.00	20,000.00	6,262.80	1,098.62		13,737.20					(19,051.50)	22,047.12	10.00%																		
24-02-771	Concrete Curbs & Gutters (On-site)	60,000.00	60,000.00	0.00	41,419.54		60,000.00						161,915.49	10.00%																		
24-02-781	Precast Concrete Pavers (On-site)	0.00	0.00	0.00	0.00								0.00	10.00%																		
24-02-821	Perimeter Fences & Gates (Tubular Steel)	5,000.00	5,000.00	0.00	0.00		(5,000.00)						0.00	10.00%																		
24-02-822	Perimeter Fences & Gates (Wood) (On-site)	0.00	0.00	0.00	0.00								0.00	10.00%																		
24-02-823	Perimeter Fence & Gate (Chain-link) (On-site)	0.00	0.00	0.00	0.00								0.00	10.00%																		
24-02-831	Retaining Walls (On-site)	0.00	0.00	0.00	0.00								0.00	10.00%																		
24-02-841	Parking Bumpers	6,000.00	6,000.00	0.00	0.00		(6,000.00)						0.00	10.00%																		
24-04-221	Concrete Masonry Units (On-site)	60,000.00	60,000.00	0.00	0.00		(60,000.00)						0.00	10.00%																		
	<b>ONSITE TOTAL</b>	<b>986,807.00</b>	<b>986,807.00</b>	<b>309,262.80</b>	<b>63,744.59</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>(0.00)</b>	<b>1,359,814.39</b>																			
<b>OFF-SITES</b>																																
26-02-311	Rough Grading (Off-site)	10,000.00	10,000.00	0.00	0.00																											
26-02-312	Finish Grading (Off-site)	10,000.00	10,000.00	0.00	0.00																											
26-02-313	Fine Grading (Off-site)	10,000.00	10,000.00	0.00	0.00		(10,000.00)																									
26-02-511	Water Distribution (Off-site)	30,000.00	30,000.00	0.00	0.00																											
26-02-531	Sewer Distribution (Off-site)	20,000.00	20,000.00	0.00	0.00																											
26-02-541	Gas Distribution (Off-site)	10,000.00	10,000.00	0.00	0.00		(10,000.00)																									
26-02-551	Electrical Distribution (Off-site)	20,000.00	20,000.00	0.00	0.00		(20,000.00)																									
26-02-582	Telephone Distribution (Off-site)	0.00	0.00	0.00	0.00																											
26-02-583	CATV Distribution (Off-site)	0.00	0.00	0.00	0.00																											
26-02-631	Storm Drainage (Off-site)	15,000.00	15,000.00	0.00	0.00																											
26-02-741	Asphalt Pavement (Off-site)	25,000.00	25,000.00	0.00	0.00		(25,000.00)																									
26-02-751	Concrete Pavement (Off-site)	0.00	0.00	0.00	0.00																											
26-02-761	Pavement Stripping/Tackle (Off-site)	10,000.00	10,000.00	0.00	0.00		10,000.00																									
26-02-771	Concrete Curbs & Gutters (Off-site)	15,000.00	15,000.00	0.00	0.00		56,000.00																									
26-02-776	Concrete Sidewalks (Off-site)	10,000.00	10,000.00	0.00	0.00																											
26-02-781	Precast Concrete Pavers (Off-site)	0.00	0.00	0.00	0.00																											
26-02-831	Retaining Walls (Off-site)	0.00	0.00	0.00	0.00																											
26-02-891	Traffic Signs & Signals	20,000.00	20,000.00	0.00	0.00		(20,000.00)																									
26-04-221	Concrete Masonry Units (Off-site)	0.00	0.00	0.00	0.00																											
	<b>OFFSITE TOTAL</b>	<b>205,000.00</b>	<b>205,000.00</b>	<b>0.00</b>	<b>0.00</b>	<b>(19,000.00)</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>186,000.00</b>																			
<b>BASE CONSTRUCTION</b>																																
28-01-741	Final Cleaning	40,																														

Table with columns: Cost Coding, Description, Budget (A), Contract Amount (B), Previously Approved Contract Changes (C), Current Contract Changes (D), Pay Appl No. 11 Transfers, Pay Appl No. 13 Line Item Transfers, Pay Appl No. 14 Line Item Transfers, Pay Appl No. 15 Line Item Transfers, Pay Appl No. 16 Line Item Transfers, Pay Appl No. 17 Line Item Transfers, Pay Appl No. 18 Line Item Transfers, Adjusted Contract Totals (E), Retention % (F), Prior Gross Amount Requested (G), Previous Request Less Prior Held Retention (H), Net Amont Paid (I), Current Request Gross Amount Requested (J), Less Retention (K), Net Amount Requested (L), Total Gross Completed To date (M), Total Amount Paid To Date (N), Total % Paid To Date (O), Total % Complete To Date (P), Total Retention To Date (Q), Balance Remaining (E)-(M) (R).

Cost Coding	Description	Budget (A)	Contract Amount (B)	Previously Approved Contract Changes (C)	Current Contract Changes (D)	Pay Appl No. 11 Line Item Transfers	Pay Appl No. 13 Line Item Transfers	Pay Appl No. 14 Line Item Transfers	Pay Appl No. 15 Line Item Transfers	Pay Appl No. 16 Line Item Transfers	Pay Appl No. 17 Line Item Transfers	Pay Appl No. 18 Line Item Transfers	Adjusted Contract Totals (E)	Retention % (F)	Previous Request			Current Request			Total Gross Completed To date (G)+(J) (M)	Total Amount Paid To Date (I)+(L) (N)	Total % Paid To Date (O) (P)	Total % Complete To Date (Q) (R)	Total Retention To Date (H)+(K) (S)	Balance Remaining (E)-(M) (T)		
															Prior Gross Amount Requested (G)	Less Prior Held Retention (H)	Net Amount Paid (I)	Gross Amount Requested (J)	Less Retention (K)	Net Amount Requested (L)								
32-01-451	Testing, Inspections, Laboratory (By Owner)	10,000.00	10,000.00	0.00	0.00		(10,000.00)						0.00	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	#DIV/0!	#DIV/0!	0.00	0.00
32-01-512	Temporary Fire Protection (monitoring)	5,000.00	5,000.00	0.00	0.00								5,000.00	10.00%	5,000.00	500.00	4,500.00	0.00	0.00	0.00	5,000.00	4,500.00	90.00%	100.00%	500.00	0.00		
32-01-514	Temporary Electric (Distributed)	10,000.00	10,000.00	0.00	500.00								10,500.00	10.00%	10,000.00	1,000.00	9,000.00	500.00	50.00	450.00	10,500.00	9,450.00	90.00%	100.00%	1,050.00	0.00		
32-01-514	Temporary Electric (Usage)	20,000.00	20,000.00	0.00	0.00								20,000.00	10.00%	20,000.00	2,000.00	18,000.00	0.00	0.00	0.00	20,000.00	18,000.00	90.00%	100.00%	2,000.00	0.00		
32-01-518	Temporary Water	10,000.00	10,000.00	0.00	10,000.00			(8,385.09)	8,385.09				20,000.00	10.00%	10,000.00	1,000.00	9,000.00	10,000.00	1,000.00	9,000.00	20,000.00	18,000.00	90.00%	100.00%	2,000.00	0.00		
32-01-521	Contractor Tools/Supplies	20,000.00	20,000.00	0.00	5,000.00								25,000.00	10.00%	20,000.00	2,000.00	18,000.00	5,000.00	500.00	4,500.00	25,000.00	22,500.00	90.00%	100.00%	2,500.00	0.00		
32-01-522	First Aid Kit	500.00	500.00	0.00	500.00								1,000.00	10.00%	500.00	50.00	450.00	500.00	50.00	450.00	1,000.00	900.00	90.00%	100.00%	100.00	0.00		
32-01-524	Field Office	10,000.00	10,000.00	0.00	0.01								10,001.01	10.00%	10,001.01	1,000.10	9,000.90	0.01	0.00	0.01	10,001.01	9,000.91	90.00%	100.00%	1,000.10	0.00		
32-01-524	Leasing Office Trailer	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	#DIV/0!	#DIV/0!	0.00	0.00	
32-01-525	Job Office Supplies	8,000.00	8,000.00	0.00	724.33								8,724.33	0.00%	8,000.00	0.00	8,000.00	724.33	0.00	724.33	8,724.33	8,724.33	100.00%	100.00%	0.00	0.00		
32-01-528	Trash Bins	40,000.00	40,000.00	0.00	0.00								40,000.00	0.00%	40,000.00	0.00	40,000.00	0.00	0.00	0.00	40,000.00	40,000.00	100.00%	100.00%	0.00	0.00		
32-01-319	Prevailing Wage Monitor	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	#DIV/0!	#DIV/0!	0.00	0.00	
32-01-528	Temporary Toilet	10,000.00	10,000.00	0.00	0.00								10,000.00	0.00%	10,000.00	0.00	10,000.00	0.00	0.00	0.00	10,000.00	10,000.00	100.00%	100.00%	0.00	0.00		
32-01-561	Security	30,000.00	30,000.00	0.00	0.00	0.00	22,321.03	8,385.09	8,275.03	11,224.33	7,000.15	0.00	96,088.93	0.00%	87,205.63	0.00	87,205.63	1,883.15	0.00	1,883.15	89,088.78	89,088.78	92.71%	92.71%	0.00	7,000.15		
32-01-562	Storage Bin	15,000.00	15,000.00	0.00	0.00		(6,321.03)						8,678.97	0.00%	8,678.97	0.00	8,678.97	0.00	0.00	0.00	8,678.97	8,678.97	100.00%	100.00%	0.00	0.00		
32-01-564	Temporary Fencing	10,000.00	10,000.00	0.00	0.00								10,000.00	0.00%	10,000.00	0.00	10,000.00	0.00	0.00	0.00	10,000.00	10,000.00	100.00%	100.00%	0.00	0.00		
32-01-742	Site Maintenance	25,000.00	25,000.00	0.00	5,320.97								30,320.97	0.00%	25,000.00	0.00	25,000.00	5,320.97	0.00	5,320.97	30,320.97	30,320.97	100.00%	100.00%	0.00	0.00		
32-01-600	Liability Insurance	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	#DIV/0!	#DIV/0!	0.00	0.00	
<b>GEN. CONDITIONS TOTAL</b>		<b>529,500.00</b>	<b>529,500.00</b>	<b>209,775.00</b>	<b>92,604.61</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>17,545.69</b>	<b>0.00</b>	<b>849,425.30</b>		<b>756,820.69</b>	<b>36,550.10</b>	<b>720,270.59</b>	<b>85,604.46</b>	<b>7,456.17</b>	<b>78,148.29</b>	<b>842,425.15</b>	<b>798,418.88</b>	<b>94.00%</b>	<b>99.18%</b>	<b>44,066.27</b>	<b>7,000.15</b>		
56-99-280	CONTRACTOR'S FEE	830,868.00	830,868.00	(330,868.00)	0.00		(94,650.00)	0.00	0.00	0.00	0.00	0.00	405,350.00	10.00%	387,381.39	38,738.14	348,643.25	17,968.61	1,796.86	16,171.75	405,350.00	364,815.00	90.00%	100.00%	40,535.00	0.00		
<b>TOTAL OVERHEAD</b>		<b>0.00</b>	<b>0.00</b>	<b>0.00</b>									<b>0.00</b>	<b>10.00%</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>#DIV/0!</b>	<b>#DIV/0!</b>	<b>0.00</b>	<b>0.00</b>		
92-99-500	Buy-Out Contingency	0.00	0.00	0.00	20,000.00	19,000.00							21,454.31	10.00%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00%	0.00%	0.00	21,454.31		
<b>Total</b>		<b>12,135,069.00</b>	<b>12,135,069.00</b>	<b>1,350,369.72</b>	<b>368,969.31</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>(0.00)</b>	<b>13,854,406.03</b>		<b>12,910,263.30</b>	<b>1,251,894.36</b>	<b>11,658,368.94</b>	<b>813,230.03</b>	<b>80,218.73</b>	<b>733,011.30</b>	<b>13,723,493.33</b>	<b>12,391,380.24</b>	<b>89.44%</b>	<b>99.06%</b>	<b>1,332,113.09</b>	<b>130,914.70</b>		

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**CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT**

Project: El Sereno (Cibolo TX)

Job No. \_\_\_\_\_

On receipt by the signer of this document of a check from Borgfeld Housing, LP (maker of check) in the sum of \$ 733,011.30 payable to HCHP Contractors, L.P. (payee or payees of check) and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the property of Borgfeld Housing, L.P. (owner) located at Cibolo, TX (location) to the following extent: El Sereno (job description).

This release covers a progress payment for all labor, services, equipment, or materials furnished to the property or to April 25, 2019 (person with whom signer contracted) as indicated in the attached statement(s) or progress payment request(s), except for unpaid retention, pending modifications and changes, or other items furnished.

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

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

Date: 5-23-19

HCHP Contractors, L.P. (Company name)

By  (Signature)

Pierre Harispuru, Vice President (Title)

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**NOTE:** Section 53.281(b)(2), Texas Property Code, requires that the above form be notarized. See Chapter 121, Texas Civil Practice & Remedies Code, regarding Acknowledgments & Proofs of Written Instruments, or consult an attorney. For short acknowledgement forms that might be suitable, see Section 121.008 in Chapter 121. Click [here](#) to go there.



## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of Los Angeles )

On May 23, 2019 before me, Lori L. Ruiz, Notary Public  
(insert name and title of the officer)

personally appeared Pierre Harispuru,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~-  
subscribed to the within instrument and acknowledged to me that he/~~she~~/~~they~~ executed the same in  
his/~~her~~/~~their~~ authorized capacity(~~ies~~), and that by his/~~her~~/~~their~~ signature(s) on the instrument the  
person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature



(Seal)



=====

**NOTICE:**

This document waives rights unconditionally and states that you have been paid for giving up those rights. It is prohibited for a person to require you to sign this document if you have not been paid the payment amount set forth below. If you have not been paid, use a conditional release form.

**UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT**

Project El Sereno (Cibolo TX)

Job No. \_\_\_\_\_

The signer of this document has been paid and has received a progress payment in the sum of \$ 1,563,234.30 for all labor, services, equipment, or materials furnished to the property or to \_\_\_\_\_ (person with whom signer contracted) on the property of Borgfeld Housing, L.P. (owner) located at Cibolo, TX (location) to the following extent: El Sereno (job description). The signer therefore waives and releases any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the above referenced project to the following extent:

This release covers a progress payment for all labor, services, equipment, or materials furnished to the property or to April 325, 2019 (person with whom signer contracted) as indicated in the attached statement(s) or progress payment request(s), except for unpaid retention, pending modifications and changes, or other items furnished.

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

Date 5-23-19

HCHP Contractors, L.P. (Company name)

By  (Signature)

Pierre Harispuru, Vice President (Title)

=====

**NOTE:** Section 53.281(b)(2), Texas Property Code, requires that the above form be notarized. See Chapter 121, Texas Civil Practice & Remedies Code, regarding Acknowledgments & Proofs of Written Instruments, or consult an attorney. For short acknowledgement forms that might be suitable, see Section 121.008 in Chapter 121. Click [here](#) to go there.

## ACKNOWLEDGMENT

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State of California  
County of Los Angeles )

On May 23, 2019 before me, Lori L. Ruiz, Notary Public  
(insert name and title of the officer)

personally appeared Pierre Harispuru,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in  
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the  
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing  
paragraph is true and correct.

WITNESS my hand and official seal.



Signature  (Seal)



**AIA**<sup>®</sup>

# Document A101<sup>™</sup> – 2007

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

**AGREEMENT** made as of the Tenth day of April in the year Two Thousand Seventeen  
(*In words, indicate day, month and year.*)

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

Borgfeld Housing, LP  
330 West Victoria Street  
Gardena, CA 90248  
Telephone Number: (424) 258-2906  
Fax Number: (424) 258-2907

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

HCHP Contractors, LP  
330 West Victoria Street  
Gardena, CA 90248  
Telephone Number: (424) 258-2800  
Fax Number: (424) 258-2801

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

Borgfeld Manor  
206 West Borgfeld Road  
Cibolo, TX 78108  
**New Construction of 136-units, 3-story wood frame rental apartment project with surface parking; including clubhouse, leasing facility, and common areas.**

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

Humphreys & Partners Architects, L.P.  
5339 Alpha Road Suite 300  
Dallas, TX 75240  
Telephone Number: 972-701-9636

The Owner and Contractor agree as follows.

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

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

AIA Document A201<sup>™</sup>-2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

## TABLE OF ARTICLES

- 1 THE CONTRACT DOCUMENTS
- 2 THE WORK OF THIS CONTRACT
- 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 4 CONTRACT SUM
- 5 PAYMENTS  
*(Paragraph deleted)*
- 6 DISPUTE RESOLUTION
- 7 TERMINATION OR SUSPENSION
- 8 MISCELLANEOUS PROVISIONS
- 9 ENUMERATION OF CONTRACT DOCUMENTS
- 10 INSURANCE AND BONDS

### ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of the following, which together with Modifications made in the manner provided therein and issued subsequent to the execution of the Agreement, form the "Contract:" (i) the Agreement; (ii) the General Conditions of the Contract for Construction, AIA Documents A201-2007, modified and attached hereto and incorporated herein by this reference ("General Conditions"); and (iii) the "Construction Documents" consisting of those documents indicated on Exhibit "A" attached hereto. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

In the event of any conflict between any of the documents described above, the terms and provisions of the Agreement shall control over those the General Conditions and Construction Documents, and the terms and provisions of the General Conditions shall control over those the Construction Documents. In the event of a conflict between the Specifications and the Drawings, regarding material, quality, size, shape or dimension, the Architect, after consulting with Owner and with Owner's approval, shall decide the correct intent.

### ARTICLE 2 THE WORK OF THIS CONTRACT

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

### ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

*(Paragraphs deleted)*

§ 3.1 The date of commencement of the Work shall be 14 calendar days from the date of a written notice to proceed by the Owner.

*(Insert the date of commencement if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)*

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

§ 3.3 The Contractor shall achieve Substantial Completion of the entire Work not later than calendar Three Hundred Sixty-Five ( 365 ) days from the date of commencement. The liquidated damages described below is not applicable to any delays that are caused by governmental imposed moratoriums, industry-wide union work stoppages or acts of God or delays described in paragraph 8.3.1 of the General Conditions for which Contractor is entitled to an extension of time.:

*(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)*

§ 3.4 Prior to the execution of this Agreement, the Contractor shall prepare and submit for the Owner's approval a progress schedule for the Work ("Progress Schedule"), which Progress Schedule shall be attached hereto as Exhibit "E." The Progress Schedule shall be related to the balance of the Project to the full extent required by the Contract Documents and shall provide for expeditious and practicable execution of the entire balance of the Work and of each unit. The Progress Schedule shall indicate the dates for the starting and completion of the various states of construction and shall be revised as required by the conditions of the Work, subject to the Owner's approval.

The Progress Schedule shall cover all buildings, activities, and milestones as required for the execution of the remaining balance of the Work.

§ 3.5 See Exhibit "L" for Force Majeure.

*(Paragraphs deleted)*

*(Table deleted)*

#### ARTICLE 4 CONTRACT SUM

*(Paragraphs deleted)*

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be **Twelve Million One Hundred Thirty-Five Thousand Sixty-Nine Dollars and No Cents (\$12,135,069.00)**, subject to additions and deductions as provided in the Contract Documents. The Contract Sum is described in greater detail on the Schedule of Values hereto attached as Exhibit "F."

§4.2 *Intentionally deleted.*

§ 4.3 Unit prices, if any:

*(Identify and state the unit price; state quantity limitations, if any, to which the unit price will be applicable.)*

§ 4.4 *Intentionally deleted.*

*(Identify allowance and state exclusions, if any, from the allowance price.)*

*(Table deleted)*

*(Paragraphs deleted)*

*(Table deleted)*

#### ARTICLE 5 PAYMENTS

##### § 5.1 PROGRESS PAYMENTS

*(Paragraphs deleted)*

§ 5.1.1 The Contractor shall, by the first (1st) day of each month ("Current Month") deliver to the Owner an application for payment ("Application of Payment") in the form of a typed statement setting forth the pre-approved schedule of values with the Contractor's certification of the percentages earned thereof during the period commencing on the first (1st) day of the month proceeding the Current Month and ending on the last day of the said preceding month ("Payment Request Period"). Such Application for Payment shall include conditional lien releases for the current Payment Request Period and unconditional lien releases for all work completed prior to the previous Payment Request Period executed by Contractor, its Subcontractor and all persons who might have mechanic's lien, stop notice or labor and material bond rights against the Project all of which waivers and releases shall be in accordance with the provisions of the Texas Property Code. The Application of Payment shall reflect retainages provided for elsewhere in the Contract Documents. The Application for Payment shall be on AIA G702 form or such other form acceptable to the Owner and its lender, if any.

§ 5.1.2 *Intentionally deleted.*

§ 5.1.3 *Intentionally deleted.*

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

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

§ 5.1.6 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 The Owner's representative will review the Application for Payment for each Payment Request Period and will promptly issue, or cause the Owner to issue, not later than ten (10) days after the Owner's receipt of the Application for Payment ("Payment Application Review Period") a "Certificate for Payment" for ninety percent (90%) of such amount as the Owner's representative

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approves based upon the Owner's representative's estimate of the percentage of completion of each portion of the Work, which Certificate for Payment shall be payable within thirty-five (35) days after Owner's receipt of the Application for Payment; provided, however, payment to the Contractor must also be approved by Owner's lender and in the event such lender does not approve the work completed during the Payment Request Period, the Application for Payment or the Certificate for Payment, Owner shall only be obligated to pay to Contractor that amount which Owner's lender approves. Within the Payment Application Review Period, the Owner shall notify the Contractor, in writing, of the withholding of a portion of the amount set forth in the Application for Payments. No portion of the sums retained by the Owner pursuant to this clause shall be payable until the reason for withholding is remedied; provided, however, Owner may elect, in its sole discretion, to release any sums retained provided that as a condition to such release, Owner shall received an unconditional lien release from the Contractor and the applicable Subcontractor. If, at any time, Owner in its sole good faith business judgment, determines that the portion of the Contract Sum then remaining unpaid will not be sufficient to complete the Work in accordance with the Contract Documents, no additional payment will be due Contractor unless and until Contractor performs a sufficient portion of the Work so that such portion of the Contract Sum then remaining unpaid is determined by Owner to be sufficient to complete the Work on or before the Completion Date, in accordance with the Contract Documents.;

- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of ten percent ( 10 %);
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, for which the Owner has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.

§ 5.1.7 The progress payment amount determined in accordance with Section 5.1.6 shall be further modified under the following circumstances:

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Owner shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and
- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201-2007.

§ 5.1.8 Reduction or limitation of retainage, if any, shall be as follows: N/A

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

## § 5.2 FINAL PAYMENT

*(Paragraphs deleted)*

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

Final payment constituting the unpaid balance of the Contract Sum, if any, (subject to any retention with respect to minor punch-list work or defective work) shall be due and payable thirty-five (35) days following the recordation of a valid Notice of Completion with respect to the Work, which the Owner to record within five (5) days from satisfaction of the following precedent; (1) Owner and its lender(s) have approved the Work; (2) the Contractor has first delivered to the Owner's representative evidence of the Contractor's payment of Subcontractor's, suppliers and materialmen and the absence of any liens generated by the Work as required by the Owner, Owner's construction or permanent lender(s) or a title insurance carrier prior to insuring the absence of all liens generated by the Work (provided, however, Contractor not to be obligated to provide evidence of payment or absence of liens to the extent Owner has failed to make payment to the Contractor in breach of the provisions of the Contract Documents); (3) the Owner has first received the Certificate

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for Payment which Certificate states that the evidences delivered by Contractor are sufficient to indicate said payment of Subcontractors to the extent Owner has paid the Contractor, and absence of liens. At Owner's option, final payment may be made in the form of a joint check made payable to the contractor and applicable Subcontractor entitled to payment out of the funds provided by the final payment. The Contractor shall provide evidence satisfactory to the Owner establishing the identities of such Subcontractors and the amounts of the payments to which they are entitled. If there should remain minor items to be completed, the Contractor and the owner shall list such items and the Contractor shall deliver, in writing, its unconditional promise to complete said items within a reasonable time following Substantial Completion (as such term is defined in subparagraph 9.8.1 of the General Conditions) of the Work, which reasonable time shall in no event be greater than sixty (60) days unless otherwise agreed to, in writing, by the Owner. The Owner may retain an amount equal to two (2) times the cost to complete the minor work ("punch-list work"), as reasonably determined by Owner, until such time as the punch-list work is completed. Within seven (7) days following the Contractor's written notification that this punch-list has been completed, the Owner's representative shall conclusively determine whether said punch-list work has, in fact, been completed. If the Owner's representative determines that the punch-list has been completed, the Owner shall, within said seven (7) day period, deliver a written notice of said completion together with the Contractor's invoice for said work (which invoice shall be submitted by the Contractor to the Owner with the Contractor's Notice of Completion). Payment for this punch-list work shall be made within ten (10) days after the date on which the Owner received the Contractor's invoice and approval from the Owner's representative.

§ 5.2.2 *Intentionally deleted.*

## ARTICLE 6 DISPUTE RESOLUTION

### § 6.1 INITIAL DECISION MAKER

The Owner will serve as Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2007, unless the parties appoint below another individual, not a party to this Agreement, to serve as Initial Decision Maker.

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

### § 6.2 BINDING DISPUTE RESOLUTION

For any Claim subject to, but not resolved by, mediation pursuant to Section 15.3 of AIA Document A201-2007, the method of binding dispute resolution shall be as follows:

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

- Arbitration pursuant to Section 15.4 of AIA Document A201-2007
- Litigation in a court of competent jurisdiction
- Other *(Specify) Non-Binding Mediation followed by, if necessary, litigation in a court of competent jurisdiction in Texas.*

## ARTICLE 7 TERMINATION OR SUSPENSION

*(Paragraphs deleted)*

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201-2007.

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2007.

## ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201-2007 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 *Intentionally deleted.*



§ 8.3 The Owner's representative:

*(Name, address and other information)*

Pierre Harispuru

330 West Victoria Street, Gardena, CA 90248-3527

Telephone Number: 424-258-2902

Fax Number: 424-258-2903

§ 8.4 The Contractor's representative:

*(Name, address and other information)*

Pierre Harispuru

330 West Victoria Street, Gardena, CA 90248-3527

Telephone Number: 424-258-2902

Fax Number: 424-258-2903

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

§ 8.6 Other provisions: N/A

§ 8.7 In the event of any dispute between the Owner and the Contractor, the Contractor shall proceed with the performance of its obligations hereunder in accordance with the Progress Schedule.

§ 8.8 Contractor's project manager shall be an individual approved by the Owner. The Contractor shall cause said project manager, an assistance project manager or field representative, identified to the Owner, to be on the job site at all times during the course of the Work and shall authorize said project manager, assistant project manager or field representative to receive and act upon instructions from the Owner on the Contractor's behalf given pursuant to the Contract Documents.

§ 8.9 *Intentionally deleted.*

§ 8.10 Contractor hereby agrees to consent in writing to the assignment by Owner of its interest in the Contract Documents to Owner's construction lender, if any, with reasonable modifications required by lender. In connection with the financing of the Project. Contractor and all subcontractors must execute and deliver, and (if appropriate) acknowledge any and all instruments reasonable required by owner or any lender, including, but not limited to, evidence of any subordination of any rights, interest, and claims under the Contract Documents and subcontracts, at law, or otherwise, to the liens, benefits, rights and privileges of any lender and filing the Contract with the county recorder.

§ 8.11 The Contractor hereby subordinates all Contractor's, laborers' mechanics', materialmen's and other similar liens that it may have or acquire under the Contract Documents or otherwise as to the Project, the Work and the property upon which the Work is being constructed to the lien and security interest securing payment of sums borrowed from any lender for the project as of the date of the commencement of work. At the request of owner, the Contractor shall execute such additional documents as may be requested from time to time by the Owner or such lender to evidence the provisions hereof.

*(Paragraphs deleted)*

§ 8.12 Notwithstanding anything to the contrary contained in any of the Contract Documents, all request for payment by the Contractor, and all request for Change Orders, required the written approval of the Owner.

*(Paragraphs deleted)*

§ 8.13 The terms of the Contract Documents are intended by the parties to be a final expression of their understanding with respect to such terms as are included in the Contract Documents and may not be contradicted by evidence of any prior or contemporaneous, statements, representations, agreement or understandings. Additionally, the parties hereby expressly agree that no such statements, representations, agreements or understanding exist. The parties further intent that the Contract Documents constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever may be introduced in any judicial proceeding involving the Contract

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Documents. No addition to, deletion from or modification of any term or provision of the Contract Documents shall be effective unless it is made in writing by the parties hereto.

*(Paragraphs deleted)*

§ 8.14 Notwithstanding anything in the Contract Documents to the contrary, the Owner shall have, at all reasonable times, the right to enter the Project for the purpose of conducting marketing activities and inspecting the Work. The Contractor shall provide for such access.

*(Paragraph deleted)*

§ 8.15 *Intentionally deleted.*

*(Paragraphs deleted)*

§ 8.16 Time is of the essence of the Contract Documents, Contractor acknowledges and agrees that is has reviewed and negotiated the various time limits or periods set forth in the Contract Documents and that any changes in such time limits or periods made in accordance with the terms of the Contract Documents will be similarly reviewed and negotiated by it. Contractor agrees to perform its obligations with due diligence within such time limits and periods in accordance with the terms of the Contract Documents. Owner and Contractor acknowledge and agree if Contractor fails to achieve Substantial Completion of the Work within the Contract Time (as such may be extended in accordance with the Contract Documents), Owner will suffer, as a result of Contractor's failure, substantial damages which are both extremely difficult and impracticable to ascertain. Therefore, Owner and Contractor, having reasonably endeavored, but failed, to ascertain an amount bearing a reasonable relationship to the actual damage that Owner will incur if Contractor fails to achieve Substantial Completion of the Work within the Contract Time (as such may be extended in accordance with the Contract Documents), agree that in the event Contractor shall fail to achieve Substantial Completion within the Contract Time (as such may be extended in accordance with the Contract Documents), Contractor agrees to pay to Owner as liquidated damages, and not as a penalty but as a reasonable estimate of the amount of damages Owner will suffer, the amount of (\$750.00) per day for each calendar day occurring after the Contract Time (as such may be extended in accordance with the Contract Documents) during which Contractor fails to achieve Substantial Completion.

§ 8.17 *Intentionally deleted.*

§ 8.18 Contractor agrees that it will not, without the prior written approval of the Owner, publicize the fact that the Owner has entered into the Contract Documents, or disclose, confirm or deny any details of the Contract Documents. Contractor agrees that it will not use Owner's name in connection with Contractor's publicity with respect to the Project without the prior review and written approval in each instance by Owner. Contractor shall also insert the terms of this provision in all contracts and/or agreements executed in connection with the services to be performed under the Contract Documents and require that its Subcontractors do the same.

§ 8.19 Contractor shall not assign the whole or any portion of its interest under the Contract Documents or any payments due or to become due Contractor hereunder nor, except as specifically permitted in the Contract Documents, subcontract any of its obligations hereunder without first obtaining in each instance the prior written consent of Owner. No assignment, whether voluntary or involuntary, by operation of law, under legal process or proceedings, by receivership, in bankruptcy or otherwise, shall be valid or effective without such prior written consent to Owner. Should Contractor attempt to make or suffer to be made any such assignment, except as aforesaid, Owner may, at its option, terminate the agreements contained within the Contract Documents upon written notice to Contractor. Should Owner consent to any such assignment, such consent shall not constitute a waiver of any of the restrictions of this Paragraph 8.19 and the same shall apply to each successive assignment hereunder, if any. Any assignment in contravention of the provision of this Paragraph 8.19 shall be void. Owner may assign its interest in the Contract Documents at any time, and upon such assignment, Owner shall automatically be released from its obligations under the Contract Documents accruing after the date of such assignment, except for payment of retention previously withheld, which obligation shall remain an obligation of Owner.

§ 8.20 The Owner shall have the right to terminate the agreements contained within the Contract Documents at any time prior to the Commencement Date, or such later date prior to the actual commencement of the construction if construction in the field does not actually commence by the Commencement Date; and in such event, the Owner shall pay to the Contractor all amounts earned pursuant to the Contract Documents of the Agreement up to the date of termination as full and final payment to Contractor.

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§ 8.21 Notwithstanding any of the other provisions of the Contract Documents, the Contractor agrees that, if the Owner sells to a bona fide purchaser its interest in the land on which the Project is located, the Contractor will accept the purchaser as the Owner under the Contract Documents (and will release the original Owner from any and all liability to the Contractor under the Contract Documents) provided the purchaser has a net worth comparable to Owner and Contractor has approved of the assignee using reasonable discretion.

§ 8.22 Contractor agrees to look solely to the assets of Owner in the Project for the enforcement of any claims against Owner, and Contractor further agrees that none of the officers, directors, employees, partners, members or shareholders of Owners assume any personal liability for any of the obligations under the Contract Documents entered into on behalf of Owner.

§ 8.23 Contractor agrees that it shall perform its obligations hereof in a manner consistent with that of a first class construction firm experience in performing sophisticated and complex work similar to the Work required for the Project.

§ 8.24 Contractor shall observe and abide by and perform all of its obligations hereunder in accordance with the Contract Documents and all applicable laws, rules and regulation of all governmental authorities having jurisdiction over the Projects site, provided however, Contractor shall not be responsible for any errors or omissions in the plans and specifications prepared by the Architect, Owner, or their agents.

§ 8.25 The headings of the Contract Documents are used herein for reference purposes only and should not govern, limit, or be used in construing the Contract Documents or any provision hereof. Any exhibits attached hereto are incorporated herein by reference and expressly made a part of the Contract Documents for all purposes. References to any exhibit made in the Contract Documents shall be deemed to include this reference and incorporation. Where the context so requires, the use of the neuter gender shall include the masculine and feminine genders, the masculine gender shall include the feminine and neuter genders, and the singular number shall include the plural and vice versa. Each Party hereto acknowledges that (i) each party hereto is of equal bargaining strength; (ii) each such party has actively participated in the preparation, and negotiation of the Contract Documents, and (iii) any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of the Contract Documents, any portion hereof, any amendments hereto, or any exhibits attached hereto.

§ 8.26 This Agreement may be executed in one or more counterparts, each of, which shall be deemed an original, and all of which together shall constitute one and the same instrument.

§ 8.27 The waiver of failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision hereof.

§ 8.28 *Intentionally deleted.*

§ 8.29 Contractor acknowledges that Owner may (i) form a joint venture (the "Venture") to own and develop on the Property or manage the development on the property of the project; (ii) obtain from institutional or other lenders ("Lenders"), including, without limitation, affiliates of Owner, construction and/or permanent financing in connection with the Project, and (iii) admit investors into the Venture or sell tax credits associated with the Project to investors (either of which shall be referred to herein as the "Investors"). For the benefit of Owner, the Lenders and the Investors, Contractor hereby; (a) acknowledges the Owner may, without the prior consent of Contractor, assign to the Venture, the Lenders, and/or the Investors, and to any direct successor to their respective interests in the property and Project, all or a joint interest in the property and Project, all or a joint interest in the Work, all documents and materials associated therewith, and/or the Contract Documents; (b) confirms that upon delivery any such assignment of the Venture, the Lenders, and/or Investors, or any direct successor to their respective interests in the property or Project, shall be entitled to enforce the Contract Documents; and (c) agrees to, within ten (10) days of request by Owner, execute and deliver to Owner and the Venture, the Lenders, and/or the Investors, a letter in substantially the form of Exhibit "B" attached hereto confirming the status of payment under the Contract Documents and the right and ability of the Venture, the Lenders and/or the Investors to exercise the rights of Owner under the Contract Documents.

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§ 8.30 Notwithstanding the fact that this Agreement is executed as of the date first set forth above, the parties recognize that a portion of the Work may have been performed prior to such date, all of which Work, shall be governed by the terms and conditions of the Contract Documents and shall be deemed to be a part of the Work. Contractor shall not be entitled to any compensation for such prior activities and services except as expressly provided herein. Without limitation the foregoing, all of Contractor's liabilities and obligations to Owner hereunder shall apply to all work and services provided by Contractor for the Project prior hereto, notwithstanding the fact that such work or services may have been performed prior to the date hereof pursuant to prior negotiations, representations, agreements, understandings or otherwise. All Work performed hereunder prior to the date of the Agreements, but subsequent to the issuance of a Notice to Proceed, is hereby deemed a part of the Work and subject to compensation and timely payments hereunder.

**ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS**

- § 9.1 *Intentionally Deleted.*
- § 9.1.1 *Intentionally Deleted.*
- § 9.1.2 *Intentionally Deleted.*
- § 9.1.3 *Intentionally Deleted.*
- § 9.1.5 *Intentionally Deleted.*
- § 9.1.6 *Intentionally Deleted.*

§ 9.1.7 Additional documents, if any, forming part of the Contract Documents: *(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201-2007 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)*

Exhibit "A"	Drawing Log	Included
Exhibit "B"	Contractor Letter	Included
Exhibit "C"	Progress Schedule	Attached
Exhibit "D"	Schedule of Values	Included
Exhibit "E"	Closeout Documents	Included
Exhibit "F"	Force Majeure	Included
Exhibit "G"	Conditions of Approval / TDHCA Requirements	Attached
Exhibit "H"	Qualifications and Exclusions	Included
Exhibit "I"	Soils Report	Attached
Exhibit "J"	Survey - Meets and Bounds	Attached
Exhibit "K"	Phase 1 ESA Updated	Attached
Exhibit "L"	Plans; includes Project Manual and Specifications	Attached

- (Paragraphs deleted)*
- (Table deleted)*
- (Paragraph deleted)*
- (Table deleted)*
- (Paragraphs deleted)*
- (Table deleted)*
- (Paragraphs deleted)*
- (Table deleted)*
- (Paragraphs deleted)*

**ARTICLE 10 INSURANCE AND BONDS**

The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A201-2007. (State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-2007.)

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

(Signature) OWNER  
Mohannad H. Mohanna  
Borgfeld Housing, LP  
BY: Highridge Costa Housing, LLC  
ITS: Managing General Partner  
TITLE: Managing Member

(Signature) CONTRACTOR  
Pierre Harispuru  
Vice President, Construction  
HCHP Construction, LP

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**EXHIBIT "A" – DRAWING LOG**

ARCHITECTURAL			
SHEET #	SHEET NAME	SHEET DATE	REV DATE
A0.00	Cover Sheet	11/10/16	02/07/17
A0.01	Index of Drawings	11/10/16	02/07/17
A1.01	Architectural Site Plan	11/10/16	02/07/17
A1.02	General Notes, Codes & Tabulations	11/10/16	02/07/17
A1.02A	First floor - Occupancy & Egress Plan	11/10/16	02/07/17
A1.02B	Second floor - Occupancy & Egress Plan	11/10/16	02/07/17
A1.02C	Third floor - Occupancy & Egress Plan	11/10/16	02/07/17
A1.03	Dwelling Units - 2010 ADA	11/10/16	
A1.03A	Dwelling Units Accessibility IBC 2015-ANSI A117.1-2009	11/10/16	02/07/17
A1.03B	Texas Accessibility Standards	11/10/17	02/07/17
A1.04	Public Spaces - 2010 ADA & TAS	11/10/16	
A1.05	Typical Rated Assemblies	11/10/16	02/07/17
A1.06	Rated Assemblies	11/10/16	
A1.06A	Rated Assemblies	11/10/16	
A1.06B	Rated Assemblies	11/10/16	
A1.06C	Rated Penetration Assemblies	11/10/16	
A1.07	STC Notes	11/10/17	02/07/17
A2.01	Door Schedule, Notes & Details	11/10/17	02/07/17
A2.02	Window Schedule	11/10/16	
A2.02A	Window Details	11/10/16	
A3.11	Unit A1 - Floor Plans & Interior Elevations	11/10/16	02/07/17
A3.11A	Unit A1 ADA - Floor Plans & Interior Elevations	11/10/16	02/07/17
A3.12	Unit A2 - Floor Plans & Interior Elevations	11/10/16	02/07/17
A3.21	Unit B1 - Floor Plans & Interior Elevations	11/10/16	02/07/17
A3.21A	Unit B1 ADA - Floor Plans & Interior Elevations	11/10/16	02/07/17
A4.11	Building Plan - First Floor	11/10/16	02/07/17
A4.11A	Enlarged Building Plan - First Floor - Left	11/10/16	02/07/17
A4.11B	Enlarged Building Plan - First Floor - Right	11/10/16	02/07/17
A4.12	Building Plan - Second Floor	11/10/16	02/07/17
A4.12A	Enlarged Building Plan - Second Floor - Left	11/10/16	02/07/17
A4.12B	Enlarged Building Plan - Second Floor - Right	11/10/16	02/07/17
A4.13	Building Plan - Third Floor	11/10/16	02/07/17
A4.13A	Enlarged Building Plan - Third Floor - Left	11/10/16	02/07/17
A4.13B	Enlarged Building Plan - Third Floor - West	11/10/16	02/07/17
A4.14	Building Plan - Roof	11/10/16	02/07/17
A4.15	Exterior Elevations - Front & Rear	11/10/16	02/07/17

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A4.16	Exterior Elevations - Left and Right	11/10/16	02/07/17
A4.16A	Enlarged Exterior Elevations - L.H.S.	11/10/16	02/07/17
A4.16B	Enlarged Exterior Elevations - R.H.S.	11/10/16	02/07/17
A4.17	Courtyard Elevations	11/10/16	02/07/17
A5.10	Typical Int. Wall Sections	11/10/16	02/07/17
A5.11	Wall Sections	11/10/16	02/07/17
A6.01	Stair Details	11/10/16	
A6.10	Stair Plans and Section BT-I	11/10/16	02/07/17
A6.20	Elevator Plans and Section	11/10/16	02/07/17
A6.21	Elevator Details	11/10/16	02/07/17
A7.01	Details	11/10/16	
A7.02	Details	11/10/16	
A7.03	Details	11/10/16	
A7.04	Details	11/10/16	02/07/17
A7.05	Details	11/10/16	02/07/17
A7.06	Details	11/10/16	02/07/17
A7.07	Details	11/10/16	02/07/17
A8.01	Clubhouse - Door & Window Schedule	11/10/16	02/07/17
A8.11	Clubhouse - Enlarged Plan - Dims & Notes	11/10/16	02/07/17
A8.12	Clubhouse - CFS plans and Int. elevations	11/10/16	02/07/17
A8.13	Clubhouse - Int. Elevations	11/10/16	02/07/17
A9.10	Enlarged plans & details	11/10/16	02/07/17

**CIVIL**

SHEET #	SHEET NAME	SHEET DATE	REV DATE
C0.0	Cover Sheet	11/11/16	
C0.1	General Notes	11/11/16	
C0.2	Plat	11/04/16	
C0.3	Demolition Plan	11/11/16	
C1.1	Site & Dimensional Control Plan	11/11/16	
C2.1	Grading Plan	11/11/16	
C2.2	Grading Plan	11/11/16	
C2.3	Grading Plan	11/11/16	
C2.4	Grading Plan	11/11/16	
C3.1	Existing Drainage Area Map	11/11/16	
C3.2	Proposed Overall Drainage Area Map	11/11/16	
C3.3	Proposed Site Drainage Area Map	11/11/16	
C4.1	Storm Sewer Plan	11/11/16	
C4.2	Storm Sewer Profile	11/11/16	
C4.3	Storm Sewer Profile	11/11/16	
C4.4	Detention Pond Calculations	11/11/16	
C5.1	Water Plan	11/11/16	
C5.2	Fire Protection Plan	11/11/16	

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C6.1	Private Sanitary Sewer Plan	11/11/16	
C6.2	Private Sanitary Sewer Profile	11/11/16	
C6.3	Public Sanitary Sewer Plan & Profile	11/11/16	
C7.1	Paving Plan	11/11/16	
C7.2	Access Street Plan & Profile	11/11/16	
C8.1	Erosion Control Plan	11/11/16	
C8.2	Erosion Control Details	11/11/16	
C9.1	Construction Details	11/11/16	
C9.2	Construction Details	11/11/16	
C9.3	Construction Details	11/11/16	
C9.4	Construction Details	11/11/16	
C9.5	Construction Details	11/11/16	

**LANDSCAPE**

SHEET #	SHEET NAME	SHEET DATE	REV DATE
L1.16	Cover Sheet	11/10/16	02/07/17
L2.16	Hardscape	11/10/16	02/07/17
L3.16	Hardscape	11/10/16	02/07/17
L4.16	Hardscape	11/10/16	02/07/17
L5.16	Hardscape - Enlargements	11/10/16	02/07/17
L6.16	Landscape	11/10/16	02/07/17
L7.16	Landscape	11/10/16	02/07/17
L8.16	Landscape - Courtyard Enlargements	11/10/16	02/07/17
L9.16	Landscape - Courtyard Enlargements	11/10/16	02/07/17
L10.16	Irrigation	11/10/16	02/07/17
L11.16	Irrigation	11/10/16	02/07/17
L12.16	Electrical - Enlargements	11/10/16	
L13.16	Entry Electrical Enlargements	11/10/16	
L14.16	Site Details	11/10/16	02/07/17
L15.16	Site Details	11/10/16	
L16.16	Site Details	11/10/16	02/07/17

**STRUCTURAL**

SHEET #	SHEET NAME	SHEET DATE	REV DATE
S0-1	Structural Specifications	11/10/16	
S0-2	Structural Schedules	11/10/16	
S0-3	Shearwalls Sections and Details	11/10/16	
S1-1A	Area A - Slab Forming Plan	11/10/16	
S1-1B	Area B - Slab Forming Plan	11/10/16	
S2-1A	Area A - Foundation Plan	11/10/16	
S2-1B	Area B - Foundation Plan	11/10/16	
S3-1A	Area A - 2nd Flr Framing & 1st Fl. Bracing Plan	11/10/16	

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S3-1B	Area B - 2nd Flr Framing & 1st Fl. Bracing Plan	11/10/16	
S4-1A	Area A - 3rd Flr Framing & 2nd Fl Bracing Plan	11/10/16	
S4-1B	Area B - 3rd Flr Framing & 2nd Fl Bracing Plan	11/10/16	
S5-1A	Area A - Roof Framing & 3rd Fl Bracing Plan	11/10/16	
S5-1B	Area B - Roof Framing & 3rd Fl Bracing Plan	11/10/16	
S6-1	Unit Framing	11/10/16	
S6-2	Unit Framing	11/10/16	
SD1-1	Foundation Sections and Details	11/10/16	
SD1-2	Foundation Sections and Details	11/10/16	
SD2-1	Floor Framing Sections and Details	11/10/16	
SD2-2	Floor Framing Sections and Details	11/10/16	
SD3-1	Floor Framing Sections and Details	11/10/16	

**MECHANICAL**

SHEET #	SHEET NAME	SHEET DATE	REV DATE
M1.00	Mechanical General Notes	11/10/16	
M2.01	Mechanical Unit Plans	11/10/16	
M3.01A	Mechanical Plan - Level 1A	11/10/16	02/07/17
M3.01B	Mechanical Plan - Level 1B	11/10/16	
M3.02A	Mechanical Plan - Level 2A	11/10/16	
M3.02B	Mechanical Plan - Level 2B	11/10/16	
M3.03A	Mechanical Plan - Level 3A	11/10/16	
M3.03B	Mechanical Plan - Level 3B	11/10/16	
M3.04	Mechanical Enlarged Plan	11/10/16	
M4.01	Mechanical Schedules	11/10/16	
M4.02	Mechanical Calculations	11/10/16	
M5.01	Mechanical Details	11/10/16	02/07/17

**ELECTRICAL**

SHEET #	SHEET NAME	SHEET DATE	REV DATE
E1.00	Electrical General Notes	11/10/16	
E1.01	Electrical Site Plan	11/10/16	
E1.02	Electrical Site Photometric Plan	11/10/16	
E2.01	Electrical Unit Plans	11/10/16	02/07/17
E3.01A	Electrical Unit Plan - Level 1A	11/10/16	02/07/17
E3.01B	Electrical Unit Plan - Level 1B	11/10/16	02/07/17
E3.02A	Electrical Plan - Level 2A	11/10/16	
E3.02B	Electrical Plan - Level 2B	11/10/16	
E3.03A	Electrical Plan - Level 3A	11/10/16	
E3.03B	Electrical Plan - Level 3B	11/10/16	
E3.04	Electrical Lighting Plan - Clubhouse	11/10/16	
E3.05	Electrical Power Plan - Clubhouse	11/10/16	02/07/17

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E3.06	Electrical Enlarged Plans	11/10/16	
E4.01	Electrical One-Line Diagrams & Schedules	11/10/16	
E4.02	Electrical One-Line Diagrams & Schedules	11/10/16	
E4.03	Electrical Schedules & Calculations	11/10/16	
E4.04	Electrical Lighting Schedules	11/10/16	
E5.01	Electrical Details	11/10/16	
<b>PLUMBING</b>			
SHEET #	SHEET NAME	SHEET DATE	REV DATE
P1.00	Plumbing General Notes	11/10/16	
P2.00	Plumbing Site Plan	11/10/16	02/07/17
P2.01	Plumbing Sanitary & Vent Unit Plans	11/10/16	
P2.02	Plumbing Domestic Water Unit Plans	11/10/16	
P3.01A	Plumbing Plan - Level 1A - Underslab	11/10/16	02/07/17
P3.01B	Plumbing Plan - Level 1B - Underslab	11/10/16	02/07/17
P3.02A	Plumbing Plan - Level 1A - Above Ceiling	11/10/16	
P3.02B	Plumbing Plan - Level 1B - Above Ceiling	11/10/16	
P3.03A	Plumbing Plan - Level 2A	11/10/16	
P3.03B	Plumbing Plan - Level 2B	11/10/16	
P3.04A	Plumbing Plan - Level 3A	11/10/16	
P3.04B	Plumbing Plan - Level 3B	11/10/16	
P3.05	Plumbing Plan - Clubhouse	11/10/16	02/07/17
P3.06	Plumbing Plan - Clubhouse	11/10/16	02/07/17
P3.07	Plumbing Plan - Enlarged Plans	11/10/16	
P4.01	Plumbing Calculations	11/10/16	
P4.02	Plumbing Schedules	11/10/16	
P5.01	Plumbing Details	11/10/16	02/07/17
P5.02	Plumbing Details	11/10/16	02/07/17
P6.01	Plumbing Riser Diagrams	11/10/16	
P6.02	Plumbing Riser Diagrams	11/10/16	
P6.03	Plumbing Riser Diagrams	11/10/16	02/07/17

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**EXHIBIT "B"**

[Letterhead of Contractor]  
**CONTRACTOR LETTER**

**Borgfeld Housing, LP**  
**330 West Victoria Street**  
**Gardena, CA 90248**

Attention:  
HCHP Contractors L.P.  
330 West Victoria Street  
Gardena, CA 90248

Attention:  
Dear Ladies and Gentlemen:

The purpose of this letter is to confirm that the undersigned ("Contractor") has provided certain work and services as described on Exhibit "A" of Exhibit "B" attached hereto (the "Work") to **Borgfeld Housing, LP** ("Owner") with respect to certain real property located in Cibolo, Texas, consisting of the following parcel(s) the ("Property"); (SEE EXHIBIT "B" of EXHIBIT "B" attached hereto.)

Contractor acknowledges that Owner intends to (i) [form a joint venture (the "Venture") to own and develop on the Property] [manage the development of the Property of] (SEE EXHIBIT "A" to EXHIBIT "B") attached hereto, (the "Project"); (ii) obtain from institutional or other lenders (the "Lenders"), including, without limitation, [name of lender, if known], construction and/or permanent financing in connection with the development of the Project; and (iii) [admit investors ("Investors") into the Venture] [sell tax credits associated with the Project to investors (the "Investors")].

For the benefit of Owner, the Lenders, and the Investors, Contractor hereby:

- (a) acknowledges that it has been paid in full for the Work and the Work Product;
- (b) consents to the assignment by Owner to the Venture, the Lenders, and/or the Investors, and to any direct successor to their respective interest's in the Property and Project, of all or a joint interest in Owner's rights and interest in the Work and all agreements between Owner and the Contractor relating to the Property, including, but not limited to, the Work Product; and
- (c) confirms that the Venture, the Lenders, and/or the Investors, or any direct successor to their respective interest in the Property or Project, shall be entitled to use the Work and rely on the information contained in the Work Product, and shall have all the rights of Owner under the agreements between Owner and the Contractor.

Very truly yours,

Mohannad H. Mohanna  
President

Borgfeld Housing, LP  
BY: Highridge Costa Housing, LLC  
ITS: Managing General Partner  
TITLE: Managing Member

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**EXHIBIT "A" TO EXHIBIT "B"**  
**DESCRIPTION OF THE WORK**

New construction of 136-units, three-story wood frame rental apartment project with surface parking; including clubhouse, leasing facility, and common areas.

**EXHIBIT "B" TO EXHIBIT "B"**  
**THE REPORTS**

BEING A 10.308 ACRE TRACT SITUATED IN THE S. COCKRILL SURVEY, ABSTRACT NO. 96 AND THE A.S. LEWIS SURVEY, ABSTRACT NO. 216, GUADALUPE COUNTY, TEXAS AND BEING A PART OF THAT CERTAIN 5.072 ACRE TRACT DESCRIBED IN VOLUME 4023, PAGE 521 AND A PART OF THAT CERTAIN 10.076 ACRE TRACT DESCRIBED IN VOLUME 4021, PAGE 446, OFFICIAL RECORDS, GUADALUPE COUNTY, TEXAS, SAID 10.308 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING, AT A FOUND ½ INCH IRON ROD IN THE NORTHERLY RIGHT-OF-WAY LINE OF W. BORGFELD ROAD, BEING THE SOUTHEASTERLY CORNER OF FALCON RIDGE UNIT-2, A SUBDIVISION OF RECORD IN VOLUME 6, PAGES 439-440 OF THE PLAT RECORDS OF GUADALUPE COUNTY, TEXAS, SAME BEING THE SOUTHWESTERLY CORNER OF SAID 10.076 ACRE TRACT;

THENCE, N 28° 08' 53" W, LEAVING THE NORTHERLY RIGHT-OF-WAY LINE OF W. BORGFELD ROAD, ALONG A PORTION OF THE COMMON BOUNDARY LINE OF SAID 10.076 ACRE TRACT AND SAID FALCON RIDGE UNIT-2, A DISTANCE OF 338.18 FEET TO A SET ½ INCH IRON ROD WITH YELLOW PLASTIC CAP STAMPED "SHERWOOD SURVEYING" FOR THE POINT OF BEGINNING, OF THE HEREIN DESCRIBED TRACT;

THENCE, CONTINUING ALONG THE EASTERLY LINE OF SAID FALCON RIDGE UNIT-2, AND A PORTION OF THE EASTERLY LINE OF FALCON RIDGE UNIT-1, A SUBDIVISION OF RECORD IN VOLUME 6, PAGES 408-409 OF SAID PLAT RECORDS, BEING THE WESTERLY LINE OF SAID 10.076 ACRE TRACT AND THE WESTERLY LINE OF SAID 5.072 ACRE TRACT, THE FOLLOWING COURSES:

N 28° 08' 53" W, A DISTANCE OF 14.03 FEET TO A SET ½ INCH IRON ROD WITH YELLOW PLASTIC CAP STAMPED "SHERWOOD SURVEYING";

N 28° 52' 52" W, A DISTANCE OF 853.56 FEET TO A FOUND ½ INCH IRON ROD MARKING AN INTERIOR ELL CORNER OF SAID FALCON RIDGE UNIT-1, BEING THE NORTHWESTERLY CORNER OF SAID 5.072 ACRE TRACT AND HEREOF;

THENCE, N 62° 11' 41" E, ALONG A PORTION OF THE COMMON BOUNDARY LINE OF SAID FALCON RIDGE UNIT-1 AND SAID 5.072 ACRE TRACT, A DISTANCE OF 503.49 FEET TO A SET ½ INCH IRON ROD WITH YELLOW PLASTIC CAP STAMPED "SHERWOOD SURVEYING" FOR THE NORTHEASTERLY CORNER HEREOF;

THENCE, S 26° 10' 24" E, ACROSS A PORTION OF SAID 5.072 ACRE TRACT AT A DISTANCE OF 101.71 FEET TO A FOUND ½ INCH IRON ROD, MARKING THE NORTHWESTERLY CORNER OF THAT CERTAIN 13.359 ACRE TRACT CONVEYED TO DANIEL KARDYS BY DEED OF RECORD IN VOLUME 2023, PAGE 387 OF SAID OFFICIAL RECORDS, AND CONTINUING ALONG A PORTION OF THE COMMON BOUNDARY LINE OF SAID 5.072 ACRE TRACT AND SAID 13.359 ACRE TRACT, FOR A TOTAL DISTANCE OF 297.40 FEET TO A FOUND ½ INCH IRON ROD CAP "4069";

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PH / [Signature]

**EXHIBIT "B" TO EXHIBIT "B"**  
**THE REPORTS (CONT)**

**1818**THENCE, S 50° 59' 25" E, ALONG A PORTION OF THE COMMON BOUNDARY LINE OF SAID 5.072 ACRE TRACT AND SAID 13.359 ACRE TRACT, A DISTANCE OF 41.49 FEET TO A FOUND ½ INCH IRON ROD MARKING THE SOUTHEASTERLY CORNER OF SAID 5.072 ACRE TRACT, BEING THE NORTHEASTERLY CORNER OF SAID 10.076 ACRE TRACT;

THENCE, S 23° 55' 06" E, ALONG A PORTION OF THE COMMON BOUNDARY OF SAID 13.359 ACRE TRACT AND SAID 10.076 ACRE TRACT, A DISTANCE OF 534.02 FEET TO A SET ½ INCH IRON ROD WITH YELLOW PLASTIC CAP STAMPED "SHERWOOD SURVEYING";

THENCE, LEAVING THE WESTERLY LINE OF SAID 13.359 ACRE TRACT, INTO AND ACROSS SAID 10.076 ACRE TRACT, THE FOLLOWING COURSES:

S 62° 17' 30" W, A DISTANCE OF 226.88 FEET TO A SET ½ INCH IRON ROD WITH YELLOW PLASTIC CAP STAMPED "SHERWOOD SURVEYING";

S 27° 42' 30" E, A DISTANCE OF 415.78 FEET SET ½ INCH IRON ROD WITH YELLOW PLASTIC CAP STAMPED "SHERWOOD SURVEYING" IN THE NORTHERLY RIGHT-OF-WAY LINE OF W. BORGFELD ROAD, BEING THE SOUTHERLY LINE OF SAID 10.076 ACRE TRACT;

THENCE, S 79° 03' 04" W, ALONG THE NORTHERLY RIGHT-OF-WAY LINE OF W. BORGFELD ROAD, A DISTANCE OF 41.77 FEET TO A SET ½ INCH IRON ROD WITH YELLOW PLASTIC CAP STAMPED "SHERWOOD SURVEYING";

THENCE, LEAVING THE NORTHERLY RIGHT-OF-WAY LINE OF W. BORGFELD ROAD, INTO AND ACROSS SAID 10.076 ACRE TRACT, THE FOLLOWING COURSES:

N 27° 42' 30" W, A DISTANCE OF 403.74 FEET TO A SET ½ INCH IRON ROD WITH YELLOW PLASTIC CAP STAMPED "SHERWOOD SURVEYING";

S 62° 17' 30" W, A DISTANCE OF 192.13 FEET TO THE POINT OF BEGINNING AND CONTAINING 10.308 ACRES (439,513 SQ. FT.) OF LAND, MORE OR LESS.

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EXHIBIT "C" – PROGRESS SCHEDULE – ATTACHED

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## EXHIBIT "D" SCHEDULE OF VALUES

<b>22-02-221</b>	<b>DEMOLITION</b>	<b>Cost</b>	<b>Comments</b>
22-02-101	Contaminated Site Remediation	0.00	
22-02-221	Demolition	50,000.00	Demo
22-13-281	Asbestos Removal	0.00	
<b>TOTAL DEMOLITION</b>		<b>50,000.00</b>	

<b>24-01-005</b>	<b>ON-SITE</b>	<b>Cost</b>	<b>Comments</b>
24-01-571	Dust Control	40,000.00	
24-02-056	Import/Export Soils	50,000.00	
24-02-231	Clearing/Grubbing	45,000.00	
24-02-311	Rough Grading (on-site)	50,000.00	
24-02-312	Finish Grading (on-site)	5,000.00	
24-02-313	Fine Grading (on-site)	0.00	
24-02-341	Lime Soil Stabilization	45,000.00	
24-02-361	Termite Soil Treatment	5,000.00	
24-02-371	Erosion Control	40,000.00	
24-02-511	Water Distribution (on-site)	80,000.00	
24-02-531	Sewer Distribution (on-site)	50,000.00	
24-02-541	Gas Distribution (on-site)	0.00	
24-02-551	Electrical Distribution (on-site)(Primary)	90,807.00	
24-02-551	Electrical Distribution (on-site) (Secondary)	40,000.00	
24-02-582	Telephone Distribution (on-site)(Primary)	5,000.00	
24-02-582	Telephone Distribution (on-site) (Secondary)	0.00	
24-02-583	CATV Distribution (on-site)(Primary)	0.00	
24-02-583	CATV Distribution (on-site) (Secondary)	0.00	
24-02-621	Site Area Drains	20,000.00	
24-02-631	Storm Drainage (on-site)	60,000.00	
24-02-741	Asphalt Pavement (on-site)	120,000.00	
24-02-751	Concrete Pavement (on-site)	90,000.00	
24-02-761	Pavement Stripping/Tactile (On-site)	20,000.00	
24-02-771	Concrete Curbs & Gutters (On-site)	60,000.00	
24-02-781	Precast Concrete Pavers (On-site)	0.00	
24-02-821	Perimeter Fences & Gates (Tubular Steel)	5,000.00	
24-02-822	Perimeter Fences & Gates (Wood) (On-site)	0.00	
24-02-823	Perimeter Fence & Gate (Chain-link) (On-site)	0.00	
24-02-831	Retaining Walls (On-site)	0.00	
24-02-841	Parking Bumpers	6,000.00	
24-04-221	Concrete Masonry Units (On-site)	60,000.00	
<b>TOTAL ON-SITE</b>		<b>986,807.00</b>	

<b>26-01-005</b>	<b>OFF-SITE</b>	<b>Cost</b>	<b>Comments</b>
26-02-311	Rough Grading (Off-site)	10,000.00	
26-02-312	Finish Grading (Off-site)	10,000.00	
26-02-313	Fine Grading (Off-site)	10,000.00	
26-02-511	Water Distribution (Off-site)	30,000.00	
26-02-531	Sewer Distribution (Off-site)	20,000.00	
26-02-541	Gas Distribution (Off-site)	10,000.00	
26-02-551	Electrical Distribution (Off-site)	20,000.00	
26-02-582	Telephone Distribution (Off-site)	0.00	
26-02-583	CATV Distribution (Off-site)	0.00	
26-02-631	Storm Drainage (Off-site)	15,000.00	
26-02-741	Asphalt Pavement (Off-site)	25,000.00	
26-02-751	Concrete Pavement (Off-site)	0.00	
26-02-761	Pavement Stripping/Tactile (Off-site)	10,000.00	
26-02-771	Concrete Curbs & Gutters (Off-site)	15,000.00	
26-02-776	Concrete Sidewalks (Off-site)	10,000.00	
26-02-781	Precast Concrete Pavers (Off-site)	0.00	
26-02-831	Retaining Walls (Off-site)	0.00	
26-02-891	Traffic Signs & Signals	20,000.00	Traffic Control
26-04-221	Concrete Masonry Units (Off-site)	0.00	
<b>TOTAL OFF-SITE</b>		<b>205,000.00</b>	

## EXHIBIT "D" SCHEDULE OF VALUES

<b>28-01-005</b>	<b>BASE CONSTRUCTION</b>	<b>Cost</b>	<b>Comments</b>
28-01-741	Final Cleaning	40,000.00	Estimate
28-03-201	Concrete Reinforcement	10,000.00	Light Pole
28-03-311	Structural Concrete	400,000.00	
28-03-481	Precast Concrete Stair Tread	20,000.00	
28-03-541	Lightweight Concrete Underlay	130,000.00	Estimate
28-04-221	Concrete Masonry Units (Base Const)	0.00	
28-04-731	Simulated Stone Veneer	250,000.00	
28-04-811	Brick Veneer	0.00	
28-05-121	Structural Steel	30,000.00	Sidewalk
28-05-501	Misc. Metal Fabrications	0.00	
28-05-511	Metal Stairs	140,000.00	Estimate
28-05-521	Metal Hand Rails & Railings	40,000.00	Hand Rails Balcony Estimate
28-06-101	Rough Carpentry (Materials/Labor)	1,650,000.00	Materials
28-06-102	Rough Carpentry - Labor	700,000.00	Labor
28-06-201	Finish Carpentry	200,000.00	
28-06-411	Cabinets	274,000.00	Estimate
28-06-416	Counter Tops	245,000.00	Estimate
28-07-101	Waterproofing	15,000.00	GYPE
28-07-181	Deck Coating	140,000.00	Estimate
28-07-211	Building Insulation	200,000.00	
28-07-311	Asphalt Shingle Roofing	55,000.00	
28-07-321	Concrete Tile Roofing	0.00	
28-07-461	Siding	0.00	
28-07-601	Flashing and Sheet Metal	15,000.00	
28-07-611	Standing Seam Roofing	30,000.00	Decorative
28-07-711	Roof Accessories, Gutters & Downspouts	30,000.00	
28-07-801	Fire/Smoke Protection (Fire Sprinklers)	250,000.00	Fire Sprinkler
28-08-101	Metal Doors & Frames	30,000.00	1 hr. doors
28-08-211	Wood Doors	1,000.00	
28-08-221	Fiberglass Doors	10,000.00	
28-08-261	Sliding Wood/Plastic Doors	0.00	
28-08-311	Specialty Doors (Rec Center)	8,000.00	Rec Center
28-08-361	Overhead Garage Doors	0.00	
28-08-501	Windows & Sliding Glass Doors	220,000.00	
28-08-701	Finish Hardware	25,000.00	
28-08-831	Mirrors	35,000.00	
28-09-221	Exterior Plaster	475,000.00	
28-09-251	Gypsum Board	560,000.00	
28-09-311	Ceramic Tile	15,000.00	
28-09-601	Floor Covering - Rec Center	10,000.00	
28-09-651	Resilient Flooring - Units	85,000.00	
28-09-681	Carpet - Units (Materials)	90,000.00	
28-09-981	Carpet - Units (Labor)	95,000.00	
28-09-911	Painting (Interior) - Est	197,000.00	
28-09-912	Painting (Exterior)	95,000.00	
28-09-913	Wallcoverings - Rec Center	2,000.00	
28-10-151	Tub/Shower Enclosures	0.00	
28-10-306	Manufactured Fireplace	3,500.00	
28-10-521	Fire Extinguishers	25,000.00	
28-10-551	Mailboxes	6,000.00	
28-10-801	Toilet/ Bath Accessories	10,000.00	
28-11-451	Appliances	255,000.00	
28-12-491	Window Treatments - units only	30,000.00	
28-12-491	Window Treatments - recreation bldg. only	4,000.00	
28-13-701	Intrusion Alarm	8,000.00	
28-13-851	Fire Alarm (DESIGN BUILD) - Fire Sprinkler	35,000.00	
28-14-201	Elevators	150,000.00	
28-14-561	Trash Chute	20,000.00	
28-15-101	Plumbing	834,000.00	
28-15-301	Fire Protection System	0.00	
28-15-411	Garbage disposals	20,000.00	
28-15-701	HVAC	520,000.00	
28-16-201	Electrical	504,394.00	
28-16-501	Electrical Fixtures	0.00	
28-16-511	Electrical Fixtures (Interior)	30,000.00	
28-16-721	Telephone Prewire	0.00	
28-16-722	Emergency Call (DESIGN BUILD)	36,000.00	
28-13-702	Alarm Prewire at Rec Center	0.00	
28-16-771	Cable TV and TV Common Antenna (DESIGN BUILD)	0.00	
<b>TOTAL BASE CONSTRUCTION</b>		<b>9,307,894.00</b>	



<b>30-01-005</b>	<b>EXTERIOR COMMON AREA</b>	<b>Cost</b>	<b>Comments</b>
30-02-776	Concrete Sidewalks/ Pool Decks	25,000.00	Included in Base Construction
30-02-791	Recreational Amenities	0.00	
30-02-811	Irrigation Systems	25,000.00	
30-02-821	Perimeter Fences & Gates (Tubular Steel)	30,000.00	
30-02-822	Perimeter Fences & Gates (Wood)	0.00	
30-02-823	Perimeter Fences & Gates (Chainlink)	0.00	
30-08-824	Electric Gates/Intercom at Entry Gate	5,000.00	
30-02-871	Outdoor Furniture (OFOI)	0.00	
30-02-881	Playground Equipment	0.00	
30-02-901	Landscape Planting (Materials)	30,000.00	
30-02-911	Landscape Planting (Labor)	20,000.00	
30-04-222	Trash Enclosure (Concrete Masonry Units)	10,000.00	
30-06-103	Trellis	0.00	
30-10-401	Signage Directory	5,000.00	
30-10-401	Building Signage (Allowance)	9,000.00	
30-10-431	Exterior Monument Signage	5,000.00	
	Carport Lighting	0.00	
30-10-531	Carport Structure	0.00	
30-10-552	Mail Kiosk(s)	6,000.00	
30-11-452	Barbeque Equipment	0.00	
	Recreation Building Interiors (OFOI)	0.00	
30-13-151	Pool	40,000.00	
30-13-151	Spa	0.00	
30-16-521	Exterior Site Lighting (Fixtures)	15,000.00	
30-16-522	Exterior Site Lighting (Labor)	0.00	
30-16-723	Intercom	0.00	
<b>TOTAL EXTERIOR COMMON AREA</b>		<b>225,000.00</b>	

<b>32-01-005</b>	<b>GENERAL REQUIREMENTS</b>	<b>Cost</b>	<b>Comments</b>
	General Contractors Bond (If Required)	0.00	
	Insurance	10,000.00	
42-99-990	City License	6,000.00	
32-01-312	Project Manager	120,000.00	
32-01-313	Project Superintendent	80,000.00	
32-01-314	Assistant Project Superintendent	50,000.00	
	General Conditions	0.00	
32-01-318	OSHA Compliance	0.00	
32-01-317	General Labor	40,000.00	
32-01-451	Testing Inspection and Laboratory (By Owner)	10,000.00	
32-01-512	Temporary Fire Protection	5,000.00	
32-01-514	Temporary Electric (Distributed)	10,000.00	
32-01-514	Temporary Electric (Usage)	20,000.00	
32-01-516	Temporary Telephone	0.00	
32-01-518	Temporary Water	10,000.00	
	Equipment Rental	0.00	
32-01-521	Contractor Tools & Supplies	20,000.00	
32-01-522	First Aid Kit	500.00	
32-01-524	Field Office	10,000.00	
32-01-524	Leasing Office Trailer	0.00	
32-01-525	Job Office Supplies	8,000.00	
32-01-526	Trash Bins	40,000.00	
32-01-528	Temporary Toilet	10,000.00	
	Security Lighting	0.00	
32-01-561	Security	30,000.00	
32-01-562	Storage Bin	15,000.00	
32-01-564	Temporary Fencing	10,000.00	
32-01-742	Site Maintenance	25,000.00	
<b>TOTAL GENERAL REQUIREMENTS</b>		<b>529,500.00</b>	

<b>TOTALS</b>	<b>Cost</b>
<b>TOTAL DEMOLITION</b>	50,000.00
<b>TOTAL ON-SITE</b>	986,807.00
<b>TOTAL OFF-SITE</b>	205,000.00
<b>TOTAL BASE CONSTRUCTION</b>	9,307,894.00
<b>TOTAL EXTERIOR COMMON AREA</b>	225,000.00
<b>SUB TOTAL</b>	<b>10,774,701.00</b>

<b>TOTAL GENERAL REQUIREMENTS</b>	529,500.00
<b>CONTRACTOR'S FEE &amp; OVERHEAD</b>	830,868.00
<b>TOTAL OVERHEAD</b>	
<b>SUB TOTAL</b>	<b>1,360,368.00</b>

<b>CONTINGENCIES</b>	0.00
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<b>GRAND TOTAL</b>	<b>12,135,069.00</b>
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**EXHIBIT "E"**

**CLOSEOUT DOCUMENTS**

**CONTRACTOR TO PROVIDE:**

- ANY BUILDING PERMITS DRAWN
- INSPECTION CARDS (WITH FINAL SIGNED OFF APPROVALS)
- CERTIFICATES OF OCCUPANCY (ALL UNITS & RECREATION CENTER)
- ANY WARRANTIES OR GUARANTEES\*\*
  - **CLOSE-OUT MANUALS:**
    - OPERATION & MAINTENANCE MANUAL
    - UNCONDITIONAL LIEN RELEASES FROM ALL SUB-CONTRACTORS AND SUPPLIERS
    - ASSIGNMENTS OF WARRANTIES FROM ALL SUB-CONTRACTORS TO PARTNERSHIP
- ANY DESIGN BUILD DRAWINGS OR PLANS DEVELOPED IN CONJUNCTION WITH THE WORK
- ANY OTHER DOCUMENTS PERTINENT TO THE WORK PERFORMED

**CLOSE OUT ITEMS**

- **Architectural, Structural, MEP, Fire Sprinkler, Fire Alarm, Landscaping, & Irrigation As-built drawings**
- **Civil As-built drawings**
- **Certificate of Substantial Completion**
- **Civil Engineer Letter of Acceptance**
- **Soils Engineer Letter/Certificate**
- **Subcontractors/Supplier List**
- **Warranty Close Out/Warranty Report form**
- **Roofing Warranty**
- **Close Out Manuals – 2 bound copies, which should include:**
  - Operation and Maintenance manuals for all materials incorporated into the work. (Refer to Section 01770 for more information on these manuals).
  - Warranty Log.
  - Assignments of warranties from all subcontractors, to the partnership, on subcontractor/suppliers letterheads (per sample attached). On letterhead, signed and notarized (Section 01770).
  - Notice of Completion.
  - Copy of Certificates of Occupancy.
  - Copy of original inspection cards, signed off.
  - Utility billing summary/Meter Logs (gas, electrical, water)
  - Utility Contact List – Names, addresses, phone numbers, contact person(s) for all utility companies.
  - Unit Punch Lists – signed off by property management firm as accepted.
  - Exterior and Common Area Punch Lists – Signed off by partnership representative.
- **Subcontractor Warranties/Assignment of Warranties** – (see attached sample). This should mirror all parties in the above subcontractor/supplier list. Note: 1-year subcontractor warranties bearing the date of final completion, using best efforts to secure warranties from manufacturers to extend beyond one (1) year from the date of final completion (per 3.5.2).

Acoustical Ceilings	Insulation (and soundproofing) Landscaping & Irrigation (read specifications for more information on as-built requirements)
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Appliances	Lath & Plaster/Stucco
Asphalt (coatings, striping, markings)	Low Voltage Systems (CATV, phone, data, etc.)
Audible Alarm/Chime Systems	Masonry
Cabinet (Installer & Manufacturer)	Mailboxes
Carports	Painting (including anti-graffiti coatings)
Ceramic Tile	Playground Equipment
Concrete, Building & Site	Plumbing
Concrete, Lightweight	Pool/Spa
Corner guard	Rain gutters
Countertops	Roofing
Deck Coatings (see also waterproofing)	Rough Carpentry & Trusses
Drywall	Security Alarm
Dry Utilities	Sheet Metal
Earthwork	Signage
Electrical	Site Furniture (Benches, picnic tables, BBQ's)
Electrical Fixtures	Sound Wall
Elevator	Stairways
Fencing (Site)	Storefront
Finish Carpentry	Structural Steel
Fire Alarm	Termite Treatment
Fire Extinguishers	Toilet Accessories
Fireproofing	Trash Chutes
Fire Sprinklers	Wall Coverings
Flooring	Waterproofing/Deck Coatings
HVAC	Wet Utilities
Handrails, Railings, etc.	Windows
	Window Coverings

- **Training Letter** – Provide a letter, signed by property management representative/agent that they have received systems training and identifying all systems for which training was provided.
- **Consent of Surety to Final Payment** – If applicable. (9.10.2)
- **Insurance Certificate** – Certificate evidencing that insurance required by Contract will remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until at least 30 days prior written notice has been given Owner. (9.10.2)
- **Insurance – Contractors Written Statement** – Provide a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract documents. (9.10.2)
- **Certificates of Testing, Inspection, or Approval** – Shall be secured by Contractor and delivered (to the architect) (13.5.4). Should include copies of all soils tests for items including, but not limited to:
  - Import
  - Pad Certification
  - Engineered fills
  - Foundation inspection(s)
  - Utility trenches – 90% in paved areas or under slabs
  - A.C. drive lands and City streets – base & final
  - Gravel fill materials
  - Copies of all structural observations, special testing, etc.
- **Termite Pre-Treat Certification** – Per 02362.
- **Insulation Certification**
- **Deferred Improvement Authorization Letter** – Provide a letter from City approving any deferred improvement items (if applicable).

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## EXHIBIT "F" - FORCE MAJEURE

Force Majeure. If either party is rendered unable, wholly or in part, to carry out its obligations under this Agreement by reason of Force Majeure, other than the obligation to make money payments, such party shall give to the other party written notice thereof with reasonably full particulars; thereupon, the obligations of the party giving notice, so far as they were affected by the Force Majeure, shall be suspended during, but no longer than, the continuance of the Force Majeure, and said party shall use all possible diligence to remove the Force Majeure as quickly as possible.

"Force Majeure" as used in this Article shall mean an act of God, natural disaster, labor dispute, strike, lockout, or other industrial disturbance, act of the public enemy, war, terrorist act, blockage, riot, lightning, fire, flood, explosion, fluctuations in electrical power, heat, light, air conditioning or telecommunications equipment, government restraint, material shortages, unusual and unavoidable delays in deliveries and any other cause, whether of the kind specifically enumerated above or otherwise, which is not reasonably within the control of the party claiming suspension.

No delay in the Work will be considered an event of Force Majeure, however, unless the delay effects the critical path for the performance of the Work and actually delays Substantial Completion of the entire Work.

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EXHIBIT "G" – CONDITIONS OF APPROVAL / TDHCA REQUIREMENTS ATTACHED

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User Notes:

(1984903527)

**EXHIBIT "H"**  
**QUALIFICATIONS AND EXCLUSIONS**

According to the plans dated February 7, 2017 and the Specifications dated February 7, 2017 all material, soil, and all testing and sampling are by owner.

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**THE FOLLOWING EXHIBITS ARE ATTACHED:**

**"I" – SOILS REPORT**

**"J" – SURVEY MEETS AND BOUNDS**

**"K" – PHASE 1 ESA UPDATE**

**"L" – PLANS; INCLUDES PROJECT MANUAL AND SPECIFICATIONS**

PH  
MAM  
Init.

16128 – El Sereno  
Construction Status Report – Due 09-28-2017

Tab 3 and 4

As of the closing date there have been no G702/703 reports filed on El Sereno and therefore no Third Party Construction Inspection Reports are available to date. We anticipate submitting G702/703 along with Third Party Inspection report on 10-01-17.





# Construction Status Report – Minority Owned Business Report (HTC Only)

**TDHCA Asset Management Division - P.O. Box 13941, Austin, Texas 78711-3941 [www.tdhca.state.tx.us/asset-management](http://www.tdhca.state.tx.us/asset-management)**

*As of 2017, this report must be provided every 90 days in coordination with the construction status reports for all HTC developments as required by Tex. Gov't Code §2306.6734 to demonstrate the Owner's attempt to ensure that at least 30% of the construction and management businesses with which the Owner contracts in connection with the development are minority-owned businesses.*

TDHCA File No.: 16128

Development Name: El Sereno

### NAME and ADDRESS of OWNERSHIP ENTITY

Name of Ownership Entity: Borgfeld Housing, LP

Contact Name: Sara Reidy

Mailing Address: 2010 Kessler Parkway

City: Dallas, State: TX Zip: 75208

Phone: (214) 941-0089

Email: sreidy@ess-email.com

**In accordance with Texas Government Code**, I, the Owner, as agreed in the Owner's Certification submitted with the Housing Tax Credit Application for the above named Development, have attempted to ensure that at least 30% of the construction and management businesses with which I contract in connection with the Development identified above are Minority Owned Businesses. I understand that a Minority Owned Business is defined by Section 2306.6734 as a business entity that is 51% owned, managed, and controlled by members of a minority group in its daily operations (for purposes of this report, Section 2306.6734 defines "minority group" as women, African Americans, American Indians, Asian Americans, Mexican Americans, and other Americans of Hispanic origin).

As of today, the percentage of businesses with which I, the Owner, have contracted that qualify as Minority Owned Businesses is as follows:

PERCENTAGE OF CONTRACTED MINORITY OWNED BUSINESSES
CONSTRUCTION: <b>58 %</b>
MANAGEMENT: <b>30 %</b>

Back up documentation will be provided to the Department in the event such documentation is requested to confirm the contracted percentages referenced above.

By: \_\_\_\_\_

Signature of Owner Representative

8-26-17

Date

SARA REIDY

Printed Name of Owner Representative

*Submit this form in accordance with the instructions related to Construction Status Reports in the Post Award Activities Manual. Construction Status Reports begin with an initial report and are received every 90 days via the applicant's FTP account. Please contact your Asset Manager or the general Asset Management inbox ([asset.management@tdhca.state.tx.us](mailto:asset.management@tdhca.state.tx.us)) with questions.*

# AIA<sup>®</sup> Document G701<sup>™</sup> – 2017

## Change Order

<b>PROJECT:</b> <i>(Name and address)</i> Borgfeld Manor  206 West Borgfeld Road Cibolo, TX 78108	<b>CONTRACT INFORMATION:</b> Contract For: New Construction of 136- units, 3-story wood frame rental apartment project with surface parking; including clubhouse, leasing facility, and common areas. Date: 04/10/2017	<b>CHANGE ORDER INFORMATION:</b> Change Order Number: 002  Date: 01/04/2018
<b>OWNER:</b> <i>(Name and address)</i> Borgfeld Housing, LP 330 West Victoria Street Gardena, CA 90248	<b>ARCHITECT:</b> <i>(Name and address)</i> Humphreys & Partners Architects, L.P. 5339 Alpha Road, Suite 300 Dallas, TX 75240	<b>CONTRACTOR:</b> <i>(Name and address)</i> HCHP Contractors, LP 330 West Victoria Street Gardena, CA 90248

**THE CONTRACT IS CHANGED AS FOLLOWS:**

*(Insert a detailed description of the change and, if applicable, attach or reference specific exhibits. Also include agreed upon adjustments attributable to executed Construction Change Directives.)*

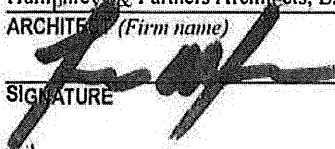
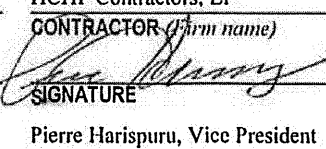
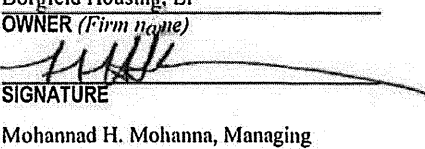
Addition of 148 working construction days (Monday through Saturday) due to weather and city delays.

The original Contract Sum was	\$	12,135,069.00
The net change by previously authorized Change Orders	\$	72,838.00
The Contract Sum prior to this Change Order was	\$	12,207,907.00
The Contract Sum will be increased by this Change Order in the amount of	\$	0.00
The new Contract Sum including this Change Order will be	\$	12,207,907.00

The Contract Time will be increased by One Hundred Forty-Eight (148) days.  
The new date of Substantial Completion will be 12/01/2018

**NOTE:** This Change Order does not include adjustments to the Contract Sum or Guaranteed Maximum Price, or the Contract Time, that have been authorized by Construction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change Directive.

**NOT VALID UNTIL SIGNED BY THE ARCHITECT, CONTRACTOR AND OWNER.**

Humphreys & Partners Architects, L.P. ARCHITECT <i>(Firm name)</i>	HCHP Contractors, LP CONTRACTOR <i>(Firm name)</i>	Borgfeld Housing, LP OWNER <i>(Firm name)</i>
 SIGNATURE	 SIGNATURE	 SIGNATURE
JAMES MCEAUL PRINTED NAME AND TITLE	Pierre Harispu, Vice President Construction PRINTED NAME AND TITLE	Mohannad H. Mohanna, Managing Member PRINTED NAME AND TITLE
1/18/18 DATE	1-10-18 DATE	1/10/18 DATE



9 January 2018

Borgfeld Housing, LP  
Attention: Mohannad H. Mohanna  
330 West Victoria Street  
Gardena, CA 90248

RE: Severe Weather Delays September through December

Dear Mr. Mohanna:

In accordance with A201, General Conditions of the Contract for Construction, section 8.3, "Delays and Extensions of Time," we advise you that we have encountered unforeseeable, unusually severe weather throughout September through December. The attached delay log shows that we have lost a total of 81 construction days due to severe rainfall. These delays impact subcontractor schedules, as soil has to dry for at least two days before work and testing can resume.

**Total Days through September 2017 to December 2017: 81**

Sincerely,

A handwritten signature in black ink, appearing to read 'Pierre Harispuru', is written over the word 'Sincerely,'.

Pierre Harispuru  
Vice President Construction  
HCHP Contractors, LP

Attachments:

1. Delay Log
2. USGS Rainfall Data during September to December 2017



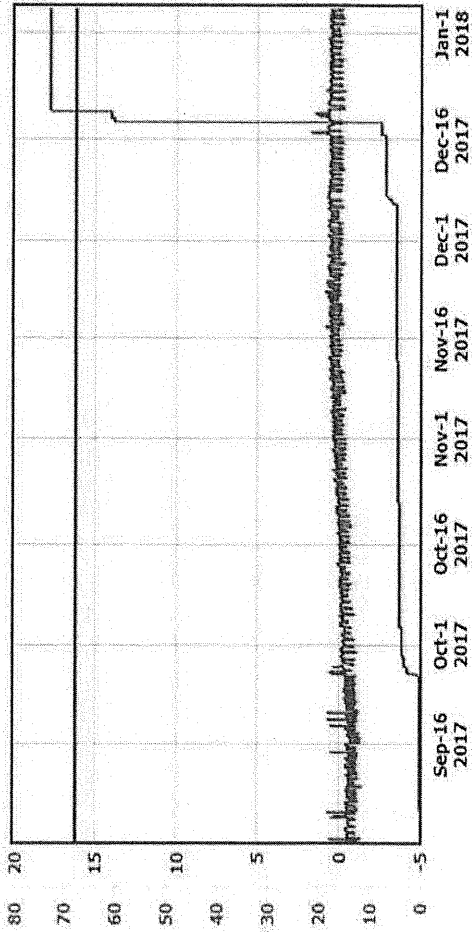
Borgfeld Manor
Pete Harispuru
01/04/18

Total # of Days Delayed:	148
Delays AVG Days:	11
No. of Delays:	0

DELAY LOG					
First Day of Delay	Last Day of Delay	# of Rain Delays	Total # of Delay Days	Status Open / CLOSED	Description of Delay
08/01/17	08/16/17	N/A	15	CLOSED	The adjacent property owner would not sign the sewer easement. She finally signed after our company intervned with the city to take care of her business sign.
08/07/17	08/11/17	N/A	5	CLOSED	Rain Delays - 10" rain received. Site needed to be pumped after rainfall due to 5' trench full of water. Time to pump - 2 days; Time for soil to dry - 3 days
08/14/17	08/31/17	N/A	18	CLOSED	Shut down by city for paving of Borgfeld Road
08/22/17	09/05/17	15	29	CLOSED	Tropical Storm Harvey - rainfall so far 34"
09/18/17	09/22/17	4	7	CLOSED	Average daily rain 3.5 Inches
09/26/17	09/30/17	4	7	CLOSED	Average daily rain 3.5 Inches
10/01/17	10/01/17	1	1	CLOSED	Average daily rain 3.5 Inches
10/03/17	10/08/17	5	8	CLOSED	Average daily rain 5 inches
10/31/17	11/06/17	6	9	CLOSED	Average daily rain 3 inches
11/09/17	11/19/17	11	18	CLOSED	Average daily rain 1 inch
12/05/17	12/10/17	6	9	CLOSED	Average daily rain 2 inches
12/18/17	12/24/17	7	10	CLOSED	Average daily rain 1 inch
12/19/17	12/21/17	N/A	3	CLOSED	City of Cibolo Plumbing Inspection delayed inspection due to busy status
12/27/17	01/01/18	6	9	CLOSED	Average daily rain 1 inch

USGS 08169740 Guadalupe Rv at Hwy 123-BR at Seguin, TX

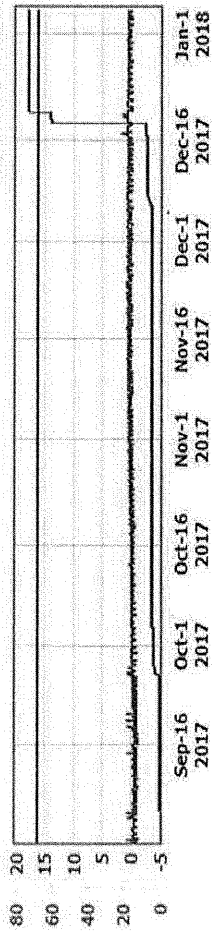
Zoom period plot  
Saturday Jan 6 2018 05:39



Explanation

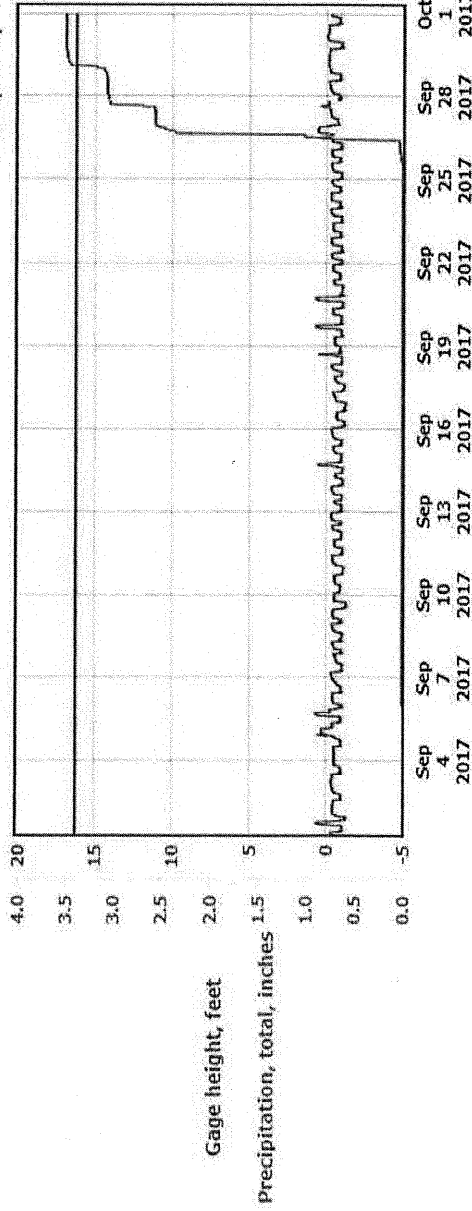
- 0.24  Gage height, [Lower Sensor]
- 16.22  Gage height, [Upper Sensor]
- 73.02  Precipitation

Period selected plot



USGS 08169740 Guadalupe Rv at Hwy 123-BR at Seguin, TX

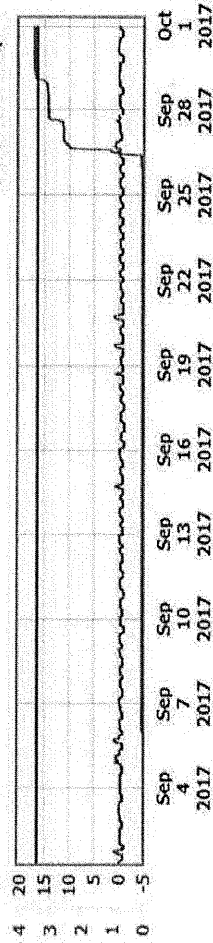
Zoom period plot  
Sunday Oct 1 2017 16:07



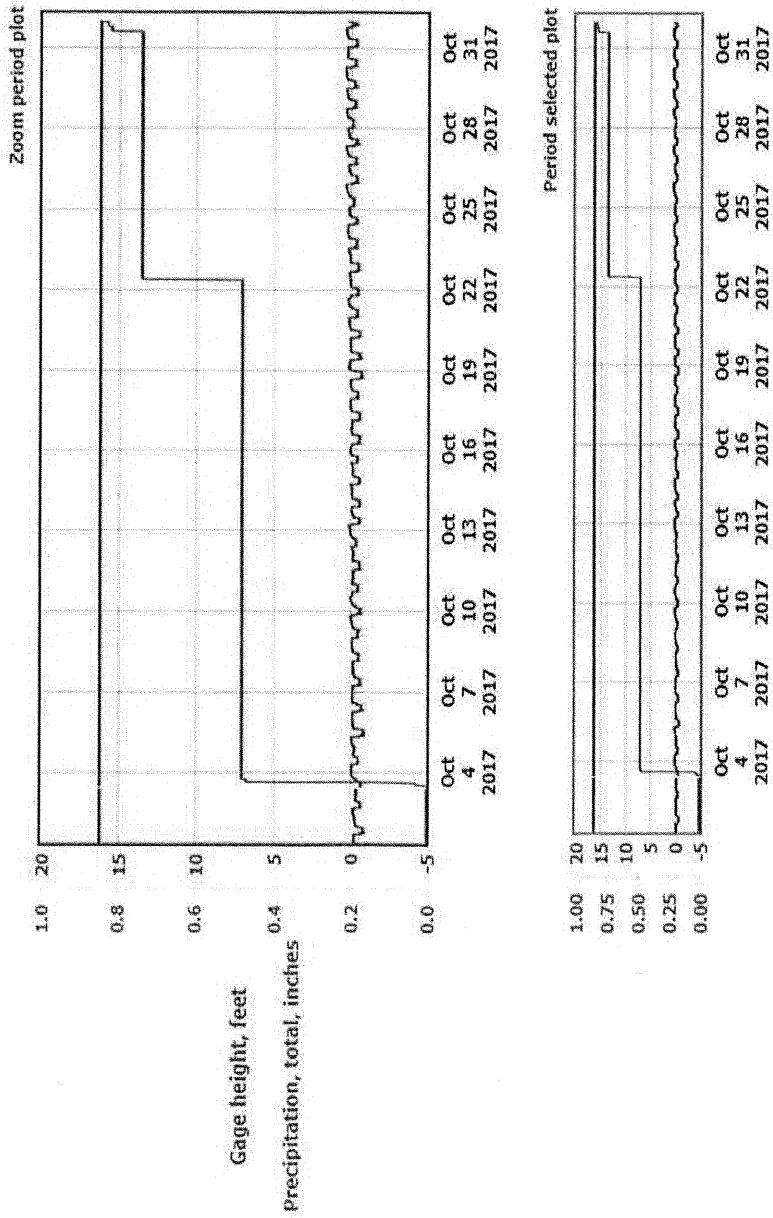
Explanation

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- 3.5  Precipitation

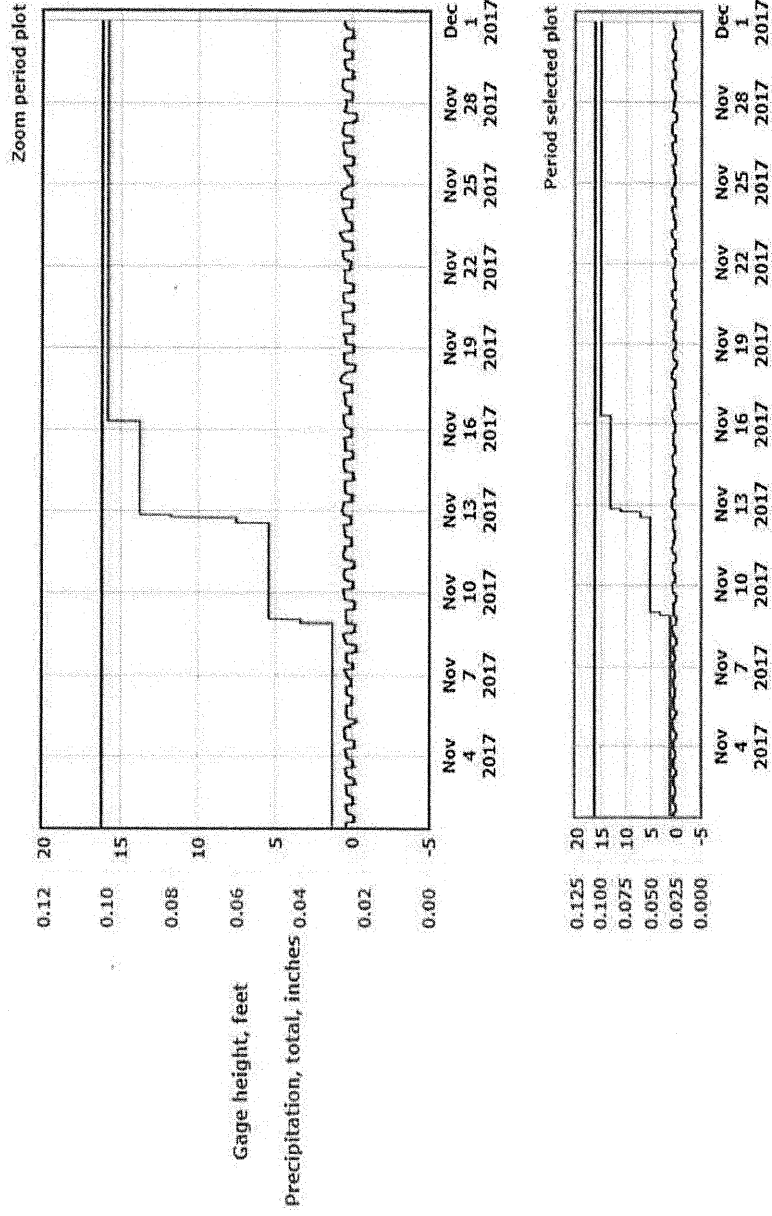
Period selected plot



USGS 08169740 Guadalupe Rv at Hwy 123-BR at Seguin, TX

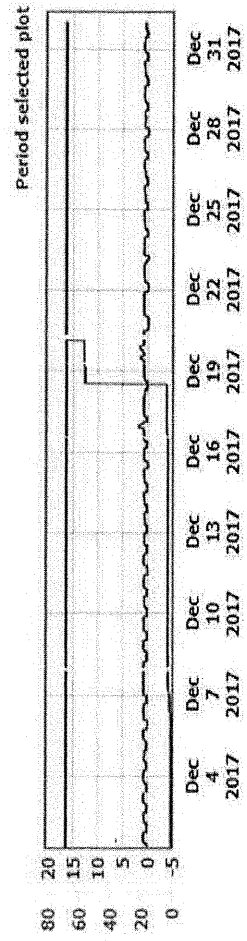
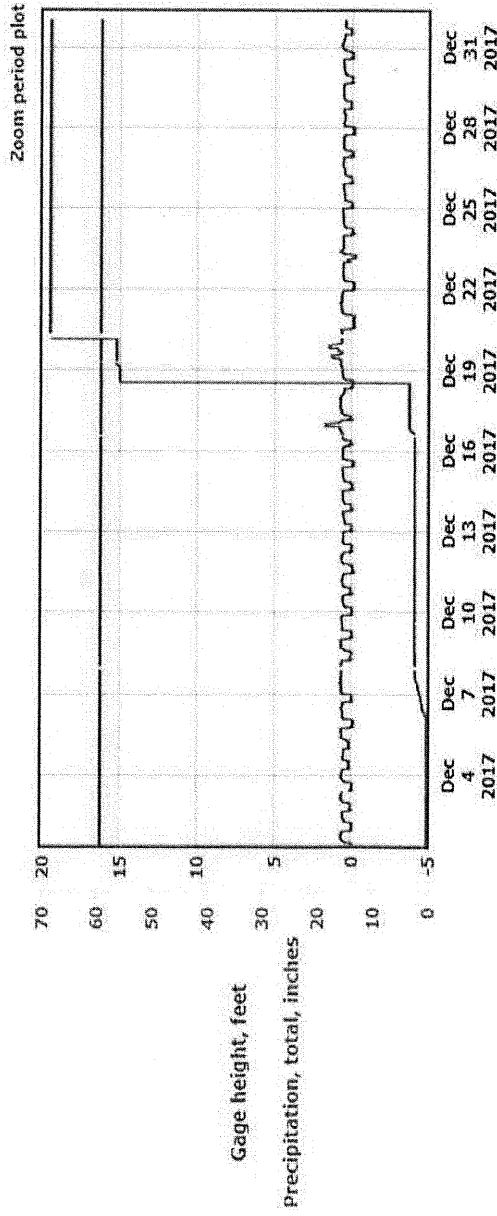


USGS 08169740 Guadalupe Rv at Hwy 123-BR at Seguin, TX





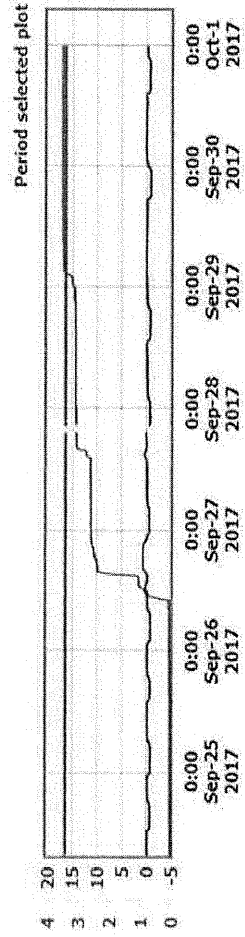
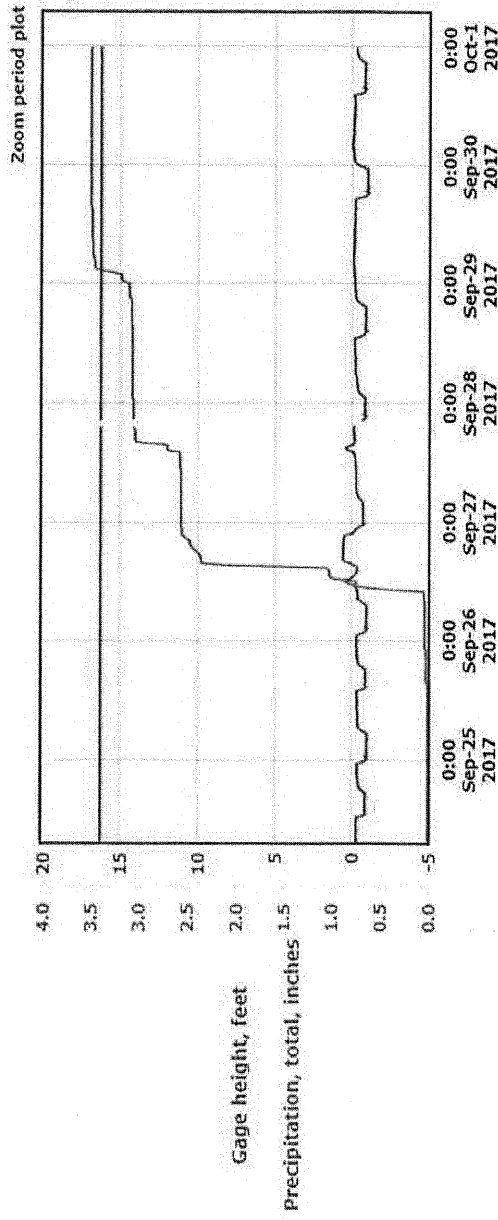
USGS 08169740 Guadalupe Rv at Hwy 123-BR at Seguin, TX



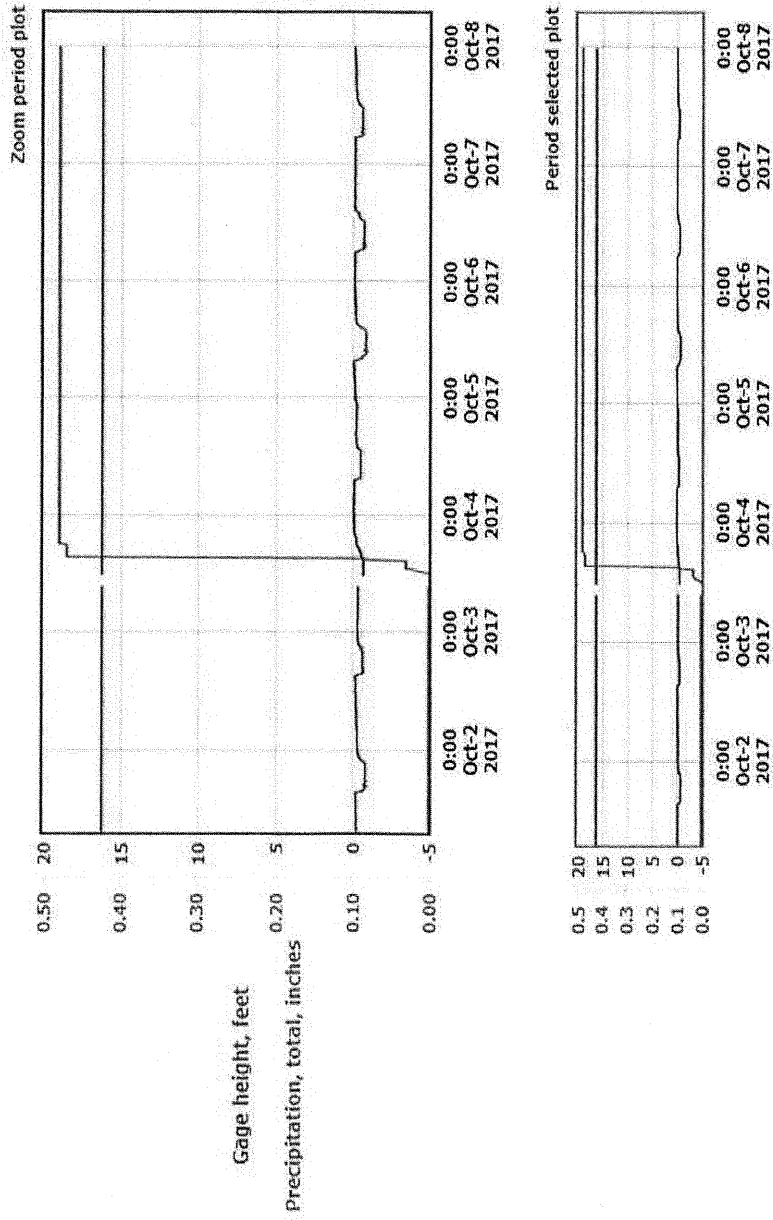
Explanation

- 0.4  Gage height, [Lower Sensor]
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- 68.58  Precipitation

USGS 08169740 Guadalupe Rv at Hwy 123-BR at Seguin, TX

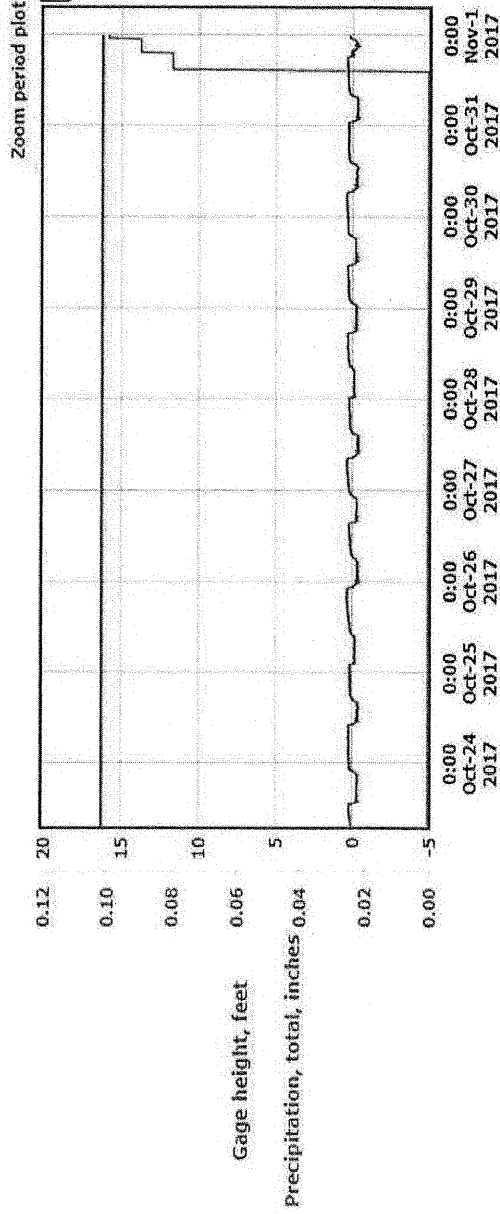


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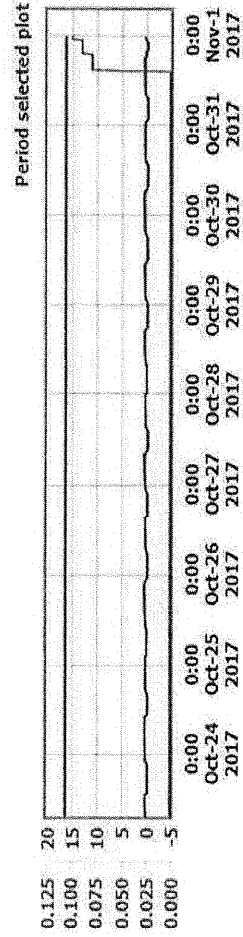
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Zoom period plot  
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Explanation

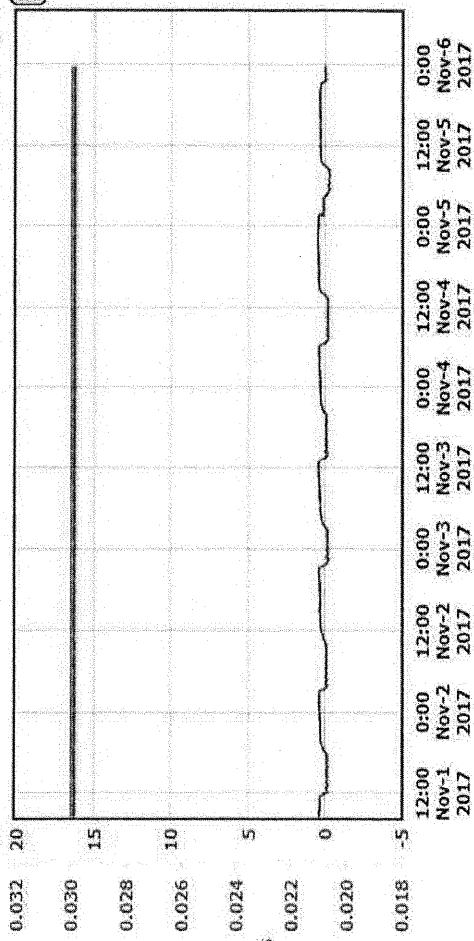
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- 16.23  Gage height, [Upper Sensor]
- 0  Precipitation



USGS 08169740 Guadalupe Rv at Hwy 123-BR at Seguin, TX

Monday Nov 6 2017 10:29

Zoom period plot



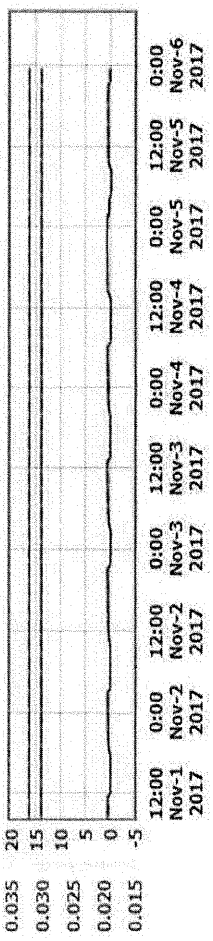
Gage height, feet

Precipitation, total, inches

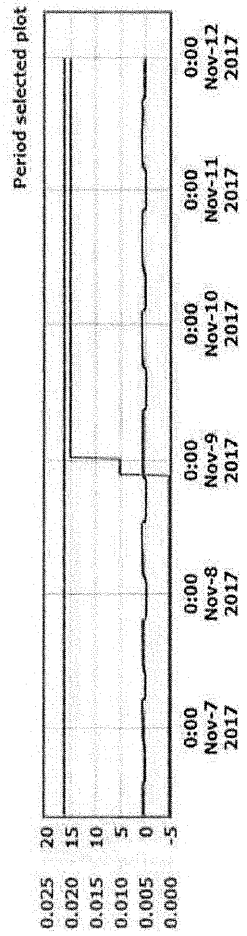
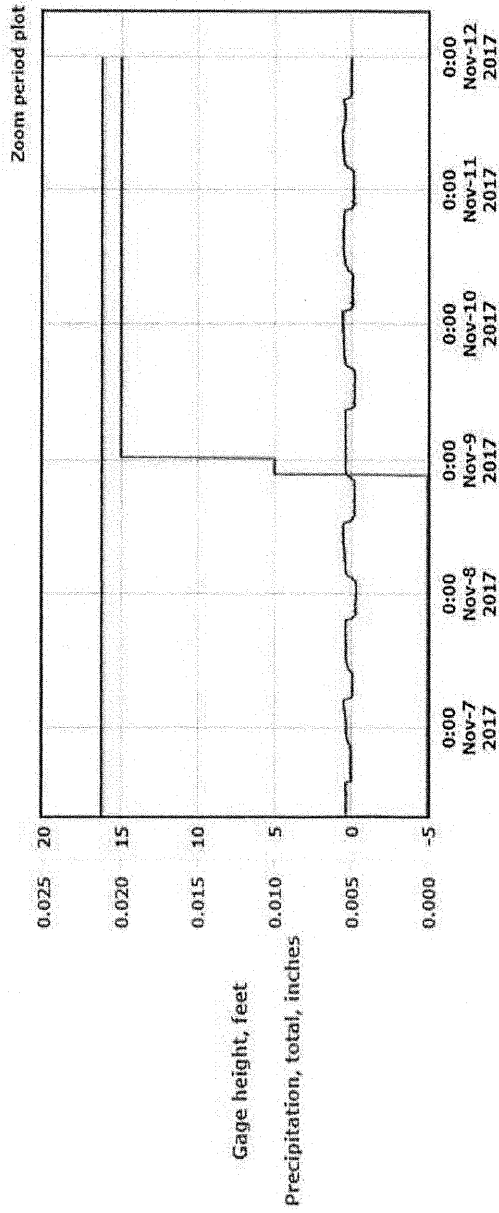
Explanation

- Gage height, [Lower Sensor]
- Gage height, [Upper Sensor]
- Precipitation

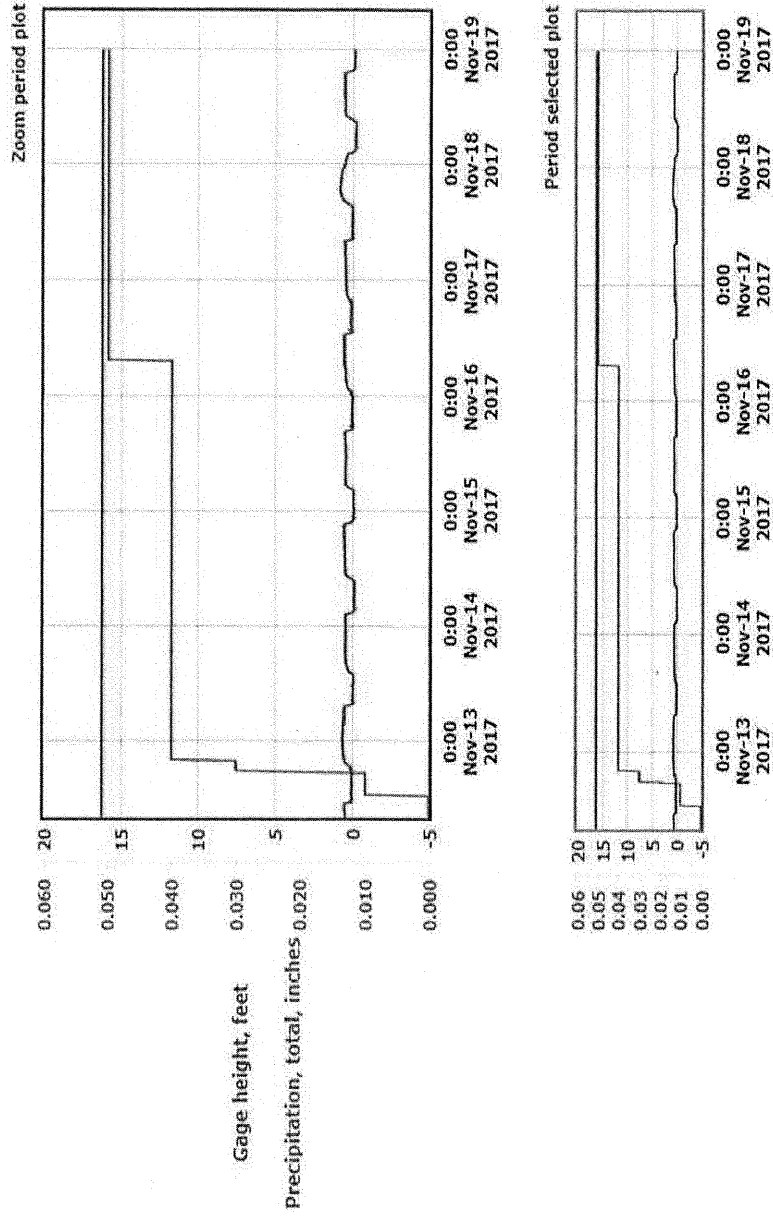
Period selected plot



USGS 08169740 Guadalupe Rv at Hwy 123-BR at Seguin, TX

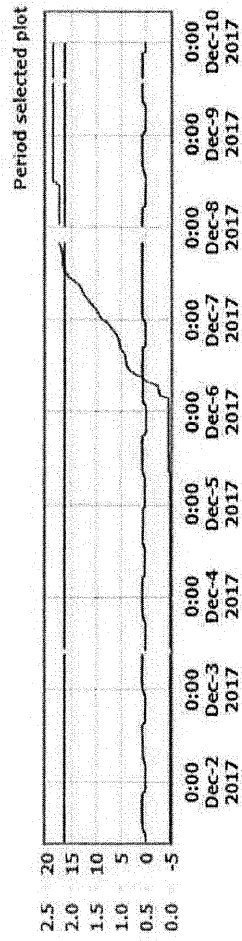
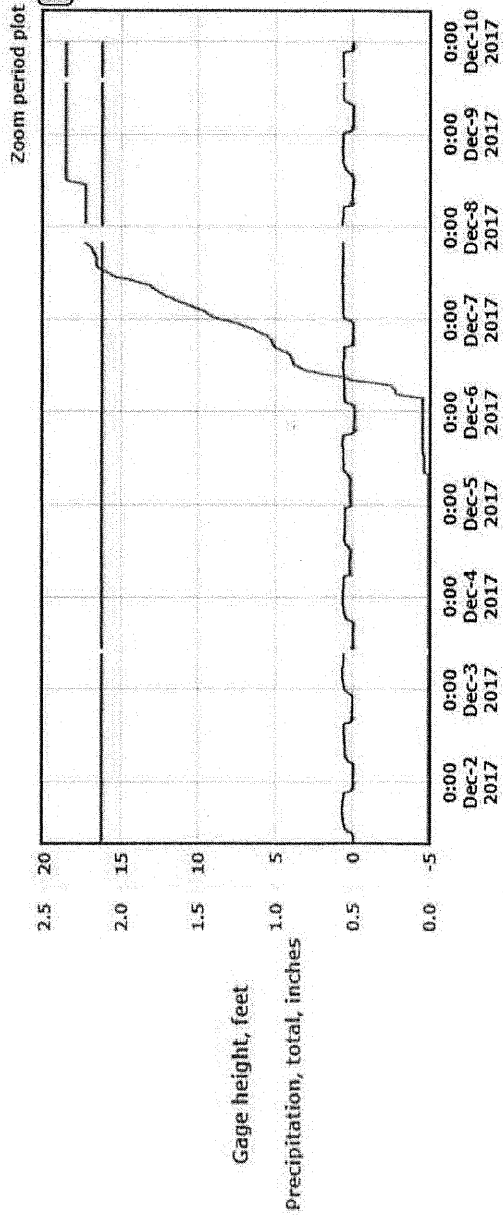


USGS 08169740 Guadalupe Rv at Hwy 123-BR at Seguin, TX



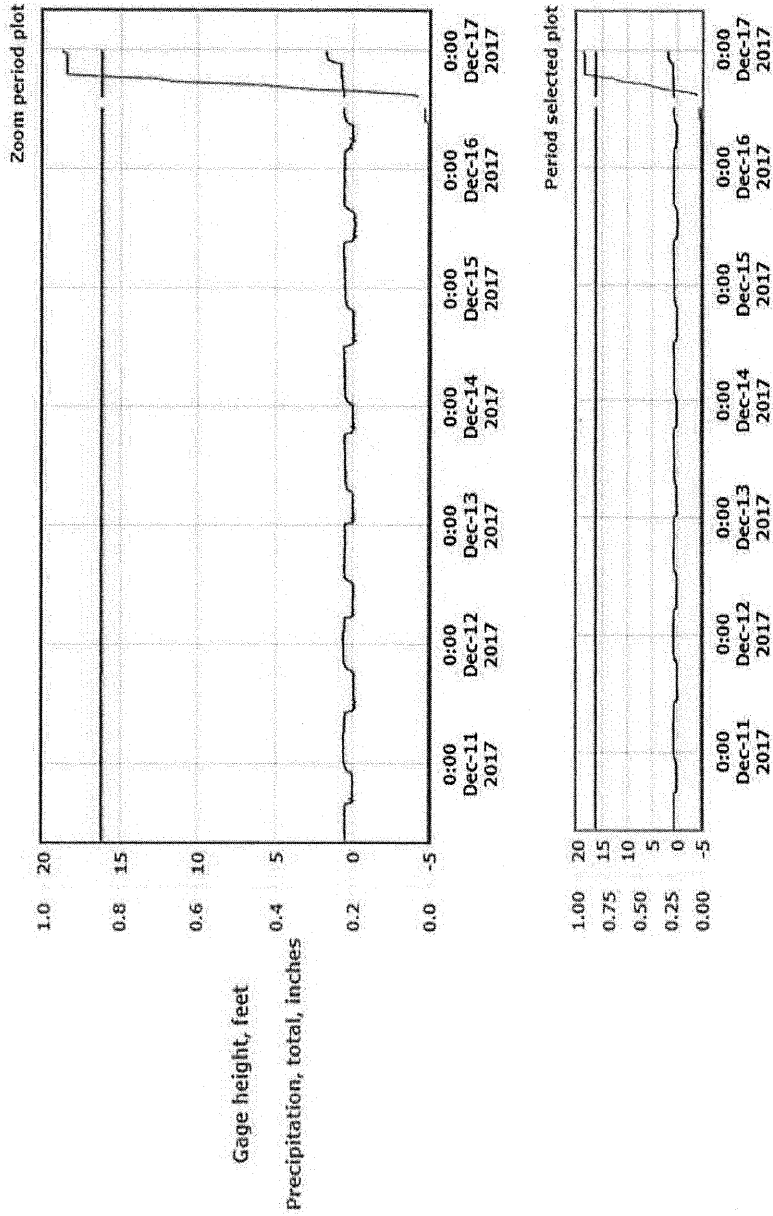
USGS 08169740 Guadalupe Rv at Hwy 123-BR at Seguin, TX

Monday Dec 11 2017 05:49





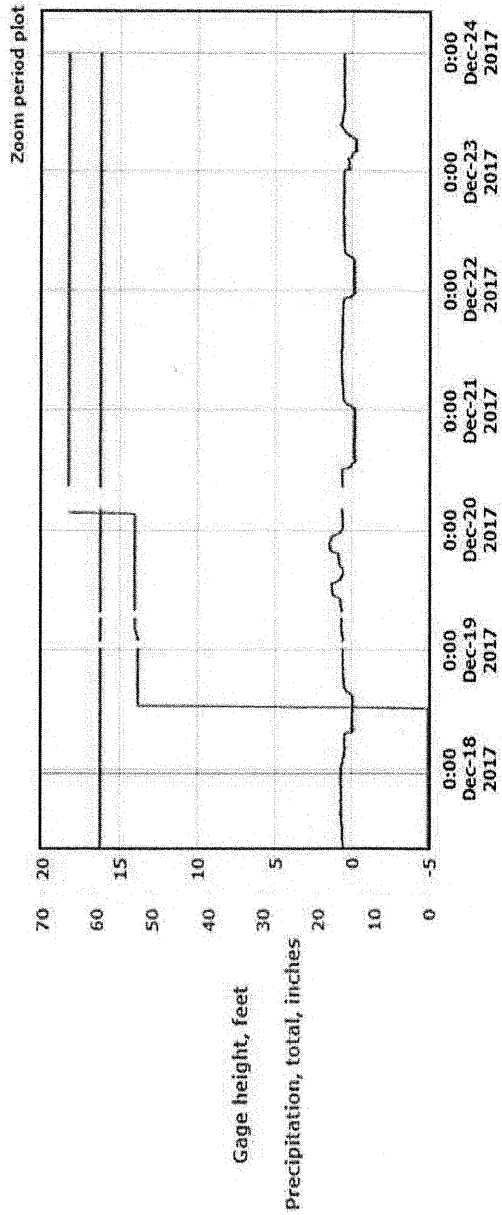
USGS 08169740 Guadalupe Rv at Hwy 123-BR at Seguin, TX



Explanation

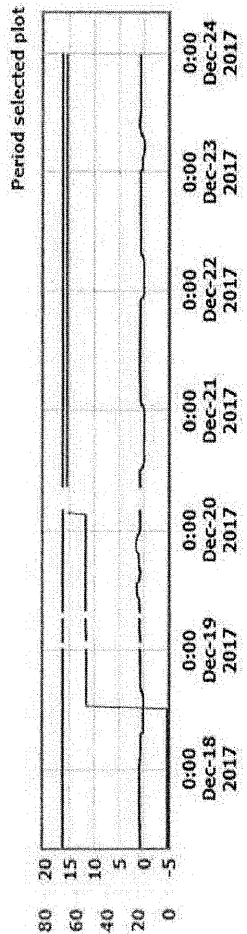
- Gage height, [Lower Sensor]
- Gage height, [Upper Sensor]
- Precipitation

USGS 08169740 Guadalupe Rv at Hwy 123-BR at Seguin, TX



Explanation

- 0.69  Gage height, [Lower Sensor]
- 16.22  Gage height, [Upper Sensor]
- 0  Precipitation



USGS 08169740 Guadalupe Rv at Hwy 123-BR at Seguin, TX

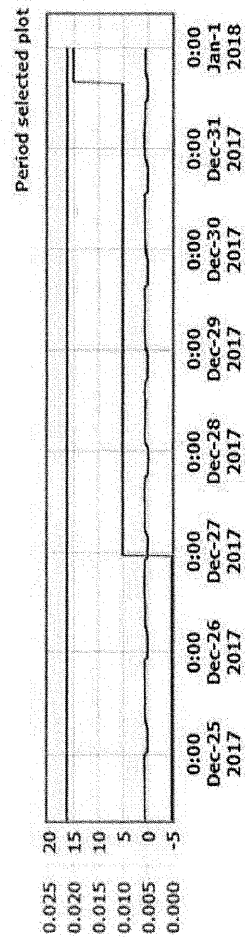
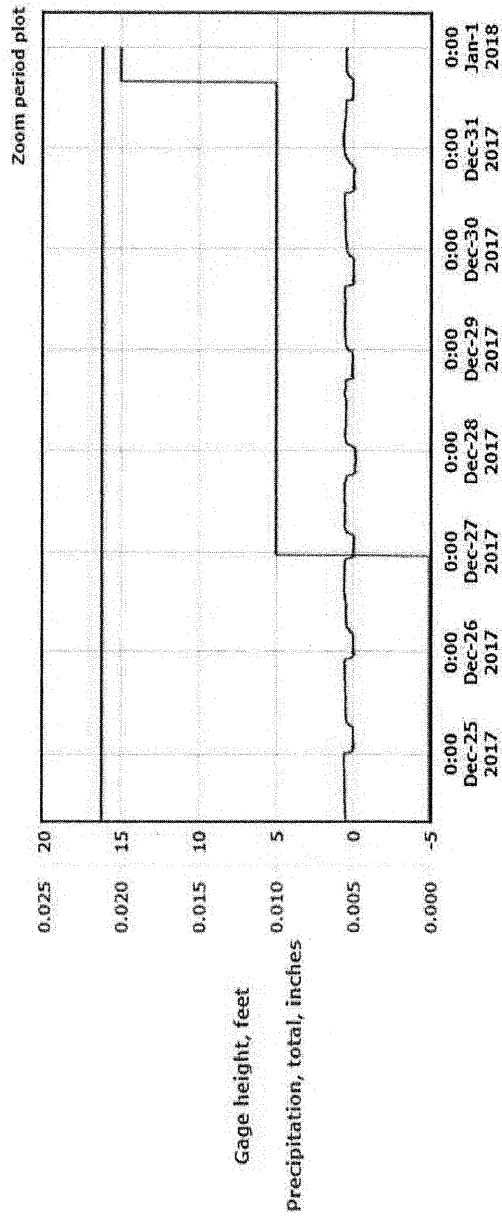


Exhibit B

# **AIA® Document G701™ – 2017**

## Change Order

<b>PROJECT: (Name and address)</b> Borgfeld Manor  206 West Borgfeld Road Cibola, TX 78108	<b>CONTRACT INFORMATION:</b> Contract For: New Construction of 136- units, 3-story wood frame rental apartment project with surface parking; including clubhouse, leasing facility, and common areas. Date: 04/10/2017	<b>CHANGE ORDER INFORMATION:</b> Change Order Number: 003  Date: 1/11/2018
<b>OWNER: (Name and address)</b> Borgfeld Housing, LP 330 West Victoria Street Gardena, CA 90248	<b>ARCHITECT: (Name and address)</b> Humphreys & Partners Architects, L.P. 5339 Alpha Road, Suite 300 Dallas, TX 75240	<b>CONTRACTOR: (Name and address)</b> HCHP Contractors, LP 330 West Victoria Street Gardena, CA 90248

**THE CONTRACT IS CHANGED AS FOLLOWS:**

*(Insert a detailed description of the change and, if applicable, attach or reference specific exhibits. Also include agreed upon adjustments attributable to executed Construction Change Directives.)*

Due to Change Order 2 of adding of 148 working construction days (Monday through Saturday) due to weather and city delays, the general conditions contract amount needs to be increased by \$43,626.00 to cover the additional days.

The original Contract Sum was	\$ 12,135,069.00
The net change by previously authorized Change Orders	\$ 72,838.00
The Contract Sum prior to this Change Order was	\$ 12,207,907.00
The Contract Sum will be increased by this Change Order in the amount of	\$ 43,626.00
The new Contract Sum including this Change Order will be	\$ 12,251,533.00
The Contract Time will be unchanged by Zero (0) days.	
The new date of Substantial Completion will be	

**NOTE:** This Change Order does not include adjustments to the Contract Sum or Guaranteed Maximum Price, or the Contract Time, that have been authorized by Construction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change Directive.

**NOT VALID UNTIL SIGNED BY THE ARCHITECT, CONTRACTOR AND OWNER.**


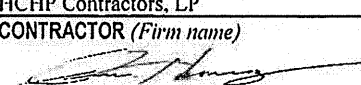
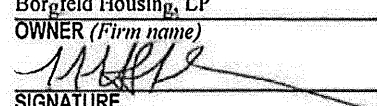
Humphreys & Partners Architects, L.P. ARCHITECT (Firm name)  SIGNATURE Peter N. Glabeaux, Construction Administrator/Architect PRINTED NAME AND TITLE 01/12/18 DATE	HCHP Contractors, LP CONTRACTOR (Firm name)  SIGNATURE Pierre Harispu, Vice President Construction PRINTED NAME AND TITLE 01/12/18 DATE	Borgfeld Housing, LP OWNER (Firm name)  SIGNATURE Mohannad H. Mohanna, Managing Member PRINTED NAME AND TITLE 1/12/18 DATE
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Exhibit C



# Document G701™ - 2017

## Change Order

**PROJECT:** *(Name and address)*  
Borgfeld Manor

206 West Borgfeld Road  
Cibolo, TX 78108

**OWNER:** *(Name and address)*  
Borgfeld Housing, L.P.  
330 West Victoria Street  
Gardena, CA 90248

**CONTRACT INFORMATION:**  
Contract For: New Construction of 136-  
units, 3-story wood frame rental apartment  
project with surface parking; including  
clubhouse, leasing facility, and common  
areas.  
Date: 04/10/2017

**ARCHITECT:** *(Name and address)*  
Humphreys & Partners Architects, L.P.  
5339 Alpha Road, Suite 300  
Dallas, TX 75240

**CHANGE ORDER INFORMATION:**  
Change Order Number: 004

Date: 1/11/2018

**CONTRACTOR:** *(Name and address)*  
HCHP Contractors, L.P.  
330 West Victoria Street  
Gardena, CA 90248

**THE CONTRACT IS CHANGED AS FOLLOWS:**

*(Insert a detailed description of the change and, if applicable, attach or reference specific exhibits. Also include agreed upon adjustments attributable to executed Construction Change Directives.)*


Due to Change Order 2 of adding of 148 working construction days (Monday through Saturday) due to weather and city delays, the General Liability Insurance and Builder's Risk for the project needs to be increased by \$68,728.00 to cover the additional days.

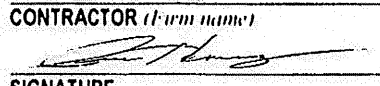
The original Contract Sum was	\$ 12,135,069.00
The net change by previously authorized Change Orders	\$ 116,464.00
The Contract Sum prior to this Change Order was	\$ 12,251,533.00
The Contract Sum will be increased by this Change Order in the amount of	\$ 68,728.00
The new Contract Sum including this Change Order will be	\$ 12,320,261.00

The Contract Time will be unchanged by Zero (0) days.  
The new date of Substantial Completion will be

**NOTE:** This Change Order does not include adjustments to the Contract Sum or Guaranteed Maximum Price, or the Contract Time, that have been authorized by Construction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change Directive.

**NOT VALID UNTIL SIGNED BY THE ARCHITECT, CONTRACTOR AND OWNER.**

Humphreys & Partners Architects, L.P.  
**ARCHITECT** *(Firm name)*  
  
**SIGNATURE**  
 James McLean  
 Administrator/Architect  
**PRINTED NAME AND TITLE**  
 01/12/18  
**DATE**

HCHP Contractors, L.P.  
**CONTRACTOR** *(Firm name)*  
  
**SIGNATURE**  
 Pierre Harispanu, Vice President  
 Construction  
**PRINTED NAME AND TITLE**  
 01/12/18  
**DATE**

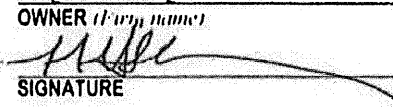
Borgfeld Housing, L.P.  
**OWNER** *(Firm name)*  
  
**SIGNATURE**  
 Mohammad H. Mohanna, Managing  
 Member  
**PRINTED NAME AND TITLE**  
 1/12/18  
**DATE**

Exhibit D





# Document G701™ – 2017

## Change Order

<b>PROJECT:</b> <i>(Name and address)</i> Borgfeld Manor  206 West Borgfeld Road Cibolo, TX 78108	<b>CONTRACT INFORMATION:</b> Contract For: New Construction of 136- units, 3-story wood frame rental apartment project with surface parking; including clubhouse, leasing facility, and common areas. Date: 04/10/2017	<b>CHANGE ORDER INFORMATION:</b> Change Order Number: 005  Date: 06/28/2018
<b>OWNER:</b> <i>(Name and address)</i> Borgfeld Housing, LP 330 West Victoria Street Gardena, CA 90248	<b>ARCHITECT:</b> <i>(Name and address)</i> Humphreys & Partners Architects, L.P. 5339 Alpha Road, Suite 300 Dallas, TX 75240	<b>CONTRACTOR:</b> <i>(Name and address)</i> HCHP Contractors, LP 330 West Victoria Street Gardena, CA 90248

**THE CONTRACT IS CHANGED AS FOLLOWS:**  
*(Insert a detailed description of the change and, if applicable, attach or reference specific exhibits. Also include agreed upon adjustments attributable to executed Construction Change Directives.)*

Increase line items to construction budget due to weather issues and labor and material costs increases. There are two line item decreases, 56-99-280 (Contractor Fee) and 32-01-312 (Project Manager).

See attached coding sheet for the updates.

The original Contract Sum was	\$ 12,135,069.00
The net change by previously authorized Change Orders	\$ 185,192.00
The Contract Sum prior to this Change Order was	\$ 12,320,261.00
The Contract Sum will be increased by this Change Order in the amount of	\$ 1,165,177.72
The new Contract Sum including this Change Order will be	\$ 13,485,438.72

The Contract Time will be unchanged by Zero (0) days.  
The new date of Substantial Completion will be

**NOTE:** This Change Order does not include adjustments to the Contract Sum or Guaranteed Maximum Price, or the Contract Time, that have been authorized by Construction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change Directive.

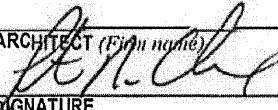
**NOT VALID UNTIL SIGNED BY THE ARCHITECT, CONTRACTOR AND OWNER.**

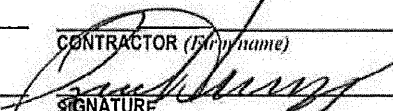
Humphreys & Partners Architects, L.P.

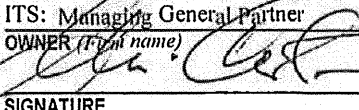
HCHP Contractors, LP

Borgfeld Housing, LP

BY: Highridge Costa Housing, LLC,  
a Delaware limited liability company,  
ITS: Managing General Partner

\_\_\_\_\_  
ARCHITECT *(Print name)*  
  
SIGNATURE

\_\_\_\_\_  
CONTRACTOR *(Print name)*  
  
SIGNATURE

\_\_\_\_\_  
OWNER *(Print name)*  
  
SIGNATURE

Peter N. Clabeaux, Construction  
Administrator/Architect  
PRINTED NAME AND TITLE

Pierre Harisuru, Vice President  
Construction  
PRINTED NAME AND TITLE

Michael A. Costa, Chief Executive Officer  
PRINTED NAME AND TITLE

7/05/18  
DATE

7-2-18  
DATE

7-2-18  
DATE

General Contractor Change Order 5 Detailed Coding Sheet

Demolition Budget				
Coding	Description	Original Contract AMT	Increase AMT	Total Budget AMT
22-02-221	Demolition	50,000.00	27,000.00	77,000.00

On-Site Budget				
Coding	Description	Original Contract AMT	Increase AMT	Total Budget AMT
24-02-312	Finish Grading	5,000.00	97,807.00	102,807.00
24-02-313	Fine Grading	-	116,193.00	116,193.00
24-02-751	Concrete Pavement	90,000.00	89,000.00	179,000.00
24-02-761	Pavement Striping/Tactile Warnings	20,000.00	6,262.80	26,262.80

Base Construction Budget				
Coding	Description	Original Contract AMT	Increase AMT	Total Budget AMT
28-03-541	Lightweight Concrete Underlayment	130,000.00	65,221.00	195,221.00
28-04-731	Simulated Stone Veneer	250,000.00	50,000.00	300,000.00
28-06-201	Finish Carpentry	200,000.00	89,368.29	289,368.29
28-09-221	Exterior Plaster	475,000.00	57,499.00	532,499.00
28-09-911	Painting (Interior)	197,000.00	25,500.00	222,500.00
28-11-451	Appliances	255,000.00	7,941.00	262,941.00
28-15-101	Plumbing	834,000.00	21,000.00	855,000.00
28-15-701	HVAC	520,000.00	90,850.00	610,850.00
28-16-201	Electrical	504,394.00	261,945.00	766,339.00
28-16-511	Electrical Fixtures	30,000.00	150,000.00	180,000.00

Exterior Common Area Budget				
Coding	Description	Original Contract AMT	Increase AMT	Total Budget AMT
30-02-776	Concrete Sidewalks/Pool Decks	25,000.00	34,633.06	59,633.06
30-02-791	Recreation Amenities (Horse Shoe Pit)	-	10,000.00	10,000.00
30-02-791	Recreation Amenities (Bocce Ball Court)	-	10,000.00	10,000.00
30-02-871	Outdoor Furniture (Benches, Planters, Trash Receptacle)	-	12,000.00	12,000.00
30-02-823	Dog Park Fence (New Line Item)	-	10,000.00	10,000.00
30-02-901	Landscape Planting (Materials)	30,000.00	137,537.52	167,537.52
30-04-222	Trash Enclosures (Concrete Masonry Units)	10,000.00	9,000.00	19,000.00
30-06-103	Trellis/Pergolas	-	34,000.00	34,000.00
30-10-401	Building Signage (Allowance)	9,000.00	11,000.00	20,000.00
30-10-431	Exterior Monument Signage	5,000.00	6,000.00	11,000.00
30-11-452	Barbeque Equipment / Outdoor Kitchen	-	20,000.00	20,000.00
30-13-151	Pool	40,000.00	12,705.05	52,705.05
24-02-621	Deck Drains	-	9,000.00	9,000.00

Contractor Fee Budget				
Coding	Description	Original Contract AMT	Decrease AMT	Total Budget AMT
56-99-280	Contractor Fee	830,868.00	(330,868.00)	500,000.00

General Requirements Budget				
Coding	Description	Current Budget AMT	Change AMT	Total Budget AMT
32-01-312	Project Manager	163,626.00	(43,626.00)	120,000.00
32-99-620	Insurance	151,566.00	68,209.00	219,775.00



November 30, 2018

Andrew Sinnott  
Multifamily Direct Loan Program Administrator  
Texas Department of Housing and Community Affairs  
221 E. 11th Street  
Austin, TX 78701

RE: TDHCA #18509 El Sereno Senior Apartments (aka Borgfeld Manor) – Request for Funding Under TDHCA MDL NOFA (3<sup>rd</sup> Amendment)

Dear Mr. Sinnott,

We hereby request \$1,140,000 a loan under the Supportive Housing set-aside of the above-referenced Notice of Funding Availability. As the El Sereno is currently under construction, we have requested a waiver of certain 3<sup>rd</sup> party report requirements, under separate cover.

The El Sereno construction schedule has been severely impacted by weather and cost increases, resulting in a funding shortfall; our request for TCAP RF funding comes in an effort to offset this shortfall. In addition to this request, we have submitted two requests for consideration at the December 6 TDHCA Board of Directors meeting: First, we have requested approval to for a change in ownership structure in order to qualify for a 50% property tax exemption (see Board Action Request #1 uploaded to MF Serve-U). Second, we requested an extension of Placed in Service deadline in a major disaster area (see Board Action Request #2).

Together, the three submissions represent our request for assistance after having stepped forward and contributed over \$600,000 in order to keep construction progress moving forward. We greatly appreciate your consideration in this matter.

Please direct any questions to Simon Fraser, Project Manager, at 424-258-2914 or [simon.fraser@housingpartners.com](mailto:simon.fraser@housingpartners.com).

Sincerely,

Mohannad H. Mohanna  
Its Managing Member

## Andrew Sinnott

---

**From:** Bandla, Raj <Raj.Bandla@lockelord.com>  
**Sent:** Monday, March 18, 2019 3:02 PM  
**To:** Monte Heaton; Andrew Sinnott; Simon Fraser  
**Cc:** Bast, Cynthia L.  
**Subject:** RE: El Sereno [18509] - RFI 4 Responses

Hi Andrew,

I will let our client discuss the specifics of the increase in cost, which I understand to be related to damage sustained during Hurricane Harvey. I expect that if our client has not done so already that they will provide the revised cost schedule as supporting material for the increased costs and their origin and that our client will also provide an updated pro forma of operating costs if that has not been already provided. Finally, I believe you have been provided evidence of Bank of America's acknowledgment of the permanent loan increase to the maximum amount of the permanent loan.

Regarding your request to confirm that the TCAP RF funds would not be used to cover costs that have been paid for by another source, please see the below explanation and feel free to contact me with any further questions or clarifications:

As mentioned above, the increase in costs incurred for this project were the result of additional work that had to be done after the project suffered damage from a natural disaster. The partnership had initially attempted to obtain debt financing to fund the additional costs but was unable to because the property would have fallen "out of balance" as defined by its existing loan documents. The partnership was also unable to obtain any additional equity or grant financing to fund the additional costs. As a result, the general partner of the partnership provided temporary funding to the partnership in order to fund accruing additional expenses, as bridge financing until the partnership was able to secure an external source of funds. I understand that our client has draws and cost reports to confirm that the general partner's funding was provided on an ad hoc basis as costs arose.

The partnership has been essentially self-funding its additional accrued expenses without a source to pay for them. To the extent that any TCAP RF funds are used to repay debt, such repayment would only be on the emergency funding that the general partner has put into the partnership in lieu of an available source of funding, as described above. The property would have lost financial feasibility without the general partner taking the above-described actions. Further, we understand that the property would lose its financial feasibility without the addition of TCAP funds.

Our client's request has been limited to an amount that reflects the amount necessary to pay unforeseen additional expenses that would not otherwise be covered by another source, which will be reflected in the sources and uses schedule provided to you by our client.

Please feel free to contact me with any additional questions that you may have on this.

Thank you,  
Raj

**Raj Bandla**  
Attorney  
**Locke Lord LLP**  
600 Congress Avenue, Suite 2200  
Austin, TX 78701  
T: 512-305-4749  
F: 512-391-4730  
[raj.bandla@lockelord.com](mailto:raj.bandla@lockelord.com)  
[www.lockelord.com](http://www.lockelord.com)



March 8, 2019

Andrew Sinnott  
Multifamily Direct Loan Program Administrator  
Texas Department of Housing and Community Affairs  
221 E. 11th Street  
Austin, TX 78701

RE: TDHCA #18509 El Sereno Senior Apartments – Waiver Request

Dear Mr. Sinnott,

El Sereno (fka Borgfeld Manor) #16128 was awarded 9% LIHTC in 2016 as a new construction senior community. The El Sereno Apartments is located in and was impacted by a major disaster area, as declared by the President on August 25, 2017 and as designated by FEMA on October 11, 2017. The project delays and construction cost increases attendant to these events were unforeseen and out of our control. As such, we are requesting a waiver of the following initial underwriting related third party reports:

1. Market Study
  1. A Market Study was submitted in accordance with the guidelines of the 2016 9% LIHTC application
  2. We have 38 units occupied and an interest list approaching 600 households.
  3. The building has received a temporary certificate of occupancy
2. Environmental Site Assessment (ESA)
  1. An ESA was submitted in accordance with the guidelines of the 2016 9% LIHTC application
  2. The building has received a temporary certificate of occupancy
3. Environmental Clearance
  1. The plans received environmental clearance prior to building permits being issued.
4. Appraisal
  1. An appraisal was submitted in accordance with the guidelines of the 2016 9% LIHTC application
5. Site Design and Development Report
  1. Site Design and Development Report was reviewed and approved in accordance with the guidelines of the 2016 9% LIHTC application
  2. The building has received a temporary certificate of occupancy

The need for these waivers was both not foreseeable and preventable in accordance with 10 TAC 10.207(1). The waivers, should they be granted, further the purposes of Tex. Gov't Code, §§2306.001, 2306.002, 2306.359, and 2306.6701 in accordance with 10 TAC 10.207(2). Specifically, the waiver will enable us to provide seniors of low, very low, and extremely low income in Cibolo with a decent, safe and affordable living environment.

Please direct any questions to Simon Fraser, Project Manager, at 424-258-2914 or [simon.fraser@housingpartners.com](mailto:simon.fraser@housingpartners.com).

Sincerely,



Mohannad H. Mohanna  
Its Managing Member

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**BORGFELD HOUSING, LP**

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**AMENDED AND RESTATED AGREEMENT  
OF LIMITED PARTNERSHIP**

**Dated as of April 26, 2017**

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## **BORGFELD HOUSING, LP**

AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP dated as of April 26, 2017, among HIGHRIDGE COSTA HOUSING, LLC, a Delaware limited liability company, as Managing General Partner (the “Managing General Partner”); BORGFELD HOUSING GP, LLC, a Delaware limited liability company, as Administrative General Partner (the “Administrative General Partner”); BANK OF AMERICA, N.A., a national banking association, as Investor Limited Partner (the “Investor Limited Partner”); BANC OF AMERICA CDC SPECIAL HOLDING COMPANY, INC., a North Carolina corporation, as Special Limited Partner (the “Special Limited Partner”); and VICTORIA CAPITAL, LLC, a California limited liability company, as the Withdrawing Limited Partner (the “Withdrawing Limited Partner”).

### **Preliminary Statement**

The Partnership was formed as a limited partnership under the Uniform Act pursuant to an Agreement of Limited Partnership dated as of April 26, 2017, (the “Original Partnership Agreement”) and a Certificate of Formation (the “Certificate”) filed with the Office of the Secretary of State of the State of Texas (the “Filing Office”) on September 6, 2016.

The purposes of this amendment to, and restatement of, the Original Partnership Agreement is to (i) admit the Investor Limited Partner, and the Special Limited Partner as Partners, (ii) provide for the withdrawal of the Withdrawing Limited Partner as Limited Partner, and (iii) to set out more fully the rights, obligations, and duties of the Partners.

Now, therefore, it is agreed and certified, and the Original Partnership Agreement is hereby amended and restated in its entirety, as follows:

### **ARTICLE I**

#### **DEFINED TERMS**

The defined terms used in this Agreement shall have the meanings specified below:

“Accountants” means CohnReznick LLP, Novogradac and Company, LLP, or any other firm of certified public accountants as may be engaged by the General Partners with the Consent of the Investor Limited Partner, which consent shall not be unreasonably withheld, conditioned or delayed.

“Adjusted Aggregate Federal Low Income Tax Credit Amount” means the product of (i) 99.99% and (ii) the aggregate amount of Federal Low Income Tax Credits that is determined by the Accountants, at Cost Certification, to be available to the Property (and is reflected in the final IRS Form(s) 8609 for the Property) for the entire Credit Period, as such amount may be increased or decreased as a result of a subsequent determination by the Accountants, a Final Determination or a Recapture Event.

“Administrative General Partner” means Borgfeld Housing GP, LLC, a Texas limited liability company.

“Admission Date” means the date on which the Investor Limited Partner is admitted to the Partnership pursuant to Section 13.8.

“Adverse Consequences” means (i) all damages, dues, penalties, fines, costs, reasonable amounts paid in settlement, liabilities, obligations, taxes, liens, losses, expenses and fees, including court costs and reasonable attorneys’ fees and expenses actually paid, or reasonably expected to be paid, by the party suffering the Adverse Consequences in connection with any and all actions, suits, proceedings, hearings, investigations, charges, complaints, claims, demands, injunctions, judgments, orders, decrees, and rulings and (ii) the costs of any fees or other compensation to third parties reasonably required in connection with replacement of a General Partner.

“Affiliate” means, when used with reference to a specified Person: (i) any Person that, directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with the specified Person; (ii) any Person that is an officer of, partner in, or trustee of, or serves in a similar capacity with respect to the specified Person or of which the specified Person is an officer, partner, or trustee, or with respect to which the specified Person serves in a similar capacity; (iii) any Person that, directly or indirectly, is the beneficial owner of, or controls, 10% or more of any class of equity securities of, or otherwise has a substantial beneficial interest (10% or more) in, the specified Person, or of which the specified Person is directly or indirectly the owner of 10% or more of any class of equity securities, or in which the specified Person has a substantial beneficial interest (10% or more); and (iv) any relative or spouse of the specified Person that is a natural person. Affiliate of the Partnership or a General Partner does not include a Person who is a partner in a partnership or joint venture with the Partnership unless that Person is otherwise an Affiliate of the Partnership or General Partner.

“After-Tax Basis” means with respect to any payment to be received by a Person (or, in the case of a passthrough entity, the partners or members of such Person), the amount of such payment supplemented by a further payment or payments so that, after deducting from such payments the amount of all Taxes (net of any current credits, deductions or other tax benefits arising from the payment by such Person (or its partners or members) of any amount, including Taxes, for which the payment to be received is made) imposed currently on such Person by any Governmental Authority or other taxing authority with respect to such payments, the balance of such payments shall be equal to the original payment received; provided, however, for the purposes of this definition, and for purposes of any payment to be made to a Person (or its partners or members) on an After-Tax Basis, it shall be assumed that federal, state and local taxes are payable at the actual marginal federal and state statutory income tax rate (taking into account the deductibility of state income taxes for federal income tax purposes) applicable to such Person.

“Agreement” means this Amended and Restated Agreement of Limited Partnership, as amended from time to time.

“Appraised Value” means, as of the Determination Date, the estimated fair market value of an asset determined by an Independent Appraiser in accordance with the procedures set forth in Section 7.7F. In determining the Appraised Value of the real estate comprising the Property, such Independent Appraiser shall take into account the rent and occupancy restrictions affecting

the Project which are set forth in the Code or in the Project Documents, as well as any increase in real estate taxes which is triggered by the removal of a General Partner.

“Architect” means Humphreys & Partners Architects, L.P., and its successors.

“Asset Management Fee” means an annual fee payable to the Special Limited Partner equal to \$7,500 per year, earned on an annual basis, beginning on the first day of the first month following Permanent Mortgage Commencement (with a pro-rata share of such fee earned for any partial calendar year) and increasing annually at a rate of 3%. The Asset Management Fee is payable solely from available Cash Flow and Capital Transaction Proceeds as provided in Section 10.1A and 10.1B and shall accrue, without interest, until there is sufficient cash available to pay accrued Asset Management Fee as set forth in Section 10.1A and 10.1B.

“Assignment” shall mean any assignment, transfer or sale, and the words “assign,” “assignee” and “assignor” shall have correlative meanings, except in each case where the sense of this Agreement requires a different construction.

“Builder” means HCHP Contractors, LP, and its successors.

“Building” or “Buildings” means any or all of the buildings to be located on the Land which, in the aggregate, will contain 136 dwelling units upon completion of construction.

“Capital Account” means, with respect to any Partner, the Capital Account maintained by the Partnership with respect to such Partner, consisting of (i) the amount of cash such Partner has contributed to the Partnership *plus* (ii) the fair market value of any property such Partner has contributed to the Partnership net of liabilities assumed by the Partnership or to which such property is subject *plus* (iii) the amount of profits and tax-exempt income allocated to such Partner *less* (iv) the amount of losses allocated to such Partner *less* (v) the amount of all cash distributed to such Partner *less* (vi) the fair market value of any property distributed to such Partner net of liabilities assumed by such Partner or to which such property is subject *less* (vii) such Partner’s share of any other expenditures which are not deductible by the Partnership for federal income tax purposes or which are not allowable as additions to the basis of Partnership property, and subject to such other adjustments as may be required under the Code.

“Capital Contribution” means the total amount of cash contributed or agreed to be contributed to the Partnership by each Partner as shown in the Schedule. Any reference in this Agreement to the Capital Contribution of a then Partner shall include a Capital Contribution previously made by any prior Partner in respect to the Partnership interest of such then Partner. The term “Capital Contribution” shall include any Special Capital Contribution.

“Capital Transaction” means any transaction the proceeds of which are not includable in determining Cash Flow, including without limitation the sale, refinancing or other disposition of all or substantially all of the assets of the Partnership, but excluding loans to the Partnership (other than a refinancing of any Mortgage Loan) and contributions of capital to the Partnership by the Partners.

“Carryover Allocation” means the Carryover Allocation to be entered into by and between the Credit Agency and the Partnership providing for an allocation of \$15,000,000 Tax Credits to the Project in the annual amount of not less than \$1,500,000.

“Cash Available for Debt Service Requirements” means, for any specified period of consecutive months beginning not earlier than the Completion Date, the excess of (i) all Cash Receipts during such period over (ii) all cash requirements of the Partnership properly allocable to such period of time on an accrual basis (not including distributions or fees to Partners payable solely out of Cash Flow of the Partnership) and, on an annualized basis, all projected expenditures, including those of a seasonal nature which might reasonably be expected to be incurred on an unequal basis during a full annual period of operation, as determined by the Accountants but specifically excluding Debt Service Requirements. For purposes of this definition, (i) cash requirements of the Partnership shall include to the extent not otherwise covered above, full funding of reserves that are not part of Debt Service Requirements, normal repairs and necessary capital improvements (not including those paid from reserves that are already included as an expense) and (ii) if free rent or other rental concessions shall have been granted to tenants, the calculation of rental revenues under clause (i) of the preceding sentence shall be adjusted so that the effect of such concessions is amortized equally over the term of all leases (excluding renewal periods) to which they apply.

“Cash Flow” means the excess of Cash Receipts over Operating Expenses. Cash Flow shall be determined separately for each Fiscal Year or portion thereof.

“Cash Receipts” means with respect to a Fiscal Year or other applicable period, all cash receipts, from whatever source derived during such period, including rental revenue, laundry income, parking revenue, and other incidental revenues which are received by the Partnership on a cash basis during such period and arise from normal operations of the Project but specifically excluding interest on Partnership reserves, proceeds from insurance (other than business or rental interruption insurance), loans, proceeds of a Capital Transaction or Capital Contributions. In addition, any amount released without restriction from any escrow account in a Fiscal Year shall be considered a cash receipt of the Partnership for such Fiscal Year.

“Certificate” means the certificate of formation of the Partnership under the Uniform Act, as amended from time to time in accordance with the terms hereof and the Uniform Act.

“Code” means the Internal Revenue Code of 1986, as amended from time to time, and the Treasury Regulations promulgated thereunder at the time of reference thereto.

“Completion Date” means the latest of: (i) the date on which the Investor Limited Partner shall have received copies of all requisite certificates or permits permitting occupancy of 100% of the Units in the Project as issued by each Governmental Agency having jurisdiction; *provided, however,* that if such certificates or permits are of a temporary nature, the “Completion Date” shall not be deemed to have occurred unless that work remaining to be done is of a nature which would not impair the permanent occupancy of any of such Units; (ii) the date as of which the Construction Inspector or Architect certifies that the work to be performed by the Builder under the Construction Contract is substantially complete, subject only to punch list items not in excess of \$150,000 in the aggregate, and that such work has been performed in a good and workmanlike

manner in accordance with applicable requirements of all Governmental Authorities having jurisdiction over the Project and the Construction Documents; (iii) the Builder has delivered a lien waiver with respect to work performed and/or materials supplied through the Completion Date and for which it has been paid to date, and (iv) environmental remediation of the Property, if any, has been completed in accordance with the requirements of any Governmental Authority having jurisdiction over the Project. Any representation by any General Partner under this Agreement that the Completion Date has occurred shall be subject to confirmation by the Investor Limited Partner pursuant to a physical inspection of the Property; *provided, however*, that in the event that the Investor Limited Partner does not make such physical inspection of the Property within ten (10) business days after having received any such General Partner's representation, then the Investor Limited Partner will be deemed to have waived the physical inspection requirement.

*"Completion Loan"* has the meaning set forth in Section 6.7.

*"Compliance Period"* means the entire period during which the "compliance period" described in Section 42(i)(1) of the Code shall be applicable to any Building.

*"Condemnation Awards"* means any and all judgments, awards of damages (including severance and consequential damages), payments, proceeds, settlements, amounts paid for a taking in lieu of condemnation of the Property, or other compensation heretofore or hereafter made, including interest thereon, and the right to receive the same, as a result of, or in connection with, any condemnation or threatened condemnation of the Property.

*"Consent of the Investor Limited Partner"* means the prior written consent or approval of the Investor Limited Partner, or, if at any time there is more than one Investor Limited Partner, the prior written consent or approval of at least 51% in interest of the Investor Limited Partners.

*"Construction Contract"* means the construction contract between the Partnership and the Builder providing for the construction of the Improvements, as amended from time to time.

*"Construction Documents"* means the Construction Contract, including, without limitation, the general conditions, project manual (including general requirements and technical specifications, drawings or sketches), the Plans and Specifications, and any addenda thereto, together with all trade contracts pursuant to which construction of the Improvements will be accomplished. Any conflict between one or more Construction Documents shall be resolved in accordance with the precedence of documents set forth in the Construction Contract.

*"Construction Inspector"* means the Person performing construction review services for the Construction Lender, or such other Person designated from time to time by the Investor Limited Partner. At any time that the Construction Lender is the Investor Limited Partner or an Affiliate thereof, then the Construction Inspector will be the Person designated by the Construction Lender to perform the acts described in the preceding sentence.

*"Construction Lender"* means Bank of America, N.A. as maker of the Construction Loan, together with its successors and assigns in such capacity.



“Construction Loan” means the construction loan in the amount of up to \$17,947,298 made by the Construction Lender to the Partnership, which loan has a term of 24 months and bears interest at the rate of 3.780%.

“Construction Loan Agreement” means the agreement by and between the Construction Lender and the Partnership which sets forth the terms and conditions upon which the Construction Loan is being made to the Partnership.

“Construction Loan Documents” means the Construction Loan Agreement, Construction Loan Mortgage, Construction Loan Note, and all other documents evidencing and securing the Construction Loan or otherwise entered into connection therewith.

“Construction Loan Mortgage” means the first-priority mortgage securing the obligations of the Partnership under the Construction Loan Note.

“Construction Loan Note” means the promissory note in the original principal amount of \$17,947,298 executed by the Partnership in favor of the Construction Lender as evidence of its obligation to repay the Construction Loan.

“Consumer Price Index” means the Consumer Price Index for All Urban Consumers, All Cities, for All Items (base 1982-84 = 100) published by the United States Bureau of Labor Statistics. In the event such index is not in existence when any determination relying on such index under this Agreement is to be made, the most comparable governmental index published in lieu thereof shall be substituted therefor.

“Cost Certification” means the submission to, and acknowledgment of receipt by, the Credit Agency of a certified audit by the Accountants of the Partnership’s development and related costs for purposes of establishing the amount of Federal Low Income Tax Credits available to the Project. A draft of the audit described in the preceding sentence shall be submitted to the Investor Limited Partner for approval prior to submission to the Credit Agency.

“Credit Agency” means the Texas Department of Housing and Community Affairs, or any successor State agency thereto having a jurisdiction over the allocation of the Tax Credits.

“Credit Period” means the entire period during which the “credit period” described in Section 42(f)(1) shall be applicable to any Building.

“Credit Reservation” means the Credit Reservation issued by the Credit Agency on August 29, 2016 providing for a conditional reservation of Tax Credits to the Project in the annual amount of \$1,500,000.

“Debt Service Coverage Ratio” means, for any specified period of consecutive calendar months beginning not earlier than the Completion Date, a fraction, the numerator of which is the Cash Available for Debt Service Requirements with respect to such period and the denominator of which is the Debt Service Requirements for such period. The achievement by the Partnership of a specified Debt Service Coverage Ratio shall be confirmed by the Accountants and shall be subject to independent confirmation by the Investor Limited Partner pursuant to a physical inspection of the Property for the purpose of confirming that the Property is in good condition

and repair (ordinary wear and tear excepted); *provided, however*, that (i) no objection by the Investor Limited Partner to the determination of the Accountants based on its physical inspection of the Property shall be valid unless the General Partners are notified of such objection, and the specific reasons therefor, within seven (7) business days following the completion of such inspection and (ii) in the event that the Investor Limited Partner does not make such physical inspection of the Property within ten (10) business days after having received the Accountants' determination letter, then the Investor Limited Partner will be deemed to have waived the physical inspection requirement.

*"Debt Service Requirements"* means, for any specified period of consecutive calendar months beginning not earlier than the Completion Date, all debt service, mortgage insurance premium and/or other cash requirements imposed by the Mortgage Loan Documents.

*"Deferred Development Fee"* has the meaning attributed thereto in the Development Agreement.

*"Designated Prime Rate"* means the annual rate of interest which is at all times equal to the lesser of (i) the highest prime rate as published in the *Wall Street Journal* (or any comparable publication selected by the Investor Limited Partner in its reasonable discretion if the *Wall Street Journal* ceases to publish such index), with calculations of interest to be made on a daily basis and on the basis of a three hundred sixty (360)-day year and (ii) the maximum rate permitted by law in the applicable context.

*"Designated Proceeds"* means the proceeds of the Mortgage Loans, any net rental or other miscellaneous income of the Partnership as of the Completion Date (to the extent not otherwise covered by this Designated Proceeds definition) which is permitted by any applicable Lender or Governmental Agency to be utilized for Development Costs, the Capital Contributions (excluding any Special Capital Contributions and Capital Contributions of the General Partners in excess of the amounts permitted under Section 4.1), and any insurance proceeds arising out of casualties prior to the Development Obligation Date.

*"Determination Date"* means the last day of the month preceding the month in which the Removal Notice Date occurs.

*"Developer"* means collectively, Managing General Partner and Casa Linda Affordable Housing, LLC, a Texas limited liability company.

*"Development Advances"* has the meaning set forth in Section 6.7.

*"Development Agreement"* means the Development Agreement of even date herewith between the Partnership and the Developer, as amended.

*"Development Amount"* has the meaning attributed thereto in the Development Agreement.

*"Development Costs"* means all costs (including the Development Amount net of the Deferred Development Fee) incurred to (i) acquire the Land, (ii) complete the construction of the Improvements or cause the same to be completed in a good and workmanlike manner, free and

clear of all mechanics', materialmen's or similar liens, and equip the Improvements or cause the same to be equipped, all substantially in accordance with the Project Documents and the drawings and specifications forming a part of the Construction Contract, (iii) arrive at Final Closing in substantial conformity with the Project Documents, (iv) discharge all Partnership liabilities and obligations arising out of any casualty giving rise to the receipt of insurance proceeds, (v) pay or provide for all other payments, expenses, escrows or reserves required by this Agreement or by any Lender, Governmental Agency or Partnership creditor to be made, incurred or funded through the Development Obligation Date (other than Operating Expenses incurred through the Development Obligation Date and reserves which are to be funded from other sources) and (vi) pay all Environmental Compliance Costs and all costs associated with the performance of any radon remediation activities which may be required pursuant to Section 12.1G.

*“Development Fee Note”* means a promissory note evidencing the obligation to pay the Deferred Development Fee as such term is defined in Section 5.C. of the Development Agreement attached hereto as **Exhibit L**, and in the form attached as Exhibit A to the Development Agreement.

*“Development Obligation Date”* means the latest to occur of (i) three (3) consecutive calendar months of not less than 90% occupancy of the Units, (ii) the Completion Date, (iii) the Initial Occupancy Date, (iv) Final Closing, and (v) delivery of the Certificate of Achievement of Development Obligation Date in the form attached to **Exhibit H**.

*“Disqualifying Event”* means, to the extent there is HUD financing or HUD insured financing on the Project, a material event or circumstance relating to the Partnership or Project which, unless cured, would give rise to a “flag” affecting Bank of America, N.A. or its Affiliates under the HUD previous participation certification system or any comparable previous participation qualification system maintained by any other jurisdiction and which would adversely impact the ability of Bank of America, N.A. or its Affiliates to participate in properties utilizing federal, state or local subsidized housing programs. Without limitation of the foregoing, if the Partnership shall be subject to regulation by HUD, the determination by HUD that the Project has failed to satisfy HUD’s minimum standards for physical condition (under current practice, receipt of a HUD REAC inspection score of under 31) and other conditions under which a flag could be placed on the Project pursuant to HUD Notice H-2011-24, issued September 13, 2011, shall be deemed an event described in the preceding sentence.

*“Document Schedule”* means the Related Agreements identified in **Exhibit B**.

*“Economic Risk of Loss”* has the meaning set forth in Treasury Regulation Section 1.752-2.

*“Election Notice”* has the meaning given to it in Section 5.3B.

*“Eligible Basis”* has the meaning set forth in Section 42(d) of the Code and the Treasury Regulations thereunder.

*“Entity”* means any general partnership, limited partnership, limited liability company or partnership, corporation, joint venture, trust, business trust, cooperative or association.

“Environmental Compliance Costs” means all costs necessary to bring the Land and the Project into compliance with all Hazardous Waste Laws.

“Environmental Reports” means the environmental reports listed in **Exhibit I**.

“Event of Bankruptcy” means, as to a specified Person:

(a) the entry of a decree or order for relief by a court having jurisdiction in the premises in respect of such Person in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of such Person or for any substantial part of his property, or ordering the winding-up or liquidation of his affairs and the continuance of any such decree or order unstayed and in effect for a period of sixty (60) consecutive days; or

(b) the commencement by such Person of a voluntary case under the federal bankruptcy laws, as now constituted or hereafter amended, or any other applicable federal or state bankruptcy, insolvency or other similar law, or the consent by him to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or similar official) of such Person or for any substantial part of his property, or the making by him of any assignment for the benefit of creditors, or the failure of such Person generally to pay his debts as such debts become due, or the taking of action by such Person in furtherance of any of the foregoing; or

(c) in the case of a Person who is a General Partner, the voluntary withdrawal of such Person as a General Partner in violation of the terms of this Agreement.

“Expense Reimbursement Contribution” means a Special Capital Contribution in the amount of the actual legal and other professional costs of the Investor Limited Partner incurred in connection with the Investor Limited Partner’s admission to the Partnership, in an amount up to \$100,000. The Investor Limited Partner will make the Expense Reimbursement Contribution concurrent with the payment of the First Installment of its Capital Contribution. The proceeds of the Expense Reimbursement Contribution will be immediately disbursed by the Partnership to pay or to reimburse such expenses of the Investor Limited Partner.

“Extended Use Agreement” means the agreement required to be entered into between the Credit Agency and the Partnership respecting long-term use restrictions and satisfying all of the requirements of Section 42(h)(6) of the Code.

“Federal Low Income Tax Credits” means the tax credits for which the Project is eligible under Section 42 of the Code.

“Final Closing” means the date upon which all of the following events have occurred: (i) the Completion Date and receipt of the final (non-temporary) certificates of occupancy permitting occupancy of 100% of the Units in the Project, (ii) Permanent Mortgage Commencement, (iii) the Project’s being free of any mechanics’ or other liens (except for the Mortgages and liens either bonded against in such a manner as to preclude the holder thereof

from having any recourse to the Project or the Partnership for payment of any debt secured thereby or affirmatively insured against (in such manner as precludes recourse to the Partnership for any loss incurred by the insurer) by the Title Policy or by another policy of title insurance issued to the Partnership by a reputable title insurance company in an amount satisfactory to Investor Tax Counsel (or by an endorsement of either such title policy)), (iv) a draft Cost Certification has been prepared by the Accountants and provided to the Investor Limited Partner for review, (v) the disbursement of proceeds under the Mortgage Loans has been made in the full amount permitted by such Cost Certification, (vi) delivery to the Investor Limited Partner of permanent Mortgage Loan Documents in form and substance reasonably acceptable to the Investor Limited Partner (to the extent not previously delivered in connection with Investment Closing), (vii) all amounts due in connection with the construction of the Project have been paid or provided for, including payment of all expenses associated with completing any punch list items outstanding as of the Completion Date, (viii) the date of delivery to the Investor Limited Partner of an ALTA “as-built” survey sufficient to allow delivery of a date-down endorsement to the Title Policy without a survey exception and otherwise in compliance with the requirement of Section 6.5A(viii); (ix) delivery of a date-down endorsement without a survey exception, and (x) the full funding of any reserves required under the Mortgage Loan Documents and this Agreement.

“Final Determination” means the earliest to occur of (i) the date on which a decision, judgment, decree or other order has been issued by any court of competent jurisdiction, which decision, judgment, decree or other order has become final (i.e., all allowable appeals requested by the parties to the action have been exhausted), (ii) the date on which the Service has entered into a binding agreement with the Partnership with respect to such issue or on which the Service has reached a final administrative determination with respect to such issue which, whether by law or agreement, is not subject to appeal, (iii) the date on which the time for instituting a claim for refund has expired, or if a claim was filed the time for instituting suit with respect thereto has expired, or (iv) the date on which the applicable statute of limitations for raising an issue regarding a federal income tax matter with respect to the Partnership has expired.

“Final Tax Credit Amount” means the amount of Federal Low Income Tax Credits determined by the Accountants promptly following the receipt of Form 8609 with respect to the Project and prior to the Fourth Installment based on all information available at such time including, but not limited to, the Cost Certification prepared by the Accountants in connection with obtaining Form 8609.

“First Full Credit Year” means the first calendar year with respect to which the Partnership actually receives the full (twelve-month) amount of Federal Low Income Tax Credits then reasonably anticipated with respect to all Buildings constituting the Project.

“Fiscal Year” means the twelve-month period which begins on the first day of January and ends on the thirty-first day of December of each calendar year (or ends on the date of final dissolution for the year in which the Partnership is wound up and dissolved).

“Forms 8609 Receipt Date” means the date on which the Partnership has received properly executed IRS Form 8609 with respect to the Building constituting the Project and delivered copies thereof to the Investor Limited Partner.

“General Partners” means, initially, Highridge Costa Housing, LLC and Borgfeld Housing GP, LLC, and any Person who becomes a General Partner as provided herein. If at any time the Partnership shall have a sole General Partner, the term “General Partners” shall be construed as singular.

“Governmental Agency” means, as applicable, the Credit Agency, and/or any other government agency having jurisdiction over the particular matter to which reference is being made.

“Guarantor” means Highridge Costa Housing Partners, LLC, a Delaware limited liability company.

“Guaranty Agreement” means the guaranty of even date herewith, made by the Guarantor in favor of the Investor Limited Partner.

“Hazardous Material” means and includes any pollutant or contaminant or any hazardous, toxic or radioactive waste, substance or material, including without limitation those listed in or regulated under any Hazardous Waste Laws, polychlorinated biphenyls, petroleum, petroleum-based or petroleum-derived products, mold, and asbestos or asbestos-containing materials. For purposes of this Agreement, Hazardous Material shall not include household cleaners, office supplies, or other items typically found in a multifamily housing development, so long as the use thereof is in compliance with all applicable Hazardous Waste Laws.

“Hazardous Waste Laws” means and includes the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980; the Resource Conservation and Recovery Act; the Toxic Substances Control Act and any other federal, state or local statutes, ordinances, regulations or by-laws dealing with Hazardous Material, as the same may be amended from time to time and including any regulations promulgated thereunder.

“HUD” means the Department of Housing and Urban Development of the United States of America and its successors.

“Improvements” means the Buildings and any related facilities to be constructed and/or rehabilitated in accordance with the Project Documents.

“Incentive Management Fee” means the fee payable from time to time by the Partnership to the Managing General Partner and Administrative General Partner for their services to the Partnership pursuant to Section 6.9B.

“Independent Appraiser” means a firm which is generally qualified to render opinions as to the fair market value of assets such as those owned by the Partnership, which is mutually acceptable to the General Partners and the Special Limited Partner and which satisfies the following criteria:

- (a) such firm is not a Partner, or an Affiliate of the Partnership or any Partner;
- (b) such firm (or a predecessor in interest to the assets and business of such firm) has been in business for at least five (5) years, and at least one of the principals of

such firm has been in the active business of appraising substantially similar assets for at least ten (10) years;

(c) such firm has regularly rendered appraisals of substantially similar assets for at least five (5) years on behalf of a reasonable number of unrelated clients, so as to demonstrate reasonable market acceptance of the valuation opinions of such firm;

(d) one or more of the principals or appraisers of such firm are members in good standing of an appropriate professional association or group which establishes and maintains professional standards for its members; and

(e) such firm renders an appraisal to the Partnership only after entering into a contract that specifies the compensation payable for such appraisal.

“Initial Economic Projections” means the economic projections for the Project attached as **Exhibit J**.

“Initial Occupancy Date” shall mean the first date upon which not less than 90% of the Low Income Units in the Project are occupied by Qualified Tenants at least one time under bona fide written leases satisfying the requirements of Section 42 of the Code with terms of not less than six (6) months. The achievement of the Initial Occupancy Date shall be confirmed by the Management Agent and certified by the General Partner with a copy of such confirmation and certification, together with the rent roll and Tenant Income Certifications for each of the Qualified Tenants, forwarded to the Special Limited Partner. The Initial Occupancy Date will be deemed to have been achieved upon written acknowledgment of such confirmation to the Partnership from the Special Limited Partner. The Special Limited Partner shall have seven (7) Business Days after receipt of the written confirmation from the Manager and General Partner to acknowledge or object to the achievement of the Initial Occupancy Date, and the failure to acknowledge or object to the calculation with such seven (7)-Business Day period shall be deemed to be an acceptance of the calculation by the Special Limited Partner. All objections must be commercially reasonable, and shall be delivered in writing to the General Partner, who shall have a reasonable time to cure such objections to the calculations received from the Special Limited Partner.

“Installment” means any Installment of the Capital Contributions of the Investor Limited Partner referred to in Section 5.1.

“Insurance Proceeds” means the insurance claims under and the proceeds of any and all policies of insurance covering the Property or any part thereof, including all returned and unearned premiums with respect to any insurance relating to such Property, in each case whether now or hereafter existing or arising.

“Interest,” or words of like import, shall mean all the interest of a Partner in Cash Flow and other distributions, capital, profits and losses, tax credits, and otherwise in the Partnership, including all allocations and distributions and all rights under this Agreement, and also shall include such interests and rights of such Partner in any successor Entity formed pursuant to this Agreement.

“Investment Closing” means the date on which this Agreement is delivered by all of the parties hereto.

“Investor Limited Partner” means, initially, Bank of America, N.A., and shall include any other Persons admitted as an Investor Limited Partner pursuant to Section 4.6 or admitted as a Substitute Limited Partner pursuant to Section 8.2, and their respective successors in such capacity.

“Investor Tax Counsel” means Buchalter, a Professional Corporation of Los Angeles, California, or other counsel acceptable to the Investor Limited Partner.

“Land” means the parcels of land on which the Improvements are located in Cibolo, Texas as described in Schedule A of the Title Policy.

“Lender” means any lender under any Mortgage Loan together with its respective successors and assigns in such capacity.

“Limited Partner” or “Limited Partners” mean any or all of those Persons designated as Limited Partners in the Schedule, any Person admitted as a Limited Partner pursuant to Section 4.6, or any Person who becomes a Substitute Limited Partner as provided herein, in each such Person’s capacity as a Limited Partner of the Partnership. Such terms shall include the Special Limited Partner, the Investor Limited Partner and any Persons who may succeed to the Interests of such Limited Partners.

“Low Income Unit” means any of the 119 Units in the Project which are to be held for occupancy by the Partnership in such manner as to qualify such units as qualified low-income housing units under Section 42(i)(3) of the Code.

“Management Agent” means HCHP Property Management, L.P., or any successor thereto engaged by the General Partners as the management agent for the Project with the Consent of the Investor Limited Partner, which consent shall not be unreasonably withheld, conditioned or delayed.

“Management Agent Fee” means a fee in the amount of 1% of gross rental income to be paid to the Management Agent as contemplated in Section 11.1.

“Management Agreement” means the management contract or agreement by and between the Partnership and the Management Agent which has received all Requisite Approvals.

“Management Fee” means the amount payable from time to time by the Partnership to the Management Agent for management services in accordance with the Management Agreement which shall be subject to any Requisite Approvals.

“Managing General Partner” means Highridge Costa Housing, LLC, a Delaware limited liability company, or any other Managing General Partner designated as provided in Section 6.3B.

“Material Default” has the meaning set forth in Section 7.7B.



“Mortgage” means any mortgage indebtedness of the Partnership evidenced by any Note and secured by any mortgage on the Property from the Partnership to any Lender; and, where the context admits, “Mortgage” shall mean and include any of the mortgages securing said indebtedness and any other documents pertaining to said indebtedness which were required by the Lender as a condition to making such Mortgage Loan. In case any Mortgage is replaced by any subsequent mortgage or mortgages, such term shall refer to any such subsequent mortgage or mortgages. The term “mortgage” means any mortgage, mortgage deed, deed of trust, deed to secure debt or any similar security instrument, and “foreclose” and words of like import include the exercise of a power of sale under a mortgage or comparable remedies.

“Mortgage Loan” means the Construction Loan and the Permanent Loan.

“Mortgage Loan Commitments” means and includes the commitment of (i) the Construction Lender to make the Construction Loan of up to \$17,947,298, and (ii) the Permanent Lender to make the Permanent Loan of up to \$4,950,000.

“Mortgage Loan Documents” means the loan agreements, Notes, Mortgages and other documents evidencing and securing any Mortgage Loan or otherwise entered into connection therewith.

“Net Capital Contribution” means \$14,773,524.

“Net Proceeds” means, when used with respect to any Condemnation Awards or Insurance Proceeds, the gross proceeds from any condemnation or casualty of the Property remaining after payment of all expenses, including reasonable attorneys’ fees, incurred in the collection of such gross proceeds.

“Note” means and includes any promissory note from the Partnership to a Lender evidencing a Mortgage Loan, and shall also mean and include any note supplemental to said original note issued to a Lender or any note issued to a Lender in substitution for any such original note.

“Operating Deficit” means the amount by which Operating Expenses exceed Cash Receipts.

“Operating Expense Loan” means a loan to the Partnership pursuant to Section 6.8A which is repayable with interest at the Applicable Federal Rate and only as provided in Article X.

“Operating Expenses” means (i) up to and including the Development Obligation Date, those expenses, properly accruable through such date which may be properly charged as operating expenses of the Project under standard accounting procedures and which are allocable, in accordance with generally accepted accounting principles, to Units for which all requisite approvals for occupancy have been obtained; such operating expenses may include real estate taxes and debt service and mortgage insurance premiums, if any, with respect to the Mortgage Loans (to the extent such operating expenses are not funded out of Designated Proceeds), but shall not include any costs required to be capitalized in accordance with generally accepted accounting principles; and (ii) after the Development Obligation Date, all the costs and expenses

of any type incurred incidental to the ownership and operation of the Project, including, without limitation, taxes, capital improvements reasonably deemed necessary by the General Partners and not funded out of any reserves for such, mortgage and bond insurance premiums, if any, and the cost of operations, debt service, maintenance and repairs, and the funding of any reserves required to be maintained by any Lender or Governmental Agency or pursuant to this Agreement, but shall not include (i) repayments of Operating Expense Loans made pursuant to Section 6.8A , (ii) distributions or payments to Partners pursuant to Article X, (iii) obligations that are payable solely from Cash Flow, or (iv) capital improvement costs paid from a reserve the funding of which is already contemplated as an expense under this definition.

“Operating Reserve” means the operating reserve described in Section 6.11B.

“Partner” means any General Partner or Limited Partner.

“Partner Nonrecourse Debt” means any Partnership liability (i) that is considered non-recourse under Treasury Regulation Section 1.1001-2 or for which the creditor’s right to repayment is limited to one or more assets of the Partnership and (ii) for which any Partner or Related Person bears the Economic Risk of Loss.

“Partner Nonrecourse Debt Minimum Gain” means the amount of partner nonrecourse debt minimum gain and the net increase or decrease in partner nonrecourse debt minimum gain determined in a manner consistent with Treasury Regulation Sections 1.704-2(d), 1.704-2(i)(2) and (i)(3) and 1.704-2(k).

“Partnership” means the limited partnership governed by this Agreement as said limited partnership may from time to time be constituted.

“Partnership Counsel” means Locke Lord LLP of 600 Congress Avenue, Suite 2200, Austin, Texas 78701 or such other counsel as the General Partners may designate from time to time as counsel for the Partnership.

“Partnership Administration Fee” means the fee payable from time to time by the Partnership to the Administrative General Partner for its administrative services to the Partnership pursuant to the Partnership Management Agreement.

“Partnership Management Agreement” means the Partnership Management Agreement between the Partnership and the Managing General Partner and the Administrative General Partner pursuant to which the Managing General Partner and the Administrative General Partner are each to provide certain management services to the Partnership.

“Partnership Management Fee” means the fee payable from time to time by the Partnership to the Managing General Partner for its management services to the Partnership pursuant to the Partnership Management Agreement.

“Partnership Minimum Gain” means the amount determined by computing, with respect to each Partnership Nonrecourse Liability, the amount of gain, if any, that would be realized by the Partnership if it disposed of (in a taxable transaction) the property subject to such liability in full satisfaction of such liability, and by then aggregating the amounts so computed. Such

computations shall be made in a manner consistent with Treasury Regulation Sections 1.704-2(d) and 1.704-2(k).

“Partnership Nonrecourse Liability” means any Partnership liability (or portion thereof) for which no Partner or Related Person bears the Economic Risk of Loss.

“Partnership Representative” is defined under “TMP” below.

“Payment Certificate” has the meaning given it in Section 5.1B(i).

“Permanent Lender” means Bank of America, N.A., together with its successors and assigns in such capacity.

“Permanent Loan” means the permanent loan in the amount of up to \$4,950,000 made by Permanent Lender to the Partnership, which loan will have a term of 35 years, amortizing over a 35-year schedule, and will bear interest at the rate of 5.45%.

“Permanent Loan Documents” means the Permanent Loan Agreement, Permanent Loan Mortgage, Permanent Loan Note, and all other documents evidencing and securing the Permanent Loan or otherwise entered into connection therewith.

“Permanent Loan Agreement” means the agreement between the Permanent Lender and the Partnership setting forth the terms and conditions upon which the Permanent Loan is being made to the Partnership.

“Permanent Loan Mortgage” means the first-priority mortgage securing the obligations of the Partnership under the Permanent Loan Note.

“Permanent Loan Note” means the promissory note in the original principal amount of \$4,950,000 to be executed by the Partnership in favor of Permanent Lender as evidence of its obligation to repay the Permanent Loan.

“Permanent Mortgage Commencement” means the latest to occur of: (i) partial repayment of the Construction Loan to an amount equal to \$4,950,000 with remaining outstanding debt converted into a permanent loan, (ii) termination of any construction phase guarantees granted in connection with any Mortgage Loan, (iii) full disbursement of the principal amount of the Permanent Loan and (iv) commencement of monthly amortization of principal and interest under the Mortgage Loan Documents (to the extent the Mortgage Loan Documents provide for principal amortization).

“Person” means any individual or Entity, and the heirs, executors, administrators, legal representatives, successors and assigns of such Person where the context so admits.

“Plans and Specifications” means the plans and specifications for the construction of the Property approved by the Construction Lender, the Credit Agency, and the Special Limited Partner, including, without limitation, specifications for materials, and all amendments and modifications thereof, as the same may from time to time be amended with the prior written approval of the Special Limited Partner, provided, however, if the Construction Lender is the

Investor Limited Partner or an Affiliate thereof, no such approval by the Special Limited Partner will be required if such changes are approved by the Construction Lender.

“Project” or “Property” means the Land and the Improvements.

“Project Documents” means and includes this Agreement, the Construction Contract, the Guaranty Agreement, the Mortgage Loan Documents, the Tax Credit Application, the Credit Reservation, the Carryover Allocation, the Extended Use Agreement, the Development Agreement, any Regulatory Agreement, the Management Agreement, the Property Management Agreement, the Mortgage Loan Commitments, and all other documents relating to the Project which are required by, or have been executed in connection with, any of the foregoing documents.

“Projected Aggregate Federal Low Income Tax Credit Amount” means \$14,998,500 which is the product of (i) 99.99% and (ii) the aggregate amount of Federal Low Income Tax Credits expected to be available to the Property during the Credit Period. If, following any determination or redetermination of the Adjusted Aggregate Federal Low Income Tax Credit Amount pursuant to Section 5.2, such amount is different than the Projected Aggregate Federal Low Income Tax Credit Amount, then, for purposes of any subsequent application of Section 5.2, the term “Projected Aggregate Federal Low Income Tax Credit Amount” shall mean the Adjusted Aggregate Federal Low Income Tax Credit Amount, provided that any required adjustment(s), payment(s) or Tax Credit Shortfall Payments have been made pursuant to the provisions of Section 5.2 on account of such difference.

“Property Management Agreement” has the meaning set forth in Section 11.1.

“Property Manager” means UAH Property Management, L.P., or any successor thereto engaged by the Management Agent as the property manager for the Project with the Consent of the Investor Limited Partner, which consent shall not be unreasonably withheld, conditioned or delayed.

“Purchase Option Agreement” means the Purchase Option Agreement of even date herewith between the Partnership and Managing General Partner.

“Qualified Income Offset Item” means (i) an allocation of loss or deduction that, as of the end of each year, reasonably is expected to be made (a) pursuant to Section 704(e)(2) of the Code to a donee of an interest in the Partnership, (b) pursuant to Section 706(d) of the Code as the result of a change in any Partner’s interest in the Partnership, or (c) pursuant to Regulation Section 1.751-1(b)(2)(ii) as the result of a distribution by the Partnership of unrealized receivables or inventory items and (ii) a distribution that, as of the end of such year, reasonably is expected to be made to a Partner to the extent it exceeds offsetting increases to such Partner’s Capital Account which reasonably are expected to occur during or prior to the Partnership taxable year in which such distribution reasonably is expected to occur.

“Qualified Tenant” means a tenant (i) with income not exceeding the percentage of area gross median income set forth in Section 42(g)(1)(A) or (B) of the Code (whichever is applicable) who leases an apartment unit in the Project under a lease having an original term of

not less than six (6) months at a rent not in excess of that specified in Section 42(g)(2) of the Code, and (ii) complying with any other requirements imposed by the Project Documents.

“Recapture Event” means an event, as evidenced by a determination thereof by the Accountants or as a result of a Final Determination, which results in a recapture with respect to all or any portion of the Partnership’s Tax Credits and/or which results in a disallowance of any Tax Credits previously claimed by the Partnership; provided that, a change in law that results in a recapture, reduction, or elimination of Tax Credits does not constitute a Recapture Event.

“Regulations” means the rules and regulations of any Governmental Agency which are applicable to the Project or the Partnership.

“Regulatory Agreement” means any regulatory agreements, affordability restrictions, restrictive covenants or other similar documents entered or to be entered into between or by the Partnership and/or for the benefit of any Lender or Governmental Agency with respect to the Project, as amended from time to time.

“Related Agreements” means each agreement, document and certificate referred to in the Document Schedule.

“Related Person” has the meaning set forth in Treasury Regulation Section 1.752-4(b) or any successor regulation thereto.

“Removal Notice” shall have the meaning set forth in Section 7.7.

“Removal Notice Date” shall have the meaning set forth in Section 7.7.

“Requisite Approvals” means any required approvals of the Lender and each Governmental Agency to an action proposed to be taken by the Partnership.

“Retirement” (including the forms “Retire” and “Retired”) means, as to a General Partner, and shall be deemed to have occurred automatically upon, the occurrence of death, adjudication of insanity or incompetence, Event of Bankruptcy, dissolution or voluntary or involuntary withdrawal from the Partnership for any reason. Involuntary withdrawal shall occur whenever a General Partner may no longer continue as a General Partner by law, death, incapacity or pursuant to any terms of this Agreement. A General Partner which is an Entity (an “Entity General Partner”) also will be deemed to have Retired upon the sale or other disposition of a controlling interest in such Entity General Partner. Without limitation of the foregoing, any of the foregoing events occurring as to an individual or Entity which directly or indirectly holds a controlling interest in an Entity General Partner shall also be deemed to constitute the Retirement of any such Entity General Partner. For purposes of this definition, “controlling interest” shall mean the power to direct the management and policies of such Entity, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise.

“Revised Economic Projections” means the economic projections calculated immediately prior to payment of the Fourth Installment using the same assumptions and methodology as the Initial Economic Projections, revised to reflect the actual construction costs and available Federal Low Income Tax Credits at such time and taking into account all other changes from the

Initial Economic Projections which affect the amount and timing of benefits, including the month the Project is placed into service for purposes of Section 42 of the Code, the actual rate of lease-up for the Low Income Units, and the actual operating history of the Project.

“Schedule” means the Schedule of Partners annexed hereto as **Exhibit A** as amended from time to time and as so amended at the time of reference thereto.

“Service” means the Internal Revenue Service.

“Special Capital Contribution” means a capital contribution described in and made pursuant to Section 6.8A or Section 6.11 and the Expense Reimbursement Contribution.

“Special Endorsements” means, collectively, (i) a non-imputation endorsement, (ii) a comprehensive endorsement, (iii) a contiguity endorsement (if the Land consists of more than one parcel), (iv) an access endorsement, (v) a zoning endorsement for improved land (including any applicable parking provisions), (vi) a Fairways endorsement (unless substantially similar coverage is provided under the general policy), (vii) a blanket easement endorsement, (viii) a subdivision endorsement, (ix) a same as survey endorsement, (x) a separate tax lot endorsement, (xi) a maximum loss endorsement, (xii) a restriction, encroachment, minerals endorsement, (xiii) a condominium endorsement (if applicable), and (xiv) any other endorsements reasonably requested by the Special Limited Partner to the extent available in the State, each in a form reasonably acceptable to the Special Limited Partner.

“Special Limited Partner” means Banc of America CDC Special Holding Company, Inc., a North Carolina corporation, and its successors.

“State” means the State of Texas.

“Substitute Limited Partner” means any Person who is admitted to the Partnership as a Limited Partner under the provisions of Section 8.2.

“Tax Credit Application” means the application submitted to the Credit Agency to obtain the Credit Reservation, as amended from time to time, including all documentation submitted to the Credit Agency concurrently therewith or pursuant thereto.

“Tax Credit Shortfall Payments” has the meaning attributed thereto in Section 5.2E.

“Tax Credits” means the Federal Low Income Tax Credits.

“Ten Percent Test Qualification” means receipt by the Special Limited Partner of evidence satisfactory to the Special Limited Partner demonstrating that the Partnership has met the “ten percent test” set forth in Section 42(h)(1)(E)(ii) of the Code with respect to the Project.

“Tenant Income Certification” means a tenant’s initial tax credit certification, including the tenant income certification/certificate of resident eligibility, all sources used in verifying income and assets (including, but not limited to, third party verification, checking and savings accounts, pay stubs, verification of assets, etc.), a copy of one completed lease signed and dated

for each building in the Property, and a copy of the first and last page of each lease of each Low Income Unit, showing the start date of the lease and signature of the resident(s) and owner.

“Title Policy” means the TLTA owner’s policy of title insurance issued to the Partnership by Chicago Title Insurance Company as endorsed to include the Special Endorsements in the amount of \$21,326,916 (which represents the sum of the Investor Limited Partner’s Net Capital Contributions and the maximum principal amount of the permanent Mortgage Loans) and dated not more than ten (10) days prior to Investment Closing.

“TMP” or “Partnership Representative” means the Managing General Partner designated as Tax Matters Partner or Partnership Representative of the Partnership in accordance with Section 6.2, as applicable.

“Transfer” means any sale, exchange, assignment, encumbrance, hypothecation, pledge, foreclosure, conveyance, gift or other transfer of any kind, whether direct or indirect, voluntary or involuntary. When used as a verb, such term shall mean, voluntarily or involuntarily, to sell, exchange, assign, encumber, hypothecate, pledge, foreclose, convey in trust, give or otherwise transfer.

“Uniform Act” means the Texas Business Organizations Code as in effect under the laws of the State, as amended from time to time.

“Units” means any of the 136 dwelling units in the Project.

“Withdrawal Purchase Price” shall have the meaning set forth in Section 7.7D.

“Withdrawing Limited Partner” means Victoria Capital, LLC, a California limited liability company.

## **ARTICLE II**

### **CONTINUATION, NAME AND PURPOSE**

#### **Section 2.1 Continuation**

The parties hereto hereby agree to continue the limited partnership known as Borgfeld Housing, LP, which was formed pursuant to the provisions of the Uniform Act.

#### **Section 2.2 Name and Office; Agent for Service**

A. The Partnership shall be conducted under the name and style set forth in Section 2.1. The principal office of the Partnership shall be at 330 West Victoria Street, Gardena, California 90248. The Managing General Partner may at any time change the location of such principal office and shall give prompt notice of any such change to the Limited Partners.

B. The name and address of the agent of the Partnership for service of process shall be: Corporation Service Company d/b/a CSC-Lawyers Incorporating Service, 211 E. 7th Street, Suite 620, Austin, Texas 78701.

### **Section 2.3 Purpose**

The purpose of the Partnership is to acquire, construct, develop, repair, improve, maintain, operate, manage, lease, dispose of and otherwise deal with the Project, which shall be known as El Sereno Senior Apartments, in accordance with any applicable Regulations and the provisions of this Agreement. The Partnership shall not engage in any other business or activity.

### **Section 2.4 Authorized Acts**

In furtherance of its purposes, but subject to all other provisions of this Agreement including, but not limited to, Article VI, the Partnership is, and the General Partners acting on its behalf are, hereby authorized:

(i) To acquire by purchase, lease or otherwise any real or personal property which may be necessary, convenient or incidental to the accomplishment of the purposes of the Partnership.

(ii) To acquire, construct, rehabilitate, operate, maintain, finance and improve, and to own, sell, convey, assign, mortgage or lease the Project and any other real estate and any personal property necessary, convenient or incidental to the accomplishment of the purposes of the Partnership.

(iii) To borrow money and issue evidences of indebtedness in furtherance of any or all of the purposes of the Partnership and to secure the same by mortgage, deed of trust, security interest, pledge or other lien on the Property or any other assets of the Partnership, to the extent permitted by the Project Documents.

(iv) To prepay in whole or in part, refinance, renew, recast, increase, modify or extend any Mortgage and in connection therewith to execute any extensions, renewals, or modifications of such Mortgage.

(v) To employ any Person, including any Affiliate, to perform services for, or to sell goods to, the Partnership and to pay for such goods and services; *provided that* (except with respect to any contract specifically authorized by this Agreement) the terms of any such transaction with an Affiliate shall not be less favorable to the Partnership than would be arrived at by unaffiliated parties dealing at arms' length.

(vi) To execute any and all Notes, Mortgages and security agreements in order to secure loans from any Lender and any and all other documents, including but not limited to the Project Documents, required by any Lender or any Governmental Agency in connection with each Mortgage and the acquisition, construction, repair, development, improvement, maintenance and operation of the Property.

(vii) To execute agreements with any Governmental Agency.

(viii) To execute leases of the Units in the Project.



(ix) To modify or amend the terms of any agreement or contract which the General Partners are authorized to enter into on behalf of the Partnership; *provided, however,* that such terms as amended shall not (1) materially adversely affect the Partnership or the Limited Partners, or (2) be in contravention of any of the terms or conditions of this Agreement.

(x) To enter into any kind of activity and to perform and carry out contracts of any kind necessary to, or in connection with, or incidental to, the accomplishment of the purposes of the Partnership, so long as said activities and contracts may be lawfully carried on or performed by a partnership under the laws of the State.

(xi) To execute the Related Agreements and any notices, documents or instruments permitted or required to be executed or delivered in connection therewith or pursuant thereto.

### **ARTICLE III**

#### **TERM AND DISSOLUTION**

A. The Partnership shall continue in full force and effect until December 31, 2067, except that the Partnership shall be dissolved prior to such date upon the happening of any of the following events:

(i) the sale or other disposition of all or substantially all the assets of the Partnership;

(ii) the Retirement of a General Partner unless the business of the Partnership is continued pursuant to Article VII;

(iii) the election to dissolve the Partnership made in writing by the General Partners with the Consent of the Investor Limited Partner, which consent shall be granted in the Investor Limited Partner's sole and absolute discretion, and any Requisite Approvals; or

(iv) the entry of a final decree of dissolution of the Partnership by a court of competent jurisdiction.

B. Upon dissolution of the Partnership (unless the business of the Partnership is continued pursuant to Article VII), the Managing General Partner (or for purposes of this paragraph their trustees, receivers, successors or legal representatives) shall cause the cancellation of the Certificate, liquidate the Partnership assets and apply and distribute the proceeds thereof in accordance with Section 10.2. Notwithstanding the foregoing, in the event such liquidating General Partners shall determine that an immediate sale of part or all of the Partnership's assets would cause undue loss to the Partners, the liquidating General Partners may, in order to avoid such loss, defer liquidation of, and withhold from distribution for a reasonable time, any assets of the Partnership except those necessary to satisfy the Partnership debts and obligations (other than Operating Expense Loans).

**ARTICLE IV**

**PARTNERS; CAPITAL**

**Section 4.1 General Partners**

A. The initial General Partners of the Partnership are Highridge Costa Housing, LLC and Borgfeld Housing GP, LLC, and their addresses and Capital Contributions are set forth in the Schedule. In no event shall the aggregate Capital Contributions of the General Partner (excluding any Special Capital Contributions, Capital Contributions made for Tax Credit Shortfall Payments pursuant to Section 5.2E, Capital Contributions made pursuant to Section 4.1B below and amounts, if any, paid pursuant to Section 10.2A) exceed \$100 without the Consent of the Investor Limited Partner, which consent shall not be unreasonably withheld, conditioned or delayed.

B. In the event the entire Development Amount and accrued but unpaid interest thereon has not been paid by the fifteenth anniversary of the Completion Date, each General Partner shall make a Capital Contribution to the Partnership in the amount necessary to pay the balance of the Development Amount owed to that General Partner's Affiliated Developer entity, and the Managing General Partner shall cause the Partnership to immediately apply such proceeds to the discharge of such obligation in full.

**Section 4.2 Limited Partners**

A. The Special Limited Partner is hereby admitted to the Partnership. Its address and Capital Contribution are set forth in the Schedule.

B. The Investor Limited Partner is hereby admitted to the Partnership. Its address and Capital Contributions are set forth in the Schedule. The payment of its Capital Contribution is governed by Section 5.1.

**Section 4.3 Partnership Capital and Capital Accounts**

A. The capital of the Partnership shall be the aggregate amount contributed by the Partners as set forth in the Schedule. No interest shall be paid by the Partnership on any Capital Contribution. If necessary or appropriate, amendments to the Certificate shall be filed from time to time to reflect the withdrawal or admission of Partners. The Schedule may be amended from time to time to reflect any changes in the Interest held or amount contributed or agreed to be contributed by any Partner.

B. An individual Capital Account shall be established and maintained for each Partner, including any additional or substituted Partner who shall hereafter receive an Interest. The original Capital Account established for each such substituted Partner shall be in the same amount as, and shall replace, the Capital Account of the Partner which such substituted Partner succeeds, and, for the purposes of this Agreement, such substituted Partner shall be deemed to have made the Capital Contribution, to the extent actually paid in, of the Partner which such substituted Partner succeeds. The term "substituted Partner", as used in this paragraph, shall mean a Person who shall become entitled to receive a share of the allocations and distributions of

the Partnership by reason of such Person succeeding to the Interest of a Partner by assignment of all or any part of a Partner's Interest. To the extent a substituted Partner receives less than 100% of the Interest of a Partner he succeeds, the original Capital Account of such substituted Partner and its Capital Contribution shall be acquired in such proportion or amount as agreed to by the substituted Partner and assigning Partner and the assigning Partner who retains a partial Interest in the Partnership shall retain the remainder of its Capital Contribution and Capital Account. Any special basis adjustments under Section 743 of the Code resulting from an election by the Partnership pursuant to Section 754 of the Code shall not be taken into account for any purpose in establishing and maintaining Capital Accounts for the Partners pursuant to this Section 4.3.

C. Nothing in this Section 4.3 shall affect the limitations on transferability of Interests set forth in Article VII or Article VIII.

D. The Withdrawing Limited Partner is Victoria Capital, LLC of Gardena, California. By its execution of this Agreement, the Withdrawing Limited Partner hereby withdraws as a Limited Partner, and the Withdrawing Limited Partner, as such, shall have no further rights with respect to the Partnership as of the Admission Date.

#### **Section 4.4 Withdrawal of Capital**

Except as may be specifically provided in this Agreement, no Partner shall have the right to (i) withdraw from the Partnership all or any part of its Capital Contribution or (ii) demand and receive property of the Partnership in return for its Capital Contribution or in respect of its Interest.

#### **Section 4.5 Liability of Limited Partners**

A. No Limited Partner shall be liable for any debts, liabilities, contracts, or obligations of the Partnership. A Limited Partner shall be liable only to make payments of its Capital Contribution as and when due hereunder. After its Capital Contribution shall be fully paid, no Limited Partner shall, except as otherwise required by the Uniform Act or Section 10.2A, be required to make any further capital contributions or payments or lend any funds to the Partnership.

B. In no event shall any Person who is at any time a member or manager of the Investor Limited Partner, or any partner, member or Affiliate of any such Person, have any personal liability for the payment or performance of any obligation of the Investor Limited Partner under the provisions of this Agreement or any document or instrument to be delivered in connection with this Agreement, including, without limitation, the obligations of the Investor Limited Partner to contribute capital to the Partnership. All parties dealing with the Investor Limited Partner shall look solely to the assets of the Investor Limited Partner for the satisfaction of any such obligation.

#### **Section 4.6 Additional Limited Partners**

The General Partners may admit additional Limited Partners only with the Consent of the Investor Limited Partner, which consent shall be granted in the Investor Limited Partner's sole and absolute discretion.

#### **Section 4.7 Agreement to be Bound by Documents**

Each General Partners and Limited Partner shall be bound by the terms of this Agreement and the Project Documents. Any incoming General Partner and Limited Partner, as a condition of receiving any Interest, shall agree to be bound by this Agreement and the Project Documents to the same extent and on the same terms as the other General Partners and Limited Partners, respectively. Upon any dissolution of the Partnership or any Transfer of the Property while any Mortgage is held by any Lender, no title or right to the possession and control of the Property and no right to collect the rents therefrom shall pass to any Person who is not, or does not become, bound in a manner satisfactory to the Lender and the Governmental Agency to the Project Documents and the provisions of this Agreement. The Project Documents shall be binding upon and shall govern the rights and obligations of the Partnership, its successors and assigns as long as the corresponding Mortgage Loans are outstanding.

### **ARTICLE V**

#### **CAPITAL CONTRIBUTIONS OF INVESTOR LIMITED PARTNER**

##### **Section 5.1 Installments of Capital Contributions**

A. The Investor Limited Partner shall contribute as its Capital Contribution the sum of \$14,773,524, payable in four (4) installments (the “Installments”) as follows:

(i) the first Installment (the “First Installment”) in the amount of \$896,438 plus the Expense Reimbursement Contribution shall be paid on the date of Investment Closing;

(ii) the Second Installment (the “Second Installment”) in the amount of \$2,090,393 shall be payable on the later to occur of (a) the Completion Date (including receipt by the Investor Limited Partner of copies of all certificates or permits permitting occupancy of the Project and a current title search report demonstrating that the Project is free of any mechanics’ or other liens (except for liens which are bonded against in a manner as to preclude the holder thereof from having any recourse to the Property or the Partnership for payment of any debt secured thereby)), or (b) May 1, 2018; provided, however, that up to \$500,000 of the Second Installment may be payable 90 days prior to the date set forth above so long as Investor Limited Partner receives (i) confirmation that the scheduled Completion Date will be met and (ii) evidence that no mechanics’ liens have been filed with respect to the Property, each satisfactory to the Investor Limited Partner in its sole and absolute discretion.

(iii) the third Installment (“Third Installment”) in the amount of \$11,652,923 shall be payable on the later to occur of (a) achievement of a 115% Debt Service Coverage Ratio for each of three (3) consecutive calendar months (which period must include the last day of the month immediately preceding the month in which this Third Installment is to be paid), (b) the Initial Occupancy Date, (c) physical occupancy of at least 90% of the Units, (d) Final Closing, including, without limitation, Permanent Mortgage Commencement (which may occur simultaneously with the payment of this

Third Installment), (e) funding of all reserves required under this Agreement, or (f) February 1, 2019.

(iv) the fourth Installment (the "Fourth Installment") in the amount of \$133,770 shall be payable on the later to occur of (a) the Forms 8609 Receipt Date, (b) receipt of a recorded copy of the Extended Use Agreement, (c) determination by the Accountants of the Final Tax Credit Amount and the calculation of any adjustment required pursuant to Section 5.2 reasonably satisfactory to the Investor Limited Partner and agreed to by the General Partner, (d) receipt by the Investor Limited Partner of a copy of the tax credit compliance audit report of initial tenant files conducted by a qualified third-party firm reasonably approved by the Investor Limited Partner, or (e) May 1, 2019.

B. The Partners and the Partnership hereby authorize and direct the Investor Limited Partner to pay and remit directly into the "Capital Account" as defined in the Construction Loan Documents, (a) the First Installment for disbursement in accordance with the terms of the Construction Loan Documents, and (b) such portion of the Third Installment as is necessary to pay down the Construction Loan to the principal amount of the Permanent Loan. The amount of any Installments paid directly to the Construction Lender will be deemed to have been contributed by the Investor Limited Partner to the Partnership in satisfaction of its obligations under Section 5.1A.

C. The obligation of the Investor Limited Partner to make each Installment (except as otherwise provided) is subject to each of the following conditions:

(i) The General Partners shall have properly completed, executed and delivered to the Investor Limited Partner a certificate relating to the appropriate remaining Installments (the "Payment Certificate"), in the forms attached hereto as **Exhibit D**, **Exhibit E**, and **Exhibit F** relating to the appropriate remaining Installments, dated the date such Installment is to be paid to the Partnership and attaching the Title Policy endorsement and any other materials referred to therein. In connection with the payment of each Installment, the Investor Limited Partner shall have the right to conduct a physical inspection of the Property to confirm the status of construction or rehabilitation thereof or to determine that the condition of the Project is consistent with sound business practices in the geographic area in which the Project is located, including no deferred maintenance. The Investor Limited Partner shall conduct such inspection within ten (10) business days of being requested to do so by the General Partners, provided, however, that the Investor Limited Partner will be deemed to waive such physical inspection requirement if it does not make such inspection within ten (10) business days of receipt of a written request by the General Partners to do so (which may be sent prior to the date of the Payment Certificate, but not more than ten (10) business days prior to the date of the Payment Certificate).

(ii) In the case of the First Installment, all Requisite Approvals to the admission of the Investor Limited Partner pursuant to this Agreement shall have been obtained and the Project shall have received a Carryover Allocation and Credit Reservation in the amount of at least \$1,500,000 per annum.

(iii) Each of the representations and warranties set forth in Section 6.5 shall be true and correct in all material respects.

(iv) No event shall have occurred and remain uncured, which would permit the Investor Limited Partner to give an Election Notice under Section 5.3.

(v) From and after the date of the occurrence of an Event of Bankruptcy as to any General Partner, any Guarantor or the Developer, the obligation of the Investor Limited Partner to pay the Installments shall be suspended, and such obligation shall be reinstated only when such Event of Bankruptcy shall have been cured in a manner approved in writing by the Investor Limited Partner.

(vi) No Installment shall be payable unless all conditions for all prior Installments have been satisfied.

(vii) The Construction Inspector shall reasonably believe that each of the Buildings will be placed in service for purposes of Section 42(h)(1)(E) of the Code not later than December 31, 2018 (which determination shall be subject to confirmation by the Investor Limited Partner), unless the Managing General Partner submits a plan to the Investor Limited Partner that evidences that placement in service will be achieved by December 31, 2018.

## **Section 5.2 Adjustment to Capital Contributions of Investor Limited Partner**

The Capital Contribution of the Investor Limited Partner shall be subject to adjustment in the manner provided in this Section 5.2.

A. Federal Low Income Tax Credit Downward Basis Adjuster. If at any time and from time to time for any reason the Accountants shall determine that, or there shall be a Final Determination or Recapture Event pursuant to which, the Adjusted Aggregate Federal Low Income Tax Credit Amount properly allocable to the Investor Limited Partner during the Credit Period for all of the Buildings in the Project is or will be less than the Projected Aggregate Federal Low Income Tax Credit Amount, then the Capital Contribution of the Investor Limited Partner shall be reduced in the aggregate by the sum of (i) \$0.985 (the "Federal Low Income Tax Credit Downward Basis Adjustment Factor") for each \$1.00 that the Adjusted Aggregate Federal Low Income Tax Credit Amount is less than the Projected Aggregate Federal Low Income Tax Credit Amount (except to the extent such shortfall is attributable to the recapture of Federal Low Income Tax Credits previously reported on a Partnership tax return, in which event the Federal Low Income Tax Credit Downward Basis Adjustment Factor shall be \$0.985 with respect to the portion of such shortfall attributable to such recapture), (ii) the amount of any interest and/or penalties paid or payable by the Investor Limited Partner (or its participants) as a result of any Recapture Event affecting the foregoing calculation and (iii) 6% per annum commencing on the Date such amount is due hereunder and continuing until the payment of the amount of such reduction in full, except to the extent such shortfall is attributable to a change in law (for purposes of this clause (iii), any reduction effected by reduction in the amount of an Installment as provided in Section 5.2 shall be deemed to have been paid on the date on which such Installment shall actually become payable hereunder).

B. Federal Low Income Tax Credit Downward Timing Adjuster. If at any time and from time to time for any reason the Accountants shall determine that, or there shall be a Final Determination pursuant to which, the amount of the Federal Low Income Tax Credits properly allocable to the Investor Limited Partner is less than \$690,057 in 2018, or \$1,499,850 in 2019 (the “Federal Downward Timing Adjuster Target Amounts”), then the Capital Contribution of the Investor Limited Partner shall be reduced by \$0.65 for each \$1.00 that the Federal Low Income Tax Credits properly allocable to the Investor Limited Partner is less than \$690,057 in 2018, and \$1,499,850 in 2019. Notwithstanding the foregoing, however, (i) in the event that the Adjusted Aggregate Federal Low Income Tax Credit Amount shall vary from the Projected Aggregate Federal Low Income Tax Credit Amount in effect on the date of the Investment Closing, the Federal Downward Timing Adjuster Target Amounts for purposes of the preceding sentence shall be adjusted by the same percentage by which the Adjusted Aggregate Federal Low Income Tax Credit Amount varies from the Projected Aggregate Federal Low Income Tax Credit Amount and (ii) if 2018 is not the First Full Credit Year, comparable adjustments shall be made for any subsequent year which precedes the First Full Credit Year.

C. Federal Low Income Tax Credit Upward Basis Adjuster. If at any time and from time to time the Accountants shall determine or there shall be a Final Determination that the Adjusted Aggregate Federal Low Income Tax Credit Amount properly allocable to the Investor Limited Partner during the Credit Period is greater than the Projected Aggregate Federal Low Income Tax Credit Amount, then the Capital Contribution of the Investor Limited Partner shall be increased, subject to the provisions of Section 5.2E below, by \$0.985 for each \$1.00 that the Adjusted Aggregate Federal Low Income Tax Credit Amount properly allocable to the Investor Limited Partner during the Credit Period is greater than the Projected Aggregate Federal Low Income Tax Credit Amount.

D. Federal Low Income Tax Credit Upward Timing Adjuster. If the Accountants shall determine or there shall be a Final Determination that the amount of the Federal Low Income Tax Credits properly allocable to the Investor Limited Partner is greater than \$690,057 in 2018 (the “Federal Upward Timing Adjuster Target Amounts”), then the Capital Contribution of the Investor Limited Partner shall be increased, subject to the provisions of Section 5.2E below, by \$0.985 for each \$1.00 that the Federal Low Income Tax Credits properly allocable to the Investor Limited Partner is greater than \$690,057 in 2018. Notwithstanding the foregoing, however, in the event that the Adjusted Aggregate Federal Low Income Tax Credit Amount shall vary from the Projected Aggregate Federal Low Income Tax Credit Amount in effect on the date of the Investment Closing, the Federal Upward Timing Adjuster Target Amounts for purposes of the preceding sentence shall be adjusted by the same percentage by which the Adjusted Aggregate Federal Low Income Tax Credit Amount varies from the Projected Aggregate Federal Low Income Tax Credit Amount.

E. Application of Adjustments.

(i) If, upon the occurrence of any determination or event giving rise to an adjustment in the Capital Contribution of the Investor Limited Partner under this Section 5.2 (aggregating and/or netting, as applicable, all concurrent adjustments applicable to the Investor Limited Partner under this Section 5.2), there is a net reduction in such Capital Contribution, then such net reduction shall be applied first to reduce the amount of any

unpaid Installments of the Capital Contribution of the Investor Limited Partner, in order, by a corresponding amount. If the net reduction exceeds the amount of such unpaid Installments, then the Managing General Partner will pay to Limited Partner the amount of such excess, on an After-Tax Basis (a “Tax Credit Shortfall Payment”), which payment shall be treated as an advance to the Partnership by Managing General Partner and a distribution from the Partnership to the Investor Limited Partner to the Investor Limited Partner, no later than seventy-five (75) days of the end of the calendar year in which the determination is made, provided, however, Investor Limited Partner may determine, in its reasonable discretion, that such treatment could reduce the amount of Federal Low Income Tax Credits which would otherwise be allocable to the Investor Limited Partner under this Agreement).

(ii) If, upon the occurrence of any determination or event giving rise to an adjustment in the Capital Contribution of the Investor Limited Partner under this Section 5.2 (aggregating and/or netting, as applicable, all concurrent adjustments under this Section 5.2), there is a net increase in such Capital Contribution, then such net increase shall be paid at the time of the Fourth Installment, and if the Fourth Installment has already been paid, shall be paid by the Investor Limited Partner within seventy-five (75) days of the date of the determination in question.

(iii) If placement in service for purposes of Section 42(h)(1)(E) has not occurred by December 31, 2018 or the rate of Federal Low Income Tax Credits is not equal to 9% in the month that the Project is placed in service, the adjustments in this Section 5.2E shall apply.

(iv) In no event will the application of adjustments set forth in this Section 5.2 cause Capital Contributions of the Investor Limited Partner to increase by more than five percent (5%) without the Consent of the Investor Limited Partner, which consent shall be granted in the Investor Limited Partner’s sole and absolute discretion and which consent is subject to approval by the Investor Limited Partner’s investment committee.

F. Provisional Adjustments. If, upon receipt by the Investor Limited Partner of a Payment Certificate with respect to any Installment, the Investor Limited Partner shall have a reasonable basis to believe that the amount of such Installment would have been subject to reduction if the Accountants had made a current determination or projection under any of the preceding provisions of this Section 5.2, the Investor Limited Partner may so notify the General Partners within seven (7) business days of receipt of such Payment Certificate, and the General Partners shall thereupon engage the Accountants to make such determination or projection (unless the General Partners and Investor Limited Partner shall mutually agree upon the adjustments to be made). The amount of the Installment in question shall then be provisionally reduced in accordance with such projection or agreement; *provided, however*, that if the Accountants’ subsequent determinations with respect to matters provisionally reduced under this paragraph shall vary from the determinations or mutual agreements described herein, then either (i) the Investor Limited Partner shall promptly pay to the Partnership the amounts, if any, by which the provisional reduction exceeded the reduction as subsequently determined or (ii) the amount, if any, by which the reduction as subsequently determined exceeded the provisional reduction shall be applied against future Installments or refunded as provided in Section 5.2E



above. The due date for payment by the Investor Limited Partner of any Installment or any portion of an Installment held back pursuant to this section shall be suspended until the Accountant's determination of the provisional reduction (if any) as provided herein.

G. The obligations of the Managing General Partner set forth in this Section 5.2 shall expire at the end of the Compliance Period and shall be guaranteed pursuant to that certain Guaranty Agreement of even date herewith. The obligations of the Managing General Partner set forth in Section 6.8 of this Agreement expire in accordance with Section 6.8 of this Agreement and are limited in amount. The limitations imposed in Section 6.8 are separate and distinct from the obligations imposed under this Section 5.2 and should not be construed as limiting in any manner the duration or amount of the obligations described in this Section 5.2.

### **Section 5.3 Repurchase of Investor Limited Partner's Interest**

A. The General Partners hereby agree to purchase the Interest of the Investor Limited Partner if any of the following events shall occur:

(i) Final Closing shall not have taken place on or before the date of maturity of the Construction Loan, *provided, however*, that such date may be automatically extended for a period of up to twelve (12) months to the extent the expiration dates set forth in the Mortgage Loan Commitments shall have been extended beyond such date; or

(ii) at any time prior to the Development Obligation Date, (1) any action to foreclose any Mortgage shall have been commenced and such action is not terminated or withdrawn within forty-five (45) days or a binding agreement with the holder(s) thereof to effect the same entered into within such period, and any notice of acceleration of indebtedness waived or withdrawn; (2) any action is commenced to foreclose any mechanics' or any other lien (other than the lien of any Mortgage) against the Project and such action has not within forty-five (45) days been either bonded against in such a manner as to preclude the holder of such lien from having any recourse to the Property or to the Partnership for payment of any debt secured thereby, or affirmatively insured against by the title insurance policy or an endorsement thereto issued to the Partnership by a reputable title insurance company (which insurance company will not have indemnity from or recourse against Partnership assets by reason of any loss it may suffer by reason of such insurance) in an amount satisfactory to Investor Tax Counsel; or (3) construction or operation of the Project shall have been enjoined by a final order (from which no further appeals are possible) of a court having jurisdiction and such injunction shall continue for a period of forty-five (45) days; or

(iii) any of the Mortgage Loan Commitments is terminated, withdrawn or becomes unenforceable (except as a result of full performance thereof in accordance with its terms) and such Commitment is not reinstated (or replaced on terms at least as favorable to the Partnership) within forty-five (45) days; or

(iv) prior to the Completion Date, a casualty occurs resulting in substantial destruction of the Project, and the insurance proceeds (if any) are insufficient to restore

the Project or the Project is not so restored within twenty-four (24) months following such casualty; or

(v) the Project shall become ineligible for 30% or more of the Projected Aggregate Federal Low Income Tax Credit Amount; or

(vi) the Partnership shall fail to achieve Development Obligation Date within 24 months following the Completion Date or shall fail to achieve Ten Percent Test Qualification by the latest date permitted under Section 42(h)(1)(E)(ii) of the Code; or

(vii) the Forms 8609 Receipt Date shall not have occurred by the due date (as the same may have been properly extended, if applicable) for filing of the Partnership's federal income tax returns for the first year of the Credit Period (unless such delay is due to the Credit Agency or is otherwise, in the judgment of the Special Limited Partner, beyond the reasonable control of the General Partners); or

(viii) any Lender or Governmental Agency shall disapprove, or fail to give a required approval of, the Investor Limited Partner as a Partner of the Partnership; or

(ix) the Construction Inspector or the Investor Limited Partner shall have reasonably determined that it is no longer likely that each of the Buildings will be placed in service for purposes of Section 42(h)(1)(E) of the Code by December 31, 2018.

B. If any such event set forth in Section 5.3A shall occur, the Managing General Partner shall give notice to the Investor Limited Partner of the obligations of the Managing General Partner hereunder to purchase its Interest (such obligation being herein called a "Purchase Obligation" and such notice the "Purchase Obligation Notice") within fifteen (15) days after the occurrence of any event giving rise to such obligation. If the Investor Limited Partner elects to sell its Interest hereunder, it shall give the General Partners notice of such election (an "Election Notice") within thirty (30) days after such Purchase Obligation Notice from the General Partners is received by the Investor Limited Partner (or, in the event that such Purchase Obligation Notice from the General Partners is not given, at any time after the occurrence of such event).

C. Within ten (10) business days after delivery to the General Partners of an Election Notice from the Investor Limited Partner, the Managing General Partner shall pay the Investor Limited Partner a purchase price (the "Purchase Price") in cash (with interest thereon at an annual rate one percentage point above the Designated Prime Rate commencing on the tenth (10th) day following the date of such delivery) equal to (i) the sum of (a) 100% of the Investor Limited Partner's Net Capital Contribution that has been paid-in to the Partnership, increasing 8% per annum commencing on the Admission Date through the fifth (5th) day following the date of such delivery, *plus* (b) the actual out-of-pocket costs (including any legal, accounting and consulting fees and any interest or penalties) paid by the Investor Limited Partner in connection with any recapture of Tax Credits allocated to the Investor Limited Partner pursuant to this Agreement *less* (ii) the sum of (a) the amount of Cash Flow theretofore distributed by the Partnership in respect of the Investor Limited Partner's Interest and (b) the amount of any Tax Credits allocable to the Interest which will not be recaptured as a result of the disposition of said

Interest or otherwise. In the event that a Purchase Obligation arises pursuant to Section 5.3A(iv), the Purchase Price shall be offset by any amounts distributed to the Investor Limited Partner pursuant to Section 10.1D.

D. Upon the giving of its Election Notice, the Investor Limited Partner shall have no further obligations under this Agreement, and the Managing General Partner shall indemnify and defend the Investor Limited Partner and hold it harmless against any such obligations. The Managing General Partner shall take all action and shall pay all costs necessary to enable the Investor Limited Partner to receive and retain the Purchase Price as against any creditor of any General Partner or the Partnership. Notwithstanding the purchase by the Managing General Partner of the Interest of the Investor Limited Partner pursuant to Section 5.3A, to the extent permitted under the applicable provisions of the Code, the Investor Limited Partner shall be allocated any profits or losses and tax credits in respect of said Interest for the period prior to the date of the receipt by the Investor Limited Partner of payment therefor. Anything herein to the contrary notwithstanding, title to the Interest of the Investor Limited Partner shall not vest in the Managing General Partner until payment in full of the Purchase Price therefor. Upon such payment, the General Partners shall forthwith cause an amendment hereto and to the Certificate (if required under State law) and any other necessary papers to be executed, filed, recorded and published wherever required showing such substitution.

E. No agreement affecting the Project shall prevent the exercise by the Investor Limited Partner of its right to require the purchase by the Managing General Partner of its Interest in the manner described in this Section 5.3.

F. The Investor Limited Partner shall have the right to waive its right to have its Interest repurchased at any time during which any of such rights shall be in effect. Any such waiver shall be exercised by delivery to the General Partners of a written notice stating under which clause(s) of this Section it is waiving its right to have its Interest repurchased and that its rights under such specified clause(s) are thereby irrevocably waived from that date forward.

G. Should any General Partner repurchase the Interest of the Investor Limited Partner pursuant to this Section 5.3, then the Special Limited Partner agrees to withdraw from the Partnership at the same time as the Investor Limited Partner's withdrawal is effective.

#### **Section 5.4 Redemption of Partnership Interest.**

At any time after payment of Investor Limited Partner's Net Capital Contribution, Investor Limited Partner may require that the Managing General Partner purchase the Investor Limited Partner's Interest and the Special Limited Partner's Interest, subject to all then existing liens and encumbrances to title, for an amount equal to \$100 (the "Put Option"). To exercise the Put Option, the Investor Limited Partner must deliver to the General Partners an irrevocable written notice of such exercise. The purchase by the Managing General Partner will be closed within 60 days after the later of (i) the Investor Limited Partner's exercise of such right, or (ii) the receipt of all required consents, if any. Any conveyance from the Investor Limited Partner and the Special Limited Partner to the Managing General Partner under this Section 5.4 will be made by quitclaim transfer, without representation or warranty of any kind by the Investor Limited Partner or the Special Limited Partner except that the Investor Limited Partner and the

Special Limited Partner will represent that such Partner has not previously transferred its Interest and such Partner's Interest is free of liens or encumbrances other than those contemplated by the Partnership's Mortgage Loans and/or by this Agreement. The Investor Limited Partner and the Special Limited Partner agree that the Partnership and the General Partners will have no liability for any Adverse Consequences to the Investor Limited Partner or the Special Limited Partner as a result of the exercise of the Put Option, including, but not limited to, recapture or lost Federal Low Income Tax Credits.

## **ARTICLE VI**

### **RIGHTS, POWERS AND DUTIES OF THE GENERAL PARTNERS**

#### **Section 6.1 Restrictions on Authority**

A. Notwithstanding any other provisions of this Agreement, the General Partners shall have no authority to perform any act in respect of the Partnership or the Project in violation of (i) any applicable law or regulation or (ii) any agreement between the Partnership and any Lender or Governmental Agency.

B. The General Partners shall not have any authority to do any of the following acts without the Consent of the Investor Limited Partner and any Requisite Approvals:

(i) to incur indebtedness for money borrowed on the general credit of the Partnership, except as specifically permitted by Article IX, provided that any Consent of the Investor Limited Partner shall be granted in the Investor Limited Partner's sole and absolute discretion, or

(ii) following completion of construction of the Improvements, to construct any new capital improvements, or to replace any existing capital improvements if construction or replacement would substantially alter the use of the Property, provided that any Consent of the Investor Limited Partner shall be granted in the Investor Limited Partner's sole and absolute discretion, or

(iii) to acquire any real property in addition to the Property (other than easements or similar rights necessary or convenient for the operation of the Project), provided that any Consent of the Investor Limited Partner shall be granted in the Investor Limited Partner's sole and absolute discretion, or

(iv) to cause the Partnership to make any loan or advance to any Person (for purposes of this clause 6.1B(iv), accounts receivable in the ordinary course of business from Persons other than the General Partners or their Affiliates shall not be deemed to be advances or loans), provided that any Consent of the Investor Limited Partner shall be granted in the Investor Limited Partner's sole and absolute discretion, or

(v) to amend, modify, or waive any term of the Mortgage Loan Documents, except non-material modifications of the Mortgage Loan Documents or other modifications that will not have an adverse effect on the General Partners' or the Partnership's ability to perform its obligations hereunder and under the Mortgage Loan

Documents, provided that any Consent of the Investor Limited Partner shall be granted in the Investor Limited Partner's sole and absolute discretion, or

(vi) to lease any Low Income Unit to other than Qualified Tenants or otherwise operate the Project in such a manner or take any action which could cause any Low Income Unit to fail to be treated as a qualified low-income housing unit under Section 42(i)(3) of the Code or which would cause the recapture by the Partnership of any low-income housing credit under Section 42 of the Code, provided that any Consent of the Investor Limited Partner shall be granted in the Investor Limited Partner's sole and absolute discretion, or

(vii) after the Investment Closing, to enter into any material Project Document or to amend any Project Document, or to permit any party thereunder to waive any provision thereof, to the extent that the effect of such amendment or waiver would be to eliminate, diminish or defer any obligation or undertaking of the Partnership, the General Partners or their Affiliates which accrues, directly or indirectly, to the benefit of, or provides additional security or protection to, the Investor Limited Partner (notwithstanding that the Investor Limited Partner is neither a party to nor express beneficiary of such provision or was not a Partner when such provision became effective), provided that any Consent of the Investor Limited Partner shall be granted in the Investor Limited Partner's sole and absolute discretion, or

(viii) to obtain, increase, refinance or materially modify any Mortgage Loan after Investment Closing or to sell or convey the Property or any substantial portion thereof, except as provided in Article IX, and except that the General Partners may cause the Partnership to grant easements and similar rights affecting the Land to obtain utility services for the Project or for other purposes necessary or convenient for the operation of the Project, provided that any Consent of the Investor Limited Partner shall be granted in the Investor Limited Partner's sole and absolute discretion, or

(ix) to cause the Partnership to commence a proceeding seeking any decree, relief, order or appointment in respect to the Partnership under the federal bankruptcy laws, as now or hereafter constituted, or under any other federal or state bankruptcy, insolvency or similar law, or the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) for the Partnership or for any substantial part of the Partnership's business or property, or to cause the Partnership to consent to any such decree, relief, order or appointment initiated by any Person other than the Partnership, provided that any Consent of the Investor Limited Partner shall be granted in the Investor Limited Partner's sole and absolute discretion, or

(x) to cause the Partnership to accept or receive any grant (unless otherwise expressly contemplated under the terms of this Agreement), provided, however, that Investor Limited Partner's consent to the receipt of grant proceeds shall not be unreasonably withheld, conditioned or delayed;

(xi) to pledge or assign any of the Capital Contribution of the Investor Limited Partner or the proceeds thereof, except as may be required in connection with the

Mortgage Loans, provided that any Consent of the Investor Limited Partner shall be granted in the Investor Limited Partner's sole and absolute discretion, or

(xii) to amend any of the Related Agreements provided, however, that Investor Limited Partner's consent to the amendment any of the Related Agreements shall not be unreasonably withheld, conditioned or delayed, or

(xiii) to permit the merger, termination or dissolution of the Partnership, provided that any Consent of the Investor Limited Partner shall be granted in the Investor Limited Partner's sole and absolute discretion, or

(xiv) to dismiss the Accountants or to engage a new firm as Accountants provided, however, that Investor Limited Partner's consent to engage a new firm as Accountants shall not be unreasonably withheld, conditioned or delayed, or

(xv) to approve any changes to the Plans and Specifications for the Project which would result, either individually in an overall development cost increase or decrease of \$100,000 or in the aggregate, in an overall development cost increase or decrease in excess of \$300,000 (*provided, however,* that any Consent of the Investor Member required under this clause (xiv) shall not be unreasonably withheld, conditioned or delayed), or

(xvi) to take any action which would cause the Property or any part thereof to be treated as tax exempt use property within the meaning of Section 168(h) of the Code, provided that any Consent of the Investor Limited Partner shall be granted in the Investor Limited Partner's sole and absolute discretion, or

(xvii) to take any action outside of the ordinary course of business of the Partnership, provided that any Consent of the Investor Limited Partner shall be granted in the Investor Limited Partner's sole and absolute discretion.

C. The General Partners shall not (a) cause the Partnership to utilize Cash Flow to acquire interests in other Entities or (b) cause the Partnership to invest the proceeds of any sale or refinancing of the Project without the Consent of the Investor Limited Partner, which consent shall be granted in the Investor Limited Partner's sole and absolute discretion.

D. Any Partner may engage independently or with others in other business ventures of every nature and description including, without limitation, the ownership, operation, management, and development of real estate, regardless of whether such real estate directly competes with the Project, and neither the Partnership nor any Partner shall have any rights by reason of this Agreement in and to such independent ventures.

## **Section 6.2 Tax Matters Partner**

A. The Managing General Partner (as defined in Section 6.3) is hereby designated as the Tax Matters Partner or TMP for the Partnership. Additionally, subject to paragraph G of this Section 6.2, the Tax Matters Partner will be designated as the "Partnership Representative." Upon the Retirement of the Person serving as the TMP (the "Retired TMP"), the Partnership

shall designate a successor TMP in accordance with Treasury Regulation Section 301.6231(a)(7)-1 or any successor Regulation, but such designee shall not become the TMP until the designation of such Person has been approved by Consent of the Investor Limited Partner, which consent shall be granted in the Investor Limited Partner's sole and absolute discretion. Such successor TMP shall notify the Service of its designation as such for such year as well as for all prior years for which the Retired TMP served in such capacity.

B. The TMP shall employ experienced tax counsel to represent the Partnership in connection with any audit or investigation of the Partnership by the Service, and in connection with all subsequent administrative and judicial proceedings arising out of such audit. The fees and expenses of such counsel shall be a Partnership expense and shall be paid by the Partnership. Such counsel shall be responsible for representing the Partnership; it shall be the responsibility of the General Partners and of the Investor Limited Partner, at their own expense, to employ tax counsel to represent their respective separate interests.

C. The TMP shall keep the Partners informed of all administrative and judicial proceedings at the Partnership level, as required by Section 6223(g) of the Code, and shall furnish to each Partner who so requests in writing, a copy of each notice or other communication received by the TMP from the Service (except such notices or communications as are sent directly to such requesting Partner by the Service). All reasonable third party costs and expenses incurred by the TMP in serving as the TMP shall be Partnership expenses and shall be paid by the Partnership.

D. The TMP shall have no authority, without the Consent of the Investor Limited Partner, which consent shall be granted in the Investor Limited Partner's sole and absolute discretion, (and the Consent of the Administrative General Partner with respect to matters materially affecting the Administrative General Partner's interests), to (i) enter into a settlement agreement with the Service which purports to bind Partners other than the TMP, (ii) file a petition as contemplated in Section 6226(a) or 6228 of the Code, (iii) intervene in any action as contemplated in Section 6226(b) of the Code, (iv) file any request contemplated in Section 6227(b) of the Code, (v) enter into an agreement extending the period of limitations as contemplated in Section 6229(b)(1)(B) of the Code or (vi) take any other substantial action which would affect the Investor Limited Partner.

E. The relationship of the TMP to the Investor Limited Partner is that of a fiduciary, and the TMP hereby acknowledges its fiduciary obligation to perform its duties in such manner as will serve the best interests of the Partnership and the Investor Limited Partner.

F. The Partnership shall indemnify the TMP (including the officers and directors of a corporate TMP) against judgments, fines, amounts paid in settlement and expenses (including attorneys' fees) reasonably incurred by the TMP in any civil, criminal or investigative proceeding in which the TMP is involved or threatened to be involved by reason of being the TMP, *provided that* the TMP acted in good faith, within what it reasonably believed to be in the best interests of the Partnership or its Partners. The TMP shall not be indemnified under this provision against any liability to the Partnership or its Partners to any greater extent than the indemnification allowed by Section 6.6 of this Agreement. The indemnification provided by this

subparagraph shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any applicable statute, agreement, vote of the Partners, or otherwise.

G. Unless otherwise elected by the Investor Limited Partner, the TMP as designated above will serve as the “Partnership Representative” as defined in the Bipartisan Budget Act of 2015, Pub L. No. 114-74 (the “Budget Act”) so long as it qualifies as partnership representative under the Budget Act or until it is removed pursuant to the provisions of Section 7.7 or Retires. While acting in such capacity, the TMP or Partnership Representative shall have all the powers and authority of a partnership representative under the Budget Act, shall represent the Partnership at the Partnership’s expense, and may expend Partnership funds for professional services and costs associated therewith; provided that, to the extent permitted by any applicable Treasury Regulations, notices, or other rules and regulations issued by the IRS, may not take any action described in this Section 6.2 without the Consent of the Investor Limited Partner, which consent shall be granted in the Investor Limited Partner’s sole and absolute discretion, (and the Consent of the Administrative General Partner with respect to matters materially affecting the Administrative General Partner’s interests). The partnership representative shall provide to all the Partners prompt notice of any communication to or from, or agreements with, any federal, state, or local tax authority regarding any Partnership tax return or other Partnership tax matter, including a summary of the provisions thereof. The Investor Limited Partner may elect, at any time and in its sole discretion, to designate itself or another person to be the Partnership Representative (so long as the Person designated meets the requirements of a partnership representative under the Budget Act), in which event the Managing General Partner must take all appropriate steps to implement such designation. The Managing General Partner agrees, in the event it is not the Partnership Representative, to cooperate fully with the Partnership Representative in the conduct of any audit or tax contest. Notwithstanding the designation of Partnership Representative: (i) the Managing General Partner will make an available election under Code Sections 6221(b) or 6226 (as in effect after the effect date of the Budget Act) if and only if requested to do so by the Investor Limited Partner, and (ii) the Managing General Partner has no authority to make any other elections available under the Budget Act or Treasury Regulations promulgated thereunder without the prior written Consent of the Investor Limited Partner, which consent shall be granted in the Investor Limited Partner’s sole and absolute discretion.

H. Unless otherwise directed in writing to do so by the Investor Limited Partner, the Partnership shall not elect to have the provisions of the Budget Act apply to the Partnership before its effective date. After the effective date and following the promulgation of Treasury Regulations implementing the Budget Act, the Partners agree to work together in good faith to amend this Section 6.2 to comply with such Treasury Regulations or other guidance issued under the Budget Act.

### **Section 6.3 Business Management and Control; Designation of Managing General Partner; Certain Rights of the Special Limited Partner**

A. The General Partners shall have the exclusive right to manage the business of the Partnership in accordance with this Agreement. No Limited Partner shall have any authority or right to act for or bind the Partnership.



B. The powers and duties of the General Partners hereunder may be exercised in the first instance by the Managing General Partner. The Managing General Partner is hereby authorized to execute and deliver in the name and on behalf of the Partnership all such documents and papers (including any required by any Lender or Governmental Agency) as such Managing General Partner deems necessary or desirable in carrying out such duties hereunder. Managing General Partner is hereby designated as the initial Managing General Partner; if such Person shall become unable to serve in such capacity or shall cease to be a General Partner, the remaining General Partners may from time to time designate from among themselves by consent one or more substitute or additional Managing General Partners. If for any reason no designation is in effect, the powers of the Managing General Partners shall be exercised by the majority consent of the remaining General Partners. A designation of a successor as Managing General Partner or the designation of an additional Managing General Partner pursuant to Section 7.3 or 7.5 shall supersede any designation or other exercise of rights pursuant to this Section 6.3B. So long as the Managing General Partner designation is in effect, then (i) except with respect to matters specifically stated herein to be the responsibility of the Administrative General Partner, the Administrative General Partner shall not otherwise have any authority (or obligation in the first instance) to carry out the powers and duties of the General Partner under this Agreement without the consent of the Managing General Partner; provided that, any failure or default by the Managing General Partner to carry out its obligations under this Agreement shall not be deemed to be a default by the Administrative General Partner unless the Administrative General Partner is first provided a reasonable opportunity to cure the Managing General Partner's default; and (ii) in the event that this Agreement provides for an action that requires the vote of both the Managing General Partner and the Administrative General Partner to effect such action (a “**Major Decision**”), the Managing General Partner and Administrative General Partner shall each vote on such matter. Either of the Managing General Partner or Administrative General Partner that is requesting a vote on a Major Decision shall give the other written notice of any Major Decision and the other Partner shall provide its approval or disapproval of the Major Decision within fourteen (14) days after receipt of such notice unless an emergency event shall have occurred in which event the applicable Partner shall provide such notice as is reasonable under the circumstances. In the event that the Managing General Partner and the Administrative General Partner disagree with respect to a Major Decision, the decision of the Managing General Partner shall control; provided, however, that the Managing General Partner may not institute any Major Decision that would have a material adverse impact on the economic interest of the Administrative General Partner without the consent of the Administrative General Partner.

Notwithstanding the foregoing paragraph, the Administrative General Partner shall materially participate in the development and operations of the Project as required by the rules and regulations of the Credit Agency pertaining to project participation by a historically underutilized business; *provided, that*, the Administrative General Partner shall only take action with respect to matters that have been agreed to by both the Managing General Partner and the Administrative General Partner.

C. In the event that (i) the Partnership is in material default of any of its obligations under the Project Documents, (ii) any General Partner, Developer or Guarantor is in default in any material respect under any of its obligations under this Agreement or any of the Related Agreements, (iii) a Recapture Event shall have occurred, (iv) a sole General Partner shall Retire, (v) an Event of Bankruptcy shall have occurred as to a General Partner, the Developer or any

Guarantor or (vi) a General Partner or an Affiliate of a General Partner shall have committed fraud or breach of fiduciary duty, the Special Limited Partner may, at its election, give notice of such default or event to the then General Partners, if any, and, (a) in the case of a default, if such default is not cured within ten (10) business days (or cured within a reasonable time (not to exceed thirty (30) days) in the event it is impossible to cure such default within such ten (10)-day period, *provided that* the General Partners are diligently and in good faith seeking to cure such default and there has been no assignment of or institution of proceedings to foreclose any Mortgage), or (b) in the event of such Retirement, Recapture Event, Event of Bankruptcy, fraudulent act or fiduciary breach, promptly after the occurrence of such event, the Special Limited Partner or any Entity of which a majority of the stock or beneficial interest is owned, directly or indirectly, by the Special Limited Partner or Bank of America, N.A., may, with the Consent of the Investor Limited Partner, elect to become an additional General Partner with all the rights and privileges of a General Partner. The Special Limited Partner shall provide the General Partners with true and correct copies of the written instruments evidencing such Consent of the Investor Limited Partner within ten (10) days after the Special Limited Partner's receipt thereof. Upon such election by the Special Limited Partner or such Entity and such Consent, the Special Limited Partner or such Entity shall automatically become and shall be deemed a General Partner and each Partner hereby irrevocably appoints the Special Limited Partner (with full power of substitution) as the attorney-in-fact of such Partner for the purpose of executing, acknowledging, swearing to, recording and/or filing any amendment to this Agreement and the Certificate necessary or appropriate to confirm the foregoing. If the Special Limited Partner or such Entity shall become an additional General Partner as herein stated, its Interest shall not be increased thereby (except that the Special Limited Partner may assign its Interest to such Entity). In the event of the admission of the Special Limited Partner or such Entity as a General Partner pursuant to this Section 6.3, and if there are then any other General Partners, the Special Limited Partner or such Entity shall have managerial rights, authority and voting rights of 51% on any matters to be decided or voted upon by the General Partners or the Managing General Partner, as the case may be, and the rights and authority of the remaining General Partners or the Managing General Partner, as the case may be, shall be deemed equally divided among them.

#### **Section 6.4 Duties and Obligations of the General Partners**

A. The General Partners shall use their reasonable best efforts to carry out the purposes, business and objectives of the Partnership, and shall devote to Partnership business such time and effort as may be reasonably necessary to (i) supervise the activities of the Management Agent, (ii) make inspections of the Project to determine if the Project is being properly maintained and that necessary repairs are being made thereto, (iii) prepare or cause to be prepared all reports of operations which are to be furnished to the Partners or to any Lender or Governmental Agency, (iv) with the Consent of the Investor Limited Partner, elect to defer the commencement of the Credit Period for all or any portion of the low-income housing tax credit allowable to the Partners under Section 42(g) of the Code, to the extent that any such deferral may be in the best economic interest of the Investor Limited Partner, which consent shall be granted in the Investor Limited Partner's sole and absolute discretion, (v) cause the Project to be insured in accordance with the requirements set forth in **Exhibit C**, and (vi) cause the Partnership and the Project to comply in all material respects with each of the representations and covenants of the applicant set forth in the Tax Credit Application.

B. Subject to the Project Documents and the requirements of Section 42 of the Code, the General Partners shall use reasonable efforts consistent with sound management practice to maximize income produced by the Project, including, if necessary, seeking any necessary approvals of, and implementing, appropriate adjustments in the rent schedule of the Project.

C. The General Partners shall timely execute and record in the appropriate filing office an Extended Use Agreement. The General Partners shall hold for occupancy such percentage of the apartments in the Project in such a manner as to qualify the entire Project as a qualified low income housing project under Section 42(g) of the Code as interpreted from time to time in regulations and rulings promulgated thereunder. The General Partners shall not take any action which would cause the termination or discontinuance of the qualification of the Project as a “qualified low income housing project” under Section 42(g) of the Code or which would cause the recapture of any Tax Credits without the Consent of the Investor Limited Partner, which consent shall be granted in the Investor Limited Partner’s sole and absolute discretion.

D. The General Partners shall prepare and submit to the Secretary of the Treasury (or any other Governmental Agency designated for such purpose), on a timely basis, any and all annual reports, information returns and other certifications and information and shall take any and all other action required (i) to insure that the Partnership (and its Partners) will continue to qualify for Tax Credits to the extent contemplated under this Agreement and (ii) unless the Consent of the Investor Limited Partner is received to act otherwise in a particular instance, which consent shall be granted in the Investor Limited Partner’s sole and absolute discretion, to avoid recapture of Tax Credits for failure to comply with the requirements of Section 42 of the Code or other applicable law.

E. Except as provided in or contemplated by the Project Documents in existence at Investment Closing, the General Partners agree that neither they nor any Related Person will at any time bear the Economic Risk of Loss for payment or performance of any Mortgage Loan. Each General Partner agrees that it will not cause any Limited Partner at any time to bear the Economic Risk of Loss for payment or performance under any Note or Mortgage. Each Limited Partner agrees not to take any action which would cause it to bear the Economic Risk of Loss for payment of any Mortgage Loan.

F. The General Partners shall have fiduciary responsibility for the safekeeping and use of all funds and assets of the Partnership, whether or not in their immediate possession or control. The General Partners shall not employ, or permit another to employ, such funds or assets in any manner except for the exclusive benefit of the Partnership.

G. No General Partner shall contract away the fiduciary duty owed at common law to the Limited Partners.

H. The General Partners shall be solely responsible for the following:

- (1) analyzing the Qualified Allocation Plan (“QAP”) for targeted areas within a state;
- (2) analyzing a site’s economy and forecasting future growth potential;

- (3) determining the site's zoning status and possible rezoning strategies;
- (4) contacting local government officials concerning access to utilities, public transportation and local ordinances;
- (5) performing environmental tests;
- (6) negotiating the purchase of the Land and the financing therefor;
- (7) causing the Partnership to acquire the Land;
- (8) processing necessary documentation with the Credit Agency in connection with the Tax Credits;
- (9) arranging the permanent mortgage financing for the Project; and
- (10) arranging for the admission to the Partnership of the Investor Limited Partner and the Special Limited Partner.

In consideration for its services set forth in this Section 6.4H, the General Partners have received their interests in the profits of the Partnership as set forth in Section 10.3. The General Partners shall not assign any of these duties to the Developer.

I. The General Partners shall (i) not store (except in compliance with applicable Hazardous Waste Laws) or dispose of any Hazardous Material at the Project; (ii) neither directly nor indirectly transport or arrange for the transport of any Hazardous Material to, at or from the Project (except in compliance with applicable Hazardous Waste Laws); (iii) provide the Limited Partners with written notice (x) upon any General Partner's obtaining knowledge of any potential or known release, or threat of release, of any Hazardous Material at or from the Project; (y) upon any General Partner's receipt of any notice to such effect from any federal, state, or other Governmental Agency and (z) upon any General Partner's obtaining knowledge of any incurrence of any expense or loss by any such Governmental Agency in connection with the assessment, containment, or removal of any Hazardous Material for which expense or loss any General Partner may be liable or for which expense or loss a lien may be imposed on the Project.

J. Reserved.

K. Reserved.

L. In the event that the Investor Limited Partner shall give notice to the General Partners that in the reasonable judgment of the Investor Limited Partner depreciation deductions will no longer be allocated to the Investor Limited Partner as a result of the treatment of the Development Amount and accrued interest thereon or any other Partnership indebtedness as a recourse obligation ("Related Party Financing"), then the General Partners shall take all such action as may be necessary to assure that any outstanding balance of such Related Party Financing shall constitute a Partnership Nonrecourse Liability and the Investor Limited Partner shall give its Consent to allow the General Partners to take all necessary action, which consent shall not be unreasonably withheld, conditioned or delayed, provided such action does not have

any negative tax consequences for the Partnership or the Investor Limited Partner. One such action may be the assignment of the outstanding balance of such Related Party Financing to an Entity which is not a Related Person.

M. The General Partners shall cause all leases of Units in the Project to contain a provision obligating tenants to notify the Management Agent or Property Manager immediately of any suspected water leaks, moisture problems or mold in Units or common areas of the Project. In addition, the General Partners shall furnish such reports and implement such actions, if any, required under the provisions of Section 12.1F.

N. Reserved.

O. At the sole cost and expense of the Partnership, the General Partner shall cause the Project to be insured in accordance the requirements set forth below and in **Exhibit C** and shall cause the Partnership to obtain and maintain such other coverage as may be required from time to time by any Lender under the Mortgage Loan Documents or as may be reasonably required from time to time by the Limited Partners in order to comply with regular requirements and practices of the Limited Partners in similar transactions including, without limitation if and to the extent required by the Limited Partners, wind insurance and earthquake insurance, so long as any such insurance is generally available at commercially reasonable premiums as determined by the Limited Partners from time to time. Such policies shall include, at a minimum, the following:

(i) Insurance against casualty to the Property under a policy or policies covering such risks as are presently included in “special form” (also known as “all risk”) coverage, including such risks as are ordinarily insured against by similar businesses, but in any event including fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, damage from aircraft, smoke, vandalism, malicious mischief and acts of terrorism. Such insurance will list “*Bank of America, N.A., a national banking association, as Investor Limited Partner, Banc of America CDC Special Holding Company, Inc., a North Carolina corporation, as Special Limited Partner, and each of their successors and assigns, as their interests may appear*” as additional insured’s and loss payees. Unless otherwise agreed in writing by Limited Partner, such insurance will be for the full insurable value of the Property, with a deductible amount, if any, in accordance with the standards set forth on **Exhibit C** and satisfactory to the Investor Limited Partner. No policy of insurance will be written such that the proceeds thereof will produce less than the minimum coverage required hereunder by reason of co-insurance provisions or otherwise. The term “full insurable value” means 100% of the actual replacement cost of the Property (excluding foundation and excavation costs and costs of underground flues, pipes, drains and other uninsurable items). Such insurance will also include:

(a) personal property coverage for building and contents owned by the Partnership, all subject to a maximum \$10,000 deductible amount;

(b) rent loss insurance in an amount equal to annual rental income; and

(c) boiler and machinery insurance on a comprehensive form basis, including repair and replacement coverage and rent loss coverage meeting the requirements of subparagraph (b) above with mechanical breakdown extension, provided that such boiler and machinery insurance is not necessary if the Project does not contain a boiler or other machinery which is covered by such insurance, or the perils which are insured by such boiler and machinery insurance are covered by other insurance maintained by the Partnership and such coverage is demonstrated to Limited Partner's reasonable satisfaction.

(ii) Comprehensive (also known as commercial) general liability insurance on an "occurrence" basis against claims for "personal injury" liability and liability for death, bodily injury and damage to property, products and completed operations, in limits satisfactory to Lender with respect to any one occurrence and the aggregate of all occurrences during any given annual policy period, with a minimum combined single limit of \$5,000,000. Such insurance will list "*Bank of America, N.A., a national banking association, as Investor Limited Partner, Banc of America CDC Special Holding Company, Inc., a North Carolina corporation, as Special Limited Partner, and each of their successors and assigns, as their interests may appear*" as additional insured's and loss payees.

(iii) During any period of construction upon the Property, the General Partner will cause the Partnership to maintain, or cause others to maintain, builder's risk insurance (non-reporting form) of the type customarily carried in the case of similar construction for 100% of the full replacement cost of work in place and materials stored at or upon the Property.

(iv) If at any time any portion of any structure on the Property is insurable against casualty by flood and is located in a Special Flood Hazard Area under the Flood Disaster Protection Act of 1973, as amended, a flood insurance policy in form and amount acceptable to Limited Partner but in no amount less than the amount sufficient to meet the requirements of applicable Law as such requirements may from time to time be in effect.

(v) Loss of rental value insurance or business interruption insurance in an amount acceptable to Limited Partner, for a minimum 12 month period, or until the Units have been brought back to their original state, plus an extended period of indemnity for at least three (3) additional months to re-lease the repaired Units.

(vi) In addition to the foregoing, the General Partner will cause the Builder to provide and maintain comprehensive (commercial) general liability insurance and workers' compensation insurance for all employees of the Builder meeting, respectively, the requirements hereunder.

Each policy of insurance (i) must be issued by one or more insurance companies each of which must have an A.M. Best's Company financial and performance rating of A-IX or better and be qualified or authorized by the Laws of the State to assume the risks covered by such policy, (ii) must provide that such policy will not be canceled or modified without at least 30 days prior

written notice to Investor Limited Partner, and (iii) will provide that any loss otherwise payable thereunder will be payable notwithstanding any act or negligence of the Partnership or the General Partner which might, absent such agreement, result in a forfeiture of all or a part of such insurance payment. The General Partner may satisfy any insurance requirement hereunder by providing one or more “blanket” insurance policies, subject to the Investor Limited Partner’s approval in each instance as to limits, coverages, forms, deductibles, inception and expiration dates, and cancellation provisions.

P. The General Partner shall review regularly all of the insurance coverages to insure that all such policies are in effect and in compliance with the terms of this Agreement and the Mortgage Loan Documents. The General Partner will cause the Partnership to promptly pay all premiums when due on such insurance and, the General Partner will deliver to the Investor Limited Partner acceptable evidence of insurance, such as a renewal policy or policies marked “premium paid” or other evidence satisfactory to the Investor Limited Partner reflecting that all required insurance is current and in force. The General Partner will immediately give written notice to the Investor Limited Partner of any cancellation of, or change in, any insurance policy. From time to time following the Admission Date, the General Partner shall deliver to the Special Limited Partner such further certificates or memoranda of insurance as the Special Limited Partner may reasonably require to confirm that such insurance and notice provisions with respect to insurance under this Agreement have been complied with. The Investor Limited Partner will not, because of accepting, rejecting, approving or obtaining insurance, incur any liability for (i) the existence, nonexistence, form or legal sufficiency thereof, (ii) the solvency of any insurer, or (iii) the payment of losses.

Q. The General Partner shall have the following duties and obligations with respect to a casualty or condemnation affecting all or a portion of the Project:

(i) In the event of any fire or other casualty to the Project (or any portion thereof) or any eminent domain or similar proceedings resulting in any condemnation or taking of the Project (or any portion thereof), the General Partner will promptly give the Investor Limited Partner written notice thereof. To the extent Net Proceeds are available for rebuilding or restoration (net of expenses reasonably incurred in obtaining such proceeds and subject to the rights and any applicable approval of the Lenders), the General Partner will rebuild or restore the Project, as the case may be, in such a manner as will as fully as possible implement the Initial Economic Projections or the Revised Economic Projections, if applicable. Any Net Proceeds that are not fully expended in such rebuilding or restoring will constitute Capital Transaction proceeds. In connection with any such rebuilding or restoring, the General Partner will seek legal, tax, and accounting counsel and take all necessary or advisable steps to preserve as fully as possible the Initial Economic Projections or the Revised Economic Projections, if applicable.

(ii) Notwithstanding the provisions of subparagraph (i) above, if it is impossible or unlikely that rebuilding or restoring the Project (or the affected portion thereof) can be accomplished with the Insurance Proceeds or Condemnation Awards available therefor, or if the projected tax benefits to the Investor Limited Partner from rebuilding or restoring the Project would be substantially equivalent to or less than the tax

benefits to Investor Limited Partner without rebuilding or restoring the Project, then, subject to the provisions of subparagraph (iii) below, the General Partner will refrain from rebuilding or restoring the Project and proceed to utilize any Net Proceeds as proceeds of a Capital Transaction.

(iii) The Investor Limited Partner, by written notice to the General Partner, may elect to cause the Partnership to rebuild or restore the Project (or the affected portion thereof) under the circumstances described in subparagraph (ii) if the reason that subparagraph (ii) is applicable is because it is impossible or unlikely that rebuilding of the Project can be accomplished with the amount of the Insurance Proceeds or Condemnation Proceeds available therefor provided and on the condition that the Investor Limited Partner agrees to provide such additional amounts as the Investor Limited Partner may deem necessary to cover such deficit. In such event, the General Partner will rebuild or restore the Project as provided in subparagraph (i) above to the extent feasible given the amount of funds available for such rebuilding or restoring. Any funds provided by the Investor Limited Partner under this subparagraph (iii) will be deemed to be additional Capital Contributions to the Partnership by the Investor Limited Partner which will have a priority return as set forth in Sections 10.1A and 10.1B.

(iv) In the event of any casualty or taking of the Project or any portion thereof, except under circumstances in which portions of the Project are unaffected by the casualty or condemnation or are rebuilt or restored as contemplated under this Section 6.4Q, the General Partner will, unless the Investor Limited Partner consents in writing to an alternative proposal, proceed to terminate and liquidate the Partnership, sell Partnership assets, repay indebtedness, and distribute proceeds of Capital Transactions to the Partners as provided in Section 10.2. In the event of a rebuilding or restoration, the General Partner will have no obligation to enter into construction or rehabilitation contracts at a price exceeding the amount of the Net Proceeds available for rebuilding or restoring.

(v) Nothing contained in this Section 6.4Q will be construed to affect the General Partner's liability for any failure to provide insurance to the full extent required under this Agreement. Notwithstanding the provisions of this Section 6.4Q, the General Partner and Guarantor shall be responsible for the costs of rebuilding or restoring the Project as a result of any uninsured casualty. For purposes of this Section 6.4Q(v), any casualty loss which is uninsured because the General Partner requested and the Investor Limited Partner approved a waiver from the insurance requirements set forth in this Agreement, shall be deemed to be an uninsured casualty for which the General Partner and Guarantor bear sole responsibility.

(vi) The provisions of this Section 6.4Q are subject to any requirements of the Lender set forth in the Mortgage Loan Documents; provided that, the General Partner acknowledges that the Investor Limited Partner will not be obligated to approve any Mortgage Loan Document which restricts the use of Insurance Proceeds and Condemnation Awards regarding restoration and reconstruction of the Project in a manner which is inconsistent with the provisions of this Section 6.4Q.



R. The General Partner will make the election under Section 168(k)(2)(D)(iii) of the Code to elect out of “bonus depreciation” for any personal property and site work costs which are placed in service in 2018.

### **Section 6.5 Representations, Warranties and Covenants**

A. The Managing General Partner, on behalf of itself, its Affiliates, and the Partnership, and the Administrative General Partner, solely with respect to matters specific to itself and its Affiliates, hereby represent and warrant to the Investor Limited Partner that the following are true as of Investment Closing, will be true on the due date for payment of each Installment and at all times hereafter:

(i) The Partnership is a duly organized limited partnership validly existing under the laws of the State and has complied with all recording requirements with each proper Governmental Agency necessary to establish the limited liability of the Limited Partners as provided herein.

(ii) No litigation or proceeding against the Partnership, any General Partner, Guarantor, the Builder or the Developer, nor any other litigation or proceeding directly affecting the Project, is pending before any court, administrative agency or other Governmental Agency which would, if adversely determined, have a material adverse effect on the Partnership, any General Partner, Guarantor, the Builder, the Developer or their respective businesses or operations, except for such matters as to which the likelihood of such a determination adverse to the Partnership is, in the opinion of Partnership Counsel or other counsel acceptable to the Investor Limited Partner, remote.

(iii) No default by any General Partner, any Affiliate thereof having any relationship with the Project, or the Partnership, in any material respect has occurred or is continuing (nor has there occurred any continuing event which, with the giving of notice or the passage of time or both, would constitute such a default in any material respect) under any of the Project Documents.

(iv) The Project Documents are in full force and effect (except to the extent fully performed in accordance with their respective terms).

(v) All accounts and reserves are fully funded to the extent currently required by the Project Documents and this Agreement.

(vi) Except for the Construction Loan and carve-outs in the Mortgage Loan Documents related to situations involving fraud or willful misrepresentation, the failure to pay taxes, the misappropriation of funds, and similar commercially reasonable exceptions that are standard in transactions of this type, no Partner, nor any related person, bears any Economic Risk of Loss with respect to any of the Mortgage Loans or, with the exception of any deferred Development Amount, any other indebtedness incurred by the Partnership.

(vii) All building, zoning and other applicable certificates, permits, approvals and licenses necessary to permit the construction, rehabilitation, repair, use, occupancy

and operation of the Project have been obtained (other than prior to completion of the Project or a specified portion thereof, such as will be issued only after the completion of the Project or such specified portion thereof) and neither the Partnership nor any General Partner has received any notice or has any knowledge of any violation with respect to the Project of any law, rule, regulation, order or decree of any Governmental Agency having jurisdiction which would have a material adverse effect on the Project or the construction, use or occupancy thereof, except for violations which have been cured and notices or citations which have been withdrawn or set aside by the issuing agency or by an order of a court of competent jurisdiction.

(viii) The Partnership owns the fee simple interest in the Property and has good and indefeasible title thereto, free and clear of any liens, charges or encumbrances other than the Mortgages, matters set forth in the Title Policy delivered at Investment Closing, encumbrances the Partnership is permitted to create under Sections 2.4 and 6.1, the Extended Use Agreement (once in effect), and mechanics' or other liens which have been bonded or insured against in such a manner as to preclude the holder of such lien or such surety or insurer from having any recourse to the Property or the Partnership for payment of any debt secured thereby. None of the liens, charges, encumbrances or exceptions set forth in the Title Policy delivered at Investment Closing has or will have a material adverse effect upon the construction or operation of the Project.

(ix) The execution and delivery of all instruments and the performance of all acts heretofore or hereafter made or taken or to be made or taken, pertaining to the Partnership or the Property by any General Partner or an Affiliate thereof which is an Entity have been or will be duly authorized by all necessary action, and the consummation of any such transactions with or on behalf of the Partnership will not constitute a breach or violation of, or a default under, the organizational documents of any such Entity or any agreement by which any such Entity or any of its properties is bound, nor constitute a violation of any law, administrative regulation or court decree. Each such Entity is duly organized and validly existing under the law of the state of its organization.

(x) No General Partner is in default in any material respect in the observance or performance of any provision of this Agreement to be observed or performed by such General Partner.

(xi) The Related Agreements are in full force and effect and no default by any party thereto (other than the Investor Limited Partner or its Affiliates) has occurred or is continuing thereunder (nor has there occurred any event which, with the giving of notice or the passage of time, or both, would constitute such a default in any material respect thereunder).

(xii) No Event of Bankruptcy has occurred and is continuing with respect to the Partnership, any General Partner, any Guarantor or the Developer.

(xiii) The Project will qualify for Federal Low Income Tax Credits and will qualify, on and after the Completion Date, as a "qualified low-income housing project"

under Section 42(g) of the Code and all Low Income Units in the Project will qualify as “low income units” under Section 42(i)(3) of the Code.

(xiv) The Project will be operated so that it will meet (and an appropriate election has been or will be made with respect to) the “40-60” set-aside test set forth in Section 42(g)(1)(B) of the Code (the “**Minimum Set-Aside Test**”) as of the dates established by Section 42(g)(3) of the Code and at all times thereafter through the end of the Compliance Period. The Partnership will elect to treat all of the Buildings comprising the Project as a single project for purposes of satisfying the Minimum Set-Aside Test.

(xv) All tax returns, financial statements, Schedules K-1 and reports due under Section 12 and **Exhibit K** have been properly filed and/or transmitted, as applicable.

(xvi) No General Partner, Affiliate of a General Partner, or Person for whose conduct any General Partner is or was responsible has ever: (i) directly or indirectly transported, or arranged for transport, of any Hazardous Material to, at or from the Project (except if such transport was or is at all times in compliance with applicable Hazardous Waste Laws); (ii) caused or was legally responsible for any release or threat of release of any Hazardous Material at the Project; (iii) received notification from any federal, state or other Governmental Agency of (x) any potential, known, or threat of release of any Hazardous Material from the Project; or (y) the incurrence of any expense or loss by any such Governmental Agency or by any other Person in connection with the assessment, containment, or removal of any release or threat of release of any Hazardous Material from the Project.

(xvii) To the best of the General Partners’ knowledge, no Hazardous Material was ever or is now stored on, transported or disposed of on the Land (except to the extent any such storage, transport or disposition was at all times in compliance with all Hazardous Waste Laws).

(xviii) No General Partner, Affiliate of a General Partner, officer of a General Partner or manager of a General Partner has ever (i) been convicted of a crime; (ii) had a judgment entered against them for fraud, willful misconduct or breach of fiduciary duty; or (iii) been sanctioned by HUD, the Securities and Exchange Commission or any other government agency.

(xix) There are currently no criminal or civil actions or administrative proceedings pending against the General Partners or their Affiliates, officers or managers.

(xx) The Adjusted Aggregate Federal Low Income Tax Credit Amount shall be at least \$14,998,500, as may be adjusted pursuant to Section 5.2.

(xxi) Each of the representations and disclosures made by the Partnership to the Credit Agency in the Tax Credit Application upon which the Credit Agency’s Credit Reservation was based, is true and correct as of the date hereof. Each of the covenants, agreements, and conditions contained in the Tax Credit Application and the Credit Reservation have been duly performed or satisfied by the Partnership or the General Partner, as applicable, to the extent that performance of any such covenant or agreement

or satisfaction of any conditions is required on or prior to the date hereof, and the General Partner has no reason to believe that the covenants, agreements, and conditions required to be performed or satisfied after the date hereof will not be performed or satisfied in a timely manner.

(xxii) The Partnership's basis in the Project as of the earlier of December 31, 2017 or the date required by the Credit Agency will be greater than 10% of the Partnership's reasonably expected basis in the Project as of December 31, 2018 and each Building will be placed in service no later than December 31, 2018.

(xxiii) No employees shall be engaged by the Partnership.

(xxiv) The fees payable by the Partnership to the General Partner or its Affiliates, as set forth herein or the other Project Documents, are reasonable in amount and ordinary and customary in nature for the services to be provided, reflect the value of the services to which the fees relate, and are consistent with those paid in other similar projects of which the General Partner and its Affiliates have knowledge. Such fees have been or will be disclosed to the Credit Agency for the purpose of the determination by the Credit Agency of the financial feasibility and viability of the Property pursuant to Section 42(m)(2) of the Code.

(xxv) None of the Mortgage Loans are subject to covenants requiring maintenance of specified debt service coverage or loan-to-value ratios.

(xxvi) None of the General Partners nor any of their controlling principals are on the list of Specially Designated Nationals and Blocked Persons promulgated by the U.S. Department of Treasury.

(xxvii) No Disqualifying Event has occurred and is continuing.

(xxviii) The General Partners shall cause the Partnership to:

(a) maintain its books and records separate from those of any other Person or Entity, including the General Partners or any Affiliates of the Partnership;

(b) except as specifically permitted by the Project Documents, not commingle assets with those of any other Entity, including its General Partners or any Affiliates of the Partnership;

(c) conduct its own business in its own name or the name of the Project so as not to mislead others as to the identity of such Entity;

(d) maintain separate financial statements from any other Person or Entity, including the General Partners or any Affiliates of the Partnership;

(e) except as specifically permitted by the Project Documents or this Agreement, pay its own liabilities out of its own funds;

(f) observe all partnership formalities including without limitation holding all meetings and obtaining all consents required by this Agreement;

(g) maintain an arm's-length relationship with its Affiliates;

(h) except as specifically permitted by the Project Documents, not guarantee or become obligated for the debts of any other Entity or hold out its credit as being available to satisfy the obligations of others, including the General Partners or any Affiliates of the Partnership;

(i) allocate fairly and reasonably any overhead for shared office space or other similar expenses;

(j) use invoices and checks separate from any other Person or Entity, including the General Partners or any Affiliates of the Partnership; and

(k) hold itself out as and operate as an Entity separate and apart from any other Entity, including the General Partners or any Affiliates of the Partnership.

(xxix) Reserved.

(xxx) The General Partners represent that the land that is the subject of the Environmental Reports is the same land that is described in Schedule A of the Title Policy.

(xxxi) The General Partner will give prompt notice to the Investor Limited Partner of any casualty or any condemnation or threatened condemnation of the Property. The General Partner will diligently assert the Partnership's rights and remedies with respect to each claim and to promptly pursue the settlement and compromise of each claim subject to the Consent of the Investor Limited Partner, which Consent will not be unreasonably withheld or delayed.

(xxxii) Except with the Consent of the Limited Partner, which consent shall not be unreasonably withheld, conditioned or delayed, and subject to the rights of any Lender, Net Proceeds will be utilized for the restoration of the Property. Unless otherwise required by Lender, Net Proceeds pending the restoration of the Property, together with any other funds deposited with the Investor Limited Partner for that purpose, must be deposited in an interest-bearing account approved of by the Investor Limited Partner.

(xxxiii) Neither the General Partner nor the Partnership will do or permit to be done anything that would affect the coverage or indemnities provided for pursuant to the provisions of any insurance policy, performance bond, labor and material payment bond or any other bond given in connection with the construction of the Improvements.

(xxxiv) All of the representations and warranties set forth in the Closing Certificate are true and correct.

## **Section 6.6 Indemnification**

A. Each General Partner (including any Retired General Partner) shall be indemnified by the Partnership against any losses, judgments, liabilities, expenses and amounts paid in settlement of any claims sustained by him or it in connection with the Partnership, *provided that* the same were not the result of such General Partner's (or any of such General Partner's Affiliates') negligence or misconduct and were the result of a course of conduct which such General Partner, in good faith, determined was in the best interest of the Partnership. Any indemnity under this Section 6.6A shall be provided out of and to the extent of Partnership assets only, and no Limited Partner shall have any personal liability on account thereof; *provided, however,* that no indemnification shall be provided for any losses, liabilities or expenses arising from or out of any alleged violation of federal or state securities laws unless (i) there has been a successful adjudication on the merits of each count involving alleged securities law violations as to the particular indemnitee and the court approves indemnification of litigation costs; (ii) such claims have been dismissed with prejudice on the merits by a court of competent jurisdiction as to the particular indemnitee and the court approves indemnification of litigation costs; or (iii) a court of competent jurisdiction approves a settlement of the claims against a particular indemnitee and finds that indemnification of the settlement and related costs should be made.

B. The Partnership shall not incur the cost of that portion of any insurance which insures any party against any liability as to which such party is herein prohibited from being indemnified.

C. The General Partners agree promptly to indemnify, defend and hold harmless the Partnership and the Limited Partners from and against any and all claims, losses, damages, costs, expenses and liabilities which the Partnership and the Limited Partners may incur by reason of any liabilities to which either the Partnership or the Project is subject at the Investment Closing; *provided, however,* that the foregoing indemnification shall not apply to any Mortgage, necessary contractual obligations normally incurred in connection with the Property, or to acts for which such General Partners are entitled to indemnification under Section 6.6A.

D. The General Partners agree to promptly indemnify, defend, and hold harmless the Partnership and the Limited Partners from and against any claims, losses, damages, costs, expenses or liabilities which the Partnership and the Limited Partners may incur on account of the presence or escape of any Hazardous Material at or from the Property (or at any other location). Any such claims, losses, damages, costs, expenses or liabilities may be defended, compromised, settled, or pursued by the Limited Partners with counsel of the Limited Partners' selection, but at the expense of the General Partners. The foregoing indemnification shall be a recourse obligation of the General Partners and shall survive the dissolution of the Partnership and/or the death, retirement, incompetency, bankruptcy or withdrawal of any General Partner.

E. The General Partners shall defend, indemnify and hold harmless the Partnership and the Limited Partners from any liability, loss, damage, fees, costs and expenses, judgments or amounts paid in settlement incurred by reason of any demands, claims, suits, actions or proceedings arising out of the General Partners' or any Affiliate's gross negligence, willful misconduct, fraud, breach of fiduciary duty or breach of this Agreement, including without limitation any breach by any General Partner or any Affiliate of any material representation,

warranty, covenant or agreement made by such General Partner set forth in Section 6.5 or elsewhere in this Agreement, including all reasonable legal fees and costs incurred in defending against any claim or liability or protecting itself or the Partnership from, or lessening the effect of, any such breach; provided that each General Partner shall be obligated to provide such indemnity only with respect to its own (or its Affiliate's) gross negligence, willful misconduct, fraud, breach of fiduciary duty or material breach of this Agreement and not those of any other General Partner (or its Affiliates). The foregoing indemnification shall be a recourse obligation of the applicable General Partner and shall survive the dissolution of the Partnership and/or the death, retirement, incompetency, bankruptcy or withdrawal of such General Partner.

F. Each Limited Partner shall be indemnified by the Partnership against any third-party claims or costs sustained or incurred by it in connection with its involvement in the Partnership, *provided that* the same were not the result of any improper action or omission on the part of such Limited Partner or any Affiliate thereof.

G. The Managing General Partner shall defend, indemnify and hold harmless the Administrative General Partner from any liability, loss, damage, fees, costs and expenses, judgments or amounts paid in settlement incurred by reason of any demands, claims, suits, actions or proceedings arising out of the Managing General Partner's or any Affiliate's gross negligence, willful misconduct, fraud, breach of fiduciary duty or material breach of this Agreement, including without limitation any breach by the Managing General Partner or any Affiliate of any material representation, warranty, covenant or agreement made by the Managing General Partner set forth in Section 6.5 or elsewhere in this Agreement, including all reasonable legal fees and costs incurred in defending against any claim or liability or protecting itself from, or lessening the effect of, any such breach.

H. The Administrative General Partner shall defend, indemnify and hold harmless the Managing General Partner from any liability, loss, damage, fees, costs and expenses, judgments or amounts paid in settlement incurred by reason of any demands, claims, suits, actions or proceedings arising out of the Administrative General Partner's or any Affiliate's gross negligence, willful misconduct, fraud, breach of fiduciary duty or material breach of this Agreement, including without limitation any breach by the Administrative General Partner or any Affiliate of any applicable material representation, warranty, covenant or agreement made by the Administrative General Partner set forth in Section 6.5 or elsewhere in this Agreement, including all reasonable legal fees and costs incurred in defending against any claim or liability or protecting itself from, or lessening the effect of, any such breach.

#### **Section 6.7 Obligation to Complete Construction and to Pay Development Costs**

The General Partner shall (i) complete the construction of the Improvements or cause the same to be completed in a good and workmanlike manner, free and clear of all mechanics', materialmen's or similar liens, and shall equip the Improvements or cause the same to be equipped with all necessary and appropriate fixtures, equipment and articles of personal property, including refrigerators and ranges, all in accordance with the Project Documents and the drawings and specifications forming a part of the Construction Contract and (ii) cause the Partnership to satisfy any other requirements necessary to achieve Final Closing in accordance with the Project Documents. If the Designated Proceeds as available from time to time are

insufficient to pay all Development Costs, the Managing General Partner shall advance or cause to be advanced to the Partnership from time to time as needed all such funds as are required to pay such deficiencies. Any such advances (“Development Advances”) shall, to the extent permitted under the Project Documents and any applicable Regulations or requirements of the Lenders and the Agency (or otherwise with any Requisite Approvals), be reimbursed at or prior to the Development Obligation Date (or, in the case of proceeds of Capital Contributions, through the date on which such Capital Contributions are received by the Partnership) only out of Designated Proceeds available from time to time after payment of all Development Costs. Any balance of the amount of each Development Advance not reimbursed through the Development Obligation Date (or, in the case of proceeds of Capital Contributions, through the date on which such Capital Contributions are received by the Partnership) shall be treated as loans (“Completion Loans”) payable solely out of Cash Flow or distributions of proceeds from a Capital Transaction in accordance with Article X.

#### **Section 6.8 Obligation to Provide for Operating Expenses**

A. During the period commencing on the Admission Date and ending on the third anniversary of the later to occur of (A) the Development Obligation Date or (B) achievement of an average 115% Debt Service Coverage Ratio for a period of twelve (12) consecutive calendar months commencing after Final Closing, the Managing General Partner agrees that if the Partnership requires funds to discharge Operating Expenses (other than to make payments to Partners, payments of any outstanding Operating Expense Loans or other obligations herein provided to be payable solely out of Cash Flow or distributions of proceeds from a Capital Transaction), the Managing General Partner shall furnish to the Partnership the funds required. Amounts so furnished to fund Operating Expenses incurred prior to the Development Obligation Date shall be deemed Special Capital Contributions. Amounts furnished to fund Operating Expenses incurred on or after the Development Obligation Date shall constitute Operating Expense Loans. Operating Expense Loans shall bear interest at the Applicable Federal Rate and be repayable only as provided in Article X. Notwithstanding the foregoing, however, the General Partners shall not be obligated to make Operating Expense Loans under this Section 6.8A to the extent that the outstanding aggregate principal amount of such Operating Expense Loans would exceed \$458,132. Operating Expense Loans may be funded and subsequently repaid in whole or in part by the Partnership, and the Managing General Partner’s obligation to make additional Operating Expense Loans will be reinstated to the extent that any Operating Expense Loans have been repaid. Notwithstanding anything herein to the contrary, net rental or other miscellaneous income that would otherwise be included in Designated Proceeds can be used for payment of Operating Expenses prior to the Development Obligation Date.

B. Reserved.

#### **Section 6.9 Certain Payments to the General Partners and Affiliates**

A. For its services in connection with the development of the Property and the supervision to completion of the construction of the Improvements and as reimbursement for Development Advances, the Developer shall be entitled to receive the amounts set forth in the Development Agreement.



B. In consideration of its services in the day-to-day administration of the business affairs of the Partnership, (i) the Managing General Partner shall receive a Partnership Management Fee in an amount equal to \$7,500 per annum and increasing annually at a rate of 3%, and (ii) the Administrative General Partner shall receive a Partnership Administration Fee in an amount equal to \$7,500 per annum and increasing annually at a rate of 3%. The Partnership Management Fee and the Partnership Administration Fee shall each be payable in accordance with the Partnership Management Agreement and Article X. In addition, the Managing General Partner and Administrative General Partner shall be entitled to payment of an annual Incentive Management Fee equal to 90% of the remaining Cash Flow as shown in the priority set forth in Clause Eleventh of Section 10.1A. Such Incentive Management Fee shall be paid to the Administrative General Partner in an amount equal to 10% of such fee less amounts paid to the Administrative General Partner as the Partnership Administration Fee for the year in question, and the balance thereof paid to the Managing General Partner.

C. All of the Partnership's expenses shall be billed directly to, and paid by, the Partnership to the extent practicable. Subject to the terms of this Agreement, reimbursements to a General Partner or any of its Affiliates by the Partnership shall be allowed subject to the following conditions:

(i) such goods or services must be necessary for the prudent formation, development, organization or operation of the Partnership;

(ii) reimbursement for goods or services provided by Persons who are not affiliated with a General Partner shall not exceed the cost to a General Partners or their Affiliates of obtaining such goods or services; and

(iii) reimbursement for goods and services obtained directly from a General Partner or its Affiliates shall not exceed the amount the Partnership would be required to pay independent parties for comparable goods and services in the same geographic location and shall not include reimbursement for the general overhead of the General Partners or their Affiliates (including salaries and benefits of employees thereof).

D. Neither the General Partners nor any of their Affiliates shall be entitled to any compensation, fees or profits from the Partnership in connection with the acquisition, construction, development or rent-up of the Land or Improvements or for the administration of the Partnership's business or otherwise, except for (i) payments provided for or referred to in Sections 2.4(v) or 6.9, (ii) payments of the Management Fee, the Partnership Management Fee, the Partnership Administration Fee, and the Incentive Management Fee, (iii) fees and distributions under Article X, (iv) such other fees and distributions as may be permitted to be paid by any Lender or the Governmental Agency out of the proceeds of any Mortgage Loan and (v) payments to the Builder under the Construction Contract.

### **Section 6.10 Joint and Several Obligations**

If there is more than one General Partner, all obligations of the General Partners hereunder shall be joint and several obligations of the General Partners, except as herein expressly provided to the contrary including as otherwise set forth in Section 6.3B and with

respect to matters specifically stated in this Agreement to be the obligation of either the Managing General Partner or the Administrative General Partner, as applicable.

### **Section 6.11 Reserve Accounts**

A. The General Partners shall establish a reserve account for capital replacements (the “Replacement Reserve”), which account shall be funded by monthly deposits of \$2,833, which amount equals \$250 per unit per year (or such greater amount as may be required by any Lender or, subject to any Requisite Approvals, such lesser amount as shall be approved in writing by the Special Limited Partner from time to time), commencing on the Conversion Date. Withdrawals from such reserve shall be utilized solely to fund capital repairs and improvements deemed necessary by the General Partners.

B. The General Partners shall cause the Partnership to establish a reserve account for Operating Deficits (the “Operating Reserve”) in the initial amount of \$433,175. The Operating Reserve shall be funded in the first instance from the proceeds of the Third Installment of the Capital Contributions of the Investor Limited Partner; provided, however, that if for any reason such proceeds shall be insufficient to fully fund the Operating Reserve at such time, the Managing General Partner shall promptly fund any such shortfall (or cause the deferral of Developer Fee to cover such shortfall). Any amount so furnished by the Managing General Partner shall constitute a Special Capital Contribution. Funds in the Operating Reserve may be used to pay, to the extent required, Operating Expenses, subject to any Requisite Approvals and the Consent of the Investor Limited Partner, which consent shall not be unreasonably withheld, conditioned or delayed, and may be used prior to the Managing General Partner's obligation to provide Operating Expense Loans pursuant to Section 6.8. The Operating Reserve shall be maintained throughout the Compliance Period, except that, upon termination of the obligations to provide Operating Expense Loans under Section 6.8, any Operating Reserve amounts in excess of 50% of the initial reserve amount set forth above shall be released in accordance with Section 10.1A. Upon expiration of the Compliance Period, any funds remaining in the Operating Reserve shall be released in accordance with Section 10.1A.

## **ARTICLE VII**

### **WITHDRAWAL AND REMOVAL OF A GENERAL PARTNER**

#### **Section 7.1 Voluntary Withdrawal**

No General Partner shall have the right to withdraw or Retire voluntarily from the Partnership or sell, assign or encumber its Interest without the Consent of the Investor Limited Partner, which consent shall be granted in the Investor Limited Partner's sole and absolute discretion, and any Requisite Approvals.

#### **Section 7.2 Obligation to Continue**

In the event of the Retirement of any General Partner, the remaining General Partners, if any, and any successor General Partner shall have the obligation to continue the business of the Partnership employing its assets and name. Immediately after the occurrence of such Retirement, the remaining General Partners, if any, shall notify the Investor Limited Partner thereof.

### **Section 7.3 Successor General Partner**

A. Upon the occurrence of any Retirement, the remaining General Partners may designate a Person to become a successor General Partner to the Retired General Partner. Any Person so designated, subject to any Requisite Approvals, the Consent of the Investor Limited Partner, which consent shall be granted in the Investor Limited Partner's sole and absolute discretion, and, if required by the Uniform Act or any other applicable law, the consent of any other Partner so required, shall become a successor General Partner.

B. If any Retirement shall occur at a time when there is no remaining General Partner and no successor General Partner is to be admitted pursuant to Section 7.3A or the remaining General Partners do not elect to continue the business of the Partnership pursuant to Section 7.2, then the Investor Limited Partner shall have the right, subject to any Requisite Approvals and Section 6.3C, to designate a Person to become a successor General Partner.

C. If the Investor Limited Partner elects to reconstitute the Partnership and admit a successor General Partner pursuant to this Section 7.3, the relationship of the Partners in the reconstituted Partnership shall be governed by this Agreement.

### **Section 7.4 Interest of Predecessor General Partner**

A. Except as provided in Section 7.3A, no assignee or transferee of all or any part of the Interest of a General Partner shall have any automatic right to become a General Partner. Until the acquisition of the Interest of a Retiring General Partner pursuant to Section 7.4C or 7.7, such Interest shall be deemed to be that of an assignee and the holder thereof shall be entitled only to such rights as an assignee may have as such under the laws of the State.

B. Anything herein contained to the contrary notwithstanding, any General Partner withdrawing voluntarily in violation of Section 7.1 shall remain liable for all of its obligations under this Agreement, for all its other obligations and liabilities hereunder incurred or accrued prior to the date of its withdrawal and for any loss or damage which the Partnership or any of its Partners may incur as a result of such withdrawal (except as provided in Section 6.6), except for any loss or damage attributable to the default, negligence or misconduct of a successor General Partner admitted in its place under this Agreement.

C. The disposition of the General Partner Interest of a General Partner Retiring voluntarily in compliance with this Agreement shall be accomplished in such manner as shall be acceptable to the remaining General Partners, shall be approved by Consent of the Investor Limited Partner, which consent shall be granted in the Investor Limited Partner's sole and absolute discretion, and shall have obtained any Requisite Approvals. Any other Retirement of a General Partner shall be governed by Section 7.7D.

### **Section 7.5 Designation of New General Partners**

The General Partners may, with the written consent of all Partners, at any time designate new General Partners, each with such Interest as a General Partner in the Partnership as the General Partners may specify, subject to any Requisite Approvals.

Any new General Partner shall, as a condition of receiving any interest in the Partnership property, agree to be bound by the Project Documents and any other documents required in connection therewith and by the provisions of this Agreement, to the same extent and on the same terms as any other General Partner.

**Section 7.6 Amendment of Certificate; Approval of Certain Events**

Upon the admission of a new General Partner, the Schedule shall be amended to reflect such admission and an amendment to the Certificate, also reflecting such admission, shall be filed as required by the Uniform Act.

Each Partner hereby consents to and authorizes any admission or substitution of a General Partner or any other transaction, including, without limitation, the continuation of the Partnership business, which has been authorized under the provisions of this Agreement, and hereby ratifies and confirms each amendment of this Agreement necessary or appropriate to give effect to any such transaction.

**Section 7.7 Removal or Nonconsensual Retirement of the General Partners**

A. In addition to any other rights granted to the Limited Partners hereunder, the Special Limited Partner shall have the right to remove and replace a General Partner (referred to herein as a “Defaulting Partner”) in accordance with the provisions of this Section 7.7 if a Material Default with respect to that Defaulting Partner occurs and is not cured within the time period set forth in this Section 7.7. A Material Default as to a Defaulting Partner shall not constitute grounds for removal of any other General Partner unless such other General Partner is also a Defaulting Partner.

B. As used in this Section 7.7, “Material Default” means the occurrence of any of the following events:

(i) a breach by the Defaulting Partner (or any of its Affiliates) of any of its representations or warranties contained herein or in the performance of any of its obligations under this Agreement or any Related Agreement that has or may have a material adverse effect on the Partnership, the Investor Limited Partner, or the Project;

(ii) a violation by the Defaulting Partner of any law, regulation or order applicable to the Partnership, or a material breach by the Partnership (as caused by the Defaulting Partner) or the Defaulting Partner under any Project Document or other material agreement or document affecting the Partnership or the Project which has or may have a material adverse effect on the Partnership, the Investor Limited Partner or the Project;

(iii) an Event of Bankruptcy as to the Defaulting Partner, any Guarantor that is an Affiliate of the Defaulting Partner or the Partnership (to the extent caused by the Defaulting Partner);

(iv) the commencement of foreclosure proceedings with respect to any Mortgage which have not been withdrawn or dismissed within forty-five (45) days after the date of such commencement; or

(v) gross negligence, fraud, willful misconduct, misappropriation of Partnership funds, or a breach of fiduciary duty by the Defaulting Partner or any Affiliate of the Defaulting Partner providing services to or in connection with the Partnership or the Project.

C. In the event that the Special Limited Partner determines to remove a Defaulting Partner pursuant to the provisions of this Section 7.7, the Special Limited Partner shall notify all the General Partners in writing of the Material Default that is the cause for the removal of the Defaulting Partner (any such notice being referred to herein as a “Removal Notice” and the date of such Removal Notice being referred to herein as the “Removal Notice Date”). In the case of any Material Default described in clauses (i) through (iv) of Section 7.7B above, the Defaulting Partner shall have ten (10) business days (or twenty (20) business days if it is a non-monetary default) from the Removal Notice Date to cure the Material Default; *provided, however*, that if a non-monetary Material Default cannot be reasonably cured within twenty (20) business days, the Defaulting Partner shall not be removed if the Defaulting Partner commences such cure within twenty (20) business days and proceeds in good faith to cure diligently thereafter, provided that the cure is completed within sixty (60) business days following the Removal Notice Date (or such lesser period as is required to cure the Material Default), and the failure to cure such Material Default within a shorter period does not have a material adverse effect on the Partnership, the Property, or the Investor Limited Partner. For purposes of this paragraph, the failure to provide or maintain any insurance required by this Agreement shall be deemed to be a monetary default. If the Defaulting Partner fails to cure within the specified time period, or if no cure right is afforded under the terms hereof, the removal of the Defaulting Partner shall be deemed to be effective as of the expiration of any applicable cure period described above; otherwise, such removal shall be effective upon the conclusion of the applicable cure period without a cure of such Material Default reasonably acceptable to the Investor Limited Partner. The Defaulting Partner shall have no right to cure any Material Default described in clause (v) of Section 7.7B above. Each Partner hereby irrevocably appoints the Special Limited Partner (with full power of substitution) as the attorney-in-fact of such Partner for the purpose of executing, acknowledging, swearing to, recording and/or filing any amendment to this Agreement and the Certificate necessary or appropriate to confirm the foregoing.

D. If a General Partner is removed pursuant to this Section 7.7, Retires voluntarily in violation of this Agreement or involuntarily Retires, the Partnership shall pay to such General Partner in the manner set forth in Section 7.7G an amount equal to (x) the sum of (i) an amount equal to the General Partner’s positive Capital Account balance, if any, following a deemed sale of all Partnership property and a deemed liquidation of the Partnership (but prior to any deemed distributions upon liquidation), (ii) the unpaid principal balance of any Operating Expense Loans owed to such General Partner, and (iii) any fees owed to such General Partner and/or its Affiliates in the manner described in Section 7.7E below minus (y) an amount equal to any Adverse Consequences suffered by the Partnership or the Limited Partners as a result of the acts or omissions of the General Partner prior to its removal or Retirement, including, without limitation, any Material Default creating the right of the Special Limited Partner to remove such

General Partner pursuant to the provisions of this Section 7.7. Any transfer taxes that are triggered by the removal or Retirement and the cost of any additional title insurance or title endorsements deemed to be necessary by the Special Limited Partner as a result of such removal or Retirement shall be paid by the removed or Retired General Partner or offset against any remaining amounts owed to the General Partner pursuant to the preceding sentence. The resulting amount is referred to herein as the “Withdrawal Purchase Price.” Notwithstanding the foregoing, the Withdrawal Purchase Price shall not exceed the amount which the removed or Retired General Partner would have received under Section 10.1B from a deemed sale of the Project on the Removal Notice Date or the date of Retirement (as applicable), based on the Appraised Value of the Project determined under Section 7.7F below.

E. In the event of the removal of the General Partner pursuant to the provisions of this Section 7.7, voluntary Retirement of the General Partner in violation of this Agreement or involuntary Retirement of the General Partner, any fees owed to such General Partner or its Affiliates (including, without limitation, any unpaid Development Amount attributable to that General Partner and its Affiliates) for services performed prior to the Removal Notice Date or date of Retirement, as applicable, shall be part of the Withdrawal Purchase Price as described above, *provided, however*, that (i) if any Adverse Consequences suffered by the Partnership or the Limited Partners exceed the Withdrawal Purchase Price as calculated pursuant to the provisions of Section 7.7D above, or (ii) there exist any unpaid obligations or liabilities of the General Partner that relate to the period up to and including the effective date of the removal or Retirement of the General Partner, any such unpaid fees owed to the General Partner or its Affiliates shall, to the extent of any such Adverse Consequences or obligations or liabilities, as the case may be, be treated as if they were paid to the General Partner (or such Affiliates) and applied by the General Partner (or such Affiliates) to the payment or satisfaction of such Adverse Consequences, obligations or liabilities, and, to the extent of such application, the obligation of the Partnership to make actual cash payments of such fees to the General Partner (or such Affiliates) shall be reduced or eliminated, as the case may be.

F. The Appraised Value of the Property shall be determined as follows. As soon as practicable and in any event within ten business days following the effective date of removal as specified in Section 7.7C above or the date of Retirement (as applicable), the removed or Retiring General Partner and the Special Limited Partner shall select a mutually acceptable Independent Appraiser. In the event that the parties are unable to agree upon an Independent Appraiser within such ten business day period, the removed or Retiring General Partner and the Special Limited Partner each shall select an Independent Appraiser. If either party fails to select an Independent Appraiser within the time period described above, the determination of the other Independent Appraiser shall control. If the difference between the Appraised Values set forth in the two appraisals is not more than ten percent (10%) of the Appraised Value set forth in the lower of the two appraisals, the fair market value shall be the average of the two appraisals. If the difference between the two appraisals is greater than ten percent (10%) of the lower of the two appraisals, then the two Independent Appraisers shall jointly select a third Independent Appraiser whose determination of Appraised Value shall be deemed to be binding on all parties as long as the third determination is between the other two determinations. If the third determination is either lower or higher than both of the other two appraisers, then the average of all three appraisers shall be the fair market value. The Partnership and the removed or Retiring General

Partner shall each pay one-half of the fees and expenses of any Independent Appraiser(s) selected pursuant to this Section 7.7F.

G. In the event of the removal of the General Partner pursuant to the provisions of this Section 7.7, voluntary Retirement of the General Partner in violation of this Agreement or involuntary Retirement of the General Partner, any Withdrawal Purchase Price due to the General Partner pursuant to the provisions of Section 7.7D above shall be payable from the first available proceeds of a Capital Transaction prior to any other distributions or payments to the Partners under Section 10.1B hereof except for those items listed in clauses *First* and *Second* of Section 10.1B.

H. Upon determination of the Withdrawal Purchase Price under the provisions of this Section 7.7, except for payment of any Withdrawal Purchase Price that is due pursuant to Section 7.7G. The Partnership and its remaining Partners shall be deemed to be completely released from all liability to such General Partner and its Affiliates generally and to any others claiming by or through the General Partner to whom any distributions or loan, fee or other payments are to be made under Article X or otherwise, and the General Partner shall be released from any and all obligations to the Partnership and the Partners which arise after the Removal Notice Date or date of Retirement, as applicable. Concurrently with the determination of the Withdrawal Purchase Price, each General Partner shall provide the Partnership, the successor General Partner(s) and the Investor Limited Partner with additional written releases from the General Partner (and any Affiliates to whom obligations of any kind are owed by the Partnership, the successor General Partner(s), the Limited Partners or any of their respective Affiliates) confirming such releases.

I. In the event that a General Partner is removed pursuant to the provisions of this Section 7.7, voluntarily Retires in violation of this Agreement or involuntarily Retires, (i) all agreements between the Partnership and such General Partner and/or its Affiliates may, at the election of the Partnership, be terminated and, except for payment of the Withdrawal Purchase Price due to such General Partner (or its Affiliates), the Partnership shall have no further obligations under such agreements, and (ii) the removed or Retired General Partner shall be liable for all costs and expenses incurred by the Partnership or the Limited Partners in connection with the admission to the Partnership of a successor General Partner, which shall be considered Adverse Consequences for a purpose of this Section. From and after the effective date of its removal or Retirement, the removed or Retiring General Partner shall not be liable for obligations of the Partnership incurred subsequent to such effective date unless such obligations arise out of acts or omissions of the removed or Retiring General Partner prior to such effective date. The removed or Retiring General Partner shall continue to be liable for all obligations, liabilities, and guarantees incurred by it in its capacity as the General Partner and any Partnership obligations incurred outside of the ordinary course of business and not listed in the prior year's financial statements or otherwise described in writing to the Special Limited Partner, and for any Adverse Consequences caused by or arising out of its acts or omissions, prior to the effective date of its removal or Retirement. Without limiting the generality of the foregoing, and in addition to any of its other obligations hereunder, the removed or Retiring Managing General Partner shall continue to be liable for any payments or advances due to the Limited Partners or the Partnership pursuant to the Capital Contribution adjustment provisions of Article V as a result of any adjustments determined thereunder, other than adjustments arising from a Recapture Event or the acts or omissions of any replacement or successor General Partner, in

either case subsequent to the effective date of the removal or Retirement of the removed or Retiring General Partner.

J. In the event that a General Partner is removed pursuant to the provisions of this Section 7.7, voluntarily Retires in violation of this Agreement or involuntarily Retires, the Special Limited Partner may designate a Person or Persons, including, without limitation, an Affiliate of the Special Limited Partner, to become a successor General Partner or Partners replacing the removed or Retired General Partner, subject to any Requisite Approvals and to the terms of the Project Documents.

K. The election by the Special Limited Partner to remove any General Partner pursuant to the provisions of this Section 7.7 shall not limit or restrict the availability and use of any other remedy that the Special Limited Partner or the Investor Limited Partner may have with respect to any General Partner in connection with its undertakings and responsibilities under this Agreement, and the exercise by the Special Limited Partner of the rights granted to it in this Section 7.7 is understood by the parties hereto to be permitted by the Uniform Act as the exercise of powers not constituting participation in the control of the business so as to cause the Special Limited Partner (or the Investor Limited Partner) to be liable for Partnership obligations as a general partner.

L. In the event that a General Partner is removed pursuant to the provisions of this Section 7.7, voluntarily Retires in violation of this Agreement or involuntarily Retires, such removed or Retired General Partner shall immediately deliver to the Special Limited Partner all books, records, tax and financial information relating to the Partnership and the Property that are in the possession or under the control of such General Partner or any of its Affiliates. Such General Partner agrees that if it fails to comply with the provisions of this Section 7.7L, the Limited Partners may enforce such provisions by specific performance, and no portion of the Withdrawal Purchase Price shall be payable unless the provisions of this Section are fully and promptly complied with.

M. If a General Partner fails to comply with any of its obligations under this Section 7.7 or contests the right of the Special Limited Partner to exercise the removal or other rights described in this Section 7.7, any costs and expenses incurred by the Limited Partners in enforcing their rights in this Section 7.7, including, without limitation, legal fees and expenses, shall be paid by such General Partner upon presentation of an itemized statement describing the same, which costs shall be deemed to be Adverse Consequences for purposes of this Section; provided that, the General Partner shall not be obligated to pay any such costs and expenses if it is the prevailing party in a proceeding contesting the Special Limited Partner's rights under Section 7.7

N. In the event that a General Partner is removed pursuant to the provisions of this Section 7.7, the Special Limited Partner may, as of such date, elect to become, or to designate another Person, including, without limitation, an Affiliate of the Investor Limited Partner or the Special Limited Partner, to become, an additional General Partner with all the rights and privileges of a General Partner. Upon such election by the Special Limited Partner, the Special Limited Partner or such other Entity shall automatically become and shall be deemed to be a General Partner and each Partner hereby irrevocably appoints the Special Limited Partner (with



full power of substitution) as the attorney-in-fact of such Partner for the purpose of executing, acknowledging, swearing to, recording and/or filing any amendment to this Agreement and the Certificate necessary or appropriate to confirm the foregoing. If the Special Limited Partner or such other Person shall become an additional General Partner as herein stated, its interest in the Partnership shall not be increased as a result thereof. In the event of the admission of the Special Limited Partner or such Person as a General Partner pursuant to this Section 7.7N in the case of removal of a General Partner that is a Managing General Partner, and if there are then any other General Partners, the Special Limited Partner or such other Person shall have managerial rights, authority and voting rights of 51% on any matters to be decided or voted upon by the General Partners or the Managing General Partner, as the case may be, and the rights and authority of the remaining General Partners or the Managing General Partner, as the case may be, shall be deemed equally divided among them. The Special Limited Partner shall be entitled to receive reasonable compensation for serving as a General Partner under this Section, and any such compensation shall be a reduction of the Withdrawal Purchase Price.

## **ARTICLE VIII**

### **TRANSFER OF LIMITED PARTNER INTERESTS**

#### **Section 8.1 Right to Assign**

A. Except as restricted in this Article VIII or by operation of law, and subject to the Regulations and to the terms of the Construction Loan Documents and the Permanent Loan Documents, each Limited Partner shall have the right to assign its Interest to and substitute in its place as a Substitute Limited Partner:

(i) any Affiliate of the Investor Limited Partner with notice to the General Partners;

(ii) with the consent of the General Partners, such consent not to be unreasonably withheld), (a) any Person provided that Investor Limited Partner will remain liable for all outstanding Installments, or (b) if the Investor Limited Partner assigns its interest and obligations for future Capital Contributions, then (A) in the case of an individual, the net worth of the proposed assignee is acceptable to the General Partners and (B) in the case of an entity, an institutional investor with a minimum credit rating of BBB; or

(iii) any partnership or limited liability company in which the Investor Limited Partner, or an Affiliate of the Investor Limited Partner, is the general partner or managing member.

B. The General Partners, at the sole expense of the assigning Limited Partner, shall cooperate in good faith to effect such assignment as expeditiously as possible, including without limitation the execution of appropriate amendments to, or updates of, the Related Agreements and/or any other documents which the assigning Limited Partner reasonably determines necessary or appropriate to accomplish such assignment, including, but not limited to, any amendments, updated opinion of Partnership Counsel, authorizing resolutions of the General

Partners and Developer and any other documents reasonably deemed necessary and appropriate by the Investor Limited Partner. In addition, in the event of a Transfer of any interest in the Investor Limited Partner, the General Partners agree to make such changes to this Agreement and the Related Agreements as the Investor Limited Partner may reasonably request.

C. The assignor shall assume any costs incurred by the Partnership in connection with an assignment of its Interest including, without limitation, costs associated with preparation and execution of appropriate amendments to, or updates of, the Related Agreements and/or any other documents in connection therewith.

## **Section 8.2 Substitute Limited Partners**

Subject to Section 8.1, each Limited Partner shall have the right to substitute an assignee as a Limited Partner in its place, subject to any Requisite Approvals. Any Substitute Limited Partner shall agree to be bound (to the same extent to which its predecessor in interest was so bound) by the Project Documents and this Agreement as a condition to its being admitted to the Partnership.

## **Section 8.3 Assignees**

A. Any permitted assignee of a Limited Partner which does not become a Substitute Limited Partner shall have the right to receive the same share of profits, losses and distributions of the Partnership to which the assigning Limited Partner would have been entitled.

B. Any assigning Limited Partner shall cease to be a Limited Partner and shall no longer have any rights or obligations of a Limited Partner except that, unless and until the assignee of such Limited Partner is admitted to the Partnership as a Substitute Limited Partner, said assigning Limited Partner shall retain the statutory rights and be subject to the statutory obligations of an assignor limited partner under the Uniform Act as well as the obligation to make the Capital Contributions attributable to the Interest in question, if any portion thereof remains unpaid.

C. There shall be filed with the Partnership a duly executed and acknowledged counterpart of the instrument making each assignment; such instrument must evidence the written acceptance of the assignee to this Agreement and the Project Documents. If such an instrument is not so filed, the Partnership need not recognize any such assignment for any purpose.

D. In the case of any assignment of a Limited Partner's Interest as a Limited Partner, where the assignee does not become a Substitute Limited Partner, the Partnership shall recognize the assignment not later than the last day of the calendar month following receipt of notice of assignment and required documentation.

E. An assignee of a Limited Partner's Interest who does not become a Substitute Limited Partner and who desires to make a further assignment of its Interest shall also be subject to the provisions of this Article VIII.

## ARTICLE IX

### LOANS; MORTGAGE REFINANCING; PROPERTY DISPOSITION

#### **Section 9.1   General**

A.     The Partnership shall be authorized to obtain the Mortgage Loans to finance the acquisition, development and construction of the Property and (to the extent permitted by the Lender) shall secure the same by the Mortgages. Except as set forth in the Project Documents as they exist on the date of Investment Closing, each Mortgage shall provide that no Partner or Related Person shall bear the Economic Risk of Loss for all or any part of such Mortgage Loans. All material Mortgage Loan Documents not approved by the Investor Limited Partner as of Investment Closing shall be submitted to and approved by the Investor Limited Partner prior to execution and delivery thereof, and any Mortgage Loan Document made available to the Investor Limited Partner prior to Investment Closing shall be deemed approved by the Investor Limited Partner upon execution of this Agreement.

B.     Subject to Section 6.1 and Section 6.3B, the General Partners are specifically authorized, for and on behalf of the Partnership, to execute the Project Documents and any permitted amendments thereto and, subject to the limitations set forth herein, such other documents as they deem necessary or appropriate in connection with the acquisition, development, operation and financing of the Property.

C.     All Partnership borrowings shall be subject to Section 6.1, this Article, the Project Documents and the Regulations. To the extent borrowings are permitted, they may be made from any source, including Partners and Affiliates. The Partnership may accept Development Advances as and when permitted pursuant to the Development Agreement, and may issue instruments evidencing Operating Expense Loans.

D.     If any Partner shall lend any monies to the Partnership, any such loan shall be unsecured and the amount of any such additional loan from a Partner shall not be an increase of its Capital Contribution. Until such time as the General Partners and the Developer shall have performed fully their obligations to make Operating Expense Loans and Development Advances, any loan from a General Partner or an Affiliate of a General Partner shall be an obligation of the Partnership to the Partner or Affiliate only if it constitutes an Operating Expense Loan or Development Advance in accordance with the provisions of this Agreement or the Development Agreement, as applicable, and shall be repayable as therein provided. Subject to the preceding sentence, any loans to the Partnership by a General Partner or an Affiliate of a General Partner may be made on such terms and conditions as may be agreed on by the Partnership, consistent with good business practices.

E.     Subject to the provisions of this Agreement with respect to related party loans, the Investor Limited Partner or an Affiliate thereof (the Investor Limited Partner or its Affiliate being referred to herein as a "Mortgagee Limited Partner") at any time may make, guarantee, own, acquire or otherwise credit enhance, in whole or in part, a loan secured by a mortgage, deed of trust, trust deed, or other security instrument encumbering the Property owned by the Partnership (any such loan being referred to as a "Related Mortgage Loan"). Under no

circumstances will a Mortgagee Limited Partner be considered to be acting on behalf or as an agent or the alter ego of the Investor Limited Partner. A Mortgagee Limited Partner may take any actions that the Mortgagee Limited Partner, in its discretion, determines to be advisable in connection with its Related Mortgage Loan (including in connection with the enforcement of its Related Mortgage Loan). Each Partner agrees, to the extent permitted by applicable law, that no Mortgagee Limited Partner owes the Partnership or any Partner any fiduciary duty or other duty or obligation whatsoever by virtue of such Mortgagee Limited Partner being a limited partner or member in the Investor Limited Partner. Neither the Partnership nor any Partner will make any claim against a Mortgagee Limited Partner, or against the Investor Limited Partner in which the Mortgagee Limited Partner is a partner or member, relating to a Related Mortgage Loan and alleging any breach of any fiduciary duty, duty of care, or other duty whatsoever to the Partnership or to any Partner based in any way upon the Mortgagee Limited Partner's status as a limited partner or member of the Investor Limited Partner. Notwithstanding any provision to the contrary in this Section 9.1E, the General Partners shall not obtain or consent to any Related Mortgage Loan unless (i) they have obtained the prior Consent of the Investor Limited Partner, which consent shall be granted in the Investor Limited Partner's sole and absolute discretion, and (ii) they have determined, based on the financial projections prepared at the time of requesting such Consent and the advice of Investor Tax Counsel, that the Related Mortgage Loan will not result in any reallocation of Tax Credits or other tax benefits among the Partners.

## **Section 9.2 Refinancing and Sale**

The Partnership may not increase the amount of or otherwise materially modify any Mortgage Loan, obtain any new Mortgage Loan or refinance any Mortgage Loan (other than pursuant to and substantially in accordance with a Commitment in existence at Investment Closing) including any required Transfer of Partnership assets for security or mortgage purposes, and may not sell, lease, exchange or otherwise Transfer all or substantially all the assets of the Partnership without the Consent of the Investor Limited Partner, which consent shall be granted in the Investor Limited Partner's sole and absolute discretion, (other than pursuant to Mortgage Loan Documents approved by the Investor Limited Partner as contemplated in Section 9.1A). In the event that an Affiliate of Bank of America, N.A. shall be ready, willing and able to furnish financing on substantially equivalent terms, the Consent of the Investor Limited Partner to any proposed refinancing of a Mortgage Loan may be conditioned upon the substitution of such Affiliate as the maker of such refinanced Mortgage Loan, and provided that any Consent of the Investor Limited Partner shall be granted in the Investor Limited Partner's sole and absolute discretion. Notwithstanding the foregoing, no such Consent shall be required for the leasing of apartments to tenants in the normal course of operations; *provided, however*, unless such Consent is obtained the Partnership shall lease the Project in such a manner as to qualify as a "qualified low-income housing project" under Section 42(g)(1) of the Code, and shall lease all of the Low Income Units to Qualified Tenants.

## **Section 9.3 Sales Commissions**

In connection with the sale of the Property by the Partnership, no Person may receive real estate commissions in excess of that which is reasonable, customary, and competitive with those paid in similar transactions in the same geographic area. Real estate commissions may be paid to an Affiliate of a General Partner.

## ARTICLE X

### PROFITS, LOSSES AND DISTRIBUTIONS

#### **Section 10.1 Distributions Prior to Dissolution**

A. Distribution of Cash Flow.

Subject to any Requisite Approvals, (i) net rental income and other miscellaneous income generated through the Development Obligation Date shall be includable in Designated Proceeds and shall be available to the Developer and the General Partners for the purposes and subject to the conditions set forth Section 6.7 hereof. From and after the Development Obligation Date, Cash Flow for each Fiscal Year (or fractional portion thereof) shall be distributed within ninety (90) days after the end of each Fiscal Year, in the following order of priority:

- (i) *First*, to pay the Asset Management Fee to the Special Limited Partner;
- (ii) *Second*, to the payment of interest on the Development Fee Note, if any;
- (iii) *Third*, to pay accrued interest on the Development Fee Note;
- (iv) *Fourth*, to pay principal on the Development Fee Note;
- (v) *Fifth*, to pay the Management Agent Fee to the Management Agent;
- (vi) *Sixth*, to pay the Partnership Management Fee to the Managing General Partner and the Partnership Administration Fee to the Administrative General Partner, on a pari passu basis;
- (vii) *Seventh*, to the Investor Limited Partner an amount equal to any amounts contributed by the Investor Limited Partner pursuant to Section 6.4Q(iii)(if any);
- (viii) *Eighth*, to the Investor Limited Partner the payment of any unpaid Tax Credit Shortfall Payments;
- (ix) *Ninth*, to the repayment of Completion Loans and interest and principal on any Operating Expense Loans then outstanding;
- (x) *Tenth*, to the replenishment of the Operating Reserve to an amount equal to 50% of the initial amount set forth in Section 6.11B;
- (xi) *Eleventh*, of any balance, 90% to pay the Incentive Management Fee to the General Partners in accordance with Section 6.9B (provided, however, that if with respect to any Fiscal Year, the Incentive Management Fee, the Partnership Administration Fee, the Partnership Management Fee, and any management fees paid to the Management Agent would collectively exceed twelve percent (12%) of the Partnership's Cash Receipts for such year, any amounts in excess of the twelve (12%) shall be paid as a distribution to the Managing General Partner and Administrative General Partner; and

- (xii) Twelfth, then to the Partners in accordance with their Interests.

Notwithstanding the foregoing, if the amount distributable to the Investor Limited Partner under this Section 10.1A (including the Asset Management Fee pursuant to Clause First) with respect to any Fiscal Year shall be less than 10% of the total amounts paid or distributable with respect to such Fiscal Year under Clauses First, Second, Third, Fourth, Fifth and Sixth of this Section 10.1A, then the amounts which would otherwise have been paid or distributed to the General Partners and their Affiliates pursuant to such clauses of this Section 10.1A shall be reduced and the amount which would otherwise have been distributed to the Investor Limited Partner pursuant to this Section 10.1A (taking into account the Asset Management Fee pursuant to Clause First) shall be increased to the extent necessary to assure that the Investor Limited Partner receives its 10% share of such total payments and distributions.

B. Distributions of Capital Transaction Proceeds

Prior to dissolution, if the General Partners shall determine that there are proceeds available for distribution from a Capital Transaction, such proceeds shall be applied and distributed as follows:

- (i) First, to discharge, to the extent required by any lender or creditor, the debts and obligations of the Partnership (other than items listed in the ensuing clauses of this Section 10.1B);
- (ii) Second, to fund reserves for contingent liabilities to the extent deemed reasonable by the Managing General Partner (other than items listed in the ensuing clauses of this Section 10.1B);
- (iii) Third, to the Limited Partners in an amount equal to, on an After-Tax Basis, the taxes (if any) owed by it (or them) as a result of any income allocation arising out of the Capital Transaction plus any amounts contributed by the Investor Limited Partner pursuant to Section 6.4Q(iii)(if any);
- (iv) Fourth, to the Special Limited Partner any unpaid, accrued Asset Management Fee;
- (v) Fifth, to any unpaid, accrued interest on the Development Fee Note;
- (vi) Sixth, to repay any outstanding Development Fee Note;
- (vii) Seventh, to any unpaid, accrued Management Agent Fee to the Management Agent;
- (viii) Eighth to any unpaid, accrued Partnership Management Fee and any unpaid, accrued Partnership Administration Fee, on a pari passu basis;
- (ix) Ninth, to the Investor Limited Partner an amount equal to any theretofore unpaid Tax Credit Shortfall Payments;

(x) *Tenth*, to the payment of the Completion Loan and interest and principal on any outstanding Operating Expense Loans; and

(xi) *Eleventh*, the balance of such proceeds shall be distributed 10% to the Investor Limited Partner, 81% to the Managing General Partner, and 9% to the Administrative General Partner.

C. Sharing of Distributions

All distributions to the respective classes of the Partners shall be shared by the members of such classes in accordance with the percentages set forth opposite their respective names on the Schedule, except as otherwise provided in this Agreement.

D. Proceeds from Insurance

Notwithstanding the provisions of Sections 10.1A or 10.1B, if the Partnership receives proceeds from the Title Policy, an insurance policy, or as the result of a casualty or condemnation wherein the Partnership will not rebuild or recover the Project, then, after payment of debts and obligations of the Partnership, such proceeds shall be applied and distributed to the payment to the Investor Limited Partner of an amount equal to 100% of its Net Capital Contribution less the sum of all Tax Credits received by the Investor Limited Partner and not subject to a Recapture Event; and the balance to the General Partners.

**Section 10.2 Distributions Upon Dissolution**

A. Upon dissolution and termination, after payment of, or adequate provision for, the debts and obligations of the Partnership, the remaining assets of the Partnership shall be distributed to the Partners in accordance with the positive balances in their Capital Accounts after taking into account all Capital Account adjustments for the Partnership taxable year, including adjustments to Capital Accounts pursuant to Sections 10.2B and 10.3B. Liquidation distributions shall be made by the end of the taxable year in which the liquidation occurs or, if later, within ninety (90) days after the date of liquidation. In the event that either (i) the Investor Limited Partner has a negative balance in its Capital Account following the liquidation of the Partnership, after taking into account all Capital Account adjustments for the Partnership taxable year in which such liquidation occurs, then the Investor Limited Partner shall pay to the Partnership in cash an amount equal to the negative balance in such its Capital Account or (ii) the Managing General Partner has a negative balance in its Capital Account following the liquidation of the Partnership, after taking into account all Capital Account adjustments for the Partnership taxable year in which such liquidation occurs, then the Managing General Partner shall pay to the Partnership in cash an amount equal to the lesser of (i) the negative balance in such Partner's respective Capital Account, or (ii) 0.0101% of the Capital Contributions of the Investor Limited Partner. Such deficit Capital Account restoration payments shall be made by the end of such taxable year (or, if later, within 90 days after the date of such liquidation) and shall, upon liquidation of the Partnership, be paid, first, to recourse creditors of the Partnership and, thereafter, distributed to other Partners in accordance with the positive balances in their Capital Accounts. Liquidation distributions shall be made by the end of the taxable year in which the liquidation occurs or, if later, within 90 days after the date of liquidation or in such

other manner as may be required under Section 1.704-1(b)(2)(ii)(b)(3) of the Allocation Regulations. Notwithstanding the foregoing, the obligation of the Investor Limited Partner to contribute such deficit shall be zero unless and until it shall notify the Partnership in writing of its election to have a different amount (the “Designated Amount”) apply, which Designated Amount may be increased or reduced (subject to the provisions of the following sentence) by similar written notice from the Investor Limited Partner at any subsequent date. No such notice shall be effective with respect to any Fiscal Year unless the same shall be given prior to the end of such Fiscal Year. No subsequent reduction to the Designated Amount shall be permitted if such reduction would cause the Designated Amount to be less than the Investor Limited Partner's deficit balance in its Capital Account (as such Capital Account is increased by the Investor Limited Partner's share of Partnership Minimum Gain) at the end of the Partnership's immediately preceding tax year.

B. With respect to assets distributed in kind to the Partners in liquidation or otherwise, (i) any unrealized appreciation or unrealized depreciation in the values of such assets shall be deemed to be profits and losses realized by the Partnership immediately prior to the liquidation or other distribution event; and (ii) such profits and losses shall be allocated to the Partners in accordance with Section 10.3B, and any property so distributed shall be treated as a distribution of an amount in cash equal to the excess of such fair market value over the outstanding principal balance of and accrued interest on any debt by which the property is encumbered. For the purposes of this Section 10.2B, “unrealized appreciation” or “unrealized depreciation” shall mean the difference between the fair market value of such assets, taking into account the fair market value of the associated financing (but subject to Section 7701(g) of the Code), and the Partnership's adjusted basis for such assets as determined under Section 1.704-1(b). This Section 10.2B is merely intended to provide a rule for allocating unrealized gains and losses upon liquidation or other distribution event, and nothing contained in this Section 10.2B or elsewhere herein is intended to treat or cause such distributions to be treated as sales for value. The fair market value of such assets shall be determined by an appraiser to be selected by the General Partners with the Consent of the Investor Limited Partner, which consent shall be granted in the Investor Limited Partner's sole and absolute discretion.

### **Section 10.3 Profits, Losses and Tax Credits**

A. Except as otherwise specifically provided in this Article X, for each Fiscal Year or portion thereof, profits, tax-exempt income, losses and non-deductible, non-capitalizable expenditures incurred and/or accrued by the Partnership, shall be allocated 0.01% to the General Partners and 99.99% to the Investor Limited Partner.

B. Except as otherwise specifically provided in Section 10.4 or elsewhere in this Article X, all profits and losses arising from a Capital Transaction shall be allocated to the Partners as follows:

As to profits:

- (i) *First*, an amount of profit equal to the aggregate negative balances (if any) in the Capital Accounts of all Partners having negative balance Capital Accounts



shall be allocated to such Partners in proportion to their negative Capital Account balances until all such Capital Accounts shall have zero balances; and

(ii) Second, an amount of profits shall be allocated to each of the Partners until the positive balance in the Capital Account of each Partner equals, as nearly as possible, the amount of cash which would be distributed to such Partner if the aggregate amount in the Capital Accounts of all Partners were cash available to be distributed in accordance with the provisions of Clauses First, Second, Third, Fourth, Fifth and Sixth of Section 10.1B.

As to losses:

(iii) First, an amount of losses equal to the aggregate positive balances (if any) in the Capital Accounts of all Partners having positive balance Capital Accounts shall be allocated to such Partners in proportion to their positive Capital Account balances until all such Capital Accounts shall have zero balances; provided, however, that if the amount of losses so to be allocated is less than the sum of the positive balances in the Capital Accounts of those Partners having positive balances in their Capital Accounts, then such losses shall be allocated to the Partners in such proportions and in such amounts so that the Capital Account balances of each Partner shall equal, as nearly as possible, the amount such Partner would receive if an amount equal to the excess of (a) the sum of all Partners' balances in their Capital Accounts computed prior to the allocation of losses under this clause First over (b) the aggregate amount of losses to be allocated to the Partners pursuant to this clause First were distributed to the Partners in accordance with the provisions of Clauses First, Second, Third, Fourth, Fifth and Sixth of Section 10.1B; and

(iv) Second, the balance, if any, of such losses shall be allocated 0.01% to the General Partners and 99.99% to the Investor Limited Partner.

C. If the Partnership (i) incurs recourse obligations (including, without limitation, accounts payable and deferred fees that in the reasonable judgment of the Special Limited Partner are not expected to be paid in the ordinary course of business) or Partner Nonrecourse Debt (including without limitation Operating Expense Loans), (ii) accepts Special Capital Contributions pursuant to Section 6.9 or other Capital Contributions from the General Partners that are required or permitted by the terms of this Agreement, all or a portion of the proceeds of which are applied to the payment of Operating Expenses or other items that are deductible for federal income tax purposes or (iii) incurs losses from extraordinary events which are not recovered from insurance or other sources (the items referred to in clauses (i), (ii) and (iii) being hereinafter referred to collectively as the "Section 10.3C Items") in respect of any Partnership taxable year, then the calculation and allocation of profits and losses shall be adjusted as follows: *first*, an amount of deductions (consisting of Operating Expenses and not cost recovery deductions) attributable to the Section 10.3C Items shall be allocated to the General Partners; and *second*, the balance of such deductions shall be allocated as provided in Section 10.3A. For purposes of determining the deductions that are attributable to the Section 10.3C Items, Cash Receipts shall be deemed to have been applied first to Debt Service Requirements and the funding of Partnership reserves and then to Operating Expenses other than Debt Service

Requirements and the funding of Partnership reserves. The term “extraordinary events,” as used in this Section 10.3C, includes casualty losses, losses resulting from liability to third parties for tortious injury, losses resulting from a breach of a legal duty by the Partnership or by the General Partners, and deductions resulting from other liabilities of the Partnership that are not incurred in the ordinary course of business. Nothing in this Section 10.3C shall prevent the Partnership from recovering an extraordinary loss from a General Partner who is liable therefor by law or under the terms of this Agreement.

D. Reserved.

E. Notwithstanding the foregoing provisions of Sections 10.3.A and 10.3.B, in no event shall any losses be allocated to a Limited Partner if and to the extent that such allocation would cause, as of the end of the Partnership taxable year, the negative balance in such Limited Partner’s Capital Account to exceed such Limited Partner’s share of Partnership Minimum Gain plus such Limited Partner’s share of Partner Nonrecourse Debt Minimum Gain plus the amount, if any, of such Limited Partner’s Designated Amount (as specified in accordance with Section 10.2A). Any losses which are not allocated to the Limited Partners by virtue of the application of this Section 10.3E shall be allocated as required under Treasury Regulation Section 1.704-1(b). For purposes of this Section 10.3E, a Partner’s Capital Account shall be treated as reduced by Qualified Income Offset Items.

F. The terms “profits” and “losses” used in this Agreement shall mean income and losses, and each item of income, gain, loss, deduction or credit entering into the computation thereof, as determined in accordance with the accounting methods followed by the Partnership and computed in a manner consistent with Treasury Regulation Section 1.704-1(b)(2)(iv). Profits and losses for federal income tax purposes shall be allocated in the same manner as profits and losses under Section 10.3 except as provided in Section 10.5B.

G. Federal Low Income Tax Credits shall be allocated among the Partners in the same manner as the deductions attributable to the expenditures creating the tax credit are allocated among the Partners in accordance with Treasury Regulation Section 1.704-1(b)(4)(ii).

#### **Section 10.4 Minimum Gain Chargebacks and Qualified Income Offset**

A. If there is a net decrease in Partnership Minimum Gain during a Partnership taxable year, each Partner will be allocated items of income and gain for such year (and, if necessary, subsequent years) in the proportion to, and to the extent of, an amount equal to such Partner’s share of the net decrease in Partnership Minimum Gain during the year. A Partner is not subject to this Partnership Minimum Gain chargeback to the extent that any of the exceptions provided in Treasury Regulation Section 1.704-2(f)(2)-(5) apply. Such allocations shall be made in a manner consistent with the requirements of Treasury Regulation Section 1.704-2(f) under Section 704 of the Code.

B. If there is a net decrease in Partner Nonrecourse Debt Minimum Gain during a Partnership taxable year, then each Partner with a share of the minimum gain attributable to such debt at the beginning of such year will be allocated items of income and gain for such year (and, if necessary, subsequent years) in proportion to, and to the extent of, an amount equal to such

Partner's share of the net decrease in Partner Nonrecourse Debt Minimum Gain during the year. A Partner is not subject to this Partner Nonrecourse Debt Minimum Gain chargeback to the extent that any of the exceptions provided in Treasury Regulation Section 1.704-2(i)(4) applied consistently with Treasury Regulation Section 1.704-2(f)(2)-(5) apply. Such allocations shall be made in a manner consistent with the requirements of Treasury Regulation Section 1.704-2(i)(4) under Section 704 of the Code.

C. If a Limited Partner unexpectedly receives in any taxable year (1) any adjustments, allocations or distributions described in Treasury Regulation Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6) or (2) a distribution, and such adjustment, allocation and/or distribution would cause the negative balance in such Partner's Capital Account to exceed (i) such Partner's share of Partnership Minimum Gain plus (ii) such Partner's share of Partner Nonrecourse Debt Minimum Gain and (iii) the amount of such Partner's obligation, if any, to restore a deficit balance in its Capital Account, then such Partner shall be allocated items of income and gain in an amount and manner sufficient to eliminate such negative balance as quickly as possible. For purposes of this Section 10.4C, a Partner's Capital Account shall be treated as reduced by Qualified Income Offset Items.

### **Section 10.5 Special Provisions**

A. Except as otherwise provided in this Agreement, all profits, losses, credits and distributions shared by the respective classes composed of the Special Limited Partner and the General Partners shall be allocated among the members of such class in accordance with the percentages set forth opposite their respective names in the Schedule. Subject to the provisions of Section 13.8, the Investor Limited Partner and Special Limited Partner each shall be deemed to have been admitted to the Partnership as of the first day of the month during which its actual admission occurs for purposes of allocating profits and losses.

B. Income, gain, loss and deduction with respect to property which has a variation between its basis computed in accordance with Treasury Regulation Section 1.704-1(b) and its basis computed for federal income tax purposes shall be shared among the Partners for tax purposes so as to take account of such variation in a manner consistent with the principles of Section 704(c) of the Code and Treasury Regulation Sections 1.704-1(b)(2)(iv)(g) and 1.704-3.

C. If the Partnership shall receive any purchase money indebtedness in partial payment of the purchase price of the Project and such indebtedness is distributed to the Partners pursuant to the provisions of Section 10.1B or Section 10.2, the distributions of the cash portion of such purchase price and the principal amount of such purchase money indebtedness hereunder shall be allocated among the Partners in the following manner: On the basis of the sum of the principal amount of the purchase money indebtedness and cash payments received on the sale (net of amounts required to pay Partnership obligations and fund reasonable reserves), there shall be calculated the percentage of the total net proceeds distributable to each class of Partners based on Section 10.1B or Section 10.2, as applicable, treating cash payments and purchase money indebtedness principal interchangeably for this purpose, and the respective classes shall receive such respective percentages of the net cash purchase price and purchase money principal. Payments on such purchase money indebtedness retained by the Partnership shall be distributed in accordance with the respective portions of principal allocated to the respective classes of

Partners in accordance with the preceding sentence, and if any such purchase money indebtedness shall be sold, the sale proceeds shall be allocated in the same proportion.

D. In the event that any fee payable to any General Partner or any Affiliate shall instead be determined to be a non-deductible, non-capitalizable distribution from the Partnership to a Partner for federal income tax purposes, then there shall be allocated to such General Partner an amount of gross income equal to the amount of such distribution.

E. Notwithstanding any provision to the contrary in this Article X, funds of the Partnership constituting Designated Proceeds shall be applied to pay Development Costs and the Development Amount in accordance with the provisions of this Agreement, the Development Agreement and the Project Documents.

F. In applying the provisions of this Article X with respect to distributions and allocations, the following ordering of priorities shall apply:

(1) Capital Accounts shall be deemed to be reduced by Qualified Income Offset Items.

(2) Capital Accounts shall be reduced by distributions of Cash Flow under Section 10.1A.

(3) Capital Accounts shall be reduced by distributions from Capital Transactions under Section 10.1B.

(4) Capital Accounts shall be increased by any minimum gain chargeback under Section 10.4A or 10.4B.

(5) Capital Accounts shall be increased by any qualified income offset under Section 10.4C.

(6) Capital Accounts shall be increased by allocations of profits under Section 10.3A.

(7) Capital Accounts shall be reduced by allocations of losses under Section 10.3A.

(8) Capital Accounts shall be reduced by allocations of losses under Section 10.3B.

(9) Capital Accounts shall be increased by allocations of profits under Section 10.3B.

G. For purposes of determining each Partner's proportionate share of excess Partnership Nonrecourse Liabilities pursuant to Treasury Regulation Section 1.752-3(a)(3), the Investor Limited Partner shall be deemed to have a 99.99% interest in profits of the Partnership and the General Partners shall be deemed to have a 0.01% interest in profits of the Partnership.

H. To the maximum extent permitted under the Code, allocations of profits and losses shall be modified so that the Partners' Capital Accounts reflect the amount they would have reflected if adjustments required by Section 10.4 had not occurred. Furthermore, if for any Fiscal Year the application of the provisions of Section 10.4 would cause a distortion in the economic sharing arrangement among the Partners and it is not expected that the Partnership will have sufficient other income to correct that distortion, the General Partners may request a waiver from the Service of the application in whole or in part of Section 10.4 in accordance with Treasury Regulation Section 1.704-2(f)(4). Notwithstanding any provision to the contrary in this Section 10.5H, depreciation deductions shall in all events be allocated 99.99% to the Investor Limited Partner and 0.01% to the General Partners.

I. To the extent that interest on obligations to any General Partner or its Affiliates is determined to be deductible by the Partnership in excess of the stated amount of interest payable thereunder, the corresponding additional interest deduction shall be allocated solely to such General Partner.

J. Any income earned by the Partnership prior to the Development Obligation Date shall be specially allocated to the General Partners.

K. Nonrecourse deductions as defined in Treasury Regulation Section 1.704-2(b)(1) for any Fiscal Year shall be allocated 99.99% to the Investor Limited Partner and 0.01% to the General Partners.

L. Any partner nonrecourse deductions as determined under Treasury Regulation Sections 1.704-2(i)(2) and 1.704-2(k) with respect to Partner Nonrecourse Debt for any Fiscal Year shall be specially allocated to the Partner or Partners that bear the Economic Risk of Loss with respect to the Partner Nonrecourse Debt to which such deductions are attributable in accordance with Treasury Regulation Section 1.704-2(b)(4) and 1.704-2(i).

M. The Partnership and its Partners shall be permitted to disclose to any and all Persons, without limitation of any kind, the tax treatment and tax structure (as defined in Treasury Regulation Section 1.6011-4(c)) of the transaction contemplated by this Agreement and all materials of any kind (including opinions or other tax analyses) relating to such tax treatment and tax structure.

## **ARTICLE XI**

### **MANAGEMENT AGENT**

#### **Section 11.1 Management Agent; Property Manager**

The General Partners shall have responsibility for obtaining a Management Agent acceptable to the Investor Limited Partner and each Lender and Governmental Agency to manage the Project in accordance with the requirements of each Lender and Governmental Agency. The General Partners shall cause the Partnership to enter into the Management Agent Agreement with the Management Agent, which may be an Affiliate of a General Partner. The initial Management Agent shall be HCHP Property Management, L.P. No Management Agent may be removed or replaced without the prior written consent of the Investor Limited Partner.

Subject to the Regulations, the Management Agent shall be entitled to receive a reasonable and competitive Management Fee (determined by reference to arm's-length property management arrangements for comparable properties in force in the general locality of the Project) not to exceed the lesser of 6% of gross rental income or the maximum amount permitted by any relevant Governmental Agency or Lender. The Management Agent shall retain a portion of the Management Fee equal to 1% of the gross rental income and pay the balance to the Property Manager as provided in the Property Management Agreement.

The Management Agent shall enter into a Property Management Agreement with a Property Manager acceptable to the Investor Limited Partner and each Lender and Governmental Agency to carry out certain management obligations of the Management Agent with respect to the Project. The initial Property Manager shall be UAH Property Management, L.P. No Property Manager may be removed or replaced without the prior written consent of the Investor Limited Partner. As compensation for services, the Management Agent shall pay to Property Manager a portion of the Management Fee as described above. The Management Agent acknowledges that notwithstanding any provisions of the Property Management Agreement, the Management Agent shall be solely responsible for its obligations to the Partnership under this Agreement and the Management Agreement.

The Management Agent acknowledges that the Partnership is required under this Agreement to use reasonable best efforts to lease 100% of the Low Income Units to tenants whose income and rent levels qualify such apartments for inclusion in meeting the requirements for Tax Credits and:

(i) The Management Agent shall require each prospective tenant to certify, on the lease application or lease, the amount of such tenant's annual family income, family size, and any other information reasonably requested by the Partnership in connection with the Tax Credits. The Management Agent shall require the tenants to certify in writing as to such matters on an annual basis, prior to such time as the information is required for reporting purposes.

(ii) Without the Partnership's express prior written consent, the Management Agent shall not enter into any lease on behalf of the Partnership at a rental amount exceeding the application maximum.

(iii) The Management Agent shall maintain and preserve all written records of the tenants' family income and size, and any other information reasonably requested by the Partnership in writing in connection with the Tax Credits, throughout the term of the Management Agreement, and shall turn all such records over to the Partnership upon the termination or expiration of the Management Agreement.

(iv) The Management Agent shall prepare reports of low-income leasing and occupancy in form suitable for submission in connection with the Tax Credits.

If at any time after the Completion Date:

(v) the Project shall be subject to any substantial building code violation which shall not have been cured within ninety (90) days after notice from the applicable

Governmental Agency or department or unless such violation is being validly contested by the General Partners by proceedings which operate to prevent any fines or criminal penalties from being levied against the Partnership or unless, in the case of any such violation not susceptible of cure within such ninety (90)-day period, the General Partners are diligently making reasonable efforts to cure the same,

(vi) operating revenues of the Project in respect of any period of twelve (12) consecutive calendar months after the Completion Date shall be insufficient to permit the Partnership to pay when due on a current basis all Partnership obligations in respect of such twelve (12) month period, as a result of negligence, misconduct, mismanagement, incompetence or malfeasance by the Property Manager.

(vii) the Project ceases to qualify as a “qualified low-income housing project” under Section 42(g) of the Code or any Low Income Unit in the Project ceases to qualify as a “low income unit” under Section 42(i)(3) of the Code,

(viii) a Recapture Event shall have occurred,

(ix) the Property Manager or its agents or employees have demonstrated incompetence or malfeasance in the management of the Project, or

(x) the Special Limited Partner has elected to remove a General Partner that is an Affiliate of the Management Agent pursuant to the provisions of Section 7.7,

then the General Partners shall forthwith give to the Special Limited Partner notice of such event (a “Management Default Notice”), and thereafter the Partnership shall, subject to any Requisite Approvals, forthwith cause the Management Agent to terminate the management agreement with the Property Manager, unless the approval of the Special Limited Partner is obtained to the retention of the Property Manager. Upon any termination, the General Partners shall immediately proceed to select a qualified Person as the new Property Manager (which, in the event the terminated Property Manager was an Affiliate of a General Partner, shall be unaffiliated with any General Partner) as the new Property Manager for the Property, which selection shall be subject to the Consent of the Investor Limited Partner and any Requisite Approvals; and, after such selection, no Management Fee shall be payable to any Person which is an Affiliate of a General Partner unless the management contract with any such Person shall provide for the right of the Partnership to terminate the same upon the occurrence of any circumstance described in this Article XI. In the event that the Special Limited Partner elects to remove the Managing General Partner pursuant to the provisions of Section 7.7, the Management Agent Agreement and the property management agreement shall automatically terminate upon removal of the Managing General Partner pursuant to Section 7.7. By its execution hereof, the Management Agent agrees that the provisions of this Section which limit the amount of the Management Fee and provide for the termination of the Management Agent and concurrent termination of any property management agreement under the circumstances herein described are hereby incorporated into any present or future Management Agent Agreement and subsequent property management agreement (which shall be deemed amended hereby to the extent necessary to give effect to such provisions).

## **Section 11.2 Special Power of Attorney**

If an event described in clauses (i) through (vi) of Section 11.1 above occurs and the General Partner fails to send a Management Default Notice to the Special Limited Partner within the ten (10) days of the date the General Partner became aware of such event, the Special Limited Partner hereby is granted an irrevocable power of attorney, coupled with an interest, to take such action, and to execute and deliver such documents on behalf of the Partners and the Partnership, as shall be legally necessary and sufficient to effect the provisions of this Article XI.

## **ARTICLE XII**

### **BOOKS AND REPORTING, ACCOUNTING, TAX ELECTION**

#### **Section 12.1 Books, Records and Reporting**

A. The General Partners shall keep or cause to be kept a complete and accurate set of books and supporting documentation with respect to the Partnership's business in accordance with this Article XII. The books of the Partnership shall be kept on the accrual basis. The books and records of the Partnership (including all records required to be maintained under the Uniform Act) shall at all times be maintained at the principal office of the Partnership. Each Partner, its duly authorized representatives and any regulatory authority which regulates such Partner shall have the right to examine the books of the Partnership and all other records and information concerning the Partnership and the Project at reasonable times. The books and records of the Partnership shall include, without limitation, copies of the following: (i) the Partnership's federal, state and local income tax or information returns and reports, if any, and all related back-up documentation for ten (10) years from the date of production and (ii) financial statements of the Partnership for ten (10) years from the date of production.

B. The Managing General Partner shall comply with all of the requirements set forth in this Section 12.1 and **Exhibit K** and will deliver to the Special Limited Partner all of the information requested in this Section 12.1 and on **Exhibit K** within the relevant time frames. The Managing General Partner shall also provide copies of all such information to the Administrative General Partner when it is delivered to the Special Limited Partner.

C. The reports and tax returns described on **Exhibit K** shall be accompanied by a certification from the Managing General Partner that states as follows: (i) all Capital Accounts have been analyzed for minimum gain and, if applicable, how any potential reallocation of profits, losses and Tax Credits will be addressed, (ii) to the best of the Managing General Partner's knowledge, no notices of any proceedings have been received by the General Partner from the IRS pertaining to the Partnership and, if such notices have been received, then a statement as to the corrective action plan, and (iii) to the best of the Managing General Partner's knowledge, no material litigation has been filed against the Partnership and, if such litigation has been filed, a statement detailing the litigation and the potential outcome.

D. If the Managing General Partner fails to complete such tax returns and submit such Schedules K-1 within the time frames set forth on **Exhibit K**, the Special Limited Partner may select a firm of accountants who shall prepare such returns and Forms K-1. The Managing



General Partner shall immediately furnish all necessary documentation and other information to prepare such tax returns and such Schedules K-1 to such accountants.

E. Every Limited Partner shall at all times have access to the records of the Partnership and may inspect and copy any of them. A list of the names and addresses of all of the Limited Partners shall be maintained as part of the books and records of the Partnership and shall be mailed to any Limited Partner upon request.

F. The General Partners shall furnish to the Special Limited Partner a radon gas test measurement report and conclusion (a “Radon Report”) for each Building upon completion of construction or rehabilitation thereof, unless the Project is located in a county in the lowest risk EPA radon map Zone 3. The Radon Report must come from a radon service professional who (i) meets state-specific requirements, if any, for providing such Radon Reports, and (ii) has a proficiency listing, accreditation or certification in radon test measurement from either (a) The National Environmental Health Association (“NEHA”) National Radon Proficiency Program or (b) The National Radon Safety Board (“NRSB”). Alternatively, a Radon Report from an environmental professional who lacks such a proficiency listing, accreditation or certification from NEHA or NRSB may be acceptable if it follows state-specific requirements and EPA recommendations and protocols set forth in the following EPA publications: *Protocols for Radon and Radon Decay Product Measurements in Homes* (EPA 402-R-93-003, June, 1993) and the *Indoor Radon and Radon Decay Product Measurement Device Protocols* (EPA 402-R-92-004, July, 1992), which protocols are summarized at [www.airchek.com](http://www.airchek.com). If the Radon Report demonstrates that the radon gas level for a Building exceeds the EPA standard for radon action or remediation then in effect, the General Partners shall install a radon mitigation system or take other recommended mitigation measures and shall provide a follow-up Radon Report to confirm effectiveness.

G. The General Partners and/or their Affiliates shall (i) report any “reportable transactions” to the Service as required under Section 6111 of the Code (“Reportable Transactions”); (ii) disclose any Reportable Transactions as required by Treasury Regulations 1.6011-4; (iii) promptly report to the Partners any Reportable Transactions in which the Partnership engages; and (iv) maintain any list of investors in accordance with Section 6112 of the Code to the extent they are required to maintain such lists. The General Partners shall be responsible for any expenses or penalties, including penalties for understatement of income, solely attributable to the failure of the General Partners or their Affiliates to satisfy the Reportable Transactions requirements imposed on them.

H. In addition to the foregoing, the Managing General Partner shall prepare a semi-annual report describing each of the following: (i) any new agreement, contract or arrangement between the Partnership and a General Partner or an Affiliate of a General Partner, (ii) the amount of all fees and other compensation and distributions and reimbursed expenses paid by the Partnership for the quarter to any General Partner or Affiliate of a General Partner, (iii) the amount of all distributions of Cash Flow and Capital Transaction proceeds made to Partners during such reporting period (if any); and (iv) a report of the significant activities of the Partnership during the reporting period including, without limitation, any material notice received by the Partnership or the General Partner of any IRS proceeding involving the Partnership, any lapse, cancellation, or non-renewal of any insurance policy that insures the

Partnership or its property, and any other material notice (the “Semi-Annual Status Reports”). Each Semi-Annual Status Report shall also contain a certification by the General Partners that neither the Partnership nor any General Partner has received any notice or has been cited by or otherwise warned in writing of any Violation (as hereinafter defined) by any Governmental Agency, which Violation could have a materially adverse impact on any of them. For purposes of this certification, a “Violation” shall mean any act or omission complained of which, if uncured, would be in violation of (a) any applicable statute, code, ordinance, rule or regulation, (b) any agreement or instrument to which the Governmental Agency and the Partnership or a General Partner is a party or to which the Project is subject, (c) any license or permit, or (d) any judgment, decree or order of a court. Any exceptions to the foregoing shall be described in such certification. In addition, if requested by the Investor Limited Partner in writing, within a reasonable time after receipt of such a request, each General Partner shall send to the Investor Limited Partner such recent financial statements (including a balance sheet and statement of income) as shall have been so requested.

### **Section 12.2 Bank Accounts**

Subject to any Requisite Approvals, the bank accounts of the Partnership shall be maintained at Bank of America, N.A., as its principal bank, for deposits and the maintenance of business, cash management, operating and administrative deposit accounts. Specifically, the General Partner will establish and maintain a separate operating account for the Partnership (the “Operating Account”). All Cash Receipts from the Project will be deposited into the Operating Account and all Operating Expenses will be paid out of the Operating Account. All funds of the Partnership in excess of those necessary for the short-term operation of the Project will be invested in the name of the Partnership or the General Partner, under such terms and conditions (including signatories) as the Investor Limited Partner approves in writing. Withdrawals shall be made only in the regular course of Partnership business on the signature of the Managing General Partner. All deposits and other funds not needed in the operation of the business shall be deposited, to the extent permitted by the Lender and the Governmental Agency, in interest-bearing accounts or invested in short-term United States Government obligations maturing within one (1) year. Promptly upon the request of the Investor Limited Partner, the General Partner will obtain and deliver to the Investor Limited Partner full, complete and accurate statements of the amounts and status of all Partnership bank accounts and all withdrawals therefrom and deposits thereto.

### **Section 12.3 Elections**

Unless the Investor Limited Partner shall specify a different permissible treatment in writing, and except to the extent otherwise required by Section 168(g)(1)(B) of the Code, the Partnership shall depreciate its residential rental property, site improvements and personal property costs, respectively, over twenty-seven and a half (27.5) years, fifteen (15) years and five (5) years for federal income tax purposes and over forty (40) years, twenty (20) years and ten (10) years for financial accounting purposes. Subject to the provisions of Section 12.4, all other elections required or permitted to be made by the Partnership under the Code shall be made by the Managing General Partner with the Consent of the Investor Limited Partner, which consent shall not be unreasonably withheld, conditioned or delayed.

#### **Section 12.4 Special Adjustments**

Upon request of the Investor Limited Partner, the General Partner will immediately file an election under Section 754 of the Code and the corresponding Treasury Regulations on behalf of the Partnership to adjust the basis of the Partnership's assets under Section 734(b) or 743(b) and a corresponding election under the applicable sections of state and local law. In the event of a Transfer of all or any part of any Interest of a Partner, the Partnership shall elect, if requested by the transferee, to adjust the basis of Partnership assets pursuant to Section 754 of the Code (or corresponding provisions of succeeding law). Notwithstanding anything to the contrary contained in Article X, any such adjustment shall affect only the successor in interest to the transferring Partner. Each Partner will furnish the Partnership with all information necessary to give effect to such election.

#### **Section 12.5 Fiscal Year**

The Fiscal Year of the Partnership shall be the calendar year unless a different year is required by the Code.

### **ARTICLE XIII**

#### **GENERAL PROVISIONS**

#### **Section 13.1 Notices**

Except as otherwise specifically provided herein, all notices, demands or other communications hereunder shall be in writing and deemed to have been given when the same are (i) deposited in the United States mail and sent by certified or registered mail, postage prepaid, (ii) deposited with Federal Express or similar overnight delivery service, (iii) transmitted by telecopier or other facsimile transmission, answerback requested, or (iv) delivered personally, in each case to the parties at the addresses set forth below or at such other addresses as such parties may designate by notice to the Partnership:

If to the Partnership, at the principal office of the Partnership set forth in Section 2.2, and if to a Partner, at its address set forth in the Schedule, with copies to with copies to Buchalter, A Professional Corporation 1000 Wilshire Blvd., Suite 1500, Los Angeles, California, 90017-2457, Attn: Michael A. Williamson, Esq. and Locke Lord LLP at 600 Congress Avenue, Suite 2200, Austin, Texas 78701, Attn: Cynthia Bast, Esq.

#### **Section 13.2 Word Meanings**

The words such as "herein," "hereinafter," "hereof," and "hereunder" refer to this Agreement as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires. The singular shall include the plural and the masculine gender shall include the feminine and neuter, and vice versa, unless the context otherwise requires. Any references to "Sections" or "Articles" are to Sections or Articles of this Agreement, unless reference is expressly made to a different document.

### **Section 13.3 Binding Provisions**

The covenants and agreements contained herein shall be binding upon, and inure to the benefit of, the heirs, legal representatives, successors and assignees of the respective parties hereto, except in each case as expressly provided to the contrary in this Agreement. Subject to the preceding sentence, none of the provisions of this Agreement shall be for the benefit of any lender or any other Person who is not a Partner.

### **Section 13.4 Applicable Law**

This Agreement shall be construed and enforced in accordance with the internal laws of the State, exclusive of its conflict of laws principles.

### **Section 13.5 Counterparts**

This Agreement may be executed in several counterparts and all so executed shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties have not signed the original or the same counterpart.

### **Section 13.6 Paragraph Titles**

Paragraph titles and any table of contents herein are for descriptive purposes only, and shall not affect the meaning of this Agreement as set forth in the text.

### **Section 13.7 Separability of Provisions; Rights and Remedies**

A. Each provision of this Agreement shall be considered separable and (i) if for any reason any provisions herein are determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those portions of this Agreement which are valid, or (ii) if for any reason any provisions herein would cause the Limited Partners to be bound by the obligations of the Partnership under the laws of the State as the same may now or hereafter exist, such provisions shall be deemed void and of no effect.

B. Each of the parties hereto irrevocably waives during the term of the Partnership (including any periods during which the business of the Partnership is required to be continued under Article VII) any right (i) that such party may have to maintain any action for partition with respect to the property of the Partnership, and (ii) to commence an action seeking dissolution of the Partnership (unless the Consent of the Investor Limited Partner has been obtained).

C. The rights and remedies of any of the parties hereunder shall not be mutually exclusive, and the exercise of one or more of the provisions hereof shall not preclude the exercise of any other provisions hereof. Each of the parties confirms that damages at law may be an inadequate remedy for breach or threat of breach of any provisions hereof. The respective rights and obligations hereunder shall be enforceable by specific performance, injunction, or other equitable remedy, but nothing herein contained is intended to limit or affect any rights at law or by statute or otherwise of any party aggrieved as against the other parties for a breach or threat of breach of any provision hereof, it being the intention that the respective rights and obligations of the Partners shall be enforceable in equity as well as at law or otherwise.

D. Each Partner and each Guarantor irrevocably:

(i) agrees that any suit, action or other legal proceeding arising out of this Agreement, any of the Related Agreements or any of the transactions contemplated hereby or thereby shall be brought in the courts of record of Guadalupe County of the State of Texas or the courts of the United States located in Central District of Texas;

(ii) consents to the jurisdiction of each such court in any such suit, action or proceeding;

(iii) waives any objection which he may have to the laying of venue of any such suit, action or proceeding in any of such courts; and

(iv) waives its right to a jury trial with respect to any suit, action or other legal proceeding arising out of this Agreement, any of the Related Agreements or any of the transactions contemplated hereby or thereby.

### **Section 13.8 Effective Date of Admission**

Any Partner admitted to the Partnership during any calendar month shall be deemed to have been admitted as of the first day of such calendar month for all purposes of this Agreement including the allocation of profits, losses and credits under Article X; *provided, however*, that if regulations are issued by the Service or an amendment to the Code is adopted which would require, in the opinion of the Accountants, that a Partner be deemed admitted on a date other than as of the first day of such month, then the General Partners shall select a permitted admission date which is most favorable to the Partner.

### **Section 13.9 Delivery of Certificate**

Promptly upon the filing of the Certificate and each amendment thereto in the appropriate filing office, the General Partners shall deliver or mail a copy thereof to each Limited Partner.

### **Section 13.10 Additional Information**

At the request of the Investor Limited Partner, the General Partners shall furnish to the Investor Limited Partner: (i) Plans and Specifications for the Project; (ii) copies of manuals, booklets and other documents describing the location and operation of all systems within the Project, including without limitation heating, air conditioning, elevator, electrical and plumbing systems; (iii) a list and copies of all agreements concerning the maintenance, operation and management of the Project; and (iv) such other information regarding the Partnership, the Project or the Related Agreements as the Investor Limited Partner may reasonably request.

### **Section 13.11 Further Documents and Actions**

The Partners agree that they shall, from time to time, execute and deliver such further documents and do such further actions and things as may be reasonably requested by any other such party in order to effect fully the purposes of this Agreement and each other agreement or instrument identified on the Document Schedule.

### **Section 13.12 Brokers or Finders**

The parties hereto agree that no broker or finder has any claim for commissions or fees in connection with the transaction embodied herein. The General Partners shall jointly and severally indemnify the Limited Partners against any brokers' or finders' fees or commissions claimed through the General Partners or their Affiliates in connection with the transactions contemplated hereby, including without limitation fees or commissions claimed by any syndicator or consultant engaged by the General Partners or any of their Affiliates. Fees payable to Bank of America, N.A. are not covered hereby.

### **Section 13.13 Amendment**

This Agreement may only be amended in writing signed by all General Partners, the Investor Limited Partner and the Special Limited Partner. All parties agree that no oral agreements or course of conduct of the parties shall be deemed to be an amendment to this Agreement unless in writing signed as described above.

### **Section 13.14 Publicity Rights**

At the Investor Limited Partner's request, but at the expense of the Partnership, the General Partner will place a sign at a location on the Property satisfactory to the Investor Limited Partner, which sign will recite, among other things, that Bank of America, N.A. is the investor limited partner in the Partnership. The General Partner expressly authorizes the Investor Limited Partner to prepare and to furnish to the news media for publication from time to time news releases with respect to the Property, specifically to include releases detailing Bank of America, N.A.'s involvement with the Property. Bank of America, N.A. may feature the Project in a series of marketing materials that may be distributed both inside and outside of Bank of America, N.A.. These materials may include the names of the General Partner, the Developer, the Guarantor, or the Project sponsor, a description of the Property type, its features, and its impact on the community, the size of the Project, in terms of both the units produced and the development costs, the Bank of America, N.A. products/services utilized in undertaking the Project (including amounts), and pictures and renderings of the Project. The General Partner and its Affiliates irrevocably grant to the Investor Limited Partner and its Affiliates the right to use, publish, produce, copyright, and to distribute to the public from time to time, in various forms of promotional materials, any information obtained by the Investor Limited Partner concerning the General Partner (excluding, however, financial information regarding the General Partner, the Guarantor, and Project sponsor, or other information of a sensitive nature that reasonable parties would agree is not suitable for public distribution), its name, projects financed in whole or in part by Bank of America, N.A., and any financial relationships or transactions entered into between the General Partner and Bank of America, N.A. or its Affiliates, specifically including photographs or images of the Project, whether or not such information, photographs or images are provided by or on behalf of the General Partner. The General Partner hereby releases any and all interest it may now or hereafter have in such promotional materials and any information, photographs or images used in connection therewith.

## ARTICLE XIV

### ANTI-BRIBERY/ANTI-CORRUPTION

#### **Section 14.1 Anti-Bribery/Anti-Corruption Representations and Warranties.**

A. The General Partner is aware of the U.S. Foreign Corrupt Practices Act of 1977, as amended (“FCPA”), and any other relevant regulations, and understands its relevance in the transaction to Bank of America, N.A.. Bank of America, N.A. is committed to strict compliance to all requirements both in the letter and spirit of all relevant laws. General Partner therefore makes the following representations and warranties in connection with the transaction or activity:

B. Familiarity and compliance with Bribery & Corruption prohibitions. The General Partner represents and warrants that it is familiar with the FCPA and/or other relevant bribery and/or corruption laws or regulations and its purposes, including its prohibition against taking corrupt or improper actions in furtherance of an offer, payment, promise to pay or authorization of the payment of anything of value, including but not limited to cash, checks, wire transfers, tangible and intangible gifts, favors, services, and those entertainment, travel expenses or any other financial advantage that goes beyond what is legal, reasonable and customary and of modest value, to:

- (i) an executive, official, employee or agent of a governmental department, agency or instrumentality;
- (ii) a director, officer, employee or agent of a wholly or partially government-owned or government-controlled entity;
- (iii) a political party or official thereof, or candidate for political office;
- (iv) an executive, official, employee or agent of a public international organization (e.g., the International Monetary Fund or the World Bank); or
- (v) any other person, entity or party,

while knowing or having a reasonable belief that all or some portion of the financial or other advantage will be used for the purpose of:

- (a) influencing any act, decision or failure to act by a person in his or her private or official capacity;
- (b) inducing a person to use his or her influence or instrumentality to affect any act or decision; or
- (c) offering, requesting or securing an improper or illegal advantage; in order to obtain, retain, direct business or any other advantage.

C. Subsequently identified bribery and corruption laws or regulatory concerns. The parties will meet promptly, as appropriate, in light of a potential bribery or corruption concern

being identified, discovered, or disclosed as the result of an ongoing or pending investigation conducted by federal, state or municipal authorities. If, after consultation by all parties to the transaction, any such bribery or corruption concern cannot be resolved in the good faith and reasonable judgment of Bank of America, N.A., then Bank of America, N.A., on written notice to General Partner, may withdraw from or terminate this agreement without penalty.

D. Non-Government Employees. Each General Partner represents (for itself only) that none of its officers, directors, senior managers, partners, owners, or principals are Government Employees.

Under Bank of America, N.A. policy, a Government Employee includes:

- Any officers and employees, regardless of rank, of a branch of government, whether national, state, provincial or local/municipal;
- Governmental departments, ministries and agencies;
- Judiciary;
- Public Hospitals;
- Central Bank officials and employees;
- Pension funds or systems;
- Sovereign Wealth Funds and employees;
- Customs Officials;
- Officers and employees of a wholly or partially Government-owned or Government-controlled entity;
- Officers and employees of a public international organization;
- Officers and employees of Self-Regulatory Organizations (SROs);
- Political parties and their officers or employees;
- Individuals acting in an official capacity or on behalf of any government or public international organization (e.g., an official advisor to the government);
- Candidates for political office and the official campaign staff of such candidates;
- Members of a ruling monarchical or royal family;
- Close family members or close associates (e.g. key advisors) of Government Employees as defined above.



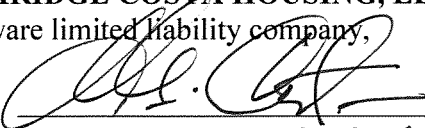
Each General Partner agrees that if any of its officers, directors, senior managers, partners, owners, or principals becomes a Government Employee (prior to the completion of this transaction or during the relationship), then such General Partner will promptly notify Bank of America, N.A. in writing. On receipt of a written notice, the Parties will consult together to address possible issues of compliance with the FCPA and or other relevant bribery and corruption laws and regulations and determine whether those issues can be satisfactorily resolved. If, after consultation, any such issues cannot be resolved in the good faith and reasonable judgment of Bank of America, N.A., then Bank of America, N.A., on written notice to General Partner, may withdraw from or terminate this agreement without penalty.

E. Previous or pending violations. Each General Partner (for itself only) warrants that it has not breached any local bribery and corruption requirements, unless these have been fully disclosed to the Bank, and that it has no reason to suspect any investigation is (or is about) to take place by any regulator or law enforcement authority in relation to its (or its officers, agents or otherwise) activities in any jurisdiction in relation to bribery and or corruption violations unless these have been fully disclosed to the Bank.

F. Role of Government Employee. Each General Partner (for itself only) represents and warrants that no Government Employee who is an officer, director, senior manager, partner, owner, principal or investor of such General Partner has been involved on behalf of a Government in decisions as to whether such General Partner or Bank of America, N.A. would be awarded business or that otherwise could benefit General Partner or Bank of America, N.A., or in the appointment, promotion, or compensation of persons who will make such decisions. Each General Partner (for itself only) further represents and warrants that no such Government Employee will use their Government positions to influence acts or decisions of a Government for the benefit of such General Partner or Bank of America, N.A. or any other linked person(s). Each General Partner (for itself only) further represents and warrants that such Government Employees will not meet or communicate with Government Employees on behalf of the General Partner or Bank of America, N.A. without advising such General Partner in writing in advance of such meeting or communication, and such General Partner will promptly provide such writing to Bank of America, N.A.

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IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed under seal as of the day and year first above written.

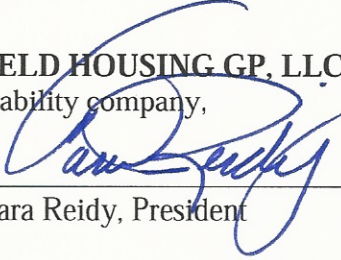
MANAGING GENERAL PARTNER: **HIGHRIDGE COSTA HOUSING, LLC**, a  
Delaware limited liability company,  
By:   
Name: MICHAEL COSTA  
Title: CEO

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed under seal as of the day and year first above written.

ADMINISTRATIVE  
GENERAL PARTNER:

**BORGFELD HOUSING GP, LLC**, a Texas  
limited liability company,

By:

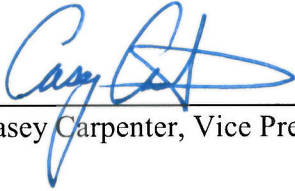
  
\_\_\_\_\_  
Sara Reidy, President

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed under seal as of the day and year first above written.

INVESTOR LIMITED PARTNER:

**BANK OF AMERICA, N.A.,**  
a national banking association

By:


  
\_\_\_\_\_  
Casey Carpenter, Vice President

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed under seal as of the day and year first above written.

SPECIAL LIMITED PARTNER:

**BANC OF AMERICA CDC SPECIAL  
HOLDING COMPANY, INC.,**  
a North Carolina corporation

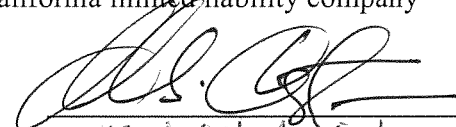
By:

  
\_\_\_\_\_  
Casey Carpenter, Vice President

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed under seal as of the day and year first above written.

WITHDRAWING LIMITED PARTNER:

**VICTORIA CAPITAL, LLC,**  
a California limited liability company

By:   
Name: Michael A. Costa  
Title: President

**Exhibit A**

**BORGFELD HOUSING, LP**

**SCHEDULE OF PARTNERS**

**As of April 26, 2017**

<b><u>Name and Business Address</u></b>	<b><u>Capital Contributions</u></b>	<b><u>Percentage of Partnership Interests for Class</u></b>
<b><u>GENERAL PARTNERS:</u></b>		
Highridge Costa Housing, LLC 330 West Victoria Gardena, CA 90248-3527 (424) 258-2800 (Telephone No.) (424) 258-2801 (Fax No.)	\$100	0.0055%
Borgfeld Housing GP, LLC c/o Casa Linda Affordable Housing, LLC 2010 Kessler Parkway Dallas, TX 75208 (214) 941-0090 (Telephone No.) (888) 811-2360 (Fax No.)	\$100	0.0045%
<b><u>INVESTOR LIMITED PARTNER:</u></b>		
Bank of America, N.A. La Costa BC 7700 El Camino Real CA0-222-02-02 Carlsbad, CA 92009-8506 (760) 697-9037 (Telephone No.) (415) 343-6755 (Fax No.)	\$14,773,524*	99.98%
<b><u>SPECIAL LIMITED PARTNER:</u></b>		
Banc of America CDC Special Holding Company, Inc. La Costa BC 7700 El Camino Real CA0-222-02-02 Carlsbad, CA 92009-8506 (760) 697-9037 (Telephone No.) (415) 343-6755 (Fax No.)	\$0	0.01%

**Exhibit B**

**RELATED AGREEMENTS**

1. Development Agreement
2. Guaranty Agreement
3. Closing Certificate
4. [Reserved]
5. [Reserved]
6. Partnership Management Agreement
7. [Reserved]
8. Purchase Option Agreement



**Exhibit C**

**INSURANCE REQUIREMENTS**

**Summary of Requirements**

Hazard insurance certificates and policy confirmations meeting Bank of America, N.A.'s requirements should be obtained in favor of the Partnership and listing "*Bank of America, N.A., a national banking association, as Investor Limited Partner, Banc of America CDC Special Holding Company, Inc., a North Carolina corporation, as Special Limited Partner, and each of their successors and assigns, as their interests may appear*" as additional insureds, with respect to the following items: (i) Builder's Risk coverage in an amount at least equal to the amount of the hard cost construction contract (i.e., the Insurable Value); (ii) Workmen's Compensation insurance; (iii) fire and extended coverage insurance in an amount equal to at least the full replacement cost of the Project, or if under construction, to replace work completed to date; (iv) single limit comprehensive general liability insurance on an "occurrence basis" against claims for personal injury in an amount of at least \$1,000,000 for any single occurrence and \$5,000,000 in aggregate coverage for any single year.

All Asset Management and Insurance Notifications and Certificates should be identified and sent to Regina Bender:

Bank of America, N.A.  
225 Franklin Street  
Boston, MA 02110  
Mail Code: MA1-225-02-02  
(617) 346-1426 (Telephone No.)  
(617) 346-2724 (Fax No.)  
Email: regina.s.bender@baml.com

**Insurance Format**

All carriers must be admitted to do business in the state where the property is located, and must be rated by **A.M. Best** and carry a minimum rating of **A- IX** or better.

***THESE REQUIREMENTS MAY BE FORWARDED TO YOUR INSURANCE AGENT OR  
BROKER AS WELL AS THE GENERAL CONTRACTOR.***

**Property Insurance Requirement**

Evidence of Property Insurance **ACORD 27**, **ACORD 28** or equivalent which conveys to the investor all the rights and privileges afforded under the policy in a manner acceptable to Bank of America, N.A.. A Lender's Loss Payable endorsement is required in addition to acceptable evidence. This endorsement shall name Bank of America, N.A. as mortgagee and loss payee and must contain provisions acceptable to Bank of America, N.A.

Note: **ACORD 25** is **not** acceptable as evidence of property coverage. ACORD forms or other forms with disclaimers similar to ACORD 25 are not acceptable. Therefore, ACORD 27 & ACORD 28 forms (**version 07/2006**) are not acceptable.

**Evidence of Property Insurance must indicate all of the following coverage:**

- Include a description of the property insured in addition to the property address.
- Bank of America, N.A., a national banking association, as Investor Limited Partner, Banc of America CDC Special Holding Company, Inc., a North Carolina corporation, as Special Limited Partner, and each of their successors and assigns, as their interests may appear, must be listed as Additional Insured.
- The policy limit for Hard Costs must be sufficient to cover the full cost to rebuild the building(s).
- Deductible of \$10,000 maximum.
- A certified copy of the insurance policy will be required prior to investment and loan closing. If this is a new insurance policy, a certified copy will be required within 90 days from the effective date.
- The insurance policy form must be Builders Risk during construction.
- The policy must be written on Special Form (also known as All Risk) during operations.
- Acts of Terrorism – the insurance policy must not contain an exclusion for acts of terrorism. The evidence of insurance must include the following: Acts of Terrorism are not specifically excluded.
- Completed Value form is required. Reporting Form is not acceptable.
- Builders Risk policies void coverage when the building in the course of construction is partially occupied prior to being 100% complete. This clause is commonly known as the Occupancy Clause. We require this clause to be deleted by endorsement.
- 30 day cancellation clause, with 10 day for non payment of premium.
- Bank of America, N.A. must be named as an additional insured.
- Vandalism and Malicious Mischief (V&MM) and Theft on construction materials on site prior to installation must be included.
- The Builders Risk policy must include coverage for Soft Costs including construction loan interest payments and other expenses that could be incurred again during the reconstruction period after a loss.

**Partnership's Liability Insurance Requirements**  
**(Use ACORD 25 form)**

*Primary liability insurance and excess liability insurance limits are acceptable to comply with the per occurrence policy limit requirement.*

- The Partnership must be a Named Insured.

- *Bank of America, N.A., a national banking association, as Investor Limited Partner, Banc of America CDC Special Holding Company, Inc., a North Carolina corporation, as Special Limited Partner, and each of their successors and assigns, as their interests may appear must be named as additional insured.*
- Commercial General Liability insurance policy must be on Occurrence Form. Claims Made form is not acceptable. The policy limit must be **\$1,000,000.00** per occurrence and **\$5,000,000** in the aggregate, and include the following coverage:
  - Products/Completed Operations coverage.
  - Protective Liability (a.k.a. Owners and Contractors Protective liability) covering borrower for liability claims stemming from the general contractor's actions.
- 30 day cancellation clause, with 10 day for non-payment of premium.

**Builder's Insurance Requirements**  
**(Use ACORD 25 form)**

*If a general contractor is hired to do the construction work, insurance from the contractor is required as follows:*

- The certificate of insurance must include a description of the property insured and the property address.
- Commercial General Liability insurance policy must be on Occurrence Form. Claims Made form is not acceptable. The policy limit must be **\$5,000,000.00** per occurrence and must include the following coverage:
  - Products/Completed Operations coverage must be included.
  - Protective Liability (a.k.a. Independent Contractors Protective liability) covering all subcontractors.
- Bank of America, N.A., a national banking association, as Investor Limited Partner, Banc of America CDC Special Holding Company, Inc., a North Carolina corporation, as Special Limited Partner, and each of their successors and assigns, as their interests may appear must be named as additional insured.
- An additional insured endorsement naming the Partnership as an additional insured.
- 30 day cancellation clause, with 10 day for non-payment of premium.
- Statutory Workers' Compensation insurance.
- Employers' Liability coverage (**\$1,000,000.00** Minimum)
- Bank of America, N.A. must be the certificate holder.

**Property Manager's Insurance Requirements**

*If a management agent is hired to perform property management services, insurance from the management agent is required as follows:*

- The certificate of insurance must include a description of the property insured and the property address.
- Commercial General Liability insurance policy must be on Occurrence Form. Claims Made form is not acceptable. The policy limit must be **\$1,000,000.00** per occurrence and **\$5,000,000** in the aggregate and must include the following coverage.
- Fidelity/dishonesty bond in an amount not less than six (6)<sup>1</sup> months of Property gross rental receipts.
- A comprehensive automobile liability insurance in an amount of not less than **\$1,000,000** per occurrence and **\$2,000,000** in the aggregate covering liability arising out of any owned, non-owned or hired vehicles (if any) utilized by the property manager in conjunction with the property and shall comply with any compulsory coverage mandated by the jurisdiction where such vehicles are registered.
- An additional insured endorsement naming the Partnership as an additional insured.
- 30 day cancellation clause, with 10 day for non-payment of premium.
- Statutory Workers' Compensation insurance providing statutory benefits for all employees of the Management Agent.
- Employers' Liability coverage (**\$1,000,000.00** Minimum).
- Bank of America, N.A. must be the certificate holder.

All of the conditions listed above are requirements of Bank of America, N.A., and must be indicated on the Proof of Insurance. The insurance requirements listed above do not modify any provisions of the loan or equity documents regarding insurance. They represent the minimum requirements of Bank of America, N.A. and should not be accepted as advice of counsel concerning an adequate property and casualty insurance program to meet your personal needs. We urge you to seek advice from your insurance adviser in this regard.

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<sup>1</sup> This requirement can be from 2 to 6 months - discuss with deal person.

**Exhibit D**

**BORGFELD HOUSING, LP**

**SECOND INSTALLMENT PAYMENT CERTIFICATE**

The undersigned, constituting the Managing General Partner (the “General Partner”) of Borgfeld Housing, LP, a Texas limited partnership (the “Partnership”), does hereby certify to Bank of America, N.A., a national banking association, and its successors and assigns (the “Investor Limited Partner”), pursuant to Section 5.1C(i) of the Amended and Restated Agreement of Limited Partnership of the Partnership, dated as of April 26, 2017 (the “Partnership Agreement”), that:

1. All preconditions, representations, warranties and agreements set forth in the Partnership Agreement and applicable to the Second Installment have been satisfied.

2. As set forth in Section 5.1A of the Partnership Agreement, the amount of the Second Installment is \$2,090,393, there being no reduction in the amount thereof pursuant to Section 5.2 of the Partnership Agreement. [Modify as appropriate if any adjustment shall have occurred and attach supporting calculations and documentation.]

3. The Special Limited Partner has received the Accountant’s report and back-up documentation relating to the character and amount of costs incurred by the Partnership and the “reasonably expected basis” in the Project for the purposes of the ten percent (10%) carryover allocation test set forth in 42(h)(1)(E) of the Code (the “10% Test Materials”). The 10% Test Materials were submitted to the Credit Agency on \_\_\_\_\_.

4. The Completion Date occurred on \_\_\_\_\_.

5. Attached hereto is a copy of the completed certification provided by the Construction Inspector or Architect, which has been reviewed and approved by the Special Limited Partner, in the form attached as Attachment A.

6. Attached hereto is (a) a true copy of all temporary or final certificates or permits of occupancy for the Project, and (b) a current title search report demonstrating that the Project is free and clear of any mechanics’ or other liens.

7. The date of this Certificate is not earlier than May 1, 2018.

8. Each of the representations and warranties set forth in Section 6.5 of the Partnership Agreement is true and correct in all material respects.

9. No event has occurred which would permit the Investor Limited Partner to give an Election Notice under Section 5.3 of the Partnership Agreement.

10. No Event of Bankruptcy as to any General Partner, Developer or Guarantor shall have occurred unless such Event of Bankruptcy shall have been cured in a manner approved in writing by the Investor Limited Partner.

11. No event has occurred which suspends or terminates the obligations of the Investor Limited Partner to pay Installments under the Partnership Agreement which has not been cured as therein provided.

12. Attached hereto is a true copy of a date-down endorsement to the Title Policy evidencing the accuracy of the representations contained in Section 6.5A(viii) of the Partnership Agreement.

13. The Investor Limited Partner has received copies of such other documents relating to the Project as it may reasonably request.

Capitalized terms not defined herein shall have the meanings given to them in the Partnership Agreement.

IN WITNESS WHEREOF, the undersigned has executed this certificate this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

GENERAL PARTNER:

**HIGHRIDGE COSTA HOUSING, LLC**, a  
Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Attachment A**

[Construction Inspector/Architect Letterhead]

100% Completion Certificate - Consultant

Form of Construction Consultant's/Architect's Certificate of Percentage Completion

The undersigned, [CONST. CONSULT.], is the construction consultant engaged by Bank of America, N.A. pursuant to that certain [CONST. CONSULT. AGREEMENT] dated as of [\_\_\_\_\_], in connection with the construction of a project known as El Sereno Senior Apartments, in Cibolo, Texas as an 136-unit multifamily mixed income project (the "Project") owned by Borgfeld Housing, LP, a Texas limited partnership (the "Partnership"). The undersigned hereby certifies to Bank of America, N.A., its successors or assigns (the "Bank") with respect to the Bank's payment to the Partnership of the amount due and owing as of the Second Installment as set forth in the Amended and Restated Agreement of Limited Partnership of the Partnership dated as of April 26, 2017 (the "Partnership Agreement"), executed by the Bank in connection with the Bank's acquisition of its Interest (as that and all other capitalized terms used herein are defined in the Partnership Agreement), as follows:

The work to be performed by the Builder under the Construction Contract is substantially complete, subject only to punch list items not in excess of \$150,000 in the aggregate, and to the best of my knowledge, such work has been performed in a good and workmanlike manner in accordance with applicable requirements of all Governmental Agencies and substantially in accordance with the Plans and Specifications.

Dated: as of \_\_\_\_\_, 20\_\_.

[\_\_\_\_\_]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**Exhibit E**

**BORGFELD HOUSING, LP**

**THIRD INSTALLMENT PAYMENT CERTIFICATE**

The undersigned, constituting the Managing General Partner (the “General Partner”) of BORGFELD HOUSING, LP, a Texas limited partnership (the “Partnership”), does hereby certify to Bank of America, N.A., a national banking association, and its successors and assigns (the “Investor Limited Partner”), pursuant to Section 5.1C(i) of the Amended and Restated Agreement of Limited Partnership of the Partnership, dated as of April 26, 2017 (the “Partnership Agreement”), that:

1. All preconditions, representations, warranties and agreements set forth in the Partnership Agreement and applicable to the Third Installment have been satisfied.

2. As set forth in Section 5.1A of the Partnership Agreement, the amount of the Third Installment is \$11,652,923, there being no reduction in the amount thereof pursuant to Section 5.2 of the Partnership Agreement. [Modify as appropriate if any adjustment shall have occurred and attach supporting calculations and documentation.]

3. The Partnership achieved a Debt Service Coverage Ratio of not less than 115% for each of three (3) consecutive calendar months on \_\_\_\_\_ (which includes the calendar month immediately preceding the date of this Certificate), as evidenced by a calculation from the Managing General Partner.

4. At least 90% of the Units are physically occupied.

5. All tax credit units have been leased to Qualified Tenants at least once.

6. The Permanent Loan has closed and the principal amount of the Permanent Loan has been fully disbursed to the Partnership.

7. The Initial Occupancy Date occurred on \_\_\_\_\_, and copies of a current rent roll and the Tenant Income Certifications for each of the Qualified Tenants in the Project have been delivered to the Special Limited Partner.

8. All reserves required under the Partnership Agreement have been funded or will be funded simultaneously with the payment of the Third Installment.

9. Final Closing has occurred or will occur simultaneously with the payment of the Third Installment. Attached hereto is a copy of the draft audit of the Partnership’s construction costs as part of Cost Certification and a copy of the draft Mortgage Loan Documents evidencing and securing the permanent Mortgage Loans to the extent not previously delivered to the Investor Limited Partner for its review and approval prior to execution and delivery thereof.

10. Attached hereto are copies of (i) the final (non-temporary) certificates of occupancy permitting occupancy of 100% of the units in the Project.



11. Reserved.

12. The date of this Certificate is not earlier than February 1, 2019.

13. Each of the representations and warranties set forth in Section 6.5 of the Partnership Agreement is true and correct in all material respects.

14. No event has occurred which would permit the Investor Limited Partner to give an Election Notice under Section 5.3 of the Partnership Agreement.

15. No Event of Bankruptcy as to any General Partner, Developer or Guarantor shall have occurred unless such Event of Bankruptcy shall have been cured in a manner approved in writing by the Investor Limited Partner.

16. No event has occurred which suspends or terminates the obligations of the Investor Limited Partner to pay Installments under the Partnership Agreement which has not been cured as therein provided.

17. Attached hereto is a true copy of an ALTA as-built survey for the Project and the final issued Title Policy with all Special Endorsements thereto (including a current date down endorsement without a survey exception), evidencing the accuracy of the representations contained in Section 6.5A(viii) of the Partnership Agreement.

18. The Investor Limited Partner has received copies of such other documents relating to the Project as it may reasonably request.

Capitalized terms not defined herein shall have the meanings given to them in the Partnership Agreement.

IN WITNESS WHEREOF, the undersigned has executed this certificate this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

GENERAL PARTNER:

**HIGHRIDGE COSTA HOUSING, LLC**, a  
Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Attachment A**

**[Letterhead of Partnership Accountants]**

**DETERMINATION OF DEBT SERVICE COVERAGE RATIO**

\_\_\_\_\_, 20\_\_

Bank of America, N.A.  
Community Development Banking  
MA1-225-02-02  
225 Franklin Street  
Boston, MA 02110

Bank of America CDC Special Holding Company, Inc.  
Community Development Banking  
MA1-225-02-02  
225 Franklin Street  
Boston, MA 02110

Re: Borgfeld Housing, LP (the "Partnership")

Ladies and Gentlemen:

We have reviewed the pertinent portions of the Amended and Restated Agreement of Limited Partnership of the Partnership dated as of April 26, 2017 (the "Partnership Agreement"). Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Partnership Agreement.

Based upon information provided to us by the Partnership concerning El Sereno Senior Apartments, a 136-unit apartment complex located in Cibolo, Texas (referred to herein as the "Project"), we have performed the following procedures:

We have compiled a statement of income and expenses for the three (3) month period ending \_\_\_\_\_, 20\_\_.

We have obtained an annual budget prepared by the Project's management agent for the year ended December 31, 20\_\_.

We have adjusted the statement to annualize all expenditures, including those of a seasonal or irregular nature which might reasonably be expected to be incurred on an unequal basis during a full annual period of operations. (Examples of such expenditures include debt service, reserve funding, maintenance, utilities, snow removal and real estate taxes.)

We have compared the budget for such period to the statement of actual results, and have made all inquiries we considered necessary with respect to any material variances.

We have performed such other procedures as we considered necessary to evaluate both the assumptions used and the information provided to us by the Partnership and the management agent.

We have determined that the Partnership, for a period of [\_\_\_\_\_] consecutive calendar months (and during each individual month) beginning on \_\_\_\_\_ 20\_\_ (which date is subsequent to Final Closing) has achieved a Debt Service Coverage Ratio of \_\_\_\_%. Furthermore, nothing has come to our attention to suggest that the data or assumptions on which the above determination is based are incorrect or inappropriate.

Copies of the calculations and adjustments we have made in reaching the determination above and of financial statements and budgets upon which such calculations are based are attached hereto.

**NOVOGRADAC & COMPANY LLP**

By: \_\_\_\_\_  
Name:  
Its:

**Exhibit F**

**BORGFELD HOUSING, LP**

**FOURTH INSTALLMENT PAYMENT CERTIFICATE**

The undersigned, constituting the Managing General Partner (the “General Partner”) of Borgfeld Housing, LP, a Texas limited partnership (the “Partnership”), does hereby certify to Bank of America, N.A., a national banking association, and its successors and assigns (the “Investor Limited Partner”), pursuant to Section 5.1C(i) of the Amended and Restated Agreement of Limited Partnership of the Partnership, dated as of April 26, 2017 (the “Partnership Agreement”), that:

1. All preconditions, representations, warranties and agreements set forth in the Partnership Agreement and applicable to the Fourth Installment have been satisfied.

2. As set forth in Section 5.1A of the Partnership Agreement, the amount of the Fourth Installment is \$133,770, there being no reduction in the amount thereof pursuant to Section 5.2 of the Partnership Agreement. [Modify as appropriate if any adjustment shall have occurred and attach supporting calculations and documentation.]

3. The Partnership has received Forms 8609 from the Credit Agency with respect to all of the Buildings comprising the Project and has recorded the Extended Use Agreement, copies of which are attached.

4. Attached hereto is a copy of the final, certified Cost Certification prepared by the Accountants. The amount of the Tax Credits for purposes of Cost Certification have been determined, as evidenced by the determination letter attached hereto as Attachment A, and the General Partner and the Investor Limited Partner agree with the adjustments calculated in accordance with Section 5.2 of the Partnership Agreement.

5. A qualified third-party firm approved by the Investor Limited Partner has performed a tax credit compliance audit report of the tenant files at the Project, copies of which are attached.

6. The date of this Certificate is not earlier than May 1, 2019.

7. Each of the representations and warranties set forth in Section 6.5 of the Partnership Agreement is true and correct in all material respects.

8. No event has occurred which would permit the Investor Limited Partner to give an Election Notice under Section 5.3 of the Partnership Agreement.

9. No Event of Bankruptcy as to any General Partner, Developer or Guarantor shall have occurred unless such Event of Bankruptcy shall have been cured in a manner approved in writing by the Investor Limited Partner.

10. No event has occurred which suspends or terminates the obligations of the Investor Limited Partner to pay Installments under the Partnership Agreement which has not been cured as therein provided.

11. Reserved.

16. The Investor Limited Partner has received copies of such other documents relating to the Project as it may reasonably request.

Capitalized terms not defined herein shall have the meanings given to them in the Partnership Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed under seal as of the day and year first above written.

GENERAL PARTNER:

**HIGHRIDGE COSTA HOUSING, LLC**, a  
Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Attachment A**

**[Letterhead of Partnership Accountants]**

**DETERMINATION OF TAX CREDIT**

\_\_\_\_\_, 20\_\_

Bank of America, N.A.  
Community Development Banking  
MA1-225-02-02  
225 Franklin Street  
Boston, MA 02110

Bank of America CDC Special Holding Company, Inc.  
Community Development Banking  
MA1-225-02-02  
225 Franklin Street  
Boston, MA 02110

Re: Borgfeld Housing, LP (the "Partnership")

Ladies and Gentlemen:

We have reviewed the pertinent portions of the Amended and Restated Agreement of Limited Partnership of the Partnership dated as of April 26, 2017 (the "Partnership Agreement"). Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Partnership Agreement.

Based upon information provided to us by the Partnership concerning El Sereno Senior Apartments, a 136-unit apartment complex located in Cibolo, Texas (referred to herein as the "Project"), we have performed the following procedures.

We have compiled a statement of the development costs through \_\_\_\_\_, 20\_\_ and the expected classification of each cost for tax purposes.

We have obtained a budget for the development costs from the Partnership.

We have compared the budget for such costs to the actual results, and have made all inquiries we considered necessary with respect to any material variances.

We have performed such other procedures as we considered necessary to evaluate both the assumptions used and the information provided to us by the Partnership.

We have determined that the Adjusted Aggregate Federal Low Income Tax Credit Amount properly allocable to the Investor Limited Partner will be \$\_\_\_\_\_.

Furthermore, nothing has come to our attention to suggest that the data or assumptions on which the above determinations are based are incorrect or inappropriate.

In making these determinations, we have assumed that [87.5]% of the Units in the Project will be “low-income units” as such term is defined in Section 42(i)(3) of the Internal Revenue Code of 1986, as amended, and have no reason to believe that such assumption is unwarranted.

Copies of the calculations we have made in reaching the determinations above and of the financial statements and budgets upon which such calculations are based are attached hereto.

**NOVOGRADAC & COMPANY LLP**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**Exhibit G**

**[Reserved]**



**Exhibit H**

**BORGFELD HOUSING, LP**

**CERTIFICATE OF ACHIEVEMENT OF DEVELOPMENT OBLIGATION DATE**

The undersigned, constituting the Managing General Partner (the “General Partners”) of Borgfeld Housing, LP, a Texas limited partnership (the “Partnership”), does hereby certify to Bank of America, N.A. and its successors and assigns (the “Investor Limited Partner”), pursuant to the Amended and Restated Agreement of Limited Partnership of the Partnership, dated as of April 26, 2017 (the “Partnership Agreement”), that:

1. The Project has achieved three (3) consecutive calendar months of not less than 90% occupancy of the Units.
2. The Initial Occupancy Date occurred on \_\_\_\_\_.
3. The Completion Date occurred on \_\_\_\_\_.
4. Final Closing occurred on \_\_\_\_\_.
5. The Development Obligation Date occurred on \_\_\_\_\_.

Capitalized terms not defined herein shall have the meanings given to them in the Partnership Agreement.

IN WITNESS WHEREOF, the undersigned has executed this certificate this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

GENERAL PARTNER:

**HIGHRIDGE COSTA HOUSING, LLC**, a  
Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Exhibit I**

**BORGFELD HOUSING, LP**

**ENVIRONMENTAL REPORTS**

1. Phase I Environmental Site Assessment Report, Borgfeld Manor, 206 W Borgfeld Road, Cibolo, Guadalupe County, Texas 78108, ECS Project No. 19-6500, prepared for the Texas Department of Housing and Community Affairs and Highridge Costa Development Company, Dated February 23, 2015 and Prepared by ECS Texas, LLP.
2. Phase I Environmental Site Assessment Update, Borgfeld Manor, 206 W Borgfeld Road, Cibolo, Guadalupe County, Texas, ECS Project No. 17:4659, prepared for Borgfeld Housing, LLP, Dated December 2, 2016 and Prepared by ECS Texas, LLP.
3. Asbestos-containing Building Material Inspection Residence, Borgfeld Manor, 206 W Borgfeld Road, Cibolo, Guadalupe County, Texas 78108, prepared for ECS Texas, LLP, Dated March 1, 2017 and prepared by Farmer Environmental Group.

**Exhibit J**

**INITIAL ECONOMIC PROJECTIONS**

[attached behind]

## Exhibit K

### TAX CREDIT MANAGEMENT REQUIREMENTS

#### Financial, Tax and other Information

**Annual Reporting and Quarterly Reporting will be coordinated through Integrated or any other Third Party Vendor as designated by the Investor Limited Partner.**

**Annual Reporting:** An annual report shall be provided to the Investor Limited Partner within 120 days of calendar year-end; provided that to the extent the Partnership, a General Partner, or Guarantor seeks an extension of its federal income tax returns, the Partnership, General Partner, or Guarantor, as applicable, may submit copies of such returns within 30 days of such filing, provided, that, so long as Managing General Partner provides Investor Limited Partner with prior written notice of any extension request, then such 30 day period may extend beyond 120 days after calendar year end. This report must include all of the information detailed below:

- Any information required by the Investor Limited Partner to complete its annual tax return, including, but not limited to Form 1065, Schedule K-1 (or its successor form) and an Apportionment Schedule (if applicable) for the Partnership by March 31st of the following year.
- Managing General Partner will submit Draft Tax Returns to Investor Limited Partner for its approval prior to filing within 100 days of the end of the calendar year.
- Commencing after the Completion Date, audited financial statements for the Partnership within 120 days of the end of the calendar year. Such audited report should include an audited balance sheet, an audited statement of income and expenses, an opinion by the Partnership's regular auditors as to the financial condition of the Partnership, auditors report on internal control, an auditor's report on compliance with specific requirements of applicable programs, the results of operations, a statement of the Partners' equity, and changes in financial condition and cash flow from the preceding year. All such reports shall be prepared in accordance with GAAP by the Partnership's regular certified public accountants. The books of account of the Partnership shall be kept on the accrual basis of accounting.
- Managing General Partner will submit the General Partners' and Guarantors' annual audited financial statements, including balance sheets and income statements, and federal income tax returns (including all Schedule K-1s and any information returns) within thirty (30) days after the filing of such Person's federal income tax or information return. All such financial statements must be in form and detail acceptable to the Special Limited Partner and must be certified as to accuracy by each Person with respect to itself. The financial statements must be prepared by a certified public accountant acceptable to the Special Limited Partner. All financial statements for individuals must be on the Special Limited Partner's then-current personal financial statement form or such other form satisfactory to the Special Limited Partner.

- An annual pro forma operating budget for the succeeding calendar year shall be prepared by the Managing General Partner and furnished to the Special Limited Partner before December 1st of each year. In addition, the Managing General Partner shall prepare and furnish to the Special Limited Partner an estimate of the profits and losses of the Partnership for federal income tax purposes for the current Fiscal Year not later than September 30 of each year. If the Managing General Partner determines that the actual operating results shown on any annual budget will vary from such budget by more than 10%, the Managing General Partner will immediately give the Special Limited Partner written notice of such variance together with a written explanation therefor.
- During Construction, an Audited Balance Sheet for the Partnership within 120 days of the end of the calendar year.
- A copy of each low-income housing tax credit compliance report delivered to or prepared by the applicable tax credit monitoring agency with respect to the Project.
- A schedule setting forth the adjustments necessary, if any, to state the income of the Partnership using the longer depreciable lives available under generally accepted accounting principles (rather than the depreciable lives used for federal income tax purposes)
- Copies of any filings made by the Partnership with respect to the Project's compliance with rent and income restrictions set forth in any Regulatory Agreement or required by any Lender or Governmental Authority with respect to the Project.
- Certification that capital accounts have been analyzed for minimum gain. Provide the General Partner's plan to address the potential reallocation of credits, if a potential reallocation exists.
- Certification that, to the best of General Partner's knowledge, no notices of any proceedings have been received by the General Partner from the Internal Revenue Service (IRS) pertaining to the Partnership. If any notice of an IRS proceeding or uncorrected Form 8823 has been received by the General Partner, then disclose details reporting the corrective action plan for such non-compliance issue or IRS proceeding.
- Certification that, to the best of the General Partner's knowledge, no material litigation has been filed against the Partnership, and if so, disclose details of the litigation and potential outcome.
- Certification that, to the best of the General Partner's knowledge, there are no known Environmental Issues.
- Such other information as the Special Limited Partner may reasonably request from time to time with regard to the business or operations of the Partnership.

**Quarterly Reporting:** The Managing General Partner shall prepare a report within 60 days of the end of the first, second, and third calendar quarters and shall provide such report to the

Special Limited Partner. These reports should provide sufficient financial and property information for the Special Limited Partner to monitor its investment and should include:

- Status of projects in lease-up, including projected and actual start date, percentage leased, and projected and actual lease-up end date, (including fourth quarter).
- During lease-up, a Rent Roll should be submitted monthly. When lease-up is complete, a Rent Roll should be submitted quarterly.
- Anticipated tax credit adjuster amounts for properties experiencing significant construction and/or lease-up delays (including fourth quarter).
- Estimated timing for receipt of 8609s.
- Unaudited financial statements and footnotes to the financial statements, including a balance sheet, income statement, statement of cash flows, reserve deposits and balances for such quarter, and as a note to the financial statements, a schedule of all loans or advances made to the Partnership by the General Partner pursuant to the Partnership Agreement.
- A report detailing any material notice (of which the General Partner is aware) received by the General Partner of (i) an Internal Revenue Service proceeding involving the Partnership, (ii) any lapse, cancellation, or non-renewal of an insurance policy that insures the Partnership or its Property, and (iii) any other material notice(including fourth quarter).
- During construction, a copy of each draw request for construction or development costs as such requests are made to the Lender.

### **Ongoing Information**

- Notification, and as provided in Section 9.1 of the Partnership Agreement, ability to review any material increase of debt on Properties, unless said increase was contemplated in the original Partnership Agreement.
- Prompt notification of any casualty or other significant adverse event relating to the Partnership including, without limitation, notification of any issues surrounding insurance claims which impact the delivery of credits.

### **Miscellaneous Information**

- The General Partner will use Novogradac & Company LLP to review first-year resident files.
- Within 30 days following the close of the first year of the Credit Period, provide a certification to the Special Limited Partner that first-year resident files have been reviewed and tested for compliance by an independent third party.

- Within 30 days following the close of the first year of the Credit Period, provide first-year resident files to the Special Limited Partner on a disc.

## Exhibit L

### DEVELOPMENT AGREEMENT (El Sereno Senior Apartments)

DEVELOPMENT AGREEMENT (the “Agreement” or “Development Agreement”) made as of April 26, 2017 by and between Borgfeld Housing, LP limited partnership (the “Partnership”), Highridge Costa Housing, LLC, a Delaware limited liability company (“HCH”) and Casa Linda Affordable Housing, LLC, a Texas limited liability company (“Casa Linda,” and collectively with HCH, the “Developer”).

#### Recitals

A. The Partnership was formed to acquire, construct, develop, improve, maintain, own, operate, lease, dispose of and otherwise deal with a 136-unit apartment project located in Cibolo, Texas (the “Project” or the “Property”).

B. The Project, following the completion of construction, is expected to constitute a “qualified low-income housing project” (as defined in Section 42(g)(1) of the Code).

C. Reserved.

D. In consideration for such services, the Partnership has agreed to pay to the Developer certain fees computed in the manner stated herein.

E. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Amended and Restated Agreement of Limited Partnership dated as of April 26, 2017 (the “Partnership Agreement”).

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to enter into this Agreement as follows:

#### Section 1. Development Services.

A. The Developer shall oversee the development and construction of the Project, and shall perform the services and carry out the responsibilities with respect to the Project as are set forth herein, and such additional duties and responsibilities as are reasonably within the general scope of such services and responsibilities and are designated from time to time by the General Partners.

B. The Developer’s services shall be performed in the name and on behalf of the Partnership and shall consist of the duties set forth in the following subparagraphs of this Section 1.B and as provided elsewhere in this Agreement; provided, however, that if the performance of any duty of the Developer set forth in this Agreement is beyond the reasonable control of the Developer, the Developer shall nonetheless be obligated to (i) use its reasonable best efforts to perform such duty and (ii) promptly notify the General Partners that the performance of such



duty is beyond its reasonable control. The Developer has performed or shall perform the following:

(i) Negotiate and cause to be executed in the name and on behalf of the Partnership agreements for architectural, engineering, testing or consulting services for the Project, and any agreements for the construction of any improvements or tenant improvements to be constructed or installed by the Partnership or the furnishing of any supplies, materials, machinery or equipment therefor, or any amendments thereof, provided that no agreement shall be executed nor binding commitment made until the terms and conditions thereof and the party with whom the agreement is to be made have been approved by the General Partners unless the terms, conditions, and parties comply with guidelines issued by the General Partners concerning such agreements;

(ii) Assist the Partnership in dealing with neighborhood groups, local organizations, abutters and other parties interested in the development of the Project.

(iii) Establish and implement appropriate administrative and financial controls for the design and construction of the Project, including but not limited to:

- coordination and administration of the Project architect, the general contractor, and other contractors, professionals and consultants employed in connection with the design or rehabilitation of the Project;
- administration of any construction contracts on behalf of the Partnership;
- participation in conferences and the rendering of such advice and assistance as will aid in developing economical, efficient and desirable design and construction procedures;
- the rendering of advice and recommendations as to the selection procedures for and selection of subcontractors and suppliers;
- the review and submission to the General Partners for approval of all requests for payments under any architectural agreement, general contractor's agreement, or any loan agreements with any lending institutions providing funds for the benefit of the Partnership for the design or construction of any improvements;

- the submission of any suggestions or requests for changes which could in any reasonable manner improve the design, efficiency or cost of the Project;
- applying for and maintaining in full force and effect any and all governmental permits and approvals required for the lawful construction of the Project;
- compliance with all terms and conditions applicable to the Partnership or the Project contained in any governmental permit or approval required or obtained for the lawful construction of the Project, or in any insurance policy affecting or covering the Project, or in any surety bond obtained in connection with the Project;
- furnishing such consultation and advice relating to the Project as may be reasonably requested from time to time by the General Partners;
- keeping the General Partners fully informed on a regular basis of the progress of the design and construction of the Project, including the preparation of such reports as are provided for herein or as may reasonably be requested by the General Partners;
- giving or making the Partnership's instructions, requirements, approvals and payments provided for in the agreements with the Project architect, general contractor, and other contractors, professionals and consultants retained for the Project; and
- at the Partnership's expense, filing on behalf of and as the attorney-in-fact for the Partnership any notices of completion required or permitted to be filed upon the completion of any improvement(s) and taking such actions as may be required to obtain any certificates of occupancy or equivalent documents required to permit the occupancy of dwelling units and other space in the Project.

(iv) Inspect the progress of the course of construction of the Project, including verification of the materials and labor being furnished to and on such construction so as to be able to approve or disapprove requests for payment made by the Project architect and the general contractor, or by any other parties with respect to the design and construction of the Project, and in addition to verify that the same is being carried out substantially in accordance with the plans and specifications approved by the General Partners or, in the event that the same is not being so carried out, to promptly so notify the General Partners.

(v) If requested to do so by the General Partners, perform on behalf of the Partnership all obligations of the Partnership with respect to the design and construction of the Project contained in any loan agreement or security agreement entered into in connection with any financing for the Project, or in any lease or rental agreement relating to space in the Project, or in any agreement entered into with any governmental body or agency relating to the terms and conditions of such construction, provided that copies of such agreements have been provided by the Partnership to the Developer or the Partnership has otherwise notified the Developer in writing of such obligations.

(vi) To the extent requested to do so by the General Partners, prepare and distribute to the General Partners a critical path schedule, and periodic updates thereto as necessary to reflect any material changes, but in any event not less frequently than quarterly, other design or construction cost estimates as required by the General Partners, and financial accounting reports, including monthly progress reports on the quality, progress and cost of construction and recommendations as to the drawing of funds from any loans arranged by the Partnership to cover the cost of design and construction of the Project.

(vii) Assist the Partnership in obtaining and maintaining insurance coverage for the Project, the Partnership and its employees during the development phase of the Project, in accordance with an insurance schedule approved by the General Partners, which insurance shall include general public liability insurance covering claims for personal injury, including but not limited to bodily injury, or property damage, occurring in or upon the Property or the streets, passageways, curbs and vaults adjoining the Property. Such insurance shall be in a liability amount approved by the General Partners and in accordance with the requirements of the Partnership Agreement.

(viii) Cause the Partnership to comply with all applicable present and future laws, ordinances, orders, rules, regulations and requirements (hereinafter called "laws") of all Federal, state and municipal governments, courts, departments, commissions, boards and offices, any national or local Board of Fire Underwriters or Insurance Services Offices having jurisdiction in the county in which the Project is located or any other body exercising functions similar to those of any of the foregoing, or any insurance carriers providing any insurance coverage for the Partnership or the Project, which may be applicable to the Project or any part thereof. Any such compliance undertaken by the Developer on behalf of and in the name of the Partnership, in accordance with the provisions of this Agreement, shall be at the Partnership's expense. The Developer shall likewise ensure that all agreements between the Partnership and independent contractors comply with all such applicable laws.

(ix) Assemble and retain all contracts, agreements and other records and data as may be necessary to carry out the Developer's functions hereunder.

(x) Coordinate and administer the design and construction of all interior tenant improvements to the extent required under any leases or other occupancy agreements to be constructed or furnished by the Partnership with respect to the initial leasing of space in the Project, whether involving building standard or non-building standard work.

(xi) Use its reasonable best efforts to accomplish the timely completion of the Project in accordance with the approved plans and specifications and the time schedules for such completion approved by the General Partners.'

(xii) At the direction of the General Partners, implement any decisions of the General Partners made in connection with the design, development and construction of the Project or any policies and procedures relating thereto, exclusive of leasing activities.

(xiii) Perform and administer any and all other services and responsibilities of the Developer which are set forth in any other provisions of this Agreement, or which are requested to be performed by the General Partners and are within the general scope of the services described herein.

## Section 2. Obligation to Complete Construction and to Pay Development Costs.

The Developer shall (i) complete the construction of the Improvements or cause the same to be completed in a good and workmanlike manner, free and clear of all mechanics', materialmen's or similar liens, and shall equip the Improvements or cause the same to be equipped with all necessary and appropriate fixtures, equipment and articles of personal property, including refrigerators and ranges, all in accordance with the Project Documents and the drawings and specifications forming a part of the Construction Contract and (ii) cause the Partnership to satisfy any other requirements necessary to achieve Final Closing which relate specifically to the construction and development of the Project, in accordance with the Project Documents. If the Designated Proceeds as available from time to time are insufficient to pay all Development Costs, the Developer shall advance or cause to be advanced to the Partnership from time to time as needed all such funds as are required to pay such deficiencies, which may be paid through a deferral of payment of the Development Amount. Any such advances ("**Development Advances**") shall, to the extent permitted under the Project Documents and any applicable Regulations or requirements of the Lenders and any Governmental Agency (or otherwise with any Requisite Approvals), be reimbursed at or prior to the Development Obligation Date (or, in the case of proceeds of Capital Contributions, through the date on which such Capital Contributions are received by the Partnership) only out of Designated Proceeds available from time to time after payment of all Development Costs. Any balance of the amount of each Development Advance not reimbursed through the Development Obligation Date (or, in the case of proceeds of Capital Contributions, through the date on which such Capital Contributions are received by the Partnership) shall be paid as a Completion Loan in accordance with Section 6.7 of the Partnership Agreement. Any deferred Development Amount shall be paid as a Deferred Development Fee as set forth in Section 5C below.

Section 3. Limitations and Restrictions.

Notwithstanding any provisions of this Agreement, the Developer shall not take any action, expend any sum, make any decision, give any consent, approval or authorization, or incur any obligation with respects to any of the following matters unless and until the same has been approved by the General Partners:

(i) Approval of all construction and architectural contracts and all architectural plans, specifications and drawings prior to the construction and/or alteration of any improvements contemplated thereby, except for such matters as may be expressly delegated in writing to the Developer by the General Partners;

(i) Any proposed change in the work of the construction of the Project, or in the plans and specifications therefor as previously approved by the General Partners, or in the cost thereof, or any other change which would affect the design, cost, value or quality of the Project, except for such matters as may be expressly delegated in writing to the Developer by the General Partners; or

(ii) Expending more than what the Developer in good faith believes to be the fair and reasonable market value at the time and place of contracting for any goods purchased or leased or services engaged on behalf of the Partnership or otherwise in connection with the Project.

Section 4. Accounts and Records.

A. The Developer, on behalf of the Partnership, shall keep such books of account and other records as may be required and approved by the General Partners, including, but not limited to, records relating to the costs for which construction advances have been requested and/or received. The Developer shall keep vouchers, statements, receipted bills and invoices and all other records, in the form approved by the General Partners, covering all collections, if any, disbursements and other data in connection with the Project prior to final completion of construction. All accounts and records relating to the Project, including all correspondence, shall be surrendered to the Partnership upon demand without charge therefor.

B. Reserved.

C. All books and records prepared or maintained by the Developer shall be kept and maintained at all times at the place or places approved by the General Partners, and shall be available for and subject to audit, inspection and copying by the Management Agent, the General Partners or any representative or auditor therefor or supervisory or regulatory authority, at the times and in the manner set forth in the Partnership Agreement.

Section 5. Compensation.

A. For its services in connection with the development of the Project and the supervision of the construction of the Improvements, the Developer shall be entitled to receive an amount (the "Development Amount"), inclusive of all fees and overhead, equal to \$2,320,004 (or such greater amount (up to 15% of the eligible basis of the Project) as may be

permitted by the Credit Agency). The portion of the Development Amount paid at Investment Closing shall be deemed earned for services performed prior to the Investment Closing. The remaining Development Amount shall be deemed to have been earned pro rata as and when the dwelling units in the Project have been completed and are ready to be placed in service.

B. The Development Amount shall be paid from and to the extent of Designated Proceeds available therefor from time to time as follows:

(i) \$290,000 of the Development Amount will be paid to the Developer at the time of Investment Closing;

(ii) \$292,844 of the Development Amount will be payable at the time of the Third Installment; and

(iii) \$133,768 of the Development Amount will be payable at the time of the Fourth Installment.

C. The outstanding balance in the anticipated amount of \$1,603,392 (the “**Deferred Development Fee**”) shall be paid from the proceeds of certain Capital Contributions and from distributions of Cash Flow or the proceeds of Capital Transactions in accordance with the provisions of Sections 4.1B, 10.1A and 10.1B of the Partnership Agreement; *provided, however*, that the Partnership shall be obligated to pay any outstanding balance of the Deferred Development Fee on the earlier to occur of the fifteenth (15) anniversary of the Completion Date or the date of liquidation of the Partnership. Interest on the Deferred Development Fee shall accrue from and after the Development Obligation Date at the rate of 2% per annum, compounded annually. The obligation to pay the Deferred Development Fee and interest thereon shall be evidenced by a promissory note in the form attached hereto as an exhibit. Payment of the Development Amount shall also be subject to all applicable provisions of Section 7.7 of the Partnership Agreement. The Development Amount shall be paid to each of HCH and Casa Linda in accordance with the schedule attached hereto as Exhibit B.

D. The Development Amount shall be applied to pay the Developer a development fee for its services hereunder. In the event there shall be Designated Proceeds remaining after application thereof to effect payment of the entire Development Amount and to effect payment of all other Development Costs, such excess shall be paid to the Developer as an incentive development fee, subject to any Requisite Approvals.

E. No Partner of the Partnership shall have any personal liability for payment of all or any portion of the Development Amount or interest thereon.

F. In the event that the Investor Limited Partner shall give notice to the General Partner that in the reasonable judgment of the Investor Limited Partner depreciation deductions will no longer be allocated to the Investor Limited Partner as a result of the treatment of the outstanding balance of the Development Amount as a Partner Non-Recourse Debt, the Developer agrees that the General Partner may take all such action as may be necessary to assure that the outstanding balance of the Development Amount shall constitute a Partnership Nonrecourse Liability.

Section 6. Amendment.

This Agreement may be amended only in a writing executed by the parties hereto; provided, however, that no such amendment shall be effective without the Consent of the Investor Limited Partner, which consent shall be granted in the Investor Limited Partner's sole and absolute discretion.

Section 7. Default and Remedies.

A. If the Developer shall default in the performance of any of its covenants or obligations under this Agreement and such default shall continue unremedied for a period of thirty (30) days after written notice thereof from the Partnership to the Developer, the Partnership may exercise one or more of the following rights and remedies, provided, however, if the default is of such a nature that it cannot be cured within the 30-day period, and the Developer has commenced to cure each default within the 30-day period, the Developer shall have an additional thirty (30) days in which to cure said default provided it acts in good faith and with due diligence to cure the same (all of which shall be cumulative):

(i) Terminate the Development Agreement.

(ii) Enforce the provisions of this Agreement by legal proceedings for the specific performance of any covenant or agreement contained herein or for the enforcement of any other appropriate legal or equitable remedy and recover damages caused by any breach by the Developer of the provisions of this Agreement, including court costs, reasonable attorneys' fees and other expenses incurred in the enforcement of the obligations of the Developer hereunder.

(iii) Exercise any and all rights and remedies which the Partnership (or its Partners) may have under applicable law.

B. In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, upon the occurrence of any event of default hereunder which is not cured within the time period specified in Section 7.A above, the Partnership is authorized to set off and to apply any amounts payable to the Developer hereunder, or to the Developer or any Affiliate thereof under the Partnership Agreement or any Related Agreement against and on account of the obligations of the Developer to the Partnership hereunder.

Section 8. Applicable Law.

This Agreement, and the application or interpretation hereof, shall be governed by and construed in accordance with the laws of the State, exclusive of its conflict of laws principles.

Section 9. Binding Agreement.

Subject to the following sentence, this Agreement shall be binding on the parties hereto, their heirs, executors, personal representatives, successors and assigns. The Developer may not assign any of its rights (including rights to payment) or obligations hereunder without the Consent of the Investor Limited Partner, which consent shall be granted in the Investor Limited

Partner's sole and absolute discretion, except for an assignment and subordination required in connection with the Construction Loan.

Section 10. Headings.

All section headings in this Agreement are for convenience of reference only and are not intended to qualify the meaning of any section.

Section 11. Terminology.

All personal pronouns used in this Agreement, whether used in the masculine, feminine or neuter gender, shall include all other genders, the singular shall include the plural, and vice versa as the context may require.

Section 12. Benefit of Agreement.

The obligations and undertakings of the Developer set forth in this Agreement are made for the benefit of the Partnership and its Partners and shall not inure to the benefit of any creditor of the Partnership other than a Partner, notwithstanding any pledge or assignment by the Partnership of this Agreement or any rights hereunder.

Section 13. Notices.

Except as otherwise specifically provided herein, all notices, demands or other communications hereunder shall be in writing and shall be deemed to have been given and received (i) two (2) business days after being deposited in the United States mail and sent by certified or registered mail, postage prepaid, (ii) one (1) business day after being delivered to a nationally recognized overnight delivery service, (iii) on the day sent by telecopier or other facsimile transmission, answer back requested, or (iv) on the day delivered personally, in each case, to the parties at the addresses set forth below or at such other addresses as such parties may designate by notice to the other party:

A. If to the Partnership, at the principal office of the Partnership set forth in Article II of the Partnership Agreement; and

B. If to the Developer, as follows:

Highridge Costa Housing, LLC  
330 West Victoria  
Gardena, CA 90248-3527  
(424) 258-2801 (Fax No.)

Casa Linda Affordable Housing, LLC  
2010 Kessler Parkway  
Dallas, TX 75208  
(888) 811-2360 (Fax No.)



in either case, with copies to Buchalter, A Professional Corporation 1000 Wilshire Blvd., Suite 1500, Los Angeles, California, 90017-2457, Attn: Michael A. Williamson, Esq.

Any notice to the Developer under this Agreement shall be sent concurrently to both HCH and Casa Linda.

Section 14. Relationship of the Parties.

Nothing contained in this Agreement shall be construed to constitute the Developer as a partner, employee or agent of the Partnership, nor shall the Developer (in its capacity as such and not as a General Partner) hold itself out as such. Except as specifically set forth herein, the Developer (in its capacity as such and not as a General Partner) has no right or authority to incur, assume or create, in writing or otherwise, any liability or obligation of any kind, express or implied, in the name or on behalf of the Partnership, it being intended by the parties that the Developer (in its capacity as such and not as a General Partner) be and remain an independent contractor responsible for its own actions.

Section 15. Termination.

This Agreement shall be subject to termination as provided in Section 7A hereof and as provided in Section 7.7I of the Partnership Agreement.

Section 16. Severability.

Each provision of this Agreement shall be considered separable and if for any reason any provisions herein are determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those portions of this Agreement which are valid.

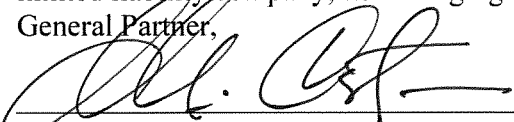
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IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the date and year first above written.

PARTNERSHIP:

**BORGFELD HOUSING, LP**, a Texas limited partnership

By: Highridge Costa Housing LLC, a Delaware limited liability company, its Managing General Partner,

By:   
Name: MICHAEL COSTA  
Title: CEO

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the date and year first above written.

DEVELOPER:

**HIGHRIDGE COSTA HOUSING, LLC,**

A Delaware limited liability company

By: 

Name: \_\_\_\_\_

*MICHAEL COSTA*

Title: \_\_\_\_\_

*CEO*

**CASA LINDA AFFORDABLE HOUSING, LLC,**

a Texas limited liability company

By: \_\_\_\_\_

Sara Reidy, Member

or

Linda S. Brown, Member

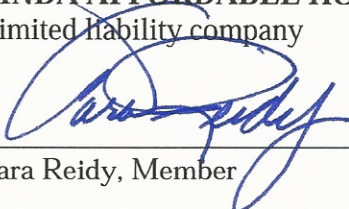
IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the date and year first above written.

DEVELOPER:

**HIGHRIDGE COSTA HOUSING, LLC,**  
A Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CASA LINDA AFFORDABLE HOUSING, LLC,**  
a Texas limited liability company

By:  \_\_\_\_\_  
Sara Reidy, Member

**[Note: This note should not be executed and delivered until the Development Obligation Date]**

EXHIBIT A

DEFERRED DEVELOPMENT FEE NOTE

\$1,603,392

[ \_\_\_\_\_ ], 20\_\_

FOR VALUE RECEIVED, Borgfeld Housing, LP, a Texas limited partnership (the "**Partnership**") promises to pay the order of Highridge Costa Housing, LLC, a Delaware limited liability company ("**HCH**") and Casa Linda Affordable Housing, LLC, a Texas limited liability company ("**Casa Linda**," and collectively with HCH, the "**Developer**") the principal sum of TWO MILLION SIX HUNDRED THREE THOUSAND THREE HUNDRED NINETY-TWO] AND 00/100 DOLLARS (\$1,603,392), with interest at the rate of 2% per annum, compounded annually, on or before the earlier to occur of the fifteenth (15th) anniversary of the Completion Date or the date of liquidation of the Partnership (the "**Maturity Date**"), in accordance with that certain Development Agreement by and between the Partnership and the Developer, dated as of April 26, 2017 (the "**Development Agreement**").

This Note evidences the obligation of the Partnership to pay the Developer a Deferred Development Fee pursuant to the Development Agreement. The Deferred Development Fee is payable from the proceeds of certain Capital Contributions and from distributions of Cash Flow or the proceeds of Capital Transactions in accordance with the provisions of Sections 4.1B, 10.1A and 10.1B of the Amended and Restated Agreement of Limited Partnership of the Partnership dated as of April 26, 2017 (the "**Partnership Agreement**"), the provisions of which are specifically incorporated herein by this reference. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Partnership Agreement.

The outstanding principal balance of this Note, together with all accrued interest thereon, shall unconditionally be due and payable on the Maturity Date.

If payment of the balance of the Deferred Development Fee and all accrued interest thereon is not paid on the Maturity Date, and such default continues for a period of ten (10) days after written notice from the Developer to the Partnership, then interest on the unpaid principal amount of this Note shall be computed at a rate per annum equal to two percent (2%) over the prevailing prime rate from time to time in effect as published in the Wall Street Journal in its Money Rates section and changing simultaneously with each published change in such published prime rate, which rate shall commence upon the expiration of such ten (10) day period and shall continue in effect until all past due principal and interest has been paid.

The Partnership may, at its election, from time to time prior to maturity, prepay without penalty all or any portion of the principal indebtedness of this Note.

Demand for payment shall be presumed to have been issued and the entire unpaid principal sum of this Note, together with accrued interest thereon, if any, shall become

immediately due in the event of the occurrence of any one or more of the following: default in the payment of any installment due hereunder continuing for a period in excess of ten (10) days after written notice from the Developer to the Partnership; the filing by the Partnership of a voluntary petition in bankruptcy; or the failure by the Partnership within ninety (90) days thereof to lift any filing against the Partnership of any involuntary petition, execution, or attachment; or the adjudication of the Partnership as bankrupt; or any assignment by the Partnership of all or substantially all of its assets for the benefit of its creditors; or the invalidity or illegality of any portion of this Note by reason of any act or omission by the Partnership.

Except as may be specifically required under the provisions of Section 5 of the Development Agreement, this Note shall not be assigned, hypothecated, pledged, sold, or otherwise transferred without the prior written consent of the Partnership, and any such other transfer without the Partnership's consent shall be null and void.

No Partner of the Partnership shall have any personal liability for the payment of this Note.

This Note shall be governed by and construed in accordance with the internal laws of the State of Texas.

IN WITNESS WHEREOF, the Partnership has executed this Note as of the date written above.

PARTNERSHIP:

**BORGFELD HOUSING, LP**, a Texas limited partnership

By: Highridge Costa Housing LLC, a Delaware limited liability company, its Managing General Partner,

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

EXHIBIT B  
DEFERRED DEVELOPMENT FEE SCHEDULE  
BETWEEN HCH AND CASA LINDA

[attached behind]

## El Sereno (Cibolo, TX)

### Developer Fee Payment Schedule

		<b>TOTAL</b>	<b>Highridge Costa</b>	<b>Casa Linda</b>	
		100%	Housing, LLC	Affordable	
Timing	% of Total	2,320,004	75%	Housing, LLC	
			1,740,003	580,001	
Close	12.5%	290,001	-	290,001	CLAH
Completion	0.0%	-	-	-	
Conversion	12.6%	292,843	251,009	41,835	pari passu
8609	5.8%	133,770	114,660	19,110	pari passu
Developer Note	69.1%	1,603,390	1,374,334	229,056	pari passu
	100%	2,320,004	1,740,003	580,001	
		-	-	-	

\*Developer Note to bear interest at 2% compounding and cash flow to be split 25% to CLAH, LLC's portion with the balance going toward HCH, LLC's portion.



## Exhibit M

### GUARANTY AGREEMENT (El Sereno Senior Apartments)

Reference is hereby made to the Amended and Restated Agreement of Limited Partnership, dated as of April 26, 2017 (the “**Partnership Agreement**”) of Borgfeld Housing, LP, a Texas limited partnership (the “**Partnership**”).

Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Partnership Agreement.

BANK OF AMERICA, N.A., a national banking association (the “**Investor Limited Partner**”) and BANC OF AMERICA CDC SPECIAL HOLDING COMPANY, INC., a North Carolina corporation (the “**Special Limited Partner**” and, together with the Investor Limited Partner, the “**Limited Partners**”), are about to acquire limited partnership interests in the Partnership (the “**Interests**”) pursuant to the Partnership Agreement. As a result of the admission of the Limited Partners to the Partnership and the Investor Limited Partner’s contribution of capital to the Partnership in accordance with the terms of the Partnership Agreement, the undersigned expect to receive substantial benefits, including, without limitation, certain fees relating to the construction and development of the Project.

To induce the Investor Limited Partner to acquire an interest in the Partnership, to enter into the Partnership Agreement and to become the Investor Limited Partner of the Partnership, Highridge Costa Housing Partners, LLC, a Delaware limited liability company (the “**Guarantors**”, which term, if there is only one Guarantor, shall refer to such sole Guarantor alone) hereby unconditionally and irrevocably, jointly and severally, guarantee to the Investor Limited Partner, commencing on the date of Investment Closing, the due and punctual performance by the General Partners and the Developer of all of their obligations under the Partnership Agreement and the Development Agreement (collectively referred to herein as the “**Obligations**”).

Each Guarantor hereby covenants and agrees to maintain, for so long as the Obligations shall remain in effect, liquid assets of not less than \$1,000,000. Each Guarantor shall furnish the Investor Limited Partner a current and accurate financial statement demonstrating compliance with the foregoing covenants within thirty (30) days after the filing of such Person’s federal income tax or information return and at such other times (and together with such other financial information) as the Investor Limited Partner may reasonably request from time to time.

The Guarantors hereby agree that their obligations hereunder shall be unconditional (and shall not be subject to any advance, set-off, counterclaim or recoupment whatsoever), irrespective of the regularity or enforcement of any Project Document, the Partnership Agreement, the Development Agreement or this Agreement or any other circumstances which might otherwise constitute a legal or equitable discharge of a surety or guarantor or any other circumstances which might otherwise limit the recourse of the Investor Limited Partner against the undersigned (other than full payment and performance of all obligations hereunder). The undersigned hereby waive diligence, presentment and demand for payment, protest, any notice of

any assignment hereunder in whole or in part or of any default hereunder or under any Project Document, the Partnership Agreement or the Development Agreement, and all notices with respect to this Guaranty, the Partnership Agreement, the Development Agreement or the Project Documents. No waiver by the Investor Limited Partner of any of its rights under the Project Documents, the Partnership Agreement, the Development Agreement or this Guaranty and no action by the Investor Limited Partner to enforce any of its rights under this Guaranty or failure to take, or delay in taking, any such action shall effect the Guarantors' obligations hereunder.

The obligations of the Guarantors hereunder shall remain in full force and effect without regard to, and shall not be affected or impaired by, (i) any amendment or modification of or addition or supplement to the Partnership Agreement, the Development Agreement or any of the Project Documents, except as insofar as such amendment, modification, addition or supplement shall directly affect any obligation hereunder (and the Investor Limited Partner shall have affirmatively consented thereto and the Guarantors shall have consented thereto if such amendment, modification, addition, or supplement would increase the Guarantors' obligations hereunder), (ii) any extension, indulgence or other action or inaction in respect of the Partnership Agreement, the Development Agreement or the Project Documents, or any exercise or nonexercise of any right, remedy, power or privilege in respect of such documents or this Guaranty, (iii) any default by the Guarantors under, or any illegality or unenforceability of, or any irregularity or defect in, the Partnership Agreement, the Development Agreement, the Project Documents or any provision of this Guaranty, (iv) any event of bankruptcy, insolvency, reorganization or similar proceeding involving or affecting the Partnership or any of the Guarantors, or (v) any other circumstances, whether or not the undersigned or the Investor Limited Partner shall have actual or constructive notice or knowledge thereof. The undersigned hereby waives to the fullest extent permitted by law, any and all notices and defenses to which they may be entitled by law to their obligations hereunder, including, without limitation, notice of acceptance of this Guaranty, and any requirement of diligence on the part of the Investor Limited Partner or any other parties to the Partnership Agreement, Development Agreement or Project Documents.

All notices, demands or other communications hereunder shall be in writing and shall be deemed to have been given (a) three (3) days after being deposited in the United States mail and sent by certified or registered mail, postage pre-paid, (b) one day after being delivered to a nationally recognized overnight courier service, service prepaid, which requires written acknowledgement of receipt or (c) when delivered personally, in each case, to the parties at the addresses set forth below at such other addresses as such parties may designate by notice to other parties:

(i) if to the Guarantors, at 330 West Victoria, Gardena, CA 90248-3527, with a copy to Locke Lord LLP at 600 Congress Avenue, Suite 2200, Austin, Texas 78701, Attn: Cynthia Bast, Esq.

(ii) if to the Limited Partners, c/o Community Development Banking, La Costa BC, 7700 El Camino Real, CA0-222-02-02, Carlsbad, CA 92009-8506, with a copy to Buchalter, A Professional Corporation 1000 Wilshire Blvd., Suite 1500, Los Angeles, California, 90017-2457, Attn: Michael A. Williamson, Esq., RE: B0965-0331.

This Guaranty (i) shall be governed by and construed in accordance with the internal law of the State, (ii) shall be binding upon and inure to the benefit of the respective heirs, executors, administrators, personal representatives, successors and assigns of the parties, and (iii) may not be modified, amended or terminated except by a written agreement by and between the Investor Limited Partner and the undersigned Guarantors.

The obligations of the undersigned Guarantors hereunder are imposed solely and exclusively for the benefit of the Investor Limited Partner and no other person shall have any standing to enforce such obligations or shall be deemed to be beneficiaries of such obligations.

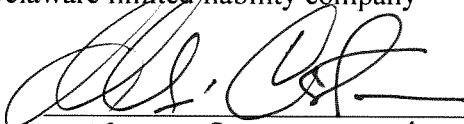
Each provision of this Guaranty shall be considered separable and if for any reason any provisions herein are determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those portions of this Guaranty that are valid.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned has caused this Guaranty to be duly executed as of the date and year first written above.

GUARANTOR:

HIGHRIDGE COSTA HOUSING PARTNERS,  
LLC,  
A Delaware limited liability company

By: 

Name: MICHAEL COSTA

Title: MANAGING

**Exhibit N**

[Reserved.]

## Exhibit O

### PARTNERSHIP MANAGEMENT AGREEMENT (El Sereno Senior Apartments)

PARTNERSHIP MANAGEMENT AGREEMENT dated as of April 26, 2017, between Borgfeld Housing, LP, a Texas limited partnership (the “**Partnership**”), Highridge Costa Housing, LLC, a Delaware limited liability company (the “**Managing General Partner**”), and Borgfeld Housing GP, LLC, a Delaware limited liability company (the “**Administrative General Partner**,” and together with the Managing General Partner, the “**General Partners**”).

#### Recitals

A. The Partnership, pursuant to its Agreement of Limited Partnership dated as of April 26, 2017 (the “**Partnership Agreement**”), is engaged in the ownership and operation of a 136-unit apartment complex located in Cibolo, Texas known as El Sereno Senior Apartments (the “**Project**”).

B. Pursuant to Section 6.4 of the Partnership Agreement, the General Partners are obligated to perform certain services on behalf of the Partnership. The Partnership has agreed to pay the General Partners certain fee for undertaking and performing these obligations, all as hereinafter provided.

C. Capitalized terms used and not otherwise defined herein shall have the respective meanings set forth in the Partnership Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

#### 1. Obligations of the General Partners.

The General Partners shall perform those duties and obligations as set forth in Section 6.4 of the Partnership Agreement.

#### 2. Partnership Management Fee.

In consideration of the Managing General Partner performing the obligations described in Section 1 above, the Partnership shall pay to the Managing General Partner an annual cumulative fee (the “**Partnership Management Fee**”) in an amount equal to \$7,500 and increasing annually at a rate of 3%. Earned but unpaid Partnership Management Fees shall accrue and be paid from future years’ Cash Flow. Notwithstanding the foregoing, however, the Partnership Management Fee shall be payable only to the extent of Cash Flow available for distribution after the payments described in clause *First* of Section 10.1A of the Partnership Agreement of the Partnership *provided, however*, that with respect to any Fiscal Year, the Partnership Management Fee, the Partnership Administration Fee, and any management fees payable to the Management Agent pursuant to the terms of the Management Agreement shall not exceed twelve percent (12%) of

the Partnership's Cash Receipts for such year, and any remaining amounts shall be paid as a distribution. The Partnership Management Fee shall be paid *pari passu* with the Partnership Administration Fee as set forth in Section 10.1A of the Partnership Agreement.

3. Partnership Administration Fee.

In consideration of the Administrative General Partner performing the obligations described in Section 1 above, the Partnership shall pay to the Administrative General Partner an annual cumulative fee (the "**Partnership Administration Fee**") in an amount equal to \$7,500 and increasing annually at a rate of 3%. Earned but unpaid Partnership Administration Fees shall accrue and be paid from future years' Cash Flow. Notwithstanding the foregoing, however, the Partnership Administration Fee shall be payable only to the extent of Cash Flow available for distribution after the payments described in clause *First* of Section 10.1A of the Partnership Agreement of the Partnership *provided, however,* that with respect to any Fiscal Year, the Partnership Administration Fee, the Partnership Management Fee, and any management fees payable to the Management Agent pursuant to the terms of the Management Agreement shall not exceed twelve percent (12%) of the Partnership's Cash Receipts for such year, and any remaining amounts shall be paid as a distribution. The Partnership Administration Fee shall be paid *pari passu* with the Partnership Management Fee as set forth in Section 10.1A of the Partnership Agreement.

4. Termination.

Notwithstanding anything contained in this Agreement to the contrary, in the event that either General Partner shall default in any material respect in any of its obligations hereunder and such default shall continue for fifteen (15) days, then the Investor Limited Partner shall give such General Partner notice of such event, and thereafter the Partnership shall, subject to all Requisite Approvals, forthwith terminate this Agreement as to the defaulting General Partner, unless the Consent of the Investor Limited Partner is obtained, which consent shall be granted in the Investor Limited Partner's sole and absolute discretion, to the retention of such General Partner hereunder. In addition, this Agreement shall automatically terminate as to a removed General Partner upon the removal of such General Partners for cause or the Retirement of such General Partner in contravention of the terms of the Partnership Agreement. Notwithstanding the foregoing, a termination of the Agreement as to one General Partner shall not affect the continued effectiveness of the Agreement to a non-defaulting or non-removed or non-Retiring General Partner.

5. Reporting Obligation Damages.

If the Managing General Partner shall be obligated to pay damages to the Investor Limited Partner under Section 12.1Q of the Partnership Agreement, the Managing General Partner shall forthwith cease to be entitled to the Partnership Management Fee. Payments of the Partnership Management Fee shall be restored only upon the payment of such damages in full, and any amount of such damages not so paid shall be deducted against payments of the Partnership Management Fee otherwise due and payable.

6. Term of Agreement.

The term of this Agreement shall commence on and as of the date hereof and shall continue in full force and effect until termination of the Partnership. This Agreement may be terminated by either party hereto at any time after Final Closing on six months' notice and shall be terminated as described in Section 4 (subject to the limitations set forth in Section 4).

7. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State, exclusive of its conflict of laws principles.

8. Severability.

Each provision of this Agreement shall be considered separable and if for any reason any provisions herein are determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those portions of this Agreement that are valid.

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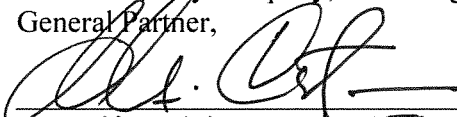


IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the date and year first above written.

PARTNERSHIP:

**BORGFELD HOUSING, LP**, a Texas limited partnership

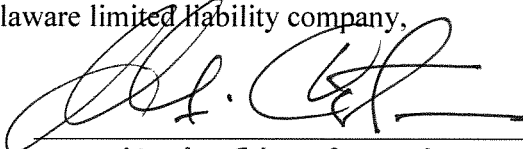
By: Highridge Costa Housing LLC, a Delaware limited liability company, its Managing General Partner,

By:   
Name: MICHAEL COSTA  
Title: CEO

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the date and year first above written.

MANAGING GENERAL PARTNER:

**HIGHRIDGE COSTA HOUSING LLC,**  
a Delaware limited liability company,

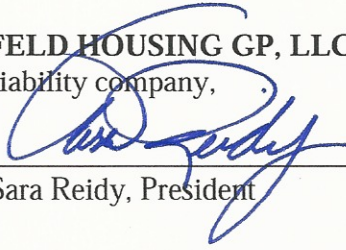
By:   
Name: MICHAEL COSTA  
Title: CEO

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the date and year first above written.

ADMINISTRATIVE  
GENERAL PARTNER:

**BORGFELD HOUSING GP, LLC**, a Texas  
limited liability company,

By:

  
\_\_\_\_\_  
Sara Reidy, President

**Exhibit P**

[Reserved]

## Exhibit Q

### PURCHASE OPTION AGREEMENT (El Sereno Senior Apartments)

PURCHASE OPTION AGREEMENT (the “**Agreement**”) is made and entered into as of April 26, 2017, among BORGFELD HOUSING, LP, a Texas limited partnership (the “**Partnership**”) and HIGHRIDGE COSTA HOUSING, LLC, a Delaware limited liability company (“**Optionee**”), and is consented to by BANK OF AMERICA, N.A., a national banking association (the “**Investor Limited Partner**”) and BANC OF AMERICA CDC SPECIAL HOLDING COMPANY, INC., a North Carolina corporation (the “**Special Limited Partner**”) and BORGFELD HOUSING GP, LLC, a Texas limited liability company (the “**Administrative General Partner**”). The Investor Limited Partner, the Special Limited Partner, and the Administrative General Partner are sometimes collectively referred to herein as the “**Consenting Partners**.”

#### Recitals

A. The Owner, pursuant to its Amended and Restated Agreement of Limited Partnership dated as of April 26, 2017 by and among the Optionee and the Consenting Partners (the “**Partnership Agreement**”), is engaged in the ownership and operation of a 136-unit apartment complex located in Cibolo, Texas known as El Sereno Senior Apartments (the “**Project**”). The real property comprising the Project is legally defined on **Exhibit A**.

B. The Project is or will be subject to an extended use agreement (the “**Extended Use Agreement**”) with the Credit Agency restricting the Project’s use to low-income housing (such use restrictions under the Extended Use Agreement being referred to collectively herein as the “**Use Restrictions**”);

D. The Optionee is the managing general partner of the Owner and is instrumental to the development of the Project;

E. The Optionee desires to have the right to acquire the Project as set forth herein.

F. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Partnership Agreement.

NOW, THEREFORE, in consideration of the execution and delivery of the Partnership Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

#### Section 1. Grant of Option

The Partnership hereby grants to the Optionee an option (the “**Option**”) to purchase the real estate, fixtures, and personal property (including cash accounts, reserves, and restricted cash) comprising the Project or associated with the physical operation thereof and owned by the Partnership at the time of purchase (the “**Property**”), for a period of twenty-four (24) months (the “**Option Period**”) following the close of the fourteenth (14th) year of the Compliance

Period as determined under Section 42(i)(1) of the Internal Revenue Code of 1986, as amended (the “**Code**”), on the terms and conditions set forth in this Agreement and subject to the conditions precedent to the exercise of the Option specified herein.

Section 2. Purchase Price Under Option

The purchase price for the Property pursuant to the Option (the “**Option Price**”) shall be the greater of the following amounts, subject to the provision set forth herein below:

A. Price Formula. An amount, determined by the Partnership’s Accountants, which is equal to the sum of (1) the outstanding principal, accrued interest, any prepayment penalty and any other amounts due under all mortgage documents relating to the Property due upon sale and the total amount of all other indebtedness of the Partnership as of the date of the closing hereunder; and (2) an amount sufficient to assure receipt by the Investor Limited Partner of the Partnership from the proceeds of the sale of the Property (when distributed pursuant to Section 10.1B of the Partnership Agreement) of an amount not less than the sum of all federal, state and local taxes, including without limitation, all income taxes due upon sale, incurred or to be incurred by the Investor Limited Partner (or its constituent partners or members) as a result of such sale plus the amount of any theretofore unpaid Tax Credit Shortfall Payments to which the Investor Limited Partner is entitled under the Partnership Agreement. Notwithstanding the foregoing, however, the amount described in the foregoing sentence shall never be less than the amount of the “minimum purchase price” as defined in Section 42(i)(7)(B) of the Code. In computing such price, it shall be assumed that each of the Partners of the Partnership (or their constituent partners or members) has the then effective maximum combined federal, state and local income tax rate; or

B. Fair Market Value. An amount equal to (i) one hundred percent (100%) of the fair market value of the Property, appraised as low-income housing to the extent continuation of such use is required under the Use Restrictions, any such appraisal to be made in accordance with the procedures described in Section 5 below (the “**Appraised Fair Market Value**”) plus (ii) an amount sufficient to assure receipt by the Investor Limited Partner of the Partnership from the proceeds of the sale of the Property (when distributed pursuant to Section 10.1B of the Partnership Agreement) of an additional amount equal to any theretofore unpaid Tax Credit Shortfall Payments to which the Investor Limited Partner is entitled under the Partnership Agreement together with any amounts owed by the Partnership to the Investor Limited Partner (whether as loan repayments, accrued fees, or a return of Capital Contributions). *Provided, however*, if the Investor Limited Partner had a capital account deficit prior to the sale of the Property or its Interest, and the amount received under (i) is insufficient to cover the Investor Limited Partner’s tax liability on the resulting gain, then the amount distributed to the Investor Limited Partner shall be increased to cover such tax liability not already covered under (i). If the Optionee decides that it does not want to exercise the Option after receiving the appraisal of the Property pursuant hereto, the Optionee shall have the right upon notice to the Owner to declare the exercise of the Option null and void without prejudice to the Optionee’s right to exercise the option at a later date during the Option Period.

Section 3      Conditions Precedent; Termination

A.      Notwithstanding anything in this Agreement to the contrary, the Option granted hereunder shall be contingent on the following being true and correct at the time of exercise of the Option and any purchase pursuant thereto: neither the Optionee nor any Affiliate of the Optionee is in material default under the Partnership Agreement or any agreement with the Partnership, the Investor Limited Partner or the Special Limited Partner (including, without limiting the generality of the foregoing, any failure to make Tax Credit Shortfall Payments to the Investor Limited Partner pursuant to Section 5.2 of the Partnership Agreement). If such condition precedent is not satisfied, the Option shall not be exercisable and the Agreement shall be of no further force and effect.

B.      This Agreement shall automatically terminate upon the occurrence of any of the following events and, if terminated, shall not be reinstated unless such reinstatement is agreed to in a writing signed by the Optionee and each of the Consenting Partners:

- (i)      the transfer of the Property to a lender in total or partial satisfaction of any loan; or
- (ii)     removal of the Optionee as a general partner of the Partnership pursuant to Section 7.7 of the Partnership Agreement.

Section 4.      Exercise of Option

The Option may be exercised by the Optionee by (a) giving prior written notice of its intent to exercise the Option to the Partnership and each of its Partners in the manner provided in the Partnership Agreement during the period commencing one (1) year prior to the commencement of the Option Period and terminating at the end of the Option Period (the “**Option Exercise Notice**”), and (b) complying with the contract and closing requirements of Sections 6 and 7 hereof. If the foregoing requirements are not satisfied as and when provided herein, the Option shall expire and be of no further force or effect.

Section 5.      Determination of Option Price

Upon delivery of the Option Exercise Notice, the Partnership and the Optionee shall determine the Option Price utilizing the Appraised Fair Market Value of the Property determined as follows. As soon as practicable following the delivery of the Option Exercise Notice, the Optionee and the Special Limited Partner shall select a mutually acceptable Independent Appraiser. In the event that the parties are unable to agree upon an Independent Appraiser within fifteen (15) business days following the date of delivery of the Option Exercise Notice, the Optionee and the Special Limited Partner each shall select an Independent Appraiser within the next succeeding five (5) business days. If either party fails to select an Independent Appraiser within such time period, the determination of the other Independent Appraiser shall control. If the difference between the Appraised Fair Market Values set forth in the two appraisals is not more than ten percent (10%) of the Appraised Fair Market Value set forth in the lower of the two appraisals, the fair market value for purposes of Section 2B(i) above shall be the average of the

two appraisals. If the difference between the two appraisals is greater than ten percent (10%) of the lower of the two appraisals, then the two Independent Appraisers shall jointly select a third Independent Appraiser whose determination of Appraised Fair Market Value shall be deemed to be binding on all parties as long as the third determination is between the other two determinations. If the third determination is either lower or higher than both of the other two appraisers, then the average of all three appraisals shall be the Appraised Fair Market Value for purposes of Section 2B(i). The Partnership shall pay the fees and expenses of any Independent Appraiser(s) selected pursuant to this Section 5.

Section 6. Contract and Closing

Upon determination of the purchase price, the Partnership and the Optionee shall enter into a written contract for the purchase and sale of the Property in accordance with the terms of this Agreement and containing such other terms and conditions as are standard and customary for similar commercial transactions in the geographic area which the Property is located, providing for a closing not later than the date specified in the Option Exercise Notice or thirty (30) days after the Option Price has been determined, whichever is later. In the absence of any such contract, this Agreement shall be specifically enforceable upon the exercise of the Option.

Section 7. Conveyance and Condition of the Property

The Owner's right, title and interest in the Property shall be conveyed by quitclaim deed, subject to such liens, encumbrances and parties in possession as shall exist as of the date of Closing and the deed covenant described in Section 8 below. The Optionee shall accept the Property "**AS IS, WHERE IS**" and "**WITH ALL FAULTS AND DEFECTS,**" latent or otherwise, without any warranty or representation as to the condition thereof whatsoever, including without limitation, without any warranty as to fitness for a particular purpose, habitability, or otherwise and no indemnity for hazardous waste or other conditions with respect to the Property will be provided. It is a condition to Closing that all amounts due to the Owner and the Investor Limited Partner from the Optionee or its Affiliates be paid in full. Each of Optionee and the Partnership shall be responsible for their own costs in connection with such Closing.

Section 8. Use Restrictions

A. In consideration of the Option granted hereunder at the price specified herein, the Optionee hereby agrees to maintain the use of the Property as low-income housing to the extent required by the Extended Use Agreement. The Optionee shall pay any and all costs, including attorneys' fees, incurred by the Investor Limited Partner in enforcing or attempting to enforce the Use Restrictions, and to pay any and all damages incurred by the Investor Limited Partner from any delay in or lack of enforceability of the same. All provisions relating to the Use Restrictions contained in such deed and in this Agreement shall be subject and subordinate to any third-party liens encumbering the Property. The terms of this Section 8 shall survive the exercise of this Option and remain in full force and effect until the end of the fifteenth (15th) year of the Compliance Period as determined under Section 42(i)(1) of the Code, *provided, however*, that upon conveyance of the Property to anyone other than the Optionee hereunder, the foregoing provisions shall terminate and have no further force or effect.



Section 9. Alternative Purchase of Partnership Interests

Notwithstanding the foregoing, the Optionee may, at its election, in lieu of a direct acquisition of the Property pursuant to the Option, acquire the limited partnership interests (but not less than all of such interests) of the Investor Limited Partner and Special Limited Partner in the Partnership for a purchase price to each of them equal to the amount which would be distributable to each such Limited Partner upon liquidation of the Partnership following any sale of the Property under the Option at the Option Price as calculated under this Agreement. The Optionee shall also be entitled to purchase the general partner interests of the Administrative General Partner (either separate from or in connection with a purchase of the limited partnership interests) for a price equal to its fair market value, as agreed to between the Optionee and the Administrative General Partner. If the Optionee and Administrative General Partner fail to reach an agreement on the fair market value of the Administrative General Partner's interest, the price for the Administrative General Partner's interest shall be equal to the amount which would be distributable to the Administrative General Partner upon liquidation of the Partnership following any sale of the Property under the Option at the Option Price as calculated under this Agreement.

Section 10. Notices

Except as otherwise specifically provided herein, all notices, demands or other communications hereunder shall be in writing and shall be deemed to have been given and received (i) two (2) business days after being deposited in the United States mail and sent by certified or registered mail, postage prepaid, (ii) one (1) business day after being delivered to a nationally recognized overnight delivery service, (iii) on the day sent by telecopier or other facsimile transmission, answer back requested, or (iv) on the day delivered personally, in each case, to the parties at the addresses set forth below or at such other addresses as such parties may designate by notice to the other party:

(i) If to the Owner, at the principal office of the Partnership set forth in Article II of the Partnership Agreement;

(ii) If to a Consenting Partner, at their respective addresses set forth in Exhibit A of the Partnership Agreement;

(iii) If to the Optionee, at its address set forth in Exhibit A of the Partnership Agreement,

in each case, with copies to Buchalter, A Professional Corporation 1000 Wilshire Blvd., Suite 1500, Los Angeles, California, 90017-2457, Attn: Michael A. Williamson, Esq.

Section 11. Severability of Provisions

Each provision of this Agreement shall be considered severable, and if for any reason any provision that is not essential to the effectuation of the basic purposes of the Agreement is determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those provisions of this Agreement that are valid.

Section 12. Binding Provisions

The covenants and agreements contained herein shall be binding upon, and inure to the benefit of, the heirs, legal representatives, successors and assignees of the respective parties hereto, except in each case as expressly provided to the contrary in this Agreement.

Section 13. Counterparts

This Agreement may be executed in several counterparts and all so executed shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties have not signed the original or the same counterpart.

Section 14. Governing Law

This Agreement shall be construed and enforced in accordance with the laws of the State of Texas, without regard to principles of conflicts of law.

Section 15. Headings

All headings in this Agreement are for convenience of reference only. Masculine, feminine, or neuter gender, shall include all other genders, the singular shall include the plural, and vice versa as the context may require.

Section 16. Amendments

This Agreement shall not be amended except by written agreement between the Optionee and the Owner with the consent of each of the Consenting Partners.

Section 17. Time

Time is of the essence with respect to this Agreement, and all provisions relating thereto shall be so construed.

Section 18. Legal Fees

Except as otherwise provided herein, in the event that legal proceedings are commenced by the Partnership against the Optionee or by the Optionee against the Partnership in connection with this Agreement or the transactions contemplated hereby, the prevailing party shall be entitled to recover all reasonable attorney's fees and expenses.

Section 19. Credit Agency Requirements

In the event of a conflict between any term of this Agreement and the rules and regulations of the Agency or the Extended Use Agreement the Credit Agency rules and regulations and the Extended Use Agreement shall control.

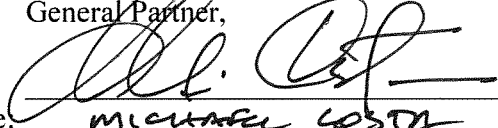
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IN WITNESS WHEREOF, the parties have executed this document as of the date first set forth hereinabove.

PARTNERSHIP:

**BORGFELD HOUSING, LP**, a Texas limited partnership

By: Highridge Costa Housing LLC, a Delaware limited liability company, its Managing General Partner,

By:   
Name: MICHAEL COSTA  
Title: CEO

IN WITNESS WHEREOF, the parties have executed this document as of the date first set forth hereinabove.

OPTIONEE:

**HIGHRIDGE COSTA HOUSING LLC,**  
a Delaware limited liability company,

By: 

Name: \_\_\_\_\_

MICHAEL COSTA

Title: \_\_\_\_\_

CEO

The undersigned hereby consent to the foregoing Agreement as of the date first set forth hereinabove.

INVESTOR LIMITED PARTNER:

**BANK OF AMERICA, N.A.,**  
a national banking association

By:

  
\_\_\_\_\_  
Casey Carpenter, Vice President

The undersigned hereby consent to the foregoing Agreement as of the date first set forth hereinabove.

SPECIAL LIMITED PARTNER:

**BANC OF AMERICA CDC SPECIAL  
HOLDING COMPANY, INC.,**  
a North Carolina corporation

By:



\_\_\_\_\_  
Casey Carpenter, Vice President

The undersigned hereby consent to the foregoing Agreement as of the date first set forth hereinabove.

ADMINISTRATIVE GENERAL  
PARTNER:

**BORGFELD HOUSING GP, LLC**, a Texas  
limited liability company,

By:

  
\_\_\_\_\_  
Sara Reidy, President

EXHIBIT A  
LEGAL DESCRIPTION

BEING A 10.308 ACRE TRACT SITUATED IN THE S. COCKRILL SURVEY, ABSTRACT NO. 96 AND THE A.S. LEWIS SURVEY, ABSTRACT NO. 216, GUADALUPE COUNTY, TEXAS AND BEING A PART OF THAT CERTAIN 5.072 ACRE TRACT RECORDED IN DOCUMENT NO. 2016011122 AND A PART OF THAT CERTAIN 10.076 ACRE TRACT RECORDED IN VOLUME 4021, PAGE 451, OFFICIAL PUBLIC RECORDS, GUADALUPE COUNTY, TEXAS, SAID 10.308 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING, AT A FOUND ½ INCH IRON ROD IN THE NORTHERLY RIGHT-OF-WAY LINE OF W. BORGFELD ROAD, BEING THE SOUTHWESTERLY CORNER OF A CALLED 0.190 ACRE RIGHT-OF-WAY DEDICATION RECORDED IN DOCUMENT NUMBER 2016024682, OFFICIAL PUBLIC RECORDS, GUADALUPE COUNTY, TEXAS, THE SOUTHEASTERLY CORNER OF FALCON RIDGE UNIT-2, A SUBDIVISION OF RECORD IN VOLUME 6, PAGES 439-440 OF THE PLAT RECORDS OF GUADALUPE COUNTY, TEXAS, SAME BEING THE SOUTHWESTERLY CORNER OF SAID 10.076 ACRE TRACT;

THENCE, N 28° 08' 53" W, LEAVING THE NORTHERLY RIGHT-OF-WAY LINE OF W. BORGFELD ROAD, ALONG A PORTION OF THE COMMON BOUNDARY LINE OF SAID 10.076 ACRE TRACT AND SAID FALCON RIDGE UNIT-2, A DISTANCE OF 338.24 FEET TO A SET ½ INCH IRON ROD WITH YELLOW PLASTIC CAP STAMPED "SHERWOOD SURVEYING" FOR THE POINT OF BEGINNING, OF THE HEREIN DESCRIBED TRACT;

THENCE, CONTINUING ALONG THE EASTERLY LINE OF SAID FALCON RIDGE UNIT-2, AND A PORTION OF THE EASTERLY LINE OF FALCON RIDGE UNIT-1, A SUBDIVISION OF RECORD IN VOLUME 6, PAGES 408-409 OF SAID PLAT RECORDS, BEING THE WESTERLY LINE OF SAID 10.076 ACRE TRACT AND THE WESTERLY LINE OF SAID 5.072 ACRE TRACT, THE FOLLOWING COURSES:

N 28° 08' 53" W, A DISTANCE OF 14.03 FEET TO A SET ½ INCH IRON ROD WITH YELLOW PLASTIC CAP STAMPED "SHERWOOD SURVEYING";

N 28° 52' 52" W, A DISTANCE OF 853.68 FEET TO A FOUND ½ INCH IRON ROD MARKING AN INTERIOR CORNER OF SAID FALCON RIDGE UNIT-1, BEING THE NORTHWESTERLY CORNER OF SAID 5.072 ACRE TRACT AND HEREOF;

THENCE, N 62° 11' 41" E, ALONG A PORTION OF THE COMMON BOUNDARY LINE OF SAID FALCON RIDGE UNIT-1 AND SAID 5.072 ACRE TRACT, A DISTANCE OF 503.53 FEET TO A SET ½ INCH IRON ROD WITH YELLOW PLASTIC CAP STAMPED "SHERWOOD SURVEYING" FOR THE NORTHEASTERLY CORNER HEREOF;

THENCE, S 26° 10' 24" E, ACROSS A PORTION OF SAID 5.072 ACRE TRACT AT A DISTANCE OF 101.73 FEET TO A FOUND ½ INCH IRON ROD, MARKING THE NORTHWESTERLY CORNER OF THAT CERTAIN 13.359 ACRE TRACT CONVEYED TO ALICIA MARIE WILLOUGHBY ET AL MARY RITA KARDYS - LIFE ESTATE BY DEED OF RECORD IN DOCUMENT NO. 2016011122 OF SAID OFFICIAL PUBLIC RECORDS, AND CONTINUING ALONG A PORTION OF THE COMMON BOUNDARY LINE OF SAID 5.072 ACRE TRACT AND SAID 13.359 ACRE TRACT, FOR A TOTAL DISTANCE OF 297.44 FEET TO A FOUND ½ INCH IRON ROD CAP "4069";

THENCE, S 50° 59' 25" E, ALONG A PORTION OF THE COMMON BOUNDARY LINE OF SAID 5.072 ACRE TRACT AND SAID 13.359 ACRE TRACT, A DISTANCE OF 41.50 FEET TO A FOUND ½ INCH IRON ROD



MARKING THE SOUTHEASTERLY CORNER OF SAID 5.072 ACRE TRACT, BEING THE NORTHEASTERLY CORNER OF SAID 10.076 ACRE TRACT;

THENCE, S 23° 55' 06" E, ALONG A PORTION OF THE COMMON BOUNDARY OF SAID 13.359 ACRE TRACT AND SAID 10.076 ACRE TRACT, A DISTANCE OF 534.10 FEET TO A SET ½ INCH IRON ROD WITH YELLOW PLASTIC CAP STAMPED "SHERWOOD SURVEYING";

THENCE, LEAVING THE WESTERLY LINE OF SAID 13.359 ACRE TRACT, INTO AND ACROSS SAID 10.076 ACRE TRACT, THE FOLLOWING COURSES:

S 62° 17' 30" W, A DISTANCE OF 215.71 FEET TO A SET ½ INCH IRON ROD WITH YELLOW PLASTIC CAP STAMPED "SHERWOOD SURVEYING";

S 31° 19' 46" E, A DISTANCE OF 335.09 FEET TO A SET ½ INCH IRON ROD WITH YELLOW PLASTIC CAP STAMPED "SHERWOOD SURVEYING";

ALONG THE ARC OF A CURVE TO THE RIGHT, WITH AN ARC LENGTH OF 66.96 FEET, HAVING A RADIUS OF 279.50 FEET, A CENTRAL ANGLE OF 13°43'34", AND A CHORD BEARING AND DISTANCE OF S 24°27'59" E, 66.80 FEET TO A SET ½ INCH IRON ROD WITH YELLOW PLASTIC CAP STAMPED "SHERWOOD SURVEYING";

ALONG THE ARC OF A CURVE TO THE RIGHT, WITH AN ARC LENGTH OF 4.11 FEET, HAVING A RADIUS OF 26.00 FEET, A CENTRAL ANGLE OF 9°02'56", AND A CHORD BEARING AND DISTANCE OF S 22°07'40" E, 4.10 FEET TO A SET ½ INCH IRON ROD WITH YELLOW PLASTIC CAP STAMPED "SHERWOOD SURVEYING" IN THE NORTHERLY LINE OF THE AFOREMENTIONED 0.190 ACRE DEDICATION;

THENCE, S 80° 05' 00" W, ALONG THE NORTHERLY LINE OF SAID 0.190 ACRE DEDICATION, A DISTANCE OF 69.14 FEET TO A SET ½ INCH IRON ROD WITH YELLOW PLASTIC CAP STAMPED "SHERWOOD SURVEYING";

THENCE, LEAVING THE NORTHERLY LINE OF W. BORGFELD ROAD, INTO AND ACROSS SAID 10.076 ACRE TRACT, THE FOLLOWING COURSES:

ALONG THE ARC OF A CURVE TO THE LEFT, WITH AN ARC LENGTH OF 11.89 FEET, HAVING A RADIUS OF 20.00 FEET, A CENTRAL ANGLE OF 34°02'58", AND A CHORD BEARING AND DISTANCE OF N 05°00'51" W, 11.71 FEET TO A SET ½ INCH IRON ROD WITH YELLOW PLASTIC CAP STAMPED "SHERWOOD SURVEYING";

ALONG THE ARC OF A CURVE TO THE LEFT, WITH AN ARC LENGTH OF 34.78 FEET, HAVING A RADIUS OF 214.50 FEET, A CENTRAL ANGLE OF 09°17'26", AND A CHORD BEARING AND DISTANCE OF N 26°41'03" W, 34.74 FEET TO A SET ½ INCH IRON ROD WITH YELLOW PLASTIC CAP STAMPED "SHERWOOD SURVEYING";

N 31° 19' 46" W, A DISTANCE OF 339.20 FEET TO A SET ½ INCH IRON ROD WITH YELLOW PLASTIC CAP STAMPED "SHERWOOD SURVEYING";

S 62° 17' 30" W, A DISTANCE OF 178.23 FEET TO THE POINT OF BEGINNING AND CONTAINING 10.308 ACRES (449,001 SQ. FT.) OF LAND, MORE OR LESS.



CONSTRUCTION LOAN AGREEMENT

by and between

BORGFELD HOUSING, LP,  
a Texas limited partnership,  
as Borrower,

and

BANK OF AMERICA, N.A.,  
a national banking association,  
as Lender,

with respect to

El Sereno Apartments  
Cibolo, Texas

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CONSTRUCTION LOAN AGREEMENT  
(Affordable Housing)

This CONSTRUCTION LOAN AGREEMENT (this "Agreement") is made as of the [\_\_\_\_] day of April, 2017, by and between BORGFELD HOUSING, LP, a Texas limited partnership ("Borrower"), and BANK OF AMERICA, N.A., a national banking association ("Lender").

Recitals

Borrower has applied to Lender for a loan to finance certain costs related to the construction and development of improvements on real property in which Borrower has acquired or is acquiring an interest. Lender has agreed to make the loan on the terms and conditions set forth in this Agreement and in the other documents evidencing and securing the loan.

Borrower is a partnership formed pursuant to the Partnership Agreement. Pursuant to the Partnership Agreement, Investor Limited Partner has been admitted as an investor limited partner and has agreed to make capital contributions to Borrower. Investor Limited Partner's obligation to make capital contributions is evidenced by, and subject to the conditions of, the Partnership Security Agreement. Pursuant to the terms of the Partnership Agreement, Investor Limited Partner is obligated to fund the Capital Obligations to Borrower, and Borrower shall be obligated to deposit such funds with Lender into the Borrower's Deposit Account (as hereinafter defined).

Borrower and General Partners have each agreed to pledge and assign to Lender, and create a security interest in favor of Lender, as to their respective interests, in and to, among other things, all of General Partner's rights as a general partner in Borrower including rights under the Partnership Agreement, in accordance with the Partnership Security Agreement.

Borrower has obtained a firm commitment from Lender in its capacity as the permanent lender (the "Permanent Lender"). Upon satisfaction of certain conditions precedent, the Loan will convert to a permanent loan (the "Permanent Loan").

Now, therefore, in consideration of the premises, and in further consideration of the mutual covenants and agreements herein set forth and of the sum of Ten Dollars (\$10.00) paid by each party to the other, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound hereby, covenant and agree as follows:

Agreements

Article I  
General Information.

Section 1.1     Conditions to Closing.

The conditions precedent to closing the Loan and recording the Mortgage are set forth in the Closing Checklist.

Section 1.2     Schedules.

The Schedules attached to this Agreement are incorporated herein and made a part hereof.

Section 1.3 Tax Credits.

A material inducement to Lender to make the Loan is the availability of the Tax Credits with respect to the Project.

Section 1.4 Defined Terms.

Capitalized terms in this Agreement shall have the meanings ascribed to such terms in the Preamble hereto and in Schedule 1.

Article II  
Advances of the Loan.

Section 2.1 The Loan.

Borrower agrees to borrow the Loan from Lender, and Lender agrees to lend the Loan to Borrower, subject to the terms and conditions herein set forth, in incremental advances which will not exceed, in the aggregate, the Loan Amount. Interest shall accrue and be payable in arrears only on sums advanced hereunder for the period of time outstanding. The Loan is not a revolving loan; amounts repaid may not be re-borrowed.

Section 2.2 Purpose; Reallocation; Revenues from Property.

The Loan shall be advanced by Lender in accordance with the terms of this Agreement to pay those expenses related to the Loan and the Property that are described in the Budget, but not, in the aggregate with respect to any line item set forth in the Budget, in excess of the amount of the Loan to be disbursed for such line item, as set forth in the Budget. Borrower will receive each advance in trust for the purpose of paying only those costs for which the advance is made and will utilize the funds advanced for no other purpose. With the prior approval of Lender, any cost savings, actual or estimated, affecting any approved line item within the Budget, other than the interest reserve (except as set forth below), may be reallocated by Borrower to any other line item within the Budget. Upon completion of the Improvements and the payment of all costs in connection therewith, any undisbursed proceeds of the Loan shall be allocated to such other line item as Lender shall approve. Each request to reallocate from a contingency reserve shall be subject to approval by Lender as to the amount and purpose for which such reallocation of funds will be used. If and when revenues are derived from the Property in amounts sufficient to pay all or any portion of the operating expenses of the Property or all or any portion of the interest on the Loan, revenues will be used to pay such expenses and/or interest, and Lender, at its sole option, may restrict or prohibit future disbursements of the Loan for such purposes to the extent that revenues are sufficient to pay such amounts. Lender hereby acknowledges and agrees that the interest reserve line item within the Budget shall be reassessed following the Completion of Construction at Borrower's request, and following such reassessment amounts in the interest reserve may be reallocated to another line item within the Budget with the prior approval of Lender.

Section 2.3 Draw Requests.

Advances shall be made not more frequently than monthly based on draw requests signed by an Authorized Person/Signer in the form attached hereto as Schedule 2 or in another form approved by Lender (including any form on an electronic platform or electronic transmission system) (a "Draw Request"). Each Draw Request for hard costs shall be set forth on AIA Forms G702 and G703 or another form approved by Lender, and shall be reviewed by the Construction Inspector, signed by the General Contractor and, if requested by Lender, approved by the Architect and/or the Engineer. Draw Requests



for hard costs shall show the percentage of Completion of Construction and shall set forth in trade breakdown form and in such detail as may be required by Lender the amounts expended and/or costs incurred for work done and materials incorporated in the Improvements. Retainage will be withheld and released in accordance with the terms of Schedule 5. Each Draw Request shall be supported by such information and documentation (such as paid receipts, invoices, statements of accounts, lien releases, etc.) as Lender may require to assure that amounts requested are to be used to reimburse Borrower for costs previously paid by Borrower or to pay costs incurred by Borrower that are to be paid from proceeds of the Loan, as set forth in the Budget.

Section 2.4 Additional Terms Regarding Advances.

Prior to any advance of the Loan, Borrower shall furnish evidence that Borrower's Up-Front Equity of not less than Eight Hundred Ninety-Six Thousand Four Hundred Thirty-Eight and No/100 Dollars (\$896,438) (the "Up-Front Equity"), which includes the Basel Equity Contribution Requirement, has been fully paid and funded. Advances of the Loan shall also be subject to the terms and conditions set forth in Schedule 5.

Section 2.5 Liability of Lender.

Lender shall in no event be responsible or liable to any Person other than Borrower for the disbursement of or failure to disburse the Loan proceeds or any part thereof and neither the General Contractor, Construction Inspector nor any subcontractor, laborer or material supplier shall have any right or claim against Lender under this Agreement or the other Loan Documents.

Section 2.6 Conversion of Loan to Permanent Loan.

(a) At such time as the conditions to conversion set forth in Section 2.6(b) have been satisfied or waived by the Lender in its sole and absolute discretion and the Lender has delivered to the Borrower and Investor Limited Partner a copy of a notice of conversion stating that the Loan will convert to the Permanent Loan and giving the date of such conversion (the "Conversion Date") which shall in no event be later than the Maturity Date of the Loan, the Loan shall convert to the Permanent Loan.

(b) The conditions precedent for conversion of the Loan to the Permanent Loan which must be satisfied or waived by the Lender in its sole and absolute discretion are as follows:

(i) No event has occurred and is continuing, or would result from a conversion of the Loan to the Permanent Loan, which constitutes an Event of Default under the Loan Documents.

(ii) The identity of the Borrower, Managing General Partner, Administrative General Partner or Guarantor has not changed (except as may be expressly permitted hereunder or under any of the Loan Documents), nor is there a material adverse change in the condition, financial or otherwise in the Borrower, Managing General Partner, Administrative General Partner and the Borrower owns an undivided fee simple interest in the Improvements.

(iii) Not later than the Conversion Date, the Loan has been paid down to amount of the Permanent Loan.

(iv) The Manager has not changed or a new Manager has been approved by the Lender in writing.

(v) Except for Permitted Encumbrances (as defined in the Mortgage) there are no liens on the Project other than that of the Mortgage and the Delivery Assurance Mortgage (which will be released upon conversion to the Permanent Loan) unless specifically approved in writing by Lender.

(vi) The Project has complied with all tax and insurance impound requirements set forth in the Loan Documents.

(vii) The Project is not subject to condemnation or other adverse governmental action and the Project complies with all applicable governmental requirements, including all federal, state and local low-income housing requirements.

(viii) Borrower shall have paid to Lender a conversion fee in the amount of \$10,000.

(ix) Borrower shall deliver to Lender a fully executed and completed Conversion Certificate in the form attached hereto as Schedule 7 and fully and completely satisfy all Conversion Conditions on or before the Maturity Date. Notwithstanding the foregoing, in the event (a) Borrower has satisfied all of the Conversion Conditions except for the Conversion Condition set forth in Section 2(j)(vi) of the Conversion Certificate, and (b) the Conversion Condition set forth in Section 2(j)(vi) of the Conversion Certificate would be satisfied by a paydown of the principal balance of the Loan, then Borrower shall immediately pay to Lender, upon demand, an amount determined by Lender, in its sole and absolute discretion, sufficient to reduce the principal balance of the Permanent Loan to an amount which will result in the satisfaction of such Conversion Condition.

### Article III Representations and Warranties.

Borrower represents and warrants to Lender that:

#### Section 3.1 Organization, Power and Authority of Borrower; Loan Documents.

Borrower (a) is a limited partnership duly organized and validly existing under the Laws of the state in which it is organized and is duly qualified to do business and in good standing in the state in which the Land is located (if different from the state of its formation) and in any other state where the nature of Borrower's business or property requires it to be qualified to do business, (b) has timely filed all tax reports required by Chapter 171 of the Texas Tax Code (the "Franchise Tax Statute") and has paid all taxes imposed upon it by the Franchise Tax Statute, (c) has not had its right to transact business in Texas forfeited for failure to file any such tax report or pay any such tax, and (d) has the power, authority and legal right to own its property and carry on the business now being conducted by it and to engage in the transactions contemplated by the Loan Documents. The Loan Documents to which Borrower is a party have been duly executed and delivered by Borrower, and the execution and delivery of, and the carrying out of the transactions contemplated by, such Loan Documents, and the performance and observance of the terms and conditions thereof, have been duly authorized by all necessary organizational action by and on behalf of Borrower. The Loan Documents to which Borrower is a party constitute the valid and legally binding obligations of Borrower and are fully enforceable against Borrower in accordance with their respective terms, except to the extent that such enforceability may be limited by Laws generally affecting the enforcement of creditors' rights.

#### Section 3.2 Other Documents; Laws.

The execution and performance of the Loan Documents to which Borrower is a party and the consummation of the transactions contemplated thereby will not conflict with, result in any breach of, or

constitute a default under, the organizational documents of Borrower, or any contract, agreement, document or other instrument to which Borrower is a party or by which Borrower or any of its properties may be bound or affected, and such actions do not and will not violate or contravene any Law to which Borrower is subject. Such actions do not and will not violate or contravene any Law to which Borrower, the Property, or any tenant under any Lease is subject, including the Controlled Substances Act.

Section 3.3 Taxes.

Borrower has filed all federal, state, county and municipal tax returns required to have been filed by Borrower and has paid all Taxes which have become due pursuant to such returns or pursuant to any tax assessments received by Borrower.

Section 3.4 Legal Actions.

There are no Claims or investigations by or before any court or Governmental Authority, pending, or to the best of Borrower's knowledge and belief, threatened against or affecting Borrower, Borrower's business or the Property. Borrower is not in default with respect to any order, writ, injunction, decree or demand of any court or any Governmental Authority affecting Borrower or the Property.

Section 3.5 Nature of Loan.

Borrower is a business or commercial organization. The Loan is being obtained solely for business or investment purposes, and will not be used for personal, family, household or agricultural purposes.

Section 3.6 Trade Names.

Borrower conducts its business solely under the name set forth in the Preamble to this Agreement and makes use of no trade names in connection therewith, unless such trade names have been previously disclosed to Lender in writing.

Section 3.7 Financial Statements.

The financial statements heretofore delivered by Borrower and each Guarantor to Lender are true and correct in all respects, have been prepared in accordance with sound accounting principles consistently applied, and fairly present the respective financial conditions of the subjects thereof as of the respective dates thereof.

Section 3.8 ERISA and Prohibited Transactions.

As of the date hereof and throughout the term of the Loan: (a) Borrower is not and will not be (i) an "employee benefit plan," as defined in Section 3(3) of ERISA, (ii) a "governmental plan" within the meaning of Section 3(32) of ERISA, or (iii) a "plan" within the meaning of Section 4975(e) of the Code; (b) the assets of Borrower do not and will not constitute "plan assets" within the meaning of the United States Department of Labor Regulations set forth in Section 2510.3-101 of Title 29 of the Code of Federal Regulations; (c) transactions by or with Borrower are not and will not be subject to state statutes applicable to Borrower regulating investments of fiduciaries with respect to governmental plans; and (d) Borrower will not engage in any transaction that would cause any Obligation or any action taken or to be taken hereunder (or the exercise by Lender of any of its rights under the Mortgage or any of the other Loan Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited

transaction under ERISA or Section 4975 of the Code. Borrower agrees to deliver to Lender such certifications or other evidence of compliance with the provisions of this Section as Lender may from time to time request.

Section 3.9 Compliance with Zoning and Other Requirements.

Borrower is in compliance with the requirements of all applicable Laws. The anticipated use of the Property complies with applicable zoning ordinances, regulations and restrictive covenants affecting the Land. All use and other requirements of any Governmental Authority having jurisdiction over the Property have been satisfied. No violation of any Law exists with respect to the Property. None of the Improvements are located, under the Flood Insurance Laws, in a Special Flood Hazard Area, or, if any portion of the Improvements is located within such area, Borrower is in compliance with Section 4.9(e) and has obtained the flood insurance prescribed therein.

Section 3.10 Plans and Specifications.

The Plans and Specifications are complete and adequate for the Construction of the Improvements. The Plans and Specifications have been approved by all Governmental Authorities having or claiming jurisdiction over the Property and by the beneficiary of each restrictive covenant affecting the Property whose approval is required. The Plans and Specifications have also been approved by any prospective purchaser of the Property or provider of permanent financing for the Property whose approval is required, if applicable. To the best of Borrower's knowledge, the Improvements, if constructed substantially in accordance with the Plans and Specifications, will fully comply with all applicable Laws, including those Laws relating to access and facilities for disabled persons.

Section 3.11 Building Permits; Other Permits.

All building, construction and other permits necessary or required in connection with the Construction of the Improvements have been validly issued or will be issued in a timely manner by a date sufficient to ensure commencement of construction and Completion of Construction in accordance with the Project Schedule. All required fees have been paid and bonds and/or other security have been posted in connection with all permits that have been issued, and adequate amounts are included in the Budget to pay all fees and the cost of all bonds and other security in connection with permits to be issued in the future. Following the issuance thereof, all permits will remain in full force and effect.

Section 3.12 Utilities.

All utility services necessary for the Construction of the Improvements and the operation thereof for their intended purposes are available at the boundaries of the Land (or will be available upon the completion of work shown in the Plans and Specifications), including telephone service, cable television, water supply, storm and sanitary sewer facilities, natural gas and electric facilities, including cabling for telephonic and data communication, and the capacity to send and receive wireless communication.

Section 3.13 Access; Roads.

All roads and other accesses necessary for the Construction of the Improvements and full utilization thereof for their intended purposes have either been completed or the necessary rights of way therefor have either been acquired by the appropriate Governmental Authority, or have been dedicated to public use and accepted by such Governmental Authority and all necessary steps have been taken by Borrower or such Governmental Authority to assure the complete construction and installation thereof by

a date sufficient to ensure the Completion of Construction of the Improvements in accordance with the Project Schedule.

Section 3.14 Other Liens.

Prior to the recordation of the Mortgage, no work of any kind (including destruction or removal of any existing improvements, site work, clearing, grading, grubbing, draining or fencing of the Land) has been or will be commenced or performed on the Land, no equipment or material has been or will be delivered to or placed upon the Land for any purpose whatsoever, and no contract (or memorandum or affidavit thereof) for the supplying of labor, materials, or services for the design or Construction of the Improvements, or the surveying of the Land or Improvements, nor any affidavit or notice of commencement of Construction of the Improvements, has been or will be executed or recorded, which could cause a mechanic's or materialman's lien or similar lien to achieve priority over the Mortgage or the rights of Lender thereunder.

Section 3.15 No Material Adverse Change.

No material adverse change has occurred in the financial conditions reflected in the financial statements of Borrower or any Guarantor since the respective dates of such statements, and no material additional liabilities have been incurred by Borrower since the dates of such statements other than the borrowings contemplated herein or as approved in writing by Lender.

Section 3.16 Defaults.

There is no Event of Default under any of the Loan Documents, and there is no event of default under any material contract, agreement or other document related to the Construction of the Improvements or the operation thereof.

Section 3.17 Affirmation of Representations and Warranties.

Each Draw Request and each receipt of the funds requested thereby shall constitute an affirmation that: (a) no uncured Event of Default has occurred hereunder; (b) the foregoing representations and warranties of Borrower are true and correct as of the date of the Draw Request and, unless Lender is notified to the contrary prior to the disbursement of the advance requested, will be so on the date of the disbursement; (c) any unadvanced portion of the Loan to which Borrower is entitled, together with additional funds that, to Lender's satisfaction, are available, set aside and committed, is or will be sufficient to pay the expenses related to the Loan and the Property that are described in the Budget; (d) all disbursements were and will be used in compliance with the Budget; (e) the work completed to the date of the Draw Request is of quality and in all other respects consistent with the Plans and Specifications; and (f) if applicable, Construction of the Improvements is proceeding in accordance with the Project Schedule.

Section 3.18 OFAC and Other Sanctions.

Neither Borrower nor any of its subsidiaries (collectively, the "Company") or, to the knowledge of the Company, any director, officer, employee, agent, Affiliate or representative of the Company is a Person currently the subject of any Sanctions, nor is the Company located, organized or resident in a country or territory that is the subject of Sanctions.

Section 3.19 Environmental Representations and Warranties.

Except as explicitly set forth in Schedule 9, which, if attached hereto is made a part hereof, Borrower, after appropriate due inquiry and investigation in accordance with good commercial or customary practices, including an investigation into the previous uses and ownership of the Property, hereby represents and warrants to, and covenants with, Lender, without regard to whether Lender has or hereafter obtains any knowledge or information related to these matters, as follows:

(a) Use of the Property. During the period of Borrower's ownership or operation of the Property, and, to the best of Borrower's knowledge, during the period prior to Borrower's ownership or operation of the Property, (i) the Property has not been used as a treatment, storage or disposal site for any Hazardous Material, for any other waste disposal activities, for industrial or manufacturing purposes or for any other use which could give rise to the Release of any Hazardous Material at the Property or which could create any unsafe or hazardous condition resulting from or related to the Release of any Hazardous Material, and to the best of Borrower's knowledge, no such use on any adjacent property has occurred at any time prior to the date hereof; (ii) there has been no Release at or from the Property or, to the best of Borrower's knowledge, at or from any disposal or treatment facility which received Hazardous Materials generated by Borrower or at the Property; and (iii) no active, inactive or abandoned under-ground or above-ground storage tanks or similar containers, or any groundwater or monitoring wells of any kind, are or have been located at the Property.

(b) Environmental Claims. No Environmental Claim has been asserted against Borrower or with respect to the Property. Borrower does not have knowledge of any threatened or pending Environmental Claim against Borrower, the Property or any facility that may have received Hazardous Material generated by Borrower or at the Property. To the best of Borrower's knowledge, no Environmental Claim has been filed against any adjacent property.

(c) Compliance with Environmental Requirements. During the period of Borrower's ownership or operation of the Property, and, to the best of Borrower's knowledge, during the period prior to Borrower's ownership or operation of the Property, the past and present conditions, uses and activities at the Property have complied with all Environmental Requirements. Borrower holds and has held all licenses, permits and approvals required by any Governmental Authority under any Environmental Requirement in connection with the ownership or operation of the business at the Property and has timely prepared, submitted and made all filings, reports, plans and notifications required under any Environmental Requirement. Borrower has furnished to Lender a copy of all reports, permits, assessments, investigations, correspondence and other documents and information in Borrower's possession which relate to environmental conditions at the Property and any other matters addressed by or relating to compliance with any Environmental Requirement.

(d) Environmental Insurance. Borrower has never applied for and been denied environmental impairment liability insurance coverage relating to the Property. Borrower has furnished to Lender a copy of all such environmental insurance policies, and all applications (whether denied, accepted or pending), related to Borrower or the Property. At Lender's request, Borrower shall cause Lender to be named as an additional insured on any such policy currently in effect.

Article IV  
Affirmative Covenants and Agreements.

Borrower covenants as of the date hereof and until such time as all Obligations shall be indefeasibly paid and performed in full, that:

Section 4.1 Commencement and Completion of Construction; Use of Proceeds.

Borrower shall cause the Construction of the Improvements to be commenced and prosecuted in a good and workmanlike manner and shall cause the same to be completed in accordance with the Project Schedule and substantially in accordance with the Plans and Specifications. Borrower shall comply with Section 4.9(e) and shall provide flood insurance as required therein, before commencing construction of any portion of any structure or Improvements located, under the Flood Insurance Laws, in a Special Flood Hazard Area. By the Completion Date, Lender shall have received evidence satisfactory to Lender that all of the buildings constituting the Improvements have been “placed in service” within the meaning of Section 42 of the Code. Borrower shall use all proceeds of the Loan for the purposes contemplated herein and which are not in contravention of any Law or any Loan Document.

Section 4.2 Approval of Construction.

No work associated with the Construction of the Improvements shall be commenced by Borrower unless and until the Plans and Specifications have been approved by Lender, by all Governmental Authorities having or claiming jurisdiction over the Land and Improvements, by the beneficiary of any applicable restrictive covenant whose approval is required, and by any other party whose approval is required under applicable agreements, and unless and until all building, construction and other permits necessary or required in connection with the Construction of the Improvements have been validly issued and all fees, bonds and any other security required in connection therewith have been paid or posted.

Section 4.3 Borrower’s Deposit Account.

If at any time Lender shall determine that (a) the proceeds of the Loan remaining to be advanced for any line item within the Budget, together with any anticipated Deferred Equity and any proceeds of Subordinate Loans that Lender determines to its satisfaction is or will be available for such item, are not or will not be sufficient to pay, in a timely manner, the amount of such line item remaining to be paid, and (b) the deficiency cannot be remedied by a reallocation of budgeted amounts pursuant to Section 2.2, or if the Budget otherwise provides for deposit of funds for the Project from any third party, then Borrower shall deposit in the Borrower’s Deposit Account funds in an amount equal to the deficiency (the “Borrower’s Deposit”). Within ten (10) days from the effective date of a Notice from Lender requesting such deposit, Borrower shall establish the Borrower’s Deposit Account with Lender, unless Borrower has previously done so, and shall fund such deposit into such account. All interest (if any) earned on sums on deposit in the Borrower’s Deposit Account shall be credited to such account. Borrower agrees that it shall include all interest and earnings on any such deposit as its income (and, if Borrower is a partnership or other pass-through entity, the income of its partners, members or beneficiaries, as the case may be), and shall be the owner of all funds on deposit in the Borrower’s Deposit Account for federal and applicable state and local tax purposes. Borrower shall be permitted to withdraw funds from the Borrower’s Deposit Account, (i) in accordance with a Draw Request approved by Lender or (ii) otherwise with Lender’s written consent, which may be by e-mail and be granted by Lender in its sole and absolute discretion. Lender may require all or part of funds in the Borrower’s Deposit Account to be used before Lender makes any further advances of Loan proceeds. Borrower hereby assigns and pledges to Lender, and grants to Lender, a first-priority security interest in and lien on the Borrower’s Deposit Account and all amounts from time to time held in or credited to the Borrower’s Deposit Account, and any proceeds thereof, as security for Borrower’s Obligations. Subject to the terms and conditions of this Section and the other provisions of the Loan Documents, the Borrower’s Deposit Account shall be subject to the sole dominion, control and discretion of Lender, but Lender shall have no fiduciary duty with respect to such account or any funds on deposit therein. All funds in the Borrower’s Deposit Account shall be used in accordance with the Budget and in compliance with the terms, covenants, conditions and provisions of this Agreement. Under no circumstance may funds be withdrawn from the Borrower’s Deposit Account

without the prior written consent of Lender and if funds are withdrawn from the Borrower's Deposit Account in a larger amount than is approved by Lender, Borrower shall promptly return the excess to the Borrower's Deposit Account upon request by Lender.

Section 4.4 Compliance with Laws; Encroachments.

Borrower shall comply with all Laws and all orders, writs, injunctions, decrees and demands of any court or any Governmental Authority affecting Borrower or the Property. The Improvements shall be constructed, maintained, and operated in accordance with all applicable (whether present or future) Laws. The Improvements shall be constructed entirely on the Land and shall not encroach upon any easement or right-of-way, or upon the land of others. Construction of the Improvements shall occur wholly within all applicable building restriction lines and set-backs, however established, and the Construction of the Improvements and their operations shall be in strict compliance with all applicable use or other restrictions and the provisions of any prior agreements, declarations, covenants and all applicable zoning and subdivision ordinances and regulations. Borrower shall obtain, preserve and maintain in good standing, as applicable, all rights, privileges and franchises necessary or desirable for the operation of the Property and the conduct of Borrower's business thereon or therefrom.

Section 4.5 Inspections; Cooperation.

Borrower shall permit representatives of Lender and the Construction Inspector to enter upon the Land, to inspect the Improvements and any and all materials to be used in connection with the Construction of the Improvements, to inspect and examine all detailed plans and shop drawings and similar materials as well as all books and records of Borrower (regardless of where maintained) and all supporting vouchers and data and to make copies and extracts therefrom and to discuss the affairs, finances and accounts pertaining to the Loan and the Improvements with representatives of Borrower. Borrower shall at all times cooperate and cause the General Contractor and each and every one of its subcontractors and material suppliers to cooperate with the representatives of Lender and the Construction Inspector in connection with or in aid of the performance of Lender's functions under this Agreement. Except in the event of an emergency, Lender shall give Borrower at least twenty-four (24) hours' notice by telephone in each instance before entering upon the Land and/or exercising any other rights granted in this Section.

Section 4.6 Contracts, Vouchers and Receipts.

Borrower shall furnish to Lender, promptly on demand, any contracts, subcontracts, bills of sale, statements, receipted vouchers or other agreements relating to the Construction of the Improvements, including any such items pursuant to which Borrower has any claim of title to any materials, fixtures or other articles delivered or to be delivered to the Land or incorporated or to be incorporated into the Improvements. Borrower shall furnish to Lender, promptly on demand, a verified written statement, in such form and detail as Lender may require, setting forth the names and addresses of all contractors, subcontractors and suppliers furnishing labor or materials in the Construction of the Improvements and showing all amounts paid for labor and materials and all items of labor and materials furnished or to be furnished for which payment has not been made and the amounts to be paid therefor.

Within fifteen (15) days after receiving notification from Lender, Borrower shall deliver to Lender any and all of the following information and documents that Lender may request, all in forms acceptable to Lender:

(a) Current plans and specifications for the Improvements certified by the Architect as being complete and accurate; and



(b) A current construction progress schedule showing the progress of construction and the projected sequencing and completion times for uncompleted work, all as of the date of the schedule.

Borrower expressly authorizes Lender to contact the Architect, General Contractor or any contractor, subcontractor, material supplier, surety or any Governmental Authority or agency to verify or discuss any information disclosed in accordance with this Section and any other information Lender may reasonably require.

Any defaulting architect, contractor, subcontractor, material supplier, or surety shall be replaced promptly, and Borrower shall deliver promptly all required information and documents to Lender regarding each replacement architect, contractor, subcontractor, material supplier, and surety. Lender may disapprove any architect, contractor, subcontractor, material supplier, surety, or other party Lender in its reasonable judgment deems financially or otherwise unqualified; however, in no event may the absence of disapproval be deemed approval.

If, based on any construction progress schedule or other materials submitted by Borrower, Lender in its reasonable judgment determines that the Improvements will not be completed by the Completion Date, Lender may request Borrower in writing to reschedule the work of construction to permit timely completion. In addition, if Lender in its reasonable judgment determines that any building constituting the Improvements will not be “placed in service” (within the meaning of Section 42 of the Code) by the Completion Date, Lender may request Borrower in writing to reschedule the work of construction. Within fifteen (15) days after receiving such a request from Lender, Borrower shall deliver to Lender a revised construction progress schedule and Project Schedule showing completion of the Improvements by the Completion Date.

#### Section 4.7 Payment and Performance of Contractual Obligations.

Borrower shall perform in a timely manner all of its obligations under the Architect’s Contract, the Construction Contract and any and all other contracts and agreements related to the Construction of the Improvements or the operation thereof, and Borrower will pay when due all bills for services or labor performed and materials supplied in connection with the Construction of the Improvements. Within thirty (30) days after the filing of any mechanic’s lien or other lien or encumbrance against the Property, Borrower will promptly discharge the same by payment or filing a bond or otherwise as permitted by Law. So long as Lender’s security has been protected by the filing of a bond or otherwise in a manner satisfactory to Lender in its sole and absolute discretion, Borrower shall have the right to contest in good faith any claim, lien or encumbrance, provided that Borrower does so diligently and without prejudice to Lender or delay in completing Construction of the Improvements.

#### Section 4.8 Correction of Construction Defects.

Promptly following any demand by Lender, Borrower shall correct or cause the correction of any structural defects in the Improvements, any work that fails to comply with the requirements of Section 4.4 and any material departures or deviations from the Plans and Specifications not approved in writing by Lender. No requirement for correction of work by Lender hereunder will affect Borrower’s obligation to complete the Improvements in accordance with the Project Schedule and on or before the Completion Date or otherwise affect the Project Schedule.

#### Section 4.9 Insurance.

Borrower shall maintain the following insurance at its sole cost and expense:

(a) Insurance against Casualty to the Property under a policy or policies covering such risks as are presently included in “special form” (also known as “all risk”) coverage, including such risks as are ordinarily insured against by similar businesses, but in any event including fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, damage from aircraft, smoke, vandalism, malicious mischief and acts of terrorism. Such insurance shall name Lender as mortgagee and loss payee. Unless otherwise agreed in writing by Lender, such insurance shall be for the full insurable value of the Property, with a deductible amount, if any, satisfactory to Lender. No policy of insurance shall be written such that the proceeds thereof will produce less than the minimum coverage required by this Section by reason of co-insurance provisions or otherwise. The term “full insurable value” means one hundred percent (100%) of the actual replacement cost of the Property (excluding excavation costs and costs of underground flues, pipes, drains and other uninsurable items).

(b) Comprehensive (also known as commercial) general liability insurance on an “occurrence” basis against claims for “personal injury” liability and liability for death, bodily injury and damage to property, products and completed operations, in limits satisfactory to Lender with respect to any one occurrence and the aggregate of all occurrences during any given annual policy period. Such insurance shall name Lender as an additional insured.

(c) Intentionally Omitted.

(d) During any period of construction upon the Property, Borrower shall maintain, or cause others to maintain, builder’s risk insurance (non-reporting form) of the type customarily carried in the case of similar construction for one hundred percent (100%) of the full replacement cost of work in place and materials stored at or upon the Property.

(e) This Subsection (e) applies if and to the extent any portion of the Improvements, or any other structure on the Property, is or in the future may be, under the Flood Insurance Laws, in a Special Flood Hazard Area. Borrower shall obtain and maintain at Borrower’s sole expense, a flood insurance policy on the Improvements and any such other structure in an amount required by Lender, but in no event less than the amount sufficient to meet the requirements of applicable Law, as such requirements may from time to time be in effect. The flood insurance policy shall be obtained as a condition to closing of the Loan, if existing improvements will be demolished before the Improvements are constructed or if the Start of Construction will occur within ninety (90) days after the closing of the Loan. If the Start of Construction will occur more than ninety (90) days after the closing of the Loan, Borrower shall deliver the flood insurance policy to Lender at least sixty (60) days before the Start of Construction or any of the following, whichever is earliest to occur: (i) Borrower commences to install the foundation slab, regardless of whether such construction work is funded with Up-Front Equity or otherwise, (ii) the elevation certificate is issued, or (iii) Borrower submits the first Draw Request for hard construction costs (other than for costs of installing the foundation slab, performing preliminary site work such as laying utilities or clearing brush, or the purchase and/or delivery of building materials) (the “First Construction Draw”). Notwithstanding the foregoing, if the lowest floor of the Improvements will be below the base flood elevation, the flood insurance policy shall be obtained at least sixty (60) days before the Improvements are walled and roofed, and in any event at least sixty (60) days before the First Construction Draw. Until the flood insurance policy is obtained, Borrower shall deliver to Lender the Pre-Construction Certificate once per month. Each Pre-Construction Certificate shall be deemed to ratify and confirm, as of the date thereof, that the AIA Document G-702 and G-703 forms executed by each contractor and approved by Architect, together with the Budget, schedules, affidavits, releases, waivers, statements, invoices, Accounts Payable Lists, bills, and other documents, certificates and information submitted with the Pre-Construction Certificate are complete and correct, and in all respects what they purport and appear to be for the amount and period applicable to the Pre-Construction Certificate. In

addition to the foregoing, Borrower shall obtain and maintain at Borrower's expense, a flood insurance policy on any building materials and supplies and any Borrower owned personal property contents in an amount required by Lender, but in no event less than the amount sufficient to meet the requirements of applicable Law, as such requirements may from time to time be in effect, as soon as a flood insurance policy on such building materials, supplies and contents can be obtained.

(f) Loss of rental value insurance or business interruption insurance in an amount acceptable to Lender.

(g) Such other and further insurance as may be required from time to time by Lender in order to comply with regular requirements and practices of Lender in similar transactions including, if required by Lender, boiler and machinery insurance, pollution liability insurance, wind insurance, volcano insurance, and earthquake insurance, so long as any such insurance is generally available at commercially reasonable premiums as determined by Lender from time to time.

In addition to the foregoing, Borrower shall cause the General Contractor to provide and maintain comprehensive (commercial) general liability insurance and workers' compensation insurance for all employees of the General Contractor meeting, respectively, the requirements of Subsections (b) and (c), above.

Each policy of insurance (i) shall be issued by one or more insurance companies each of which must have an A.M. Best Company financial and performance rating of A-IX or better and are qualified or authorized by the Laws of the State to assume the risks covered by such policy, (ii) with respect to the insurance described under the preceding Subsections (a), (d), (e) and (f), shall have attached thereto standard non-contributing, non-reporting mortgagee clauses in favor of and entitling Lender without contribution to collect any and all proceeds payable under such insurance, either as sole payee or as joint payee with Borrower, (iii) shall provide that such policy shall not be canceled or modified without at least thirty (30) days prior written notice to Lender, and (iv) shall provide that any loss otherwise payable thereunder shall be payable notwithstanding any act or negligence of Borrower which might, absent such agreement, result in a forfeiture of all or a part of such insurance payment. Borrower shall promptly pay all premiums when due on such insurance and Borrower will deliver to Lender acceptable evidence of insurance, such as a renewal policy or policies marked "premium paid" or other evidence satisfactory to Lender reflecting that all required insurance is current and in force. Borrower will immediately give Notice to Lender of any cancellation of, or change in, any insurance policy. Lender shall not, because of accepting, rejecting, approving or obtaining insurance, incur any liability for (A) the existence, nonexistence, form or legal sufficiency thereof, (B) the solvency of any insurer, or (C) the payment of losses. Borrower may satisfy any insurance requirement hereunder by providing one or more "blanket" insurance policies, subject to Lender's approval in each instance as to limits, coverages, forms, deductibles, inception and expiration dates, and cancellation provisions.

#### Section 4.10 Adjustment of Condemnation and Insurance Claims.

Borrower shall give prompt Notice to Lender of any Casualty or any Condemnation or threatened Condemnation. Lender is authorized, at its sole and absolute option, to commence, appear in and prosecute, in its own or Borrower's name, any action or proceeding relating to any Condemnation or Casualty, and to make proof of loss for and to settle or compromise any Claim in connection therewith. In such case, Lender shall have the right to receive all Condemnation Awards and Insurance Proceeds, and may deduct therefrom any and all of its Expenses. However, so long as no Event of Default has occurred and Borrower is diligently pursuing its rights and remedies with respect to a Claim, Lender will obtain Borrower's written consent (which consent shall not be unreasonably withheld or delayed) before making proof of loss for or settling or compromising such Claim. Borrower agrees to diligently assert its Construction Loan Agreement

rights and remedies with respect to each Claim and to promptly pursue the settlement and compromise of each Claim subject to Lender's approval, which approval shall not be unreasonably withheld or delayed. If, prior to the receipt by Lender of any Condemnation Award or Insurance Proceeds, the Property shall have been sold pursuant to the provisions of the Mortgage, Lender shall have the right to receive such funds (a) to the extent of any deficiency found to be due upon such sale with interest thereon (whether or not a deficiency judgment on the Mortgage shall have been sought or recovered or denied), and (b) to the extent necessary to reimburse Lender for its Expenses. If any Condemnation Awards or Insurance Proceeds are paid to Borrower, Borrower shall receive the same in trust for Lender. Within ten (10) days after Borrower's receipt of any Condemnation Awards or Insurance Proceeds, Borrower shall deliver such awards or proceeds to Lender in the form in which they were received, together with any endorsements or documents that may be necessary to effectively negotiate or transfer the same to Lender. Borrower agrees to execute and deliver from time to time, upon the request of Lender, such further instruments or documents as may be requested by Lender to confirm the grant and assignment to Lender of any Condemnation Awards or Insurance Proceeds.

#### Section 4.11 Utilization of Net Proceeds.

(a) Net Proceeds must be utilized either for payment of the Obligations or for the restoration of the Property. Net Proceeds may be utilized for the restoration of the Property only if no Event of Default shall exist and only if in the reasonable judgment of Lender (i) there has been no material adverse change in the financial viability of the construction or operation of the Improvements, (ii) the Net Proceeds, together with other funds deposited with Lender for that purpose, are sufficient to pay the cost of the restoration pursuant to a budget and plans and specifications approved by Lender, and (iii) the restoration can be completed prior to the final maturity of the Loan. Otherwise, Net Proceeds shall be utilized for payment of the Obligations.

(b) If Net Proceeds are to be utilized for the restoration of the Property, the Net Proceeds, together with any other funds deposited with Lender for that purpose, must be deposited with Lender in a Borrower's Deposit Account. Borrower hereby assigns and pledges to Lender and grants to Lender a first-priority security interest and lien on any Net Proceeds and any Borrower's Deposit Account holding such Net Proceeds and any proceeds thereof, as security for the Obligations. Lender's security interest in the Borrower's Deposit Account shall be perfected by Lender's "control" of such account in accordance with the Uniform Commercial Code of the State. The account will be opened and managed in a manner consistent with, and subject to, the provisions of Section 4.3 governing the Borrower's Deposit Account, including those provisions permitting Lender to require Borrower to deposit funds in the event of a deficiency in the funds available to complete restoration as herein contemplated. Borrower shall not be entitled to withdraw any Net Proceeds without Lender's prior written consent (which may be by e-mail). Borrower shall be permitted to withdraw Net Proceeds from the Borrower's Deposit Account (i) in accordance with a Draw Request approved by Lender or (ii) otherwise with Lender's written consent, which may be by e-mail and be granted by Lender in its sole and absolute discretion, and (iii) in a manner consistent with, and subject to, Section 4.3.

#### Section 4.12 Management.

Borrower at all times shall provide for the competent and responsible management and operation of the Property. Any management contract or contracts affecting the Property must be approved in writing by Lender prior to the execution of the same.

Section 4.13 Books and Records; Financial Statements; Tax Returns.

Borrower shall provide or cause to be provided to Lender the financial reports set forth below. In addition, upon Lender's request, Borrower will deliver, or cause to be delivered, such additional information as Lender may reasonably require, including without limitation, a leasing report.

<b>Entity</b>	<b>Document Type</b>	<b>Commencement</b>	<b>Late After</b>
Borrower	In-House Financial Statements (Balance Sheet, Income Statement)	Beginning with the year ending December 31, 2017	120 days after the end of each fiscal year of the Borrower
Borrower	In-House Interim Financial Statements (Balance Sheet, Income Statement)	Beginning with the quarter ending June 30, 2017	60 days after the end of each fiscal quarter of the Borrower
Borrower	Property Schedule, including rent roll and net operating income statement	Beginning with the month after the month in which the Property receives a temporary certificate of occupancy.	30 days after the end of each calendar month
Guarantor	In-House Financial Statements (Balance Sheet, Income Statement)	Beginning the quarter ending June 30, 2017	60 days after the end of each fiscal quarter of the Guarantor
Guarantor	Consolidated Audited Financial Statements and schedule of real estate owned	Beginning with the year ending December 31, 2017	120 days after the end of each fiscal year of Guarantor
Guarantor	Compliance Certificate in the form of Schedule 13	Beginning with the year ending December 31, 2017	120 days after the end of each fiscal year of Guarantor

Borrower will keep and maintain full and accurate books and records administered in accordance with sound accounting principles, consistently applied, showing in detail the earnings and expenses of the Property and the operation thereof. All Financial Statements and Property Schedules shall be in form and detail satisfactory to Lender and shall contain or be attached to the signed and dated written certification of the reporting party in form specified by Lender to certify that the Financial Statements are furnished to Lender in connection with the extension of credit by Lender and constitute a true and correct statement of the reporting party's financial position. All certifications and signatures on behalf of corporations, partnerships, limited liability companies or other entities shall be by a representative of the reporting party satisfactory to Lender. All Financial Statements and Property Schedules for a reporting party who is an individual shall be on Lender's then-current personal financial statement form or in another form satisfactory to Lender. All fiscal year-end Financial Statements of Borrower and Guarantor shall be audited and certified, without any qualification or exception not acceptable to Lender, by independent certified public accountants acceptable to Lender, and shall contain all reports and disclosures required by generally accepted accounting principles for a fair presentation. All quarterly Financial Statements may be prepared by the applicable reporting party and shall include a minimum of a balance sheet, income statement, and statement of cash flow. All Property Schedules may be prepared by the applicable reporting party. Borrower shall provide, upon Lender's request, convenient facilities for the audit and

verification of any such statement. Additionally, Borrower will provide Lender at Borrower's expense with all evidence that Lender may from time to time reasonably request in writing as to compliance with all provisions of the Loan Documents.

Section 4.14 Estoppel Certificates.

Within ten (10) days after any request by Lender or a proposed assignee or purchaser of the Loan or any interest therein, Borrower shall certify in writing to Lender, or to such proposed assignee or purchaser, the then unpaid balance of the Loan and whether Borrower claims any right of defense or setoff to the payment or performance of any of the Obligations, and if Borrower claims any such right of defense or setoff, Borrower shall give a detailed written description of such claimed right.

Section 4.15 Taxes.

Borrower shall pay and discharge all Taxes prior to the date on which penalties are attached thereto unless and to the extent only that such Taxes are contested in accordance with the terms of the Mortgage.

Section 4.16 Lender's Rights to Pay and Perform.

If, after any required notice, Borrower fails to promptly pay or perform any of the Obligations within any applicable grace or cure periods, Lender, without Notice to or demand upon Borrower, and without waiving or releasing any Obligation or Event of Default, may (but shall be under no obligation to) at any time thereafter make such payment or perform such act for the account and at the expense of Borrower. Lender may enter upon the Property for that purpose and take all action thereon as Lender considers necessary or appropriate. At the option of Lender, following the occurrence of an Event of Default, Lender may apply any undisbursed Loan proceeds to the satisfaction of the conditions of the Loan Documents, irrespective of the allocation of such Loan proceeds in the Budget. Without limiting the generality of the foregoing, Lender may pay directly from the proceeds of the Loan all interest bills rendered by Lender in connection with the Loan, and following the occurrence of an Event of Default may make advances directly to the General Contractor, the title insurance company, any subcontractor or material supplier, or to any of them jointly. The execution hereof by Borrower shall, and hereby does, constitute an irrevocable authorization so to advance the proceeds of the Loan. No further direction or authorization from Borrower shall be necessary to warrant such direct advances. Each advance shall be secured by the Mortgage and shall satisfy the obligations of Lender hereunder to the extent of the amount of the advance.

Section 4.17 Reimbursement; Interest.

If Lender shall incur any Expenses or pay any Claims by reason of the Loan or the rights and remedies provided under the Loan Documents (regardless of whether or not any of the Loan Documents expressly provide for an indemnification by Borrower against such Claims), Lender's payment of such Expenses and Claims shall constitute advances to Borrower which shall be paid by Borrower to Lender on demand, together with interest thereon from the date incurred until paid in full at the rate of interest then applicable to the Loan under the terms of the Note. Each advance shall be secured by the Mortgage and the other Loan Documents as fully as if made to Borrower, regardless of the disposition thereof by the party or parties to whom such advance is made. Notwithstanding the foregoing, however, in any action or proceeding to foreclose the Mortgage or to recover or collect the Obligations, the provisions of Law governing the recovery of costs, disbursements and allowances shall prevail unaffected by this Section.

Section 4.18 Notification by Borrower.

Borrower shall, within ten (10) days after Borrower obtains knowledge of the occurrence of any of the following events, notify Lender in writing thereof, specifying in each case the action Borrower has taken or will take with respect thereto: (a) any Event of Default hereunder or under any of the other Loan Documents; (b) any violation of Law by Borrower or any Guarantor, or any claim or assertion by any Governmental Authority that the Property or Improvements fail to comply with any Law; (c) any investigation by any Governmental Authority, or any litigation, arbitration or other proceeding instituted or threatened against Borrower or any Guarantor or the Property, and any material development therein; (d) any default by the General Contractor, the Architect, or any contractor, supplier or surety or any material adverse change in the financial condition or operations of any of them; (e) any claim by Borrower of a default by any tenant or other party under any Lease or any of the Subordinated Loan Documents; or (f) any material adverse change in the financial condition, results of operations, business or properties of Borrower, Guarantor or any other Person liable for the payment or performance of any of the Obligations.

Section 4.19 Release and Indemnification by Borrower.

Borrower agrees to release, indemnify the Indemnified Parties and to hold the Indemnified Parties harmless from and against, and to defend the Indemnified Parties by counsel approved by Lender from and against, any and all Claims directly or indirectly arising out of or resulting from any transaction, act, omission, event or circumstance in any way connected with the Property or the Loan, including any Claim arising out of or resulting from (a) Construction of the Improvements, including any defective workmanship or materials; (b) any failure by Borrower to comply with the requirements of any Laws or to comply with any agreement that applies or pertains to the Property, including any agreement with a broker or “finder” in connection with the Loan or other financing of the Property; (c) any failure by Borrower to observe and perform any of the obligations imposed upon the landlord under the Leases; (d) any other Event of Default hereunder or under any of the other Loan Documents; (e) any assertion or allegation that an Indemnified Party is liable for any act or omission of Borrower or any other Person in connection with the ownership, development, financing, leasing, operation or sale of the Property; (f) in connection with the content or accuracy of any appraisal provided by Lender to Borrower, Borrower’s use of any such appraisal, and/or subsequent use of any such appraisal by any third party to whom Borrower provides such appraisal; or (g) Environmental Matters; **WITHOUT LIMITATION, THE FOREGOING RELEASES AND INDEMNITIES SHALL APPLY TO EACH INDEMNIFIED PARTY WITH RESPECT TO MATTERS WHICH IN WHOLE OR IN PART ARE CAUSED BY OR ARISE OUT OF, OR ARE CLAIMED TO BE CAUSED BY OR ARISE OUT OF, THE NEGLIGENCE (WHETHER SOLE, COMPARATIVE OR CONTRIBUTORY) OR STRICT LIABILITY OF SUCH INDEMNIFIED PARTY. HOWEVER, SUCH RELEASES AND INDEMNITIES SHALL NOT APPLY TO AN INDEMNIFIED PARTY TO THE EXTENT THAT THE SUBJECT OF THE RELEASE OR INDEMNIFICATION IS CAUSED BY OR ARISES OUT OF THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF SUCH INDEMNIFIED PARTY.** The agreements and indemnifications contained in this Section shall apply to Claims arising both before and after the repayment of the Loan and shall survive the repayment of the Loan, any foreclosure or deed, assignment or conveyance in lieu thereof and any other action by Lender to enforce the rights and remedies of Lender hereunder or under the other Loan Documents. Upon demand by an Indemnified Party, Borrower shall diligently defend any Environmental Claim which relates to the Property or is threatened or commenced against such Indemnified Party, all at Borrower’s own cost and expense and by counsel to be approved by Lender in the exercise of its reasonable judgment. In the alternative, Lender may elect, at any time and for any reason, to conduct its own defense through counsel selected by Lender and at the sole cost and expense of Borrower.

Section 4.20 Fees and Expenses.

Borrower shall pay all fees, charges, costs and expenses required to satisfy the conditions of the Loan Documents. Without limitation of the foregoing, Borrower will pay, when due, and if paid by Lender will reimburse Lender on demand for, all fees and expenses of the Construction Inspector, the title insurance company, environmental engineers, appraisers, surveyors and Lender's counsel in connection with the closing, administration, modification or any "workout" of the Loan, or the enforcement of Lender's rights and remedies under any of the Loan Documents. Borrower acknowledges that Lender may receive a benefit, including a discount, credit or other accommodation, from outside counsel based on the fees such counsel may receive on account of their relationship with Lender including fees paid pursuant hereto. At Closing, Borrower will pay to Lender: (i) an origination fee with respect to the Loan equal to one percent (1.0%) of the Loan Amount and (ii) an origination fee with respect to the Permanent Loan equal to the greater of (a) \$7,500 or (b) one percent (1.0%) of the amount of the Permanent Loan.

Section 4.21 Appraisals.

Lender may obtain from time to time an appraisal of all or any part of the Property, prepared in accordance with written instructions from Lender, from a third-party appraiser satisfactory to, and engaged directly by, Lender. The cost of one such appraisal, including any costs for internal review thereof, obtained by Lender in each calendar year and the cost of each such appraisal obtained by Lender following the occurrence of an Event of Default shall be borne by Borrower and shall be paid by Borrower on demand.

In the event Lender agrees to deliver any appraisal to Borrower, Lender does not (a) represent that the presumptions or opinions in any appraisal are relevant or accurate; (b) represent that any appraisal has been or has not been approved by Lender; or (c) represent that Lender endorses or does not endorse the opinions set forth in any appraisal. Borrower agrees that any transmittal by Lender of any appraisal of the Property to Borrower is given without representation or warranty. Borrower will hold any appraisal delivered by Lender to Borrower in confidence and will not distribute it to any other person or entity, except Borrower's employees, agents, attorneys, consultants, or unless compelled by Law or judicial proceedings, without Lender's prior written consent. Borrower waives any and all present and future claims, actions, causes of action, defenses and/or counterclaims which it may now or hereafter assert against Lender in connection with the content or accuracy of any such appraisal, Borrower's use of any such appraisal, and subsequent use of any such appraisal by any third party to whom Borrower provides the appraisal.

Section 4.22 Leasing and Tenant Matters.

Borrower shall comply with the terms and conditions of Schedule 6 in connection with the leasing of space within the Improvements.

Section 4.23 Principal Depository.

Borrower shall maintain Bank of America, N.A. as its principal depository bank, including for the maintenance of business, cash management, operating and administrative deposit accounts. Without limiting the generality of the foregoing, Borrower shall maintain with Lender all deposit accounts related to the Property, including all operating accounts, any reserve or escrow accounts, any accounts from which Borrower may from time to time authorize Lender or Swap Counterparty to debit payments due on the Loan and any Swap Contracts, and any lockbox, cash management or other account into which tenants are required from time to time to pay rent. Borrower hereby grants to Lender a security interest in the foregoing accounts and deposit accounts.



Section 4.24 Intentionally Omitted.

Section 4.25 Swap Contracts.

In the event that Borrower shall elect to enter into a Swap Contract with Swap Counterparty, Borrower shall comply with all of the terms and conditions of Schedule 8 with respect to all Swap Contracts.

Section 4.26 Intentionally Omitted.

Section 4.27 Income from Property.

Borrower shall first apply all income from leases, and all other income derived from the Property, to pay the Property Expenses, including all amounts then required to be paid under the Loan Documents, before using or applying such income for any other purpose. At all times prior to repayment of the Loan, (a) all Net Monthly Cash Income shall be used first to pay monthly interest payments coming due under the Loan except as otherwise provided in the Loan Documents, and (b) Borrower may not distribute any income to any of its members, partners, or shareholders, allow any member, partner, or shareholder to withdraw capital, or make any payments on indebtedness owed to any member, partner, or shareholder.

Section 4.28 As-Built Plans; Surveys.

Upon the request of Lender, Borrower shall promptly provide to Lender (a) as-built plans and specifications for the Improvements as actually completed, certified by the Architect as being complete and accurate, and/or (b) an as-built ALTA survey of the Land and Improvements in form and substance satisfactory to Lender, certified by a licensed land surveyor and showing the location of the completed improvements, and all boundary lines, easements, rights of way, and other matters affecting the Land. Borrower agrees to pay the cost and expense for such as-built plans and specifications and/or as-built surveys.

Section 4.29 Project Schedule.

Borrower understands and acknowledges that Lender, in making the Loan, has relied on Borrower's projections set forth in the Project Schedule. Whenever Borrower knows or believes there has been or will be a material failure to meet the projections of the Project Schedule, Borrower shall submit to Lender for its approval a revised Project Schedule in the form set forth in Schedule 4. Also, whenever Lender in its reasonable judgment determines that there has been or will be a material failure to meet such projections, Lender may make written demand on Borrower to submit a revised Project Schedule to Lender for its approval. Borrower shall submit a revised Project Schedule to Lender within fifteen (15) days after any such demand. Borrower shall use its best efforts to meet the projections of the currently approved Project Schedule. Any revised Project Schedule shall identify any changes in any projections or other economic terms and be accompanied by Borrower's statement of reasons for the changes. Borrower shall execute such documentation and provide such endorsements to Lender's title insurance policy as Lender may reasonably require in connection with the revised Project Schedule. Lender need make no further disbursements unless and until it approves the revised Project Schedule. Lender reserves the right to approve or disapprove any Project Schedule in its reasonable judgment. The most recently approved Project Schedule supersedes all previously approved Project Schedules.

Section 4.30 Capital Contributions of Investor Limited Partner.

Borrower shall cause Investor Limited Partner to make the capital contributions required pursuant to the Partnership Agreement, at the times, in the amounts, and subject to the terms and conditions specified therein. In no event may Borrower amend, modify, or waive any term of the Partnership Agreement, except non-material modifications of the Partnership Agreement, without the prior written consent of Lender in its sole and absolute discretion.

Section 4.31 Covenants Regarding Tax Credits.

Borrower hereby agrees to comply with all of the following covenants:

(a) To observe and perform all obligations imposed on Borrower in connection with the Tax Credits, including the obligation to have the Property “placed in service” (within the meaning given in Section 42 of the Code) in a timely manner; and to operate the rent-restricted residential units of the Property, and to use Borrower’s best efforts to cause all appropriate parties to operate the same, in accordance with all requirements, statutes, and regulations governing the Tax Credits;

(b) To preserve at all times the allocation and availability of the Tax Credits;

(c) Not to release, forego, alter, amend, or modify its rights to the Tax Credits without Lender’s prior written consent, which Lender may give or withhold in Lender’s sole and absolute discretion;

(d) Not to execute any rent-restricted residential lease of all or any portion of the Property which does not comply fully with all requirements, statutes, and regulations governing the Tax Credits, without Lender’s prior written consent, which Lender may give or withhold in Lender’s sole and absolute discretion;

(e) To cause to be kept all records, and cause to be made all elections and certifications, pertaining to the number and size of apartment units, occupancy thereof by tenants, income level of tenants, set-asides for low-income tenants, and any other matters now or hereafter required to qualify for and maintain the Tax Credits in connection with the low-income occupancy of the Property;

(f) To comply with the appropriate minimum low-income set-aside requirements under the Code or applicable federal Laws and state Laws (including rules and regulations of the TDHCA) applicable to the creation, maintenance and continued availability of the Tax Credits;

(g) To certify compliance with the set-aside requirements and report the dollar amount of qualified basis and maximum applicable percentage, date of placement in service and any other information required for the Tax Credits at such time periods as required by federal Laws and state Laws (including rules and regulations of the TDHCA) for such Tax Credits;

(h) To set aside the appropriate number of units for households with incomes meeting the required standards of the median income of the county in which the Project is located to qualify for the Tax Credits (as determined pursuant to Section 42 of the Code and/or state Laws), adjusted for family size, and to operate and maintain all such units as “low-income units” qualifying for the Tax Credits under Section 42(i)(3) of the Code and/or state Laws;

(i) To exercise good faith in all activities relating to the operation and maintenance of the Property in accordance with the requirement of federal Laws and state Laws; and

(j) To promptly deliver to Lender true and correct copies of any (i) notice of default from Investor Limited Partner, (ii) notice of Investor Limited Partner's intent to transfer its limited partner interests, or (iii) notice of default or non-compliance received from TDHCA. Immediately upon receipt thereof, Borrower shall deliver to Lender a copy of (i) the fully-executed carryover allocation and final reservation of Tax Credits for the Property; (ii) the basis audit (as required by Section 42 of the Code) for the Property (including a certificate of Borrower's accountant or attorneys if requested by Lender); (iii) the first annual income certification for all tenants of the Property showing that the tenants are qualified for purposes of Borrower's obtaining Tax Credits, and (iv) the fully-completed Form 8609 (required by the Code) issued for the Property. Borrower shall deliver promptly to Lender such other certificates, income certificates, reports and information as Lender may request.

Borrower understands and acknowledges that Lender is making the Loan based, in part, upon the value of the Tax Credits, and the Tax Credits, directly or indirectly, constitute part of Lender's security for the Loan. Borrower agrees to indemnify, defend, and hold Lender harmless for, from, and against any and all actions, suits, claims, demands, liabilities, losses, damages, obligations, and costs or expenses, including litigation costs and reasonable attorneys' fees, arising from or in any way connected with Borrower's failure to comply with one or more Tax Credit Covenants, excepting those arising out of, or resulting, solely from Lender's gross negligence or willful misconduct.

#### Section 4.32 Asbestos Operations and Maintenance.

Borrower acknowledges that the Property may contain asbestos-containing materials ("ACM"), as disclosed by an asbestos survey prepared by Farmer Environmental Group, LLC dated March 1, 2017 (the "Survey"). Borrower shall, at Borrower's sole cost and expense, follow all recommendations in the Survey, as the same may be amended by subsequent surveys, regarding safety conditions for and maintenance of the ACM, including any recommendation to institute an operations and maintenance plan (the "O&M Plan"). While any portion of the Loan is outstanding, upon the request of Lender, at Borrower's sole cost and expense, Borrower shall conduct an updated asbestos survey of the Property. Each such survey shall be conducted by a consultant acceptable to Lender who shall determine the condition of the ACM and whether the O&M Plan should be revised or any other measures taken to ensure the continued safe condition of the ACM. Borrower shall deliver to Lender a copy of the each such survey and shall certify to Lender in writing, no later than thirty (30) days after Borrower's receipt of such survey, that Borrower has complied with all of the recommendations of the consultant contained in the survey.

#### Section 4.33 Notice to Lender.

If, at any time, Borrower becomes aware, or has reasonable cause to believe, that any Release or threatened Release of any Hazardous Material has occurred or will occur at the Property, or if Borrower identifies or otherwise becomes aware of any noncompliance or alleged non-compliance with any Environmental Requirement by Borrower or at the Property, any threatened or pending Environmental Claim related to the Property or any event or condition which could result in an Environmental Claim, Borrower shall notify Lender immediately in writing of such circumstance and shall include a full description of all relevant information. Borrower shall, upon receipt, promptly deliver to Lender a copy of any report, audit, summary or investigation, of any kind or character, whether prepared by or on behalf of Borrower or by any other Person, related to environmental conditions at the Property or the compliance status of the Property with respect to any Environmental Requirement.

Section 4.34 Site Assessments and Information.

If Lender shall ever have reason to believe that any Release or threatened Release of a Hazardous Material or any non-compliance with any Environmental Requirement has occurred with respect to the Property, or if any Environmental Claim is made or threatened with respect to the Property, or if an Event of Default (as defined in the Mortgage) occurs, or following the completion of any corrective action pursuant to Subsection (d) of Section 3, Borrower shall, within thirty (30) days of written request by Lender and at Borrower's expense, provide to Lender an environmental site assessment and compliance audit of the Property which addresses such conditions. Such environmental site assessment and compliance audit shall be performed to the reasonable satisfaction of Lender, in accordance with good environmental engineering practices and by a consulting firm reasonably acceptable to Lender. Each report shall be addressed to Lender. A copy of each report and all supporting documents shall be promptly furnished to Lender.

Section 4.35 Response to Releases, Non-Compliance and Environmental Claims.

Borrower shall, in compliance with all Environmental Requirements, promptly undertake and complete any and all investigations, testing, or abatement, clean up, remediation, response or other corrective action necessary or recommended to: (i) remove, remediate, clean up or abate any Release or threatened Release of any Hazardous Material at or from the Property; (ii) correct any non-compliance with any Environmental Requirement by Borrower or at the Property; (iii) address any unsafe or hazardous condition at the Property resulting from or related to any Hazardous Material; or (iv) make an appropriate response to any threatened or pending Environmental Claim related to Borrower or the Property. Any report or other document prepared in response to any of these events shall be addressed to Lender. A copy of any such report or other document (and all supporting documents) shall be promptly furnished to Lender. If requested by Lender, Borrower shall provide to Lender, within thirty (30) days of Lender's request, a bond, letter of credit or other financial assurance evidencing to Lender's satisfaction that all necessary funds are readily available to pay the costs and expenses of the required actions and to discharge any liens established against the Property.

Section 4.36 Lender's Rights.

Lender shall have the right, but not the obligation, without limitation of Lender's rights under the other Loan Documents, and at Borrower's sole risk and expense, to enter onto the Property and/or to take, or cause to be taken, such actions as Lender deems necessary or advisable to investigate, clean up, remediate or otherwise respond to, address or correct any of the issues addressed in this Agreement. Borrower shall reimburse Lender on demand for the costs of any such action. Lender agrees, however, that, except in the case of an emergency, Lender will take such action only after written notice to Borrower of the circumstances and the failure by Borrower, within a reasonable period of time following receipt of such notice, to commence or diligently pursue to completion the appropriate corrective action. Lender owes no duty of care to protect Borrower or any other Person against, or to inform Borrower or any other Person of, any Hazardous Material or other environmental condition affecting the Property.

Article V  
Negative Covenants.

Borrower covenants as of the date hereof and until such time as all Obligations shall be indefeasibly paid and performed in full, that:

Section 5.1 Conditional Sales.

Borrower shall not incorporate in the Improvements any property acquired under a conditional sales contract or lease or as to which the vendor retains title or a security interest, without the prior written consent of Lender.

Section 5.2 Changes to Plans and Specifications.

Borrower shall not make or permit any changes in the Plans and Specifications, including any such changes that alter, diminish or add to the work to be performed or change the design of the Improvements, without the prior written consent of Lender and under such reasonable conditions as Lender may establish. Lender's prior written consent shall not be required, however, as to any change order which (a) individually does not cause the fixed or guaranteed maximum price of the Construction Contract to be increased or decreased by more than One Hundred Thousand Dollars (\$100,000) and, when added to all previous change orders for which Lender's consent is not required hereunder, does not cause such price to be increased or decreased by more than Three Hundred Thousand Dollars (\$300,000) in the aggregate, (b) does not result in a material change to the design of the Improvements, and (c) has been approved in writing by the Architect and/or the Engineer, and any Governmental Authority, or other party whose approval is required. If, regardless of cost, any change in the Plans and Specifications requires the approval of Investor Limited Partner or any other party to any of the Loan Documents, Lender shall have the right to condition its consent upon receipt of evidence satisfactory to Lender that such party has approved such change.

Section 5.3 Insurance Policies and Bonds.

Borrower shall not do or permit to be done anything that would affect the coverage or indemnities provided for pursuant to the provisions of any insurance policy, performance bond, labor and material payment bond or any other bond given in connection with the Construction of the Improvements.

Section 5.4 Compliance with Environmental Requirements.

Borrower will not cause, commit, permit or allow to continue: (i) any non-compliance with any Environmental Requirement by Borrower, any tenant or any other Person, by or with respect to the Property or any use of or condition or activity at the Property; (ii) the generation, storage or use of any Hazardous Material at the Property, except for Hazardous Materials that are commonly legally used, stored or generated (and in such amounts commonly legally used, stored or generated) as a consequence of using the Property for its permitted business purposes, but only so long as the use, storage or generation of such Hazardous Materials is in full compliance with all Environmental Requirements; (iii) the treatment, disposal or unauthorized Release of any Hazardous Material at the Property in any manner; (iv) the installation of any above-ground or below-ground storage tanks or other containers containing Hazardous Materials at the Property; (v) any other activity which could create any unsafe or hazardous condition resulting from or related to Hazardous Materials at the Property; or (vi) the attachment of any environmental lien to the Property. Borrower acknowledges that Hazardous Materials may permanently and materially impair the value and use of the Property and shall perform all actions necessary to protect the fair market value of the Property from impairment as a result of Hazardous Materials.

Section 5.5 Commingling.

Borrower shall not commingle the funds and other assets of Borrower with those of any Affiliate or any other Person.

Section 5.6 Controlled Substances.

Without limiting the provisions of Section 4.1, Borrower shall not, and shall not suffer or permit a tenant under any Lease to violate any Laws affecting the Property, including the Controlled Substances Act, or which could otherwise result in the occurrence of an Event of Default under Section 6.24, including the commencement of any proceedings under the Civil Asset Forfeiture Reform Act. Upon learning of any conduct contrary to this Section, Borrower shall immediately take all actions reasonably expected under the circumstances to terminate any such use of the Property, including: (a) to give timely notice to an appropriate law enforcement agency of information that led Borrower to know such conduct had occurred, and (b) in a timely fashion to revoke or make a good faith attempt to revoke permission for those engaging in such conduct to use the Property or to take reasonable actions in consultation with a law enforcement agency to discourage or prevent the illegal use of the Property.

Section 5.7 Sanctions.

Borrower shall not, directly or indirectly, use the proceeds of the Loan, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person, to fund the activities of or business with any Person, or in any country or territory, that, at the time of such funding, is the subject of Sanctions, or in any other manner that will result in a violation by any Person (including any Person participating in the transaction being financed by the Loan, whether as underwriter, advisor, investor or otherwise) of Sanctions.

Section 5.8 Additional Debt.

Borrower shall not incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than (a) the Loan, (b) advances or trade debt or accrued expenses incurred in the ordinary course of business of operating the Property, (c) any Operating Expense Loans made by a General Partner or Limited Partner pursuant to the Partnership Agreement and (d) any Development Fee Note. No other debt may be secured by the Property, whether senior, subordinate or pari passu.

Article VI  
Events of Default.

The occurrence or happening, from time to time, of any one or more of the following shall constitute an event of default under this Agreement ("Event of Default"):

Section 6.1 Payment Default.

Borrower fails to pay any Obligation under this Agreement when due, whether on the scheduled due date or upon acceleration, maturity or otherwise and, except for regularly scheduled payments under the Note (for which a Notice shall not be required), such failure continues uncured for a period of five (5) days after Notice thereof from Lender to Borrower.

Section 6.2 Default Under Other Loan Documents.

An Event of Default (as defined therein) occurs under the Note or the Mortgage or any other Loan Document, or Borrower or Guarantor fails to promptly pay, perform, observe or comply with any term, obligation or agreement contained in any of the Loan Documents (within any applicable grace or cure period).

Section 6.3 Accuracy of Information; Representations and Warranties.

Any information contained in any financial statement, schedule, report or any other document delivered by Borrower, Guarantor or any other Person to Lender in connection with the Loan proves at any time not to be in all respects true and accurate, or Borrower, Guarantor or any other Person shall have failed to state any material fact or any fact necessary to make such information not misleading, or any representation or warranty contained in this Agreement or in any other Loan Document or other document, certificate or opinion delivered to Lender in connection with the Loan, proves at any time to be incorrect or misleading in any material respect either on the date when made or on the date when reaffirmed pursuant to the terms of this Agreement.

Section 6.4 Deposits.

Borrower fails to deposit funds with Lender, in the amount requested by Lender, pursuant to the provisions of Section 4.3 or Section 4.11, within ten (10) days from the effective date of a Notice from Lender requesting such deposit, or Borrower fails to deliver to Lender any Condemnation Awards or Insurance Proceeds within ten (10) days after Borrower's receipt thereof.

Section 6.5 Insurance Obligations.

Borrower fails to promptly perform or comply with any of the covenants contained in the Loan Documents with respect to maintaining insurance, including the covenants contained in Section 4.9; provided, however, to the extent any failure to perform or comply with any of the covenants contained in the Loan Documents with respect to maintaining insurance does not result in a lapse of coverage, Borrower shall have five (5) days to cure before any such failure is deemed an Event of Default.

Section 6.6 Other Obligations.

Borrower fails to promptly perform or comply with any of the Obligations set forth in this Agreement (other than those expressly described in other Sections of this Article), and such failure continues uncured for a period of thirty (30) days after Notice from Lender to Borrower, unless (a) such failure, by its nature, is not capable of being cured within such period, and (b) within such period, Borrower commences to cure such failure and thereafter diligently prosecutes the cure thereof, and (c) Borrower causes such failure to be cured no later than ninety (90) days after the date of such Notice from Lender.

Section 6.7 Progress of Construction.

Construction of the Improvements is abandoned or is discontinued for a period of more than thirty (30) consecutive days.

Section 6.8 Damage to Improvements.

The Improvements are substantially damaged or destroyed by fire or other casualty and Lender determines that the Improvements cannot be restored and completed in accordance with the terms and provisions of this Agreement and the Mortgage and has delivered Notice thereof to Borrower.

Section 6.9 Lapse of Permits or Approvals.

Any permit, license, certificate or approval that Borrower is required to obtain with respect to the construction, operation, development, leasing or maintenance of the Improvements or the Property lapses,

provided that such lapse would result in a material adverse impact to Borrower, the Improvements or the Property.

Section 6.10 Completion of Construction.

Completion of Construction does not occur in accordance with the Project Schedule, or Lender determines that Completion of Construction will not occur in accordance with the Project Schedule, and Lender has delivered Notice thereof to Borrower.

Section 6.11 Mechanic's Lien.

A lien for the performance of work or the supply of materials filed against the Property, or any stop notice served on Borrower, the General Contractor or Lender, remains unsatisfied or unbonded for a period of forty-five (45) days after the date of filing or service or as of any earlier date on which the lien claimant shall commence an enforcement action.

Section 6.12 Survey Matters.

Any Survey required by Lender during the period of construction shows any matter which in Lender's reasonable judgment would interfere with the Construction of the Improvements or the operation or use of the Property, and such matter is not removed within a period of thirty (30) days after Notice thereof by Lender to Borrower.

Section 6.13 General Contractor Default.

The General Contractor defaults under the Construction Contract in a manner which Lender deems to be material, and, unless otherwise agreed in writing by Lender, Borrower fails to exercise its rights and remedies under the Construction Contract with respect to such default within five (5) days of receiving Notice thereof from Lender to Borrower.

Section 6.14 Performance Enjoined or Prohibited.

Borrower is enjoined or prohibited from performing any of its obligations under any of the Loan Documents for a period of more than fifteen (15) consecutive days.

Section 6.15 Bankruptcy.

Borrower, any General Partner or any Guarantor files a bankruptcy petition or makes a general assignment for the benefit of creditors, or a bankruptcy petition is filed against Borrower, any General Partner or any Guarantor and such involuntary bankruptcy petition continues undismissed for a period of sixty (60) days after the filing thereof.

Section 6.16 Appointment of Receiver, Trustee, Liquidator.

Borrower, any General Partner or any Guarantor applies for or consents in writing to the appointment of a receiver, trustee or liquidator of Borrower, any General Partner, any Guarantor, the Property, or all or substantially all of the other assets of Borrower, any General Partner or any Guarantor, or an order, judgment or decree is entered by any court of competent jurisdiction on the application of a creditor appointing a receiver, trustee or liquidator of Borrower, any General Partner, any Guarantor, the Property, or all or substantially all of the other assets of Borrower, any General Partner or any Guarantor.



Section 6.17 Inability to Pay Debts.

Borrower, any general partner of Borrower or any Guarantor becomes unable or admits in writing its inability or fails generally to pay its debts as they become due.

Section 6.18 Judgment. One or more judgments for the payment of money in an aggregate amount in excess of \$50,000 shall be rendered against Borrower or any Guarantor, or any combination thereof and the same shall remain undischarged for a period of thirty (30) consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of Borrower or any Guarantor to enforce any such judgment.

Section 6.19 Dissolution; Change in Business Status.

Unless the written consent of Lender is previously obtained and except as expressly permitted under the Loan Documents, all or substantially all of the business assets of Borrower, any general partner of Borrower or any Guarantor are sold, Borrower, any general partner of Borrower or any Guarantor is dissolved, or there occurs any change in the form of business entity through which Borrower, any general partner of Borrower or any Guarantor presently conducts its business or any merger or consolidation involving Borrower, any general partner of Borrower or any Guarantor.

Section 6.20 Default Under Other Indebtedness.

Borrower or any Guarantor fails to pay any indebtedness (other than the Loan) owed by Borrower or such Guarantor to Lender when and as due and payable (whether by acceleration or otherwise), and such failure continues uncured for a period of five (5) days after Notice thereof from Lender to Borrower.

Section 6.21 Death; Disability.

Borrower or any Guarantor dies or becomes incapacitated, unless within ninety (90) days after such death or incapacity a substitute for such Borrower or Guarantor acceptable to Lender, in its sole and absolute discretion, agrees to assume and perform the obligations of such Borrower or Guarantor in connection with the Loan and the Property. In determining whether or not to approve any Person as a substitute Borrower or Guarantor, Lender may consider, among other things, the net worth and relevant business experience of such Person.

Section 6.22 Change in Controlling Interest.

Without the prior written consent of Lender (which consent may be conditioned, among other matters, on the issuance of a satisfactory endorsement to the title insurance policy insuring Lender's interest under the Mortgage), and except as expressly permitted by the Loan Documents, the controlling interest in Borrower ceases to be owned, directly or indirectly, by Highridge Costa Housing Partners, LLC, a Delaware limited liability company.

Section 6.23 Material Adverse Change.

In the reasonable opinion of Lender, and following written notice to Borrower, the prospect of payment or performance of all or any part of the Obligations has been impaired because of a material adverse change in the financial condition, results of operations, business or properties of Borrower, Guarantor or any other Person liable for the payment or performance of any of the Obligations.

Section 6.24 Forfeiture.

A judicial or nonjudicial forfeiture or seizure proceeding is commenced by a Governmental Authority and remains pending with respect to the Property or any part thereof, on the grounds that the Property or any part thereof had been used to commit or facilitate the commission of a criminal offense by any Person, including any tenant, pursuant to any Law, including under the Controlled Substances Act or the Civil Asset Forfeiture Reform Act, regardless of whether or not the Property or the Mortgage shall become subject to forfeiture or seizure in connection therewith.

Section 6.25 Dividend, Payment or Distribution.

Borrower makes a dividend, payment or distribution to any member, partner, or shareholder which is not permitted under this Agreement.

Section 6.26 Default Under Partnership Agreement.

A default of Borrower occurs under the Partnership Agreement.

Section 6.27 Tax Credit Covenants.

Borrower fails to comply with any Tax Credit Covenant; provided, however, that a failure under Section 4.31(i) and (j) will not be deemed an Event of Default if Borrower cures such failure within thirty (30) days of receiving Notice thereof from Lender.

Article VII  
Remedies on Default.

Section 7.1 Remedies on Default.

Upon the happening of any Event of Default, Lender shall have the right, in addition to any other rights or remedies available to Lender under the Mortgage or any of the other Loan Documents or under applicable Law, to exercise any one or more of the following rights and remedies:

(a) Lender may terminate its obligation to advance any further principal of the Loan pursuant to this Agreement by Notice to Borrower.

(b) Lender may accelerate all of Borrower's Obligations under the Loan Documents, whether or not matured and regardless of the adequacy of any other collateral securing the Loan, whereupon such Obligations shall become immediately due and payable, without notice of default, acceleration or intention to accelerate, presentment or demand for payment, protest or notice of nonpayment or dishonor, or notices or demands of any kind or character (all of which are hereby waived by Borrower).

(c) Lender may apply to any court of competent jurisdiction for, and obtain appointment without bond of, a receiver for the Property.

(d) Lender may set off the amounts due to Lender under the Loan Documents, whether or not matured and regardless of the adequacy of any other collateral securing the Loan, against any and all accounts, credits, money, securities or other property of Borrower now or hereafter on deposit with, held by or in the possession of Lender to the credit or for the account of Borrower, without notice to or the consent of Borrower.

(e) Lender may enter into possession of the Property and perform any and all work and labor necessary to complete the Construction of the Improvements (whether or not in accordance with the Plans and Specifications) and to employ watchmen to protect the Property and the Improvements. All sums expended by Lender for such purposes shall be deemed to have been advanced to Borrower under the Note and shall be secured by the Mortgage. For this purpose, Borrower hereby constitutes and appoints Lender its true and lawful attorney-in-fact with full power of substitution, which power is coupled with an interest and cannot be revoked, to complete the work in the name of Borrower, and hereby empowers said attorney or attorneys, in the name of Borrower or Lender:

(i) To use any funds of Borrower including any balance which may be held by Lender and any funds which may remain unadvanced hereunder for the purpose of completing the Construction of the Improvements, whether or not in the manner called for in the Plans and Specifications;

(ii) To make such additions and changes and corrections to the Plans and Specifications as shall be necessary or desirable in the judgment of Lender to complete the Construction of the Improvements;

(iii) To employ such contractors, subcontractors, agents, architects and inspectors as shall be necessary or desirable for said purpose;

(iv) To pay, settle or compromise all existing bills and claims which are or may be liens against the Property, or may be necessary or desirable for the completion of the work or the clearance of title to the Property;

(v) To execute all applications and certificates which may be required in the name of Borrower;

(vi) To enter into, enforce, modify or cancel Leases and to fix or modify Rents on such terms as Lender may consider proper;

(vii) To file for record, at Borrower's cost and expense and in Borrower's name, any notices of completion, notices of cessation of labor, or any other notices that Lender in its sole and absolute discretion may consider necessary or desirable to protect its security;

(viii) To prosecute and defend all actions or proceedings in connection with the Construction of the Improvements and to take such actions and to require such performance as Lender may deem necessary; and

(ix) To do any and every act with respect to the Construction of the Improvements which Borrower may do in its own behalf.

(f) Lender may exercise any and all other rights and remedies under this Agreement, the Loan Documents or at Law, equity or otherwise.

Without limitation of the foregoing, upon the occurrence of an actual or deemed entry of an order for relief with respect to Borrower under the Bankruptcy Code (Title 11 of the United States Code, as in effect from time to time), any obligation of Lender to make advances shall automatically terminate, and the unpaid principal amount of the Loan outstanding and all interest and other amounts payable hereunder and under the Note and other Loan Documents shall automatically become due and payable, in each case without further act of Lender.

Section 7.2 No Release or Waiver; Remedies Cumulative and Concurrent.

Borrower shall not be relieved of any Obligation by reason of the failure of Lender to comply with any request of Borrower or of any other Person to take action to foreclose on the Property under the Mortgage or otherwise to enforce any provision of the Loan Documents, or by reason of the release, regardless of consideration, of all or any part of the Property. No delay or omission of Lender to exercise any right, power or remedy accruing upon the happening of an Event of Default shall impair any such right, power or remedy or shall be construed to be a waiver of any such Event of Default or any acquiescence therein. No delay or omission on the part of Lender to exercise any option for acceleration of the maturity of the Obligations, or for foreclosure of the Mortgage following any Event of Default as aforesaid, or any other option granted to Lender hereunder in any one or more instances, or the acceptance by Lender of any partial payment on account of the Obligations shall constitute a waiver of any such Event of Default and each such option shall remain continuously in full force and effect. No remedy herein conferred upon or reserved to Lender is intended to be exclusive of any other remedies provided for in the Loan Documents, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder, or under the Loan Documents, or now or hereafter existing at Law or in equity or by statute. Every right, power and remedy given by the Loan Documents to Lender shall be concurrent and may be pursued separately, successively or together against Borrower or the Property or any part thereof, and every right, power and remedy given by the Loan Documents may be exercised from time to time as often as may be deemed expedient by Lender. All notice and cure periods provided in this Agreement or in any Loan Document shall run concurrently with any notice or cure periods provided by Law.

Section 7.3 Notice to Investor Limited Partner.

Lender agrees that it shall not complete a foreclosure sale of the Property or record a deed-in-lieu of foreclosure with respect to the Property (each, a “Foreclosure Remedy”) unless and until Investor Limited Partner has first been given thirty (30) days written notice of the Event(s) of Default, or the Unmatured Event(s) of Default, giving rise to Lender’s right to complete such Foreclosure Remedy, and Investor Limited Partner has failed, within such thirty (30) day period to cure such Event(s) of Default and/or Unmatured Event(s) of Default; provided, however, that Lender shall be entitled during such thirty (30) day period to continue to pursue all of its rights and remedies under the Loan Documents, including but not limited to acceleration of the Note (subject to any de-acceleration provisions specifically set forth in the Loan Documents), commencement and pursuit of foreclosure (but not completion of the foreclosure sale), any guaranty (subject to any notice and cure provisions contained therein), and/or any other Loan Document. In the event Lender has accelerated the Note and the Investor Limited Partner cures all Events of Default giving rise to such acceleration within the thirty (30) day cure period described above, such cure shall have the effect of de-accelerating the Note; provided, however, that such de-acceleration shall not waive or limit any of Lender’s rights to accelerate the Note or exercise any other remedies under the Loan Documents as to any future or continuing Events of Default. It is the express intent of the parties hereunder that Lender shall have the right to pursue all rights and remedies except completion of a Foreclosure Remedy without liability to Investor Limited Partner for failure to provide notice to Investor Limited Partner, and that Lender’s liability hereunder shall be expressly limited to actual damages to Investor Limited Partner directly caused by Lender’s completion of a Foreclosure Remedy without Investor Limited Partner receiving the notice and opportunity to cure described above. Lender’s failure to give any such notice for any reason shall not act to impair or waive any remedy or right of Lender under this Agreement or any other Loan Document. Unless expressly prohibited by Law, Investor Limited Partner agrees to record a “Request for Notice,” or similar appropriate document requesting notice of any foreclosure sale, in the Official Records of the County in which the Property is located, and in the event Lender has failed to sooner provide notice to Investor Limited partner, the receipt of such notice of

foreclosure sale shall be deemed to be notice to the Investor Limited Partner as contemplated hereunder. Lender shall give Investor Limited Partner notice at the address set forth below or such other address as Investor Limited Partner may instruct Lender in writing from time to time:

Bank of America, N.A.  
La Costa BC  
7700 El Camino Real  
CA0-222-02-02  
Carlsbad, CA 92009  
Attention: Stephanie Barrett  
Reference: El Sereno Senior Apartments

With a copy to:

Buchalter, a Professional Corporation  
1000 Wilshire Blvd., Suite 1500  
Los Angeles, CA 90017  
Attention: Michael A. Williamson, Esq.  
Matter No.: B0965-0331

#### Section 7.4 Replacement of General Partner to Cure Non-Monetary Default.

Lender acknowledges that there are certain non-monetary events which become Events of Default hereunder without any notice or right to cure (the “Uncurable Events of Default”), for example, an Uncurable Event of Default occurs if “any representation or warranty made or given in any of the Loan Documents proves to be false or misleading in any material respect.” Pursuant to Section 7.3 above, Lender has allowed Investor Limited Partner certain notice and cure rights before Lender can fully exercise certain of its rights and remedies under the Loan Documents. Lender agrees that for purposes of Investor Limited Partner’s notice and cure rights contained in Section 7.3 above, an Uncurable Event of Default shall be (a) curable by Investor Limited Partner’s removal and replacement of a General Partner in accordance with Section 7.5 below (subject to Lender’s right provided therein to approve the replacement of such General Partner) and (b) treated as any other non-monetary default, subject to the thirty (30) day notice and cure period provided to Investor Limited Partner in Section 7.3 above; provided, however, that (i) there shall be no other Events of Default (subject to applicable notice and right to cure periods) continuing; (ii) Investor Limited Partner shall have the right to remove and replace a General Partner pursuant to the terms of the Partnership Agreement, and (iii) Investor Limited Partner shall promptly pursue and diligently proceed to remove and replace a General Partner in accordance with Section 7.5 below. Nothing herein shall operate to (A) allow Borrower to cure an Uncurable Default (other than cure by the Investor Limited Partner by removal and replacement of a General Partner as provided above); (B) extend the time for Borrower to cure any Event of Default; (C) delay or limit Lender’s right or remedies hereunder or under any Loan Document (except as specifically provided therein), or (D) extend the notice and cure rights of Investor Limited Partner contained in Section 7.3 above.

#### Section 7.5 Allowed Transfers of Partnership Interest.

Notwithstanding anything herein or in any Loan Document to the contrary, Lender agrees that, subject to the terms and conditions set forth below, the following transfers of partnership interests shall be allowed transfers (each, an “Allowed Transfer”) and shall not constitute an Event of Default hereunder or under any Loan Document.

(a) Approved Transferee. For purposes hereof, “Approved Transferee” shall mean Investor Limited Partner, any “Approved Affiliate” of Investor Limited Partner, or Highridge Costa Housing Partners, LLC. For purposes hereof, an Approved Affiliate means any affiliated limited partnership in which (i) Investor Limited Partner is a general partner, or (ii) the entity which is the general partner of such Approved Affiliate is a partnership with Investor Limited Partner as its general partner, it being the intention of the parties that Investor Limited Partner be ultimately liable as a general partner for the obligations of the Approved Affiliate.

(b) Transfer of General Partner’s Interest. In the event that (i) any General Partner is in default under the Partnership Agreement; (ii) any General Partner withdraws from Borrower in violation of the Partnership Agreement, and/or (iii) an Event of Default or Unmatured Event of Default has occurred and is continuing hereunder, Investor Limited Partner may have rights under the Partnership Agreement to remove and replace such General Partner. Investor Limited Partner shall be allowed to remove and replace any such General Partner; provided, however, that (A) the replacement of any General Partner by an Approved Transferee shall be subject to the prior written approval of Lender, which approval shall not be unreasonably withheld or delayed, and (B) the replacement of any General Partner by anyone other than an Approved Transferee shall be subject to the prior written approval of Lender in its sole and absolute discretion, (C) the partnership interests of any such substitute general partner or partners shall be subject to Lender’s security interests pursuant to the terms of the Partnership Security Agreement, and (D) any such substitute general partner shall execute any and all documents, including security agreements and financing statements, as Lender may reasonably request in order to create, perfect, or continue such security interests.

(c) Transfer of Investor Limited Partner’s Interest. Investor Limited Partner may, without the consent of Lender, transfer all or any portion of its limited partnership interest to an Approved Transferee. Any transfer of all or any part of Investor Limited Partner’s limited partnership interest to anyone other than an Approved Transferee shall be subject to the prior written approval of Lender in its sole and absolute discretion.

Section 7.6 Transfer of Property Pursuant to Option. Lender hereby consents to the terms of that certain option granted by Borrower to Highridge Costa Housing, LLC, a Delaware limited liability company (the “Option Transferee”) pursuant to the terms of that certain Purchase Option Agreement dated as of even date herewith, among Borrower, and the Option Transferee, Bank of America, N.A., a national banking association, as investor limited partner, and Banc of America CDC Special Holding Company, Inc., a North Carolina corporation, as special limited partner (the “Option”). Borrower may transfer the Property to Option Transferee in accordance with the terms of the Option without the prior written consent of Lender, provided that Option Transferee shall take the Property subject to the Mortgage.

Article VIII  
Miscellaneous.

Section 8.1 Further Assurances; Authorization to File Documents.

At any time, and from time to time, upon request by Lender, Borrower will, at Borrower’s expense, (a) promptly correct any defect, error or omission in any Loan Document, (b) execute, acknowledge, deliver, procure, record or file such further instruments and do such further acts as Lender deems necessary, desirable or proper to carry out the purposes of the Loan Documents and to identify and subject to the liens and security interest of the Loan Documents any property intended to be covered thereby, including any renewals, additions, substitutions, replacements or appurtenances to the Property, (c) execute, acknowledge, deliver, procure, file or record any document or instrument Lender deems necessary.

necessary, desirable or proper to protect the liens or the security interest under the Loan Documents against the rights or interests of third persons, and (d) provide such certificates, documents, reports, information, affidavits and other instruments and do such further acts deemed necessary, desirable or proper by Lender to comply with the requirements of any Governmental Authority having jurisdiction over Lender. Upon any failure by Borrower to do so, Lender may make, execute and record any and all such instruments, certificates and other documents for and in the name of Borrower, all at the sole expense of Borrower, and Borrower hereby appoints Lender the agent and attorney-in-fact of Borrower to do so, this appointment being coupled with an interest and being irrevocable. Without limitation of the foregoing, Borrower irrevocably authorizes Lender at any time and from time to time to file any initial financing statements, amendments thereto and continuation statements deemed necessary or desirable by Lender to establish or maintain the validity, perfection and priority of the security interests granted in the Mortgage or hereunder, and Borrower ratifies any such filings made by Lender prior to the date hereof. In addition, at any time, and from time to time, upon request by Lender, Borrower will, at Borrower's expense, provide any and all further instruments, certificates and other documents as may, in the opinion of Lender, be necessary or desirable in order to verify Borrower's identity and background in a manner satisfactory to Lender.

Section 8.2     No Warranty by Lender.

By accepting or approving anything required to be observed, performed or fulfilled by Borrower or to be given to Lender pursuant to this Agreement, including any certificate, Survey, receipt, appraisal or insurance policy, Lender shall not be deemed to have warranted or represented the sufficiency, legality, effectiveness or legal effect of the same, or of any term, provision or condition thereof and any such acceptance or approval thereof shall not be or constitute any warranty or representation with respect thereto by Lender.

Section 8.3     Standard of Conduct of Lender.

Nothing contained in this Agreement or any other Loan Document shall limit the right of Lender to exercise its business judgment or to act, in the context of the granting or withholding of any advance or consent under this Agreement or any other Loan Document, in a subjective manner, whether or not objectively reasonable under the circumstances. Borrower and Lender intend by the foregoing to set forth and affirm their entire understanding with respect to the standard pursuant to which Lender's duties and obligations are to be judged and the parameters within which Lender's discretion may be exercised hereunder and under the other Loan Documents.

Section 8.4     No Partnership.

Nothing contained in this Agreement shall be construed in a manner to create any relationship between Borrower and Lender other than the relationship of borrower and lender and Borrower and Lender shall not be considered partners or co-venturers for any purpose on account of this Agreement.

Section 8.5     Severability.

In the event any one or more of the provisions of this Agreement or any of the other Loan Documents shall for any reason be held to be invalid, illegal or unenforceable, in whole or in part or in any other respect, or in the event any one or more of the provisions of any of the Loan Documents operates or would prospectively operate to invalidate this Agreement or any of the other Loan Documents, then and in either of those events, at the option of Lender, such provision or provisions only shall be deemed null and void and shall not affect the validity of the remaining Obligations, and the

remaining provisions of the Loan Documents shall remain operative and in full force and effect and shall in no way be affected, prejudiced or disturbed thereby.

Section 8.6 Authorized Persons and Authorized Signers.

Lender is authorized to rely upon the continuing authority of the Authorized Persons and Authorized Signers to bind Borrower as set forth in Borrower's Instruction Certificate. Such authorization may be changed only upon written Notice to Lender accompanied by evidence, reasonably satisfactory to Lender, of the authority of the Person giving such Notice. Such Notice shall be effective not sooner than five (5) Business Days (as defined in the Note) following receipt thereof by Lender.

Section 8.7 Notices.

All Notices required or which any party desires to give hereunder or under any other Loan Document shall be in writing and, unless otherwise specifically provided in such other Loan Document, shall be deemed sufficiently given or furnished if delivered by personal delivery, by nationally recognized overnight courier service or by certified United States mail, postage prepaid, addressed to the party to whom directed at the applicable address set forth below (unless changed by similar notice in writing given by the particular party whose address is to be changed) or by facsimile. Any Notice shall be deemed to have been given either at the time of personal delivery or, in the case of courier or mail, as of the date of first attempted delivery at the address and in the manner provided herein, or, in the case of facsimile, upon receipt; provided that service of a Notice required by any applicable statute shall be considered complete when the requirements of that statute are met. Notwithstanding the foregoing, no notice of change of address shall be effective except upon actual receipt. This Section shall not be construed in any way to affect or impair any waiver of notice or demand provided in this Agreement or in any other Loan Document or to require giving of notice or demand to or upon any Person in any situation or for any reason.

The address and fax number of Borrower are:

Borgfeld Housing, LP  
c/o Highridge Costa Housing  
330 W. Victoria Street  
Gardena, CA 90248  
Attention: Michael A. Costa  
Fax Number: (424) 258-2801



With a copy to:

Chernove & Associates, Inc.  
16027 Ventura Boulevard, Suite 660  
Encino, CA 91436  
Attention: Sheldon Chernove

And a copy to:

Borgfeld Housing GP, LLC  
c/o Casa Linda Development Corporation  
2010 Kessler Parkway  
Dallas, Texas 75208  
Attention: Sara Reidy

And a copy to:

Locke Lord LLP  
600 Congress Avenue, Suite 2200  
Austin, Texas 78701  
Attention: Cynthia Bast

The address of Lender is:

Bank of America, N.A.  
Loan Administration  
Mail Code #CA4-702-02-29  
2001 Clayton Road, 2<sup>nd</sup> Floor  
Concord, CA 94520  
Attention: Loan Administration Manager

With a copy to:

Buchalter, a Professional Corporation  
1000 Wilshire Blvd., Suite 1500  
Los Angeles, CA 90017  
Attention: Michael A. Williamson, Esq.  
Matter No.: B0965-0333

Section 8.8 Permitted Successors and Assigns; Disclosure of Information.

(a) Each and every one of the covenants, terms, provisions and conditions of this Agreement and the Loan Documents shall apply to, bind and inure to the benefit of Borrower, its successors and those assigns of Borrower consented to in writing by Lender, and shall apply to, bind and inure to the benefit of Lender and the endorsees, transferees, successors and assigns of Lender, and all Persons claiming under or through any of them.

(b) Borrower agrees not to transfer, assign, pledge or hypothecate any right or interest in any payment or advance due pursuant to this Agreement, or any of the other benefits of this Agreement, without the prior written consent of Lender, which consent may be withheld by Lender in its sole and absolute discretion. Any such transfer, assignment, pledge or hypothecation made or attempted by

Borrower without the prior written consent of Lender shall be void and of no effect. No consent by Lender to an assignment shall be deemed to be a waiver of the requirement of prior written consent by Lender with respect to each and every further assignment and as a condition precedent to the effectiveness of such assignment.

(c) Lender may sell or offer to sell the Loan or interests therein to one or more assignees or participants. Borrower shall execute, acknowledge and deliver any and all instruments reasonably requested by Lender in connection therewith, and to the extent, if any, specified in any such assignment or participation, such assignee(s) or participant(s) shall have the same rights and benefits with respect to the Loan Documents as such Person(s) would have if such Person(s) were Lender hereunder. Lender may disseminate any information it now has or hereafter obtains pertaining to the Loan, including any security for the Loan, any credit or other information on the Property (including environmental reports and assessments), Borrower, any of Borrower's principals or any Guarantor, to any actual or prospective assignee or participant, to Lender's Affiliates, including Merrill Lynch, Pierce, Fenner & Smith Incorporated, to any regulatory body having jurisdiction over Lender, to any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to Borrower and the Loan, or to any other party as necessary or appropriate in Lender's reasonable judgment.

(d) Lender may at any time pledge or assign all or any portion of its rights under the Loan Documents, which evidence and/or secure the Loan, including under the Note, to any of the twelve (12) Federal Reserve Banks organized under Section 4 of the Federal Reserve Act, 12 U.S.C. Section 341. No such pledge or assignment or enforcement thereof shall release Lender from its obligations under any of the Loan Documents, which evidence and/or secure the Loan.

#### Section 8.9 Modification; Waiver.

None of the terms or provisions of this Agreement may be changed, waived, modified, discharged or terminated except by instrument in writing executed by the party or parties against whom enforcement of the change, waiver, modification, discharge or termination is asserted. None of the terms or provisions of this Agreement shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same.

#### Section 8.10 Third Parties; Benefit.

All conditions to the obligation of Lender to make advances hereunder are imposed solely and exclusively for the benefit of Lender and its assigns and no other Persons shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that Lender will refuse to make advances in the absence of strict compliance with any or all thereof and no other Person shall, under any circumstances, be deemed to be the beneficiary of such conditions, any or all of which may be freely waived in whole or in part by Lender at any time in the sole and absolute exercise of its discretion. The terms and provisions of this Agreement are for the benefit of the parties hereto and, except as herein specifically provided, no other Person (other than Investor Limited Partner, with respect to its rights under Section 7.3 above) shall have any right or cause of action on account thereof.

#### Section 8.11 Rules of Construction.

The words "hereof," "herein," "hereunder," "hereto," and other words of similar import refer to this Agreement in its entirety. The terms "agree" and "agreements" mean and include "covenant" and "covenants." The words "include" and "including" shall be interpreted as if followed by the words "without limitation." The captions and headings contained in this Agreement are included herein for convenience of reference only and shall not be considered a part hereof and are not in any way intended

to define, limit or enlarge the terms hereof. All references (a) made in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders, (b) made in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well, (c) to the Loan Documents are to the same as extended, amended, restated, supplemented or otherwise modified from time to time unless expressly indicated otherwise, (d) to the Land, the Improvements or the Property shall mean all or any portion of each of the foregoing, respectively, and (e) to Articles, Sections and Schedules are to the respective Articles, Sections and Schedules contained in this Agreement unless expressly indicated otherwise.

Section 8.12 Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one and the same instrument.

Section 8.13 Signs; Publicity.

At Lender's request, but at the expense of Borrower, Borrower shall place a sign at a location on the Property satisfactory to Lender, which sign shall recite, among other things, that Lender is financing the Construction of the Improvements. Borrower expressly authorizes Lender to prepare and to furnish to the news media for publication from time to time news releases with respect to the Property, specifically to include releases detailing Lender's involvement with the financing of the Property.

Section 8.14 Governing Law.

This Agreement shall be governed by and construed, interpreted and enforced in accordance with the Laws of the State.

Section 8.15 Time of Essence.

Time shall be of the essence for each and every provision of this Agreement of which time is an element.

Section 8.16 Electronic Communications.

(a) Electronic Transmission of Data. Lender and Borrower agree that certain data related to the Loan (including confidential information, documents, applications and reports) may be transmitted electronically, including transmission over the internet. This data may be transmitted to, received from or circulated among agents and representatives of Borrower and/or Lender and their Affiliates and other Persons involved with the subject matter of this Agreement.

(b) Intentionally Omitted.

(c) Assumption of Risks; Indemnification. Borrower acknowledges and agrees that (i) there are risks associated with the use of electronic transmission and that Lender does not control the method of transmittal, the service providers or the operational or technical issues that could occur; (ii) Lender has no obligation or responsibility whatsoever and assumes no duty or obligation for the security, receipt or third party interception of any such electronic transmission of data, or any operational or technical issues that may occur with the electronic transmission of data; and (iii) Borrower will release, hold harmless and indemnify Lender from any claim, damage or loss, **including that arising in whole or part from**

**Lender's strict liability or sole, comparative or contributory negligence**, which is related to the electronic transmission of data.

Section 8.17 Forum.

Borrower hereby irrevocably submits generally and unconditionally for itself and in respect of its property to the non-exclusive jurisdiction of any state court or any United States federal court sitting in the State specified in the governing law section of this Agreement and to the non-exclusive jurisdiction of any state court or any United States federal court sitting in the state in which any of the Property is located, over any Dispute. Borrower hereby irrevocably waives, to the fullest extent permitted by Law, any objection that Borrower may now or hereafter have to the laying of venue in any such court and any claim that any such court is an inconvenient forum. Borrower hereby agrees and consents that, in addition to any methods of service of process provided for under applicable Law, all service of process in any such suit, action or proceeding in any state court or any United States federal court sitting in the State specified in the governing law section of this Agreement or in which any of the Property is located may be made by certified or registered mail, return receipt requested, directed to Borrower at its address for notice set forth in this Agreement, or at a subsequent address of which Lender received actual notice from Borrower in accordance with the notice section of this Agreement, and service so made shall be complete five (5) days after the same shall have been so mailed. Nothing herein shall affect the right of Lender to serve process in any manner permitted by Law or limit the right of Lender to bring proceedings against Borrower in any other court or jurisdiction.

Section 8.18 WAIVER OF JURY TRIAL.

**EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING OR ACTION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE NOTE, THE MORTGAGE, OR ANY OTHER DOCUMENT EXECUTED IN CONNECTION HEREWITH OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY).**

**EACH PARTY HERETO HEREBY:**

(a) CERTIFIES THAT NO REPRESENTATIVE, AGENT, OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER;

(b) ACKNOWLEDGES THAT THIS WAIVER AND THE PROVISIONS OF THIS SECTION WERE A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THE LOAN DOCUMENTS;

(c) CERTIFIES THAT THIS WAIVER IS KNOWINGLY, WILLINGLY, AND VOLUNTARILY MADE;

(d) AGREES AND UNDERSTANDS THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH PROCEEDING OR ACTION, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS OR ANY OTHER AGREEMENT, AND FURTHER AGREES THAT SUCH PARTY SHALL NOT SEEK TO

CONSOLIDATE ANY SUCH PROCEEDING OR ACTION WITH ANY OTHER PROCEEDING OR ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED;

(e) AGREES THAT BORROWER AND LENDER ARE EACH HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING OR ACTION AS CONCLUSIVE EVIDENCE OF THIS WAIVER OF JURY TRIAL; AND

(f) REPRESENTS AND WARRANTS THAT SUCH PARTY HAS BEEN REPRESENTED IN THE SIGNING OF THIS AGREEMENT AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

Section 8.19 USA Patriot Act Notice.

Lender hereby notifies Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Patriot Act"), Lender is required to obtain, verify and record information that identifies Borrower, which information includes the name and address of Borrower and other information that will allow Lender to identify Borrower in accordance with the Patriot Act. Borrower shall, promptly following a request by Lender, provide all documentation and other information that Lender requests in order to comply with its ongoing obligation under "know your customer" and anti-money laundering rules and regulations, including the Patriot Act.

Section 8.20 Entire Agreement.

The Loan Documents constitute the entire understanding and agreement between Borrower and Lender with respect to the transactions arising in connection with the Loan, and supersede all prior written or oral understandings and agreements between Borrower and Lender with respect to the matters addressed in the Loan Documents. In particular, and without limitation, the terms of any commitment by Lender to make the Loan are merged into the Loan Documents, as applicable. Except as incorporated in writing into the Loan Documents, there are no representations, understandings, stipulations, agreements or promises, oral or written, with respect to the matters addressed in the Loan Documents. If there is any conflict between the terms, conditions and provisions of this Agreement and those of any other instrument or agreement, including any other Loan Document, the terms, conditions and provisions of this Agreement shall prevail.

THE WRITTEN LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.

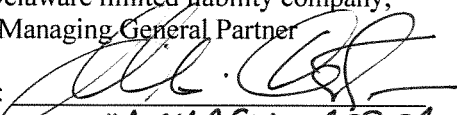
THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

IN WITNESS WHEREOF, Borrower and Lender have caused this Agreement to be executed as of the date first above written.

BORROWER:

BORGFELD HOUSING, LP,  
a Texas limited partnership

By: Highridge Costa Housing, LLC,  
a Delaware limited liability company,  
its Managing General Partner

By:   
Name: MICHAEL COSTA  
Title: CEO

By: Borgfeld Housing GP, LLC,  
a Texas limited liability company,  
its Administrative General Partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

IN WITNESS WHEREOF, Borrower and Lender have caused this Agreement to be executed as of the date first above written.

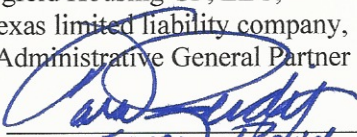
BORROWER:

BORGFELD HOUSING, LP,  
a Texas limited partnership

By: Highridge Costa Housing, LLC,  
a Delaware limited liability company,  
its Managing General Partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

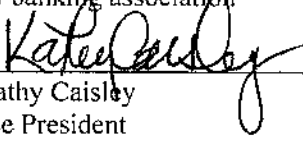
By: Borgfeld Housing GP, LLC,  
a Texas limited liability company,  
its Administrative General Partner

By:  \_\_\_\_\_  
Name: Sara Reidy  
Title: President

IN WITNESS WHEREOF, Borrower and Lender have caused this Agreement to be executed as of the date first above written.

LENDER:

BANK OF AMERICA, N.A.,  
a national banking association

By:   
Name: Kathy Caisley  
Title: Vice President



## Schedule 1

### Definitions

Unless the context otherwise specifies or requires, the following terms shall have the meanings herein specified, such definitions to be applicable equally to the singular and the plural forms of such terms and to all genders:

“Accounts Payable List” means a written summary from Borrower of all accounts paid and payable for soft costs associated with the applicable Draw Request identifying each such account and the invoice amount due, and shall be in form and substance acceptable to Lender. For purposes of this definition, “soft costs” includes costs and expenses of development other than those attributable to the construction of the physical Improvements, including but not limited to architect’s fees, consulting fees, management fees, abatement expenses, legal fees, testing and inspection fees, connection charges, and other similar fees and expenses.

“Administrative General Partner” means Borgfeld Housing GP, LLC, a Texas limited liability company.

“Additional Financial Reporting” means (a) Financial Statements and/or Property Schedules requested more frequently than quarterly and/or (b) such additional information, reports and statements respecting the Property and the Improvements, or the business operations and financial condition of each reporting party, as Lender may reasonably request.

“Affiliate” means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

“Architect” means Humphreys & Partners Architects, L.P., its successors and permitted assigns.

“Architect’s Contract” means the agreement dated August 19, 2016, by and between Borrower, as owner, and the Architect, as architect, and any other contract for architectural services relating to the Construction of the Improvements between Borrower and an architect, and approved in writing by Lender, as the same may be amended from time to time with the prior written approval of Lender.

“At” or “at,” when used with respect to the Property or any property adjacent to the Property, means “on, at, in, under, above or about.”

“Authorized Person” means any representative of Borrower duly designated by Borrower in accordance with Borrower’s Instruction Certificate, authorized to bind Borrower in providing Draw Requests and requesting disbursements of Loan proceeds.

“Authorized Signer” means any representative of Borrower duly designated by Borrower in accordance with Borrower’s Instruction Certificate, authorized to bind Borrower and to act for Borrower for all purposes in connection with the Loan, including providing Draw Requests and requesting disbursements of Loan proceeds, obtaining information pertaining to the Loan, requesting any action under the Loan Documents, providing any certificates, and appointing and changing any Authorized Persons.

“Banking Day” means any day that is not a Saturday, Sunday or banking holiday in the State.

“Basel Equity Contribution Requirement” means the contribution of capital by Borrower of cash or readily marketable assets or the payment of development costs out-of-pocket, as approved by Lender, equal to at least fifteen percent (15%) of the “as completed” value of the Property, or such other valuation of the Property as may be approved by Lender, as determined by reference to an appraisal in form and substance satisfactory to Lender.

“Borrower Remittance Instructions” means Borrower’s remittance instructions provided in the form attached hereto as Schedule 12.

“Borrower’s Deposit” shall have the meaning set forth in Section 4.3.

“Borrower’s Deposit Account” means an account established by Borrower with Lender pursuant to the terms of Section 4.3.

“Borrower’s Instruction Certificate” means a certificate provided by or on behalf of Borrower in the form attached hereto as Schedule 11, designating certain Authorized Persons and Authorized Signers as set forth therein.

“Budget” means the breakdown of hard costs and soft costs attached hereto as Schedule 3, as the same may be revised from time to time with the written approval of Lender.

“Carryover Allocation” means any carryover, continuation or finalization of the reservation or allocation effected pursuant to the Preliminary Reservation and any carryover allocation needed to preserve the Tax Credits with respect to the Project.

“Casualty” means any act or occurrence of any kind or nature that results in damage, loss or destruction to the Property.

“Checking Account” means account ending in 3665 established by Borrower with Lender.

“Civil Asset Forfeiture Reform Act” means the Civil Asset Forfeiture Reform Act of 2000 (18 U.S.C. Sections 983 et seq.), as amended from time to time, and any successor thereto.

“Claim” means any liability, suit, action, claim, demand, loss, expense, penalty, fine, judgment or other cost of any kind or nature whatsoever, including fees, costs and expenses of attorneys, consultants, contractors and experts.

“Closing Checklist” means that certain Closing Requirements and Checklist setting forth the conditions for closing the Loan and recording the Mortgage.

“Code” means the Internal Revenue Code of 1986, as amended from time to time.

“Company” shall have the meaning set forth in Section 3.18.

“Completion Date” means the earliest date specified in Section 3 of Schedule 4.

“Completion of Construction” means, with respect to the Construction of the Improvements or any component thereof, the satisfaction of all of the conditions of Section 5 of Schedule 5.

“Condemnation” means any taking of title to, use of, or any other interest in the Property under the exercise of the power of condemnation or eminent domain, whether temporarily or permanently, by

any Governmental Authority or by any other Person acting under or for the benefit of a Governmental Authority.

“Condemnation Awards” means any and all judgments, awards of damages (including severance and consequential damages), payments, proceeds, settlements, amounts paid for a taking in lieu of Condemnation, or other compensation heretofore or hereafter made, including interest thereon, and the right to receive the same, as a result of, or in connection with, any Condemnation or threatened Condemnation.

“Construction Contract” means the agreement dated April 10, 2017, by and between Borrower, as owner, and the General Contractor, as general contractor, and any other contract for the Construction of the Improvements between Borrower and a contractor, and approved in writing by Lender, as the same may be amended from time to time with the prior written approval of Lender.

“Construction Inspector” means a Person appointed or designated by Lender from time to time to inspect the progress of the Construction of the Improvements and the conformity of construction with the Plans and Specifications, the Budget and the Project Schedule, and to perform such other acts and duties for such other purposes as Lender may from time to time deem appropriate or as may be required by the terms of this Agreement.

“Construction Inspector Report” means a written report from the Construction Inspector due to Lender on a specified predetermined day of each month, and/or on a day prior to the disbursement of funds, acceptable to Lender.

“Construction of the Improvements” means the development of the Land and/or the construction of the Improvements.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “Controlling” and “Controlled” have meanings correlative thereto.

“Controlled Substances Act” means the Controlled Substances Act (21 U.S.C. Sections 801 et seq.), as amended from time to time, and any successor statute.

“Deferred Equity” is an additional amount that Borrower is required to pay toward the Total Costs Breakdown as set forth in Schedule 3, as of the date indicated. All installments of Deferred Equity shall be deposited directly with Lender into the Borrower’s Deposit Account.

“Dispute” means any controversy, claim or dispute between or among the parties to this Agreement, including any such controversy, claim or dispute arising out of or relating to (a) this Agreement, (b) any other Loan Document, (c) any related agreements or instruments, or (d) the transaction contemplated herein or therein (including any claim based on or arising from an alleged personal injury or business tort).

“Draw Request” has the meaning set forth in Section 2.3.

“Engineer” means HPCivil engineering, LLC, its successors and permitted assigns.

“Environmental Claim” means any complaint, action, notice, order, claim, investigation, judicial or administrative proceeding or action, or other similar claims or communications from any Person (defined below) involving or alleging any non-compliance with any Environmental Requirement (defined

below) or the existence of any unsafe or hazardous condition resulting from or related to the Release (defined below) of any Hazardous Material (defined below).

“Environmental Law” means any and all applicable federal, state or local Laws, statutes, ordinances, rules, regulations, orders, principles of common law, judgments, permits, licenses or other determinations of any judicial or regulatory authority, now or hereafter in effect, imposing liability, establishing standards of conduct or otherwise relating to protection of the environment (including natural resources, surface water, groundwater, soils, and indoor and ambient air), health and safety, land use matters or the presence, generation, treatment, storage, disposal, Release or threatened Release, transport or handling of any Hazardous Material.

“Environmental Matters” means (a) the presence, Release or threatened Release of any Hazardous Material at or from the Property, on or before the Transition Date; (b) the breach of any representation, warranty, covenant or agreement contained in this Agreement because of any act, omission, event or condition existing or occurring on or before the Transition Date; (c) any violation or potential violation, on or before the Transition Date, of any Environmental Requirement in effect on or before the Transition Date, regardless of whether any act, omission, event or circumstance giving rise to the violation constituted a violation at the time of the occurrence or inception of such act, omission, event or circumstance; (d) any Environmental Claim related to any, act, omission, event or condition existing or occurring in connection with the use or occupancy of the Property at any time on or before the Transition Date; (e) the filing or imposition of any environmental lien against the Property; and regardless of whether any matter set forth in the foregoing Subsections (a) through (e) was caused by Borrower, a prior owner of the Property, or any other Person whatsoever.

“Environmental Requirement” means any Environmental Law, or any other applicable agreement or restriction (including any condition or requirement imposed by any third party or insurance or surety company), now or hereafter in effect, which relates to any matters addressed by any Environmental Law, Hazardous Material, or the prevention of any unsafe or hazardous condition resulting from or related to the Release of any Hazardous Material.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“Event of Default” has the meaning set forth in Article VI.

“Expenses” means all fees, charges, costs and expenses of any nature whatsoever incurred at any time and from time to time (whether before or after an Event of Default) by Lender in making, funding, administering or modifying the Loan, in negotiating or entering into any “workout” of the Loan, or in exercising or enforcing any rights, powers and remedies provided in the Mortgage or any of the other Loan Documents, including attorneys’ fees, court costs, receiver’s fees, management fees and costs incurred in the repair, maintenance and operation of, or taking possession of, or selling, the Property.

“FEMA” means the Federal Emergency Management Agency or any successor agency.

“Financial Statements” means (a) for each reporting party other than an individual, a balance sheet, income statement, statements of cash flow and additional schedules as reasonably determined by Lender: amounts and sources of contingent liabilities, reconciliation of changes in equity, liquidity verification, cash flow projections, real estate schedules providing details on each individual real property in the reporting party’s portfolio, including raw land, land under development, construction in process and stabilized properties, any additional schedules as may be required by Lender, and unless Lender otherwise consents, consolidated and consolidating statements if the reporting party is a holding company or a parent of a subsidiary entity; and (b) for each reporting party who is an individual, a balance sheet,

statements of cash flow and additional schedules as reasonably determined by Lender: and amounts and sources of contingent liabilities, sources and uses of cash and liquidity verification, cash flow projections, real estate schedules providing details on each individual real property in the reporting party's portfolio, including raw land, land under development, any additional schedules as may be required by Lender, and unless Lender otherwise consents, Financial Statements for each entity owned or jointly owned by the reporting party. For purposes of this definition and any covenant requiring the delivery of Financial Statements, each party for whom Financial Statements are required is a "reporting party" and a specified period to which the required Financial Statements relate is a "reporting period".

"First Construction Draw" has the meaning set forth in Section 4.9(e).

"Flood Insurance Laws" means, collectively, (a) the National Flood Insurance Act of 1968, (b) the Flood Disaster Protection Act of 1973, and (c) the National Flood Insurance Reform Act of 1994, each as amended and together with any successor Law of such type.

"Force Majeure" means strikes, lock-outs, war, civil disturbance, natural disaster, acts of terrorism or acts of God which cause a delay in Borrower's performance of an Obligation related to the work of construction; provided, however, that (a) Borrower must give Notice to Lender within ten (10) days after the occurrence of an event which it believes to constitute Force Majeure, (b) in no event shall Force Majeure extend the time for the performance of an Obligation by more than ninety (90) days, and (c) circumstances that can be remedied or mitigated through the payment of money shall not constitute Force Majeure hereunder to the extent such remedy or mitigation is deemed reasonable by Lender in its sole discretion.

"General Contractor" means HCHP Contractors, L.P., its successors and permitted assigns.

"General Partners" collectively means Administrative General Partner and Managing General Partner.

"Governmental Authority" or "Governmental Authorities" means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

"Guarantor" means, individually or collectively, Highridge Costa Housing Partners, LLC and its heirs, personal representatives, successors and assigns.

"Guaranty" means the Guaranty Agreement of even date herewith executed by Guarantor for the benefit of Lender, as the same may from time to time be extended, amended, restated, supplemented or otherwise modified.

"Hazardous Material" means any substance, material, element, compound, waste or chemical, whether solid, liquid or gaseous, which is defined, listed, classified or otherwise regulated in any way under any Environmental Laws, or any other such substances or conditions (including mold and other mycotoxins or fungi) which may create any unsafe or hazardous condition or pose any threat to health and safety.

“Improvements” means all on-site and off-site improvements to the Land for a 136-unit affordable rental housing project to be constructed on the Land, together with all fixtures, tenant improvements, and appurtenances now or later to be located on the Land and/or in such improvements.

“Indemnified Party” means and includes Lender and Trustee, any Persons owned or controlled by, owning or controlling, or under common control or affiliated with Lender and/or Trustee, any participants in the Loan, the directors, officers, partners, employees and agents of Lender and/or such Persons, and the successors and assigns of each of the foregoing Persons.

“Insurance Proceeds” means the insurance claims under and the proceeds of any and all policies of insurance covering the Property or any part thereof, whether or not such insurance policies are required by Lender, including interest thereon and unearned premiums with respect to any insurance relating to the Property, in each case whether now or hereafter existing or arising.

“Investor Limited Partner” means Bank of America, N.A., a national banking association.

“Land” means the real property described in and encumbered by the Mortgage.

“Law” or “Laws” means, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law. With respect to Borrower and the Property, “Law” or “Laws” includes all Laws pertaining to the construction, sale, leasing or use of the Improvements and to access and facilities for handicapped or disabled persons, including and to the extent applicable, any building codes, the Controlled Substances Act, the Flood Insurance Laws, the Federal Architectural Barriers Act (42 U.S.C. § 4151 *et seq.*), the Fair Housing Amendments Act of 1988 (42 U.S.C. § 3601 *et seq.*), the Americans With Disabilities Act of 1990 (42 U.S.C. § 12101 *et seq.*), the Rehabilitation Act of 1973 (29 U.S.C. § 794), each as amended to date and further amended from time to time.

“Lease(s)” means all leases, subleases, license agreements and other occupancy or use agreements (whether oral or written), now or hereafter existing, which cover or relate to the Property or any part thereof, together with all options therefor, amendments thereto and renewals, modifications and guaranties thereof, including any cash, letter of credit or other security for payments and performance of the tenants’ obligations under the Leases, whether such security is to be held until the expiration of the terms of the Leases or applied to one or more of the installments of Rent coming due thereunder.

“Loan” means the loan from Lender to Borrower, the repayment obligations in connection with which are evidenced by the Note.

“Loan Amount” means Seventeen Million Nine Hundred Forty-Seven Thousand Two Hundred Ninety-Eight and No/100 Dollars (\$17,947,298.00).

“Loan Documents” means this Agreement, the Note, the Mortgage, the Environmental Agreement, the Guaranty, any Swap Contract, any application or reimbursement agreement executed in connection with any letter of credit, the Partnership Agreement and any and all other documents which Borrower, Guarantor or any other party or parties have executed and delivered, or may hereafter execute

and deliver, to evidence, secure or guarantee the Obligations, or any part thereof, as the same may from time to time be extended, amended, restated, supplemented or otherwise modified.

“Manager” means HCHP Property Management, LP, a California limited partnership or any other reputable and creditworthy property manager subject to the prior written approval of Lender, which written approval may be evidenced by e-mail confirmation, not to be unreasonably withheld, with a portfolio of properties comparable to the Property under active management.

“Managing General Partner” means Highridge Costa Housing LLC, a Delaware limited liability company.

“Mortgage” means the Deed of Trust, Assignment, Security Agreement and Fixture Filing of even date herewith given by Borrower to one or more trustees for the benefit of Lender to secure the Obligations, as the same may from time to time be extended, amended, restated, supplemented or otherwise modified.

“Net Monthly Cash Income” mean all actual cash income received from the Property during a calendar month less the actual operating expenses incurred for or attributable to the Property, excluding amounts payable under the Note.

“Net Proceeds” when used with respect to any Condemnation Awards or Insurance Proceeds, means the gross proceeds from any Condemnation or Casualty remaining after payment of all expenses, including attorneys’ fees, incurred in the collection of such gross proceeds.

“Note” means the Promissory Note of even date herewith, in an amount equal to the Loan Amount, made by Borrower to the order of Lender, as the same may from time to time be extended, amended, restated, supplemented or otherwise modified.

“Notice” means a notice, request, consent, demand or other communication given in accordance with the provisions of Section 8.7 of this Agreement.

“Obligations” means all present and future debts, obligations and liabilities of Borrower to Lender arising pursuant to, or on account of, the provisions of this Agreement, the Note or any of the other Loan Documents, including the obligations: (a) to pay all principal, interest, late charges, prepayment premiums (if any) and other amounts due at any time under the Note; (b) to pay all Expenses, indemnification payments, fees and other amounts due at any time under the Mortgage or any of the other Loan Documents, together with interest thereon as provided in the Mortgage or such Loan Document; (c) to pay and perform all obligations of Borrower (or its Affiliate) under any Swap Contract; and (d) to perform, observe and comply with all of the terms, covenants and conditions, expressed or implied, which Borrower is required to perform, observe or comply with pursuant to the terms of this Agreement, the Mortgage or any of the other Loan Documents.

“OFAC” means the Office of Foreign Assets Control of the United States Department of the Treasury.

“Partnership Agreement” means that certain Agreement of Limited Partnership of Borrower, dated as of even date herewith, entered into by General Partners, Investor Limited Partner and Banc of America CDC Special Holding Company, Inc., a North Carolina corporation, as special limited partner.

“Partnership Security Agreement” means an assignment of, and first priority security interest in, all of Borrower’s, Managing General Partner’s and Administrative General Partner’s respective interests,

in and to all of General Partner's rights as a general partner in Borrower including rights under the Partnership Agreement.

"Patriot Act" has the meaning set forth in Section 8.19.

"Permanent Lender" has the meaning set forth in the Recitals.

"Permanent Loan" has the meaning set forth in the Recitals.

"Permanent Loan Documents" means, collectively, the Loan Documents which do not terminate on the Conversion Date, together with any documents executed in connection with the Permanent Loan on or before the Conversion Date.

"Person" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

"Plans and Specifications" means any and all plans and specifications prepared in connection with the Construction of the Improvements and approved in writing by Lender, as the same may from time to time be amended with the prior written approval of Lender.

"Pre-Construction Certificate" means a properly completed and executed written certificate by Borrower to Lender in the form attached as an exhibit to the Closing Checklist, setting forth, among other things, the total Up-Front Equity expended or disbursed for the Property, together with the current Budget, the related AIA Documents G-702 and G-703 and such other schedules, affidavits, releases, waivers, statements, invoices, Accounts Payable Lists, bills, and such other documents, certificates and information as may be requested by Lender.

"Preliminary Reservation" means the preliminary reservation of low income housing tax credits dated August 29, 2016 issued by the TDHCA to Borrower under file number 16128.

"Project" means the Land and the Improvements.

"Project Schedule" means the schedule for commencement and completion of the Construction of the Improvements and the operation of the Project attached hereto as Schedule 4, as the same may be revised from time to time with the written approval of Lender.

"Property" means the Land, the Improvements and all other property constituting the "Property" as described and defined in the Mortgage, or subject to a right, lien or security interest to secure the Loan pursuant to any other Loan Document.

"Property Expenses" means the costs and expenses associated with the ownership, maintenance, development, operation and marketing of the Land and Improvements.

"Property Schedules" means any one or combination of the following, as reasonably determined by Lender based on (x) the Property type and (y) whether Completion of Construction has occurred: property operating statements, rent rolls, leasing status reports (including tenants' names, occupied tenant space, Lease terms, Rents, vacant space and proposed Rents), and operating budgets.

"Release" means the presence of or any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, seeping, migrating, dumping or disposing of any Hazardous



Material (including the abandonment or discarding of barrels, drums, tanks, and other similar containers, containing any Hazardous Material) into the indoor or outdoor environment.

“Rents” means all of the rents, royalties, issues, profits, revenues, earnings, income and other benefits of the Property or any part thereof, or arising from the use or enjoyment of the Property or any part thereof, including all such amounts paid under or arising from any of the Leases and all fees, charges, accounts or other payments for the use or occupancy of rooms or other public facilities within the Property or any part thereof.

“Sanctions” means any sanction administered or enforced by the United States Government (including without limitation, OFAC), the United Nations Security Council, the European Union, Her Majesty’s Treasury or other relevant sanctions authority.

“Special Flood Hazard Area” means an area identified as such by the Administrator of FEMA using FEMA’s Flood Insurance Rate Map or FEMA’s Flood Hazard Boundary Map.

“Start of Construction” means the earlier to occur of (a) the first placement of permanent construction of any Improvement on the Property, such as the pouring of a slab or footing, the installation of piles, the construction of columns, or any work beyond the stage of excavation, or (b) the placement of a manufactured (mobile) home, whether to be used for residential or business purposes, on a foundation on the Property.

“State” means the State of Texas.

“Survey” means a map or plat of survey of the Land which conforms with Lender’s survey requirements set forth in the Closing Checklist.

“Swap Contract” means any agreement, whether or not in writing, relating to any Swap Transaction, including, unless the context otherwise clearly requires, any agreement or contract that constitutes a “swap” within the meaning of Section 1a(47) of the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute, and CFTC Regulation 1.3(xxx), any form of master agreement (the “Master Agreement”) published by the International Swaps and Derivatives Association, Inc., and any other master agreement, entered into prior to the date hereof or any time after the date hereof, between Swap Counterparty and Borrower (or its Affiliate), together with any related schedules and confirmations, as the same may be amended, restated, replaced, supplemented, superseded or otherwise modified from time to time in accordance with its terms, relating to or governing any or all of the foregoing.

“Swap Counterparty” means Lender or an Affiliate of Lender, in its capacity as counterparty under any Swap Contract.

“Swap Transaction” means any transaction that is a rate swap, basis swap transaction, forward rate transaction, commodity swap, commodity option, equity or equity index swap or option, bond option, note or bill option, interest rate option, forward foreign exchange transaction, cap transaction, spot or floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, swap option, currency option, credit swap or default transaction, T-lock, or any other similar transaction (including any option to enter into any of the foregoing) or any combination of the foregoing, entered into prior to the date hereof or anytime after the date hereof between Swap Counterparty and Borrower (or its Affiliate) so long as a writing, such as a Swap Contract, evidences the parties’ intent that such obligations shall be secured by the Mortgage in connection with the Loan.

“Tax Credit Covenant” means each of the covenants contained in Section 4.31.

“Tax Credits” means the federal low income housing tax credits reserved or allocated by the TDHCA, acting under Section 42(h) of the Code pursuant to the Preliminary Reservation and any Carryover Allocation with respect to the Project.

“Taxes” means all taxes and assessments whether general or special, ordinary or extraordinary, or foreseen or unforeseen, which at any time may be assessed, levied, confirmed or imposed by any Governmental Authority or any communities facilities or other private district on Borrower or on any of its properties or assets or any part thereof or in respect of any of its franchises, businesses, income or profits.

“TDHCA” means the Texas Department of Housing and Community Affairs.

“Transition Date” means the earlier of the following two dates: (a) the date on which the indebtedness and obligations secured by the Mortgage have been paid, performed and finally discharged in full (without possibility for disgorgement), and the Mortgage has been released; or (b) the date on which the lien of the Mortgage is fully and finally foreclosed or a conveyance by deed in lieu of such foreclosure is fully and finally effective and possession of the Property has been given to and accepted by Lender or any other purchaser or grantee free of occupancy and claims to occupancy by Borrower and its heirs, devisees, representatives, successors and assigns; provided that, if such payment, performance, release, foreclosure or conveyance is challenged, in bankruptcy proceedings or otherwise, the Transition Date shall be deemed not to have occurred until such challenge is validly released, dismissed with prejudice or otherwise barred by Law from further assertion.

“Unmatured Event(s) of Default” means an event(s) that with notice or the passage of time, or both, could become an Event of Default.

“Up-Front Equity” has the meaning ascribed to such term in Section 2.4.

Schedule 2

DRAW REQUEST

[BORROWER'S LETTERHEAD]

TO: BANK OF AMERICA, N.A. ("Lender")

DATE \_\_\_\_\_

PROJECT NAME: El Sereno Senior Apartments

LOCATION: Cibolo, TX

BORROWER: Borgfeld Housing, LP

FOR PERIOD ENDING \_\_\_\_\_

In accordance with the Construction Loan Agreement in the amount of \$17,947,298.00 dated April [\_\_\_], 2017, between Borrower and Lender:

A. Borrower requests that \$\_\_\_\_\_ be advanced from Loan proceeds. The proceeds should be credited as set forth in Borrower Remittance Instructions.

B. *[Borrower requests Lender's consent to withdraw funds from the Borrower's Deposit Account held as **[Borrower's Deposit, Up-Front Equity or Deferred Equity]** in the amount of \$\_\_\_\_\_].*

- |    |                                     |         |
|----|-------------------------------------|---------|
| 1. | CURRENT DRAW REQUEST FOR HARD COSTS | \$_____ |
| 2. | CURRENT DRAW REQUEST FOR SOFT COSTS | \$_____ |
| 3. | TOTAL DRAW REQUEST                  | \$_____ |

AUTHORIZED PERSON/SIGNER:

\_\_\_\_\_ Dated: \_\_\_\_\_

Schedule 3

Budget

[ATTACHED]

**BUDGET FOR:****BORROWER:** BORGFELD HOUSING, LP**PROJECT DESCRIPTION:** EL SERENO APTS - 136 UNITS**Project Uses**

Description	Original Budget	Deferred? BLANK = "NO"
<b>LAND</b>		
Land Value	2,248,602.00	
<b>TOTAL LAND</b>	<b>2,248,602.00</b>	
<b>HARD COSTS</b>		
Demolition	50,000.00	
Site Work	986,807.00	
Off Site Improvements	205,000.00	
Construction - Residential	9,532,894.00	
General Requirements	602,338.00	
Contractor Overhead and Profit	830,868.00	
Sub Total Contracts	12,207,907.00	
Construction Contingency	610,395.00	
Personal Property - Development Budget	150,000.00	
<b>TOTAL HARD COSTS</b>	<b>12,968,302.00</b>	
<b>SOFT COSTS</b>		
Const Loan Inspection	16,500.00	
Const Loan Origination Fee	179,473.00	
Const Title & Recording	105,216.00	
Perm Loan Origination Fee	49,500.00	
Perm Conversion Fee - Deferred	10,000.00	YES
Perm Title & Recording - Deferred	10,000.00	YES
B of A Lender Legal	40,000.00	
T.Credit Application & Monitoring Fees	67,740.00	
Marketing	125,000.00	
Accounting	22,500.00	
Operating Reserve - Deferred	433,175.00	YES
Developer Fees	290,001.00	
Developer Fees - Deferred	2,030,003.00	YES
Insurance	45,163.00	
Taxes	93,497.00	
Legal	80,772.00	
Architect	420,000.00	
Survey & Engineering	143,600.00	
Appraisal & Mkt Study	23,630.00	
Soils Investigation	5,700.00	

Impact Fees	990,435.00	
Environmental Surveys	6,570.00	
Soft Cost Contingency	86,003.00	
Sub Total Misc	5,274,478.00	
Interest Reserve	835,532.00	
Sub Total Int Res	835,532.00	
Sub Total Op Def	0.00	
<b>TOTAL SOFT COSTS</b>	<b>6,110,010.00</b>	
<b>TOTAL PROJECT USES</b>	<b>21,326,914.00</b>	<b>2,483,178.00</b>

## Project Sources

Description INCLUDE APPLICABLE TIMING	Original Budget	Deferred/ Unavailable?
Loan Funds	17,947,298.00	
SUB-TOTAL LOAN PROCEEDS	17,947,298.00	
ILP at Closing	896,438.00	
Completion/Coverion - Deferred	2,483,178.00	YES
<b>SUB-TOTAL EQUITY/OTHER</b>	<b>3,379,616.00</b>	
<b>TOTAL PROJECT SOURCES</b>	<b>21,326,914.00</b>	<b>2,483,178.00</b>

Schedule 4

Project Schedule

1. Commencement.

Subject to Force Majeure, Borrower shall cause Construction of the Improvements to commence no later than fifteen (15) days after the date hereof.

2. Intentionally Omitted.

3. Completion of Construction of All Improvements.

Subject to Force Majeure, Borrower shall cause Completion of Construction of all of the Improvements to occur no later than August 1, 2018.

4. Outside Date for Completion of Construction.

Regardless of the existence or non-existence or occurrence or non-occurrence of Force Majeure, in no event shall Completion of Construction of the Improvements occur later than the date of the maturity of the Loan.

5. Project Leasing.

Borrower shall cause Units in the Project to be occupied by third-party residential tenants, in compliance with all applicable Laws and restrictions applicable to the Land, in accordance with the following:

90% of Units	December 1, 2018
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## Schedule 5

### Additional Terms Regarding Advances

The conditions precedent to closing the Loan, recording the Mortgage and making the first advance are set forth in the Closing Checklist. Subsequent advances of the Loan shall be subject to the following additional terms and conditions:

1. Advances Under the Budget.

Subject to the satisfaction of all closing and disbursement conditions set forth above, Lender shall make disbursements of the Loan based on the Budget. From each line item within the Budget, Lender shall disburse Loan funds in an amount not to exceed the total amount shown in the Budget for that line item, taking into account all prior disbursements, retention requirements, and any reallocation of funds to which Lender has consented in writing.

2. Intentionally Omitted.

3. Additional Items Required for Each Advance.

Lender shall not be obligated to make an advance of Loan proceeds until and unless the following additional items shall have been received and approved by Lender, as and to the extent required by Lender, prior to the date of the advance:

(a) A notice of title continuation or an endorsement to the title insurance policy with respect to the Land theretofore delivered to Lender, showing that since the last preceding advance, there has been no change in the status of title and no other exception not theretofore approved by Lender, which endorsement shall have the effect of advancing the effective date of the policy to the date of the advance then being made and increasing the coverage of the policy by an amount equal to the advance then being made, if the policy does not by its terms provide automatically for such an increase.

(b) Interim acknowledgments of payment and waivers and releases of liens from all Persons who have furnished labor, materials and/or services in the Construction of the Improvements, covering work performed, materials supplied and services rendered through the date of the last preceding advance as required by Lender.

(c) Soil compaction test reports, bearing capacity test reports and concrete test reports.

(d) A foundation Survey and such other current Surveys as Lender may reasonably request, in each instance disclosing no violation, encroachment or other variance from applicable set-backs or other restrictions unless approved in writing by Lender.

(e) Evidence that the Improvements have not been materially damaged by fire or other Casualty unless Lender shall have received Insurance Proceeds, or satisfactory assurance that it will receive such proceeds in a timely manner pursuant to Section 4.10, sufficient in the judgment of Lender to effect a satisfactory restoration and completion of the Improvements in accordance with the terms of the Mortgage and this Agreement.

(f) Evidence that all work requiring inspection by any Governmental Authority having or claiming jurisdiction has been duly inspected and approved by such authority and by any rating or inspection organization, bureau, association or office having or claiming jurisdiction.



(g) Evidence, including the Construction Inspector Report, that all work completed at the time of the application for an advance has been performed in a good and workmanlike manner, that all materials and fixtures usually furnished and installed at that stage of construction have been so furnished and installed, that the Improvements can be completed in accordance with the Project Schedule, and that the balance of the Loan proceeds then held by Lender and available for advance pursuant to the terms of this Agreement, together with other funds which Lender determines to be available to Borrower for such purpose, are and will be sufficient to pay the cost of such completion.

4. Conditions Precedent to All Advances.

Lender shall not be obligated to make an advance of Loan proceeds unless the following additional conditions shall have been satisfied or waived in writing by Lender as of the date of each advance:

(a) No lien for the performance of work or supplying of labor, materials or services shall have been filed against the Land and remain unsatisfied or unbonded.

(b) No condition or situation shall exist at the Land which, in the reasonable determination of Lender, constitutes a danger to or impairment of the Property or presents a danger or hazard to the public.

(c) The representations and warranties made in Article III shall be true and correct on and as of the date of the advance with the same effect as if made on such date.

(d) All terms and conditions of the Loan Documents required to be met as of the date of the applicable advance shall have been met to the satisfaction of Lender.

(e) No Event of Default shall have occurred and be continuing.

(f) Lender shall have received all due diligence materials it deems necessary with respect to verifying Borrower's identity and background information in a manner satisfactory to Lender.

5. Advances for Hard Costs; Hard Cost Contingency.

Lender shall make periodic advances for hard costs as construction progresses. Each advance shall be equal to Borrower's total costs as reflected in the applicable Draw Request, net of retainage in the amount of 10%. Lender shall not be obligated to make the final advance of the Loan for hard costs in the amount of 10% of all hard cost line items in the Budget unless the following additional conditions shall have been satisfied, to the extent required by Lender:

(a) The Construction Inspector and the Architect and/or the Engineer shall have certified to Lender that construction has been completed in a good and workmanlike manner, in accordance with applicable requirements of all Governmental Authorities and substantially in accordance with the Plans and Specifications;

(b) To the extent required by applicable Governmental Authorities for the use and occupancy of the Improvements, certificates of occupancy and other applicable permits and releases shall have been issued with respect to the Improvements and copies thereof have been furnished to Lender;

(c) Lender shall have received a satisfactory as-built Survey showing the location of the Improvements;

(d) Lender shall have received a satisfactory final affidavit from the General Contractor and full and complete releases of lien from the General Contractor and each subcontractor of and supplier to the General Contractor with respect to work performed and/on materials supplied in the Construction of the Improvements;

(e) If requested by Lender, Lender shall have received a satisfactory set of as-built plans and specifications for the Improvements;

(f) A valid notice of completion shall have been recorded and not less than forty-one (41) days have lapsed since the filing date of said notice;

(g) Lender shall have received a satisfactory endorsement to its title insurance policy; and

(h) All other terms and conditions of this Agreement and the other Loan Documents required to be met as of the date of the final advance of the Loan for hard costs shall have been met to the satisfaction of Lender.

Lender may advance those portions of the Loan shown on the Budget as “Hard Cost Contingency” (if any) on a pro rata basis over the construction period according to the following percentages of the Improvements which have been completed (only if shown as expended with all supporting documentation and information and as shown in the report of the Construction Inspector submitted in connection with such advance) at the time of any advance of such Hard Cost Contingency portion: (i) no more than twenty-five percent (25%) may be advanced until the Improvements are twenty-five percent (25%) complete, (ii) no more than fifty percent (50%) may be advanced until the Improvements are fifty percent (50%) complete, (iii) no more than seventy-five percent (75%) may be advanced until the Improvements are seventy-five percent (75%) complete, and (iv) no more than one hundred percent (100%) may be advanced until the Improvements are fully complete.

6. Intentionally Omitted.

7. Intentionally Omitted.

8. Advances for Soft Costs.

Lender shall make periodic advances for soft costs, each in the amount requested in the applicable Draw Request, without retainage. Borrower shall be required to submit to Lender, an Accounts Payable List for any advances for soft costs.

9. Advances for Interest.

Lender shall make periodic advances to pay interest as and when it becomes due. Borrower hereby irrevocably authorizes Lender to make any interest payment on Borrower’s behalf by debiting the interest reserve in the amount of the payment and applying the debited amount to accrued and unpaid interest on the Loan.

10. Advances for Developer’s Fees.

Advances for developer’s fees will be made in an aggregate amount not to exceed \$2,320,004. No advance will be made for the developer’s fees if an Event of Default exists and is continuing under the Loan Documents. Advances for developer’s fees set forth in the Budget will be made in strict accordance with the following schedule:

(a) \$290,001 upon closing of the Loan; and

(b) \$292,843 upon Borrower's satisfaction of all conditions precedent set forth in Section 2.6(b) for conversion of the Loan to the Permanent Loan.

11. Intentionally Omitted.

12. Instructions for Funding Advances.

Subject to Lender's right to advance Loan proceeds as provided in this Agreement, Lender is authorized to make advances as set forth in the Borrower Remittance Instructions. Such authorization may be changed only upon written Notice to Lender accompanied by evidence, reasonably satisfactory to Lender, of the authority of the Person giving such Notice. Such Notice shall be effective not sooner than five (5) Business Days (as defined in the Note) following receipt thereof by Lender.

## Schedule 6

### Leasing and Tenant Matters

#### 1. Representations and Warranties of Borrower Regarding Leases.

Borrower represents and warrants that Borrower has delivered to Lender Borrower's standard form of tenant lease and an accurate and complete rent roll for the Property, and no Lease or guaranty contains any option or right of first refusal to purchase all or any portion of the Property or any present or future interest therein.

#### 2. Covenants of Borrower Regarding Leases and Rents.

Borrower covenants that Borrower (a) will observe and perform all of the obligations imposed upon the landlord in the Leases and will not do or permit to be done anything to impair the security thereof; (b) will use its best efforts to enforce or secure, or cause to be enforced or secured, the performance of each and every obligation and undertaking of the respective tenants under the Leases and will appear in and defend, at Borrower's sole cost and expense, any action or proceeding arising under, or in any manner connected with, the Leases; (c) will not collect any of the Rents in advance of the time when the same become due under the terms of the Leases; (d) will not discount any future accruing Rents; (e) without the prior written consent of Lender, will not execute any assignment of the Leases or the Rents; (f) will execute and deliver, at the request of Lender, all such assignments of the Leases and Rents in favor of Lender as Lender may from time to time require; and (g) will not, and will not suffer or permit a tenant under any Lease to violate any Laws affecting the Property, including the Controlled Substances Act, or which could otherwise result in the occurrence of an Event of Default under Section 6.24, including the commencement of any proceedings under the Civil Asset Forfeiture Reform Act.

#### 3. Residential Leasing Guidelines.

Borrower shall not enter into any Lease of space in the Improvements unless approved or deemed approved by Lender and Permanent Lender prior to execution. Borrower's standard form of tenant lease, and any revisions thereto, must have the prior written approval of Lender and Permanent Lender. Lender shall be "deemed" to have approved any Lease that: (a) is on the standard form lease approved by Lender with no deviations except as approved by Lender; (b) is entered into in the ordinary course of business with a bona fide unrelated third party tenant, and Borrower, acting in good faith and exercising due diligence, has determined that the tenant is financially capable of performing its obligations under the Lease; (c) does not affect more than one (1) residential unit within the Improvements and is for a minimum term of six (6) months and a maximum term of twelve (12) months, unless otherwise agreed in writing by Lender; (d) with respect to any rent-restricted unit, is with a tenant who qualifies as a low-income family for purposes of meeting the requirements for obtaining Tax Credits; (e) meets the standards required by Section 42 of the Code; (f) meets the requirements of Investor Limited Partner; and (g) conforms to the Project Schedule. If requested by Lender, Borrower shall provide to Lender a correct and complete copy of each existing and future Lease, including any exhibits, and any guaranty(ies) thereof, within seven (7) days after Lender's request (for existing Leases) or seven (7) days after execution (for future Leases).

#### 4. Intentionally Omitted.

#### 5. Delivery of Leasing Information and Documents.

From time to time upon Lender's request, Borrower shall promptly deliver to Lender (a) complete executed originals of each Lease, including any exhibits thereto and any guaranty(ies) thereof, (b) a

complete rent roll of the Property in such detail as Lender may require, together with such operating statements and leasing schedules and reports as Lender may require, and (c) such other information regarding tenants and prospective tenants and other leasing information as Lender may request.

Schedule 7

BORROWER'S  
CONVERSION CERTIFICATE  
(Combined Construction and Permanent Mortgage Loans)

This Conversion Certificate (this "Certificate") is made on \_\_\_\_\_ by BORGFELD HOUSING, LP, a Texas limited partnership, having an office at c/o Highridge Costa Housing, 330 W. Victoria Street, Gardena, CA 90248 (the "Borrower") for the benefit of BANK OF AMERICA, N.A., a national banking association (together with its successors and assigns, the "Lender").

RECITALS:

A. Lender has made a loan to Borrower in the original principal amount of \$17,947,298 (the "Mortgage Loan") which Mortgage Loan is evidenced by a Promissory Note dated as of April [ ], 2017 (the "Note"), and is secured, among other things, by a first priority mortgage, deed of trust or deed to secure debt of even date with the Note (the "Instrument") encumbering the property described therein (the "Mortgaged Property").

B. Lender has also made a permanent loan to Borrower in the original principal amount of \$4,950,000 (the "Permanent Loan") which Permanent Loan is evidenced by a promissory note dated as of \_\_\_\_\_ (the "Multifamily Note") and is secured, among other things, by a mortgage (the "Multifamily Mortgage") to secure debt of even date with the Multifamily Note encumbering the property described therein (collectively, the Multifamily Note and Multifamily Mortgage, and related documents are known as the "Permanent Loan Documents").

C. As a condition to making the Mortgage Loan, Lender required Borrower to enter into a Construction Loan Agreement dated as of even date with the Note by and between Borrower and Lender (the "Construction Loan Agreement").

D. Borrower is obligated to make the Conversion Certificate with respect to the Mortgage Loan pursuant to the provisions of the Construction Loan Agreement.

CERTIFICATE:

1. Defined Terms. All capitalized terms not defined in this Certificate shall have the meanings ascribed to them in the Construction Loan Agreement.

2. Representations and Warranties. Borrower hereby makes for the benefit of Lender and its successor and assigns, and as of the date hereof, each of the representations, warranties and covenants set forth in the Construction Loan Agreement, and hereby further represents, warrants and covenants to Lender and its successors and assigns, as of the date hereof that:

(a) Modifications. Since the closing date of the Mortgage Loan, the terms of the Note, the Instrument, and other Mortgage Loan documents, and any Permanent Loan Documents have not been impaired, waived, altered or modified in any material respect, except pursuant to the written agreements between Borrower and Lender.

(b) Condition of Property. The Mortgaged Property is (a) free and clear of any damage that would materially and adversely affect its value as security for the Mortgage Loan and (b) to Borrower's knowledge, all building systems contained therein are in good working order so as not to materially and adversely affect its value as security for the Mortgage Loan.

(c) Environmental Report. Borrower has furnished to Lender a Phase I environmental site assessment of the Mortgaged Property in connection with or subsequent to the origination of the Mortgage Loan (the "Environmental Report"). Borrower has no knowledge of any material and adverse environmental condition or circumstance affecting the Mortgaged Property which is not disclosed in such Environmental Report. Any environmental condition or circumstance disclosed in such Environmental Report either has been fully remediated or is not material. No action has been taken by Borrower, or to its knowledge, any other person, that would subject the Mortgaged Property to liability pursuant to applicable environmental laws, rules, or regulations and Borrower has not received any notice from any governmental authority or other person of any failure under any applicable environmental laws, rules or regulations with respect to the Mortgaged Property.

(d) No Holdbacks. The proceeds of the Mortgage Loan have been fully disbursed and there is no obligation for future advances with respect thereto.

(e) Fair Market Value. Either: (a) to Borrower's knowledge based upon an appraisal obtained in connection with the origination of the Mortgage Loan, the original principal balance of the Mortgage Loan is equal to no more than 80% of the fair market value, at the date hereof, of the real property interest securing the Mortgage Loan; provided that for purposes hereof, the fair market value of the real property interest must first be reduced by (x) the amount of any lien on the real property interest that is senior to the Mortgage Loan and (y) a proportionate amount of any lien that is in parity with the Mortgage Loan; or (b) substantially all the proceeds of such Mortgage Loan were used to acquire, improve or protect the real property which served as the only security for such Mortgage Loan (other than a recourse feature or other third party credit enhancement within the meaning of Treasury Regulations Section 1.860G-2(a)(1)(ii)).

(f) Advancement of Funds by Lender; Tax Credit Advances. No advance of funds that has not been repaid prior to the date hereof has been made by Lender for the payment of any principal and/or interest payment required, after the date hereof, to be paid with respect to the Mortgage Loan. Other than with respect to principal and/or interest payable under the Mortgage Loan or any bridge loan made to Borrower by Lender, no portion of the Mortgage Loan has been advanced to Borrower for the payment of any principal and/or interest required to be paid by Borrower with respect to any other loan. Either (i) all of the tax credit equity contributions have been fully funded by the tax credit investor prior to the date hereof, or (ii) as of the date hereof, the failure to fully fund such tax credit equity contributions has not triggered a

default under any other obligation that could result in a lien against the Mortgaged Property or render Borrower insolvent and the Mortgaged Property continues to qualify to receive the tax credits. To the extent the Mortgaged Property has any units for which tax credits are sought pursuant to Section 42 of the Internal Revenue Code, those units have been placed in service, within the meaning of such Section 42 of the Internal Revenue Code and either (1) a true and correct copy of IRS Form 8609 issued to the Borrower has been provided to the Lender, or (2) evidence has been provided to the Lender that the Borrower has filed with the requisite agency all documents required for such agency to issue a true and correct copy of IRS Form 8609.

(g) No Mechanics' Liens. The Mortgaged Property is free and clear of any and all mechanics' and materialmen's liens that are prior or equal to the lien of the Instrument, and no rights are outstanding that under law could give rise to any such lien that would be prior or equal to the lien of the Instrument except, in each case, for liens insured against by the Title Policy (as defined below).

(h) Improvements; No Encroachments. To Borrower's knowledge, all of the material improvements on the Mortgaged Property which were considered in determining the appraised value of the Mortgaged Property lay wholly within the boundaries and building restriction lines of such property, except for encroachments that are insured against by the Title Policy or that do not materially and adversely affect the value of such Mortgaged Property, and no improvements on adjoining properties materially encroached upon such Mortgaged Property so as to materially and adversely affect the value of such Mortgaged Property, except those encroachments that are insured against by the Title Policy.

(i) Licenses and Permits. Borrower is in possession of all material licenses, permits and franchises required by applicable law for the ownership and operation of the Mortgaged Property as it is now operated.

(j) Conversion Conditions. All of the following conditions (the "Conversion Conditions") have been met with respect to the Mortgage Loan:

(i) Borrower has provided to Lender prior to the date hereof all of the documents and other items required to be delivered to Lender pursuant to the Construction Loan Documents and the Permanent Loan Documents (unless waived by the Lender in writing) and any other items requested by Lender in connection with the conversion of the Mortgage Loan.

(ii) Borrower has paid or has made arrangements to pay to Lender, on the same day as the delivery of this Certificate the conversion fee and term loan origination fee due to Lender pursuant to the terms of the Construction Loan Documents and any and all title charges and fees associated with the title insurance company's issuance of the title insurance policy with respect to the Multifamily Mortgage.

(iii) Borrower has provided to Lender digital photographs of the Mortgaged Property taken after completion of construction.



(iv) Borrower has provided to Lender prior to the date hereof all of the following documents which documents are in material compliance with the Loan Documents and in form and substance satisfactory to Lender:

(1) Evidence of zoning compliance (including parking) for the Mortgaged Property, which evidence may be in the form of a building permit and a certificate of occupancy (or their equivalents) if the building authority and the zoning authority are the same;

(2) True and correct copies of an unconditional certificate of occupancy form the appropriate governmental authority empowered to exercise jurisdiction over the Mortgaged Property and/or each unit, as applicable, or if such jurisdiction does not issue certificates of occupancy or an equivalent thereto, evidence that the Mortgaged Property has passed all inspections and received all approvals which are conditions precedent to occupancy of the Mortgaged Property;

(3) Evidence that all public utilities necessary for operation of the Mortgaged Property are connected and available for use;

(4) An as-built survey;

(5) An endorsement to the Title Policy or, in the event such original endorsement has not been issued, an original binder or actual title commitment or a copy thereof, with the original endorsement to follow within 180 days of the Conversion Date insuring Lender's first lien subject only to Permitted Encumbrances and, unless otherwise agreed to in writing by Lender, not listing the Construction Loan Documents as an exception;

(6) Updated certificates of good standing from the applicable governmental authority (if issued by such an authority) for Borrower, each general partner or managing member, as applicable of Borrower, any key principal of Borrower and any guarantor or indemnitor, and, to the extent such documents were modified since the closing date of the Mortgage Loan, updated organizational documents for Borrower, each general partner or managing member, as applicable of the Borrower, any key principal of Borrower and any guarantor or indemnitor;

(7) Evidence of property insurance and other insurance required by the Instrument;

(8) Architect's certificate regarding completion, certifying that the improvements at the Mortgaged Property have been completed (i) in a good and workmanlike manner and substantially in accordance with the approved plans and specifications, and (ii) in compliance with all applicable requirements of all governmental authorities having jurisdiction over the Mortgaged Property;

(9) Evidence of the existence of applicable tax abatements or payments in lieu of taxes (PILOTs); and

(10) An executed assignment of management agreement with respect to the managing agent agreement for the Mortgaged Property, in form satisfactory to Lender.

(v) Borrower has provided Lender with a certified rent roll for each of the three (3) consecutive, full calendar months immediately preceding the month in which this Certificate is executed (the “Stabilization Period”), each certified by Borrower as true, correct and complete, demonstrating that during each month of the Stabilization Period, the actual physical and economic occupancy of the residential units at the Mortgaged Property under Acceptable Leases (as defined below) was no less than ninety percent (90%) (the rent rolls for the second and third months of the Stabilization Period must be dated 30 days and 60 days, respectively, from the date of the rent roll for the first month of the Stabilization Period). Borrower hereby represents and warrants that there has been no material adverse change in the information contained in the rent rolls since the respective dates of such rent rolls.

(vi) The Mortgaged Property has produced an average monthly Net Operating Income (as defined below) (taking into account any partial prepayment of the Mortgage Loan occurring in connection with conversion to the permanent phase) during the three months of the Stabilization Period (provided that the actual Net Operating Income for the last calendar month of the Stabilization Period shall not be lower than the average Net Operating Income during the Stabilization Period) which (A) produces a debt service coverage ratio equal to or higher than the Minimum Debt Coverage Ratio, and (B) supports a principal balance of the Mortgage Loan on the date hereof equal to or greater than the Stabilized Loan Amount as defined below.

“Acceptable Leases” means written lease agreements on a customary residential lease form, with tenants other than employees of Borrower or any property manager for the Mortgaged Property or any affiliate of the Borrower or such property manager, providing for initial lease terms of not less than six (6) months nor more than two (2) years, complying with all applicable laws.

“Adjusted Operating Expenses” means the Operating Expenses, as determined and adjusted by the Lender, including, without limitation, adjustment to (i) correspond to assumptions made by the Lender in underwriting the Mortgage Loan to the extent such assumptions are more conservative than actually realized, and (ii) any periodic or seasonal changes in Operating Expenses (including not yet incurred and re-leasing expenses) occurring outside of the Stabilization Period.

“Adjusted Operating Revenues” means the Operating Revenues, as determined and adjusted by the Lender, including, without limitation, the following adjustments: (i) adjustments to correspond to assumptions made by Lender in underwriting the Mortgage Loan to the extent such assumptions were more conservative than revenues actually realized, (ii) adjustment to include any periodic or seasonal changes in Operating Revenues occurring outside the Stabilization Period, and (iii) adjustments to Operating Revenues to exclude amounts attributable to occupancy in excess of the economic vacancy assumption for the Mortgaged Property determined by Lender. Rents used in calculating Adjusted Operating Revenues will include only rents collected pursuant to Acceptable Leases and may not include premiums (excess rent above

typical rent for a standard unit with a standard term lease) derived from corporate units (units rented to business entities), furnished units, short term leases or similar factors.

“Annual Debt Service Constant” means the constant annual percentage necessary to fully amortize the Mortgage Loan in level monthly annuity payments over the amortization period described in the Note at the permanent phase interest rate (when expressed as a percentage, the Annual Debt Service Constant must be carried out to at least six decimal places).

“Minimum Debt Coverage Ratio” is a debt service coverage ratio of not less than 1.15 to 1.00.

“Net Operating Income” is the excess of the Adjusted Operating Revenue over Adjusted Operating Expenses.

“Operating Expenses” are all reasonable and necessary expenses of operating the Mortgaged Property in the ordinary course of business which are actually incurred by Borrower (appropriately pro-rated for any expenses that, although actually incurred in a particular period, also relate to other periods) and which are directly associated with and fairly allocable to the Mortgaged Property for the applicable period, including, without limitation, ad valorem real estate taxes and assessments, insurance premiums and regularly scheduled tax and insurance impounds paid with respect to the Mortgage Loan (without taking any such payment or expense into account more than once), deposits to replacement reserves, maintenance costs, management fees determined by Lender (not including out-of-pocket cost reimbursements required under the applicable management agreement in such limitation), accounting, legal, and other professional fees, fees relating to environmental audits, wages, salaries, and personnel expenses, but excluding payments of principal and interest on the Note, capital expenditures, any of the foregoing expenses which are paid from deposits to cash reserves previously included as Operating Expenses, and any payment or expense for which Borrower was or is to be reimbursed from proceeds of the Mortgage Loan or insurance or by any third party. Operating Expenses shall not include federal, state or local income taxes, corporate overhead or fees or legal and other professional fees unrelated to the operation of the Mortgaged Property.

“Operating Revenues” means all cash receipts of Borrower from operation of the Mortgaged Property or otherwise arising in respect of the Mortgaged Property which are properly allocable to the Mortgaged Property for the applicable period, including receipts from leases and parking agreements, concession fees and charges and other miscellaneous operating revenues, proceeds from rental or business interruption insurance, withdrawals from cash reserves (except to the extent any operating expenses paid therewith are excluded from Operating Expenses), but excluding security deposits and earnest money deposits until they are forfeited by the depositor, advance rentals until they are earned, and proceeds from a sale or other disposition.

“Stabilized Loan Amount” is the amount achieved by dividing (x) by (y), where (x) is the quotient obtained by dividing the Net Operating Income of the Property by the Minimum Debt Coverage Ratio, and (y) is the Annual Debt Service Constant or, expressed as a formula:

$$x = (\text{Net Operating$$

$$\text{Stabilized Loan Amount} = \frac{\text{Income} \div \text{Minimum Debt Service Coverage Ratio}}{y = \text{Annual Debt Service Constant}}$$

(k) Disbursement of Permanent Loan. Borrower acknowledges and agrees that the date of disbursement of the Permanent Loan under the Permanent Loan Documents is the Conversion Date.

3. Cooperation. Borrower shall provide Lender, or cause to be provided to Lender, all documents and other evidence reasonably requested by Lender in order to verify the compliance of the Mortgaged Property and the Mortgage Loan with the Conversion Conditions.

4. Breach. It is hereby acknowledged that if there is a breach of any of the representations and warranties made in this Certificate, such breach shall constitute an Event of Default under the Construction Loan Agreement.

5. First Payment Under Multifamily Note. It is agreed that payment of principal and interest for each Interest Accrual Period as that term is defined in the Multifamily Note shall be due and payable commencing on the 1<sup>st</sup> day of the second calendar month after the calendar month in which disbursement is first made, unless disbursement of principal is made on the first day of the calendar month in which case such payment will commence on the 1st day of the calendar month immediately succeeding the month in which disbursement is first made, and continuing on each Scheduled Payment Date as that term is defined in the Multifamily Note thereafter.

[Signatures on the following page]

IN WITNESS WHEREOF, Borrower has caused this Certificate to be executed by its duly authorized officer as of the date first above written.

**BORROWER:**

**BORGFELD HOUSING, LP,**  
a Texas limited partnership

By: Highridge Costa Housing, LLC,  
a Delaware limited liability company,  
its Managing General Partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: Borgfeld Housing GP, LLC,  
a Texas limited liability company,  
its Administrative General Partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## Schedule 8

### Swap Contracts

1. Swap Documentation. Within the timeframes required by Lender and Swap Counterparty, Borrower shall deliver to Swap Counterparty the following documents and other items, executed and acknowledged as appropriate, all in form and substance satisfactory to Lender and Swap Counterparty: (a) Master Agreement in the form published by the International Swaps and Derivatives Association, Inc. and related schedule in the form agreed upon between Borrower (or its Affiliate) and Swap Counterparty; (b) a confirmation under the foregoing, if applicable; (c) the Guaranty; (d) if Borrower (or its Affiliate) is anything other than a natural person, evidence of due authorization to enter into transactions under the foregoing Swap Contract with Swap Counterparty, together with evidence of due authorization and execution of any Swap Contract; and such other title endorsements, documents, instruments and agreements as Lender and Swap Counterparty may require to evidence satisfaction of the conditions set forth in this Section, including a swap endorsement to Lender's title insurance policy in form and substance satisfactory to Lender.

2. Conveyance and Security Interest. To secure Borrower's Obligations, Borrower hereby transfers, assigns and transfers to Lender, and grants to Lender a security interest in, all of Borrower's right, title and interest, but not its obligations, duties or liabilities for any breach, in, under and to the Swap Contract, any and all amounts received by Borrower in connection therewith or to which Borrower is entitled thereunder, and all proceeds of the foregoing. All amounts payable to Borrower under the Swap Contract shall be paid to Lender and shall be applied to pay interest or other amounts under the Loan.

3. Interest Reserve. Borrower and Lender acknowledge that the amount of the interest reserve line item in the Budget was calculated based on the assumptions that Borrower (or its Affiliate) would obtain the Swap Contract and would timely pay and perform its Obligations under the Swap Contract in the future. On the terms and subject to the provisions of this Agreement governing advances of Loan proceeds, Lender will make advances from interest reserve for periodic payments under the Swap Contract as and when they become due. Borrower hereby irrevocably authorizes Lender to make any payment under the Swap Contract by debiting the interest reserve in the amount of the payment and applying the debited amount to the Swap Contract. Lender will disburse the amount of any payment under a Swap Contract into the Checking Account defined and designated below. Notwithstanding the foregoing, Lender shall have no obligation to make any advance for any payment which becomes due under a Swap Contract following an Event of Default.

4. Cross-Default. It shall be an Event of Default under this Agreement if any Event of Default occurs as defined under any Swap Contract as to which Borrower (or its Affiliate) is the Defaulting Party, or if any Termination Event occurs under any Swap Contract as to which Borrower (or its Affiliate) is an Affected Party. As used in this Section, the terms "Defaulting Party," "Termination Event" and "Affected Party" have the meanings ascribed to them in the Swap Contract.

5. Remedies; Cure Rights. In addition to any and all other remedies to which Lender and Swap Counterparty are entitled at Law or in equity, Swap Counterparty shall have the right, to the extent so provided in any Swap Contract or any Master Agreement relating thereto, (a) to declare an event of default, termination event or other similar event thereunder and to designate an Early Termination Date as defined under the Master Agreement, and (b) to determine net termination amounts in accordance with the Swap Contract and to setoff amounts between Swap Contracts. Lender shall have the right at any time (but shall have no obligation) to take in its name or in the name of Borrower (or its Affiliate) such action as Lender may at any time determine to be necessary or advisable to cure any default under any Swap Contract or to protect the rights of Borrower (or its Affiliate) or Swap Counterparty thereunder;

provided, however, that before the occurrence of an Event of Default under this Agreement, Lender shall give prior written notice to Borrower before taking any such action. For this purpose, Borrower hereby constitutes Lender its true and lawful attorney-in-fact with full power of substitution, which power of attorney is coupled with an interest and irrevocable, to exercise, at the election of Lender, any and all rights and remedies of Borrower (or its Affiliate) under the Swap Contract, including making any payments thereunder and consummating any transactions contemplated thereby, and to take any action that Lender may deem proper in order to collect, assert or enforce any claim, right or title, in and to the Swap Contract hereby assigned and conveyed, and generally to take any and all such action in relation thereto as Lender shall deem advisable. Lender shall not incur any liability if any action so taken by Lender or on its behalf shall prove to be inadequate or invalid. Borrower expressly understands and agrees that Lender is not hereby assuming any duties or obligations of Borrower (or its Affiliate) to make payments to Swap Counterparty under any Swap Contract or under any other Loan Document. Such payment duties and obligations remain the responsibility of Borrower (or its Affiliate) notwithstanding any language in this Agreement.

6. Timing of Interest Rate Periods. At all times when any Swap Contract is in effect, Borrower shall elect Interest Periods of one (1) month in duration for all LIBOR Rate Principal. As used herein, the terms “Interest Period” and “LIBOR Rate Principal” have the meanings ascribed to them in the Note. Borrower shall time its rate elections under the Note so that each Interest Period for LIBOR Rate Principal ends on a day when a payment is due from either counterparty under any Swap Contract.

7. Automatic Deduction and Credit.

(a) At all times when any Swap Contract is in effect, Borrower shall maintain the Checking Account in good standing with Lender. Borrower hereby grants to Lender and Swap Counterparty a security interest in the Checking Account, and any other accounts and deposit accounts from which Borrower may from time to time authorize Lender to debit payments due on the Loan and the Swap Contracts. Borrower is granting this security interest to Lender and Swap Counterparty for the purpose of securing the Obligations.

(b) At all times when any Swap Contract is in effect, all monthly payments owed by Borrower under the Note will be automatically deducted on their due dates from the Checking Account. Lender is hereby authorized to apply the amounts so debited to Borrower’s obligations under the Loan. Notwithstanding the foregoing, Lender will not automatically deduct the principal payment at maturity from the Checking Account.

(c) At all times when any Swap Contract is in effect, all payments owed by Borrower (or its Affiliate) under any Swap Contract will be automatically deducted on their due dates from the Checking Account. The preceding sentence includes Borrower’s authorization for Lender to debit from the Checking Account any monetary obligation owed by Borrower (or its Affiliate) to Swap Counterparty following any Early Termination Date, as defined under the Master Agreement. Swap Counterparty is hereby authorized to apply the amounts so debited to the obligations of Borrower (or its Affiliate) under the applicable Swap Contract.

(d) Lender will debit the Checking Account on the dates the foregoing payments become due; provided, however, that if a due date does not fall on a Banking Day, Lender will debit the Checking Account on the first Banking Day following such due date.

(e) Borrower shall maintain sufficient funds on the dates when Lender enters debits authorized by this Agreement. If there are insufficient funds in the Checking Account on any date when Lender enters any debit authorized by this Agreement, without limiting Lender’s other remedies in such an event, the debit will be reversed in whole or in part, in Lender’s sole and absolute discretion, and such

amount not debited shall be deemed to be unpaid and shall be immediately due and payable in accordance with the terms of the Note and/or the Swap Contract, as applicable.

(f) So long as there is no Event of Default existing under this Agreement or any Swap Contract, Lender will automatically credit the Checking Account for payments owed by Swap Counterparty under the Swap Contract. Lender will credit the Checking Account on the dates the foregoing payments become due; provided, however, that if a due date does not fall on a Banking Day, Lender will credit the Checking Account on the first Banking Day following such due date.



Schedule 9

Specific Exceptions to Borrower's Environmental Representations and Warranties

None.

Schedule 10  
Intentionally Omitted



**BORROWER'S INSTRUCTION CERTIFICATE**

**Certificate of Authority and Specimen Signatures**

I, **[NAME OF AUTHORIZED SIGNATORY]**, the authorized signatory of Borgfeld Housing, LP, a Texas limited partnership, ("Borrower"), which said Borrower has executed a certain Construction Loan Agreement dated April [\_\_\_], 2017, with Bank of America, N.A. ("**Bank**"), in the stated original principal amount of \$17,947,298 ("Loan Agreement"), and **do hereby certify** that the Authorized Signers and Authorized Persons whose names, titles and signatures appear in Sections I and II below are authorized to act on behalf of Borrower for the specified purposes indicated below.

**Section I – General Authorization.**

Any one (1) of the Authorized Signers, indicated below, is authorized to act on behalf of Borrower for all purposes including, but not limited to obtaining any and all information pertaining to the Loan, requesting any action under the Loan Documents, providing any certificates on behalf of Borrower, and appointing and changing Authorized Persons below. All persons who signed the Loan Agreement on behalf of Borrower must sign in this Section I acknowledging their agreement with the below listed Authorized Persons.

Name	Title	Signature

**Section II – Draw Requests for Loan Proceeds Authorization.**

Any one (1) of the Authorized Persons, indicated below, is authorized to act on behalf of Borrower in providing Draw Requests and requesting disbursements of Loan proceeds.

Name	Title	Signature

**I further certify** that the specimen signatures set forth above in Sections I and II, next to each name are the true and genuine signatures of such persons, and Bank may conclusively rely on the accuracy, genuineness, and good faith of any written, oral or electronic communication from any of the above listed individuals, for the specified purposes so stated. Bank may rely on this Borrower's Instruction Certificate until written notice is received by Bank, revoking the authorizations in Sections I and II and/or replacing this with a new Borrower's Instruction Certificate, and such notice shall be effective not sooner than five (5) Business Days following receipt thereof.

\_\_\_\_\_  
(Printed Name of Authorizing Party)                      (Signature)                      (Title)                      (Phone Number)

Schedule 12



Effective Date: \_\_\_\_\_, 20\_\_\_\_  
Page \_\_\_\_\_ of \_\_\_\_\_

Borrower Remittance Instructions

I, [NAME OF AUTHORIZED SIGNATORY], the authorized signatory of Borgfeld Housing, LP, a Texas limited partnership ("Borrower"), which said Borrower has executed a certain Construction Loan Agreement dated April [\_\_\_], 2017, with Bank of America, N.A. ("Bank"), in the stated original principal amount of \$17,947,298 ("Loan Agreement"), do hereby certify that the following represents Borrower's remittance instructions.

Bank is hereby instructed to use the following instructions as directed by Borrower for either disbursement of Loan proceeds or debit of Loan payments:

Account Name: \_\_\_\_\_  
Account Number: \_\_\_\_\_  
Bank Name: \_\_\_\_\_  
City & State: \_\_\_\_\_  
ABA #: \_\_\_\_\_

Check one of the following:

\_\_\_\_\_ I certify that the above-referenced account is owned by Borrower.

\_\_\_\_\_ I certify that the above-referenced account is owned by a title company, escrow company or other closing agent directed and authorized by Borrower to receive Loan proceeds.

\_\_\_\_\_ I certify that the above-referenced account ("Account") is owned by Borrower. Borrower agrees that scheduled **payments on the Loan will be deducted automatically** on their due dates from the Account. Bank is hereby authorized to apply the amounts so debited to Borrower's obligations under the Loan. Notwithstanding the foregoing, Bank will not automatically deduct the principal payment at maturity from the Account. Bank will debit the Account on the dates the payments become due. If a due date does not fall on a Business Day, Bank will debit the Account on the first Business Day following the due date. If there are insufficient funds in the Account on the date Bank enters any debit authorized hereby, without limiting Bank's other remedies in such an event, the debit will be reversed in whole or in part, in Bank's sole and absolute discretion, and such amount not debited shall be deemed to be unpaid and shall be immediately due and payable in accordance with the terms of the Loan.

Bank may rely on these instructions until written notice is received by Bank, revoking these instructions and/or replacing this with new Borrower Remittance Instructions, and such notice shall be effective not sooner than five (5) Business Days following receipt thereof.

[Signature page follows.]

BORGFELD HOUSING, LP,  
a Texas limited partnership

By: Highridge Costa Housing, LLC,  
a Delaware limited liability company,  
its Managing General Partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: Borgfeld Housing GP, LLC,  
a Texas limited liability company,  
its Administrative General Partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Schedule 13

Form of Compliance Certificate

Highridge Costa Housing Partners, LLC  
330 W. Victoria Street  
Gardena, CA 90248  
Attention: Michael A. Costa  
Fax Number: (424) 258-2801

\_\_\_\_\_, 20\_\_

COMPLIANCE CERTIFICATE

Bank of America, N.A.,  
Loan Administration  
Mail Code #CA4-702-02-29  
2001 Clayton Road, 2<sup>nd</sup> Floor  
Concord, CA 94520  
Attention: Loan Administration Manager

Re: \$17,947,298 loan to Borgfeld Housing, LP

Ladies and Gentlemen:

This annual compliance certificate (this “Certificate”) is being delivered pursuant to that certain Construction Loan Agreement dated April [\_\_], 2017, by and among the Borgfeld Housing, LP, a Texas limited partnership (“Borrower”) and Bank of America, N.A. (“Lender”) (as the same may have been or may hereafter be amended, modified, supplemented, restated and replaced from time to time, the “Loan Agreement”) and that certain Guaranty Agreement dated as of April [\_\_], 2017, by the undersigned (“Guarantor”) in favor of Lender (as the same may have been or may hereafter be amended, modified, supplemented, restated and replaced from time to time, the “Guaranty Agreement”). All capitalized terms used but not defined in this Certificate shall have the meanings given in the Loan Agreement and Guaranty Agreement, as applicable.

This Certificate is being given for the fiscal year ending on \_\_\_\_\_. Guarantor hereby certifies to Lender as follows:

1. All representations and warranties made by Guarantor in the Loan Documents (and any certificate, document or financial or any other statement furnished pursuant to or in connection therewith) remain true and correct in all material respects on and as of the date of this Certificate with the same force and effect as if made on and as of such date.

2. No material adverse change has occurred since the date of the last compliance certificate delivered to Lender pursuant to the Loan Agreement and the Guaranty Agreement, and no event or condition that could reasonably be expected to have a material adverse change in the financial condition of Guarantor, has occurred, except as set forth below [if blank, there are no exceptions]:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. The Unencumbered Liquid Assets of Guarantor was \_\_\_\_\_, determined as follows:
- (a) \_\_\_\_\_ Dollars (\$ \_\_\_\_\_); plus
  - (b) \_\_\_\_\_ United States Treasury or governmental agency obligations which constitute full faith and credit of the United States of America; plus
  - (c) \_\_\_\_\_ commercial paper rated P-1 or A1 by Moody's or S&P, respectively; plus
  - (d) \_\_\_\_\_ medium- and long-term securities rated investment grade by one of the rating agencies described in (c) above; plus
  - (e) \_\_\_\_\_ Eligible Stocks; plus
  - (f) \_\_\_\_\_ mutual funds quoted in The Wall Street Journal which invest primarily in the assets described in (a)-(e) above.

The Unencumbered Liquid Assets of Guarantor as of such date was \$ \_\_\_\_\_.

This covenant will be calculated at the end of fiscal year of Guarantor, using the results of that reporting period.

The calculations made and the information contained herein are complete and correct and fairly present the financial position and results of operations of Guarantor in accordance with accounting principles consistently applied, and correctly reflect the books and records of Guarantor.

Should you require any further documentation or have any questions, please contact \_\_\_\_\_.

GUARANTOR:

HIGHRIDGE COSTA HOUSING PARTNERS,  
 LLC,  
 a Delaware limited liability company

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_



8h

**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**OCTOBER 10, 2019**

Presentation, discussion, and possible action regarding an award of Direct Loan funds from the 2019-1 Multifamily Direct Loan Notice of Funding Availability for Sierra Royale (#19503).

**RECOMMENDED ACTION**

**WHEREAS**, Sierra Housing, Ltd. (Applicant) submitted an application for Direct Loan funds under the 2019-1 Multifamily Direct Loan Notice of Funding Availability (2019-1 NOFA) for the refinancing of the permanent debt on a 76-unit multifamily Development known as Sierra Royale in the City of Robstown;

**WHEREAS**, the Applicant previously received an allocation of 9% Housing Tax Credits (HTC) in 2004, which restricted 68 of the 76 units to low income households;

**WHEREAS**, the Development experienced significant property damage as a result of Hurricane Harvey in August 2017, and subsequently received an award of \$4,539,635 in Community Development Block Grant – Disaster Recovery (CDBG-DR) funds from the General Land Office (GLO) for rehabilitation and related soft costs;

**WHEREAS**, the Applicant is seeking to refinance approximately \$1,700,000 in the form of a balloon payment due to PNC Real Estate, the permanent lender, and has requested \$2,000,000 in Direct Loan funds under the Preservation set-aside;

**WHEREAS**, despite refinance being the primary use of the requested Direct Loan funds, because the CDBG-DR funds are being used for rehabilitation, the requirements of the Preservation set-aside are being met in the total MFDL eligible costs in the Development; and

**WHEREAS**, staff recommends moving forward with less than 20% owner contributed equity (as it is classifying the CDBG DR grant as equity), and approving an award of \$1,849,736 in Tax Credit Assistance Program Repayment Funds (TCAP RF);

**NOW, therefore, it is hereby**

**RESOLVED**, that a Direct Loan award of \$1,849,736 in TCAP RF under the Preservation set-aside of the 2019-1 NOFA for Sierra Royale Apartments is hereby approved in the form presented at this meeting, conditioned upon recordation of a HOME-Match Land Use Restriction Agreement (LURA) for one

unit on The Villas at Cedar Grove before loan closing on Sierra Royale Apartments; and

**FURTHER RESOLVED**, that the Board's approval is conditioned upon satisfaction of all conditions of underwriting, previous participation, and completion of any other reviews required to assure compliance with the applicable rules and requirements.

### **BACKGROUND**

On December 6, 2018, the Board approved the issuance of a NOFA for up to \$34,557,797, which has subsequently been amended to increase the amount available to \$68,093,832.50 within four set-asides:

- \$19,998,832.50 in Supportive Housing/ Soft Repayment set-aside, composed of \$500,000 in TCAP RF and \$19,498,832.50 in National Housing Trust Fund
- \$500,000 of HOME funds under the CHDO set-aside,
- \$2 million in TCAP RF under the Preservation set-aside
- \$45,595,000 in the General set-aside, composed of \$27,945,000 in HOME, \$4 million in NSP1 Program Income, and \$13,650,000 in TCAP RF.

Sierra Royale is an existing 76-unit multifamily development serving a General population in the City of Robstown that received an allocation of 9% HTC in 2004. The property encountered significant property damage as a result of Hurricane Harvey in August 2017, leading the Applicant to request and receive an award of \$4,539,635 in CDBG-DR funds from GLO in 2018. In February 2019, the Applicant submitted an Application requesting \$2,000,000 in TCAP RF under the Preservation set-aside of the 2019-1 NOFA primarily to make the balloon payment on the existing PNC Real Estate loan (approximately \$1,700,000). The Applicant has represented that they have been unable to secure conventional financing in order to pay off the PNC loan that will mature in 2021, and has requested a loan from the Department as the lender of last resort. The Applicant has proposed restricting 25 of the 76 units in the Development to 80% AMI and below households under the TCAP RF Land Use Restriction Agreement (LURA) in connection with this Direct Loan request, as further reflected in the Real Estate Analysis report.

The TCAP RF LURA will encumber the property for 30 years from loan closing, resulting in fourteen additional years of affordability beyond the Extended Use Period in the HTC LURA. With the additional Department funding, the property will also be brought up to 2010 Americans with Disabilities Act (ADA) Standards with the exceptions outlined in *79 Federal Register* 29671 and as further described in 10 TAC Chapter 1, Subchapter B (2010 ADA Standards).

The \$1,849,736 TCAP RF loan will be structured as a first lien hard repayable loan at a 5.5% interest rate with a 30-year amortization and 20-year term. While the Development Owner is

not providing any owner equity, the CDBG-DR funds are essentially the same as equity since they are structured as a grant; it is similar to the equity that would be generated from a \$500,000 9% HTC allocation. Therefore, staff believes the \$4,539,635 in CDBG-DR provides reasonable assurance that the owner will be able to complete construction and stabilization timely. Additionally, the Applicant provided an “as is” appraisal that reflects a value of \$2,630,000, which results in a loan to value ratio of approximately 69%, less than the maximum of 80% in accordance with 10 TAC §13.8(c)(7)(C). The Department’s loan to value ratio should decrease further once the rehab is complete.

While this Application does not meet the requirements of a Work Out development since the Department does not have an existing loan on the property, it has many of the same attributes of a Work Out development (Legend Oaks (18507)) that the Board approved earlier this year in that it has experienced spiking operating costs as a result of the municipality increasing its water rates. This development does not adhere to DCR requirements (1.80 in year 1 instead of the maximum 1.35 required by 10 TAC §11.302(d)(4)(D)) while the development does adhere to income-to-expense ratio (64.89%, which is below the maximum 65% required by 10 TAC §11.302(i)(4)(A)). Underwriting made adjustments to the financing structure as outlined in 10 TAC §11.302(i)(4)(D)(ii), and is recommending approval because the Department is the only lender, the Department is not trying to size a credit allocation, and the Department is not limited by standards adopted in the Department’s Action Plan to HUD because the Preservation Set-Aside consists entirely of TCAP-RF funds.. Additionally, staff has limited developer fee in its underwriting, ensuring that the developer does not receive an unreasonable return.

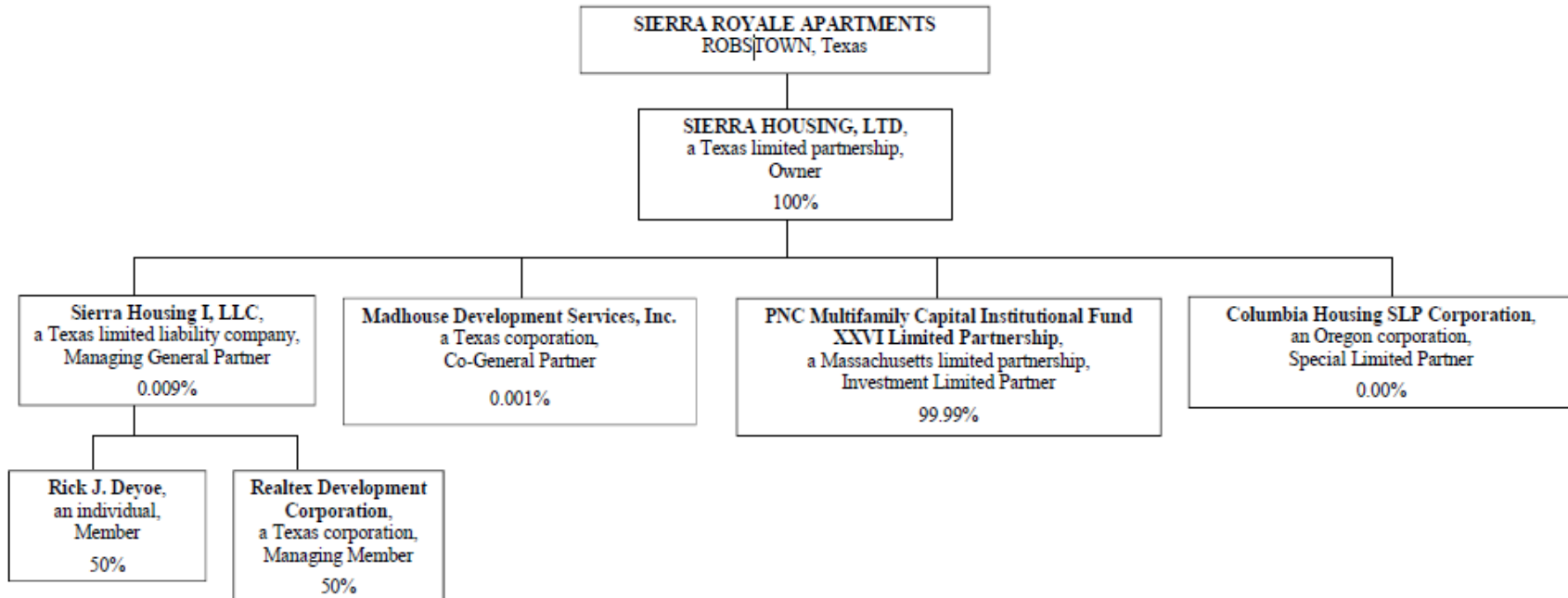
Also similar to Legend Oaks, Sierra Royale has maintained relatively high levels of occupancy, and seems to be in a position to continue doing so. Because this application is proposing rehab with Direct Loan funds as the only source of Department funding, and because the Applicant was able to provide rent rolls showing greater than 80% occupancy for the most recent six months, this application was exempted from the Market Analysis requirement in 10 TAC §11.205(2).

With regard to the 5% Match requirement in section 6h of the 2019-1 NOFA, the Applicant has proposed meeting this requirement through donated labor and/or materials by the contractor and subcontractors on another property that the Applicant has control over. The other property for which match will be provided is The Villas at Cedar Grove (19364), an Application that received 9% HTC allocation in July of this year. As a result of providing match through that property, the Department will place a LURA on The Villas at Cedar Grove, that results in one HOME Match-eligible unit restricted to 80% AMI and High HOME rent. This LURA will be required to be recorded before loan closing on Sierra Royale.

*Organizational Structure and Previous Participation:* The borrower is Sierra Housing, Ltd. 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 2; EARAC recommends approval without conditions.

*Public Comment:* There have been no letters of support or opposition received by the Department in connection with this current application.

**SIERRA ROYALE APARTMENTS**  
**Owner Organizational Chart**  
 As of November, 2015



# 19503 Sierra Royale - Application Summary

REAL ESTATE ANALYSIS DIVISION

October 3, 2019

PROPERTY IDENTIFICATION	
Application #	19503
Development	Sierra Royale
City / County	Robstown / Nueces
Region/Area	10 / Rural
Population	General
Set-Aside	General
Activity	Rehabilitation (Built in 2005)

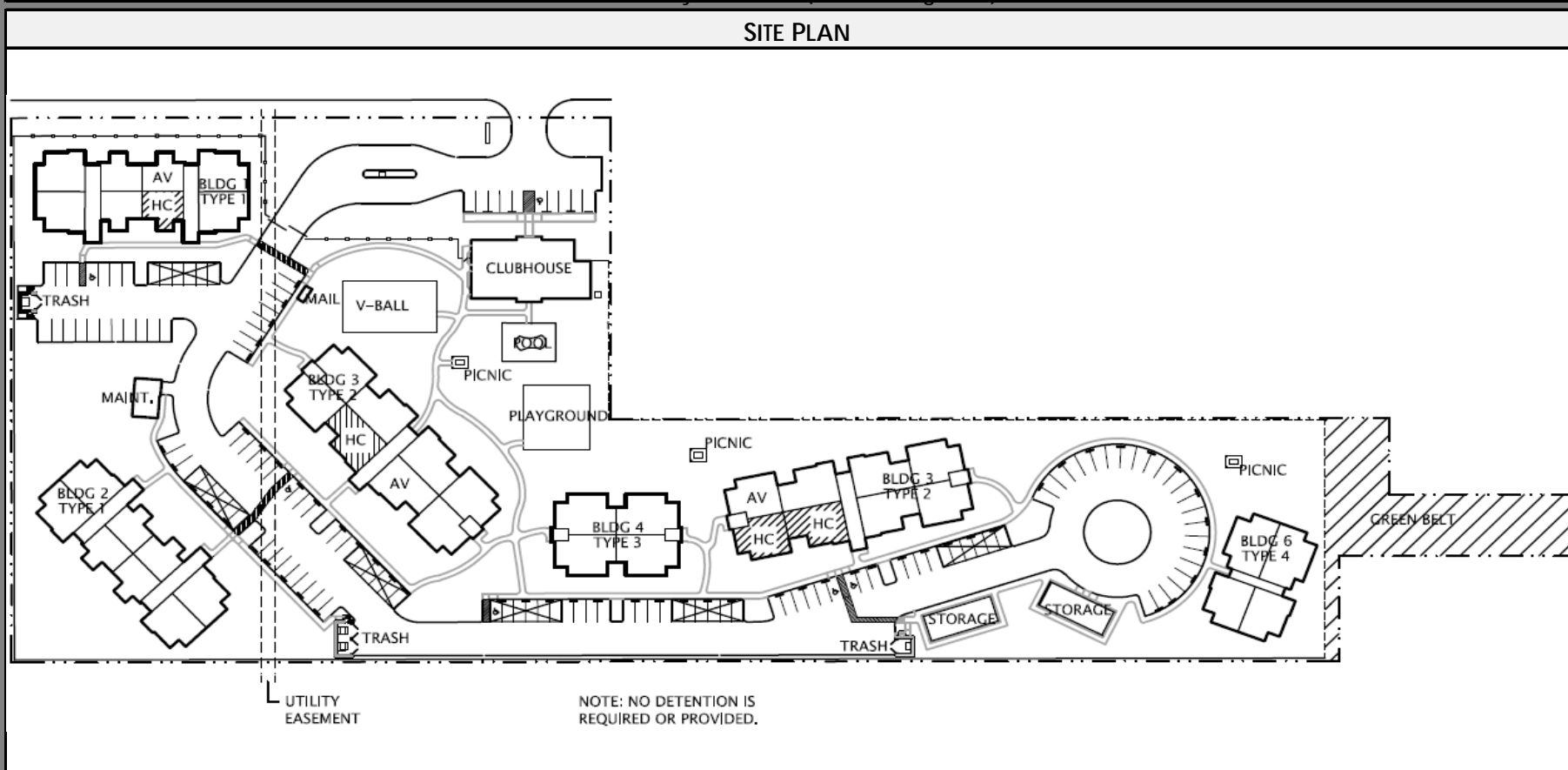
RECOMMENDATION						
TDHCA Program	Amount	Rate	Amort	Term	Lien	
MF Direct Loan Const. to Perm. (Repayable)	\$1,849,736	5.50%	30	20	1	

KEY PRINCIPAL / SPONSOR		
Rick J. Deyoe / President of Realtex Development Corporation		
Related Parties	Contractor - No	Seller - No



UNIT DISTRIBUTION			INCOME DISTRIBUTION		
# Beds	# Units	% Total	Income	# Units	% Total
Eff	-	0%	30%	4	5%
1	16	21%	40%	4	5%
2	34	45%	50%	19	25%
3	26	34%	60%	41	54%
4	-	0%	MR	8	11%
<b>TOTAL</b>	<b>76</b>	<b>100%</b>	<b>TOTAL</b>	<b>76</b>	<b>100%</b>

PRO FORMA FEASIBILITY INDICATORS			
Pro Forma Underwritten		TDHCA's Pro Forma	
Debt Coverage	1.80	Expense Ratio	65.0%
Breakeven Occ.	78.1%	Breakeven Rent	\$617
Average Rent	\$737	B/E Rent Margin	\$120
Property Taxes	\$639/unit	Exemption/PILOT	0%
Total Expense	\$5,545/unit	Controllable	\$3,287/unit



**MARKET FEASIBILITY INDICATORS**

**N/A**

DEVELOPMENT COST SUMMARY			
Costs Underwritten		TDHCA's Costs - Based on PCA	
Avg. Unit Size	977 SF	Density	10.9/acre
Acquisition		\$22K/unit	\$1,691K
Building Cost	\$31.64/SF	\$31K/unit	\$2,350K
Hard Cost		\$40K/unit	\$3,046K
Total Cost		\$84K/unit	\$6,389K
Developer Fee	\$457K	(0% Deferred)	Paid Year: 1
Contractor Fee	\$426K	30% Boost	Yes

REHABILITATION COSTS / UNIT			
Site Work	\$3K	8%	Finishes/Fixtures \$4K 11%
Building Shell	\$20K	50%	Amenities \$4K 10%
HVAC	\$4K	10%	Total Exterior \$27K 72%
Appliances	\$3K	7%	Total Interior \$11K 28%

DEBT (Must Pay)					CASH FLOW DEBT / GRANT FUNDS					EQUITY / DEFERRED FEES	
Source	Term	Rate	Amount	DCR	Source	Term	Rate	Amount	DCR	Source	Amount
TDHCA	20/30	5.50%	\$1,849,736	1.80	GLO CDBG Grant	0/0	0.00%	\$4,539,635	1.80		
<b>TOTAL DEBT (Must Pay)</b>			<b>\$1,849,736</b>		<b>CASH FLOW DEBT / GRANTS</b>			<b>\$4,539,635</b>		<b>TOTAL EQUITY SOURCES</b>	<b>\$0</b>
										<b>TOTAL DEBT SOURCES</b>	<b>\$6,389,371</b>
										<b>TOTAL CAPITALIZATION</b>	<b>\$6,389,371</b>

**CONDITIONS**

- 1 Receipt and acceptance before Direct Loan Closing
  - a: Substantially final construction contract with Schedule of Values.
  - b: Documentation identifying any required matching funds, and confirming that the source is eligible to be counted as matching funds under HUD and TDHCA requirements.
  - c: Certification that a Phase II ESA was performed to assess if constituents of concern associated with the former dry cleaning plant and past fueling operations from adjacent properties have adversely affected the soils or groundwater within the limits of the subject site; to include an itemization of any recommended mitigation measures and the associated cost.
  - d: Certification that a noise study has been completed; to include an itemization of any recommended mitigation measures and the associated cost.
  - e: Determination of the Acceptable Separation Distance (ASD) per HUD guidelines with regard to the approximately 6 aboveground storage tanks (ASTs) observed on the adjacent property; to include an itemization of any recommended mitigation measures and the associated cost.
  - f: Certification of comprehensive testing for mold; to include an itemization of any recommended mitigation measures and the associated cost.
  - g: Certification of comprehensive testing for asbestos, as recommended by the ESA, to include an itemization of any recommended mitigation measures and the associated cost.
- 2 Required Before Approval of the Final Direct Loan Draw:
  - Certification that any and all mitigation measures recommended as a result of Conditions 1 (c), 1(d), 1(e), 1(f), and 1(g), have been fully implemented.

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

**RISK PROFILE**

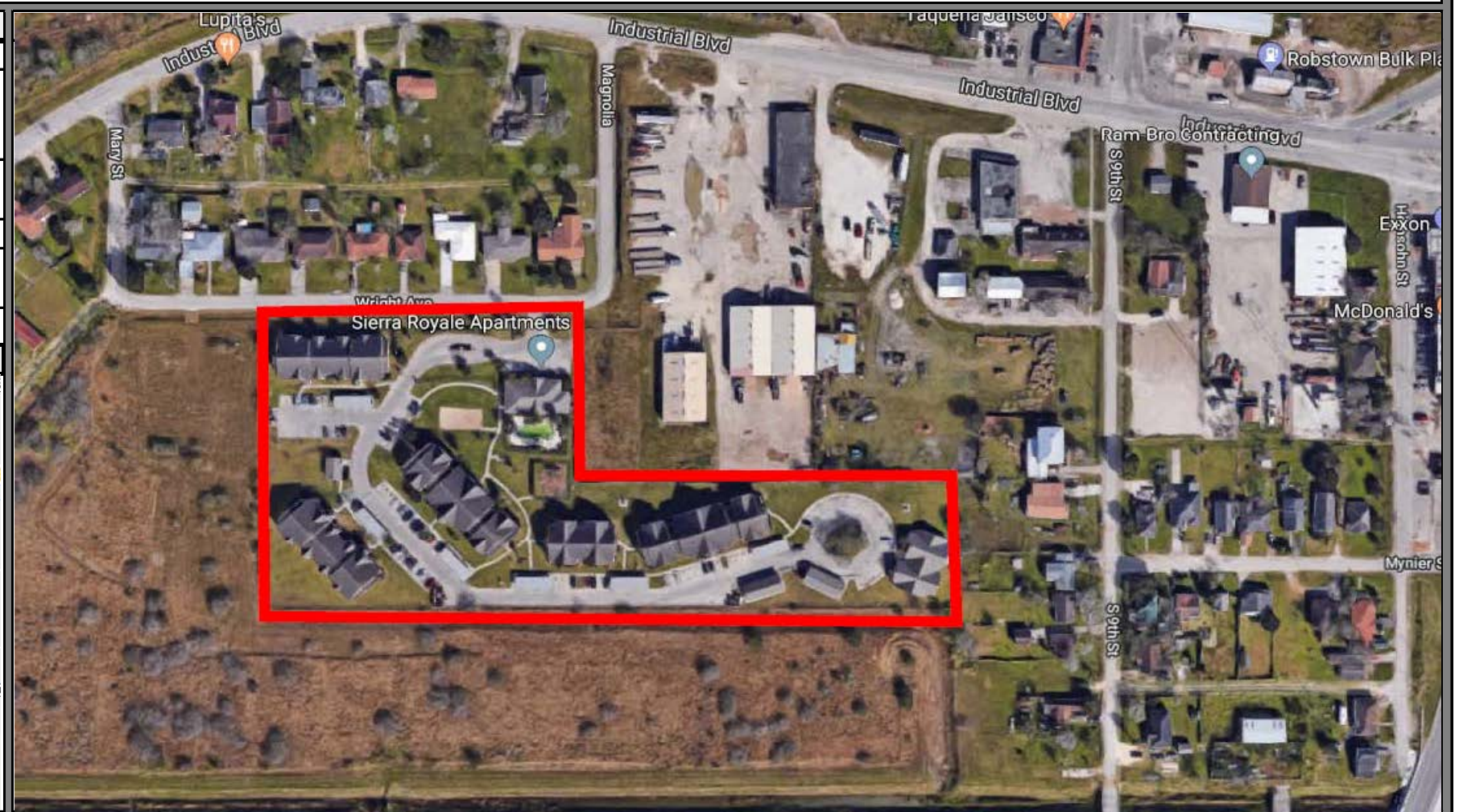
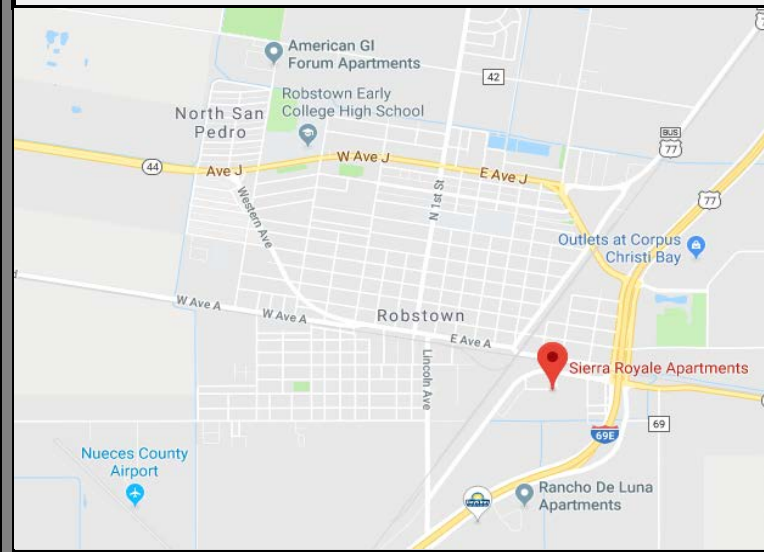
STRENGTHS/MITIGATING FACTORS

- Conversion from PHA utility allowance to Energy Consumption Model utility allowance mitigates reduction in gross income.
- Underwritten Market Rents lower than reported rents at nearby properties

WEAKNESSES/RISKS

- Operating at a loss due to rising utility expenses, combined with stagnant gross rents.
- High expense-to-income ratio

**AREA MAP**







**DEVELOPMENT IDENTIFICATION**

TDHCA Application #: 19503 Program(s): MDL

Sierra Royale

Address/Location: 630 Wright Avenue

City: Robstown County: Nueces Zip: 78380

Population: General Program Set-Aside: General Area: Rural

Activity: Rehabilitation Building Type: Garden (Up to 4-story) Region: 10

Analysis Purpose: New Application - Initial Underwriting

**ALLOCATION**

TDHCA Program	REQUEST				RECOMMENDATION				
	Amount	Interest Rate	Amort	Term	Amount	Interest Rate	Amort	Term	Lien
MF Direct Loan Const. to Perm. (Repayable)	\$2,000,000	2.00%	30	30	\$1,849,736	5.50%	30	20	1

**CONDITIONS**

- 1 Receipt and acceptance before Direct Loan Closing
  - a: Substantially final construction contract with Schedule of Values.
  - b: Documentation identifying any required matching funds, and confirming that the source is eligible to be counted as matching funds under HUD and TDHCA requirements.
  - c: Certification that a Phase II ESA was performed to assess if constituents of concern associated with the former dry cleaning plant and past fueling operations from adjacent properties have adversely affected the soils or groundwater within the limits of the subject site; to include an itemization of any recommended mitigation measures and the associated cost.
  - d: Certification that a noise study has been completed; to include an itemization of any recommended mitigation measures and the associated cost.
  - e: Determination of the Acceptable Separation Distance (ASD) per HUD guidelines with regard to the approximately 6 aboveground storage tanks (ASTs) observed on the adjacent property; to include an itemization of any recommended mitigation measures and the associated cost.
  - f: Certification of comprehensive testing for mold; to include an itemization of any recommended mitigation measures and the associated cost.
  - g: Certification of comprehensive testing for asbestos, as recommended by the ESA, to include an itemization of any recommended mitigation measures and the associated cost.

2 Required Before Approval of the Final Direct Loan Draw:

- Certification that any and all mitigation measures recommended as a result of Conditions 1( c), 1(d), 1(e), 1(f), and 1(g), have been fully implemented.

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

**SET-ASIDES**

TDHCA SET-ASIDES for HTC LURA		
Income Limit	Rent Limit	Number of Units
30% of AMI	30% of AMI	4
40% of AMI	40% of AMI	4
50% of AMI	50% of AMI	19
60% of AMI	60% of AMI	41

TDHCA SET-ASIDES for DIRECT LOAN LURA		
Income Limit	Rent Limit	Number of Units
50% of AMFI	Low HOME	5
60% of AMFI	High HOME	18
80% of AMFI	High HOME	2

**DEVELOPMENT SUMMARY**

Sierra Royale Apartments is an existing affordable tax credit development that originally received an allocation of housing tax credits in 2004, and is currently in its final year of the initial Compliance Period. The applicant is requesting a Direct Loan under the new "Preservation set-aside" established by the 2019 Direct Loan NOFA.

The Partnership received approval of a \$4.5M CDBG grant from the Texas General Land Office for funding needed to repair the property from Hurricane Harvey and completely rehabilitate the project.

The Applicant states that the property has operated at a deficit for the past 3-4 years as a result of stagnant rents and increasing operating expenses; the existing debt is due to mature in 2022; the extended tax credit compliance period is for another 15 years; and the GLO compliance period is for 20 years. Therefore, in connection with the preservation of this affordable housing property, the existing debt needs to be refinanced.

The Applicant states that the majority of Direct Loan Funds will go towards the refinance of the existing debt that will be maturing in 2 years, while the bulk of all Texas GLO funds will go towards the complete rehabilitation of the property

The GLO DR award and the requested Direct Loan will be the only sources of funding. The Applicant will satisfy the 5% Match requirement through donated labor and/or materials on another recently-awarded property over which the Applicant has control.

Since the GLO DR award is a grant with no debt obligation, the Department has determined it satisfies the 20% Owner Equity requirement.

The application is exempt from the requirement for a Market Study because it proposes rehabilitation with a Direct loan as the only source of Department funding, and the rent roll demonstrates greater than 80% occupancy for the previous six months.

The Applicant has requested waivers of the feasibility criteria related to expense-to-income ratio and debt coverage ratio.

## RISK PROFILE

STRENGTHS/MITIGATING FACTORS	
▫	Conversion from PHA utility allowance to Energy Consumption Model utility allowance mitigates reduction in gross income.
▫	Underwritten Market Rents lower than reported rents at nearby properties

WEAKNESSES/RISKS	
▫	Operating at a loss due to rising utility expenses, combined with stagnant gross rents.
▫	High expense-to-income ratio

## DEVELOPMENT TEAM

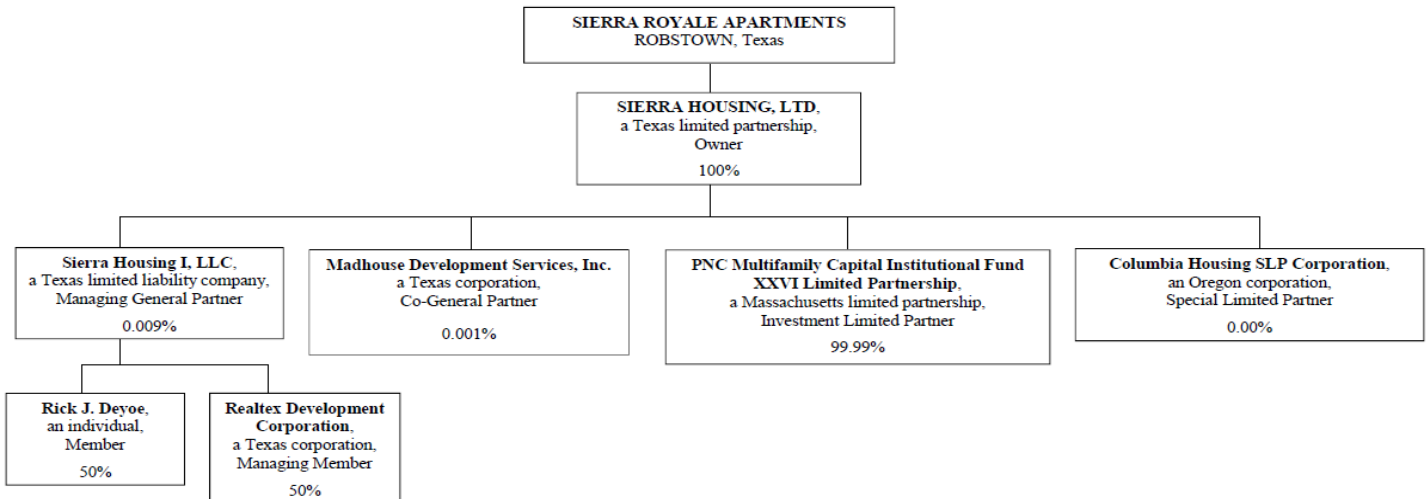
### PRIMARY CONTACTS

Name: Rick J. Deyoe  
 Phone: (512) 306-9206  
 Relationship: Principle

Name: Alma Cobb  
 Phone: (512) 306-9206  
 Relationship: \_\_\_\_\_

## OWNERSHIP STRUCTURE

### SIERRA ROYALE APARTMENTS Owner Organizational Chart As of November, 2015



- Rick J. Devoe is transitioning all assets to The Wentwood Companies.



SITE CONTROL

**Site Acreage:** Development Site: 7.00 acres Density: 10.9 units/acre  
**Site Control:** 7 **Site Plan:** 7 **Appraisal:** 7 **ESA:** 7

Control Type: Recorded Warranty Deed Deed Date: 9/30/2004

Development Site: 7.00 acres

Applicant: Sierra Housing, Ltd

Related-Party Seller/Identity of Interest: Yes

Comments:  
There is no acquisition. The Applicant has owned the property since original construction in 2005.

APPRAISED VALUE

Appraiser: Novogradac & Company, LLP Date: 11/28/2018

Land as Vacant:	<u>7 acres</u>	<u>\$360,000</u>	Per Unit:	<u>\$4,737</u>
Existing Buildings: (as-is)		<u>\$2,270,000</u>	Per Unit:	<u>\$29,868</u>
<b>Total Development: (as-is)</b>		<u><b>\$2,630,000</b></u>	Per Unit:	<u><b>\$34,605</b></u>

GENERAL INFORMATION

Flood Zone:	<u>AE</u>	Scattered Site?	<u>No</u>
Zoning:	<u>R-3; Multifamily</u>	Within 100-yr floodplain?	<u>Yes</u>
Re-Zoning Required?	<u>No</u>	Utilities at Site?	<u>Yes</u>
Year Constructed:	<u>2005</u>	Title Issues?	<u>No</u>

Surrounding Uses:

- North: Both Single Family homes and an industrial site.
- West: Single Family homes
- South: 15.3 acres of vacant land owned by property owner of the subject site.
- East: Vacant

Other Observations:  
The parcel to the south was once proposed as a Phase II of the subject, but is currently being held for future affordable single family development with a non-profit partnership.

Comments:  
The Applicant states that an Insurance Claim was filed after the effects of Hurricane Harvey. The property sustained major roof damage and other damage to some of the exterior fixtures associated with the property. The insurance company did not want to pay off anything substantial on the claim, and refused to cover even all roofs which received major storm damage. Resulting from denials of the insurance company, the Applicant states they have been tied up in litigation on this property until just recently when they finally settled by paying roughly \$80,000 towards the claim. Expecting that the insurer was not going to provide sufficient insurance proceeds as needed to adequately repair the property, the Applicant submitted an application for the Texas GLO Grant.

**HIGHLIGHTS of ENVIRONMENTAL REPORTS**

Provider: SWCA Environmental Consultants Date: November, 2018

Recognized Environmental Conditions (RECs) and Other Concerns:

- Former dry cleaning plant located approximately 137 feet northwest of the subject site.
- Adjacent north facility was past/current fueling activities and hazardous materials storage.

Comments:

An asbestos survey is recommended prior to any demolition or remodeling of the existing structures on the subject site.

A mold inspection is recommended prior to the demolition or remodeling of the apartment units.

The submitted ESA does not address noise; §11.305(b)(1) requires that the ESA provider must "state if a noise study is recommended for a property in accordance with current HUD guidelines and identify its proximity to industrial zones, major highways, active rail lines, civil and military airfields, or other potential sources of excessive noise"

**MARKET ANALYSIS**

Underwriter Comments:

Per 10 TAC §13.5(d), "Applications proposing Rehabilitation that request MFDL as the only source of Department funding may be exempted from the Market Analysis requirement in 10 TAC §11.205(2) (relating to Required Third Party Reports) if the Development's rent rolls for the most recent six months reflect occupancy of at least 80%." Applicant received a waiver of Market Study requirements due to the property's 98.1% average occupancy over the past 10 years.

**OPERATING PRO FORMA**

<b>SUMMARY- AS UNDERWRITTEN (TDHCA Pro Forma)</b>					
NOI:	\$227,128	Avg. Rent:	\$737	Expense Ratio:	65.0%
Debt Service:	\$126,031	B/E Rent:	\$617	Controllable Expenses:	\$3,287
Net Cash Flow:	\$101,097	UW Occupancy:	92.5%	Property Taxes/Unit:	\$639
Aggregate DCR:	1.80	B/E Occupancy:	78.1%	Program Rent Year:	2019

Updated Energy Consumption Model utility allowances are significantly lower than previous allowances; this contributes to a projected increase in Gross Effective Income over current operations.

Market rents underwritten based on rents currently achieved.

Operating expenses underwritten based on previous three years operating statements.

Underwriter's pro forma exhibits a 64.98% expense-to-income ratio, meeting the maximum 65%, thus precluding the need for a waiver.

Related-Party Property Management Company: 0

Revisions to Rent Schedule: 

4
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Revisions to Annual Operating Expenses: 

1
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## DEVELOPMENT COST EVALUATION

### SUMMARY- AS UNDERWRITTEN (TDHCA's Costs- Based on PCA)

Acquisition	\$/ac	\$22,250/unit	\$1,691,005	Contractor Fee	\$426,298
Off-site + Site Work		\$7,237/unit	\$550,000	Soft Cost + Financing	\$569,826
Building Cost	\$31.64/sf	\$30,919/unit	\$2,349,841	Developer Fee	\$456,786
Contingency	5.04%	\$1,923/unit	\$146,149	Reserves	\$199,466
<b>Total Development Cost</b>		\$84,071/unit	<b>\$6,389,371</b>	<b>Rehabilitation Cost</b>	<b>\$38,156/unit</b>
<b>Qualified for 30% Basis Boost?</b>		Located in OCT with < 20% HTC units/HH			

**Refinance:**

Payoff of the \$1.691M outstanding loan balance from the existing loan with PNC Real Estate.

**Site Work:**

Site work costs include landscaping, fencing, paving, parking, and restriping, sidewalks, new carports, stucco repair, roofing, stairs, rails, and treads, gutters and down spouts, windows as needed, exterior and interior doors, resurface pool and decking, new playground, new BBQ equipment, new sprinkler and fire system, replace air conditioning units, and community gates.

Applicant expects \$50K in Demolition Costs that were not found in their PCA, but PCA added an additional \$60K in Site Amenities.

**Building Cost:**

Interior renovations include granite countertops, new appliances, cabinetry, plumbing & electrical fixtures.

Replacement of all flooring (as specified), doors, dry wall (as needed), interior paint, & finished hardware.

Underwritten Building Costs come directly from the 3rd Party PCA.

### REHABILITATION COSTS / UNIT / % HARD COST

Site Work	\$235,000	\$3,092/unit	8%	Finishes/Fixtures	\$320,000	\$4,211/unit	11%
Building Shell	\$1,529,841	\$20,129/unit	50%	HVAC	\$300,000	\$3,947/unit	10%
Amenities	\$315,000	\$4,145/unit	10%	Appliances	\$200,000	\$2,632/unit	7%
<b>Total Exterior</b>	<b>\$2,079,841</b>	<b>\$27,366/unit</b>	<b>72%</b>	<b>Total Interior</b>	<b>\$820,000</b>	<b>\$10,789/unit</b>	<b>28%</b>

**Contingency:**

Soft Cost Contingency was added to general Contingency.

**Soft Costs:**

Applicant's relocation cost estimates were based on the Uniform Relocation Act.

**Financing Cost:**

Finance cost includes \$145K yield maintenance fee to the current Lender.

**Developer Fee:**

Applicant included 20% developer fee; Underwriter limited to 15% per REA Rules.

**Reserves:**

\$199K Initial Reserves deposit equates to approximately five months expenses and debt service.

**Comments:**

Relocation Plan includes a Relocation Officer designated by the applicant's corporate office.

Related-Party Contractor:

No

Related-Party Cost Estimator:

Yes

Revisions to Development Cost Schedule:	0
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## UNDERWRITTEN CAPITALIZATION

### INTERIM SOURCES

Funding Source	Description	Amount	Rate	LTC
TDHCA	MF Direct Loan Const. to Perm. (Repayable)	\$2,000,000	5.50%	31%
GLO CDBG Grant		\$4,539,635		69%
		<b>\$6,539,635</b>	<b>Total Sources</b>	

### PERMANENT SOURCES

Debt Source	PROPOSED				UNDERWRITTEN				
	Amount	Interest Rate	Amort	Term	Amount	Interest Rate	Amort	Term	LTC
TDHCA	\$2,000,000	2.00%	30	30	\$1,849,736	5.50%	30	20	29%
GLO CDBG Grant	\$4,539,635				\$4,539,635				71%
<b>Total</b>	<b>\$6,539,635</b>				<b>\$6,389,371</b>				

**Comments:**

Applicant request is for \$2,000,000 TDHCA Multifamily Direct Loan. But the proposed transaction is oversourced as a result of the adjustment to developer fee. The recommended loan amount is limited to the funds needed.

Applicant requested the loan at 2.00%. At that rate debt coverage would be 2.77 times. Per §11.302(d)(4)(d)(ii)(I), "If the DCR is greater than the maximum ... the Underwriter will make adjustments to the assumed financing structure (consisting of) an increase to the interest rate up to the highest interest rate on any senior debt or if no senior debt a market rate determined by the Underwriter based on current market interest rates".

The Underwriter determines 5.50% to be an appropriate market rate based on recently reviewed transactions. At this rate debt coverage is 1.80, well above the maximum 1.35. But the maximum DCR is intended for tax credit applications, in which the sizing of a tax credit allocation must be weighed against a development's debt capacity. In this case the GLO CDBG award has already been made. Allowing operation with a high DCR reduces the operational risk of the Development and does not provide any undue enrichment.

The Applicant requested the Direct Loan with a 30-year maturity. The rules state the term of a Multifamily Direct Loan should match the term of any superior loan. In this case, with the Direct Loan as the only source of debt, the Underwriter recommends a 20-year term to match the compliance period of the GLO CDBG award.

Payoff of the existing permanent loan is projected to be \$1,691,005. Excess funds from the TDHCA Direct Loan not used to pay off the existing debt must be used to pay Hard Costs of expected renovation. The excess may not be used to repay Deferred Developer Fee (if any).

The GLO CDBG award is received as a grant with no expectation of repayment.

## CONCLUSIONS

**Recommended Financing Structure:**

	Amount	Interest Rate	Amort	Term	Lien
TDHCA Multifamily Direct Loan	\$1,849,736	5.5%	30	20	1

Underwriter: Greg Stoll

Manager of Real Estate Analysis: Thomas Cavanagh

Director of Real Estate Analysis: Brent Stewart



**UNIT MIX/RENT SCHEDULE**  
**Sierra Royale, Robstown, MDL #19503**

LOCATION DATA	
CITY:	Robstown
COUNTY:	Nueces
Area Median Income	\$64,400
PROGRAM REGION:	10

UNIT DISTRIBUTION							
# Beds	# Units	% Total	Assisted	MDL	Income	# Units	% Total
Eff	-	0.0%	0	0	20%	-	0.0%
1	16	21.1%	0	5	30%	4	5.3%
2	34	44.7%	0	11	40%	4	5.3%
3	26	34.2%	0	9	50%	19	25.0%
4	-	0.0%	0	0	60%	41	53.9%
5	-	0.0%	0	0	70%	-	0.0%
					80%	-	0.0%
					MR	8	10.5%
<b>TOTAL</b>	<b>76</b>	<b>100.0%</b>	<b>-</b>	<b>25</b>	<b>TOTAL</b>	<b>76</b>	<b>100.0%</b>

Pro Forma ASSUMPTIONS	
Revenue Growth	2.00%
Expense Growth	3.00%
Basis Adjust	130%
Applicable Fraction	88.02%
APP % Acquisition	3.42%
APP % Construction	3.42%
Average Unit Size	977 sf

UNIT MIX / MONTHLY RENT SCHEDULE																						
HTC		TDHCA Direct Loan Program		UNIT MIX				APPLICABLE PROGRAM RENT			APPLICANT'S PRO FORMA RENTS				TDHCA PRO FORMA RENTS				MARKET RENTS			
Type	Gross Rent	Type	Gross Rent	# Units	# Beds	# Baths	NRA	Gross Rent	Utility Allow	Max Net Program Rent	Delta to Max	Rent psf	Net Rent per Unit	Total Monthly Rent	Total Monthly Rent	Rent per Unit	Rent psf	Delta to Max	Underwritten	Comp		
TC 30%	\$373			2	1	1	709	\$373	\$84	\$289	(\$8)	\$0.40	\$281	\$562	\$578	\$289	\$0.41	\$0	\$647	\$0.91	\$883	
TC 40%	\$498			1	1	1	709	\$498	\$84	\$414	(\$11)	\$0.57	\$403	\$403	\$414	\$414	\$0.58	\$0	\$647	\$0.91	\$883	
TC 50%	\$622			4	1	1	709	\$622	\$84	\$538	(\$13)	\$0.74	\$525	\$2,100	\$2,152	\$538	\$0.76	\$0	\$647	\$0.91	\$883	
TC 50%	\$622	LH/50%	\$622	1	1	1	709	\$622	\$84	\$538	(\$13)	\$0.74	\$525	\$525	\$538	\$538	\$0.76	\$0	\$647	\$0.91	\$883	
TC 60%	\$747			4	1	1	709	\$747	\$84	\$663	(\$16)	\$0.91	\$647	\$2,588	\$2,588	\$647	\$0.91	(\$16)	\$647	\$0.91	\$883	
TC 60%	\$747	HH/60%	\$789	4	1	1	709	\$747	\$84	\$663	(\$16)	\$0.91	\$647	\$2,588	\$2,588	\$647	\$0.91	(\$16)	\$647	\$0.91	\$883	
TC 30%	\$447			2	2	2	962	\$447	\$96	\$351	(\$9)	\$0.36	\$342	\$684	\$702	\$351	\$0.36	\$0	\$781	\$0.81	\$938	
TC 40%	\$597			2	2	2	962	\$597	\$96	\$501	(\$12)	\$0.51	\$489	\$978	\$1,002	\$501	\$0.52	\$0	\$781	\$0.81	\$938	
TC 50%	\$746	LH/50%	\$746	3	2	2	962	\$746	\$96	\$650	(\$15)	\$0.66	\$635	\$1,905	\$1,950	\$650	\$0.68	\$0	\$781	\$0.81	\$938	
TC 50%	\$746			7	2	2	962	\$746	\$96	\$650	(\$15)	\$0.66	\$635	\$4,445	\$4,550	\$650	\$0.68	\$0	\$781	\$0.81	\$938	
TC 60%	\$895			10	2	2	962	\$895	\$96	\$799	(\$18)	\$0.81	\$781	\$7,810	\$7,810	\$781	\$0.81	(\$18)	\$781	\$0.81	\$938	
TC 60%	\$895	HH/60%	\$948	7	2	2	962	\$895	\$96	\$799	(\$18)	\$0.81	\$781	\$5,467	\$5,467	\$781	\$0.81	(\$18)	\$781	\$0.81	\$938	
TC 60%	\$895	HH/80%	\$948	1	2	2	962	\$895	\$96	\$799	(\$18)	\$0.81	\$781	\$781	\$781	\$781	\$0.81	(\$18)	\$781	\$0.81	\$938	
MR				2	2	2	962	\$0	\$96		NA	\$0.79	\$760	\$1,520	\$1,562	\$781	\$0.81	NA	\$781	\$0.81	\$938	
TC 40%	\$690			1	3	2	1,162	\$690	\$105	\$585	\$6	\$0.51	\$591	\$591	\$585	\$585	\$0.50	\$0	\$964	\$0.83	\$1,069	
TC 50%	\$862			3	3	2	1,162	\$862	\$105	\$757	\$8	\$0.66	\$765	\$2,295	\$2,271	\$757	\$0.65	\$0	\$964	\$0.83	\$1,069	
TC 50%	\$862	LH/50%	\$862	1	3	2	1,162	\$862	\$105	\$757	\$1	\$0.65	\$758	\$758	\$757	\$757	\$0.65	\$0	\$964	\$0.83	\$1,069	
TC 60%	\$1,035			7	3	2	1,162	\$1,035	\$105	\$930	(\$23)	\$0.78	\$907	\$6,349	\$6,510	\$930	\$0.80	\$0	\$964	\$0.83	\$1,069	
TC 60%	\$1,035	HH/60%	\$1,087	7	3	2	1,162	\$1,035	\$105	\$930	(\$23)	\$0.78	\$907	\$6,349	\$6,510	\$930	\$0.80	\$0	\$964	\$0.83	\$1,069	
TC 60%	\$1,035	HH/80%	\$1,087	1	3	2	1,162	\$1,035	\$105	\$930	(\$23)	\$0.78	\$907	\$907	\$930	\$930	\$0.80	\$0	\$964	\$0.83	\$1,069	
MR				6	3	2	1,162	\$0	\$105		NA	\$0.74	\$860	\$5,160	\$5,784	\$964	\$0.83	NA	\$964	\$0.83	\$1,069	
<b>TOTALS/AVERAGES:</b>				<b>76</b>				<b>74,264</b>				<b>(\$14)</b>	<b>\$0.74</b>	<b>\$721</b>	<b>\$54,765</b>	<b>\$56,029</b>	<b>\$737</b>	<b>\$0.75</b>	<b>(\$6)</b>	<b>\$815</b>	<b>\$0.83</b>	<b>\$971</b>

<b>ANNUAL POTENTIAL GROSS RENT:</b>	<b>\$657,180</b>	<b>\$672,348</b>
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## STABILIZED PRO FORMA

*Sierra Royale, Robstown, MDL #19503*

### STABILIZED FIRST YEAR PRO FORMA

	COMPARABLES		APPLICANT				TDHCA				VARIANCE	
	Database	2018 actual	% EGI	Per SF	Per Unit	Amount	Amount	Per Unit	Per SF	% EGI	%	\$
<b>POTENTIAL GROSS RENT</b>				\$0.74	\$721	\$657,180	\$672,348	\$737	\$0.75		-2.3%	(\$15,168)
RUBS/Trash Reimbursement					\$0.00		\$28,800	\$31.58			-100.0%	(\$28,800)
<b>POTENTIAL GROSS INCOME</b>						\$657,180	\$701,148				-6.3%	(\$43,968)
Vacancy & Collection Loss					7.5% PGI	(49,289)	(52,586)	7.5% PGI			-6.3%	3,298
Rental Concessions						-	-				0.0%	-
<b>EFFECTIVE GROSS INCOME</b>						\$607,892	\$648,562				-6.3%	(\$40,670)

General & Administrative	\$34,884	\$459/Unit	\$32,073	\$564	6.56%	\$0.54	\$525	\$39,880	\$32,073	\$422	\$0.43	4.95%	24.3%	7,807
Management	\$34,083	4.0% EGI	\$29,643	\$399	5.35%	\$0.44	\$428	\$32,492	\$32,428	\$427	\$0.44	5.00%	0.2%	64
Payroll & Payroll Tax	\$89,521	\$1,178/Unit	\$75,736	\$1,229	15.63%	\$1.28	\$1,250	\$95,000	\$93,308	\$1,228	\$1.26	14.39%	1.8%	1,692
Repairs & Maintenance	\$59,562	\$784/Unit	\$88,666	\$678	7.35%	\$0.60	\$588	\$44,700	\$49,400	\$650	\$0.67	7.62%	-9.5%	(4,700)
Electric/Gas	\$25,390	\$334/Unit	\$22,803	\$161	2.76%	\$0.23	\$221	\$16,800	\$20,523	\$270	\$0.28	3.16%	-18.1%	(3,723)
Water, Sewer, & Trash <span style="float: right;">Tenant Pays: WS</span>	\$59,063	\$777/Unit	\$60,552	\$731	9.18%	\$0.75	\$735	\$55,828	\$54,497	\$717	\$0.73	8.40%	2.4%	1,331
Property Insurance	\$40,202	\$0.54 /sf	\$36,396	\$527	6.58%	\$0.54	\$526	\$40,000	\$40,087	\$527	\$0.54	6.18%	-0.2%	(87)
Property Tax <span style="float: right;">(@ 100%) 3.3558</span>	\$36,052	\$474/Unit	\$48,000	\$639	7.90%	\$0.65	\$632	\$48,000	\$48,528	\$639	\$0.65	7.48%	-1.1%	(528)
Reserve for Replacements	\$30,743	\$405/Unit	\$0	\$335	4.38%	\$0.36	\$350	\$26,600	\$22,800	\$300	\$0.31	3.52%	16.7%	3,800
Cable TV			700	\$9	0.30%	\$0.02	\$24	\$1,800	\$700	\$9	\$0.01	0.11%	157.1%	1,100
Supportive Services			-	\$0	2.37%	\$0.19	\$189	\$14,400	\$14,400	\$189	\$0.19	2.22%	0.0%	-
TDHCA Compliance fees (\$40/HTC unit)			-	\$0	0.50%	\$0.04	\$40	\$3,040	\$2,720	\$36	\$0.04	0.42%	11.8%	320
TDHCA Direct Loan Compliance Fees (\$34/MDL unit)				\$0	0.14%	\$0.01	\$11	\$850	\$850	\$11	\$0.01	0.13%	0.0%	-
Security			-	\$0	1.50%	\$0.12	\$120	\$9,120	\$9,120	\$120	\$0.12	1.41%	0.0%	-
<b>TOTAL EXPENSES</b>					<b>70.49%</b>	<b>\$5.77</b>	<b>\$5,638</b>	<b>\$ 428,510</b>	<b>\$421,433</b>	<b>\$5,545.18</b>	<b>\$5.67</b>	<b>64.98%</b>	<b>1.7%</b>	<b>\$ 7,077</b>
<b>NET OPERATING INCOME ("NOI")</b>					<b>29.51%</b>	<b>\$2.42</b>	<b>\$2,360</b>	<b>\$179,382</b>	<b>\$227,128</b>	<b>\$2,989</b>	<b>\$3.06</b>	<b>35.02%</b>	<b>-21.0%</b>	<b>\$ (47,747)</b>

CONTROLLABLE EXPENSES	\$3,319/Unit	\$3,287/Unit
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**CAPITALIZATION / TOTAL DEVELOPMENT BUDGET / ITEMIZED BASIS**  
*Sierra Royale, Robstown, MDL #19503*

<b>DEBT / GRANT SOURCES</b>															
<b>APPLICANT'S PROPOSED DEBT/GRANT STRUCTURE</b>									<b>AS UNDERWRITTEN DEBT/GRANT STRUCTURE</b>						
<b>DEBT (Must Pay)</b>	<b>Fee</b>	<b>Cumulative DCR</b>		<b>Pmt</b>	<b>Rate</b>	<b>Amort</b>	<b>Term</b>	<b>Principal</b>	<b>Principal</b>	<b>Term</b>	<b>Amort</b>	<b>Rate</b>	<b>Pmt</b>	<b>Cumulative</b>	
		<b>UW</b>	<b>App</b>											<b>DCR</b>	<b>LTC</b>
TDHCA		2.56	2.02	\$88,709	2.00%	30	30	\$2,000,000	\$1,849,736	20	30	5.50%	\$126,031	1.80	29.0%
<b>CASH FLOW DEBT / GRANTS</b>															
GLO CDBG Grant		2.56	2.02	\$0	0.00%	0	0	\$4,539,635	\$4,539,635	0	0	0.00%		1.80	71.0%
				<b>\$88,709</b>	<b>TOTAL DEBT / GRANT SOURCES</b>			<b>\$6,539,635</b>	<b>\$6,389,371</b>	<b>TOTAL DEBT SERVICE</b>			<b>\$126,031</b>	<b>1.80</b>	<b>100.0%</b>

<b>NET CASH FLOW</b>	\$138,419	\$90,673								<b>TDHCA NET OPERATING INCOME</b>	\$227,128	\$101,097	<b>NET CASH FLOW</b>
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<b>EQUITY SOURCES</b>											
<b>APPLICANT'S PROPOSED EQUITY STRUCTURE</b>						<b>AS UNDERWRITTEN EQUITY STRUCTURE</b>					
<b>EQUITY / DEFERRED FEES</b>	<b>DESCRIPTION</b>	<b>% Cost</b>	<b>Annual Credit</b>	<b>Credit Price</b>	<b>Amount</b>	<b>Amount</b>	<b>Credit Price</b>	<b>Annual Credit</b>	<b>% Cost</b>	<b>Annual Credits per Unit</b>	<b>Allocation Method</b>
	Additional (Excess) Funds Req'd	0.0%				\$0			0.0%		
<b>TOTAL EQUITY SOURCES</b>		0.0%			\$0	\$0			0.0%		

<b>TOTAL CAPITALIZATION</b>					<b>\$6,539,635</b>	<b>\$6,389,371</b>					15-Yr Cash Flow after Deferred Fee:	<b>\$1,529,514</b>
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<b>DEVELOPMENT COST / ITEMIZED BASIS</b>											
<b>APPLICANT COST / BASIS ITEMS</b>					<b>TDHCA COST / BASIS ITEMS</b>					<b>COST VARIANCE</b>	
<b>Eligible Basis</b>		<b>Total Costs</b>	<b>Total Costs</b>	<b>Eligible Basis</b>		<b>%</b>	<b>\$</b>				
<b>Acquisition</b>	<b>New Const. Rehab</b>			<b>New Const. Rehab</b>	<b>Acquisition</b>						
Payoff of Existing Debt		\$22,250 / Unit	\$1,691,005	\$1,691,005	\$22,250 / Unit	0.0%	\$0				
Site Work		\$3,553 / Unit	\$270,000	\$235,000	\$3,092 / Unit	14.9%	\$35,000				
Site Amenities		\$3,092 / Unit	\$235,000	\$315,000	\$4,145 / Unit	-25.4%	(\$80,000)				
Building Cost		\$32.24 /sf	\$31,501/Unit	\$2,394,091	\$2,349,841	\$30,919/Unit	\$31.64 /sf	1.9%	\$44,250		
Contingency		0.00%	5.04%	\$146,149	\$146,149	5.04%	#DIV/0!	0.0%	\$0		
Contractor Fees		0.00%	14.00%	\$426,298	\$426,298	14.00%	#DIV/0!	0.0%	\$0		
Soft Costs		\$4,164 / Unit	\$316,500	\$316,500	\$4,164 / Unit	0.0%	\$0				
Financing		\$3,333 / Unit	\$253,326	\$253,326	\$3,333 / Unit	0.0%	\$0				
Developer Fee		\$0	19.96%	\$607,800	\$456,786	15.00%	#DIV/0!	33.1%	\$151,014		
Reserves		5 Months	\$199,466	\$199,466	4 Months	0.0%	\$0				
<b>TOTAL HOUSING DEVELOPMENT COST (UNADJUSTED BASIS)</b>		\$86,048 / Unit	<b>\$6,539,635</b>	<b>\$6,389,371</b>	\$84,071 / Unit	<b>2.4%</b>	<b>\$150,264</b>				
Acquisition Cost			\$0								
Contingency			\$0								
Contractor's Fee			\$0								
Financing Cost											
Developer Fee			(\$151,014)								
Reserves			\$0								
<b>ADJUSTED BASIS / COST</b>			\$84,061/unit	<b>\$6,388,621</b>	<b>\$6,389,371</b>	\$84,071/unit	<b>0.0%</b>	<b>(\$750)</b>			
<b>TOTAL HOUSING DEVELOPMENT COSTS BASED ON 3RD PARTY PCA/CNA</b>				<b>\$6,389,371</b>							

## Long-Term Pro Forma

*Sierra Royale, Robstown, MDL #19503*

	Growth Rate	Year 1	Year 2	Year 3	Year 4	Year 5	Year 10	Year 15	Year 20	Year 25	Year 30	Year 35	Year 40
EFFECTIVE GROSS INCOME	2.00%	\$648,562	\$661,533	\$674,764	\$688,259	\$702,024	\$775,092	\$855,764	\$944,832	\$1,043,171	\$1,151,745	\$1,271,620	\$1,403,971
TOTAL EXPENSES	3.00%	\$421,433	\$433,752	\$446,434	\$459,490	\$472,930	\$546,318	\$631,194	\$729,365	\$842,926	\$974,304	\$1,126,307	\$1,302,189
<b>NET OPERATING INCOME ("NOI")</b>		<b>\$227,128</b>	<b>\$227,781</b>	<b>\$228,330</b>	<b>\$228,769</b>	<b>\$229,094</b>	<b>\$228,773</b>	<b>\$224,570</b>	<b>\$215,467</b>	<b>\$200,245</b>	<b>\$177,441</b>	<b>\$145,313</b>	<b>\$101,782</b>
EXPENSE/INCOME RATIO		65.0%	65.6%	66.2%	66.8%	67.4%	70.5%	73.8%	77.2%	80.8%	84.6%	88.6%	92.8%
<b>MUST -PAY DEBT SERVICE</b>													
TOTAL DEBT SERVICE		\$126,031	\$126,031	\$126,031	\$126,031	\$126,031	\$126,031	\$126,031	\$126,031	\$126,031	\$126,031	\$126,031	\$126,031
DEBT COVERAGE RATIO		1.80	1.81	1.81	1.82	1.82	1.82	1.78	1.71	1.59	1.41	1.15	0.81
<b>ANNUAL CASH FLOW</b>		<b>\$101,097</b>	<b>\$101,750</b>	<b>\$102,299</b>	<b>\$102,738</b>	<b>\$103,063</b>	<b>\$102,742</b>	<b>\$98,539</b>	<b>\$89,436</b>	<b>\$74,214</b>	<b>\$51,410</b>	<b>\$19,282</b>	<b>(\$24,249)</b>
Deferred Developer Fee Balance		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
<b>CUMULATIVE NET CASH FLOW</b>		<b>\$101,097</b>	<b>\$202,847</b>	<b>\$305,146</b>	<b>\$407,884</b>	<b>\$510,947</b>	<b>\$1,026,671</b>	<b>\$1,529,514</b>	<b>\$1,997,088</b>	<b>\$2,401,322</b>	<b>\$2,707,338</b>	<b>\$2,872,123</b>	<b>\$2,842,963</b>

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**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**OCTOBER 10, 2019**

Presentation, discussion, and possible action on the Fifth Amendment to the 2019-1 Multifamily Direct Loan Annual Notice of Funding Availability and approving its publication in the *Texas Register*.

**RECOMMENDED ACTION**

**WHEREAS**, the Board approved the 2019-1 Multifamily Direct Loan Notice of Funding Availability (2019-1 NOFA) on December 6, 2018, which included \$11.5 million in Tax Credit Assistance Program loan repayments (TCAP Repayment Funds or TCAP RF), \$9,638,041 in National Housing Trust Fund (NHTF), \$8,919,756 in HOME funds, and \$4.5 million in NSP Round 1 Program Income (NSP1 PI);

**WHEREAS**, the Board approved the First Amendment to the 2019-1 NOFA on April 25, 2019, which added \$6,023,465 in de-obligated HOME funds and \$3,660,000 in TCAP RF to the General set-aside, while reprogramming \$2,000,000 in unrequested TCAP RF from the Preservation set-aside and \$6,115,058 in unrequested HOME funds from the Community Housing Development Organization (CHDO) set-aside to the General set-aside, resulting in \$14,443,221 in HOME funds, \$11.16 million in TCAP RF, and \$4.5 million in NSP1 PI currently available under the General set-aside;

**WHEREAS**, the Board approved a conditional and then final Second Amendment to the 2019-1 NOFA (Second Amendment) on May 23, 2019, and July 25, 2019, respectively, which added \$8,401,779 in HOME PI and reprogrammed HOME funds to the 2019-1 NOFA under the General set-aside, originally subject to the Department of Housing and Urban Development's (HUD's) approval of the 2019 One Year Action Plan (OYAP), and staff setting up the financial mechanisms to allow expenditure of the funds by the Department;

**WHEREAS**, on July 25, 2019, the Board also approved the Third Amendment to the 2019-1 NOFA (Third Amendment), approving \$5,100,000 in HOME PI and reprogrammed HOME funds;

**WHEREAS**, on September 5, 2019, the Board approved the Fourth Amendment to the 2019-1 NOFA (Fourth Amendment), approving the addition of \$9,860,791.50 in NHTF 2019 Program Year funds under the Supportive Housing/ Soft Repayment (SH/SR) set-aside and increasing the maximum request for applications proposing new construction under the SH/SR set-aside from \$2,000,000 to \$3,000,000;

**WHEREAS**, there are two 4% Housing Tax Credit-layered Priority 3 applications under the General set-aside requesting \$8,000,000 total and only \$5,510,000 in TCAP RF and \$500,000 in Neighborhood Stabilization Program Round 1 Program Income (NSP1 PI)

remaining under the General set-aside, resulting in a \$1,990,000 gap between what is available and what has been requested;

**WHEREAS**, \$1,500,000 in TCAP RF remains available and unrequested under the SH/SR set-aside and \$990,000 in TCAP RF received in April and May 2019 is available to help fill the gap in the General set-aside;

**WHEREAS**, substituting the \$2,490,000 in TCAP RF rather than \$1,990,000 in TCAP RF with \$500,000 in NSP1 PI is preferable both from a document preparation standpoint and compliance standpoint since one fund source would be utilized rather than two;

**WHEREAS**, staff recommends reprogramming \$1,500,000 of TCAP RF currently under the SH/SR set-aside to the General set-aside, and adding \$990,000 in TCAP RF received in April and May 2019 to the General set-aside to allow the Department to fully fund the last two Priority 3 applications should they be recommended for awards;

**WHEREAS**, as a result of TCAP RF no longer being available under the SH/SR set-aside, new construction is the only eligible activity under the SH/SR set-aside with NHTF being the only source under the SH/SR set-aside;

**WHEREAS**, staff further recommends releasing \$500,000 in NSP1 PI from the 2019-1 NOFA in order to be utilized for single family activities; and

**WHEREAS**, staff further recommends changing the application submission deadline for the General, Community Housing Development Organization (CHDO), and Preservation set-asides to 5:00 p.m. Austin local time on October 11, 2019, while allowing applications under the SH/SR set-aside to continue to be received until 5:00 p.m. Austin local time on November 26, 2019;

**NOW, therefore, it is hereby**

**RESOLVED**, that \$1,500,000 of TCAP RF currently under the SH/SR set-aside be reprogrammed to the General set-aside and \$990,000 in TCAP RF received in April and May 2019 be added to the General set-aside;

**FURTHER RESOLVED**, that the application submission deadline for the General, CHDO, and Preservation set-asides be changed to 5:00 p.m. Austin local time on October 11, 2019;

**FURTHER RESOLVED** \$500,000 in NSP1 PI will be reprogrammed from the 2019-1 NOFA in order to be utilized for single family activities; and

**FURTHER RESOLVED**, the Executive Director and staff as designated by the Executive Director are 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

On December 21, 2018, the 2019-1 NOFA was published in the *Texas Register* announcing the availability of up to \$34,557,797, composed of \$11.5 million in TCAP RF, \$9,638,041 in NHTF, \$8,919,756 in HOME funds, and \$4.5 million in NSP1 PI – for the development of affordable multifamily rental housing. Of the total NOFA amount of \$34,557,797, \$12,304,698 was made available under the General set-aside.

On May 10, 2019, the First Amendment to the 2019-1 NOFA was published in the *Texas Register* announcing the availability of up to \$44,241,262, composed of \$15,160,000 in TCAP RF, \$9,638,041 in NHTF, \$14,943,221 in HOME funds, and \$4,500,000 in NSP1 PI. Of the total NOFA amount of \$44,241,262, \$30,103,221 was made available under the General set-aside, \$14,443,221 of which was HOME funds.

On June 7, 2019, the conditional Second Amendment to the 2019-1 NOFA was published in the *Texas Register* announcing the potential availability of up to \$8,401,779 in additional HOME funds under the General set-aside exclusively for award to 2019 9% HTC-layered applications. The proposed \$8,401,779 was contingent on approval of the Department's 2019 OYAP from HUD, which recently occurred.

With all conditions met, the Board approved the finalization of the Second Amendment on July 25, 2019, which confirmed the availability of \$8,401,779 in HOME funds for 2019 9% HTC-layered applications under the General set-aside. The Board also approved the Third Amendment to the 2019-1 NOFA on July 25, 2019, adding another \$5,100,000 in HOME PI and reprogrammed HOME funds for the specific utilization on concurrently awarded 9% LIHTC applications.

On September 20, 2019, the Fourth Amendment to the 2019-1 NOFA was published in the *Texas Register* approving the addition of \$9,860,791.50 in NHTF 2019 Program Year funds under the Supportive Housing/Soft Repayment (SH/SR) set-aside, and increasing the maximum request for applications proposing new construction under the SH/SR set-aside from \$2,000,000 to \$3,000,000.

With this reprogramming of \$1,500,000 in TCAP RF from the SH/SR set-aside to the General set-aside and the addition of \$990,000 in TCAP RF received in April and May 2019, staff anticipates being able to make one more award of TCAP RF under the General set-aside to Fish Pond at Corpus Christi (application #19610) should it be recommended for an award. The addition of these funds will bring the total TCAP RF available under the General set-aside to \$13,650,000, with \$1,650,000 awarded to Avanti at Sienna Palms Legacy (application #19504) and \$4,000,000 recommended for award to Bridge at Loyola Lofts (#19418) earlier at this Board meeting. The \$500,000 in remaining NSP1 PI will be released for single family activities since making an award to one application from two fund sources, (when one fund source is available) adds unnecessary complexity.

As a result of NHTF being the only fund source available under the SH/SR set-aside after approval of this Fifth Amendment, new construction (or reconstruction as defined in 24 CFR §93.2) will be the only eligible activity under the SH/SR set-aside. Applications under the SH/SR set-aside will continue to be



accepted until 5:00 p.m. Austin local time on November 26, 2019, as there is a significant amount of NHTF remaining under this set-aside.

Applications under the CHDO, Preservation, and General set-asides, meanwhile, will be accepted until 5:00 p.m. Austin local time on October 11, 2019, as all funds under these set-asides have been fully awarded and/or requested.

Applications that are unable to timely resolve deficiencies will be suspended and given a new received date in accordance with 10 TAC §11.201(7)(C). If the new application acceptance date is after November 26, 2019, the application will be terminated.

Moving forward, staff will continue to monitor the demand for Direct Loan funds and may recommend further amendments to the 2019-1 NOFA if necessary.



**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**  
**MULTIFAMILY DIRECT LOAN**  
**2019-1 NOTICE OF FUNDING AVAILABILITY (NOFA)**  
**ANNUAL NOFA**  
**FIFTH AMENDMENT**

THIS AMENDMENT REPROGRAMS \$1,500,000 IN TAX CREDIT ASSISTANCE PROGRAM REPAYMENT FUNDS (TCAP RF) FROM THE SUPPORTIVE HOUSING/ SOFT REPAYMENT (SH/SR) SET-ASIDE TO THE GENERAL SET-ASIDE, ADDS \$990,000 IN TCAP RF RECEIVED IN APRIL AND MAY 2019 TO THE GENERAL SET-ASIDE, AND RELEASES \$500,000 IN NEIGHBORHOOD STABILIZATION PROGRAM ROUND 1 PROGRAM INCOME (NSP1 PI) FROM THE GENERAL SET-ASIDE FOR SINGLE FAMILY ACTIVITIES. ADDITIONALLY, THIS AMENDMENT CHANGES THE APPLICATION SUBMISSION DEADLINE FOR APPLICATIONS SUBMITTED UNDER THE COMMUNITY HOUSING DEVELOPMENT ORGANIZATION (CHDO), PRESERVATION, AND GENERAL SET-ASIDES TO 5:00 P.M. AUSTIN LOCAL TIME ON OCTOBER 11, 2019. APPLICATIONS SUBMITTED UNDER THE SH/SR SET-ASIDE WILL CONTINUE TO BE RECEIVED UNTIL 5:00 P.M. AUSTIN LOCAL TIME ON NOVEMBER 26, 2019.

THIS AMENDMENT REPLACES IN ITS ENTIRETY SECTIONS 1, 2A, 2B, 2C, 2D, AND 6A. ALL OTHER SECTIONS OF THE 2019-1 NOFA REMAIN AS AMENDED BY THE FIRST, SECOND, THIRD, AND FOURTH AMENDMENTS.

- 1) Summary.** The Texas Department of Housing and Community Affairs (the Department) announces the availability of up to **\$68,093,832.50** in Multifamily Direct Loan funding for the development of affordable multifamily rental housing for low-income Texans. Applications submitted under the Supportive Housing/ Soft Repayment (SH/SR) set-aside under the 2019-1 NOFA will be accepted from January 14, 2019, through November 26, 2019 (if sufficient funds remain), while applications submitted under the CHDO, General, and Preservation set-asides under the 2019-1 NOFA will be accepted from January 14, 2019, through October 11, 2019. From September 20, 2019, through October 21, 2019, an Applicant applying for NHTF Funds is limited to the amount available in the region as provided in the 2019 NHTF Regional Allocation Formula found in Attachment B. An Applicant that submits a complete application for NHTF funds from September 20, 2019, through October 21, 2019, requesting a greater amount than is available in the Region, will have an Application date of receipt of October 22, 2019. The availability and use of these funds are subject to the following rules, as applicable:

Texas Administrative Code  
10 TAC Chapter 1 (Administration)

10 TAC Chapter 2 (Enforcement)  
10 TAC Chapter 10 (Uniform Multifamily Rules)  
10 TAC Chapter 11 (Qualified Allocation Plan)  
10 TAC Chapter 12 (Multifamily Housing Revenue Bonds)  
10 TAC Chapter 13 (Multifamily Direct Loan Rule)

Texas Government Code

Tex. Gov't. Code Chapter 2306

U.S. Department of Housing and Urban Development (HUD) Program Regulations

24 CFR Part 92 (HOME Investment Partnerships Program Final Rule)  
24 CFR Part 93 (Housing Trust Fund Interim Rule)  
24 CFR Part 570, as modified by Federal Register Notice (Neighborhood Stabilization Program Round 1)

Fair Housing

Federal Fair Housing Act, 42 U.S.C. 3601-19.

Other Federal laws and regulations may that apply depending on funding source:

Environmental Compliance

All federal sources must have some type of environmental review in accordance with 24 CFR Part 93 or 24 CFR Part 58 as applicable.

Minimizing Resident Displacement

All federal sources must follow the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; HOME and NSP1 PI must follow Section 104(d) of Housing and Community Development Act of 1974; and all federal sources must follow the HUD Handbook 1378.

Labor Standards

HOME and NSP1 PI funds are regulated by Davis-Bacon and Related Labor Acts (40 U.S.C. §3141-3144 and 3146-3148, 24 CFR §92.354, and HUD Handbook Federal Labor Standards Compliance in Housing and Community Development Programs).

Employment Opportunities

HOME, NHTF, and NSP1 PI require compliance with 24 CFR Part 135 (Section 3).

**Except as otherwise noted in this NOFA, Applicants proposing development of affordable multifamily rental housing should assume HOME, NSP1 PI and/or NHTF funds will be awarded and be prepared to comply with applicable regulations. An Applicant must familiarize itself with all of the applicable state and federal rules that govern the program. If HOME, NSP1 PI and/or NHTF funds are used and Federal regulations or subsequent guidance imposes additional requirements, such Federal regulations or guidance shall govern.**

An Applicant that proposes refinancing with minimal rehabilitation must have a Market Analysis in accordance with 10 TAC §11.303 (unless an exception applies under 10 TAC §13.5(d)), and a PCA in accordance with 10 TAC §11.306, both of which must support the proposed level of rehabilitation. The Applicant must receive a waiver from the Board of the rehabilitation amounts listed in 10 TAC §11.101(b)(3). An Application proposing Refinancing with Minimal Rehabilitation, or that requests supplemental funds for an Application that has received funding or allocation in a previous year, generally will only receive Tax Credit Assistance Program Repayment Funds (“TCAP RF”), but, except as otherwise noted in this NOFA, may receive HOME, NSP and/or NHTF funds if it is an eligible activity for a federal fund source. An award to a Development that proposes to refinance with minimal rehabilitation, or to obtain supplemental financing, will not be made in amount that exceeds the amount necessary to replace lost funding or maintain the anticipated levels of feasibility in the original Application, as determined by the Board.

- 2) a. CHDO Set-Aside. At least \$500,000 in HOME funds are set aside for nonprofit organizations that can be certified as Community Housing Development Organizations (CHDOs).
- b. Supportive Housing/ Soft Repayment Set-Aside. Up to \$19,498,832.50 (all \$19,498,832.50 in NHTF) is available in this set-aside. Applicants proposing new construction (or reconstruction as defined in 24 CFR §93.3) within this set-aside must restrict all Direct Loan-assisted units to 30% AMI.
- c. Preservation Set-Aside. Up to \$2,000,000 in TCAP RF is available in this set-aside. Eligible activities under this set-aside include: (1) acquisition and rehabilitation; (2) rehabilitation without acquisition; and (3) refinancing with minimal rehabilitation (less than \$30,000 per unit).
- d. General Set-Aside. All remaining TCAP RF, HOME, and NSP1 PI funds available, currently anticipated to be \$45,595,000. Eligible activities under this set-aside include those mentioned in the Preservation set-aside as well as New Construction.

Set-Aside	Eligible Activities	Amount Available		Maximum Request <sup>1</sup>
CHDO	NC, A/R, R	HOME	\$500,000	\$500,000
Supportive Housing / Soft Repayment	A/R, R	TCAP RF	\$500,000	\$500,000
	NC	NHTF	\$19,498,833	\$3,000,000
Preservation	A/R, R, Refi MR	TCAP RF	\$2,000,000	\$2,000,000
General	NC, A/R, R, Refi MR	HOME	\$27,945,000	\$4,000,000 if NC;
		TCAP RF	\$13,650,000	\$2,000,000 if A/R, R, Refi MR
		NSP1 PI	\$4,000,000	

<sup>1</sup> This total includes any other Multifamily Direct Loan Funds previously awarded to the Applicant by the Department.

**Key:**

NC – New Construction

R – Rehabilitation

A/R – Acquisition/Rehabilitation

Refi MR – Refinancing with Minimal Rehabilitation

**6) Application Submission Requirements**

- a. Applications under the SH/SR set-aside under this NOFA will be accepted starting at 8:00 a.m. Austin local time on January 14, 2019 through November 26, 2019, at 5:00 p.m. Austin local time (if sufficient funds remain). Applications under the CHDO, Preservation, and General set-asides under this NOFA will be accepted starting at 8:00 a.m. Austin local time on January 14, 2019 through October 11, 2019, at 5:00 p.m. Austin local time.