

# **BOARD BOOK OF DECEMBER 6, 2018**



**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 2017

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 to be served and total funding either administered or pledged for Fiscal Year 2017 (September 1, 2016, through August 31, 2017) – 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: 8,583**  
**Total Funding: \$886,263,818\***

#### **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: 326**  
**Total Funding: \$17,323,164**

#### **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: 5,870**  
**Total Funding: \$870,405,445**

#### **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: 1,678**  
**Total Funding: \$13,668,121**

#### **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: 3,349**  
**Total Funding: \$24,379,360**

#### **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: 36,555**  
**Total Funding: \$15,009,483**

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

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

**Total Households Served: 134,465**  
**Total Funding: \$94,482,215**

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

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

**Total Individuals Served: 492,727**  
**Total Funding: \$31,237,527**

Sources: this data comes from the TDHCA 2018 State Low Income Housing Plan and Annual Report draft. Multifamily New Construction & Rehab data come from the most recent award logs from FY2017 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.

\*FY2017 data for the Multifamily program is artificially low, largely due to federal tax reform’s timing effects on 4% housing tax credit developments. A significant amount of 4% activity was delayed into the 4 months after FY2017 (Sept., Oct., and Nov., and Dec.).





# CONSENT AGENDA

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

**A G E N D A  
8:00 AM  
DECEMBER 6, 2018**

**Texas Capitol Building  
Capitol Extension Room E2.026  
1100 Congress Avenue  
Austin, TX 78701**

**CALL TO ORDER**

**ROLL CALL**

**J.B. Goodwin, Chair**

**CERTIFICATION OF QUORUM**

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

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

Resolution Commemorating and Recognizing December 21, 2018, as *Homeless Persons' Memorial Day in Texas*

**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 September 6, 2018 and October 11, 2018

**J. Beau Eccles**  
General Counsel

**LEGAL**

- b) Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning North Athens Homes (HOME 532340/CMTS 2707)
- c) Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning Oak Park Apartments (HTC 91056/CMTS 965) and a related Final Order of Debarment against David Yilmaz and The David Yilmaz Living Trust for a period of 15 years

**Jeffrey T. Pender**  
Deputy General Counsel

**OCI/HTF/NSP**

- d) Presentation, discussion, and possible action on a Memorandum of Understanding between the Texas Department of Housing and Community Affairs and the Texas Department of Agriculture regarding the management of Community Development Block Grant funds for the Colonia Self-Help Center Program

**Raul Gonzales**  
Director of  
OCI/HTF and NSP

**BOND FINANCE**

- e) Presentation, discussion, and possible action on Resolution No. 19-011 authorizing publication of Public Notice for Mortgage Credit Certificate Program
- f) Presentation, discussion, and possible action on Inducement Resolution No. 19-012, for Multifamily Housing Revenue Bonds Regarding Authorization for Filing Application for Private Activity Bond Authority on the 2019 Waiting List for Waters at Redbud
- g) Presentation, discussion, and possible action on Inducement Resolution No. 19-013 for Multifamily Housing Revenue Bonds Regarding Authorization for Filing an Application for Private Activity Bond Authority for McMullen Square Apartments

**Monica Galuski**  
Director of  
Bond Finance

**Teresa Morales**  
Manager of  
Multifamily Bonds



## **RULES**

- u) Presentation, discussion, and possible action on an order adopting new 10 TAC Chapter 7, Subchapter D, Ending Homelessness Fund, and directing publication in the *Texas Register*
- v) Presentation, discussion, and possible action on an order proposing the amendment of 10 TAC §8.7 Program Regulations and Requirements, and directing publication for public comment in the *Texas Register*
- w) Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC Chapter 29, Texas Single Family Neighborhood Stabilization Program Rule, and an order adopting new 10 TAC Chapter 29, Texas Single Family Neighborhood Stabilization Program Rule, and directing publication in the *Texas Register*
- x) Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC Chapter 1, Subchapter C, Previous Participation; and an order adopting new, with changes, 10 TAC Chapter 1, Subchapter C, Previous Participation and Executive Award Review and Advisory Committee, and directing their publication for adoption in the *Texas Register*
- y) Presentation, discussion, and possible action on the draft 2019 State of Texas Low Income Housing Plan and Annual Report, and proposed repeal and proposed new 10 TAC Chapter 1, Subchapter A, General Policies and Procedures §1.23 concerning State of Texas Low Income Housing Plan and Annual Report, and directing their publication for public comment in the *Texas Register*

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

**Brooke Boston**  
Director of  
Programs

**Elizabeth Yevich**  
Director of  
Housing Resource Center

## **CONSENT AGENDA REPORT ITEMS**

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

- a) TDHCA Outreach Activities, (November - December)
- b) Presentation, discussion, and possible action to accept the report on the Draft Computation of Housing Finance Division Total and Unencumbered Fund Balances and Transfers to the Housing Trust Fund
- c) Report on the Department's SFY 2018 draft Balance Sheet/Statement of Net Position for the year ended August 31, 2018
- d) Report regarding a Request for Proposal for Financial Advisor issued by the Texas Department of Housing and Community Affairs
- e) Report on the allocation of Program Year 2019 Community Services Block Grant awards
- f) Report on the 2020 QAP Planning process

**Michael Lyttle**  
Director of  
External Affairs

**Ernie Palacios**  
Director of  
Financial Administration

**Monica Galuski**  
Director of  
Bond Finance

**Michael DeYoung**  
Director of  
Community Affairs

**Marni Holloway**  
Director of  
MF Finance

## **ACTION ITEMS**

### **ITEM 3: INTERNAL AUDIT**

Report on the meeting of the Internal Audit and Finance Committee

**Sharon Thomason**  
Chair of Audit Committee

### **ITEM 4: BOND FINANCE**

- a) Presentation, discussion, and possible action on Resolution No. 19-010 authorizing the sale of mortgage-backed securities and redemption of 2009 Series A Residential Mortgage Revenue Bonds and 2009 Series B Residential Mortgage Revenue Bonds
- b) Presentation, discussion, and possible action regarding the Issuance of Multifamily Tax-Exempt Bonds (M-TEMS) (Park Yellowstone) Series 2019 and Multifamily Housing Revenue Bonds (Park Yellowstone) Series 2019 Resolution No. 19-016 and a Determination Notice of Housing Tax Credits

**Monica Galuski**  
Director of  
Bond Finance

**Teresa Morales**  
Manager of  
Multifamily Bonds

### **ITEM 5: RULES**

Presentation, discussion, and possible action on an order adopting the amendments to 10 TAC Chapter 10 Subchapter E, concerning Post Award and Asset Management Requirements, and directing its publication in the *Texas Register*

**Rosalio Banuelos**  
Director of  
Asset Management

**ITEM 6: MULTIFAMILY FINANCE**

**Marni Holloway**  
Director of  
MF Finance

- a) Presentation, discussion, and possible action on a request for the extension of the placement in service deadline under 10 TAC §11.6(5) of the 2018 Qualified Allocation Plan related to Credits Returns Resulting from Force Majeure Events
 

16185	Merritt Heritage	Georgetown
18210	Merritt Monument	Midland
- b) Presentation, discussion, and possible action on penalties for failure to meet deadlines under 10 TAC 11.9(c)(8) Readiness to Proceed
 

18013	Dayton Retirement Center	Dayton
18243	2222 Cleburne	Houston
- c) Presentation, discussion, and possible action regarding approval for publication in the *Texas Register* of the 2019-1 Multifamily Direct Loan Notice of Funding Availability
- d) Presentation, discussion, and possible action regarding a request for extension of deadlines for the Housing Tax Credit Application
 

18235	Memorial Apartments	McAllen
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- e) Presentation, discussion and possible action regarding an Award of Direct Loan funds from the 2018-1 Multifamily Direct Loan Notice of Funding Availability
 

18019	Highlander Senior Village	Bulverde
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**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 Terri Roeber, 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 30.06, Penal Code (trespass by license holder with a concealed handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a concealed handgun.

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

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

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

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



**Texas Department of Housing and Community Affairs**  
**RESOLUTION**

**WHEREAS**, as measured by the 2017 Annual Homeless Assessment Report, more than 23,000 persons experiencing homelessness were counted in Texas during the last two weeks of January in each of the last three years, including more than 6,800 people in families;

**WHEREAS**, the state and federal homelessness and homelessness prevention programs administered by the Texas Department of Housing and Community Affairs (the Department) support street outreach, emergency shelters, rapid re-housing, homelessness prevention, and support services as front line responses to community homelessness;

**WHEREAS**, the Department's homeless programs assisted more than 45,000 persons, helping them to move toward housing stability after experiencing or being at risk of homelessness in State Fiscal Year 2018;

**WHEREAS**, the Department recognizes that each person who works with someone experiencing or at risk of homelessness makes a difference;

**WHEREAS**, the Department supports local governments and organizations that work, often in collaboration, to address, prevent, and minimize homelessness;

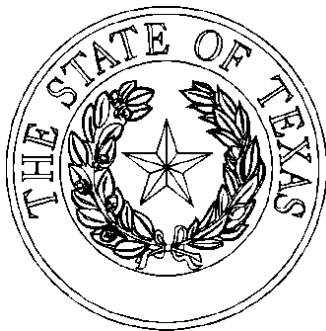
**WHEREAS**, December 21, 2018, is National Homeless Persons' Memorial Day, which annually falls on the longest night of the year; and

**WHEREAS**, the Department recognizes those who have lost their lives while experiencing homelessness;

**NOW, therefore, it is hereby**

**RESOLVED**, that the Governing Board of the Texas Department of Housing and Community Affairs does hereby commemorate and recognize December 21, 2018, as Homeless Persons' Memorial Day in Texas and encourages all Texas individuals and organizations, public and private, to join in this observance of National Homeless Persons' Memorial Day.

Signed this Sixth Day of December 2018.



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J.B. Goodwin, Chair

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Leslie Bingham Escareño, Vice  
Chair

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Paul A. Braden, Member

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Leo Vasquez, Member

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Asusena Reséndiz, Member

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Sharon Thomason, Member

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David Cervantes, Acting Director

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**BOARD ACTION REQUEST**

**BOARD SECRETARY**

**DECEMBER 6, 2018**

Presentation, discussion, and possible action on Board meeting minutes summaries for September 6, 2018, and October 11, 2018

**RECOMMENDED ACTION**

Approve the Board meeting minutes summaries for September 6, 2018, and October 11, 2018.

**RESOLVED**, that the Board meeting minutes summaries for September 6, 2018, and October 11, 2018, are hereby approved as presented.

**Texas Department of Housing and Community Affairs Governing Board  
Board Meeting Minutes Summary  
September 6, 2018**

On Thursday, the sixth day of September 2018, 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 Hearing Room E2.016 of the Texas Capitol Extension, 1100 Congress Avenue, 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

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 the following items which were moved to the Action Item Agenda:

- Item 1(d) – Presentation, discussion, and possible action on a Determination Notice for Housing Tax Credits with another Issuer for 18409 John Cramer Apartments, El Paso; 18410 Ambrosio Guillen Apartments, El Paso; 18411 MLK Memorial, El Paso; 18420 Walnut Creek, Austin; and 18422 Elysium Grand, Austin; and
- Item 1(bb) – Presentation, discussion, and possible action on an order proposing the repeal of 10 TAC Chapter 1, Subchapter C, Previous Participation; and an order proposing new 10 TAC Chapter 1, Subchapter C, Previous Participation and Executive Award Review and Advisory Committee, and directing their publication for public comment in the *Texas Register*

2) The Board unanimously approved a resolution recognizing October 2018 as National Energy Awareness Month.

3) On Action Item 1(d) – Presentation, discussion, and possible action on a Determination Notice for Housing Tax Credits with another Issuer for 18409 John Cramer Apartments, El Paso; 18410 Ambrosio Guillen Apartments, El Paso; 18411 MLK Memorial, El Paso; 18420 Walnut Creek, Austin; and 18422 Elysium Grand, Austin – Chairman Goodwin announced that 18422 Elysium Grand would be pulled from consideration of the item. Following public comment (listed below), the Board unanimously approved staff recommendation to issue the housing tax credits.

- Farida Deeds, Austin citizen, testified in opposition to awarding housing tax credits to 18422 Elysium Grand

4) Action Item 3(a) – Report on the Migrant Labor Housing Facilities License Program – was presented by Tom Gouris, TDHCA Director of Special Initiatives, with additional information from Tim Irvine, TDHCA Executive Director. Paul Braden, Board and Rules Committee Member, relayed that the Rules Committee recommended not proceeding forward with the amendment to the rules on the agenda as Item 7(e). The Board heard and unanimously accepted the report.

5) Action Item 3(b) – Report on Department’s Fair Housing Activities – was presented by Brooke Boston, TDHCA Director of Programs. The Board heard and unanimously accepted the report.

6) Action Item 4(a) – Report on the meeting of the Internal Audit and Finance Committee – was presented by Sharon Thomason, Chair of the TDHCA Governing Board Audit and Finance Committee. The Board heard and unanimously accepted the report.

7) Action Item 4(b) – Presentation and possible approval of the Annual Internal Audit Plan for Fiscal Year 2019 – was presented by Mark Scott, TDHCA Director of Internal Audit. The Board unanimously approved the plan.

8) Action Item 4(c) – Presentation and review of the Internal Audit of the Neighborhood Stabilization Program close out process – was presented by Mr. Scott. The Board heard and accepted the presentation and review.

9) Action Item 5 – Presentation, discussion, and possible action regarding Resolution No. 19-004 approving amendments to program documents for Taxable Mortgage Program; authorizing the execution of documents and instruments relating to the foregoing; making certain findings and determinations in connection therewith; and containing other provisions relating to the subject – was presented by Monica Galuski, TDHCA Chief Investment Officer and Director of Bond Finance. The Board unanimously approved staff recommendation to adopt the resolution and approve the associated administrative measures.

10) Chairman Goodwin exercised his discretion on the order of the agenda for the Board to take up Action Item 1(bb) – Presentation, discussion, and possible action on an order proposing the repeal of 10 TAC Chapter 1, Subchapter C, Previous Participation; and an order proposing new 10 TAC Chapter 1, Subchapter C, Previous Participation and Executive Award Review and Advisory Committee, and directing their publication for public comment in the *Texas Register* – which was presented by Ms. Boston. Following public comment (listed below), the Board unanimously voted to table the item to the October 2018 meeting.

- Tamea Dula, Coats Rose, provided comment on the draft rules
- Tim Alcott, San Antonio Housing Authority, provided comment on the draft rules
- Cynthia Bast, Locke Lord, provided comment on the draft rules
- Gerry Cichon, Housing Authority of the City of El Paso, provided comment on the draft rules
- Tracey Fine, National Church Residences, provided comment on the draft rules
- Barry Palmer, Coats Rose, provided comment on the draft rules

11) The Board heard Action Item 6 – Presentation by Beth Van Duyne, HUD Regional Administrator for Region VI, on the Rental Assistance Demonstration Program.

12) Action Item 7(a) – Presentation, discussion, and possible action on the proposed repeal of 10 TAC Chapter 10, Subchapter A, concerning General Information and Definitions, Subchapter B, concerning Site and Development Requirements and Restrictions, Subchapter C, concerning Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules for Applications, Subchapter D, concerning Underwriting and Loan Policy, and Subchapter G, concerning Fee Schedule, Appeals and Other Provisions, and directing publication for public comment in the *Texas Register* – was presented by Marni Holloway, TDHCA Director of Multifamily Finance. The Board unanimously approved staff recommendation for the proposed repeal of the existing rules and to publish the draft rules.

13) Action Item 7(b) – Presentation, discussion, and possible action on the proposed repeal of 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan, and a proposed new 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan (which will incorporate into Chapter 11 substance from the Uniform Multifamily Rules being repealed from 10 TAC Chapter 10, Subchapters A, B, C, D, and G), and directing its publication for public comment in the *Texas Register* – was presented by Ms. Holloway with additional information from Mr. Irvine and Sharon Gamble, TDHCA Administrator of the Competitive Housing Tax Credit Program. Following public comment (listed below), the Board unanimously approved staff recommendation for the proposed repeal of the existing rules and to publish the draft rules.

- Zachary Krochtengel, developer, provided comments on the draft rules
- Michael Tamez, Madhouse Development, asked a question of staff

14) Action Item 7(c) – Presentation, discussion, and possible action on the proposed repeal of 10 TAC Chapter 13, Multifamily Direct Loan Rule, and proposed new 10 TAC Chapter 13, Multifamily Direct Loan Rule, and directing publication for public comment in the *Texas Register* – was presented by Ms. Holloway. The Board unanimously approved staff recommendation for the proposed repeal of the existing rules and to publish the draft rules.

15) Action Item 7(d) – Presentation, discussion, and possible action on an order proposing the repeal of 10 TAC Chapter 12, Multifamily Housing Revenue Bond Rules, and an order proposing new 10 TAC Chapter 12, concerning the Multifamily Housing Revenue Bond Rules, and directing publication for public comment in the *Texas Register* – was presented by Teresa Morales. The Board unanimously approved staff recommendation for the proposed repeal of the existing rules and to publish the draft rules.

16) The Board did not consider Action Item 7(e) – Presentation, discussion, and possible action on an order proposing the repeal of 10 TAC Chapter 90, Migrant Labor Housing Facilities, and an order proposing new 10 TAC Chapter 90, Migrant Labor Housing Facilities, and directing publication for public comment in the *Texas Register* – as it was pulled from the agenda.



17) Action Item 7(f) – Presentation, discussion, and possible action on the proposed amendment of 10 TAC Chapter 10 Subchapter E, concerning Post Award and Asset Management Requirements, and directing its publication for public comment in the Texas Register – was presented by Rosalio Banuelos, TDHCA Acting Director of Multifamily Asset Management. The Board unanimously approved staff recommendation for the proposed repeal of the existing rules and to publish the draft rules.

18) At 10:20 a.m., the Board went into Executive Session and reconvened in open session at 10:40 a.m. No action was taken in Executive Session.

19) There was no comment during the Public Comment portion of the meeting.

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 10:40 a.m. The next meeting is set for Thursday, October 11, 2018.

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Secretary

Approved:

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Chair

**Texas Department of Housing and Community Affairs Governing Board  
Board Meeting Minutes Summary  
October 11, 2018**

On Thursday, the eleventh day of October 2018, at 8:03 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 Hearing Room E2.028 of the Texas Capitol Extension, 1100 Congress Avenue, Austin, Texas.

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

- J.B. Goodwin
- 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 adopted a resolution recognizing September 15, 2018, through October 15, 2018, as Hispanic Heritage Month in Texas.

2) The Board unanimously approved the Consent Agenda as presented except for sub item 18422 Elysium Grand, Austin, in Item 1(l) – Presentation, discussion, and possible action on a Determination Notice for Housing Tax Credits with another Issuer. This sub item was moved for consideration to the Action Item Agenda.

3) Sub item 18422 Elysium Grand, Austin, under Action Item 1(l) – Presentation, discussion, and possible action on a Determination Notice for Housing Tax Credits with another Issuer – was presented by Marni Holloway, TDHCA Director of Multifamily Finance, with additional information from Tim Irvine, TDHCA Executive Director. Following public comment (listed below), the Board approved staff recommendation to find the site eligible for a tax credit award and to approve that award.

- Farida Deeds, representing the neighborhood in which the proposed development would be located, testified in opposition to staff recommendation
- Megan Lasch, Saigebrook Development and representing Elysium Grand, testified in support of staff recommendation
- Toni Jackson, Jones Walker and representing Elysium Grand, provided information on the item
- Sarah André, Austin citizen, testified in support of staff recommendation

4) Action Item 3(a) – Report on Recent Voucher Application Activity – was presented by Brooke Boston, TDHCA Director of Programs. The Board heard and unanimously accepted the report.

5) Action Item 3(b) – Quarterly Report on Texas Homeownership Division Activity – was presented by Cathy Gutierrez, TDHCA Director of Texas Homeownership Division. The Board heard and unanimously accepted the report.

6) Chairman Goodwin exercised his discretion on the order of the agenda and announced that Action Item 3(c) – Report on the process for appointment of a new Executive Director and actions of the Executive Director Committee – would be moved to the end of the agenda.

7) Chairman Goodwin exercised his discretion on the order of the agenda and announced that Action Item 4(a) – Presentation, discussion and possible action regarding the Issuance of Multifamily Housing Revenue Bonds (Related RD Portfolio) Series 2018 Resolution No. 19-007 and Determination Notices of Housing Tax Credits for 18605 Bastrop Oak Grove, Bastrop; 18606 Bay City Village, Baytown; 18607 Burk Village, Burkburnett; 18608 Elgin Meadowpark, Elgin; 18609 Evan Tom Sawyer, Evant; 18610 Hondo Brian Place, Hondo; 18611 Hondo Gardens, Hondo; 18612 Lampasas Gardens, Lampasas; and 18613 Lantana Apartments, Beeville – would be moved to the end of the agenda.

8) Action Item 4(b) – Presentation, discussion and possible action regarding the Issuance of Multifamily Housing Revenue Bonds (Forestwood Apartments) Series 2018 A and Taxable Multifamily Housing Revenue Bonds (Forestwood Apartments) Series 2018B Resolution No. 19-008 and a Determination Notice of Housing Tax Credits – was presented by Teresa Morales, TDHCA Manager of Multifamily Bonds. The Board unanimously approved staff recommendation to issue the bonds, approve the resolution, and award the tax credits.

9) The Board did not take up Action Item 5 – Presentation, discussion and possible action on staff determinations regarding Undesirable Neighborhood Characteristics for Multifamily Direct Loan Application 18503 Eastern Oaks Apartments, Austin – as it was pulled from the agenda.

10) Action Item 6 – 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; an order adopting the repeal of 10 TAC Chapter 6 Community Affairs Programs: §6.1 Purpose and Goals, §6.2 Definitions, §6.3 Subrecipient Contract, §6.7 Subrecipient Reporting Requirements, §6.8 Applicant/Customer Denials and Appeal Rights; §6.205 Limitations on Use of Funds, §6.206 CSBG Needs Assessment, Community Action Plan, and Strategic Plan, §6.207 Subrecipient Requirements, §6.213 Board Responsibility, §6.214 Board Meeting Requirements; §6.301 Background and Definitions, §6.304 Deobligation and Reobligation of CEAP Funds, §6.307 Subrecipient Requirements for Customer Eligibility Criteria and Establishing Priority for Eligible Households, §6.309 Types of Assistance and Benefit Levels, §6.312 Payments to Subcontractors and Vendors; §6.403 Definitions, §6.405 Deobligation and Reobligation of Awarded Funds, §6.406 Subrecipient Requirements for Establishing Priority for Eligible Households and Customer Eligibility Criteria, §6.407 Program Requirements, §6.412 Mold-Like Substances, §6.414 Eligibility for Multifamily

Dwelling Units and §6.415 Health and Safety and Unit Deferral; and an order adopting new 10 TAC Chapter 6 Community Affairs Programs: §6.1 Purpose and Goals, §6.2 Definitions, §6.3 Subrecipient Contract, §6.7 Subrecipient Reporting Requirements, §6.8 Applicant/Customer Denials and Appeal Rights; §6.205 Limitations on Use of Funds, §6.206 CSBG Assessment, Community Action Plan, and Strategic Plan, §6.207 Subrecipient Requirements, §6.213 Board Responsibility, §6.214 Board Meeting Requirements; §6.301 Background and Definitions, §6.304 Deobligation and Reobligation of CEAP Funds, §6.307 Subrecipient Requirements for Customer Eligibility Criteria and Establishing Priority for Eligible Households, §6.309 Types of Assistance and Benefit Levels, §6.312 Payments to Subcontractors and Vendors; §6.403 Definitions, §6.405 Deobligation and Reobligation of Awarded Funds, §6.406 Subrecipient Requirements for Establishing Priority for Eligible Households and Customer Eligibility Criteria, §6.407 Program Requirements, §6.412 Mold-Like Substances, §6.414 Eligibility for Multifamily Dwelling Units and §6.415 Health and Safety and Unit Deferral; and directing that they be published for adoption in the *Texas Register* – was presented by Ms. Boston with additional information from Mr. Irvine and Mr. Eccles. Following public comment (listed below), the Board unanimously approved staff recommendation to repeal the old rules and adopt the new ones as presented. (*It should also be noted that prior to the Board vote on this item, Ms. Bingham-Escareño left the dais.*)

- Bill Powell, South Plains Community Action Association, provided comment on the rules
- Laura Ponce, El Paso Community Action Program Project Bravo, provided comment on the rules

11) Action Item 4(a) was presented by Ms. Morales. The Board unanimously approved staff recommendation to issue the bonds and housing tax credits and to adopt the resolution.

12) At 9:20 a.m., the Board went into Executive Session and reconvened in open session at 10:11 a.m. No action was taken in Executive Session except for deliberations on personnel matters pursuant to Texas Government Code §551.074.

13) Action Item 3(c) was presented by Chairman Goodwin. The report indicated that the Executive Director Committee recommends to the full Board that David Cervantes be named Acting Director upon the retirement of Executive Director Tim Irvine. Official action on the item would be scheduled for the meeting of November 8, 2018. The Board heard and unanimously accepted the report.

14) There was no comment during the Public Comment portion of the meeting.

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 10:15 a.m.  
The next meeting is set for Thursday, November 8, 2018.

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Secretary

Approved:

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Chair

1b



**BOARD ACTION REQUEST**

**LEGAL DIVISION**

**DECEMBER 6, 2018**

Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning North Athens Homes (HOME 532340 / CMTS 2707)

**RECOMMENDED ACTION**

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

**WHEREAS**, representatives of Owner have attended multiple informal conferences and signed a prior Agreed Final Order in 2016;

**WHEREAS**, a total administrative penalty of \$2,000 was paid under the 2016 Agreed Final Order as a result of Owner’s failure to remedy violations as required;

**WHEREAS**, the following violations were identified during a 2017 onsite file monitoring review and remain unresolved today: an Affirmative Marketing Plan violation; a violation for failure to execute required lease language for two units; a Tenant Income Certification violation relating to one unit; Household Income Above Limit Upon Initial Occupancy violations for two units; and gross rent violations for two units;

**WHEREAS**, on October 23, 2018, 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 \$7,050, with \$3,500 to be paid in two installments, and the remaining \$3,550 to be forgiven if all requirements of the Agreed Final Order are met; 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 \$7,050, subject to partial forgiveness as outlined above, for noncompliance at North Athens Homes, substantially in the form presented at this meeting, and authorizing any non-substantive technical corrections, is hereby adopted as the order of this Board.

## BACKGROUND

North Athens Concerned Citizens (“Owner”) is the owner of North Athens Homes (“Property”), which includes ten single family homes, located in Athens, Henderson County. Records of the Texas Secretary of State list the following officers for the organization: Willie E Sims (Executive Director), Evelyn Sims (Director / Secretary), JL Ingram (Director / Treasurer), Robert Edison (Director), Bonella Edison (Director), Lester Nevells (Director), Angelina Smith (Director), Beverly White (Director), Danyelle Reece (Director), Feleciah Brown (Director). CMTS lists Evelyn Joyce Sims, as the primary contact for Owner and Feleciah Brown as the onsite manager. The property is self-managed.

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

Despite numerous attempts by the Compliance Division, Legal Division, and Enforcement Committee to provide technical assistance and obtain acceptable corrective action, Owner has been unable to operate the property in compliance with LURA requirements. Owner’s first administrative penalty referral was in 2013 for an annual owner’s compliance report violation, which was resolved with no enforcement action taken. The second referral was in 2015, for failure to submit pre-onsite documentation, failure to appear for an onsite file monitoring review, and one Uniform Physical Condition Standards (“UPCS”) violation. Corrections were submitted after an administrative penalty informal conference was set. Although the originally referred findings were resolved, the submission uncovered numerous new violations and a new corrective deadline of August 19, 2015, was set by the Compliance Division. The Enforcement Committee considered relevant factors during an informal conference, said factors including the April 17, 2014, death of Willie E. Sims, and voted to send a warning letter, providing technical support, requiring owner representatives to attend training, recommending hiring an outside property manager, and requiring submission of full corrections on or before an August 19, 2015, deadline that had been set by the Compliance Division. Corrections were submitted, but multiple violations remained unresolved and were referred to the Enforcement Committee. A follow-up informal conference was held in 2016, and an Agreed Final Order was recommended. That Agreed Final Order included an administrative penalty of \$2,000, with a \$500 portion due at signing and the remaining \$1,500 to be forgiven if all violations were resolved as required. The order was subsequently violated and the full administrative penalty was required to be paid.

Owner has been referred again for an administrative penalty for further file monitoring violations identified during 2017 and 2018. The following referred violations are unresolved:

1. Failure to maintain a compliant Affirmative Marketing Plan and evidence of associated marketing efforts;
2. Lease violation relating to failure to execute required good cause eviction language in the leases for three units;
3. A Tenant Income Certification violation for failure to provide an annual self-certification for one unit;
4. Household income violations for two units; and
5. Gross rent violations for two units.

Owner representatives participated in an informal conference with the Enforcement Committee on October 23, 2018. Although file submissions have improved since 2015, Owner continues to miss deadlines and submit incomplete documentation. Some of the violations, such as those involving continued overcharged gross rents, are very serious and Owner representatives do not appear to have applied remedial strategies despite the specific instructions provided by TDHCA staff. Initial problems in 2013 and 2015 related to the illness and death of former Executive Director, Willie E. Sims, and then the transition of the property to his wife, Evelyn Joyce Sims, who has stated that she was not previously involved with operation or management of the property. Mrs. Sims has had difficulty complying with the LURA as required by TDHCA, and has asked for assistance from other board members, including Feleciah Brown. However, Ms. Brown was involved at the time of the 2016 Agreed Final Order, and said during the October 23, 2018, informal conference that she works on file monitoring requirements when she has time, as a favor to Mrs. Sims. Although both stated that they will comply with TDHCA requirements, it was clear to Committee members that compliance was not a high enough priority for either Mrs. Sims or Ms. Brown. This information, coupled with their continued failure to comply with department requirements, suggests that the 2016 administrative penalty assessment was insufficient to deter future violations. Accordingly, the Enforcement Committee has recommended the maximum administrative penalty, with a partially forgivable portion as an incentive to comply.

Owner representatives have agreed to sign an Agreed Final Order with the following negotiated terms:

1. The maximum potential administrative penalty, totaling \$7,050, subject to partial forgiveness as indicated below;
2. Owner must submit a \$3,500 portion of the administrative penalty in two parts, with the first installment of \$1,750 due on or before January 25, 2019, and the second installment of \$1,750 due on or before February 22, 2019;
3. Owner must correct the file monitoring violations as indicated in the Agreed Final Order, and submit full documentation of the corrections to TDHCA on or before February 4, 2019;
4. If Owner complies with all requirements and addresses all violations as required, the remaining administrative penalty in the amount of \$3,550 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 \$7,050 is recommended. This will be a reportable item of consideration under previous participation for any new award to the principals of the Owner.

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

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BEFORE THE  
TEXAS DEPARTMENT OF  
HOUSING AND  
COMMUNITY AFFAIRS

**AGREED FINAL ORDER**

**General Remarks and official action taken:**

On this 6<sup>th</sup> day of December, 2018, 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 **NORTH ATHENS CONCERNED CITIZENS**, a Texas nonprofit corporation (“Respondent”).

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

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

**WAIVER**

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

**FINDINGS OF FACT (“FOF”)**

*Jurisdiction:*

1. During 1995, Respondent was awarded an interest free HOME loan allocation by the Board, in an amount of \$646,519 to build and operate North Athens Homes (“Property”) (HTC file No. 532340 / CMTS No. 2707 / LDLD No. 519).
2. Respondent signed a land use restriction agreement (“LURA”) regarding the Property. The LURA was effective December 22, 1995, and filed of record at Volume 1643, Page 673 of the Official Public Records of Real Property of Henderson County, Texas.

3. Respondent is subject to the regulatory authority of TDHCA.

Compliance Violations<sup>1</sup>:

4. Property has a history of violations and previously signed an Agreed Final Order on June 2, 2016, agreeing to an administrative penalty in the total amount of \$2,000, with \$500 due at signing and the remainder to be deferred and forgiven if fully acceptable corrections were received in accordance with the terms of that order. The order was violated and the full administrative penalty was paid.
5. An on-site monitoring review was conducted on October 18, 2017, 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 May 1, 2018, corrective action deadline was set, however, the following violations were not resolved before the corrective action deadline:
  - a. Respondent failed to provide a compliant affirmative marketing plan, a violation of 10 TAC §10.617 (Affirmative Marketing Requirements), 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 received on May 1, 2018, but it was incomplete and the violation remains unresolved.
  - b. Respondent failed to execute required lease provisions for 203 Broadmore, 208 St. Joseph, and 210 St. Joseph, a violation of 10 TAC §10.613(b) (Lease Requirements), which requires leases to include specific language protecting tenants from eviction without good cause and prohibiting owners from taking certain actions such as locking out or seizing property, or threatening to do so, except by judicial process. A template lease was received, but signed leases for the above units have not been received and the violation remains unresolved.
  - c. Respondent failed to provide a Tenant Income Certification and related verifications for 207 Broadmore, a violation of 10 TAC §10.612(c) (Tenant File Requirements), which requires HOME properties to complete a recertification with verifications of each HOME unit every sixth year of the affordability period. In the intervening years, they must collect a self-certification using TDHCA's Income Certification form, by the anniversary of the effective date of the original Income Certification for the household. The self-certification due by October 1, 2017 was not present in the file. As corrective action, a full new tenant file was submitted, but it was incomplete and the Department was not able to determine eligibility for the household, a new violation that also remains unresolved.

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<sup>1</sup> Within this Agreed Final Order, all references to violations of TDHCA Compliance Monitoring rules at 10 TAC Chapter 10 refers to the versions of the code in effect at the time of the compliance monitoring reviews and/or inspections that resulted in recording each violation. All past violations remain violations under the current code and all interim amendments.

- d. Respondent failed to provide documentation that household incomes were within prescribed limits upon initial occupancy for units 207 Broadmore and 209 Broadmore, 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. Tenant files were submitted for both units, but verifications were incomplete and the Department was unable to determine eligibility. Both violations remain unresolved.
  - e. Respondent collected gross rents that exceeded income limits as a result of a utility allowance error for units 205 Broadmore and 210 St. Joseph. The monthly rents charged were \$1,018 and \$985, respectively, both exceeding the High HOME limit of \$941. TDHCA publishes maximum rent limits 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. Exceeding the maximum rent is a violation of 10 TAC §10.622 (Special Rules Regarding Rents and Rent Limit Violations). Corrective documentation including evidence of rent reductions and refunds have not been received and the violations remain unresolved.
6. The following violations remain outstanding at the time of this order:
- a. Affirmative marketing violation described in FOF #5.a;
  - b. Lease language violations described in FOF #5.b;
  - c. Tenant Income Certification violation described in FOF #5.c;
  - d. Household income violations described in FOF #5.d; and
  - e. Gross rent violations described in FOF #5.e.

### **CONCLUSIONS OF LAW**

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503 and 10 TAC §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 §10.617 in 2017, by failing to provide a complete affirmative marketing plan.
4. Respondent violated 10 TAC §10.10.613(b) in 2017, by failing to execute required lease language for 203 Broadmore, 208 St. Joseph, and 210 St. Joseph.
5. Respondent violated 10 TAC §10.612(c) in 2017, by failing to provide an annual Tenant Income Certification and related verifications for 207 Broadmore.
6. Respondent violated 10 TAC §10.611 and Section 2.4 of the LURA in 2017 and 2018, by failing to provide documentation that household incomes were within prescribed limits upon initial occupancy for 207 Broadmore and 209 Broadmore.



7. Respondent violated 10 TAC §10.622 in 2017 and 2018 by charging rents that exceeded income limits as a result of a utility allowance error for units 205 Broadmore and 210 St. Joseph, then failing to make timely corrections once the violations were discovered.
8. 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.
9. Because Respondent is a housing sponsor, TDHCA may order Respondent to perform or refrain from performing certain acts in order to comply with the law, TDHCA rules, or the terms of a contract or agreement to which Respondent and TDHCA are parties, pursuant to Tex. Gov't Code §2306.267.
10. Because Respondent has violated rules promulgated pursuant to Tex. Gov't Code §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.
11. An administrative penalty of \$7,050 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 \$7,050, subject to partial deferral as further ordered below.

**IT IS FURTHER ORDERED** that Respondent shall pay and is hereby directed to pay a \$3,500 portion of the assessed administrative penalty by cashier's checks payable to the "Texas Department of Housing and Community Affairs", to be divided into two payments, with the first installment of \$1,750 due on or before January 25, 2019, and the second installment of \$1,750 due on or before February 22, 2019.

**IT IS FURTHER ORDERED** that Respondent shall fully correct the file monitoring violations as indicated in the exhibits and submit full documentation of the corrections to TDHCA on or before February 4, 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 administrative penalty in the amount of \$3,550 and that remaining amount of the administrative penalty will be deferred and forgiven.

**IT IS FURTHER ORDERED** that if Respondent fails to satisfy any conditions or otherwise violates any provision of this order, 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 \$3,550 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 5, 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 December 6, 2018.

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 6th day of December, 2018, 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 6th day of December, 2018, 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



## Exhibit 1

### File Monitoring Violation Resources and Instructions

#### **Resources:**

1. Refer to the following link for all references to the rules at 10 TAC §10 that are referenced below:  
[http://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac\\_view=5&ti=10&pt=1&ch=10&sch=F&rl=Y](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=10&pt=1&ch=10&sch=F&rl=Y)
2. Refer to the following link for copies of forms that are referenced below:  
<http://www.tdhca.state.tx.us/pmcomp/forms.htm>
3. Technical support and training presentations are available at the following links:  
Income and Rent Limits: <http://www.tdhca.state.tx.us/pmcomp/irl/index.htm>  
Utility Allowance: <http://www.tdhca.state.tx.us/pmcomp/utility-allowance.htm>  
Affirmative Marketing Webinar: <http://www.tdhca.state.tx.us/pmcomp/presentations.htm>  
Affirmative Marketing Technical Assistance: <http://www.tdhca.state.tx.us/pmcdocs/AMT-Assistance-Guide.pdf>  
Tenant Selection Criteria Webinar: <http://www.tdhca.state.tx.us/pmcomp/presentations.htm>  
Online Reporting: <http://www.tdhca.state.tx.us/pmcomp/reports.htm>  
FAQ's: <http://www.tdhca.state.tx.us/pmcomp/compFaq.htm>
4. **All corrections must be submitted via CMTS:** See link for steps to upload documents  
<http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf>.
5. **Important notes -**
  - i. Do not backdate any documents listed below.
  - ii. A transfer of a qualified household from another unit is not sufficient to correct any findings. If there is a tenant income certification or household income above limit violation, a transfer from another unit will simply cause the finding to transfer to that unit.

#### **Instructions:**

##### 6. **Affirmative marketing plan –**

Problems with prior submission(s) include but are not limited to:

- Section 3b of the plan was missing the “Not Hispanic” group as a least likely to apply population;
- The Athens Housing Authority was identified in Worksheet 3 as an outreach organization, but is not located in the applicable census tract and is not specifically associated with the identified target population persons with disabilities;
- South Place Rehabilitation and Nursing was identified in Worksheet 3 as an outreach organization for multiple least likely to apply populations. Specific organizations and community contacts chosen may not be used to satisfy more than one least likely to apply population; and
- A sample outreach letter was submitted that included required language, but it did not indicate to whom the letter had been sent.

Technical Support: First read the rule at 10 TAC §10.617, read the technical assistance guide at <http://www.tdhca.state.tx.us/pmcdocs/AMT-Assistance-Guide.pdf>, and watch the webinar at <http://www.tdhca.state.tx.us/pmcomp/presentations.htm>, to gain a general understanding regarding affirmative marketing.

Steps to complete an affirmative marketing plan:

- a. Identify the appropriate housing market in which outreach efforts will be made;
- b. Determine the groups that are least likely to apply and mark them in Section 3b of your plan. The Affirmative Marketing Web Tool referenced at 10 TAC §10.617(d)(5) to determine groups that are least likely to apply is available online at: <http://www.tdhca.state.tx.us/pmcomp/forms.htm> and a copy is included at *Exhibit 2*. The groups *currently* identified by the tool are Persons with Disabilities, White, and Not Hispanic. If you use this Tool and save a copy with your Plan, you may rely upon its results. Your last submission was missing “Other – Not Hispanic”.

Alternatively, if you do not use the Tool, you may perform your own analysis to determine groups that are least likely to apply, but you must perform and document a reasonable analysis by which those groups were identified, you must always include persons with disabilities, and populations representing less than 1% of the total population of the County or MSA will not be required in your affirmative marketing. This analysis must be included with the plan.

When the “Not Hispanic” population is identified by the Web Tool as a group least likely to apply, that group would be marked in Section 3b of your plan as “Other” and you would write in “Not Hispanic”. Many owners assume that the “Not Hispanic” group identified by the Affirmative Marketing Web Tool means “White”. That is not necessarily the case. The Compliance Division explains the category like this: each household member has a Race *and* an Ethnicity. The Race could be White, American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander. The Ethnicity could be either Hispanic or Not Hispanic. In other words, a person could be Black/African American and Hispanic. Likewise, a person could be White and Hispanic. In other words, the “Not Hispanic” demographic is literally everyone who is “Not Hispanic.”

- c. In Worksheet 3 of your plan, identify specific organizations, media, and community contacts in the housing market to send marketing outreach materials. The organizations must specifically reach those groups designated as least likely to apply. You must have at least one organization per targeted population, and a single organization cannot meet the requirement for more than one targeted population. The Tool provides a link to a map that will show which Census tracts may be most beneficial for affirmative marketing. The census tracts provided for outreach consideration represent nearby neighborhoods identified in the U.S. Census as having the greatest number of the groups who are least likely to apply at your development based on its location. The identified neighborhoods may represent a first step for planning meaningful outreach and marketing for your development.

Specific examples of how to find organizations associated with the least likely to apply groups:

- i. Least likely to apply population - People with disabilities:
  - A. Local Center for Independent Living (“CIL”) – serve persons with all disability types. Not all counties are covered [http://www.txsilc.org/page\\_CILs.html](http://www.txsilc.org/page_CILs.html)
  - B. Aging and Disability Resource Center (“ADRC”) – intake and referral for persons with physical, intellectual, or developmental disabilities - all counties are covered: <https://www.dads.state.tx.us/contact/search.cfm>
  - C. Local Intellectual and Developmental Disability Authority (LIDDA) – serves persons with intellectual, or developmental disabilities - all counties are covered: <https://www.dads.state.tx.us/contact/search.cfm>
  - D. Local Mental Health Authority (LMHA) – serves persons with Mental Illness and Substance Use disorders - all counties are covered: <https://www.dshs.texas.gov/mhservices-search/>
  - E. Local non-profits in your area serving people with disabilities

- F. Call 211 and ask about resources for people with disabilities in your area, reach out to groups serving people with disabilities in your community
- ii. Least likely to apply population - White:
  - A. Examples of acceptable community contacts might include community centers, places of worship, libraries, and grocery stores in census tracts with a high concentration of the racial group. In TDHCA's Web Tool, these areas are listed under "tracts for outreach consideration"
- iii. Least likely to apply population – Not Hispanic:
  - A. Community centers, places of worship, libraries, grocery stores in census tracts with a high concentration of the racial group. In TDHCA's Web Tool, these areas are listed under "tracts for outreach consideration"
- d. Complete and execute an affirmative marketing plan using any version of HUD Form 935.2A, including the groups and organizations identified above;
- e. Comply with all requirements of 10 TAC §10.617, which we recommend using as a checklist;
- f. Ensure that Section 8 of your plan includes information considering how Limited English Proficiency may affect populations least likely to apply, and including ways you plan to mitigate language barriers related to advertising and community outreach. Such information should be included in the Plan as an additional consideration, or as an attachment to the Plan. Some sample information that may be useful for preparation is available at <http://www.tdhca.state.tx.us/pmcdocs/LAP-Guide.doc>;
- g. Send marketing outreach materials to all organizations identified in your updated Worksheet 3, ensuring that said marketing materials comply with all requirements of 10 TAC §10.617. Remember that 10 TAC §10.617(f)(5) requires marketing materials to include the Fair Housing Logo and give contact information that prospective tenants can access if reasonable accommodations are needed in order to complete the application process. This contact information sentence must include the terms "reasonable accommodation" and must be in English and Spanish for all of your marketing materials, even those targeting the Non-Hispanic population. Here is a sample of an acceptable sentence recently included in marketing materials from another property: *"Individuals who need to request a reasonable accommodation to complete the application process should contact the apartment manager at XXX-XXX-XXXX. Personas con discapacidad que necesitan solicitar un acomodacion razonable para completar el proceso de aplicacion deben comunicarse con el Administrador del apartment al XXX-XXX-XXXX."*
- h. Look over the "10.617 (affirmative marketing)" tab of the spreadsheet at the following link, which 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>
- i. Maintain all documentation in your files for future review.

What to submit: Submit the updated Affirmative Marketing plan *and* copies of outreach materials sent to each organization listed in Worksheet 3. Ensure that all are signed and dated.

[additional instructions follow on next page]

**9. Lease violations for 203 Broadmore, 208 St. Joseph, and 210 St. Joseph:**

Problem with prior submissions: 10 TAC §10.613(b) and the HOME Final Rule prohibit Owners from evicting 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, or for other good cause. To terminate tenancy, the Owner must serve written notice to the tenant specifying the grounds for the action at least thirty (30) days before the termination of tenancy. Owners executing or renewing leases after November 1, 2007, must specifically state 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). The files for the above units did not include this required lease language. A lease agreement template was received, but signed documents for the above units have not been submitted.

What to submit: Present each unit above with a lease addendum including the above language and submit copies of the executed lease addendum for each unit above to the Department for review. Alternatively, if a household listed above has moved out making it not possible for them to execute the lease addendum, complete the Owner Certification of Corrected Noncompliance at Exhibit 3 and submit the executed certification to the Department for review.

**10. Gross Rent violations for 205 Broadmore and 210 St. Joseph:**

TDHCA publishes maximum rent limits 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. The High HOME rent limit is \$941, but the documentation provided shows a total monthly rent of \$1,018 for 205 Broadmore (\$405 tenant paid rent + \$260 utility allowance + \$353 housing assistance = \$1,018) and \$985 for 210 St. Joseph (\$355 tenant paid rent + \$260 utility allowance + \$370 housing assistance = \$985).

What to submit if the affected household remains a resident: Rents must be reduced and the total overcharged amounts must be refunded. You may not apply the overcharged amount as a credit, it must be refunded. Submit the following documentation:

- a. Updated lease contracts showing reduced rent amounts;
- b. Current rent roll showing the reductions and refunds;
- c. Copies of the cancelled checks as evidence of the refunds.

What to submit if the affected household has moved out: Refund the overcharged amounts and submit a copy of the cancelled check as evidence of the refund. If you cannot locate the household, the overcharged amounts must be deposited into a trust account for the household and you must submit evidence of this account opening balance. The account must remain open for the shorter of a four (4) 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.

*[additional instructions follow on next page]*



**11. Tenant Income Certification / Household income above limit upon initial occupancy for 207 Broadmore and 209 Broadmore:** Follow the instructions below and submit documentation.

What to submit for 207 Broadmore: If the unit remains occupied by the Alecia J. Sims household and that household qualifies for occupancy, but income and assets have not been properly verified. In order to verify income and assets, you must perform one of the following:

- a. In order to verify income and assets as of 7/23/2018: On 8/1/2018, an income certification with an effective date of 7/23/2018 was submitted, along with partial income and asset verifications. The pay stubs submitted on 8/1/2018 include 5 pay stubs that are within 120 days of the income certification, but 6 were requested and the remainder of the pay stubs submitted were outdated. Additionally, there was no social security award letter showing the amount of the monthly Social Security Income payment, and the pay stubs submitted indicate that wages are directly deposited into a bank account that was not disclosed or verified. In order to qualify the household as of the 7/23/2018 income certification, you must complete the income and asset verifications by submitting the following: (1) a Social Security award letter indicating the award amount for that period, (2) six pay stubs or a payroll printout history from the period of 120 days prior to the 7/23/2018 income certification (acceptable date range for the pay stubs is between 3/25/2018 and 7/23/2018), (3) copies of bank statements for the 6 months prior to 7/23/2018 (statements to include the period between 1/23/2018 and 7/23/2018), and (4) calculate the six month average balance from those statements and add that information to the Income Certification dated 7/23/2018. Ensure that Ms. Sims initials and dates beside the changes; - OR -
- b. In order to verify income and assets as of 2/10/2018: On 3/26/2018, an income certification with an effective date of 2/10/2018 was submitted, along with partial income and asset verifications. In order to qualify the household as of the 2/10/2018 income certification, you must complete the income and asset verifications by submitting the following: (1) a Social Security award letter indicating the award amount for that period (the letter dated 11/26/2016 is outdated), (2) six pay stubs or a payroll printout history from the period of 120 days prior to the 2/10/2018 income certification (acceptable date range for the pay stubs is between 10/13/2017 and 2/10/2018), (3) copies of bank statements for the 6 months prior to 2/10/2018 (statements to include the period between 8/10/2017 and 2/10/2018), and (4) calculate the six month average balance from those statements and add that information to the Income Certification dated 2/10/2018. Ensure that Ms. Sims initials and dates beside the changes; - OR -
- c. In order to certify the household under their current circumstances: Provide a new application, a new Income Certification, and new verifications of all sources of income and assets. Verifications of income and assets must include: (1) a new social security award letter, (2) six paystubs dated within the 120 days prior to the date of the new Income Certification (*for example, if your income certification is dated 12/1/2018, your six pay stubs would need to be during the time period between August 3, 2018 and December 1, 2018*), (3) bank statements for the 6 months prior to the date of the new Income Certification (*for example, if your income certification is dated 12/1/2018, your six months of bank statements would include the entire period between 6/1/2018 and 12/1/2018*), and (4) calculate the six month average balance from those statements and add that information to the new Income Certification. Ensure that Ms. Sims initials and dates beside the changes. If this option is chosen, you must provide first-hand documentation such as pay stubs and bank statements. Third-party verification forms will not be accepted; - OR -
- d. Alternatively, if the Sims household does not qualify for occupancy or no longer resides in the unit, follow the instructions in the table on the following page.

What to submit for 209 Broadmore: In order to verify income and assets, you must perform one of the following if the unit remains occupied by the Elizabeth Johnson household and that household qualifies for occupancy.

- a. In order to verify income and assets as of 2/12/2018, you must submit the following: (1) bank statements for the period covering the six months prior to the 2/12/2018 Income Certification date (statements to include the period between 10/15/2017 and 2/12/2018), and (2) calculate the six month average balance from those statements and add that information to the Income Certification dated 2/12/2018. Ensure that Ms. Johnson initials and dates beside the changes; - OR -
- b. In order to certify the household under their current circumstances: Provide a new application, a new Income Certification, and new verifications of all sources of income and assets. Verifications of income and assets must include: (1) a new social security award letter, (2) six paystubs dated within the 120 days prior to the date of the new Income Certification (*for example, if your income certification is dated 12/1/2018, your six pay stubs would need to be during the time period between August 3, 2018 and December 1, 2018*), (3) bank statements for the 6 months prior to the date of the new Income Certification (*for example, if your income certification is dated 12/1/2018, your six months of bank statements would include the entire period between 6/1/2018 and 12/1/2018*), and (4) calculate the six month average balance from those statements and add that information to the new Income Certification. Ensure that Ms. Johnson initials and dates beside the changes. If this option is chosen, you must provide first-hand documentation such as pay stubs and bank statements. Third-party verification forms will not be accepted; - OR -
- c. Alternatively, if the Johnson household does not qualify for occupancy or no longer resides in the unit, follow the instructions in the table below; - OR -

<b>Alternate circumstance with respect to units 207 and 209 Broadmore</b>	<b>Instruction</b>
I. If unit is occupied by a new qualified household	Submit the full tenant file*.
II. If unit is occupied by a nonqualified household on a month-to-month lease	A. Follow your normal procedures for terminating residency and provide a copy of documentation to TDHCA.** B. Once the unit becomes available, occupy the unit by a qualified household, and submit the full new tenant file within 30 days of occupancy*. Receipt of the full tenant file after 2/4/2019 is acceptable for this circumstance provided that Requirement A above is fulfilled.
III. If unit is occupied by a nonqualified household with a non-expired lease	A. Issue a nonrenewal notice** to tenant and provide a copy to TDHCA, along with a letter committing to occupying the unit with a new qualified household and submitting a full tenant file* as soon as the unit becomes available. If the tenant is protected by another program such as Section 8 or USDA-RD and the property cannot issue a nonrenewal notice as a result, submit a letter stating which program protects the household and committing to occupying the unit with a new qualified household and submitting a full tenant file* as soon as the unit becomes available; <i>continues on next page</i>

<p>III. If unit is occupied by a nonqualified household with a non-expired lease</p>	<p><i>Continued from prior page</i></p> <p>B. As soon as the unit is occupied by a qualified household, you must submit the full tenant file*. Receipt of the full tenant file after 2/4/2019 is acceptable for this circumstance provided that Requirement A above is fulfilled by that deadline.</p>
<p>IV. If unit has been vacant <i>more than</i> 30 days</p>	<p>A. Unit must be made ready for occupancy and a letter certifying that the unit is ready for occupancy must be submitted to TDHCA on or before 2/4/2019.</p> <p>B. Occupy the unit by a qualified household, and submit the full new tenant file within 30 days of occupancy*. Receipt of the full tenant file after 2/4/2019 is acceptable for this circumstance provided that Requirement A above is fulfilled by that deadline.</p>
<p>V. If unit has been vacant <i>less than</i> 30 days</p>	<p>A. If unit is ready for occupancy, a letter certifying to that effect must be submitted to TDHCA.</p> <p>B. If unit is not ready for occupancy, submit a letter to TDHCA including details regarding work that is required and when the unit will be ready for occupancy (no more than 30 days from the date of vacancy).</p> <p>C. Occupy the unit by a qualified household, and submit the full new tenant file within 30 days of occupancy*. Receipt of the full tenant file after 2/4/2019 is acceptable for this circumstance provided that Requirements A and B above are fulfilled by that deadline.</p>

\*A full tenant file must include:

- A. Tenant application;
- B. Verifications of all sources of income and assets;
- C. Tenant income certification;
- D. Lease and lease addendum;
- E. Tenant Rights and Resources Guide Acknowledgment; and
- F. A copy of the tenant selection criteria under which the household was screened.

Remember that items A-C above must be dated within 120 days of one another. Bank statements must cover a 6 month period. Further technical support is provided at Exhibit 4.

\*\* If a notice of nonrenewal or notice of termination is sent to tenant, ensure that it complies with requirements of the rule at 10 TAC 10.610(f)

**Exhibit 2**

**Affirmative Marketing Web Tool**

11/16/2018

Affirmative Marketing Tool

**Affirmative Marketing Tool - Updated 02/22/2017**

11/16/2018

**Property: NORTH ATHENS HOMES**

CMTS # 2707

Census Tract: 48213951200

County Henderson

MSA Not in an MSA

**Optional:** Select the nearest MSA to view larger areas to which you might market your property:

Select an MSA

Results will not display for any populations representing less than 1% of the total population of the County or MSA. These populations will not be required in your affirmative marketing.

**Census Tract vs. County**

Least Likely to Apply	% Census Tract	% County	Tract for Outreach Consideration
Persons with Disabilities	12.74	19.03	48213951400
White	50.59	85.82	48213950300
Not Hispanic	60.73	89.19	48213950300

[Map Census Tracts](#)

The report above shows the groups to whom you must affirmatively market based on a comparison of your census tract to the applicable County or MSA area as identified in the Rule. You must select these groups on the HUD 935.2A form as groups least likely to apply.

The census tracts provided for outreach consideration represent nearby neighborhoods identified in the U.S. Census as having the greatest number of the groups who are least likely to apply at your development based on its location. The identified neighborhoods may represent a first step for planning meaningful outreach and marketing for your development.

**Exhibit 3**

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

Development Name: North Athens Homes CMTS ID: 2707

The above referenced Development was monitored on October 18, 2017 to determine if the Development is in compliance with the requirements of the HOME program. The review resulted in a finding of noncompliance under Title 10, Chapter 10, Subchapter F related to Compliance Monitoring, §10.613(b) which states:

*(b) For HOME and NSP Developments, the HOME Final Rule (and as adopted by Texas NSP) prohibits Owners from evicting 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, or for other good cause. To terminate tenancy, the Owner must serve written notice to the tenant specifying the grounds for the action at least thirty (30) days before the termination of tenancy. Owners executing or renewing leases after November 1, 2007, shall specifically state in the lease or in an addendum attached to the lease that evictions or non-renewal of leases for other than good cause are prohibited (24 CFR §92.253). Owners must also comply with all other lease requirements and prohibitions stated in 24 CFR §92.253.*

Through this certification, you hereby certify the following:

1. The required language has been added to the lease or lease addendum;
2. All low-income households have been provided an updated lease or lease addendum containing the required information; and,
3. All future leases with low-income households will contain the required language either within the lease or through the use of a lease addendum.

Under 10 TAC §2.401(e), a person shall be recommended for debarment if they control a Development that during two sequential monitoring visits is found to be out of compliance with the lease requirements described in §10.613. If at the next onsite review, there has been not been an ownership transfer and noncompliance is assessed for failure to execute required lease provisions, the owner will be recommended for debarment from participation in programs administered by the Department. A copy of §10.613 is attached to ensure ongoing compliance.

I, \_\_\_\_\_, on behalf of North Athens Concerned Citizens, Inc., 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 §10.613(b) has been corrected in the manner described and that all required lease language under §10.613 is in the lease and lease addendum. I further certify that I understand that if this event of noncompliance is cited at the next onsite review of North Athens Homes, 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

### **Tenant File Guidelines**

The following technical support does not represent a complete list of all file requirements and is intended only as a guide. TDHCA staff recommends that all onsite staff responsible for accepting and processing applications sign up for First Thursday Training in order to get a full overview of the process. Sign up at <http://www.tdhca.state.tx.us/pmcomp/COMPtrain.html>. Forms discussed below are available at: <http://www.tdhca.state.tx.us/pmcomp/forms.htm>.

1. **Intake Application**<sup>2</sup>: Each adult household member must complete their own application in order to be properly screened at initial certification. A married couple can complete a joint application. The Department does not have a required form to screen households, but we make a sample form available for that purpose. All households must be screened for household composition, income and assets. Applicants must complete all blanks on the application and answer all questions. Any lines left intentionally blank should be marked with “none” or “n/a.” The application must be signed and dated by all adult household members, using the date that the form is actually completed. If you use the Texas Apartment Association (TAA) Rental Application, be aware that it does not include all requirements, but they have a “Supplemental Rental Application for Units Under Government Regulated Affordable Housing Programs” that includes the additional requirements.
2. **Release and Consent**: Have tenant sign TDHCA’s Release and Consent form so that verifications may be collected by the property.
3. **Verify Income**<sup>3</sup>: Each source of income and asset must be documented for every adult household member based upon the information disclosed on the application. There are multiple methods:
  - a. **Income Verification for Households with Section 8 Certificates**: This form is signed by the Public Housing Authority, verifying that the household is eligible at initial occupancy or at recertification. Since the necessary income and asset verifications were performed by the housing authority and were effective as of a specific date, this form must be signed within 120 days of that effective date, either at initial move-in or at recertification. This form must also be dated within 120 days of the application and Income Certification that you collect. If outside of that period, you must verify income and assets yourself.
  - b. **First hand verifications**: Paystubs or payroll print-outs that show gross income. If you choose this method, ensure that you collect 6 paystubs.
  - c. **Verification of non-employment income**: You must obtain verifications for all other income sources, such as child support, social security, and/or unemployment benefits. Self-certification by the household is not acceptable. Examples: benefit verification letter(s) would be acceptable for social security and/or employment benefits. Acceptable verifications for child support could include documents such as divorce decree(s), court order(s), or a written statement from the court or attorney general regarding the monthly awarded amount;

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<sup>2</sup> & <sup>3</sup> Remember that the application, verifications of income and assets, and the Tenant Income Certification form must be signed within 120 days of one another. If one component is outside of that timeframe, you must recertify.

- d. **Telephone Verifications:** these are acceptable *only* for clarifying discrepancies and cannot be used as primary form of verification. Include your name, the date, the name of the person with whom you spoke, and your signature;
  - e. **Certification of Zero Income:** If an adult household member does not report any sources of income on the application, this form can be used to document thorough screening and to document the source of funds used to pay for rent, utilities, and/or other necessities.
4. **Verify Assets<sup>4</sup>:** Regardless of their balances, applicants must report all assets owned, including assets such as checking or savings accounts. The accounts are typically disclosed on the application form, but you must review all documentation from the tenant to ensure proper documentation of the household's income and assets. For instance, review the credit report (if you pull one), application, pay stubs, and other documents to ensure that all information is consistent. Examples of ways to find assets that are frequently overlooked: Review pay stubs for assets such as checking and retirement accounts that the household may have forgotten to include in the application. These accounts must also be verified.
- a. **First hand verifications** such as bank statements to verify a checking account. First hand verifications are required for the HOME Program. For savings accounts, use the current balance. For checking accounts, use the average balance for the last 6 months (include 6 months of statements and average the balance). For other account types, ensure that you use a consistent number of consecutive statements, as identified in your management plan.
5. **Tenant Income Certification Form<sup>5</sup>:** Upon verification of all income and asset sources disclosed on the application and any additional information found in the documentation submitted by the tenant, the next step is to annualize the sources on the Income Certification Form, add them together, and compare to the applicable income limit for household size which can be found at <http://www.tdhca.state.tx.us/pmcomp/irl/index.htm>. Be sure to include any income derived from assets. The form must include all household members, and be signed by each adult household member. *Remember that it must be signed within 120 days of the application and the verifications of income and assets.*
6. **Lease:** Must conform with your LURA and TDHCA requirements and indicate a rent below the maximum rent limits, which can be found at <http://www.tdhca.state.tx.us/pmcomp/irl/index.htm>. When determining the rent, ensure that the tenant's rent, plus the utility allowance, plus any housing subsidies, plus any mandatory fees, are below the maximum limits set by TDHCA. 10 TAC §10.613(a) prohibits the eviction or termination of tenancy of low income households for reasons other than good cause throughout the affordability period in accordance with Revenue Ruling 2004-82. In addition, 10 TAC §10.613(f) prohibits HTC developments from locking out or threatening to lock out any development resident, or seizing or threatening to seize personal property of a resident, except by judicial process, for purposes of performing necessary repairs or construction work, or in case of emergency. The prohibitions must be included in the lease or lease addendum. TAA has an affordable lease addendum that has incorporated

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<sup>4 & 5</sup> Remember that the application, verifications of income and assets, and the Tenant Income Certification form must be signed within 120 days of one another. If one component is outside of that timeframe, you must recertify.

this required language. If you are not a TAA member, you can draft a lease addendum using the requirements outlined above.

7. **Tenant Selection Criteria:** In accordance with 10 TAC §10.610(b), you must maintain written Tenant Selection Criteria and a copy of those written criteria under which an applicant was screened must be included in the household's file.
8. **Tenant Rights and Resources Guide:** As of 1/8/2015, the Fair Housing Disclosure Notice and Tenant Amenities and Services Notice have been replaced by the Tenant Rights and Resources Guide, a copy of which is available online at: <http://www.tdhca.state.tx.us/pmcdocs/FairHousingDisclosureBooklet.doc>.

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

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

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

In the event that there is a prior finding for a Fair Housing Disclosure Notice, Tenant Amenities and Services Notice, the Tenant Rights and Resources Guide was not provided timely, or the household does not certify to receipt of the Tenant Rights and Resources Guide, resolution will be achieved by providing the household with the Tenant Rights and Resources Guide and receiving a signed acknowledgment. A copy of the acknowledgment form is available at:

<http://www.tdhca.state.tx.us/pmcdocs/FairHousingDisclosureSignaturePage.pdf>.



Exhibit 5:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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**BOARD ACTION REQUEST**

**LEGAL DIVISION**

**DECEMBER 6, 2018**

Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning Oak Park Apartments (HTC 91056 / CMTS 965) and a related Final Order of Debarment against David Yilmaz and The David Yilmaz Living Trust for a period of 15 years

**RECOMMENDED ACTION**

**WHEREAS**, Oak Park Apartments (“Property”), owned by The David Yilmaz Living Trust (“Owner”), has uncorrected compliance findings relating to the applicable land use restriction agreement and the associated statutory and rule requirements;

**WHEREAS**, David Yilmaz is the sole trustee of Owner;

**WHEREAS**, representatives of Owner have attended multiple informal conferences and signed a prior Agreed Final Order on May 10, 2016;

**WHEREAS**, an administrative penalty was paid as required by the 2016 Agreed Final Order, but no corrective documentation was submitted until September 24, 2018, after an informal conference was held by the Enforcement Committee regarding new violations that were also referred for an administrative penalty;

**WHEREAS**, TDHCA attempted to perform an onsite monitoring review on November 7, 2017, but no Owner representative was present, despite reasonable notice provided by the Compliance Division and Legal Division. Violations were identified for refusing to allow onsite monitoring, and for failure to submit pre-onsite documentation including an Entrance Interview Questionnaire, a current and applicable utility allowance, an updated Unit Status Report, an Affirmative Marketing Plan along with evidence of outreach marketing, and written policies and procedures;

**WHEREAS**, on June 26, 2018, 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 \$96,250, with \$64,166.67 to be paid within 90 days of Board approval and the remaining \$32,093.33 to be forgiven if all terms of the Agreed Final Order are met;

**WHEREAS**, during their June 26, 2018 meeting, the Enforcement Committee also requested a debarment referral from the Compliance Division because Owner had materially violated the Land Use Restriction Agreement (“LURA”) by refusing to allow a monitoring visit;

**WHEREAS**, Tex. Gov’t. Code §2306.0504(c)(1) addresses debarment and indicates that the Department shall debar a person from participation in a Department program if the person materially or repeatedly violates any condition imposed by the Department in connection with the administration of a Department program;

**WHEREAS**, 10 TAC §2.401(d) also addresses debarment, and lists examples of material violations of a LURA. Specifically, Owner and David Yilmaz violated 10 TAC §2.401(d) by refusing to allow onsite monitoring;

**WHEREAS**, an informal conference regarding the debarment referral was held on September 25, 2018, with the Enforcement Committee recommending a debarment term of 15 years, and reaffirming their prior recommendation relating to an administrative penalty Agreed Final Order;

**WHEREAS**, Owner permitted an onsite monitoring review that was successfully performed on October 17, 2018, 344 days after the original review was attempted, then later submitted partial corrections for the pre-onsite violations on October 27, 2018;

**WHEREAS**, current unresolved compliance findings relating to the 2017 onsite monitoring review include the following pre-onsite documentation violations: Unit Status Report showing implementation of the utility allowance, Affirmative Marketing Plan and associated marketing materials, and written policies and procedures;

**WHEREAS**, staff has based its administrative penalty recommendation on the Department's rules for administrative penalties and an assessment of each and all of the statutory factors identified in Tex. Gov't. Code §2306.042 that are to be considered in assessing such penalties, applied specifically to the facts and circumstances present in this case;

**WHEREAS**, staff has based its debarment recommendation for a term of 15 years on the Department's rules for debarment and an assessment of each and all of the material factors identified at 10 TAC §2.401(j) that are to be considered in determining a recommended period of debarment, applied specifically to the facts and circumstances present in this case; and

**WHEREAS**, David Yilmaz has responded to indicate that he will sign an Agreed Final Order with respect to the recommended administrative penalty, and he did not oppose a Final Order of Debarment, failing to respond during the twenty day appeal period for the debarment recommendation.

**NOW, therefore, it is hereby**

**RESOLVED**, that two orders, including a Final Order of Debarment for a term of 15 years, and an Agreed Final Order assessing an administrative penalty of \$96,250, subject to partial forgiveness as outlined above, for noncompliance at Oak Park Apartments, substantially in the form presented at this meeting, and authorizing any non-substantive technical corrections, are hereby adopted as orders of this Board.

## **BACKGROUND**

The David Yilmaz Living Trust (“Owner”) is the owner of Oak Park Apartments (“Property”), a low income apartment complex composed of 104 units, located in Dallas County. CMTS lists David Yilmaz as the primary contact for Owner, and he represents that he is the sole trustee for Owner. The property is self managed, with Connie Duque as onsite manager.

The Property is subject to a LURA signed by a prior owner in 1991 in consideration for a housing tax credit allocation in the annual amount of \$71,185 to rehabilitate and operate the Property. The Owner acquired the property in 2005 and did not receive prior Department approval, but the LURA remains in effect per Section 2 of the LURA which stipulates that its restrictions run with the land.

The property has been consistently noncompliant since it was purchased by Owner in 2005. Owner was previously referred for an administrative penalty in 2010, 2013, and 2015. The 2010 referral was resolved after a teleconference with the Enforcement Committee (“Committee”), and no action was taken. In 2013, Owner was referred for an administrative penalty for failure to allow onsite monitoring. The Committee held an informal conference on August 27, 2013, and Owner blamed the referred violations on issues with mail delivery and high turnover in property managers. The Committee required the new property manager to attend income eligibility training, and it set a series of deadlines, after which the Committee would re-evaluate the referral if corrections were not acceptable. Significant technical support was also provided, by both the Compliance and Legal Divisions.

Another informal conference was held on November 19, 2013. Owner had fired the property manager who was present for the August informal conference, and fired a second property manager in October 2013. Owner indicated he had hired a new property manager on November 1, 2013, who had completed income eligibility training, had tax credit experience, and was working on corrective documentation. Owner also repeated the arguments from August about mail delivery problems and issues with unreliable property managers. The Committee recommended training and a second series of deadlines, after which the Committee would re-evaluate the referral if corrections were not acceptable. Corrective documentation was submitted, but was extensive and difficult to review, so the Compliance Division opted to review the necessary documentation during the next regularly scheduled onsite review.

That review was completed and the property was referred back to the Committee on August 11, 2015. An informal conference was scheduled for November 17, 2015, but Mr. Yilmaz did not respond to mail, email, or telephone calls, and did not attend the informal conference. The Committee voted to recommend a \$2,000 administrative penalty, the maximum potential amount for the referred violations, which included a household income violation for unit 211, a lease notice violation for unit 211, and failure to clarify answers to the 2014 Annual Owner’s Compliance Report. A contested case hearing was initiated with the State Office of Administrative Hearings, and the case was settled with an Agreed Final Order requiring full corrections and a \$500 administrative penalty within thirty days. The administrative penalty was reduced to \$500 because a \$1,000 portion of the administrative penalty had been associated with an Annual Owner’s Compliance Report violation where Owner had submitted a report, but failed to adequately explain one of the answers. During hearing preparation, it was determined by counsel that the Department could not penalize that finding under the rule as written because the associated administrative penalty amount is for failure to submit an annual report. The administrative penalty was reduced by

a further \$500 to encourage settlement, with permission received from the Governing Board. The administrative penalty was paid, but the violations for unit 211 were not ultimately resolved until September 24, 2018.

A regularly scheduled onsite monitoring review was set for November 7, 2017, and no Owner representatives were present, despite email and telephone reminders by the Compliance Division and Legal Division on November 1, 2017. A notice of noncompliance was issued and no response was received. The property was referred to the Committee on April 13, 2018, for refusal to allow the 2017 onsite monitoring review, and for failure to submit pre-onsite documentation.

David Yilmaz and the property manager, Connie Duque, participated in an informal conference with the Committee on June 26, 2018, regarding an administrative penalty referral. Owner again mentioned that he does not receive mail and also has problems with email. He told the Committee that he lives in California and has difficulty hiring reliable property managers from that distance; the experienced manager he had hired in 2015 allegedly stole money from him. He admitted that he did not regularly supervise her work, and that he trusted her because of her self-representations that she was an experienced manager with housing tax credit experience. Since he is an absentee owner, he says his property managers take advantage of him. He also gave a long description of various health problems that have contributed to his failure to comply, saying that he does not “feel good” generally. When questioned, he specifically stated that although he wanted to comply, TDHCA has not been a major concern, that his health was his primary concern. The current onsite manager was also present and, when asked about her experience, she indicated that she started at the Property in April 2017, admitted that she had no experience, has never attended any TDHCA training, and that her last job was as a nursing assistant. When staff reminded Owner that TDHCA has been issuing compliance monitoring documentation via the Compliance Monitoring and Tracking System (“CMTS”) since 2013, Mr. Yilmaz stated that he does not check CMTS. When asked why nobody was present for the 2017 onsite monitoring review, he indicated that he did not appear for the review because he had a dental surgery appointment in California, and that the property manager did not appear because she was sick. He also posited that the assigned Compliance Monitor may have waited outside of a residential unit that used to be the office, perhaps mistaking it for the current office. At the conclusion of the meeting, Mr. Yilmaz agreed to sign an Agreed Final Order with the following terms:

1. A \$96,260 administrative penalty, subject to partial forgiveness as indicated below;
2. Owner must submit a \$64,166.67 portion of the administrative penalty within 90 days of the Agreed Final Order being approved by the Governing Board;
3. Owner must correct the 2017 onsite file monitoring violations as indicated in the Agreed Final Order, and submit full documentation of the corrections to TDHCA within ninety days of the Agreed Final Order being approved by the Governing Board;
4. If Owner complies with all requirements and addresses all violations as required, the remaining administrative penalty in the amount of \$32,093.33 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.

While deliberating during the informal conference, Committee members also requested a debarment referral from the Compliance Division because failure to allow onsite monitoring is considered a material violation of the LURA. Tex. Gov't. Code §2306.0504(c) states that the Department shall debar a person from participation in a Department program if the person materially or repeatedly violates any condition imposed by the department in connection with the administration of a debarment program. One of the material violations identified by 10 TAC §2.401(d) is refusing to allow onsite monitoring. Accordingly, the Department must debar David Yilmaz and The David Yilmaz Living Trust.

A debarment referral was received and a debarment informal conference was scheduled for August 28, 2018, then rescheduled for September 25, 2018, as a courtesy when requested by David Yilmaz. David Yilmaz and the property manager, Connie Duque, attended on September 25, 2018. No new arguments were provided during this informal conference. Despite numerous attempts by the Compliance Division, Legal Division, and Enforcement Committee to provide technical assistance and obtain acceptable corrective action, Owner has been unwilling or unable to operate the property in compliance with LURA requirements and consistently fails to respond to monitoring requests or deadlines. Owner has failed to allow onsite monitoring three times, which is unprecedented for the Committee. This is among the very worst potential violations because it undermines the Department's ability to assure that the property continues to be safe, decent and affordable. The fact that it has happened three times is not acceptable. Owner lives in California and daily management is left to an onsite manager that he employs directly. David Yilmaz has failed to grasp TDHCA requirements despite statements to the contrary, and he has not adequately supervised his property managers. He has attended numerous informal conferences and has been told of his responsibilities repeatedly. Furthermore, David Yilmaz continues to hire inexperienced staff, despite having sufficient cash flow to hire a qualified outside management company, of which there are many in the Irving area. The Committee determined that a 15-year debarment term is appropriate under the relevant factors, including those defined at 10 TAC §2.401(j).

Owner has since allowed TDHCA access to the property, and an onsite monitoring review was successfully completed on October 17, 2018, 344 days past the originally scheduled date. Findings were identified and a monitoring letter is currently pending, which will set a ninety day corrective action period. Those new violations are not part of this current recommendation. Partial corrective documentation for the pre-onsite documentation violation was submitted on October 27, 2018, but the following pre-onsite components are incomplete and the violation remains unresolved as a result: Unit Status Report showing implementation of the utility allowance, Affirmative Marketing Plan and associated marketing materials, and written policies and procedures.

Consistent with direction from the Department's Enforcement Committee, a partially probated and, upon successful completion of probation, partially forgivable administrative penalty in the amount of \$96,250 is recommended, along with a debarment term of 15 years. This will be a reportable item of consideration under previous participation for any new award to the principals of the Owner.



ENFORCEMENT ACTION AGAINST  
THE DAVID YILMAZ LIVING TRUST  
WITH RESPECT TO  
OAK PARK APARTMENTS  
(LIHTC FILE # 91056 / CMTS # 965)

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BEFORE THE  
TEXAS DEPARTMENT OF  
HOUSING AND  
COMMUNITY AFFAIRS

### **AGREED FINAL ORDER**

#### **General Remarks and official action taken:**

On this 6<sup>th</sup> day of December, 2018, 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 **THE DAVID YILMAZ LIVING TRUST** (“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 1991, Dominion Equity Corporation (“Prior Owner”) was awarded an allocation of Low Income Housing Tax Credits by the Board, in an annual amount of \$71,185 to rehabilitate and operate Oak Park Apartments (“Property”) (HTC file No. 91056 / CMTS No. 965 / LDLD No. 139).
2. Prior Owner signed a land use restriction agreement (“LURA”) regarding the Property. The LURA was effective November 7, 1991, and filed of record at Volume 91227, Page 5261 of the Official Public Records of Real Property of Dallas County, Texas. In accordance with

Section 2 of the LURA, the LURA is a restrictive covenant/deed restriction encumbering the Property and binding on all successors and assigns for the full term of the LURA.

3. Respondent took ownership of the Property on December 30, 2005 and, although an Agreement to Comply was not signed, Respondent is 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<sup>1</sup>:

5. Property has a history of violations and previously signed an Agreed Final Order on May 10, 2016, agreeing to submit corrective documentation within thirty days along with a \$500 administrative penalty. The administrative penalty was paid, but no corrective documentation was submitted regarding unit 211 until September 24, 2018, after a new enforcement action was initiated for new violations identified during an onsite review.
6. An on-site monitoring review was scheduled to be conducted on November 7, 2017, to determine whether Respondent was in compliance with LURA requirements to lease units to low income households and maintain records demonstrating eligibility. Violations of the LURA and TDHCA rules were identified. Notifications of noncompliance were sent and a March 22, 2018, corrective action deadline was set, however, the following violations were not resolved before the corrective action deadline:
  - a. Respondent failed to allow onsite monitoring on November 7, 2017, a violation of 10 TAC §10.618, which requires Respondent to permit the Department access to the premises and records in order to review all documents supporting compliance with the Housing Tax Credit program. The Department gave reasonable notice of the review on November 6, 2017, as required, and the Legal Division also contacted Respondent by email and telephone on November 1, 2017, as a courtesy reminder to ensure that someone would be present. TDHCA staff was present for the scheduled onsite review at 3pm on November 7, 2017, but a representative for Respondent management did not appear and the Department did not have access to Respondent's records. After intervention by the Enforcement Committee, an onsite review was scheduled and successfully conducted on October 17, 2018, 344 days past the originally scheduled date. Allowing onsite access to the premises and records only resolves the finding for failure to permit onsite monitoring; any findings associated with that new 2018 onsite review will receive a ninety-day corrective action period, with any identified findings to be considered outside of this Agreed Final Order.
  - b. 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. Required documentation included an Entrance Interview Questionnaire, a current

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<sup>1</sup> Within this Agreed Final Order, all references to violations of TDHCA Compliance Monitoring rules at 10 TAC Chapter 10 refers to the versions of the code in effect at the time of the compliance monitoring reviews and/or inspections that resulted in recording each violation. All past violations remain violations under the current code and all interim amendments.

and applicable utility allowance, an updated Unit Status Report, an Affirmative Marketing Plan along with evidence of outreach marketing, and written policies and procedures including tenant selection criteria. Partial corrective action has been received, but the following pre-onsite components are incomplete and the finding remains unresolved as a result: Unit Status Report showing implementation of the utility allowance, Affirmative Marketing Plan and associated marketing materials, and written policies and procedures.

7. The following violations remain outstanding at the time of this order:
  - a. Pre-onsite documentation violation relating to the utility allowance, Unit Status Report, Affirmative Marketing Plan and associated marketing materials, and written policies and procedures, as further described in FOF #6.b;

### **CONCLUSIONS OF LAW**

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503, and 10 TAC §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 §10.618 in 2017, by failing to allow onsite monitoring.
5. Respondent violated 10 TAC §10.607 and §10.618 in 2017, by not submitting pre-onsite documentation including an Entrance Interview Questionnaire, a current and applicable utility allowance, an updated Unit Status Report, an Affirmative Marketing Plan along with evidence of outreach marketing, and written policies and procedures including tenant selection criteria, in preparation for the monitoring review.
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 \$96,250 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 \$96,250, subject to partial deferral as further ordered below.

**IT IS FURTHER ORDERED** that Respondent shall pay and is hereby directed to pay a \$64,166.67 portion of the assessed administrative penalty by cashier's check payable to the "Texas Department of Housing and Community Affairs" on or before March 6, 2019.

**IT IS FURTHER ORDERED** that Respondent shall fully correct the file monitoring violations as indicated in the exhibits and submit full documentation of the corrections to TDHCA on or before March 6, 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 in the amount of \$32,093.33, and that remaining amount of the administrative penalty will be deferred and forgiven.

**IT IS FURTHER ORDERED** that any new findings of noncompliance identified during the onsite monitoring review conducted on October 17, 2018, with the exception of those findings already outlined above that are also associated with the failed November 7, 2017 onsite monitoring review, are not included in this Agreed Final Order.

**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 \$32,093.33 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 December 6, 2018.*

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 6th day of December, 2018, 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 6th day of December, 2018, 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



## Exhibit 1

### File Monitoring Violation Resources and Instructions

#### **Resources:**

1. Refer to the following link for all references to the rules at 10 TAC §10 that are referenced below:  
[http://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac\\_view=5&ti=10&pt=1&ch=10&sch=F&rl=Y](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=10&pt=1&ch=10&sch=F&rl=Y)
2. Refer to the following link for copies of forms that are referenced below:  
<http://www.tdhca.state.tx.us/pmcomp/forms.htm>
3. Technical support and training presentations are available at the following links:  
Utility Allowance: <http://www.tdhca.state.tx.us/pmcomp/utility-allowance.htm>  
Affirmative Marketing Webinar: <http://www.tdhca.state.tx.us/pmcomp/presentations.htm>  
Affirmative Marketing Technical Assistance: <http://www.tdhca.state.tx.us/pmcdocs/AMT-Assistance-Guide.pdf>  
Tenant Selection Criteria Webinar: <http://www.tdhca.state.tx.us/pmcomp/presentations.htm>  
FAQ's: <http://www.tdhca.state.tx.us/pmcomp/compFaqs.htm>
4. **All corrections must be submitted via CMTS:** See link for steps to upload documents  
<http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf>.
5. **Important notes -**
  - i. Do not backdate any documents listed below.
  - ii. A transfer of a qualified household from another unit is not sufficient to correct any findings. If there is a tenant income certification or household income above limit violation, a transfer from another unit will simply cause the finding to transfer to that unit.

**Instructions:** Submit the following complete documentation to correct the pre-on-site documentation violation.

6. **Written tenant selection criteria** – You are required to maintain written policies and procedures, including tenant selection criteria. Respondent submitted written tenant selection criteria, however, the criteria were incomplete.

How to prepare compliant criteria: First watch the webinar presentation is available at: <http://www.tdhca.state.tx.us/pmcomp/presentations.htm>. Then prepare updated written policies and procedures 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 “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: Upload to CMTS written policies and procedures meeting all requirements of [10 TAC §10.610](#), including but not limited to the technical support items provided above.



7. **Utility Allowance** – You are required to implement and annually update a utility allowance. This is not an amount that you will charge to tenants; it is an estimate of how much the households are paying toward utilities, to ensure that their total housing expenses are appropriately restricted. When determining the appropriate rent amount, you will ensure that the tenant’s rent, plus this utility allowance, plus any housing subsidies, plus any mandatory fees, are below the maximum limits set by TDHCA.

Problems with past submissions: The property has indicated that it is using the Public Housing Authority methodology to calculate a utility allowance. Past submissions were unacceptable because:

- i. You initially submitted a utility allowance from the City of Dallas Housing Authority, however, Oak Park is located in Irving, Texas, so that housing authority is not applicable. The applicable housing authority is the Dallas County Housing Agency.
- ii. On 10/27/2018, you submitted a utility allowance from the Dallas County Housing Agency for the years 2016 and 2017. They have not published an allowance for 2018, so their 2017 allowance remains applicable. You did not calculate the utility allowance properly; you included an allowance for a range and refrigerator, but you provide both appliances and neither should be included in the allowance as a result. Additionally, your Unit Status Report completed on 10/17/2018 did not show that the utility allowance had been implemented.

What to submit: Properly calculate the utility allowances for 2016 and 2017, then submit via CMTS upload. Implement the utility allowance, then submit the development’s updated Unit Status Report via CMTS to demonstrate that the 2017 Dallas County Housing Authority’s utility allowance has been implemented. Rent will then be tested development-wide once the proper allowance is implemented, and any resulting noncompliance will be cited at that time and provided a separate corrective action period of 90 days. For more information, see <http://www.tdhca.state.tx.us/pmcomp/utility-allowance.htm>.

8. **Affirmative marketing plan** –

Problems with past submissions: You submitted a plan on 10/27/2018, however, the least likely to apply groups in Section 3b appear to be unsupported, and Section 4c did not include organizations for marketing to the following least likely to apply groups: Asian, Black/African American, and Not Hispanic. Additionally, the outreach marketing letters did not meet minimum requirements.

Technical Support: First read the rule at 10 TAC §10.617, read the technical assistance guide at <http://www.tdhca.state.tx.us/pmcdocs/AMT-Assistance-Guide.pdf>, and watch the webinar at <http://www.tdhca.state.tx.us/pmcomp/presentations.htm>, to gain a general understanding regarding affirmative marketing.

Steps to complete affirmative marketing plan:

- a. Identify the appropriate housing market in which outreach efforts will be made;
- b. Determine the groups that are least likely to apply and mark them in your plan. The Affirmative Marketing Tool referenced at 10 TAC §10.617(d)(5) to determine groups that are least likely to apply is attached at Exhibit 2 and is available online at: <http://www.tdhca.state.tx.us/pmcomp/forms.htm>. Section 3b of your plan submitted on 10/27/2018 marked the following groups: American Indian or Alaskan Native, Asian, Persons with Disabilities, and gays and lesbians. No data was submitted to support these selections. The groups *currently* identified by the Tool are Persons with Disabilities, Black/African American, Not Hispanic, and Asian. If you use this Tool and include a copy with your Plan, you may rely upon its results. Update Section 3b of your plan to include only the groups identified in the Tool. Alternatively, if you do not use the Tool, you may perform your own analysis to determine groups that are least likely to apply, but you must perform and document a reasonable analysis by which those groups were identified, you must always include persons with disabilities, and

populations representing less than 1% of the total population of the County or MSA will not be required in your affirmative marketing. This analysis must be included with the plan.

When the “Not Hispanic” population is identified by the Tool as a group least likely to apply, that group would be marked in part 3b of your plan as “Other” and you would write in “Not Hispanic”. Many owners assume that the “Not Hispanic” group identified by the Tool means “White”. That is not necessarily the case. The Compliance Division explains the category like this: each household member has a Race *and* an Ethnicity. The Race could be White, American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander. The Ethnicity could be either Hispanic or Not Hispanic. In other words, a person could be Black/African American and Hispanic. Likewise, a person could be White and Hispanic. In other words, the “Not Hispanic” demographic is literally everyone who is “Not Hispanic.”

- c. Identify in section 4c of your plan specific organizations, media, and community contacts in the housing market to send marketing outreach materials. The organizations must specifically reach the groups designated as least likely to apply in Section 3b of your plan. Each identified group must have at least one dedicated organization listed in section 4c. You cannot submit one organization for multiple groups. The Tool provides a link to a map that will show which Census tracts may be most beneficial for affirmative marketing. The census tracts provided for outreach consideration represent nearby neighborhoods identified in the U.S. Census as having the greatest number of the groups who are least likely to apply at your development based on its location. The identified neighborhoods may represent a first step for planning meaningful outreach and marketing for your development.

Specific examples:

- i. Least likely to apply population - People with disabilities:
  - A. Local Center for Independent Living (“CIL”) – serve persons with all disability types. Not all counties are covered [http://www.txsilc.org/page\\_CILs.html](http://www.txsilc.org/page_CILs.html)
  - B. Aging and Disability Resource Center (“ADRC”) – intake and referral for persons with physical, intellectual, or developmental disabilities - all counties are covered: <https://www.dads.state.tx.us/contact/search.cfm>
  - C. Local Intellectual and Developmental Disability Authority (LIDDA) – serves persons with intellectual, or developmental disabilities - all counties are covered: <https://www.dads.state.tx.us/contact/search.cfm>
  - D. Local Mental Health Authority (LMHA) – serves persons with Mental Illness and Substance Use disorders - all counties are covered: <https://www.dshs.texas.gov/mhservices-search/>
  - E. Local non-profits in your area serving people with disabilities
  - F. Call 211 and ask about resources for people with disabilities in your area, reach out to groups serving people with disabilities in your community
- ii. Least likely to apply population - Asian:
  - A. Local Asian real estate association
  - B. Local Asian Chamber of Commerce
  - C. Local Asian American Resource Center
  - D. Local organizations serving the Asian community
  - E. Community centers, places of worship, libraries, grocery stores in census tracts with a high concentration of the racial group. In TDHCA’s Tool, these areas are listed under “tracts for outreach consideration”

- iii. Least likely to apply population - Black/African American:
  - A. Local Black/African American Chamber of Commerce
  - B. Local Black/African American Professionals Social Network
  - C. Weekly Black/African American newspaper / website for a city
  - D. Local community center or YMCA in a historically black/African American neighborhood;
  - E. Community centers, places of worship, libraries, grocery stores in census tracts with a high concentration of the racial group. In TDHCA's Tool, these areas are listed under "tracts for outreach consideration"
- iv. Least likely to apply population – Not Hispanic:
  - A. Community centers, places of worship, libraries, grocery stores in census tracts with a high concentration of the racial group. In TDHCA's Tool, these areas are listed under "tracts for outreach consideration"
- d. Complete and execute an affirmative marketing plan using any version of HUD Form 935.2A, including the groups and organizations identified above;
- e. Comply with all requirements of 10 TAC §10.617, which we recommend using as a checklist;
- f. Ensure that your plan includes a section considering how Limited English Proficiency may affect populations least likely to apply, and including ways you plan to mitigate language barriers related to advertising and community outreach. Such information should be included in the Plan as an additional consideration, or as an attachment to the Plan. Some sample information that may be useful for preparation is available at <http://www.tdhca.state.tx.us/pmcdocs/LAP-Guide.doc>;
- g. Send marketing outreach materials to all organizations identified in Section 4c of your plan, ensuring that said marketing materials comply with all requirements of 10 TAC §10.617. Remember that 10 TAC §10.617(f)(5) requires marketing materials to include the Fair Housing Logo and give contact information that prospective tenants can access if reasonable accommodations are needed in order to complete the application process. These were not included in your letters submitted on 10/27/2018. The contact information sentence must include the terms "reasonable accommodation" and must be in English and Spanish for all outreach marketing letters, regardless of the targeted group. Here is a sample of an acceptable sentence recently included in marketing materials from another property: *"Individuals who need to request a reasonable accommodation to complete the application process should contact the apartment manager at XXX-XXX-XXXX. Personas con discapacidad que necesitan solicitar un acomodacion razonable para completar el proceso de aplicacion deben comunicarse con el Administrador del apartment al XXX-XXX-XXXX."*
- h. Look over the "10.617 (affirmative marketing)" tab of the spreadsheet at the following link, which 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 Affirmative Marketing plan *and* outreach materials are complete, submit both by CMTS upload.

## Exhibit 2

11/19/2018

Affirmative Marketing Tool

### Affirmative Marketing Tool - Updated 02/22/2017 11/19/2018

#### Property: Oak Park Apts

CMTS # 965  
Census Tract: 48113014405  
County Dallas  
MSA Dallas-Plano-Irving, TX Metropolitan Division

Results will not display for any populations representing less than 1% of the total population of the County or MSA. These populations will not be required in your affirmative marketing.

#### Census Tract vs. MSA

Least Likely to Apply	% Census Tract	% MSA	Tract for Outreach Consideration
Persons with Disabilities	8.44	8.66	48257051300
Black / African American	5.06	16.22	48113016612
Not Hispanic	33.72	71.18	48085031405
Asian	1.71	6.03	48113014127

[Map Census Tracts](#)

The report above shows the groups to whom you must affirmatively market based on a comparison of your census tract to the applicable County or MSA area as identified in the Rule. You must select these groups on the HUD 935.2A form as groups least likely to apply.

The census tracts provided for outreach consideration represent nearby neighborhoods identified in the U.S. Census as having the greatest number of the groups who are least likely to apply at your development based on its location. The identified neighborhoods may represent a first step for planning meaningful outreach and marketing for your development.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**

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**To:** TDHCA Governing Board  
**From:** David Cervantes, Acting Director  
**Date:** December 6, 2018  
**Subject:** Report to the Board

The Enforcement Committee has recommended a 15 year debarment term against The David Yilmaz Living Trust, and its sole Trustee, David Yilmaz (collectively, “Respondent”), for refusing to allow onsite monitoring on November 7, 2017. I have, in my capacity as Acting Director of the Department, made the following **PRELIMINARY DETERMINATIONS**:

**I. JURISDICTION:**

1. During 1991, Dominion Equity Corporation (“Prior Owner”) was awarded an allocation of Low Income Housing Tax Credits by the Board, in an annual amount of \$71,185 to rehabilitate and operate Oak Park Apartments (“Property”) (HTC file No. 91056 / CMTS No. 965 / LDLD No. 139).
2. Prior Owner signed a land use restriction agreement (“LURA”) regarding the Property. The LURA was effective November 7, 1991, and filed of record at Volume 91227, Page 5261 of the Official Public Records of Real Property of Dallas County, Texas. In accordance with Section 2 of the LURA, the LURA is a restrictive covenant/deed restriction encumbering the Property and binding on all successors and assigns for the full term of the LURA.
3. Respondent took ownership of the Property on December 30, 2005 and, although an Agreement to Comply was not signed, Respondent is bound to the terms of the LURA in accordance with Section 2 thereof.
4. Respondent is subject to the regulatory authority of TDHCA.

**II. MATERIAL VIOLATIONS SUBJECT TO DEBARMENT<sup>2</sup>:**

1. TDHCA attempted to perform a scheduled onsite monitoring review on November 7, 2017. Despite reminders by the Compliance Division and Legal Division, Respondent failed to appear for the review, thus refusing TDHCA access the premises to conduct its review. The Compliance Division issued a monitoring report on December 22, 2017, identifying multiple findings, including refusal to allow onsite monitoring, a violation of 10 TAC §10.618, which requires Respondent to permit the Department access to the premises and

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<sup>2</sup> Within this Agreed Final Order, all references to violations of TDHCA Compliance Monitoring rules at 10 Tex. Admin. Code, Chapters 10 and 60 refer to the versions of the code in effect at the time of the compliance monitoring reviews and/or inspections that resulted in recording each violation. All past violations remain violations under the current code and all interim amendments.



records in order to review all documents supporting compliance with the Housing Tax Credit program. A ninety day corrective deadline of March 22, 2018, was established to submit corrective documentation, but no response was received. Ultimately, an onsite review was successfully conducted on October 17, 2018, 344 days past the originally scheduled date, after intervention by the Enforcement Committee.

### III. LAW/RULE VIOLATIONS:

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §2306.0504 and 10 TAC §2.401.
2. Respondent is a "Responsible Party" as that term is defined in 10 TAC §2.102(5).
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 §10.618 in 2017 by refusing to allow onsite monitoring.
5. Pursuant to Tex. Gov't. Code §2306.0504(c), the Department shall debar a person from participation in a Department program if the person materially or repeatedly violates any condition imposed by the department in connection with the administration of a department program.
6. Pursuant to 10 TAC §2.401(d), refusing to allow onsite monitoring is considered a material violation that justifies debarment.

### IV. RECOMMENDED DEBARMENT TERM:

Pursuant to 10 Tex. Admin. Code §2.401(j), recommended periods of debarment are to be based upon material factors such as the following:

1. **Repeated occurrences:** Although refusal to allow onsite monitoring is the reason for the mandatory debarment, Respondent has a long history of noncompliance, which is a relevant factor in determining the appropriate debarment term. There is a history of refusing to allow onsite monitoring, with the violation occurring three times since 2010. Representatives have attended numerous informal conferences with the Enforcement Committee and previously signed an Agreed Final Order in 2016, which was violated, with multiple violations relating to unit 211 remaining unresolved until 2018.
2. **Seriousness of underlying issues:** Not allowing onsite monitoring is extremely serious because it undermines the Department's ability to verify that the property is being maintained as safe, decent and affordable housing. It is among the most egregious compliance violations and has happened three times.



3. **Presence or absence of corrective action, including corrective action to install new responsible persons and ensure they are qualified and properly trained:** On multiple occasions, the Enforcement Committee told Respondent that he needs to hire qualified staff, and it has repeatedly recommended training. However, the current property manager's last job was as a nursing assistant. She started at the property in April of 2017, and during the administrative penalty informal conference on June 26, 2018, she admitted that she had no experience and had never attended any TDHCA training courses. Respondent continues to ignore TDHCA correspondence and advice. He has attended multiple informal conferences and has been told of his responsibilities repeatedly; he needs to ensure that his staff is properly trained since he lives in California and does not oversee operation of the Property himself. Respondent did contact TDHCA after his administrative penalty informal conference to schedule an onsite monitoring review, and the manager started submitting corrections before the debarment informal conference was held, but they were incomplete.
4. **Other material factors:** The property has good cash flow and is located in Irving, Texas, but Respondent continues to directly hire unqualified onsite managers rather than hiring a qualified property management company, of which there are many in the area. The property is in average physical condition, however, and has no outstanding Uniform Physical Condition Standards ("UPCS") violations. There is a significant administrative penalty also pending, which should act as a significant incentive to bring the property into compliance and deter future violations.

A Notice of Debarment Determination was issued by the Executive Director on October 10, 2018, and included an appeal period of 20 days. Respondent did not respond during the appeal period, but later indicated that he will not oppose the debarment. A debarment term of 15 years is appropriate under the debarment factors outlined above. Accordingly, after consideration of all appropriate factors, including those set out in TEX. GOV'T CODE §2306.0504 and 10 TEX. ADMIN. CODE §2.401, the Enforcement Committee has recommended a debarment term of 15 years.

ENFORCEMENT ACTION AGAINST  
THE DAVID YILMAZ LIVING TRUST  
AND DAVID YILMAZ, ITS TRUSTEE

§  
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§  
§

BEFORE THE  
TEXAS DEPARTMENT OF  
HOUSING AND  
COMMUNITY AFFAIRS

### **FINAL ORDER**

#### **General Remarks and official action taken:**

On this 6<sup>th</sup> day of December, 2018, 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 **THE DAVID YILMAZ LIVING TRUST**, and **DAVID YILMAZ**, its Trustee (collectively, “Respondent”), for refusing to allow onsite monitoring on November 7, 2017.

This Final Order is executed pursuant to the authority granted in the Tex. Gov’t Code, Chapter 2306.0504, which requires the Board to adopt a policy providing for the debarment of a person from participation in Department programs because of a person’s past failure to comply with conditions imposed by the Department in the administration of its programs. The policy was adopted by the Board and is set forth in 10 TAC §2.401.

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

### **FINDINGS OF FACT**

#### **Jurisdiction:**

1. During 1991, Dominion Equity Corporation (“Prior Owner”) was awarded an allocation of Low Income Housing Tax Credits by the Board, in an annual amount of \$71,185 to rehabilitate and operate Oak Park Apartments (“Property”) (HTC file No. 91056 / CMTS No. 965 / LDLD No. 139).
2. Prior Owner signed a land use restriction agreement (“LURA”) regarding the Property. The LURA was effective November 7, 1991, and filed of record at Volume 91227, Page 5261 of the Official Public Records of Real Property of Dallas County, Texas. In accordance with Section 2 of the LURA, the LURA is a restrictive covenant/deed restriction encumbering the Property and binding on all successors and assigns for the full term of the LURA.
3. Respondent took ownership of the Property on December 30, 2005 and, although an Agreement to Comply was not signed, Respondent is bound to the terms of the LURA in accordance with Section 2 thereof.
4. Respondent is subject to the regulatory authority of TDHCA.

Material Violations Subject To Debarment:

1. TDHCA attempted to perform a scheduled onsite monitoring review on November 7, 2017. Despite reminders by the Compliance Division and Legal Division, Respondent failed to appear for the review, thus refusing TDHCA access the premises to conduct its review. The Compliance Division issued a monitoring report on December 22, 2017, identifying multiple findings, including refusal to allow onsite monitoring, a violation of 10 TAC §10.618, which requires Respondent to permit the Department access to the premises and records in order to review all documents supporting compliance with the Housing Tax Credit program. A ninety day corrective deadline of March 22, 2018, was established to submit corrective documentation, but no response was received. Ultimately, an onsite review was successfully conducted on October 17, 2018, 344 days past the originally scheduled date, after intervention by the Enforcement Committee.

**CONCLUSIONS OF LAW**

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §2306.0504 and 10 TAC §2.401.
2. Respondent is a "Responsible Party" as that term is defined in 10 TAC §2.102(5).
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 §10.618 in 2017 by refusing to allow onsite monitoring.
5. Pursuant to Tex. Gov't. Code §2306.0504(c), the Department shall debar a person from participation in a Department program if the person materially or repeatedly violates any condition imposed by the department in connection with the administration of a department program.
6. Pursuant to 10 TAC §2.401(d), refusing to allow onsite monitoring is considered a material violation that justifies debarment.

Based upon the foregoing findings of fact and conclusions of law, and an assessment of material factors including those set forth in 10 Tex. Admin. Code §2.401(j) to be considered for a recommended period of debarment, as applied specifically to the facts and circumstances present in this case, the Board of the Texas Department of Housing and Community Affairs orders the following:

**IT IS HEREBY ORDERED** that Respondent is debarred from future participation in all programs administered by the Department for a period of **fifteen** years, to commence upon the date this Order is approved by the Board.

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

*Approved by the Governing Board of TDHCA on December 6, 2018.*

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 6th day of December, 2018, 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 6th day of December, 2018, 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

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**BOARD ACTION REQUEST**  
**OCI, HTF, and NSP DIVISION**  
**DECEMBER 6, 2018**

Presentation, discussion, and possible action on a Memorandum of Understanding between the Texas Department of Housing and Community Affairs and the Texas Department of Agriculture regarding the management of Community Development Block Grant funds for the Colonia Self-Help Center Program

**RECOMMENDED ACTION**

**WHEREAS**, Rider 7 of Article VII of the General Appropriations Act of the Eighty-fifth Texas Legislature, reflects that the Texas Department of Agriculture ("TDA") shall allocate 2.5% of the yearly allocation of Community Development Block Grant ("CDBG") funds to the Texas Department of Housing and Community Affairs ("TDHCA") to support the operation of the Colonia Self-Help Centers ("CSHC");

**WHEREAS**, the Department executes a Memorandum of Understanding ("MOU") with TDA to put Rider 7 into effect and to provide for the administration, operation, and program activities of the CSHC Program;

**NOW, therefore, it is hereby**

**RESOLVED**, that the Executive Director or Acting Director is hereby authorized to execute an MOU between TDHCA and TDA regarding the management of CDBG funds for the CSHC Program.

**BACKGROUND**

In accordance with the General Appropriations Act, the purpose of this MOU is to transfer federal CDBG funds from TDA to TDHCA for the administration and operation of the CSHC Program pursuant to the provisions of Rider 18 of TDA's appropriations and Rider 7 of TDHCA's appropriations in the General Appropriations Act for the 2018-2019 biennium, and as authorized pursuant to Tex. Gov't Code, Subchapter Z.

Upon approval of the Board, the MOU will be fully executed by the duly authorized representatives of TDHCA and TDA to be effective on February 1, 2019.

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
TEXAS DEPARTMENT OF AGRICULTURE  
AND  
TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**

**SECTION I. PARTIES**

This Memorandum of Understanding, hereinafter referred to as “Memorandum,” is made and entered into between the Texas Department of Agriculture, hereinafter referred to as “TDA,” a public and official agency of the State of Texas, and the Texas Department of Housing and Community Affairs, hereinafter referred to as “TDHCA,” a public and official agency of the State of Texas.

**SECTION II. PURPOSE**

In accordance with Section 487.351 of the Texas Government Code, the purpose of this Memorandum is to make available federal Community Development Block Grant (“CDBG”) funds from TDA to TDHCA for the administration, operation, and program activities of the Colonia Self-Help Centers (“SHC”) and to partially fund TDHCA’s border field offices pursuant to the provisions of Rider 7 of TDHCA’s appropriation and Rider 18 of TDA’s appropriation for the 2018-2019 biennium under the General Appropriations Act of the 85<sup>th</sup> Legislature, Regular Session, and authorized pursuant to Subchapter Z of Chapter 2306 of the Texas Government Code.

**SECTION III. PERIOD OF PERFORMANCE**

This Memorandum shall begin on February 1, 2019, and shall terminate on August 31, 2020.

**SECTION IV. TDHCA PERFORMANCE**

TDHCA shall allocate the funds received under this Memorandum to each county in which a Colonia SHC, designated in accordance with Section 2306.583 of the Texas Government Code or subsequent governing legislation, is located. TDHCA oversight of the program administration shall ensure that all activities are carried out in accordance with the federal law and regulations at 42 USC §5301 *et seq.* and 24 CFR Part 570, and the state law and rules at Chapter 2306, Subpart Z of the Texas Government Code, and 10 TAC 25 (“Colonia SHC Program Rule”). In addition, TDHCA shall:

- A. Approve all awards, amendments and modifications related to the funding of the Colonia SHCs in accordance with the Texas Community Development Block Grant (“TxCDBG”) Program (Implementation Manual link is:

[http://www.texasagriculture.gov/GrantsServices/RuralEconomicDevelopment/RuralCommunityDevelopmentBlockGrant\(CDBG\)/Forms.aspx](http://www.texasagriculture.gov/GrantsServices/RuralEconomicDevelopment/RuralCommunityDevelopmentBlockGrant(CDBG)/Forms.aspx)), including the annual Action Plan, 10 TAC 1 (“Administrative Rules”), 10 TAC 2 (“Enforcement Rules”), 10 TAC 20 (“Single Family Programs Umbrella Rule”), and 10 TAC 21 (“Minimum Energy Efficiency Requirements for Single Family Construction Activities”).

- B. Participate in public hearings to solicit comments regarding the funds provided under this Memorandum and provide input as necessary.
- C. Adhere to the certifications TDA makes to the U.S. Department of Housing and Urban Development (“HUD”) in order to receive CDBG funding.
- D. Ensure that each activity included in a Colonia SHC program contract by and between TDHCA and the Colonia SHC subrecipient (“Program Contract”) meets a national objective, and qualifies as an eligible activity as identified under the state CDBG regulations. Compliance with this requirement shall be clearly reflected in the performance statements and budgets attached to all Program Contracts.
- E. Ensure that each activity in the Program Contract’s performance statement has a corresponding budget line item in the budget.
- F. Obligate the funds provided under this Memorandum within fourteen (14) months after the date the funds were provided to TDA from HUD. Funds deobligated and any program income recovered from the funds provided through the Colonia SHC program shall be used by TDHCA for the Colonia SHCs in accordance with the applicable Action Plan.
- G. Ensure that direct delivery costs, associated with the delivery of housing assistance including the preparation of work write-ups and required architectural or professional services that are directly attributable to a particular housing unit, be charged to the housing related construction budget line item under each Program Contract.
- H. Provide on a regular basis oversight and monitoring of the activities of Colonia SHC subrecipients, units of local government and the respective Colonia SHC nonprofit service providers, to ensure that CDBG activities are completed, performance goals are met and funds expended in accordance with the Colonia SHC Program Rule, Program Contract provisions, applicable state and federal rules, regulations, policies, including 2 CFR Part 200, and related statutes. This oversight of activities is separate from the monitoring responsibilities of TDA. Monitoring reviews may take place at any time or at the request of the unit of local government or TDHCA. A final monitoring review must take place within 120 days of the Program Contract termination.
- I. Conduct the final monitoring review of Program Contract close-out documents and an on-site review of subrecipient records to achieve the following monitoring objectives: ensure that activities have been completed and beneficiaries served in accordance with the Program Contract’s performance statement and budget; ensure that subrecipient systems, policies and procedures used to administer CDBG funds contain sufficient controls against fraud and misuse and that they are in place and operating efficiently; identify areas of specific need for additional technical assistance.
- J. Provide TDA a copy of any findings and associated necessary corrective actions to be carried out by the Colonia SHC subrecipient as well as concerns and recommendations that do not require corrective action.



## **SECTION V. TDA FUNDING AND PERFORMANCE OBLIGATIONS**

- A. Colonia SHC funding. Notwithstanding any other provision of this Memorandum, the total obligations incurred by TDA shall not exceed 2.5% of the annual formula allocation of regular CDBG funds received by the State of Texas from HUD for Federal Program Years 2019 and 2020. TDA shall be responsible for funding, managing, and reporting all Colonia SHC funds in the HUD Integrated Disbursement and Information System (“IDIS”), including assigning and/or modifying program year sources of funds. TDA shall transfer funds provided under this section to the appropriate local government upon receipt of requests for payment from TDHCA and receipt of funds from HUD. TDA shall simultaneously notify TDHCA of the transfer to the local government.
- B. Administration funds. TDA shall transfer to TDHCA, administration funds, totaling no more than 4.47% of the Colonia SHC funding described in Subsection A of this Section V, assuming TDA receives from HUD a regular annual state CDBG allocation and administration funds are available for the state CDBG program for Program Years 2019 and 2020, for costs incurred for TDHCA’s border field offices and Office of Colonia Initiatives staff and planning activities. TDHCA shall submit a budget that defines the use of CDBG funds for this purpose. TDHCA will notify TDA no later than July 31 of each year of any administration funds under this Section V that may be applied to the following state fiscal year.
- C. TDA shall be responsible for fulfilling the federal match requirement for the award of CDBG funds to TDA. If the state general revenue appropriations for the federal match requirement are reduced thereby necessitating a reduction in the overall Texas CDBG administration amount, the administration funds provided in Subsection B of this Section V shall be reduced by the same percentage as the overall reduction in the state general revenue appropriations for the federal match requirement.
- D. All increases and reductions in the Program Contract amount for the administration of the Colonia SHC program should be in proportion to the amount of the grant award from HUD.
- E. This Memorandum shall not be construed as creating any debt on behalf of the State of Texas and/or TDA in violation of Article III, Section 49, of the Texas Constitution. In compliance with Article VIII, Section 6, of the Texas Constitution, all obligations of the State of Texas or TDA hereunder are subject to the availability of appropriations and authorizations by the Texas Legislature. This Memorandum, including any amendments, extensions, renewals or subsequent agreements, is executed by TDA contingent upon the availability of appropriated funds. Notwithstanding any other provision in this Memorandum or any other document, this Memorandum is void upon the insufficiency or unavailability of appropriated funds.
- F. TDA shall monitor TDHCA’s oversight and monitoring of the activities of Colonia SHC subrecipients, units of local government and the respective Colonia SHC nonprofit service providers, to ensure that CDBG activities are completed, performance goals are met and funds expended in accordance with the Colonia SHC Program Rule, Program Contract provisions, applicable state and federal rules, regulations, policies, including 2 CFR Part 200, and related statutes.
- G. TDA shall monitor TDHCA’s monitoring activities to achieve the following monitoring objectives: ensure that activities have been completed and beneficiaries served in accordance with the Program Contract’s performance statement and budget attached thereto; ensure that subrecipient systems, policies and procedures used to administer

CDBG funds contain sufficient controls against fraud and misuse and that they are in place and operating efficiently; identify areas of specific need for additional technical assistance.

- H. TDA shall identify in writing, through a monitoring report, any findings and recommended associated corrective actions that may be carried out by TDHCA or the subrecipient of Colonia SHC funding as well as concerns and recommendations that do not require corrective action.

## **SECTION VI. DISALLOWED COSTS**

Costs that are found to be disallowed, if any, by TDHCA, TDA or HUD may be deducted from existing and future allocations of CDBG funds to TDHCA in an amount agreed upon by the parties to this Memorandum, to the extent allowed by law.

## **SECTION VII. REPORTING REQUIREMENTS AND RETENTION OF AND ACCESS TO RECORDS**

- A. TDHCA shall furnish to TDA, and TDA shall furnish to TDHCA, such reports on the operation and performance of work under this Memorandum as may be required by TDA or TDHCA in order to respond to requests for information.
- B. Per 24 CFR §570.490(d), "Recordkeeping Requirements," TDHCA shall retain all records relating to its responsibilities described by this Memorandum for three (3) years after the closeout of the grant to the State. TDA shall furnish to TDHCA, and TDHCA shall furnish to Colonia SHC subrecipients, notification in writing when the three-year period begins.
- C. TDHCA shall give the TDA, HUD, the Auditor of the State of Texas, and any of their duly authorized representatives access to, and the right to examine, all records relating to this Memorandum for as long as such records are retained by TDHCA as specified in Subsection B of this Section VII. TDHCA shall also provide TDA a copy of any audits conducted on the programs and services covered by this Memorandum.
- D. TDHCA shall maintain up-to-date accomplishments in quarterly reports and submit on a timely basis in an agreed upon format sufficient for TDA to complete the CDBG Annual Performance Evaluation Report ("PER") and for the purposes of drawing funds under the Integrated Disbursement & Information System ("IDIS").
- E. TDHCA shall maintain up-to-date accomplishments in quarterly reports identifying cumulative data necessary for HUD's IDIS reporting. Each contractor shall maintain data regarding all activities completed under the Program Contract.
- F. TDHCA shall submit Personnel Cost Calculation forms and timesheets or other approved manner as agreed upon by the parties to this Memorandum to TDA for the reimbursement of administrative expenses.
- G. TDHCA shall respond to TDA in a timely manner regarding any HUD or other correspondence related to the Colonia SHC fund, including any monitoring or audit reports.
- H. TDHCA shall submit copies of Program Contracts and amendments necessary to keep TDA tracking systems updated and for the payment of draws.

**SECTION VIII. AMENDMENTS AND CHANGES**

Any alteration, addition or deletion to the terms of this Memorandum shall be by amendment hereto in writing and executed by both parties hereto except as may be expressly provided for in some other manner by the terms of this Memorandum.

**SECTION IX. POLITICAL ACTIVITY**

None of the activities or performances rendered hereunder by TDHCA shall involve and no portion of the funds received by TDHCA hereunder shall be used for any political activity, including but not limited to any activity to further the election or defeat of any candidate for public office, or any activity undertaken to influence the passage, defeat, or final contents of legislation.

**SECTION X. SECTARIAN ACTIVITY**

None of the activities or performances rendered hereunder by TDHCA shall involve and no portion of the funds received by TDHCA hereunder shall be used in support of any sectarian or religious activity.

**SECTION XI. ORAL AND WRITTEN AGREEMENTS**

All oral or written agreements between the parties hereto relating to the subject matter of this Memorandum that were made prior to the execution of this Memorandum have been reduced to writing and are contained herein.

**APPROVED AND ACCEPTED ON BEHALF OF THE TDHCA AND TDA EFFECTIVE THE 1<sup>ST</sup> DAY OF FEBRUARY 2019.**

**AGREED AND EXECUTED BY:**

\_\_\_\_\_  
Jason Fearneyhough, Deputy Commissioner  
Texas Department of Agriculture

\_\_\_\_\_  
David Cervantes, Acting Director  
Texas Department of Housing and Community Affairs

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**BOARD ACTION REQUEST**  
**BOND FINANCE DIVISION**  
**DECEMBER 6, 2018**

Presentation, discussion, and possible action on Resolution No. 19-011 authorizing publication of Public Notice for Mortgage Credit Certificate Program

**RECOMMENDED ACTION**

Adopt attached Resolution.

**BACKGROUND**

The Texas Department of Housing and Community Affairs (the Department) released its current Mortgage Credit Certificate (MCC) program, Program 90, on October 11, 2018. Program 90 used \$500 million of volume cap allocation, which converted to \$125 million of MCC authority. In accordance with Internal Revenue Service requirements, the Department must reserve 20% of the volume cap allocation (the Targeted Area Reservation) for one year from the date MCCs were first made available under the program for loans made in Targeted Areas. Targeted Areas are census tracts in which 70% or more of the families have incomes that are 80% of the statewide median income or below, or are areas of chronic economic distress. The Department's Targeted Area Reservation is \$100 million of volume cap, or \$25 million of MCC Authority, and expires June 7, 2019 (one year after the wait list for this program began accepting reservations), after which the Targeted Area Reservation is released and can be used for any qualifying MCCs under the program.

As of October 31, 2018, 60% of amounts available for non-Targeted Area loans had been used for MCCs issued through the program or was committed to loans in the pipeline. Based on current origination levels, staff expects that amounts available for non-Targeted Area loans will be fully committed by January 2019. To ensure a continuous flow of available MCC authority, staff is requesting approval to publish the public notice required by the Internal Revenue Service (the Public Notice) for MCC Program 92, expected to be released in March 2019. The Public Notice is required to be published at least 90 days prior to the issuance of the related MCCs.

Staff will return to the Board for authorization to request bond authority from the Texas Bond Review Board, for approval to convert bond authority to MCC authority, and for approval of the related MCC documents before Program 92 is released and MCC issuance can begin. Staff anticipates that Program 92 will use bond authority that has been carried forward for this purpose.

## RESOLUTION NO. 19-011

### RESOLUTION AUTHORIZING PUBLICATION OF PUBLIC NOTICE FOR MORTGAGE CREDIT CERTIFICATE PROGRAM; 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 from time to time (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 and very low income (as defined in the Act) and families of moderate income (as described in the Act and determined by the Governing Board of the Department (the “Governing Board”) from time to time) at prices they can afford; and

WHEREAS, the Act authorizes the Department: (a) to make, acquire and finance, and to enter into advance commitments to make, acquire and finance, mortgage loans and participating interests therein, secured by mortgages on residential housing in the State of Texas (the “State”); (b) to issue its bonds, for the purpose, among others, of obtaining funds to acquire or finance such mortgage loans, 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 single family mortgage loans or participating interests, and to mortgage, pledge or grant security interests in such mortgages or participating interests, 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, the Department proposes to convert a portion of its authority to issue qualified mortgage bonds to mortgage credit certificates (“MCCs”), to be used for the Department’s Mortgage Credit Certificate Program to be designated as Program 92 (“MCC Program 92”); and

WHEREAS, the Governing Board desires to authorize the publication of public notice required under Section 25 of the Internal Revenue Code of 1986, as amended, and Treasury Regulation Section 1.25-3T(j)(4) issued thereunder as to the issuance of MCCs and maintenance of a list of single family mortgage lenders that will participate in MCC Program 92 (the “Public Notice”) and the taking of such actions as may be necessary to carry out the purposes of this Resolution;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BOARD OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS THAT:

#### ARTICLE 1

##### APPROVAL OF DOCUMENTS AND CERTAIN ACTIONS

Section 1.1 Publication of Public Notice. The Department is hereby authorized to publish the Public Notice in the Texas Register and newspapers throughout the State.

Section 1.2 Authorized Representatives. The following persons are each hereby named as authorized representatives of the Department for purposes of executing, attesting, affixing the Department’s seal to, and delivering the documents and instruments and taking the other actions referred to in this Article 1: the Chair or Vice Chair of the Governing 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 Texas Homeownership of the Department, and the Secretary or Assistant Secretary to the Governing Board. Such persons are referred to herein collectively as the “Authorized Representatives.” Any one of the Authorized Representatives is authorized to act individually as set forth in this Resolution.

Section 1.3 Ratifying Other Actions. All other actions taken or to be taken by an Authorized Representative and the Department’s staff in connection with the publication of the Public Notice for MCC Program 92 are hereby ratified and confirmed.

## ARTICLE 2

### GENERAL PROVISIONS

Section 2.1 Notice of Meeting. This Resolution was considered and adopted at a meeting of the Governing Board that was noticed, convened, and conducted in full compliance with the Texas Open Meetings Act, Chapter 551 of the Texas Government Code, and with §2306.032 of the Texas Government Code, regarding meetings of the Governing Board.

Section 2.2 Effective Date. This Resolution shall be in full force and effect from and upon its adoption.

*[Execution Page Follows]*

PASSED AND APPROVED this 6th day of December, 2018.

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Chair, Governing Board

ATTEST:

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Secretary to the Governing Board

(SEAL)



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**BOARD ACTION REQUEST**  
**BOND FINANCE DIVISION**  
**DECEMBER 6, 2018**

Presentation, discussion, and possible action on Inducement Resolution No. 19-012, for Multifamily Housing Revenue Bonds Regarding Authorization for Filing Application for Private Activity Bond Authority on the 2019 Waiting List for Waters at Redbud

**RECOMMENDED ACTION**

**WHEREAS**, a bond pre-application, as further detailed below, was submitted to the Department for consideration of an inducement resolution;

**WHEREAS**, Board approval of the inducement resolution is the first step in the application process for a multifamily bond issuance by the Department; and

**WHEREAS**, approval of the inducement will allow staff to submit an application to the Bond Review Board (BRB) for the issuance of a Certificate of Reservation associated with the Development;

**NOW, therefore, it is hereby**

**RESOLVED**, that based on the foregoing, the Inducement Resolution No. 19-012 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 Waters at Redbud, is hereby approved in the form presented to this meeting.

**BACKGROUND**

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 previously funded developments 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 \$14.5 million in private activity bond volume cap.

**Waters at Redbud (18619)**

This development is located at 1300 N. Redbud Boulevard in McKinney, Collin County, and includes the acquisition/rehabilitation of 150 units serving the general population. This development is currently in the Department's portfolio and was originally financed using 501(c)(3) bonds issued by the Department that have since been redeemed. This transaction is proposed to be Priority 2 with 118 of the units rent and income restricted at 60% of the Area Median Family Income ("AMFI"), 29 of the units will be market rate, with no income or rent restrictions, and the remaining three units will be employee occupied. This existing property is currently encumbered by a State Housing Trust Fund LURA, which runs through December 30, 2024 and requires 85 units be restricted at 50% AMFI, 63 units be restricted at 80% AMFI and two units to be used as community/leasing office space. Given the potential conflict with what the applicant has proposed, staff will work with the applicant to ensure the unit mix proposed at full application (once submitted) complies with the existing restrictions. The Department has not received any public comment relating to this application.

## RESOLUTION NO. 19-012

RESOLUTION DECLARING INTENT TO ISSUE MULTIFAMILY REVENUE BONDS WITH RESPECT TO RESIDENTIAL RENTAL DEVELOPMENT; 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 development (the “Development”) more fully described in Exhibit A attached hereto. The ownership of the Development 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 Development and expect to make additional payments in the future and desire that they be reimbursed for such payments and other costs associated with the Development 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 Development 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 Development 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 Development 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 Development 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 Development 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 Development in an aggregate principal amount not to exceed those amounts, corresponding to the Development, 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 or rehabilitation of its Development and listed on Exhibit A attached hereto (“Costs of the Development”) 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 Development; (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 Development 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 Development, which Development 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 Development. Substantially all of the proceeds of the Bonds shall be used to finance the Development, 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 Development. The Costs of the Development may include any cost of acquiring, constructing, reconstructing, improving, installing and expanding the Development. Without limiting the generality of the foregoing, the Costs of the Development 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 Development, administrative expenses and such other expenses as may be necessary or incident to the acquisition, construction, reconstruction, improvement and expansion of the Development, the placing of the Development 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 Development’s 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 Development 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 Development 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 Development 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 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 Development and Owners. The Board finds that:

- (a) the Development is 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 Development is a public purpose and will provide a public benefit; and
- (e) the Development 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 Development 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 6<sup>th</sup> day of December, 2018.

[SEAL]

By: \_\_\_\_\_  
Chair, Governing Board

ATTEST:

\_\_\_\_\_  
Secretary to the Governing Board

*Signature Page to Inducement Resolution*

December 6, 2018 Inducement Resolution – Waters at Redbud

#5816980.4

**EXHIBIT “A”**

Description of the Owner and the Development

Project Name	Owner	Principals	Amount Not to Exceed
Waters at Redbud	Waters at Redbud, L.P., a Texas limited partnership	General Partner: AHF-Waters at Redbud, LLC, a Texas limited liability company  Limited Partner: R4 Capital LLC, a Texas limited liability company	\$14,500,000
Costs: Acquisition/rehabilitation of a 150-unit affordable, multifamily housing development to be known as Waters at Redbud, to be located at 1300 N. Redbud Boulevard, McKinney, Collin County, Texas 75069.			

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**BOARD ACTION REQUEST**

**BOND FINANCE DIVISION**

**DECEMBER 6, 2018**

Presentation, discussion, and possible action on Inducement Resolution No. 19-013 for Multifamily Housing Revenue Bonds Regarding Authorization for Filing an Application for Private Activity Bond Authority for McMullen Square Apartments

**RECOMMENDED ACTION**

**WHEREAS**, the Board previously adopted the bond inducement resolution for McMullen Square Apartments at the meeting of January 18, 2018, and an updated resolution at the meeting of October 11, 2018;

**WHEREAS**, the prior Board action on October 11, 2018, modified the maximum bond amount from \$6,300,000 to \$10,100,000;

**WHEREAS**, the applicant now seeks to modify the borrower entity name as reflected in the Exhibit A to the bond resolution; and

**WHEREAS**, modification of the borrower entity name is necessary so that it is consistent with the 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, the Inducement Resolution No. 19-013 to proceed with the application submission to the BRB for possible receipt of State Volume Cap issuance authority from the 2019 Private Activity Bond Program for the McMullen Square Apartments, is hereby approved in the form presented to this meeting.

**BACKGROUND**

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 previously funded developments through the Department. 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 \$10.1 million in private activity bond volume cap.

**McMullen Square Apartments (18603)**

This development is located at 537 N. General McMullen Drive in San Antonio, Bexar County, and includes the acquisition/rehabilitation of 100 units serving the general population. The property was previously awarded an allocation of 9% Housing Tax Credits in 2001. This transaction is proposed to be Priority 3 with 56 of the units rent and income restricted at 60% of the Area Median Family Income (“AMFI”) and 44 units of the units rent and income restricted at 50% AMFI. The Department has not received any letters of support or opposition for this development.

## RESOLUTION NO. 19-013

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 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 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 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 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") approved Resolution No. 18-013 on January 18, 2018 (the "Original Resolution") declaring its intent to issue its multifamily revenue bonds for the purpose of providing funds to the Owners to finance the Developments described on the exhibit to the Original Resolution on the terms and conditions set forth therein, and the Board has determined to amend the Original Resolution only with respect to the Owners and Developments described on Exhibit A attached hereto in order to amend the not to exceed principal amount for the respective Developments listed on Exhibit A hereto; 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 of the

Original Resolution 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 of the Original Resolution 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. The Original Resolution and this Resolution constitute 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 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 6<sup>th</sup> day of December, 2018.

[SEAL]

By: \_\_\_\_\_  
Chair, Governing Board

ATTEST:

\_\_\_\_\_  
Secretary to the Governing Board

*Signature Page to Inducement Resolution*

**EXHIBIT “A”**

Description of the Owner and the Development

Project Name	Owner	Principals	Amount Not to Exceed
McMullen Square Apartments	TCD MCM, LP, a Texas limited partnership	General Partner: TCD McMullen GP, LLC, a Texas limited liability company	\$10,100,000.00
Costs: Acquisition/rehabilitation of a 100-unit affordable, multifamily housing development known as McMullen Square Apartments, located at 537 N. General McMullen Drive, San Antonio, Texas 78228.			

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**BOARD ACTION REQUEST**  
**BOND FINANCE DIVISION**  
**DECEMBER 6, 2018**

Presentation, discussion, and possible action on Resolution No. 19-014 authorizing the execution of an Escrow Agreement relating to the Multifamily Housing Mortgage Revenue Bonds for Ironwood Crossing Series 2002A

**RECOMMENDED ACTION**

**WHEREAS**, the Department issued Series 2002A Tax-Exempt Bonds in the aggregate principal amount of \$15,000,000 and Series 2002B Taxable Bonds in the aggregate principal amount of \$1,970,000 to the Ironwood Crossing development in Fort Worth to construct 280 units of affordable multifamily rental housing;

**WHEREAS**, the Borrower is requesting the Department's approval to enter into an Escrow Agreement among the Department as Bond Issuer, the Owner, and Wells Fargo Bank, N.A. as Escrow Agent;

**WHEREAS**, the Escrow Agreement would provide for the defeasance, payment and discharge of all the outstanding Series 2002A Tax-Exempt Bonds;

**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 redemption on October 1, 2027; and

**WHEREAS**, the outstanding Series 2002B Taxable Bonds will be redeemed on the defeasance date and are therefore not part of the Escrow Agreement.

**NOW, therefore, it is hereby**

**RESOLVED**, that Resolution No. 19-014 relating to the Escrow Agreement for Ironwood Crossing 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 Ironwood Crossing were originally issued through the Department in November 2002. The Series 2002A tax-exempt bond amount was \$15,000,000 and the Series 2002B taxable amount was \$1,970,000. The original financing structure included privately placed bonds with Charter Municipal Mortgage Acceptance Company, and as such were unrated with no credit enhancement.

The Board previously approved modifications to some aspects of the financing structure associated with the original bond covenants in June 2014. These modifications were memorialized in the form of a Supplemental Trust Indenture and included lower interest rates on both the tax-exempt and taxable bonds, along with modified maturities and amortizations. These modifications helped alleviate the need to fund operating deficits and reduce the default risk to Freddie Mac as the lender.

As part of the current proposal, the borrower has requested the Department enter into an Escrow Agreement that would provide for the tax-exempt bonds to be defeased in accordance with the terms of the Trust Indenture, dated November 2002 and Supplemental Trust Indenture dated July 2014. The taxable bonds will be redeemed on the defeasance date and are not part of the Escrow Agreement. The tax-exempt bonds would be defeased until the first call date of October 1, 2027, and funds will be deposited to pay the required debt service on the defeased bonds. The proceeds to fund the escrow will come from the sale of the property (the ownership transfer is still under review by the Department), which is contemplated to occur on December 10, 2018.



## RESOLUTION NO. 19-014

### RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF AN ESCROW AGREEMENT IN CONNECTION WITH MULTIFAMILY HOUSING MORTGAGE REVENUE BONDS (IRONWOOD CROSSING) SERIES 2002A; 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 (Ironwood Crossing) Series 2002A in the original principal amount of \$15,000,000 (the “Tax-Exempt Bonds”) and its Taxable Multifamily Housing Mortgage Revenue Bonds (Ironwood Crossing) Series 2002B in the original principal amount of \$1,970,000 (the “Taxable Bonds” and together with the Tax-Exempt Bonds, the “Bonds”) pursuant to the terms and provisions of that certain Trust Indenture dated as of November 1, 2002, as supplemented by a Supplemental Trust Indenture and Modification Agreement dated as of July 1, 2014 (collectively, the “Indenture”), between the Department and Wells Fargo Bank, National Association, successor trustee to Wells Fargo Bank Texas, N.A., as trustee (the “Trustee”); and

WHEREAS, the proceeds of the Bonds were loaned to Ironwood Ranch Townhomes Limited Partnership, a limited partnership organized and existing under the laws of the State of Ohio (the “Borrower”) for the purpose of financing a portion of the costs of a multifamily housing development known as Ironwood Crossing, pursuant to that certain Loan Agreement dated as of November 1, 2002 (the “Loan Agreement”) among the Department, the Borrower and the Trustee; 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 Tax-Exempt Bonds, redemption and payment of the Taxable Bonds and discharge of the Indenture; and

WHEREAS, to effectuate the defeasance of the Tax-Exempt Bonds, the Department has determined to enter into an Escrow Agreement (the “Escrow Agreement”) among the Department, the Borrower and Wells Fargo Bank, National Association, as escrow agent (the “Escrow Agent”); and

WHEREAS, pursuant to the Escrow Agreement, the Borrower will deposit in trust with the Escrow Agent funds sufficient, together with purchase of certain government securities as described in a Verification Report to be provided by Causey Demgen & Moore P.C, to provide for the payment of the

principal, redemption price, if any, and interest due or to become due on the Tax-Exempt Bonds at the times and in the manner specified in the Indenture; and

WHEREAS, the Borrower has requested to redeem and pay in full the Taxable Bonds on the same day the Tax-Exempt Bonds are defeased, which date may not be an Interest Payment Date, as such term is defined in the Indenture; and

WHEREAS, the owner of 100% of the outstanding Taxable Bonds has provided to the Trustee a letter waiving any requirement that the Taxable Bonds be redeemed on an Interest Payment Date, as such term is defined 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 Consent to Redemption of Taxable Bonds. The Department consents to the redemption and payment in full of the Taxable Bonds on the same day the Tax-Exempt Bonds are defeased.

Section 1.3 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 1.4 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 1.5 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 1.6 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 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.

Section 1.7 Ratifying Other Actions. That all other actions taken by the Executive Director or Acting 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.

*[The remainder of this page left intentionally blank.]*

PASSED AND APPROVED this 6th day of December, 2018.

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Chair, Governing Board

ATTEST:

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Secretary to the Governing Board

(SEAL)

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**ESCROW AGREEMENT**

**Dated as of December 10, 2018**

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**Among**

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS,  
as Issuer,**

**IRONWOOD RANCH TOWNHOMES LIMITED PARTNERSHIP,  
as Borrower,**

**and**

**WELLS FARGO BANK, N.A.,  
as Escrow Agent**

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**Providing for the Defeasance, Payment, and Discharge of Certain  
Outstanding Multifamily Housing Revenue Bonds**

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## ESCROW AGREEMENT

This **ESCROW AGREEMENT** dated as of December 10, 2018 (the “*Agreement*”), among the **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**, a public and official agency of the State of Texas (the “*Issuer*”), **IRONWOOD RANCH TOWNHOMES LIMITED PARTNERSHIP**, an Ohio limited partnership (the “*Borrower*”), and **WELLS FARGO BANK, N.A.**, a national banking association organized and existing under the laws of the United States of America, having a corporate trust office located in Minneapolis, Minnesota (the “*Escrow Agent*”).

### RECITALS

1. The Borrower is providing for the defeasance, payment, and discharge of all of the Issuer’s outstanding Multifamily Housing Mortgage Revenue Bonds (Ironwood Crossing) Series 2002A (the “*Defeased Bonds*”).

2. The Defeased Bonds will mature (or will be subject to redemption prior to maturity) and will have interest payable as shown on **Schedule 1** hereto.

3. The Borrower is providing for (a) the defeasance and payment of the Defeased Bonds in accordance with the requirements of the hereinafter defined Indenture, through the deposit in trust with the Escrow Agent of \$[\_\_\_\_\_] provided by the Borrower, and (b) the purchase of the hereinafter defined Escrowed Securities as herein provided.

4. The Escrow Agent is, by this Agreement, appointed by the hereinafter defined Trustee and is acting as master escrow agent for the Defeased Bonds under this Agreement.

**NOW, THEREFORE**, in consideration of the foregoing and of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

#### *1. Definitions.*

Capitalized terms used in this Agreement and not otherwise defined have the meanings set forth in the Indenture. The following words and terms used in this Agreement shall have the following meanings:

“*Agreement*” means this Escrow Agreement, and any amendments hereto.

“*Bond Counsel*” means Gilmore & Bell, P.C., or other firm of attorneys nationally recognized on the subject of municipal bonds and acceptable to the Issuer, the Borrower and the Escrow Agent.

“*Bond Payment Date*” means any date on which any principal of, redemption premium, or interest on any of the Defeased Bonds is due and payable as shown on **Schedule 1** attached hereto, including the Redemption Date.

“*Borrower*” means Ironwood Ranch Townhomes Limited Partnership, an Ohio limited partnership, and its successors and assigns.

**“Defeased Bonds”** means the outstanding Multifamily Housing Mortgage Revenue Bonds (Ironwood Crossing) Series 2002A of the Issuer, all of which are being defeased, paid and discharged pursuant to this Agreement.

**“Escrow Agent”** means Wells Fargo Bank, N.A., and its successor or successors at the time acting as the Escrow Agent under this Agreement.

**“Escrow Fund”** means the fund by that name established pursuant to **Section 3** of this Agreement.

**“Escrowed Securities”** means the direct non-callable obligations of the United States of America listed on **Schedule 2** attached hereto, and any Substitute Escrowed Securities.

**“Indenture”** means the Trust Indenture, dated as of November 1, 2002, between the Issuer and the Trustee, as supplemented by the Supplemental Trust Indenture and Modification Agreement, dated as of July 1, 2014, among the Issuer, the Borrower, and the Trustee, under which the Defeased Bonds were issued, and any amendments or supplements thereto.

**“Issuer”** means the Texas Department of Housing and Community Affairs, the issuer of the Defeased Bonds, and its successors and assigns.

**“Redemption Date”** means October 1, 2027.

**“Substitute Escrowed Securities”** means any direct non-callable obligations of the United States of America which have been acquired by the Escrow Agent and substituted for Escrowed Securities in accordance with **Section 8** of this Agreement.

**“Trustee”** means Wells Fargo Bank, N.A. (as successor in interest to Wells Fargo Bank Texas, N.A.), as trustee for the Defeased Bonds pursuant to the Indenture.

**“Verification Report”** means the verification report of Causey Demgen & Moore P.C., certified public accountants, addressed to the Issuer, the Borrower, the Trustee, and the Escrow Agent, referred to in **Section 5** of this Agreement, a copy of which is attached hereto as **Exhibit A**.

## **2. Representations of the Escrow Agent.**

(a) The Escrow Agent acknowledges receipt, concurrently with the execution and delivery of this Agreement, of copies of the Indenture and the Verification Report, and reference herein to or citation herein of any provisions of said documents shall be deemed to incorporate the same as a part hereof in the same manner and with the same effect as if they were fully set forth herein.

(b) The Escrow Agent is duly authorized and empowered under the laws of the State of Texas to accept and execute agreements of the character herein set forth, and has the requisite power and authority to perform the duties of the Escrow Agent set forth in this Agreement.

## **3. Establishment of Escrow Fund.**

The Escrow Agent shall establish a special and irrevocable separate trust fund to be held in the custody of the Escrow Agent and designated as the **“Escrow Fund for Defeased Bonds – Ironwood**

**Ranch Townhomes Limited Partnership**” (the “*Escrow Fund*”). Except as otherwise provided herein, moneys in the Escrow Fund shall be held in trust by the Escrow Agent and shall be applied solely for the purpose of purchasing Escrowed Securities and to provide funds to the Trustee in accordance with this Agreement at the times and in the amounts required to pay debt service on the Defeased Bonds.

**4. *Deposits to the Escrow Fund.***

Concurrently with the execution and delivery of this Agreement, the Borrower has deposited or caused to be deposited with the Escrow Agent, and the Escrow Agent acknowledges receipt and deposit into the Escrow Fund of the following moneys:

- (a) moneys provided by the Borrower in the amount of \$[\_\_\_\_\_]; and
- (b) moneys transferred from funds held under the Indenture in the amount of \$[\_\_\_\_\_].

The Escrow Agent shall apply such amounts deposited in the Escrow Fund to purchase the Escrowed Securities at a purchase price of \$[\_\_\_\_\_] which shall be delivered to and deposited in the Escrow Fund, leaving an initial cash balance of \$[\_\_\_\_\_] in the Escrow Fund.

**5. *Verification Report.***

Causey Demgen & Moore P.C., certified public accountants, in the Verification Report have verified the mathematical accuracy of the computations relating to (i) the adequacy of cash plus government securities to be held in escrow to pay the debt service requirements of the outstanding principal of the Defeased Bonds and (ii) the yield on the Escrowed Securities, which demonstrate that:

- (a) the cash held in the Escrow Fund, together with the maturing principal of the Escrowed Securities held therein and interest to accrue thereon, without consideration of any reinvestment thereof, will be sufficient to pay all principal of, redemption premium, and interest on the Defeased Bonds on the respective Bond Payment Dates; and
- (b) the yield on the Escrowed Securities allocated to proceeds of the Defeased Bonds does not exceed the yield on the Defeased Bonds.

**6. *Creation of Lien.***

The escrow created hereby shall be irrevocable. The holders of the Defeased Bonds are hereby given an express lien on and security interest in the cash and securities in the Escrow Fund and all earnings thereon until used and applied in accordance with this Agreement. Such lien and security interest for the Defeased Bonds shall be in accordance with the debt service requirements of the Defeased Bonds as shown on **Schedule 1** hereto. The matured principal of and earnings on the cash and securities in the Escrow Fund are hereby pledged and assigned and shall be applied solely for the payment of the principal of, redemption premium, if any, and interest on the Defeased Bonds.

**7. *Application of Cash and Escrowed Securities in the Escrow Fund.***

(a) Except as otherwise expressly provided in this Section or in **Section 8** hereof, the Escrow Agent shall have no power or duty to invest any money held hereunder or to sell, transfer or otherwise dispose of any Escrowed Securities.



(b) The Escrow Agent is directed to purchase, using cash in the Escrow Fund, the Escrowed Securities described in **Schedule 2** hereof.

(c) On or prior to each Bond Payment Date, the Escrow Agent shall withdraw from the Escrow Fund an amount equal to the principal of, redemption premium, if any, and interest on the Defeased Bonds becoming due and payable on such Bond Payment Date, as set forth in **Schedule 1** hereto, and shall transfer such amount to the office of the Trustee, so that immediately available funds in the required amounts will reach such office on or before **12:00** noon, central time, on such Bond Payment Date. In order to make the payments required by this subsection, the Escrow Agent is hereby authorized to present or redeem the Escrowed Securities in accordance with the maturity schedule in the Verification Report. The liability of the Escrow Agent to make the payments required by this subsection with respect to the Defeased Bonds shall be limited to the money and Escrowed Securities in the Escrow Fund.

(d) Cash held from time to time in the Escrow Fund shall be (1) held uninvested, or (2) at the written direction of the Borrower, invested in direct non-callable obligations of the United States of America maturing on or before the Bond Payment Date on which such cash will be needed, as specified in the Verification Report; provided that the Escrow Agent shall receive an opinion of Bond Counsel to the effect that such investment will not cause the interest on the Defeased Bonds to become included in gross income for purposes of federal income taxation.

(e) Upon the payment in full of the principal of, redemption premium, if any, and interest on the last of the Defeased Bonds, all remaining money and securities in the Escrow Fund, together with any interest thereon, shall be transferred to the Borrower.

(f) Notwithstanding any other provisions of this Agreement, the Borrower hereby covenants that no part of the moneys or funds in the Escrow Fund shall be used or directed to be used by the Escrow Agent, at any time, directly or indirectly, in a manner that would cause any of the Defeased Bonds to be an “arbitrage bond” under Section 148 of the Internal Revenue Code.

#### **8. *Substitute Escrowed Securities.***

(a) If any of the Escrowed Securities are not available for delivery on the date of this Agreement, the Escrow Agent is directed to accept substitute securities in lieu thereof provided: (1) the substitute securities are non-callable, direct obligations of the United States of America; (2) the maturing principal of and interest on the substitute securities is equal to or greater than the principal and interest payable on the unavailable Escrowed Securities, and is payable no later than, and in amounts no less than, the payments on the unavailable Escrowed Securities; (3) the Escrow Agent, the Trustee, and the Borrower receive from a nationally recognized independent certified public accountant or accounting firm a certification, to the effect that after such substitution, the principal of and interest payable on the Escrowed Securities to be held in the Escrow Fund after giving affect to the substitution, together with any other money to be held in the Escrow Fund after such transaction, will be sufficient to pay all remaining principal of, redemption premium, if any, and interest on the Defeased Bonds pursuant to **Schedule 1** hereto; and (4) the Escrow Agent, the Trustee, and the Borrower receive an opinion of Bond Counsel to the effect that the substitution will not cause the interest on the Defeased Bonds to become included in gross income for purposes of federal income taxation. If the original Escrowed Securities become available and are tendered to the Escrow Agent, the Escrow Agent shall accept such Escrowed Securities, shall return the substitute securities as directed by such original purchaser and shall notify Bond Counsel and the Borrower of the transaction.

(b) At the written request of the Borrower, and upon compliance with the conditions hereinafter stated, the Escrow Agent from time to time may sell, transfer, request the redemption of, or otherwise dispose of any of the Escrowed Securities and substitute for the Escrowed Securities so redeemed or otherwise disposed of solely cash or Substitute Escrowed Securities. The Escrow Agent shall purchase such Substitute Escrowed Securities with the proceeds derived from any such sale, transfer, disposition, or redemption of the Escrowed Securities together with any other funds available for such purpose. The substitution may be effected only if: (1) the substitution of the Substitute Escrowed Securities for the original Escrowed Securities occurs simultaneously; (2) the Escrow Agent, the Trustee, and the Borrower receive a certification to the effect that after such substitution, (A) the principal of and interest payable on the Escrowed Securities to be held in the Escrow Fund after giving effect to the substitution (including Substitute Escrowed Securities to be acquired), together with any other money to be held in the Escrow Fund after such transaction, will be sufficient to pay all remaining principal of, redemption premium, if any, and interest on the Defeased Bonds pursuant to **Schedule 1** hereto, and (B) the amounts and dates of the anticipated transfers from the Escrow Fund to the Trustee will not be diminished or postponed thereby; and (3) the Escrow Agent, the Trustee, and the Borrower shall receive an opinion of Bond Counsel to the effect that such substitution would not cause the interest on the Defeased Bonds to become included in gross income for purposes of federal income taxation under then existing law. In the event that any such substitution results in cash held in the Escrow Fund in excess of the cash required for the certification of an independent certified public accountant referred to in this subsection (as evidenced by such certification), the Escrow Agent shall, at the request of the Borrower, withdraw such excess from the Escrow Fund and pay such excess to the Borrower; provided that, in the opinion of Bond Counsel delivered to the Escrow Agent, such withdrawal and application will not cause the interest on the Defeased Bonds to become included in gross income for purposes of federal income taxation.

#### **9. *Redemption of Defeased Bonds.***

(a) The Borrower has provided for the defeasance, discharge and payment of the Defeased Bonds by deposit with the Escrow Agent, concurrently with the delivery of this Agreement and as provided in this Agreement, of moneys and government securities in such amounts and with such maturities that will, together with income or increment to accrue thereon, without consideration of any reinvestment thereof, be fully sufficient to pay, redeem and discharge the Defeased Bonds on the Redemption Date. The Borrower requests and directs the Trustee to (1) call all of the Defeased Bonds for redemption and payment on the Redemption Date at a redemption price equal to 100% of the outstanding principal amount thereof with respect to the Defeased Bonds, plus accrued interest thereon to the Redemption Date, (2) unless waived by the owners of the Defeased Bonds, give notice of such redemption to the owners of the Defeased Bonds no later than ten (10) Business Days (as such term is defined in the Indenture) prior to the Redemption Date, and otherwise in accordance with the requirements of the Indenture, and (3) take or cause to be taken all further action necessary to call and redeem the Defeased Bonds on the Redemption Date as provided herein.

(b) The Borrower directs the Escrow Agent and the Escrow Agent agrees, to the extent within its power, on behalf of the Trustee, to take or cause to be taken such further action as may be necessary under the Indenture to cause the redemption of said Defeased Bonds on the Redemption Date.

**10. Reports of the Escrow Agent.**

As long as any of the Defeased Bonds, together with the interest thereon, have not been paid in full, the Escrow Agent, at least fifteen (15) days prior to each Bond Payment Date, shall determine the amount of money which will be available in the Escrow Fund to pay the principal of, redemption premium, if any, and interest on the Defeased Bonds on the next Bond Payment Date. If the Escrow Agent determines that sufficient funds will not be available on such Bond Payment Date to make the payment to be made on such Bond Payment Date pursuant to **Section 7**, then the Escrow Agent shall certify in writing to the Borrower and the Trustee the amount so determined, and provide a list of the money and Escrowed Securities held by it in the Escrow Fund on the date of such certification, including all money held by it which was received as interest or profit from Escrowed Securities.

**11. Liability of Escrow Agent.**

(a) The Escrow Agent shall not be liable for any loss resulting from any investment, sale, transfer, or other disposition made pursuant to this Agreement in compliance with the provisions hereof, other than as a result of the Escrow Agent's negligence or willful misconduct. The Escrow Agent shall have no lien whatsoever on any of the money or Escrowed Securities on deposit in the Escrow Fund for the payment of fees and expenses for services rendered by the Escrow Agent under this Agreement or otherwise.

(b) The Escrow Agent shall not be liable for the accuracy of the calculations as to the sufficiency of the Escrowed Securities and money to pay the Defeased Bonds. So long as the Escrow Agent applies the Escrowed Securities and money as provided herein, the Escrow Agent shall not be liable for any deficiencies in the amounts necessary to pay the Defeased Bonds caused by such calculations. Notwithstanding the foregoing, the Escrow Agent shall not be relieved of liability arising from and proximate to its failure to comply fully with the terms of this Agreement.

(c) If the Escrow Agent fails to account for any of the Escrowed Securities or money received by it, said Escrowed Securities or money shall be and remain the property of the Borrower in trust for the holders of the Defeased Bonds, and, if for any reason such Escrowed Securities or money are not applied as herein provided, the assets of the Escrow Agent shall be impressed with a trust for the amount thereof until the required application shall be made.

(d) All covenants, stipulations, promises, agreements and obligations of the Escrow Agent contained in this Agreement shall be deemed to be the respective limited covenants, stipulations, promises, agreements, and obligations of the Escrow Agent, and not of any officer, employee, or agent of the Escrow Agent, nor of any incorporator, employee, or agent of any successor corporation to the Escrow Agent, in its individual capacity. No recourse shall be had against any such individual, either directly or otherwise under or upon any obligation, covenant, stipulation, promise, or agreement contained herein or in any other documents executed in connection therewith.

(e) The Escrow Agent may rely and shall be protected in acting upon or refraining from acting upon in good faith any resolution, certification, statement, instrument, opinion, report, notice, request, direction, consent, verification, order, bond, debenture, or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties.

(f) The Escrow Agent undertakes to perform such duties and only such duties as are specifically set forth in this Agreement.

(g) No provision of this Agreement shall be construed to relieve the Escrow Agent from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that the Escrow Agent shall not be liable for any error of judgment made in good faith by an authorized officer or employee of the Escrow Agent, unless it is proven that the Escrow Agent was negligent in ascertaining the pertinent facts, or for the misconduct or negligence of any agent appointed with due care.

(h) Whether or not therein expressly so provided, every provision of this Agreement relating to the conduct or affecting the liability of or affording protection to the Escrow Agent shall be subject to the provisions of this Section.

**12. Fees and Costs of the Escrow Agent.**

The aggregate amount of the costs, fees, and expenses of the Escrow Agent in connection with the creation of the escrow described in and created by this Agreement and in carrying out any of the duties, terms, or provisions of this Agreement is a one-time fee in the amount of \$[\_\_\_\_\_], which amount shall be paid by the Borrower concurrently with the execution and delivery of this Agreement.

Notwithstanding the preceding paragraph, the Escrow Agent shall be entitled to reimbursement from the Borrower of reasonable out-of-pocket, legal or extraordinary expenses incurred in carrying out the duties, terms, or provisions of this Agreement. Claims for such reimbursement may be made to the Borrower and in no event shall such reimbursement be made from funds held by the Escrow Agent pursuant to this Agreement. The Escrow Agent agrees that it will not assert any lien whatsoever on any of the money or securities on deposit in the Escrow Fund for the payment of fees and expenses for services rendered by the Escrow Agent under the Agreement or otherwise.

If the Escrow Agent resigns or is removed prior to the expiration of this Agreement, the Escrow Agent shall rebate to the Borrower a ratable portion of any fee theretofore paid to the Escrow Agent for its services under this Agreement.

**13. Resignation or Removal of Trustee, Successor Escrow Agent; Removal of Escrow Agent.**

(a) In the event of any resignation or removal of the Escrow Agent as trustee under the Indenture and any appointment of a successor trustee thereunder, such successor trustee, without any further act, deed, or conveyance, shall become the successor Escrow Agent fully vested with all the rights, immunities, powers, trusts, duties, and obligations of its predecessor hereunder, but such predecessor shall, nevertheless, on the written request of such successor Escrow Agent or the Borrower, execute and deliver an instrument transferring to such successor Escrow Agent all the estates, properties, rights, powers, and trusts of such predecessor hereunder, and every predecessor Escrow Agent shall transfer and deliver all Escrowed Securities and moneys held by it to its successor and shall execute any transfer, assignment, or instrument in writing necessary to so transfer said Escrowed Securities and moneys and to make the principal of and interest on said Escrow Securities payable to such successor Escrow Agent. Should any other transfer, assignment, or instrument in writing from the Borrower be required by any successor Escrow Agent for more fully and certainly vesting in such successor Escrow Agent the estates, rights, powers, and duties hereby vested or intended to be vested in the predecessor Escrow Agent hereunder, any such transfer, assignment, and instruments in writing shall, on request, be executed, acknowledged, and delivered by the Borrower, as the case may be. In the event of resignation of the Escrow Agent, a pro rata portion of the amount paid to the Escrow Agent pursuant to **Section 12** hereof shall be returned to the

Borrower. In the event of any resignation or removal of the Escrow Agent as trustee under the Indenture, such resignation or removal shall not become effective until a successor trustee shall be in place and the cash and Escrowed Securities held in the Escrow Fund have been transferred to the successor trustee.

(b) The Escrow Agent may resign or be removed, at any time, for any reason, by written notice of its resignation or removal to the proper parties at their respective addresses as set forth herein, at least thirty (30) days before the date specified for such resignation or removal to take effect.

**14. *Continuing Duties of Trustee.***

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 agrees to be bound by and to comply with those provisions of the Indenture. The Escrow Agent has been appointed under this Agreement by the Borrower, and the Borrower agrees that by such appointment the immunities, protections, rights, and indemnification provided to the Trustee under the Indenture and related documents, including but not limited to any loan agreements and guaranties, shall not cease, diminish or be modified in any way.

**15. *Appointment of Escrow Agent and Acceptance of Terms.***

The Trustee, by execution of this Agreement in its capacity as Trustee, hereby agrees to and accepts the terms and provisions of this Agreement, and agrees to act as Escrow Agent under this Agreement and in accordance with the Indenture, to act in all capacities appropriate and necessary for the defeasance of the Defeased Bonds. In its capacity as the Escrow Agent, the Trustee shall be entitled to all of the rights, protections, immunities, and indemnities created in favor of the Trustee by the Indenture.

**16. *Amendments.***

This Agreement may not be repealed, revoked, altered, or amended without the written consent of the Issuer, the Escrow Agent, the Borrower, and the owners of the Defeased Bonds; provided, however, that the Issuer, the Borrower, and the Escrow Agent may, without the consent of, or notice to, such owners, enter into such agreements supplemental to this Agreement as shall not adversely affect the rights of such owners 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 Escrow Agent for the benefit of the holders of the Defeased Bonds, any additional rights, remedies, powers, or authority that may lawfully be granted to, or conferred upon, such holders or the Escrow Agent; and
- (c) to subject to this Agreement additional funds, securities or properties.

The Escrow Agent shall be entitled to rely exclusively upon an opinion of Bond Counsel with respect to compliance with this Section, including the extent, if any, to which any change, modification,

addition, or elimination affects the rights of the holders of the Defeased Bonds, or that any instrument executed hereunder complies with the conditions and provisions of this Section.

**17. Termination.**

This Agreement shall terminate when all transfers required to be made by the Escrow Agent under the provisions hereof shall have been made.

**18. Notices.**

Except as otherwise provided herein, it shall be sufficient service of any notice, request, complaint, demand, or other paper required by this Agreement to be given to or filed with any of the following if the same shall be duly mailed by first class, certified or registered mail addressed (provided, however, that notice to the Escrow Agent will be effective only upon receipt):

(a) To the Issuer:

Texas Department of Housing and Community Affairs  
Attention: [Raquel Morales]  
221 E. 11<sup>th</sup> Street  
Austin, Texas 78701

(b) To the Borrower:

Ironwood Ranch Townhomes Limited Partnership  
c/o Alden Torch Financial LLC  
1225 17<sup>th</sup> Street, Suite 1400  
Denver, Colorado 80202  
Attention: Legal Department

(c) To the Escrow Agent:

Wells Fargo Bank, N.A.  
MAC: N9300-060  
600 South 4<sup>th</sup> Street, 6<sup>th</sup> Floor  
Minneapolis, Minnesota 55415  
Attention: Angela Weidell-LaBathe

(d) To the Trustee and the owners of the Defeased Bonds at their respective addresses and by the method set forth in the Indenture.

**19. Benefit of Escrow Agreement.**

This Agreement shall inure to the benefit of and shall be binding upon the parties hereto, and their respective successors and assigns. Nothing in this Agreement, express or implied, shall give to any person, other than the parties hereto and their successors and assigns, the Trustee, and the owners of the Defeased Bonds, any benefit or any legal or equitable right, remedy, or claim under this Agreement.

**20. *Limitation on Issuer Liability.***

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 Escrow Fund to pay the principal, premium, if any, and interest on the Defeased Bonds; or
- (c) any action or inaction of the Escrow Agent or the Borrower in connection therewith.

**21. *Severability.***

If any provision in this Agreement shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

**22. *Counterparts.***

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

**23. *Governing Law.***

This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

**24. *Electronic Transactions.***

This Agreement and the transactions related hereto and described herein may be conducted and related documents may be sent, received and stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts to such original documents for all purposes, including the filing of any claim, action, or suit in the appropriate court of law.

**IN WITNESS WHEREOF**, the parties hereto have each caused this Agreement to be executed by their duly authorized officers as of the date first above written.

**ISSUER:**

**TEXAS DEPARTMENT OF HOUSING AND  
COMMUNITY AFFAIRS**

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

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

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



**BORROWER:**

**IRONWOOD RANCH TOWNHOMES LIMITED PARTNERSHIP**, an Ohio limited partnership

By: Alden GP-Ironwood Crossing, LLC, its General Manager

By: Alden Affordable Holdings, LLC, its Manager

By: \_\_\_\_\_  
Name: Jill Brooks-Garnett  
Title: Chief Operating Officer

**ESCROW AGENT:**

**WELLS FARGO BANK, N.A.,** as Escrow Agent

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

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

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

The undersigned, as trustee with respect to the Defeased Bonds, hereby acknowledges receipt of the directions of the Borrower with respect to the defeasance and redemption of the Defeased Bonds set forth in **Section 9** of the foregoing Agreement and hereby agrees to comply with such directions in accordance with the provisions thereof.

**WELLS FARGO BANK, N.A.**, as Trustee

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

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

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

**SCHEDULE 1  
TO ESCROW AGREEMENT**

**DEBT SERVICE SCHEDULE TO CALL FOR DEFEASED BONDS**

**\$15,000,000**

**Texas Department of Housing and Community Affairs  
Multifamily Housing Mortgage Revenue Bonds  
(Ironwood Crossing) Series 2002A**

[TO BE COMPLETED BASED ON VERIFICATION REPORT]

<u>Bond Payment Date</u>	<u>Principal</u>	<u>Interest</u>	<u>Total Payment</u>
12/1/2018			
1/1/2019			
2/1/2019			
3/1/2019			
4/1/2019			
5/1/2019			
6/1/2019			
7/1/2019			
8/1/2019			
9/1/2019			
10/1/2019			
11/1/2019			
12/1/2019			
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<sup>(1)</sup> All of the Defeased Bonds will be redeemed and paid prior to maturity on October 1, 2027, at a redemption price of 100% of the principal amount thereof (\$[\_\_\_\_\_]), plus accrued interest.

**SCHEDULE 2  
TO ESCROW AGREEMENT**

**SCHEDULE OF ESCROWED SECURITIES**

<b>Type</b>	<b>Settlement Date</b>	<b>Maturity Date</b>	<b>Par Amount</b>	<b>Coupon Rate</b>	<b>Price</b>	<b>Cost</b>	<b>Accrued Interest</b>	<b>Total Cost</b>
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**EXHIBIT A**  
**VERIFICATION REPORT**



1i

**BOARD ACTION REQUEST**  
**BOND FINANCE DIVISION**  
**DECEMBER 6, 2018**

Presentation, discussion, and possible action on Resolution No. 19-015 authorizing the execution of an Escrow Agreement relating to the Multifamily Housing Mortgage Revenue Bonds for Parkview Townhomes Series 2003A

**RECOMMENDED ACTION**

**WHEREAS**, the Department issued Series 2003A Tax-Exempt Bonds in the aggregate principal amount of \$15,000,000 and Series 2003B Taxable Bonds in the aggregate principal amount of \$1,600,000 to the Parkview Townhomes (fka Providence at Rush Creek) development in Arlington to construct 248 units of affordable multifamily rental housing;

**WHEREAS**, the Borrower is requesting the Department's approval to enter into an Escrow Agreement among the Department as Bond Issuer, the Owner, and Wells Fargo Bank, N.A. as Escrow Agent;

**WHEREAS**, the Escrow Agreement would provide for the defeasance, payment and discharge of all the outstanding Series 2003A Tax-Exempt Bonds;

**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 redemption on December 1, 2020; and

**WHEREAS**, the outstanding Series 2002B Taxable Bonds were previously redeemed and are no longer outstanding.

**NOW, therefore, it is hereby**

**RESOLVED**, that Resolution No. 19-015 relating to the Escrow Agreement for Parkview Townhomes (fka Providence at Rush Creek) 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 Parkview Townhomes were originally issued through the Department in December 2003. The Series 2003A tax-exempt bond amount was \$15,000,000 and the Series 2003B taxable amount was \$1,600,000. The original financing structure included privately placed bonds with Charter Municipal Mortgage Acceptance Company and as such were unrated with no credit enhancement.

The Board previously approved modifications to some aspects of the financing structure associated with the original bond covenants in April 2012. These modifications were memorialized in the form of a Supplemental Trust Indenture and included redemption, interest rate and sinking fund redemption schedule

provisions under the original bond covenants. These modifications helped alleviate the need to fund operating deficits and reduce the default risk to Freddie Mac as the lender.

Worth noting among the modifications was the concept of a contingent interest rate associated with the bonds. Specifically, the overall interest rate remained the same; however, it was separated into two components, a base rate of 4.75% per annum plus a contingent interest rate equal to 1.85% per annum. The contingent interest rate was to be paid from the excess cash flow from the Development escrowed with the Trustee until the Development generated enough cash flow from operations to pay debt service at full coupon. The base rate was payable independent of excess cash flow.

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 December 2003 and Supplemental Trust Indenture dated June 2012. The bonds would be defeased until the first call date of December 1, 2020, and funds will be provided that will pay the required debt service on the defeased bonds. As it relates to the interest rate, the escrow will provide for payment of the 4.75% interest rate plus 1.85% of contingent interest, for total interest of 6.60%. The proceeds to fund the escrow will come from the sale of the property (the ownership transfer has not been approved by the Department), which is contemplated to occur on December 10, 2018.

## RESOLUTION NO. 19-015

### RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF AN ESCROW AGREEMENT IN CONNECTION WITH MULTIFAMILY HOUSING MORTGAGE REVENUE BONDS (PARKVIEW TOWNHOMES) SERIES 2003A; 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 (Parkview Townhomes) Series 2003A in the original principal amount of \$15,000,000 (the “Bonds”) pursuant to the terms and provisions of that certain Trust Indenture dated as of December 1, 2003, as supplemented by a Supplemental Trust Indenture and Modification Agreement dated as of June 1, 2012 (collectively, the “Indenture”), between the Department and Wells Fargo Bank, National Association, successor trustee to Wells Fargo Bank Texas, N.A., as trustee (the “Trustee”); and

WHEREAS, the proceeds of the Bonds were loaned to Chicory Court IV, 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 Parkview Townhomes, pursuant to that certain Loan Agreement dated as of December 1, 2003 (the “Loan Agreement”) among the Department, the Borrower and the Trustee; 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 Escrow Agreement (the “Escrow Agreement”) among the Department, the Borrower and Wells Fargo Bank, National Association, as escrow agent (the “Escrow Agent”); and

WHEREAS, pursuant to the Escrow Agreement, the Borrower will deposit in trust with the Escrow Agent funds sufficient, together with purchase of certain government securities as described in a Verification Report to be provided by Causey Demgen & Moore P.C, 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:

Section 1.

APPROVAL OF DOCUMENTS AND CERTAIN ACTIONS

(a) 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.

(b) 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.

(c) 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.

(d) 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

(e) 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 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.

(f) Ratifying Other Actions. That all other actions taken by the Executive Director or Acting 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.

Section 2.

GENERAL PROVISIONS

(a) 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.

(b) 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.

(c) 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.

(d) Effective Date. This resolution shall be in full force and effect from and upon its adoption.

*[The remainder of this page left intentionally blank.]*

PASSED AND APPROVED this 6th day of December, 2018.

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Chair, Governing Board

ATTEST:

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Secretary to the Governing Board

(SEAL)

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**ESCROW AGREEMENT**

**Dated as of December 10, 2018**

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**Among**

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS,  
as Issuer,**

**CHICORY COURT IV, LP,  
as Borrower,**

**and**

**WELLS FARGO BANK, N.A.,  
as Escrow Agent**

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**Providing for the Defeasance, Payment, and Discharge of Certain  
Outstanding Multifamily Housing Revenue Bonds**

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## ESCROW AGREEMENT

This **ESCROW AGREEMENT** dated as of December 10, 2018 (the “*Agreement*”), among the **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**, a public and official agency of the State of Texas (the “*Issuer*”), **CHICORY COURT IV, LP**, a Texas limited partnership (the “*Borrower*”), and **WELLS FARGO BANK, N.A.**, a national banking association organized and existing under the laws of the United States of America, having a corporate trust office located in Minneapolis, Minnesota (the “*Escrow Agent*”).

### RECITALS

1. The Borrower is providing for the defeasance, payment, and discharge of all of the Issuer’s outstanding Multifamily Housing Mortgage Revenue Bonds (Parkview Townhomes) Series 2003A (the “*Defeased Bonds*”).

2. The Defeased Bonds will mature (or will be subject to redemption prior to maturity) and will have interest payable as shown on **Schedule 1** hereto.

3. The Borrower is providing for (a) the defeasance and payment of the Defeased Bonds in accordance with the requirements of the hereinafter defined Indenture, through the deposit in trust with the Escrow Agent of \$[\_\_\_\_\_] provided by the Borrower, and (b) the purchase of the hereinafter defined Escrowed Securities as herein provided.

4. The Escrow Agent is, by this Agreement, appointed by the hereinafter defined Trustee and is acting as master escrow agent for the Defeased Bonds under this Agreement.

**NOW, THEREFORE**, in consideration of the foregoing and of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

#### 1. *Definitions.*

Capitalized terms used in this Agreement and not otherwise defined have the meanings set forth in the Indenture. The following words and terms used in this Agreement shall have the following meanings:

“*Agreement*” means this Escrow Agreement, and any amendments hereto.

“*Bond Counsel*” means Gilmore & Bell, P.C., or other firm of attorneys nationally recognized on the subject of municipal bonds and acceptable to the Issuer, the Borrower and the Escrow Agent.

“*Bond Payment Date*” means any date on which any principal of, redemption premium, or interest on any of the Defeased Bonds is due and payable as shown on **Schedule 1** attached hereto, including the Redemption Date.

“*Borrower*” means Chicory Court IV, LP, a Texas limited partnership, and its successors and assigns.

**“Defeased Bonds”** means the outstanding Multifamily Housing Mortgage Revenue Bonds (Parkview Townhomes) Series 2003A of the Issuer, all of which are being defeased, paid and discharged pursuant to this Agreement.

**“Escrow Agent”** means Wells Fargo Bank, N.A., and its successor or successors at the time acting as the Escrow Agent under this Agreement.

**“Escrow Fund”** means the fund by that name established pursuant to **Section 3** of this Agreement.

**“Escrowed Securities”** means the direct non-callable obligations of the United States of America listed on **Schedule 2** attached hereto, and any Substitute Escrowed Securities.

**“Indenture”** means the Trust Indenture dated as of December 1, 2003, between the Issuer and the Trustee, as supplemented by the Supplemental Trust Indenture and Modification Agreement, dated as of June 1, 2012, among the Issuer, the Borrower, and the Trustee, under which the Defeased Bonds were issued, and any amendments or supplements thereto.

**“Issuer”** means the Texas Department of Housing and Community Affairs, the issuer of the Defeased Bonds, and its successors and assigns.

**“Redemption Date”** means December 1, 2020.

**“Substitute Escrowed Securities”** means any direct non-callable obligations of the United States of America which have been acquired by the Escrow Agent and substituted for Escrowed Securities in accordance with **Section 8** of this Agreement.

**“Trustee”** means Wells Fargo Bank, N.A., as trustee for the Defeased Bonds pursuant to the Indenture.

**“Verification Report”** means the verification report of Causey Demgen & Moore P.C., certified public accountants, addressed to the Issuer, the Borrower, the Trustee, and the Escrow Agent, referred to in **Section 5** of this Agreement, a copy of which is attached hereto as **Exhibit A**.

## **2. Representations of the Escrow Agent.**

(a) The Escrow Agent acknowledges receipt, concurrently with the execution and delivery of this Agreement, of copies of the Indenture and the Verification Report, and reference herein to or citation herein of any provisions of said documents shall be deemed to incorporate the same as a part hereof in the same manner and with the same effect as if they were fully set forth herein.

(b) The Escrow Agent is duly authorized and empowered under the laws of the State of Texas to accept and execute agreements of the character herein set forth, and has the requisite power and authority to perform the duties of the Escrow Agent set forth in this Agreement.

## **3. Establishment of Escrow Fund.**

The Escrow Agent shall establish a special and irrevocable separate trust fund to be held in the custody of the Escrow Agent and designated as the **“Escrow Fund for Defeased Bonds – Chicory Court**

**IV, LP**” (the “*Escrow Fund*”). Except as otherwise provided herein, moneys in the Escrow Fund shall be held in trust by the Escrow Agent and shall be applied solely for the purpose of purchasing Escrowed Securities and to provide funds to the Trustee in accordance with this Agreement at the times and in the amounts required to pay debt service on the Defeased Bonds.

**4. Deposits to the Escrow Fund.**

Concurrently with the execution and delivery of this Agreement, the Borrower has deposited or caused to be deposited with the Escrow Agent, and the Escrow Agent acknowledges receipt and deposit into the Escrow Fund of the following moneys:

- (a) moneys provided by the Borrower in the amount of \$[\_\_\_\_\_]; and
- (b) moneys transferred from funds held under the Indenture in the amount of \$[\_\_\_\_\_].

The Escrow Agent shall apply such amounts deposited in the Escrow Fund to (i) pay an amount equal to \$[\_\_\_\_\_], representing an amount of accrued and unpaid Contingent Interest due as of December 1, 2018, to the holders of the Defeased Bonds and (ii) purchase the Escrowed Securities at a purchase price of \$[\_\_\_\_\_] which shall be delivered to and deposited in the Escrow Fund, leaving an initial cash balance of \$[\_\_\_\_\_] in the Escrow Fund.

**5. Verification Report.**

Causey Demgen & Moore P.C., certified public accountants, in the Verification Report have verified the mathematical accuracy of the computations relating to (i) the adequacy of cash plus government securities to be held in escrow to pay the debt service requirements of the outstanding principal of the Defeased Bonds and (ii) the yield on the Escrowed Securities, which demonstrate that:

- (a) the cash held in the Escrow Fund, together with the maturing principal of the Escrowed Securities held therein and interest to accrue thereon, without consideration of any reinvestment thereof, will be sufficient to pay all principal of, redemption premium, and interest on the Defeased Bonds on the respective Bond Payment Dates; and
- (b) the yield on the Escrowed Securities allocated to proceeds of the Defeased Bonds does not exceed the yield on the Defeased Bonds.

**6. Creation of Lien.**

The escrow created hereby shall be irrevocable. The holders of the Defeased Bonds are hereby given an express lien on and security interest in the cash and securities in the Escrow Fund and all earnings thereon until used and applied in accordance with this Agreement. Such lien and security interest for the Defeased Bonds shall be in accordance with the debt service requirements of the Defeased Bonds as shown on **Schedule 1** hereto. The matured principal of and earnings on the cash and securities in the Escrow Fund are hereby pledged and assigned and shall be applied solely for the payment of the principal of, redemption premium, if any, and interest on the Defeased Bonds.

**7. Application of Cash and Escrowed Securities in the Escrow Fund.**

(a) Except as otherwise expressly provided in this Section or in **Section 8** hereof, the Escrow Agent shall have no power or duty to invest any money held hereunder or to sell, transfer or otherwise dispose of any Escrowed Securities.

(b) The Escrow Agent is directed to purchase, using cash in the Escrow Fund, the Escrowed Securities described in **Schedule 2** hereof.

(c) On or prior to each Bond Payment Date, the Escrow Agent shall withdraw from the Escrow Fund an amount equal to the principal of, redemption premium, if any, and interest on the Defeased Bonds becoming due and payable on such Bond Payment Date, as set forth in **Schedule 1** hereto, and shall transfer such amount to the office of the Trustee, so that immediately available funds in the required amounts will reach such office on or before **12:00** noon, central time, on such Bond Payment Date. In order to make the payments required by this subsection, the Escrow Agent is hereby authorized to present or redeem the Escrowed Securities in accordance with the maturity schedule in the Verification Report. The liability of the Escrow Agent to make the payments required by this subsection with respect to the Defeased Bonds shall be limited to the money and Escrowed Securities in the Escrow Fund.

(d) Cash held from time to time in the Escrow Fund shall be (1) held uninvested, or (2) at the written direction of the Borrower, invested in direct non-callable obligations of the United States of America maturing on or before the Bond Payment Date on which such cash will be needed, as specified in the Verification Report; provided that the Escrow Agent shall receive an opinion of Bond Counsel to the effect that such investment will not cause the interest on the Defeased Bonds to become included in gross income for purposes of federal income taxation.

(e) Upon the payment in full of the principal of, redemption premium, if any, and interest on the last of the Defeased Bonds, all remaining money and securities in the Escrow Fund, together with any interest thereon, shall be transferred to the Borrower.

(f) Notwithstanding any other provisions of this Agreement, the Borrower hereby covenants that no part of the moneys or funds in the Escrow Fund shall be used or directed to be used by the Escrow Agent, at any time, directly or indirectly, in a manner that would cause any of the Defeased Bonds to be an "arbitrage bond" under Section 148 of the Internal Revenue Code.

**8. Substitute Escrowed Securities.**

(a) If any of the Escrowed Securities are not available for delivery on the date of this Agreement, the Escrow Agent is directed to accept substitute securities in lieu thereof provided: (1) the substitute securities are non-callable, direct obligations of the United States of America; (2) the maturing principal of and interest on the substitute securities is equal to or greater than the principal and interest payable on the unavailable Escrowed Securities, and is payable no later than, and in amounts no less than, the payments on the unavailable Escrowed Securities; (3) the Escrow Agent, the Trustee, and the Borrower receive from a nationally recognized independent certified public accountant or accounting firm a certification, to the effect that after such substitution, the principal of and interest payable on the Escrowed Securities to be held in the Escrow Fund after giving affect to the substitution, together with any other money to be held in the Escrow Fund after such transaction, will be sufficient to pay all remaining principal of, redemption premium, if any, and interest on the Defeased Bonds pursuant to **Schedule 1** hereto; and (4) the Escrow Agent, the Trustee, and the Borrower receive an opinion of Bond

Counsel to the effect that the substitution will not cause the interest on the Defeased Bonds to become included in gross income for purposes of federal income taxation. If the original Escrowed Securities become available and are tendered to the Escrow Agent, the Escrow Agent shall accept such Escrowed Securities, shall return the substitute securities as directed by such original purchaser and shall notify Bond Counsel and the Borrower of the transaction.

(b) At the written request of the Borrower, and upon compliance with the conditions hereinafter stated, the Escrow Agent from time to time may sell, transfer, request the redemption of, or otherwise dispose of any of the Escrowed Securities and substitute for the Escrowed Securities so redeemed or otherwise disposed of solely cash or Substitute Escrowed Securities. The Escrow Agent shall purchase such Substitute Escrowed Securities with the proceeds derived from any such sale, transfer, disposition, or redemption of the Escrowed Securities together with any other funds available for such purpose. The substitution may be effected only if: (1) the substitution of the Substitute Escrowed Securities for the original Escrowed Securities occurs simultaneously; (2) the Escrow Agent, the Trustee, and the Borrower receive a certification to the effect that after such substitution, (A) the principal of and interest payable on the Escrowed Securities to be held in the Escrow Fund after giving effect to the substitution (including Substitute Escrowed Securities to be acquired), together with any other money to be held in the Escrow Fund after such transaction, will be sufficient to pay all remaining principal of, redemption premium, if any, and interest on the Defeased Bonds pursuant to **Schedule 1** hereto, and (B) the amounts and dates of the anticipated transfers from the Escrow Fund to the Trustee will not be diminished or postponed thereby; and (3) the Escrow Agent, the Trustee, and the Borrower shall receive an opinion of Bond Counsel to the effect that such substitution would not cause the interest on the Defeased Bonds to become included in gross income for purposes of federal income taxation under then existing law. In the event that any such substitution results in cash held in the Escrow Fund in excess of the cash required for the certification of an independent certified public accountant referred to in this subsection (as evidenced by such certification), the Escrow Agent shall, at the request of the Borrower, withdraw such excess from the Escrow Fund and pay such excess to the Borrower; provided that, in the opinion of Bond Counsel delivered to the Escrow Agent, such withdrawal and application will not cause the interest on the Defeased Bonds to become included in gross income for purposes of federal income taxation.

#### **9. *Redemption of Defeased Bonds.***

(a) The Borrower has provided for the defeasance, discharge and payment of the Defeased Bonds by deposit with the Escrow Agent, concurrently with the delivery of this Agreement and as provided in this Agreement, of moneys and government securities in such amounts and with such maturities that will, together with income or increment to accrue thereon, without consideration of any reinvestment thereof, be fully sufficient to pay, redeem and discharge the Defeased Bonds on the Redemption Date. The Borrower requests and directs the Trustee to (1) call all of the Defeased Bonds for redemption and payment on the Redemption Date at a redemption price equal to 100% of the outstanding principal amount thereof with respect to the Defeased Bonds, plus accrued interest thereon to the Redemption Date, (2) unless waived by the owners of the Defeased Bonds, give notice of such redemption to the owners of the Defeased Bonds no later than ten (10) Business Days (as such term is defined in the Indenture) prior to the Redemption Date, and otherwise in accordance with the requirements of the Indenture, and (3) take or cause to be taken all further action necessary to call and redeem the Defeased Bonds on the Redemption Date as provided herein.

(b) The Borrower directs the Escrow Agent and the Escrow Agent agrees, to the extent within its power, on behalf of the Trustee, to take or cause to be taken such further action as may be necessary under the Indenture to cause the redemption of said Defeased Bonds on the Redemption Date.

#### ***10. Reports of the Escrow Agent.***

As long as any of the Defeased Bonds, together with the interest thereon, have not been paid in full, the Escrow Agent, at least fifteen (15) days prior to each Bond Payment Date, shall determine the amount of money which will be available in the Escrow Fund to pay the principal of, redemption premium, if any, and interest on the Defeased Bonds on the next Bond Payment Date. If the Escrow Agent determines that sufficient funds will not be available on such Bond Payment Date to make the payment to be made on such Bond Payment Date pursuant to **Section 7**, then the Escrow Agent shall certify in writing to the Borrower and the Trustee the amount so determined, and provide a list of the money and Escrowed Securities held by it in the Escrow Fund on the date of such certification, including all money held by it which was received as interest or profit from Escrowed Securities.

#### ***11. Liability of Escrow Agent.***

(a) The Escrow Agent shall not be liable for any loss resulting from any investment, sale, transfer, or other disposition made pursuant to this Agreement in compliance with the provisions hereof, other than as a result of the Escrow Agent's negligence or willful misconduct. The Escrow Agent shall have no lien whatsoever on any of the money or Escrowed Securities on deposit in the Escrow Fund for the payment of fees and expenses for services rendered by the Escrow Agent under this Agreement or otherwise.

(b) The Escrow Agent shall not be liable for the accuracy of the calculations as to the sufficiency of the Escrowed Securities and money to pay the Defeased Bonds. So long as the Escrow Agent applies the Escrowed Securities and money as provided herein, the Escrow Agent shall not be liable for any deficiencies in the amounts necessary to pay the Defeased Bonds caused by such calculations. Notwithstanding the foregoing, the Escrow Agent shall not be relieved of liability arising from and proximate to its failure to comply fully with the terms of this Agreement.

(c) If the Escrow Agent fails to account for any of the Escrowed Securities or money received by it, said Escrowed Securities or money shall be and remain the property of the Borrower in trust for the holders of the Defeased Bonds, and, if for any reason such Escrowed Securities or money are not applied as herein provided, the assets of the Escrow Agent shall be impressed with a trust for the amount thereof until the required application shall be made.

(d) All covenants, stipulations, promises, agreements and obligations of the Escrow Agent contained in this Agreement shall be deemed to be the respective limited covenants, stipulations, promises, agreements, and obligations of the Escrow Agent, and not of any officer, employee, or agent of the Escrow Agent, nor of any incorporator, employee, or agent of any successor corporation to the Escrow Agent, in its individual capacity. No recourse shall be had against any such individual, either directly or otherwise under or upon any obligation, covenant, stipulation, promise, or agreement contained herein or in any other documents executed in connection therewith.

(e) The Escrow Agent may rely and shall be protected in acting upon or refraining from acting upon in good faith any resolution, certification, statement, instrument, opinion, report, notice,

request, direction, consent, verification, order, bond, debenture, or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties.

(f) The Escrow Agent undertakes to perform such duties and only such duties as are specifically set forth in this Agreement.

(g) No provision of this Agreement shall be construed to relieve the Escrow Agent from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that the Escrow Agent shall not be liable for any error of judgment made in good faith by an authorized officer or employee of the Escrow Agent, unless it is proven that the Escrow Agent was negligent in ascertaining the pertinent facts, or for the misconduct or negligence of any agent appointed with due care.

(h) Whether or not therein expressly so provided, every provision of this Agreement relating to the conduct or affecting the liability of or affording protection to the Escrow Agent shall be subject to the provisions of this Section.

## ***12. Fees and Costs of the Escrow Agent.***

The aggregate amount of the costs, fees, and expenses of the Escrow Agent in connection with the creation of the escrow described in and created by this Agreement and in carrying out any of the duties, terms, or provisions of this Agreement is a one-time fee in the amount of \$[\_\_\_\_\_], which amount shall be paid by the Borrower concurrently with the execution and delivery of this Agreement.

Notwithstanding the preceding paragraph, the Escrow Agent shall be entitled to reimbursement from the Borrower of reasonable out-of-pocket, legal or extraordinary expenses incurred in carrying out the duties, terms, or provisions of this Agreement. Claims for such reimbursement may be made to the Borrower and in no event shall such reimbursement be made from funds held by the Escrow Agent pursuant to this Agreement. The Escrow Agent agrees that it will not assert any lien whatsoever on any of the money or securities on deposit in the Escrow Fund for the payment of fees and expenses for services rendered by the Escrow Agent under the Agreement or otherwise.

If the Escrow Agent resigns or is removed prior to the expiration of this Agreement, the Escrow Agent shall rebate to the Borrower a ratable portion of any fee theretofore paid to the Escrow Agent for its services under this Agreement.

## ***13. Resignation or Removal of Trustee, Successor Escrow Agent; Removal of Escrow Agent.***

(a) In the event of any resignation or removal of the Escrow Agent as trustee under the Indenture and any appointment of a successor trustee thereunder, such successor trustee, without any further act, deed, or conveyance, shall become the successor Escrow Agent fully vested with all the rights, immunities, powers, trusts, duties, and obligations of its predecessor hereunder, but such predecessor shall, nevertheless, on the written request of such successor Escrow Agent or the Borrower, execute and deliver an instrument transferring to such successor Escrow Agent all the estates, properties, rights, powers, and trusts of such predecessor hereunder, and every predecessor Escrow Agent shall transfer and deliver all Escrowed Securities and moneys held by it to its successor and shall execute any transfer, assignment, or instrument in writing necessary to so transfer said Escrowed Securities and moneys and to make the principal of and interest on said Escrow Securities payable to such successor Escrow Agent. Should any other transfer, assignment, or instrument in writing from the Borrower be required by any successor

Escrow Agent for more fully and certainly vesting in such successor Escrow Agent the estates, rights, powers, and duties hereby vested or intended to be vested in the predecessor Escrow Agent hereunder, any such transfer, assignment, and instruments in writing shall, on request, be executed, acknowledged, and delivered by the Borrower, as the case may be. In the event of resignation of the Escrow Agent, a pro rata portion of the amount paid to the Escrow Agent pursuant to **Section 12** hereof shall be returned to the Borrower. In the event of any resignation or removal of the Escrow Agent as trustee under the Indenture, such resignation or removal shall not become effective until a successor trustee shall be in place and the cash and Escrowed Securities held in the Escrow Fund have been transferred to the successor trustee.

(b) The Escrow Agent may resign or be removed, at any time, for any reason, by written notice of its resignation or removal to the proper parties at their respective addresses as set forth herein, at least thirty (30) days before the date specified for such resignation or removal to take effect.

**14. *Continuing Duties of Trustee.***

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 agrees to be bound by and to comply with those provisions of the Indenture. The Escrow Agent has been appointed under this Agreement by the Borrower, and the Borrower agrees that by such appointment the immunities, protections, rights, and indemnification provided to the Trustee under the Indenture and related documents, including but not limited to any loan agreements and guaranties, shall not cease, diminish or be modified in any way.

**15. *Appointment of Escrow Agent and Acceptance of Terms.***

The Trustee, by execution of this Agreement in its capacity as Trustee, hereby agrees to and accepts the terms and provisions of this Agreement, and agrees to act as Escrow Agent under this Agreement and in accordance with the Indenture, to act in all capacities appropriate and necessary for the defeasance of the Defeased Bonds. In its capacity as the Escrow Agent, the Trustee shall be entitled to all of the rights, protections, immunities, and indemnities created in favor of the Trustee by the Indenture.

**16. *Amendments.***

This Agreement may not be repealed, revoked, altered, or amended without the written consent of the Issuer, the Escrow Agent, the Borrower, and the owners of the Defeased Bonds; provided, however, that the Issuer, the Borrower, and the Escrow Agent may, without the consent of, or notice to, such owners, enter into such agreements supplemental to this Agreement as shall not adversely affect the rights of such owners 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 Escrow Agent for the benefit of the holders of the Defeased Bonds, any additional rights, remedies, powers, or authority that may lawfully be granted to, or conferred upon, such holders or the Escrow Agent; and



- (c) to subject to this Agreement additional funds, securities or properties.

The Escrow Agent shall be entitled to rely exclusively upon an opinion of Bond Counsel with respect to compliance with this Section, including the extent, if any, to which any change, modification, addition, or elimination affects the rights of the holders of the Defeased Bonds, or that any instrument executed hereunder complies with the conditions and provisions of this Section.

**17. Termination.**

This Agreement shall terminate when all transfers required to be made by the Escrow Agent under the provisions hereof shall have been made.

**18. Notices.**

Except as otherwise provided herein, it shall be sufficient service of any notice, request, complaint, demand, or other paper required by this Agreement to be given to or filed with any of the following if the same shall be duly mailed by first class, certified or registered mail addressed (provided, however, that notice to the Escrow Agent will be effective only upon receipt):

- (a) To the Issuer:

Texas Department of Housing and Community Affairs  
Attention: [Raquel Morales]  
221 E. 11<sup>th</sup> Street  
Austin, Texas 78701

- (b) To the Borrower:

Chicory Court IV, LP  
c/o Alden Torch Financial LLC  
1225 17<sup>th</sup> Street, Suite 1400  
Denver, Colorado 80202  
Attention: Legal Department

- (c) To the Escrow Agent:

Wells Fargo Bank, N.A.  
MAC: N9300-060  
600 South 4<sup>th</sup> Street, 6<sup>th</sup> Floor  
Minneapolis, Minnesota 55415  
Attention: Angela Weidell-LaBathe

- (d) To the Trustee and the owners of the Defeased Bonds at their respective addresses and by the method set forth in the Indenture.

**19. Benefit of Escrow Agreement.**

This Agreement shall inure to the benefit of and shall be binding upon the parties hereto, and their respective successors and assigns. Nothing in this Agreement, express or implied, shall give to any person, other than the parties hereto and their successors and assigns, the Trustee, and the owners of the Defeased Bonds, any benefit or any legal or equitable right, remedy, or claim under this Agreement.

**20. Limitation on Issuer Liability.**

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 Escrow Fund to pay the principal, premium, if any, and interest on the Defeased Bonds; or
- (c) any action or inaction of the Escrow Agent or the Borrower in connection therewith.

**21. Severability.**

If any provision in this Agreement shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

**22. Counterparts.**

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

**23. Governing Law.**

This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

**24. Electronic Transactions.**

This Agreement and the transactions related hereto and described herein may be conducted and related documents may be sent, received and stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts to such original documents for all purposes, including the filing of any claim, action, or suit in the appropriate court of law.

**IN WITNESS WHEREOF**, the parties hereto have each caused this Agreement to be executed by their duly authorized officers as of the date first above written.

**ISSUER:**

**TEXAS DEPARTMENT OF HOUSING AND  
COMMUNITY AFFAIRS**

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

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

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

**BORROWER:**

**CHICORY COURT IV, LP**, a Texas limited partnership

By: SUBLETT ROAD ARLINGTON LLC, a Delaware limited liability company, its general partner

By: CENTERLINE GUARANTEED MANAGER II LLC, a Delaware limited liability company, its Manager

By: CENTERLINE AFFORDABLE HOUSING ADVISORS LLC, a Delaware limited liability company, its Sole Member

By: CENTERLINE CAPITAL GROUP LLC, a Delaware limited liability company, its Sole Member

By: \_\_\_\_\_  
Name: Jill Brooks-Garnett  
Title: Chief Operating Officer

**ESCROW AGENT:**

**WELLS FARGO BANK, N.A.**, as Escrow Agent

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

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

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

The undersigned, as trustee with respect to the Defeased Bonds, hereby acknowledges receipt of the directions of the Borrower with respect to the defeasance and redemption of the Defeased Bonds set forth in **Section 9** of the foregoing Agreement and hereby agrees to comply with such directions in accordance with the provisions thereof.

**WELLS FARGO BANK, N.A.**, as Trustee

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

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

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

**SCHEDULE 1  
TO ESCROW AGREEMENT**

**DEBT SERVICE SCHEDULE TO CALL FOR DEFEASED BONDS**

**\$15,000,000**

**Texas Department of Housing and Community Affairs  
Multifamily Housing Mortgage Revenue Bonds  
(Parkview Townhomes) Series 2003A**

[TO BE COMPLETED BASED ON VERIFICATION REPORT]

<u>Bond Payment</u> <u>Date</u>	<u>Principal</u>	<u>Interest</u>	<u>Contingent</u> <u>Interest</u>	<u>Total Payment</u>
12/1/2018				
1/1/2019				
2/1/2019				
3/1/2019				
4/1/2019				
5/1/2019				
6/1/2019				
7/1/2019				
8/1/2019				
9/1/2019				
10/1/2019				
11/1/2019				
12/1/2019				
1/1/2020				
2/1/2020				
3/1/2020				
4/1/2020				
5/1/2020				
6/1/2020				
7/1/2020				
8/1/2020				
9/1/2020				
10/1/2020				
11/1/2020				
12/1/2020				(1)
<b>Total</b>				

<sup>(1)</sup> All of the Defeased Bonds will be redeemed and paid prior to maturity on December 1, 2020, at a redemption price of 100% of the principal amount thereof (\$[\_\_\_\_\_]), plus accrued interest.

**SCHEDULE 2  
TO ESCROW AGREEMENT**

**SCHEDULE OF ESCROWED SECURITIES**

<b>Type</b>	<b>Settlement Date</b>	<b>Maturity Date</b>	<b>Par Amount</b>	<b>Coupon Rate</b>	<b>Price</b>	<b>Cost</b>	<b>Accrued Interest</b>	<b>Total Cost</b>
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\_\_\_\_\_

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\_\_\_\_\_

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**EXHIBIT A**  
**VERIFICATION REPORT**

1j

**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**DECEMBER 6, 2018**

Presentation, discussion, and possible action regarding changes in the structures of the Development Owner, Developer, and Guarantor prior to issuance of IRS Form(s) 8609 and a request for fee waiver for 2400 Bryan Apartments (HTC #18269)

**RECOMMENDED ACTION**

**WHEREAS**, 2400 Bryan Apartments (the Development) received an award of 9% Housing Tax Credits (HTCs) in 2018 for the new construction of 212 multifamily units in Dallas, Dallas County;

**WHEREAS**, the Development Owner was proposed to be a partnership with 2400 Bryan Street GP, LLC (GP) as its General Partner;

**WHEREAS**, GP was proposed to have Texas Legends Care as 51% member, RMGM Bryan Street, LLC (RMGM) as 39% member, and LOK Texas, LLC (LOK) as 10% member;

**WHEREAS**, RMGM was proposed to be the Developer;

**WHEREAS**, RMGM was proposed to have John H. (Jack) Matthews as 75% member and MaxineReb, Inc., a to-be-formed entity wholly owned by D. Scott Galbraith, as 25% member;

**WHEREAS**, RMGM Developers, LLC was proposed to be the Development's Guarantor, with John H. (Jack) Matthews as 75% member and D. Scott Galbraith as 25% member;

**WHEREAS**, D. Scott Galbraith passed away on August 15, 2018, and all ownership and developer interests in RMGM devolved to John H. (Jack) Matthews;

**WHEREAS**, the estate of D. Scott Galbraith retained the position of the deceased in the Guarantor;

**WHEREAS**, Lisa Vecchietti, sole member of LOK Texas, LLC, a Historically Underutilized Business (HUB), and employee of BETCO Consulting, LLC (BETCO), a HUB and consultant for the Applicant, left BETCO and withdrew LOK from GP;

**WHEREAS**, the replacement of the original HUB by another HUB is necessary to maintain the scoring status of the Application and the corresponding recommendation for an award of tax credits, and Applicant's counsel has requested approval for BETCO to fill the departing HUB's position;

**WHEREAS**, after the award, the decision was taken to form the Development Owner as a limited liability company, 2400 Bryan Street, LLC, instead of a partnership, and Applicant's counsel has requested approval for this change;

**WHEREAS**, on October 17, 2018, the name of Texas Legends Care became The Community Project;

**WHEREAS**, exceptional circumstances necessitated amendments of the Developer and Guarantor, and the applicant has asked for a waiver of the \$2,500 amendment request fee;

**WHEREAS**, the transfers of ownership are being requested prior to the issuance of IRS Form(s) 8609, and 10 TAC §10.406(e) requires that parties reflected in the Application as having Control remain in the Development Owner and retain such Control, unless otherwise approved by the Board; and

**WHEREAS**, the circumstances that have led the Applicant to request the change could not have been predicted, and were out of the control of the Applicant;

**NOW, therefore, it is hereby**

**RESOLVED**, that the ownership transfers in 2400 Bryan Apartments are approved as presented to this meeting, along with waiver of the Ownership Transfer fee, and the Executive Director and his designees are each authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

### **BACKGROUND**

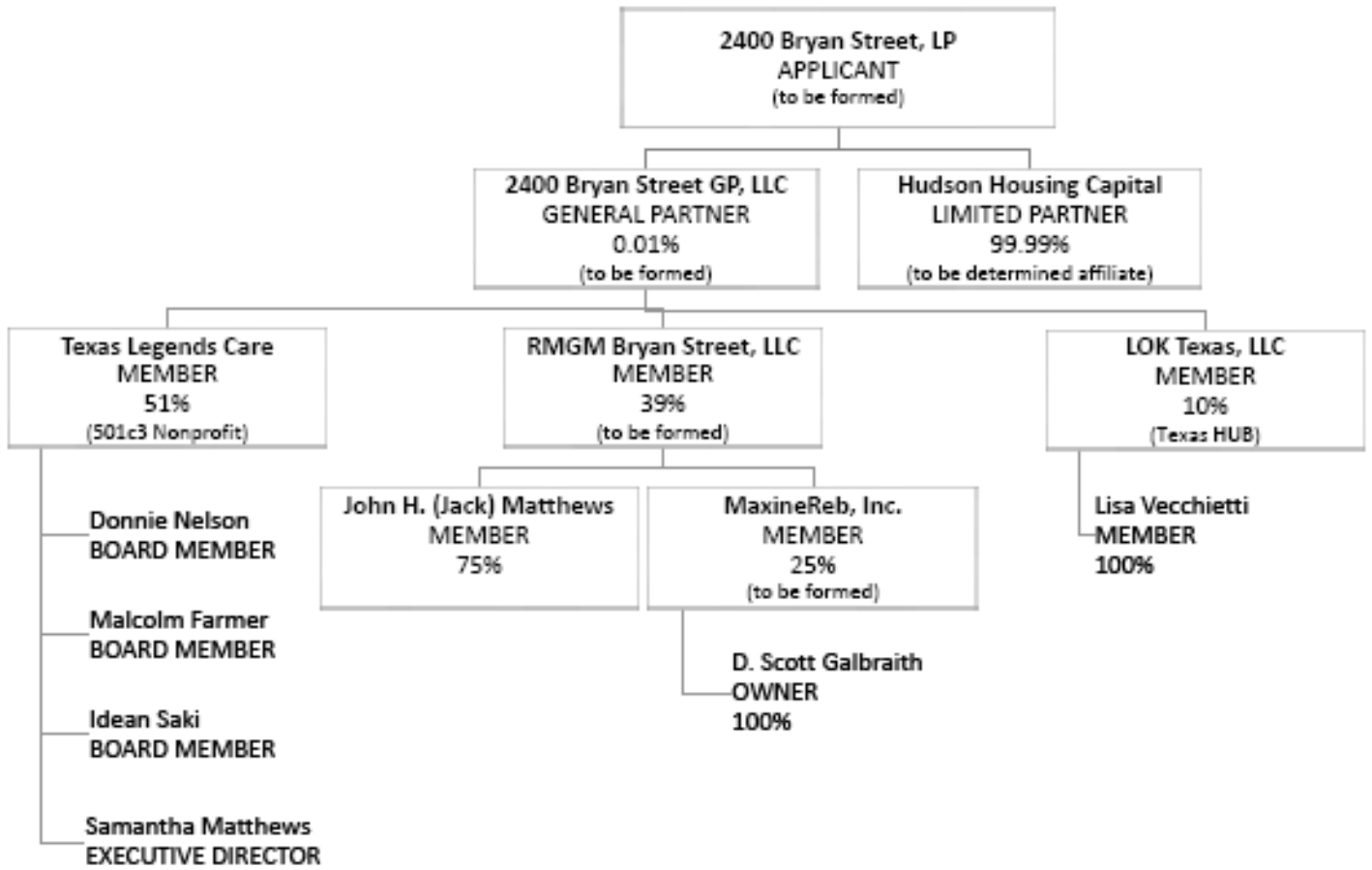
2400 Bryan Street Apartments is a proposed Development in Dallas that was approved for a 9% HTC award in 2018 for the new construction of 212 units. The HTC Application for the Development proposed John H. (Jack) Matthews and D. Scott Galbraith to have 100% Control of the Developer and Guarantor organizations as well 75% and 25% Control, respectively, of a minority member of the Development Owner's General Partner. When Galbraith passed away on August 15, 2018, his estate took his position in the Guarantor while his interests in the Development Owner and Developer were proposed to be assumed by Matthews. Approval for transfer of the Development Owner interest and amendments to change the Developer and Guarantor structure were requested, as was a change in the Development Owner from limited partnership to limited liability company, the latter change representing the preference of the Applicants.

Replacement of the original HUB was also requested. The HUB's position in the Development was one of the two minority members of the General Partner, the other being the member Controlled by Matthews and Galbraith. The final member of the General Partner, Texas Legends Care, a Texas nonprofit corporation, was the majority member. The original HUB, LOK, was owned by Lisa Vecchietti, an employee of BETCO, also a HUB. BETCO was a consultant to the Applicant. Vecchietti resigned from BETCO and vacated the position of her HUB in the Development Owner. Keeping a HUB in place was necessary to maintain the scoring status of the Application, and BETCO was proposed to replace LOK.

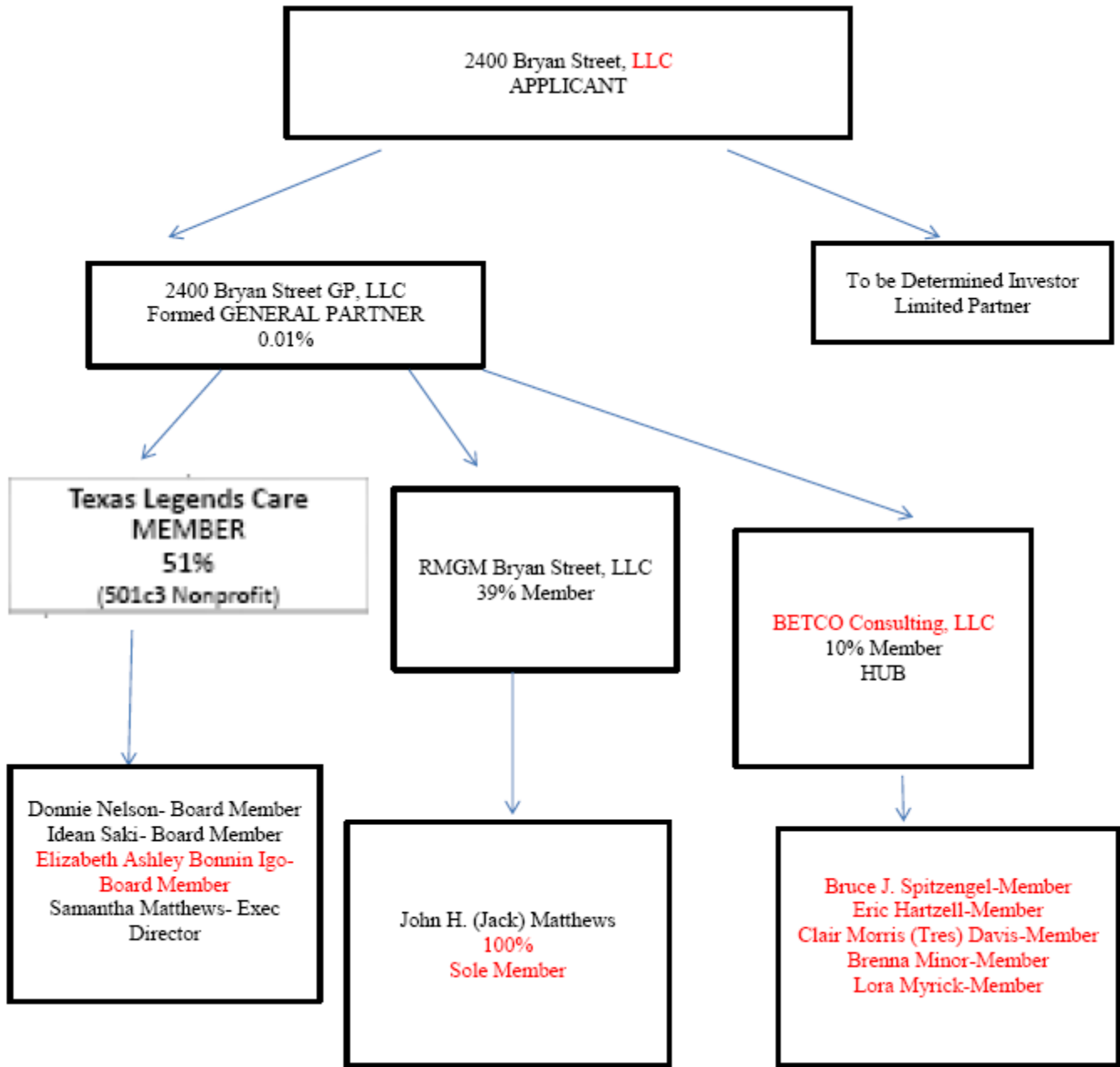
10 TAC §10.406(e) states, “Prior to the issuance of Form(s) 8609 (for Housing Tax Credits) . . . an Applicant may request an amendment to its ownership structure to add Principals.” However, the rule continues, “The party(ies) reflected in the Application as having control must remain in the ownership structure and retain such control, unless approved otherwise by the Board.” Changes in any of the organizations discussed above may require Board approval in the future. At present, administration of the estate might not have progressed sufficiently to determine the appropriate final structure for Board consideration. The pre- and post-transfer organization charts for the Development Owner, Developer and Guarantor are below.

Due to the unfortunate and unforeseen circumstances surrounding the Applicant’s request for an Ownership Transfer, staff recommends that the Transfer be approved, and that the associated fee be waived.

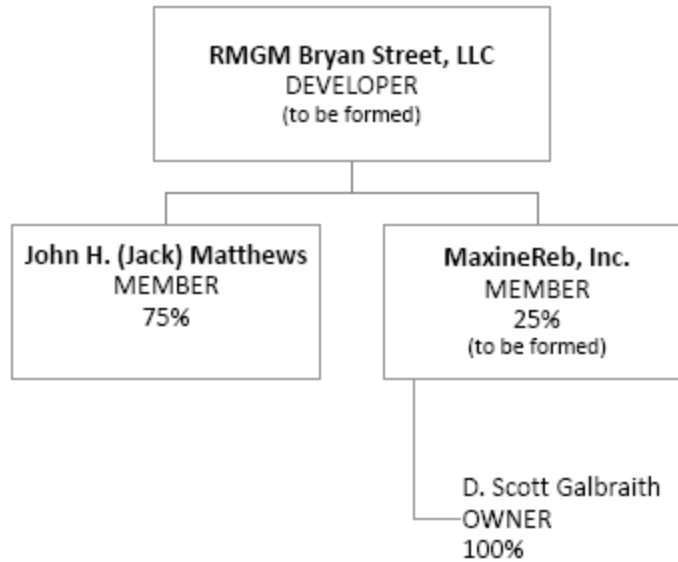
Ownership Structure Approved at Application



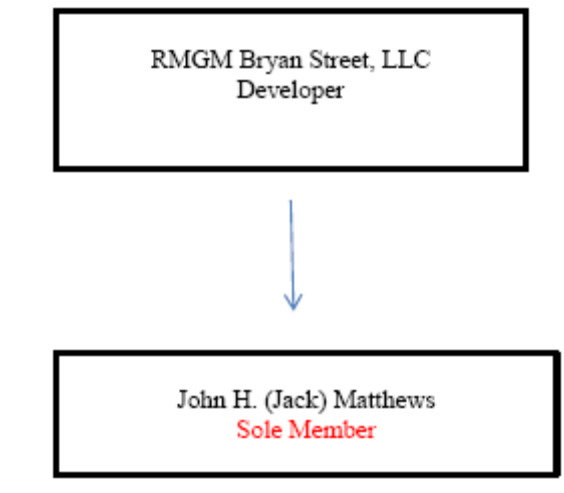
Revised Ownership Structure



Developer Structure Approved at Application

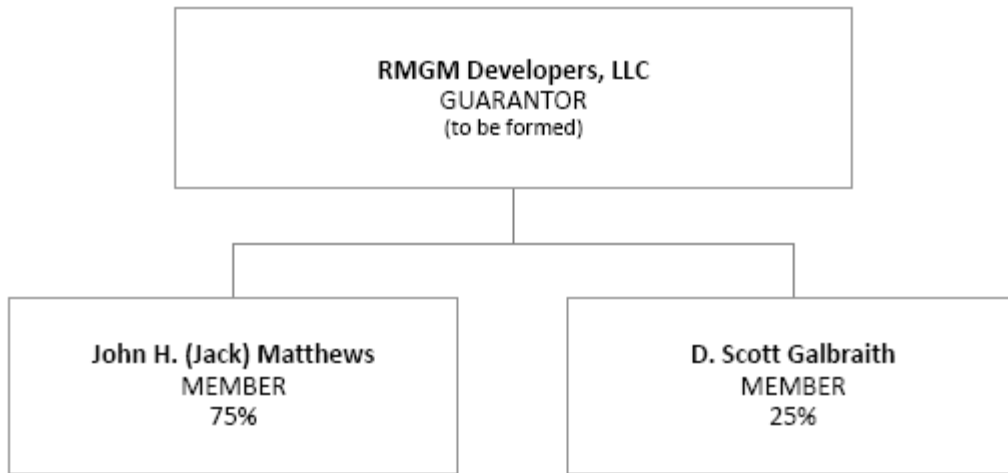


Revised Developer Structure

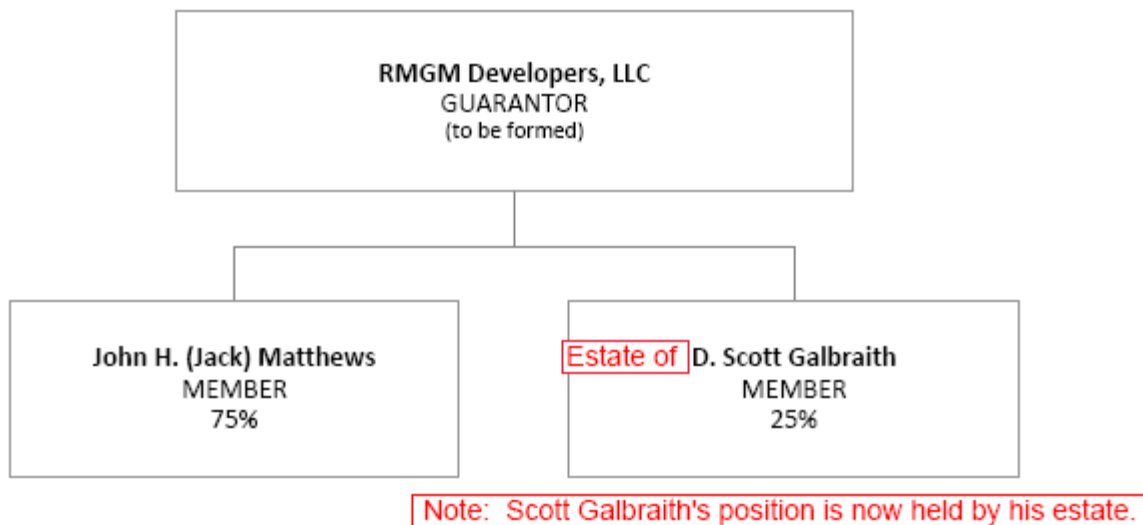




**Guarantor Structure Approved at Application**



**Revised Guarantor Structure**



Staff recommends approval of the ownership transfers for 2400 Bryan Street Apartments as presented.



THE LAW OFFICES OF  
CLAIRE G. PALMER, PLLC

7707 Brookview Court  
Irving, Texas 75063

972-948-3166

clairepalmerpllc@sbcglobal.net

November 14, 2018

*Via Email only*

Tim Irvine  
Executive Director  
Texas Department of Housing and Community Affairs  
21 E 11<sup>th</sup> Street  
Austin, Texas 78701

Re: TDHCA Application #18269, 2400 Bryan Street, Dallas, Texas (the "Application")

Dear Mr. Irvine:

I am writing this letter and making a formal request for transfer of parts of the Ownership Structure of Application #18269, 2400 Bryan Street, Dallas, Texas, in conjunction with a full Transfer Application.

There are four changes to the Application, as follows:

1. The Application was submitted as 2400 Bryan Street, LP, **a to be formed limited partnership**. At Commitment Notice, the owners preferred a limited liability company structure, so the Owner was formed as 2400 Bryan Street, LLC, **a Texas limited liability company** (emphasis added).
2. Texas Legends Care, the 51% owner of 2400 Bryan Street GP, LLC, the Manager of the Owner, has had a Board Election and Malcolm Farmer was replaced by Elizabeth Ashley Bonnin Igo. All of her required submittals are contained in the Transfer Application. In addition, on October 17<sup>th</sup>, 2018, the name of Texas Legends Care was formally changed to The Community Project. They are awaiting IRS approval and I will provide that as soon as it is available.
3. At Application the 39% Member of 2400 Bryan Street GP, LLC was RMGM Bryan Street, LLC, a to be formed limited liability company. The 25% Member of the latter company was to have been MaxineReb, Inc. a corporation wholly owned by Scott Galbraith. As you know, Mr. Galbraith passed away in August. This happened after the tax credit award but before the Commitment Notice was issued. As a result, RMGM Bryan Street, LLC was formed as a limited liability company, with John H. (Jack) Matthews as the Sole Member. Mr. Matthews was to have been the 75% owner, so all of his required application forms were already included in the original Application and the Commitment Notice.
4. The consultant for the Application was BETCO Consulting, LLC ("BETCO"). At that time, Lisa Vecchietti was an employee of BETCO and the HUB she owned was the HUB in the Application. Since

that time, Ms. Vecchietta left BETCO and no longer desires to serve in the capacity of HUB. BETCO has agreed to step into that role. Therefore, we request that substitution. All of their required forms are included in the Transfer Application.

While this may seem to be a number of changes, they are all occasioned by circumstances beyond the control of the Applicant. I respectfully request that these changes be approved by the Board of TDHCA and that the \$2500.00 fee be waived.

If you have any question or require additional information, please do not hesitate to contact me.

Sincerely,

The Law Offices of Claire G. Palmer, PLLC



Claire Palmer

cc: Lora Myrick  
Jack Matthews  
Kristian Teleki  
Adam Miller  
Marcus Shropshire  
Samantha Matthews

2400 Bryan Street, LP  
320 Main Street West  
Lewisville, Texas 75057

Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup> Street  
Austin, Texas 78701

To whom it may concern,

We are writing you in regards to the proposed changes in the ownership structure for 2400 Bryan Street, LP (TDHCA ID# 18269). The Partner leaving the Partnership is LOK Texas, LLC ("LOK"), and the Partner entering the Partnership is BETCO Consulting, LLC ("BETCO"). With respect to ownership percentages, there were no changes to any other partners' interest, and the 10% ownership interest previously held by LOK will be transferred to BETCO. The reason for the ownership change is the result of the loss of the partner due to resignation from the firm.

Please feel free to contact Lora Myrick, Principal at BETCO at (512) 785-3710 should you have any questions or concerns.

Thank you,

A handwritten signature in blue ink that reads "Lora Myrick". The signature is written in a cursive, flowing style.

**From:** [Lisa Vecchietti](#)  
**To:** [Ben Sheppard](#)  
**Cc:** [Lora Myrick](#)  
**Subject:** RE: 18269 Ownership Transfer  
**Date:** Monday, October 29, 2018 2:06:59 PM

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Ben,

Hope things are going well.

I give my consent for LOK Texas to be removed from the proposed ownership structure for 2400 Bryan (TDHCA App #18269).

Please let me know if you need anything else,

Lisa Vecchietti  
O: 512.226.8709  
M: 512.627.8062

**From:** Lora Myrick <lora@betcohousinglab.com>  
**Sent:** Monday, October 29, 2018 2:01 PM  
**To:** Lisa Vecchietti <Lisa.Vecchietti@berkadia.com>  
**Subject:** Fwd: 18269 Ownership Transfer

Thank you.  
Lora

----- Forwarded message -----

From: **Ben Sheppard** <[ben.sheppard@tdhca.state.tx.us](mailto:ben.sheppard@tdhca.state.tx.us)>  
Date: Fri, Oct 26, 2018 at 9:46 AM  
Subject: 18269 Ownership Transfer  
To: Claire Palmer <[clairepalmer@sbcglobal.net](mailto:clairepalmer@sbcglobal.net)>, Lora Myrick <[lora@betcohousinglab.com](mailto:lora@betcohousinglab.com)>

Please give me an acknowledgement from Lisa that she consents to the change.

Thanks,

Ben Sheppard  
Specialist, Multifamily Finance  
Texas Department of Housing and Community Affairs  
Ph. 512.475.2122

*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\(b\)](#)).*

--

Lora Myrick

Principal

812 San Antonio, Suite L-14

Austin, Texas 78701

(512) 785-3710

[www.betcohousinglab.com](http://www.betcohousinglab.com)



## Letter of Explanation

Include request letter behind this tab. Letter should include:

- Description of persons and organizations departing and entering
- Change(s) in percentage(s) of interest
- Explanation of the reason for the ownership change

## Ownership Transfer Information

Complete the below information concerning this transfer. Information related to this and other forms in this packet may be found in the Post Award Activities Manual on the Department's Asset Management page.

### Property Information

TDHCA ID#: 18269 Primary Program: 9% HTC CMTS#: \_\_\_\_\_  
Property Name: 2400 Bryan Current Owner: 2400 Bryan Street, LLC  
Type of Transfer: Other Date of Transfer: 11/15/2018 OR  Already Occurred  
Have Forms 8609 been issued for this property? No Has construction been completed? No  
**Controlling parties at Application must remain in the structure and retain control. Contact your Asset Manager.**  
Did this property receive points for non-profit participation? No Will the non-profit change? No

*If the property received points and the non-profit will change, the new non-profit's involvement in the operation of the Development throughout the Compliance period must be described.*

Did this property receive points for a HUB? Yes Will the HUB change? Yes  
**Submit Exhibit C - HUB Documents.**

*Please see attached explanation of HUB involvement and participation.*

Is this property in or past year 15 of its Compliance Period? No Does the ROFR process apply? Yes

### Compliance Status

Any uncorrected issues of noncompliance beyond the Corrective Action Period? No  
Any Corrective Action for noncompliance items currently in review? No Date Submitted: \_\_\_\_\_

### Ownership Transfer Contact Information

Contact Name: Lora Myrick Phone: ( 512 ) 785 - 3710 Extension: \_\_\_\_\_  
Email: lora@betcohousinglab.com Ownership Transfer Fee Submitted?  Check #: \_\_\_\_\_

### Property Sale Information *(Only if Property Sale is Occurring with Transfer)*

Title Company: \_\_\_\_\_ Title Company Contact: \_\_\_\_\_  
Email: \_\_\_\_\_ Phone: ( \_\_\_\_\_ ) \_\_\_\_\_ - \_\_\_\_\_ Extension: \_\_\_\_\_  
Sale will be: \_\_\_\_\_ Amount of New Financing (if any): \$ \_\_\_\_\_  
Lender (if any): \_\_\_\_\_ Terms of New Financing (if any): \_\_\_\_\_ % Interest  
Terms of New Financing (if any): \_\_\_\_\_ yr Am \_\_\_\_\_ yr Term  
Total Reserves: \$ \_\_\_\_\_ Amount of Reserves to transfer: \$ \_\_\_\_\_  
If HOME, will HOME loan be paid off at time of sale?

### New Proposed Owner Information

Proposed Owner: BETCO Consulting, LLC Authorized Agent: Lora Myrick

Was the above or any of its members formed in a state other than Texas? Yes

**Submit Exhibit A - Appropriate documents from the Texas Secretary of State and copies of governing documents.**

### Proposed Owner Experience Summary

Does the proposed Owner or its members have experience in affordable housing operations or management? Yes

Years of Cumulative Experience as indicated above: 20+

*Twenty-four years of experience with implementing, ensuring compliance and managing funds for various federal, state and conventional housing programs including HOME, CDBG, Housing Tax Credits and State Housing Trust Fund for both the state of Oklahoma and Texas. Served as Director of Program Services, HOME Program Manager and Team Lead for compliance at the Texas Department of Housing and Community Affairs and with the Oklahoma Housing Finance Agency. Experience with Fair Housing, Loan/Grant/Contract administration and compliance, HUD CPD Program regulations, and Housing Tax Credits. Also holds various certifications for HOME and Housing Tax Credits. Monitored for compliance with Fair Housing Act, ADA requirements and Section 504 for various federal and state programs.*

### New Management Agent Information

Management Agent will be replaced at the time of Transfer.  
Entity: \_\_\_\_\_ Taxpayer ID: \_\_\_\_\_  
Contact: \_\_\_\_\_ Phone: ( \_\_\_\_\_ ) \_\_\_\_\_ - \_\_\_\_\_ Extension: \_\_\_\_\_  
Address: \_\_\_\_\_



# Pre-Transfer and Post-Transfer Organization Charts

Two charts must be submitted, one to describe the ownership structure before the change in ownership and one to describe the structure after the change. All organizations and natural persons that did or will own and/or control the subject property must be included in the charts. Any entity shown must include ownership to the level of natural persons and include percentages of interest.

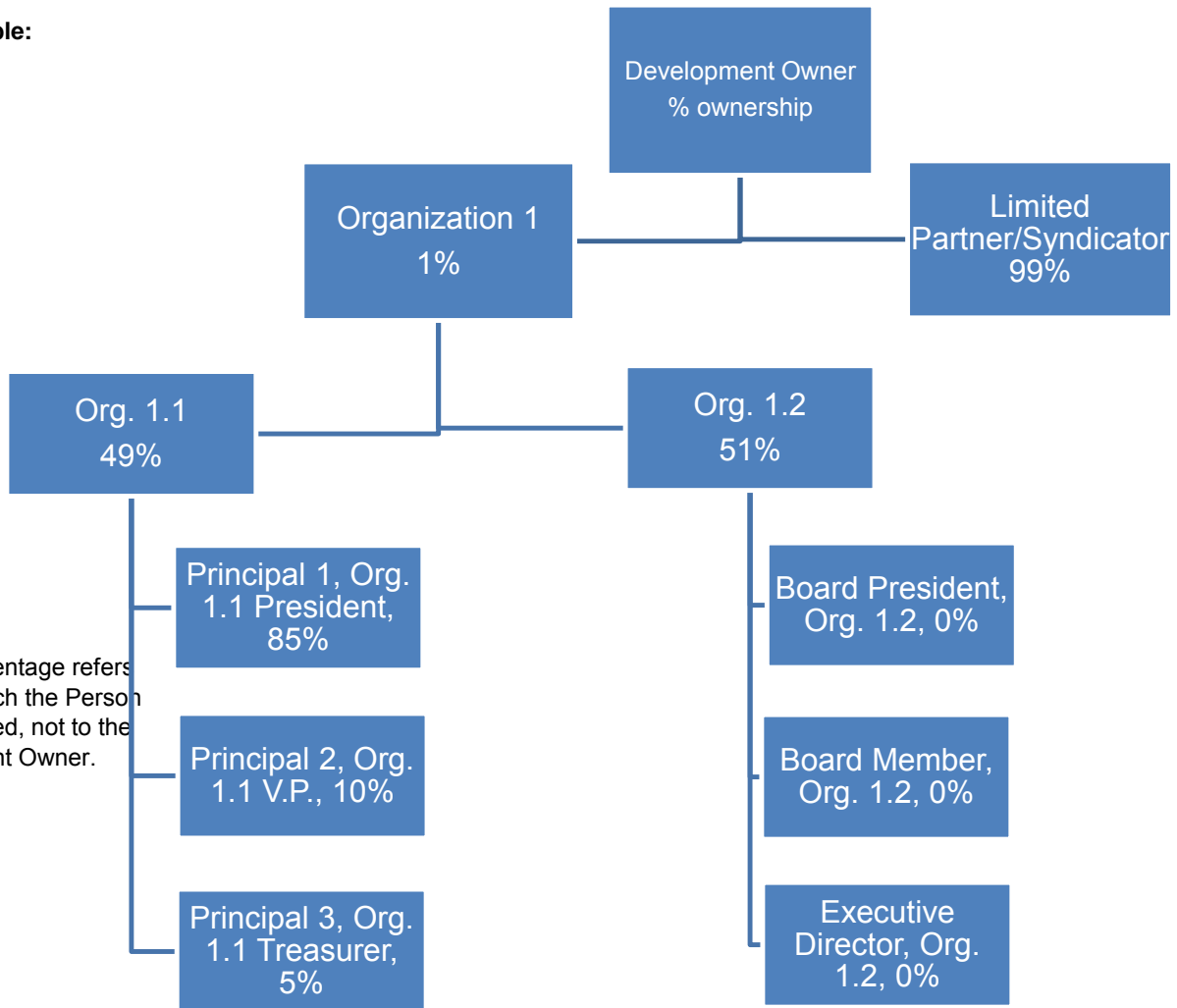
The organization charts must include:

- The names and ownership percentages of all Persons having an ownership interest in the Development Owner. If the property has not been placed in service, the Developer organization chart must also be included.
- Nonprofit entities, public housing authorities, publicly traded corporations, individual board members and executive directors must be included in the Organization charts.
- Any and all trusts must list all beneficiaries that are not just financial beneficiaries but have the legal ability to control or direct activities of the trust.

In the case of:

- (A) Partnerships - Principals include all general Partners and Special LPs (any LP that is not the Syndicator is a "Special LP");
- (B) Corporations - Principals include the executive director and all members of the board (with percentage of ownership reflected for each member as applicable).
- (C) Limited liability companies - Principals include all the managing members and all other members.

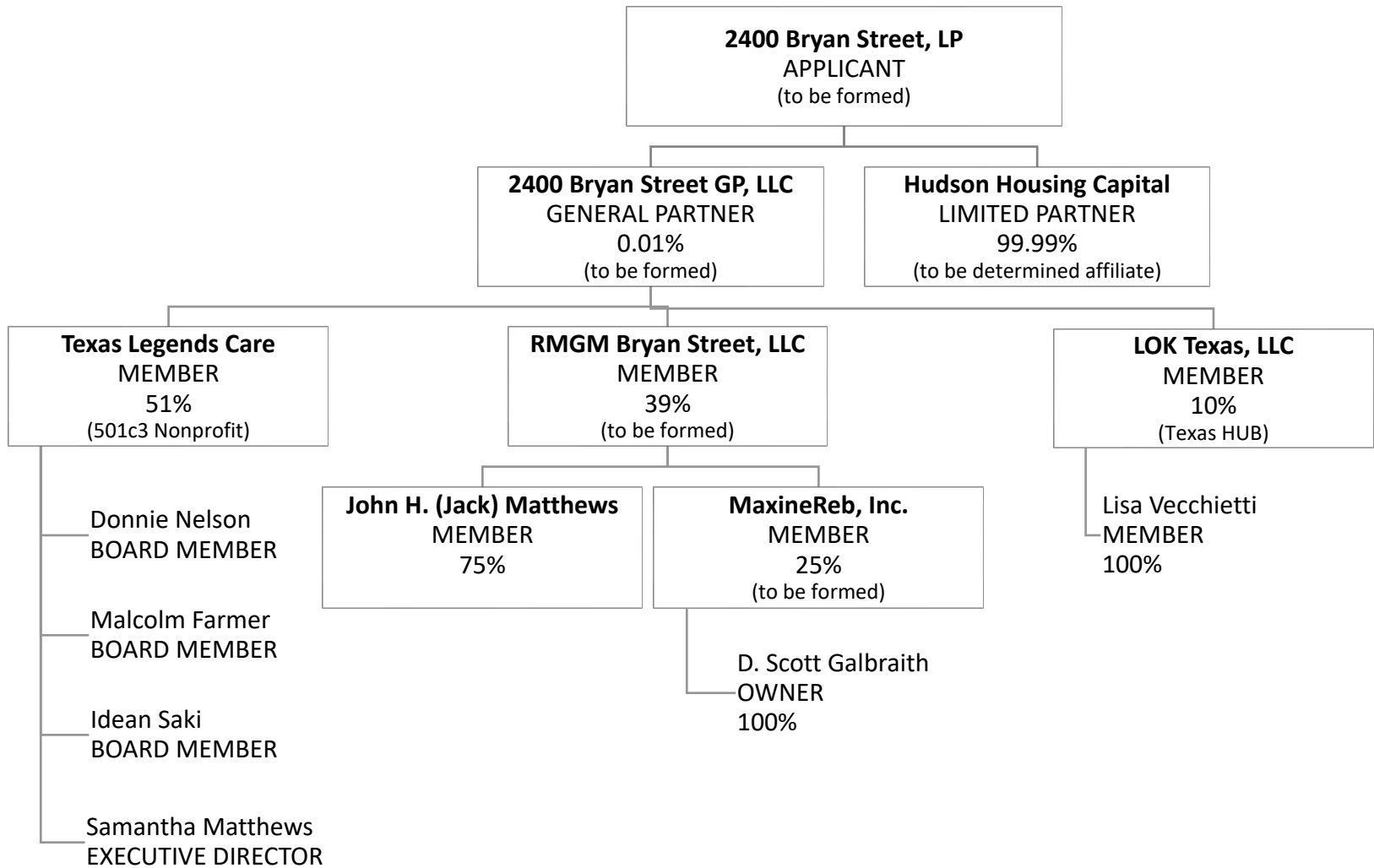
**Org. Chart Example:**



Note that the percentage refers to the entity to which the Person is directly connected, not to the whole Development Owner.

TAB 37. Org Charts  
Development Owner

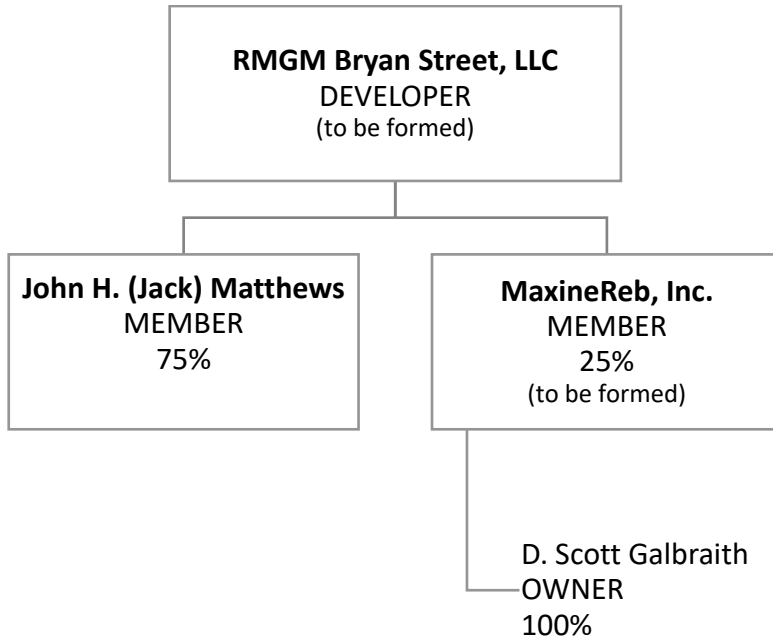
Original Chart



TAB 37. Org Charts

**Developer**

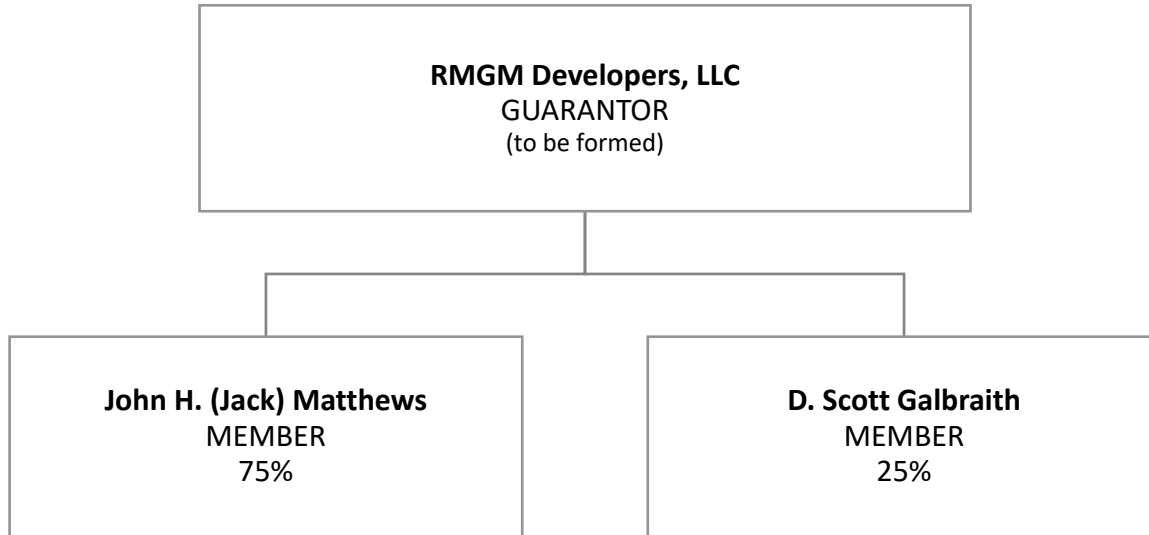
Original Chart



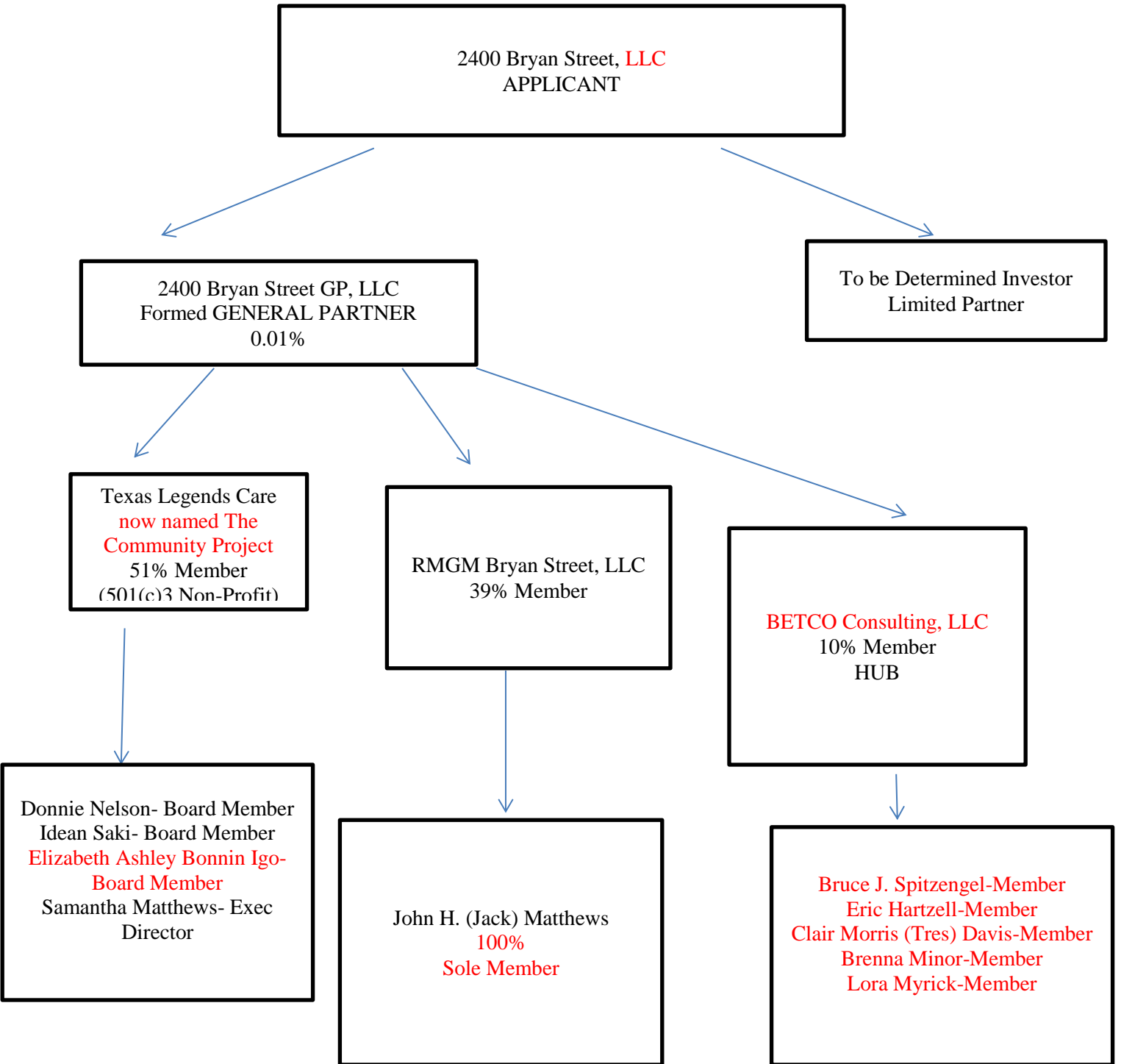
TAB 37. Org Charts

**Guarantor**

Original Chart



TAB 37 Org Charts  
Revised Development Owner



Tab 37 Org Charts  
Revised Developer

RMGM Bryan Street, LLC  
Developer

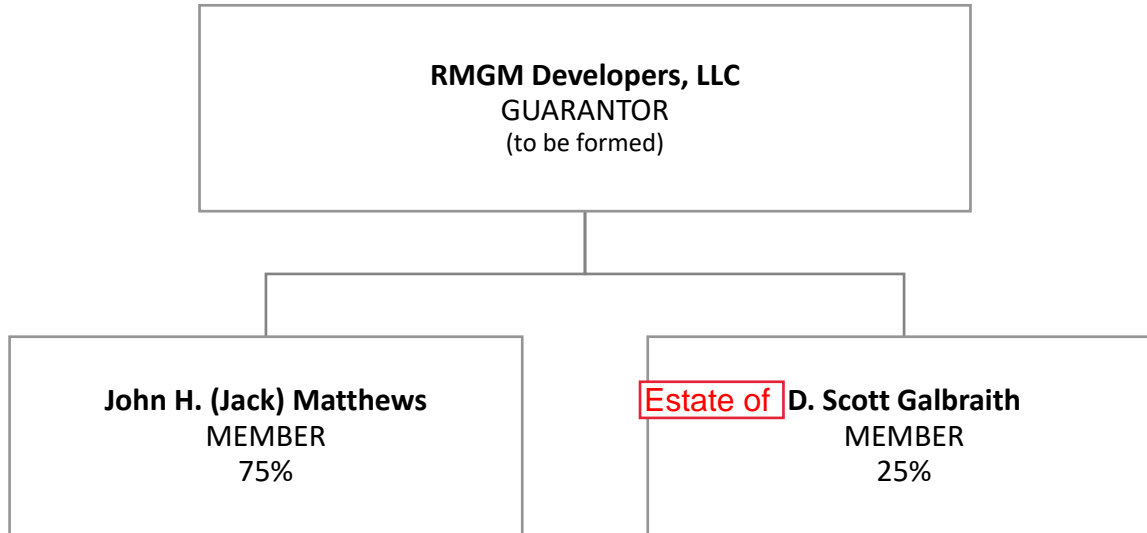


John H. (Jack) Matthews  
Sole Member

TAB 37. Org Charts

**Guarantor**

To be revised upon settlement  
of estate of D. Scott Galbraith



Note: Scott Galbraith's position is now held by his estate.

## New Org Chart Information

### Organizations & Persons with a Direct Interest in the Proposed Development Owner

Provide the requested information for all partnerships, corporations, limited liability companies, trusts, non-profits, or any other public or private entity and their Affiliates identified on the New Owner Organization Chart. Any Organization that owns or controls another organization should be identified as a separate entity. All natural persons with a percentage of ownership interest must be listed below each entity (Board members should be listed below non-profits). All new entities of the proposed Owner will be checked for Certificates of Reservation and Account Status with the Texas Secretary of State and the Texas Comptroller. If filings are foreign, cannot be found or are not current, do not represent structures as indicated, or if signatory authority cannot be verified, additional documentation will be requested. (Note - Entity Names, natural persons, and ownership percentage should coincide with the Owner and Developer Organization Charts). More space is available by un hiding cells after Row 314.

#### Entity # 1

Organization Name: 2400 Bryan Street GP, LLC Entity Role: GP  
 Address: 320 Main Street West City: Lewisville State: TX Zip: 75057  
 Authorized Officer: \_\_\_\_\_ Phone: 2142211199 Email: kteleki@matthewssouthwest.c  
 Taxpayer ID: \_\_\_\_\_ Org Type: Limited Liability Company  
 Formed Outside TX? N Date Formed: 9/5/2018 % Ownership: 0.01 % Previous TDHCA Experience? N

All proposed new individuals/entities with a controlling interest must submit financial statements with Tab 10

Date of Last Financial Statement: \_\_\_\_\_ Total Liquid Assets and Cash On Hand: \$ \_\_\_\_\_

List of Natural Persons (Indicate Previous TDHCA Experience by selecting "Y" or "N")

1. <u>Texas Legends Care</u>	2. <u>RMGM Bryan Street, LLC</u>	3. <u>BETCO Consulting, LLC</u>
TDHCA Experience? <u>N</u>	TDHCA Experience? <u>N</u>	TDHCA Experience? <u>Y</u>
4. _____	5. _____	6. _____
TDHCA Experience? <u>  </u>	TDHCA Experience? <u>  </u>	TDHCA Experience? <u>  </u>

#### Entity # 2

Organization Name: Texas Legends Care Entity Role: 51% Member of GP  
 Address: 2601 Avenue of the Stars, Suite 300 City: Frisco State: TX Zip: 75034  
 Authorized Officer: Idean Saki Phone: (214) 469-0822 Email: \_\_\_\_\_  
 Taxpayer ID: 46-1616007 Org Type: Non-Profit  
 Formed Outside TX? N Date Formed: 12-Dec % Ownership: 0.0051 % Previous TDHCA Experience? N

All proposed new individuals and entities with a controlling interest must submit financial statements with Tab 10

Date of Last Financial Statement: 2017 Total Liquid Assets and Cash On Hand: \$ \_\_\_\_\_

List of Natural Persons (Indicate Previous TDHCA Experience by selecting "Y" or "N")

1. <u>Donnie Nelson (Board Mem)</u>	2. <u>Elizabeth Ashley Bonnin Igo</u>	3. <u>Idean Saki (Board Mem)</u>
TDHCA Experience? <u>N</u>	TDHCA Experience? <u>N</u>	TDHCA Experience? <u>N</u>
4. <u>Samantha Matthews (Exec Dir)</u>	5. _____	6. _____
TDHCA Experience? <u>N</u>	TDHCA Experience? <u>  </u>	TDHCA Experience? <u>  </u>

#### Entity # 3

Organization Name: RMGM Bryan Street, LLC Entity Role: 39% Member of the GP  
 Address: 320 Main Street West City: Lewisville State: TX Zip: 75057  
 Authorized Officer: John H. Matthews Phone: 2142211199 Email: kteleki@matthewssouthwest.c  
 Taxpayer ID: 83-1879713 Org Type: Limited Liability Company  
 Formed Outside TX? N Date Formed: 9/7/2018 % Ownership: 0.0039 % Previous TDHCA Experience? N

All proposed new individuals and entities with a controlling interest must submit financial statements with Tab 10

Date of Last Financial Statement: na Total Liquid Assets and Cash On Hand: \$ 0

List of Natural Persons (Indicate Previous TDHCA Experience by selecting "Y" or "N")

1. <u>John H. (Jack) Matthews</u>	2. _____	3. _____
TDHCA Experience? <u>Y</u>	TDHCA Experience? <u>N</u>	TDHCA Experience? <u>  </u>
4. _____	5. _____	6. _____
TDHCA Experience? <u>  </u>	TDHCA Experience? <u>  </u>	TDHCA Experience? <u>  </u>

#### Entity # 4

Organization Name: BETCO Consulting, LLC Entity Role: 10% member of GP  
 Address: 2201 Northland Drive City: Austin State: TX Zip: 78756  
 Authorized Officer: Lora Myrick Phone: 5127853710 Email: lora@betcoconsulting.com



1k

**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**DECEMBER 6, 2018**

Presentation, discussion, and possible action regarding site eligibility under 10 TAC §10.101(a)(3) related to Undesirable Neighborhood Characteristics for Arbor at Wayforest in Houston

**RECOMMENDED ACTION**

**WHEREAS**, the Arbor at Wayforest is anticipated to be a proposed new construction development by Atlantic Pacific Communities for which a housing tax credit application has not yet been submitted;

**WHEREAS**, the applicant is seeking a Board determination regarding an Undesirable Neighborhood Characteristic affecting the proposed development site;

**WHEREAS**, pursuant to 10 TAC §10.101(a)(3) of the Uniform Multifamily Rules related to Undesirable Neighborhood Characteristics, the proposed development is located in a census tract where the Part I violent crime is greater than 18 per 1,000 persons annually as reported on Neighborhood Scout for 2017; and

**WHEREAS**, staff has conducted a further review of the proposed development site and surrounding neighborhood, and based on the violent crime data from the applicable local law enforcement which calculates the Part I violent crime to be 5.17 per 1,000 for 2017, and projected to be 6.89 per 1,000 persons annually for 2018, staff recommends the proposed site be found eligible under 10 TAC §10.101(a)(3) of the Uniform Multifamily Rules;

**NOW, therefore, it is hereby,**

**RESOLVED**, that the Board accepts staff recommendation, and finds the site for the proposed Arbor at Wayside development eligible under the requirements of 10 TAC §10.101(a)(3) of the 2018 Uniform Multifamily Rules;

**FURTHER RESOLVED**, that if a housing tax credit application is submitted under the 2019 Qualified Allocation Plan the applicant will be required to meet the requirements related to site eligibility as stated therein; provided however, that the application will not be required to be presented before the Board for a subsequent determination of site eligibility related to crime unless the facts and circumstances that formed the basis for this determination materially change; and

**FURTHER RESOLVED**, that this determination is applicable only to crime and should there be other neighborhood risk factors identified that do not comply with the 2019 Qualified Allocation Plan, a determination by the Board related to those neighborhood risk factors will be required.

## **BACKGROUND**

The Department received a request from Atlantic Pacific Communities seeking a preliminary determination on site eligibility for a proposed development, Arbor at Wayforest, in Houston. The site, intended to include new construction, and proposed to be funded through the 4% Housing Tax Credit program, is within a census tract that has a Part I violent crime greater than 18 per 1,000 persons annually as reported on Neighborhood Scout.

Arbor at Wayforest is proposed to be located on Wayforest Drive, northeast of the intersection of Wayforest Drive and Richcrest Drive in unincorporated Harris County. The census tract for the development (48201240501) has a Part I violent crime rate of 20.39 per 1,000 persons annually as reported on Neighborhood Scout. The applicant provided local law enforcement data, from the Harris County Sheriff's Office and considered appropriate considering the location of the property, that indicated a Part I violent crime rate of 5.17 per 1,000 for 2017, and estimated to be 6.89 per 1,000 persons annually for 2018 (data provided through August 2018).

Acceptable mitigation under the rule is violent crime data from the county sheriff's department for the police beat or patrol area that would yield a crime rate below the threshold indicated in the rule. The applicant provided a map of the grid areas used by the Harris County Sheriff's Department that aligns with the census tract boundaries and tabulated the instances of violent crime within those grid areas. The data yielded a rate of Part I violent crime that is below the threshold indicated in the rule.

Based on the aforementioned data and documentation staff does not believe the undesirable neighborhood characteristic relating to crime is of a nature and severity that should render the proposed development ineligible and the mitigation provided is sufficient to deem the site eligible pursuant to 10 TAC §10.101(a)(3) of the Uniform Multifamily Rules. Staff notes that while an application for the proposed development has not yet been submitted, the affirmative recommendation regarding eligibility is based on the facts and information provided herein. Should an application be filed that requires compliance with the 2019 Qualified Allocation Plan, the applicant will be required to meet the requirements related to site eligibility as stated therein; provided however, that the application will not be required to be presented before the Board for a subsequent determination of site eligibility related to crime, unless the facts and circumstances that formed the basis for this determination materially change. Moreover, this determination is applicable only to crime and should there be other neighborhood risk factors identified that do not comply with the 2019 Qualified Allocation Plan, a determination by the Board related to those neighborhood risk factors will be required.

11

**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**DECEMBER 6, 2018**

Presentation, discussion, and possible action on a Determination Notice for Housing Tax Credits with another Issuer (#18441 Lakeway Apartment Homes, Austin ETJ)

**RECOMMENDED ACTION**

**WHEREAS**, an application for 4% Housing Tax Credits for Lakeway Apartment Homes, sponsored by TX Lakeway Apartments GP, LLC and the Strategic Housing Finance Corporation of Travis County, was submitted on August 15, 2018;

**WHEREAS**, the Certification of Reservation from the Texas Bond Review Board was issued on August 14, 2018, and will expire on January 11, 2019;

**WHEREAS**, the proposed issuer of the bonds is the Strategic Housing Finance Corporation of Travis County; and

**WHEREAS**, in accordance with 10 TAC §1.301(d)(1), the compliance history is designated as a Category 3 and deemed acceptable by Executive Award and Review Advisory Committee (EARAC) after review and discussion;

**NOW, therefore, it is hereby**

**RESOLVED**, that the site for Lakeway Apartment Homes is hereby found to be eligible; and

**FURTHER RESOLVED**, that the issuance of a Determination Notice of \$1,196,981 in 4% Housing Tax Credits, subject to underwriting conditions that may be applicable as found in the Real Estate Analysis report posted to the Department's website for Lakeway Apartment Homes, is hereby approved as presented to this meeting.

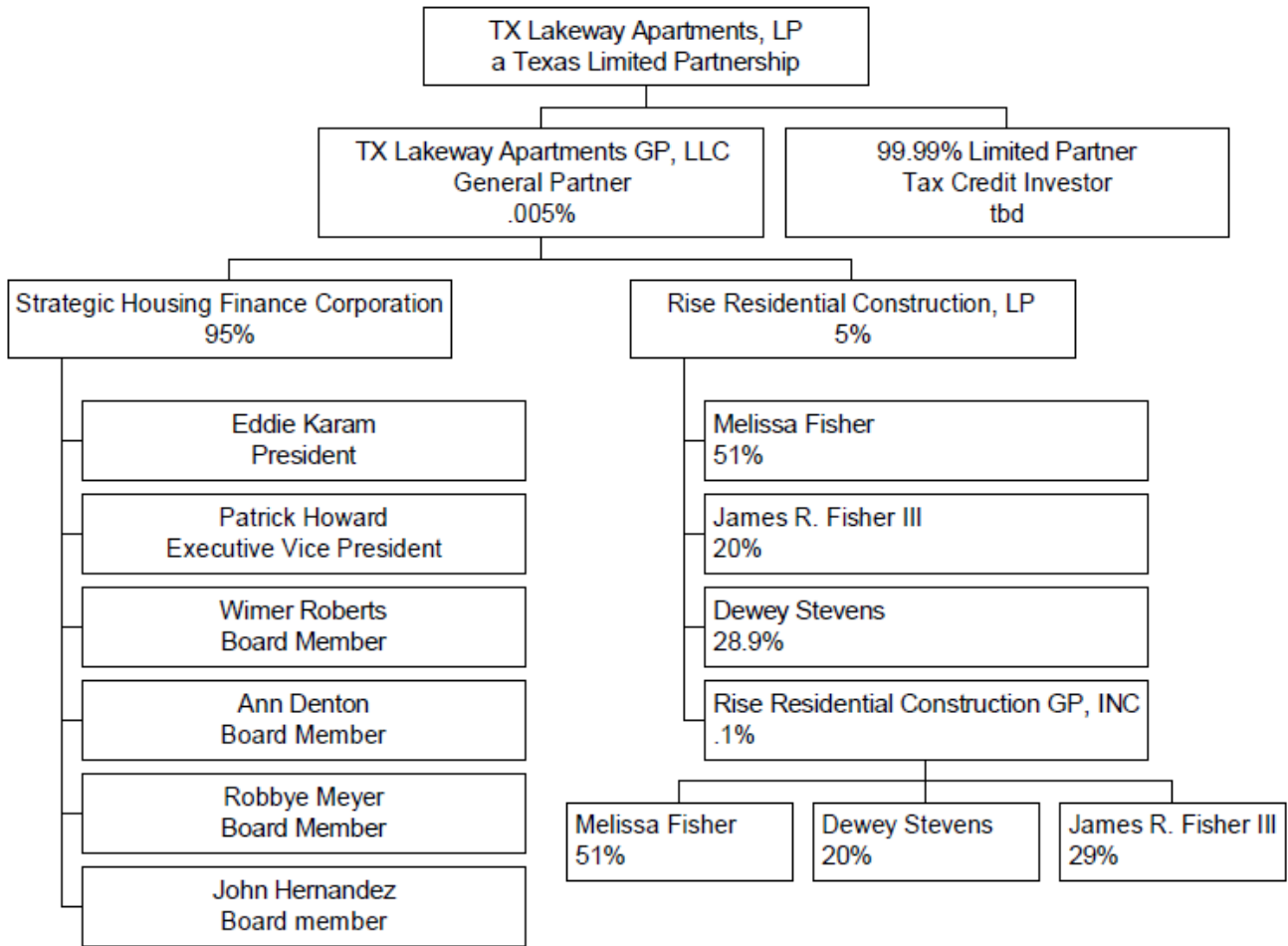
**BACKGROUND**

*General Information:* Lakeway Apartment Homes is the proposed new construction of 180 units to be located at FM 620 at Storm Drive in the extraterritorial jurisdiction of Austin, Travis County. The site will serve a general population and conforms to current zoning requirements. The Certificate of Reservation from the Bond Review Board was issued under the Priority 3 designation, which does not have a prescribed restriction on the percentage of Area Median Family Income (AMFI) that must be served; however, all of the units will be rent and income restricted at 60% AMFI. The census tract (0017.42) has a median household income of \$67,327, is in the second quartile, and has a poverty rate of 13.4%.

*Organizational Structure and Previous Participation:* The Borrower is TX Lakeway Apartments, LP and includes the entities and principals as illustrated in Exhibit A. The applicant's portfolio is considered a Category 3, and the previous participation was deemed acceptable by EARAC without further review or discussion.

*Public Comment:* There have been no letters of support or opposition submitted to the Department.

**EXHIBIT A**



# 18441 Lakeway Apartment Homes - Application Summary

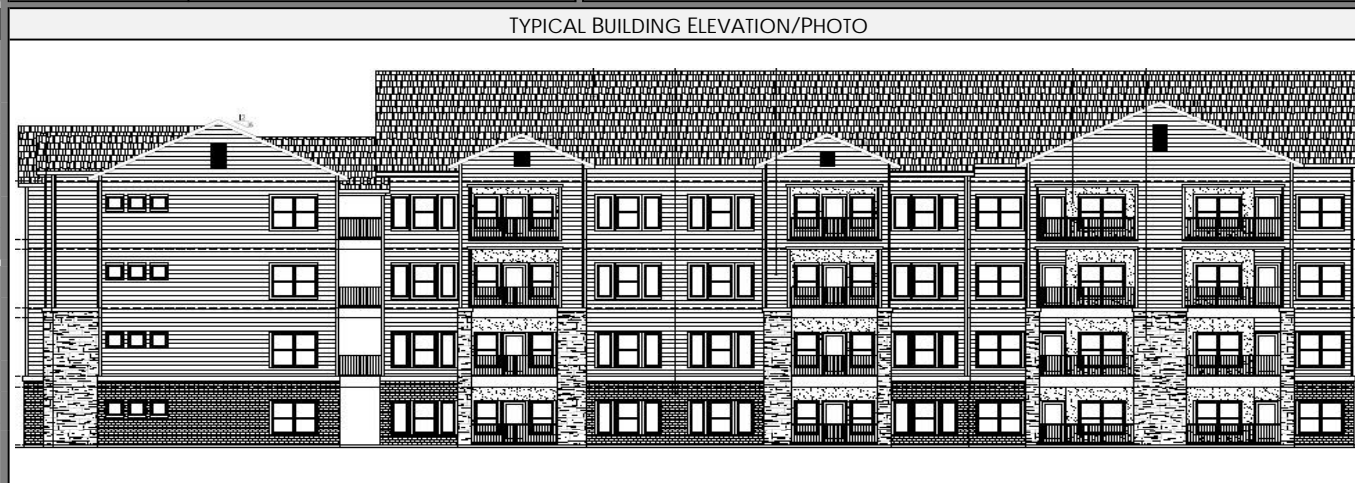
REAL ESTATE ANALYSIS DIVISION

November 29, 2018

PROPERTY IDENTIFICATION	
Application #	18441
Development	Lakeway Apartment Homes
City / County	Austin / Travis
Region/Area	7 / Urban
Population	General
Set-Aside	General
Activity	New Construction

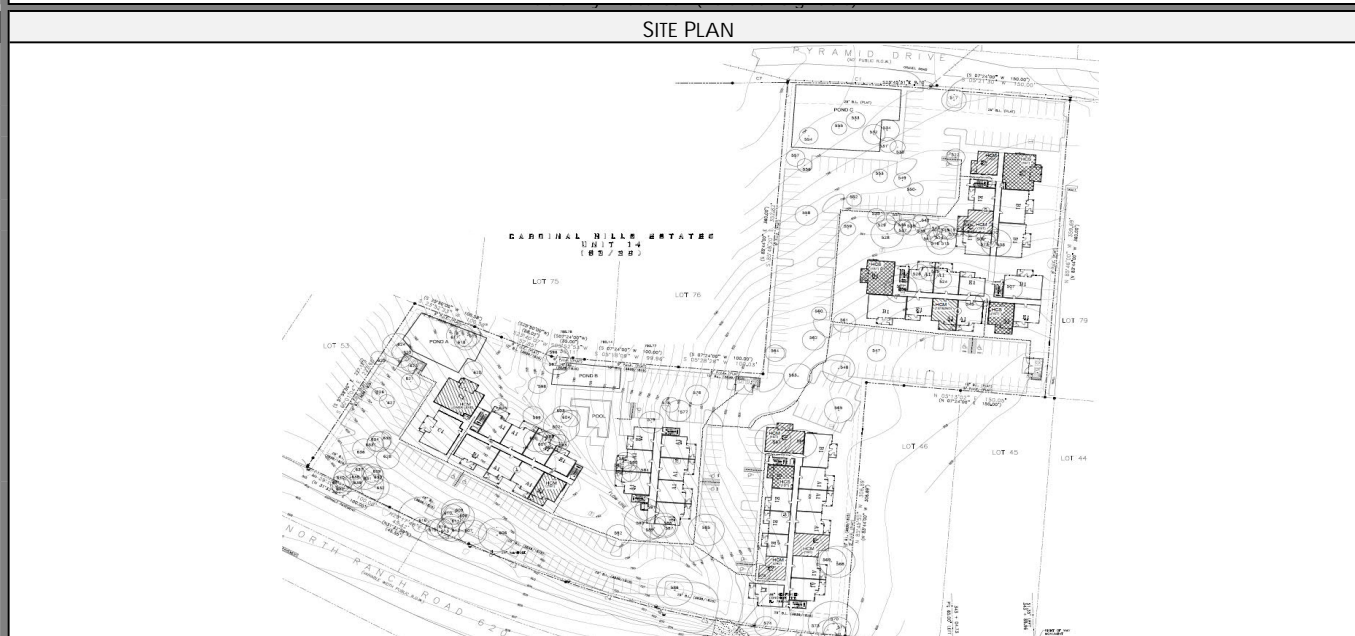
RECOMMENDATION			
TDHCA Program	Request	Recommended	
LIHTC (4% Credit)	\$1,203,960	\$1,196,981	\$6,650/Unit \$0.90

KEY PRINCIPAL / SPONSOR		
Melissa Fisher - Principal & Bill Fisher - Consultant		
Related Parties	Contractor - Yes	Seller - No



UNIT DISTRIBUTION			INCOME DISTRIBUTION		
# Beds	# Units	% Total	Income	# Units	% Total
Eff	43	24%	30%	-	0%
1	94	52%	40%	-	0%
2	30	17%	50%	-	0%
3	13	7%	60%	180	100%
4	-	0%	MR	-	0%
<b>TOTAL</b>	<b>180</b>	<b>100%</b>	<b>TOTAL</b>	<b>180</b>	<b>100%</b>

PRO FORMA FEASIBILITY INDICATORS			
Pro Forma Underwritten		TDHCA's Pro Forma	
Debt Coverage	1.15	Expense Ratio	39.3%
Breakeven Occ.	85.2%	Breakeven Rent	\$873
Average Rent	\$949	B/E Rent Margin	\$77
Property Taxes	Exempt	Exemption/PILOT	100%
Total Expense	\$4,225/unit	Controllable	\$3,151/unit



MARKET FEASIBILITY INDICATORS			
Gross Capture Rate (10% Maximum)			8.0%
Highest Unit Capture Rate	65%	0 BR/60%	43
Dominant Unit Cap. Rate	50%	1 BR/60%	94
Premiums (↑60% Rents)	Yes		
Rent Assisted Units	N/A		

DEVELOPMENT COST SUMMARY			
Costs Underwritten		Applicant's Costs	
Avg. Unit Size	785 SF	Density	30.7/acre
Acquisition		\$11K/unit	\$2,010K
Building Cost	\$85.62/SF	\$67K/unit	\$12,091K
Hard Cost		\$93K/unit	\$16,712K
Total Cost		\$169K/unit	\$30,427K
Developer Fee	\$3,501K	(74% Deferred)	Paid Year: 10
Contractor Fee	\$2,340K	30% Boost	Yes

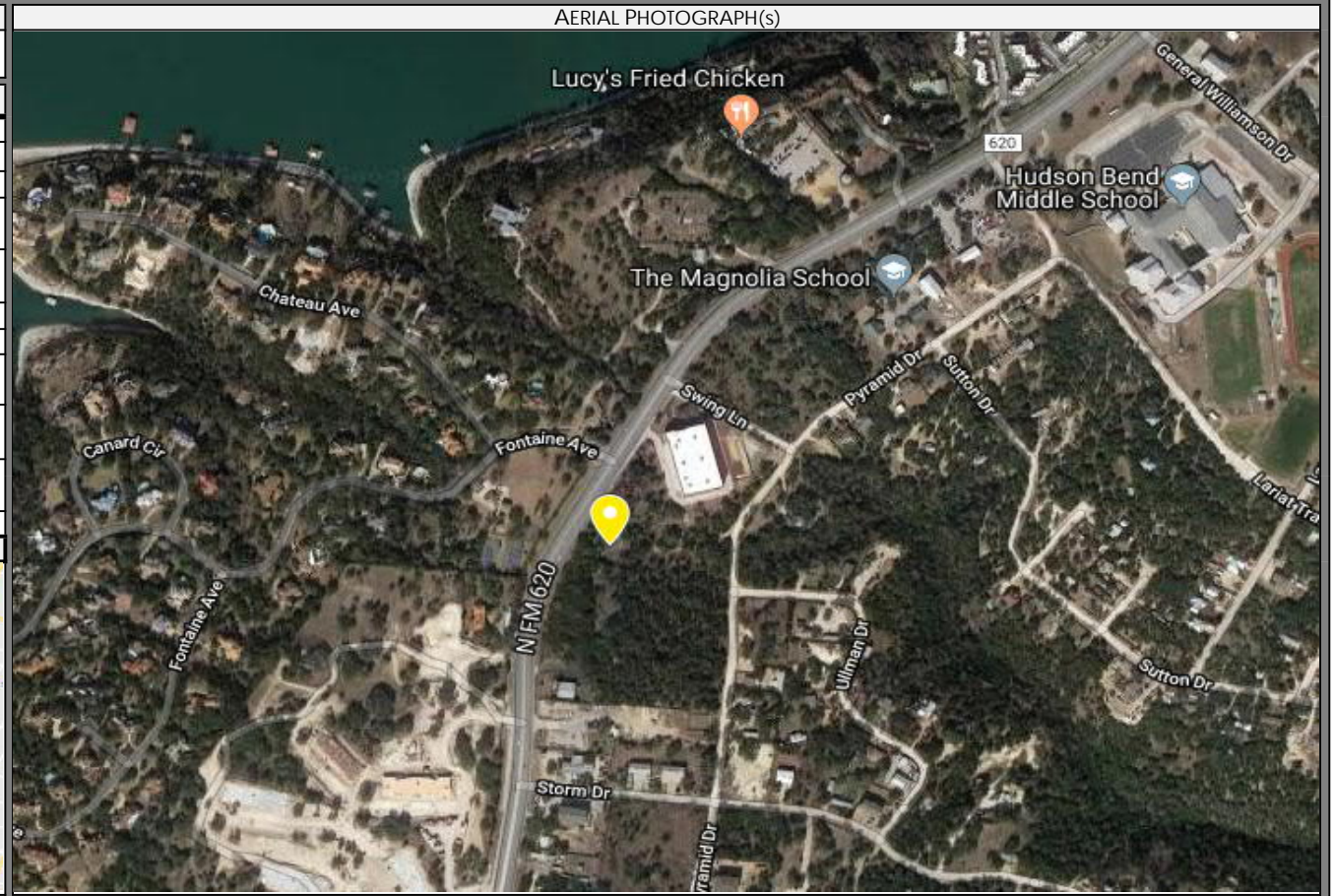
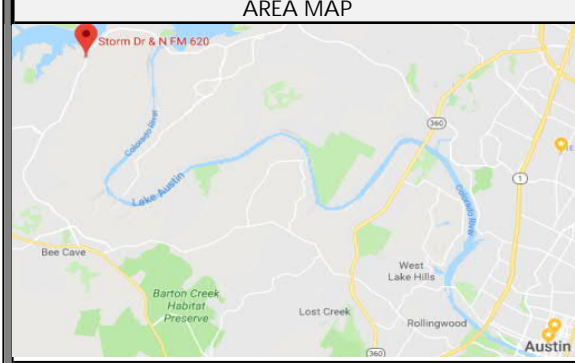


DEBT (Must Pay)					CASH FLOW DEBT / GRANT FUNDS					EQUITY / DEFERRED FEES	
Source	Term	Rate	Amount	DCR	Source	Term	Rate	Amount	DCR	Source	Amount
IBC Bank	15/40	5.25%	\$18,600,000	1.06						TBP-LOI is 42 Equity Partners	\$10,762,054
Adjustment to Debt Per \$10.302(c)	15/40	5.25%	(\$1,511,000)	1.15						Deferred Developer Fee	\$2,575,599
IBC Bank--Tel Earn out	15/40	5.25%	\$0	1.15						DDF Note paid at conversion	
TOTAL DEBT (Must Pay)			\$17,089,000		CASH FLOW DEBT / GRANTS			\$0		TOTAL EQUITY SOURCES	\$13,337,653
										TOTAL DEBT SOURCES	\$17,089,000
										TOTAL CAPITALIZATION	\$30,426,653

BOND RESERVATION / ISSUER	
% Financed with Tax-Exempt Bonds	79.1%

RISK PROFILE	
STRENGTHS/MITIGATING FACTORS	
▫	Experienced LIHTC developer in Texas.
▫	100% affordable units
▫	Tax exempt resulting from ownership by Strategic Housing Finance Corporation.
▫	Exceptional demand in the submarket, mitigating feasibility concerns by historical AMI increases.
▫	Future option to utilize Income Averaging.

WEAKNESSES/RISKS	
▫	Higher development cost, partially due to small units.
▫	Feasibility at proposed debt amount depends on initial interest-only period
▫	Unit mix is predominantly Studios & 1 Bd small units, resulting in a high Unit Capture Rate.
▫	Primary access entry from busy RM 620.



**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**DECEMBER 6, 2018**

Presentation, discussion, and possible action on a Determination Notice for Housing Tax Credits with another Issuer (#18450 Patriot Pointe Apartments, Fort Worth)

**RECOMMENDED ACTION**

**WHEREAS**, an application for 4% Housing Tax Credits for Patriot Pointe Apartments, sponsored Fort Worth Affordability, Inc. and LDG Development, was submitted on September 21, 2018;

**WHEREAS**, the Certification of Reservation from the Texas Bond Review Board was issued on November 13, 2018, and will expire on April 12, 2019;

**WHEREAS**, the proposed issuer of the bonds is the Trinity River Public Facility Corporation;

**WHEREAS**, pursuant to 10 TAC §10.101(a)(2) of the Uniform Multifamily Rules related to Undesirable Site Features, applicants must disclose to the Department if the Development Site is located within the applicable distance of any undesirable site features;

**WHEREAS**, the applicant disclosed that the proposed Development Site is located within 500 feet of an active railroad track;

**WHEREAS**, the applicant submitted a resolution from the City of Fort Worth that indicated the City Planning and Zoning Codes and Ordinances provide that multifamily developments are permitted adjacent to railroad easements with 0' of required setback which is acceptable mitigation under 10 TAC §10.101(a)(2) and, therefore, the site should be considered eligible;

**WHEREAS**, pursuant to 10 TAC §10.101(a)(3) of the Uniform Multifamily Rules related to Undesirable Neighborhood Characteristics, applicants are required to disclose to the Department the presence of certain characteristics of a proposed development site;

**WHEREAS**, the applicant has disclosed the presence of two undesirable neighborhood characteristics, including that the elementary school and 6<sup>th</sup> grade school in the attendance zone of the proposed development failed to achieve a Met Standard rating based on the 2017 Accountability Ratings by the Texas Education Agency (TEA), and the poverty rate in the census tract in which the proposed development is located has a poverty rate above 40%;

**WHEREAS**, staff has conducted a further review of the proposed development site and surrounding neighborhood and based on the mitigation provided, which includes a letter from the Chief Academic Officer for the Fort Worth Independent School District (FWISD) and declining poverty rates over the past five years, as further discussed herein, staff

recommends the proposed site be found eligible under 10 TAC §10.101(a)(3) of the Uniform Multifamily Rules; and

**WHEREAS**, in accordance with 10 TAC §1.301(d)(1), the compliance history is designated as a Category 3 and deemed acceptable by Executive Award and Review Advisory Committee (EARAC) after review and discussion;

**NOW, therefore, it is hereby**

**RESOLVED**, that the site for Patriot Pointe Apartments is hereby found to be eligible; and

**FURTHER RESOLVED**, that the issuance of a Determination Notice of \$1,270,859 in 4% Housing Tax Credits, subject to underwriting conditions that may be applicable as found in the Real Estate Analysis report posted to the Department's website for Patriot Pointe Apartments, is hereby approved as presented to this meeting.

### **BACKGROUND**

*General Information:* Patriot Pointe Apartments is the proposed new construction of 220 units to be located at 2101 and 2151 Southeast Loop 820 in Fort Worth, Tarrant County. The site will serve a general population and conforms to current zoning requirements. Of the 220 total units, 209 will be rent and income restricted at 60% of Area Median Family Income (AMFI) and the remaining 11 units will be market rate with no income or rent restrictions. The development will include 22 project based vouchers and 22 Rental Assistance Demonstration units. The census tract (1059.02) has a median household income of \$24,909, is in the fourth quartile, and has a poverty rate of 45.3%.

*Site Analysis:* The presence of an undesirable site feature under 10 TAC §10.101(a)(2)(E) of the Uniform Multifamily Rules requires additional site analysis. Patriot Pointe will be located within 500 feet of an active railroad track. The resolution of no objection from the City of Fort Worth indicated the City Planning and Zoning Codes and Ordinances provide that multifamily developments are permitted adjacent to railroad easements with 0' of required setback which is acceptable mitigation under the rule.

The undesirable neighborhood characteristics under 10 TAC §10.101(a)(3) also requires additional site analysis and those characteristics attributable to Patriot Pointe Apartments include the elementary and 6<sup>th</sup> grade school's failure to achieve a Met Standard rating in 2017 and the development is proposed to be located in a census tract that has a poverty rate above 40%.

School: The proposed development site is located within the attendance zone of Clifford Davis Elementary School (Davis) and Glencrest 6<sup>th</sup> Grade School (Glencrest), both of which received an Improvement Requirement (IR) rating for 2017. The Department received a letter from Charles Carroll, Chief Academic Officer for FWISD, stating that FWISD is currently implementing a campus improvement plan for each campus that will serve the development and further explains a variety of changes that are being made to ensure a higher rating in the upcoming years. Moreover, the letter represents that the Applicant has agreed to incorporate services into the development to help the children increase their performance in the classroom. These proposed services, as indicated in the letter, include after school tutoring and summer education programs. FWISD also represented that they believed the In reviewing the recently released 2018 TEA Accountability Ratings for Davis, the school achieved the Met Standard rating which staff believes is sufficient mitigation. FWISD believes the incorporation of Patriot Pointe into the community will go a long

way in improving each of the campus' performance and indicated that based on all of the aforementioned items, it is reasonable to conclude that Glencrest can achieve a Met Standard rating by the time Patriot Pointe is placed into service.

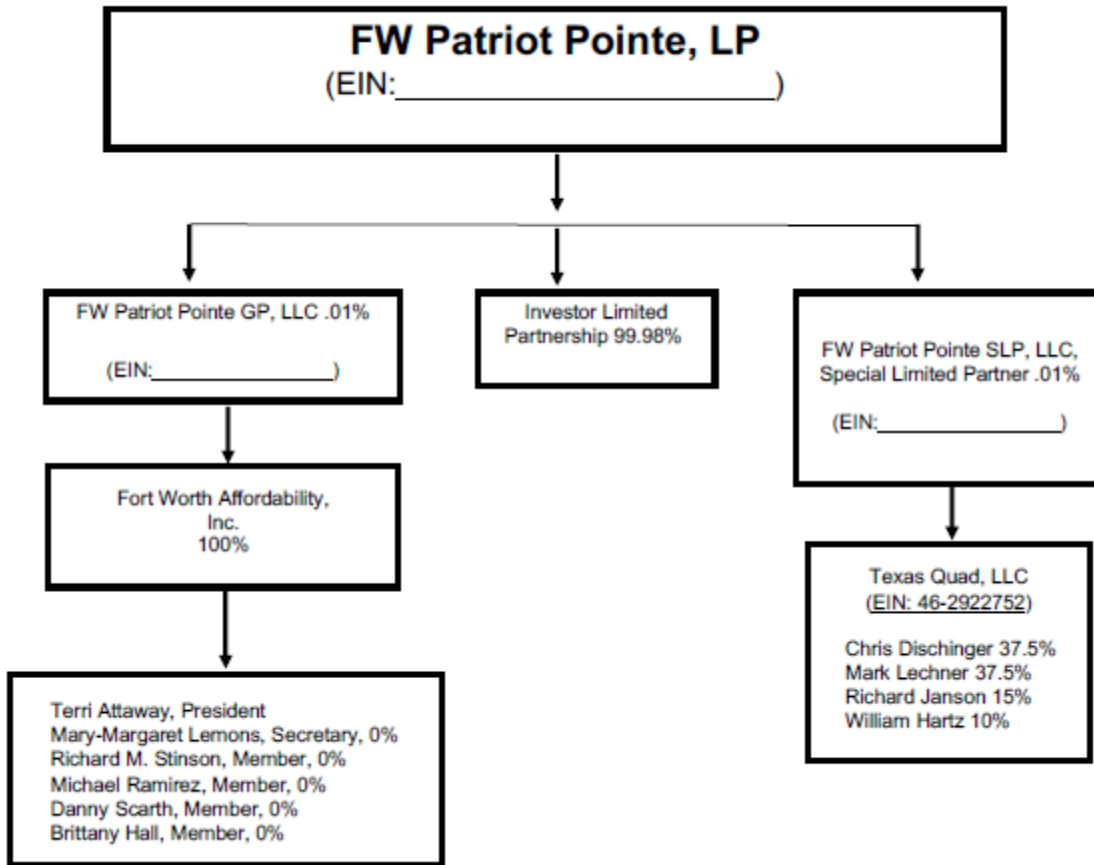
Staff believes the Improvement Required rating is not of such a nature or severity that should render the proposed Development ineligible and based on the assessment and mitigation provided staff believes the application should be found eligible pursuant to 10 TAC §10.101(a)(3) of the Uniform Multifamily Rules.

Poverty: The development is located in a census tract that has a poverty rate of 45.3% which exceeds the threshold allowed under the rule. In reviewing the poverty rate over the most recent four-year period, the rate has decreased from 51% in 2015 to 45.3% in 2018 and based on the recently released 2019 Draft Site Demographics Report, the poverty rate has decreased further, to 42.3%. Based on the demonstrated downward trend staff believes the poverty rate is not of a nature or severity that should render the proposed development site ineligible and believes it is reasonable to conclude the rate could decrease to below the threshold by the time the development is placed into service. Staff recommends the site be considered eligible pursuant to 10 TAC §10.101(a)(3).

*Organizational Structure and Previous Participation:* The Borrower is FW Patriot Pointe, LP and includes the entities and principals as illustrated in Exhibit A. The applicant's portfolio is considered a Category 3, and the previous participation was deemed acceptable by EARAC without further review or discussion.

*Public Comment:* There have been no letters of support or opposition submitted to the Department.

EXHIBIT A





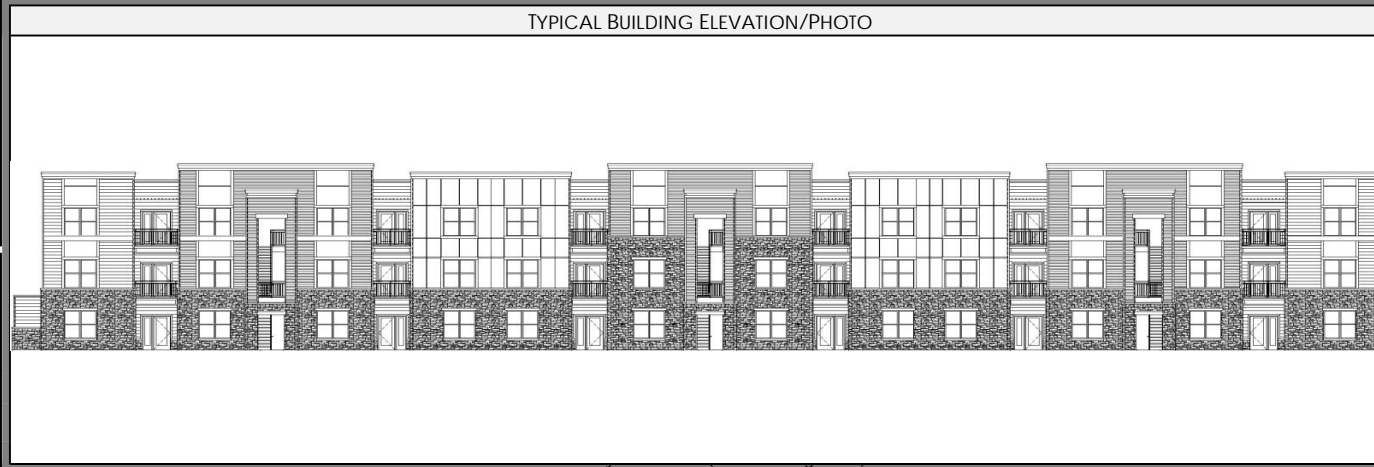
# 18450 Patriot Pointe - Application Summary

REAL ESTATE ANALYSIS DIVISION  
November 29, 2018

PROPERTY IDENTIFICATION	
Application #	18450
Development	Patriot Pointe
City / County	Fort Worth / Tarrant
Region/Area	3 / Urban
Population	General
Set-Aside	General
Activity	New Construction

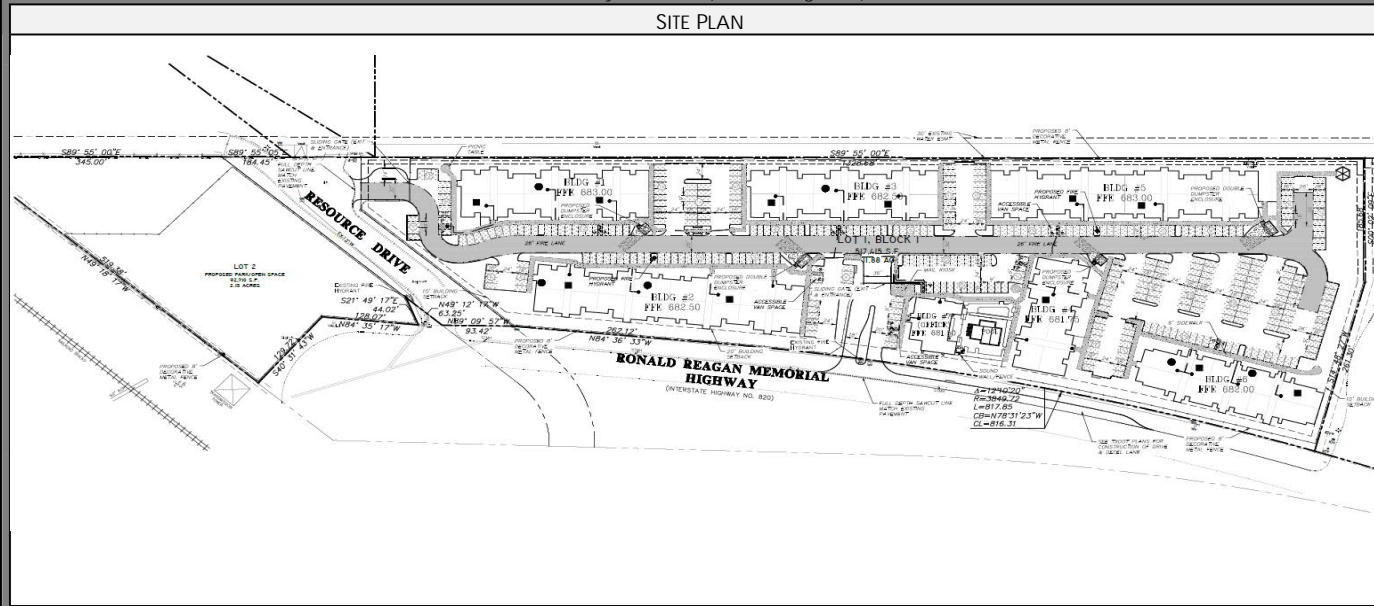
RECOMMENDATION					
TDHCA Program		Request	Recommended		
LIHTC (4% Credit)		\$1,270,859	\$1,270,859	\$5,777/Unit	\$0.94

KEY PRINCIPAL / SPONSOR		
Justin Hartz / Development Manager & Jason Trevino / Development Coordinator		
Related Parties	Contractor - Yes	Seller - No



UNIT DISTRIBUTION			INCOME DISTRIBUTION		
# Beds	# Units	% Total	Income	# Units	% Total
Eff	-	0%	30%	-	0%
1	24	11%	40%	-	0%
2	108	49%	50%	-	0%
3	76	35%	60%	209	95%
4	12	5%	MR	11	5%
<b>TOTAL</b>	<b>220</b>	<b>100%</b>	<b>TOTAL</b>	<b>220</b>	<b>100%</b>

PRO FORMA FEASIBILITY INDICATORS			
Pro Forma Underwritten		Applicant's Pro Forma	
Debt Coverage	1.18	Expense Ratio	37.1%
Breakeven Occ.	83.6%	Breakeven Rent	\$892
Average Rent	\$990	B/E Rent Margin	\$97
Property Taxes	Exempt	Exemption/PILOT	100%
Total Expense	\$4,158/unit	Controllable	\$3,179/unit



MARKET FEASIBILITY INDICATORS			
Gross Capture Rate (10% Maximum)			5.3%
Highest Unit Capture Rate	33%	2 BR/60%	90
Dominant Unit Cap. Rate	33%	2 BR/60%	90
Premiums (↑60% Rents)	Yes		\$27/Avg.
Rent Assisted Units	44	20% Total Units	

DEVELOPMENT COST SUMMARY			
Costs Underwritten		Applicant's Costs	
Avg. Unit Size	1,190 SF	Density	19.5/acre
Acquisition		\$10K/unit	\$2,207K
Building Cost	\$70.18/SF	\$84K/unit	\$18,370K
Hard Cost		\$98K/unit	\$21,484K
Total Cost		\$165K/unit	\$36,404K
Developer Fee	\$4,136K	(33% Deferred)	Paid Year: 4
Contractor Fee	\$3,008K	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	
Red Stone	17/40	5.20%	\$22,073,000	1.18	FWHA	30/0	3.00%	\$1,000,000	1.18	Enterprise	\$11,946,074	
										LDG Multifamily, LLC	\$1,384,881	
										TOTAL EQUITY SOURCES	\$13,330,955	
										TOTAL DEBT SOURCES	\$23,073,000	
TOTAL DEBT (Must Pay)			\$22,073,000		CASH FLOW DEBT / GRANTS			\$1,000,000		TOTAL CAPITALIZATION		\$36,403,955

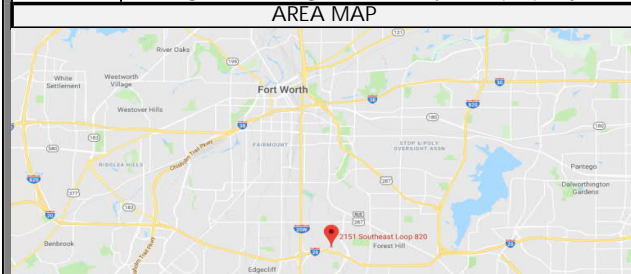
**CONDITIONS**

- 1 Receipt and acceptance by Cost Certification:
  - a: Clarification from FWHA of exact payment standard for PBV units, and appropriate utility allowance applicable to those units.
  - b: Unit/building matrix indicating the distribution of all RAD and PBV units among the residential buildings, and a utility allowance scheme for all buildings approved by TDHCA Compliance.
  - c: Attorney opinion validating federally sourced funds can be considered bona fide debt with a reasonable expectation that it will be repaid in full and further stating that the funds should not be deducted from eligible basis.
  - d: Architect certification that all noise assessment recommendations were implemented and the Development is compliant with HUD noise guidelines.
  - e: Architect certification that mitigation measures for HUD ASD guidelines were successfully implemented with regard to the 500-gallon diesel AST on the adjacent property.

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	Trinity River Public Facility Corporation
Expiration Date	4/12/2019
Bond Amount	\$25,000,000
BRB Priority	Priority 3
Close Date	
Bond Structure	Private Placement
% Financed with Tax-Exempt Bonds	74.1%

RISK PROFILE	
STRENGTHS/MITIGATING FACTORS	
◦	Applicant has national development experience of > 4000 LIHTC units.
◦	Fort Worth Housing Authority (GP) has helped to deliver 24 new developments to Fort Worth.
◦	1.15 <= DCR <= 1.35 for both IO and fully amortizing.
◦	Market Analyst projects rents substantially higher than applicant expectations for market units.
WEAKNESSES/RISKS	
◦	Potential infeasibility if indexed Swap Rate continues to increase at same pace as 2018.
◦	Undetermined mitigation necessary resulting from Aboveground Storage Tank on adjacent property.



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**TO BE POSTED  
NOT LATER THAN  
THE THIRD DAY  
BEFORE THE  
DATE OF THE  
MEETING**

1n

**BOARD ACTION REQUEST**  
**ASSET MANAGEMENT DIVISION**  
**DECEMBER 6, 2018**

Presentation, discussion, and possible action regarding a material amendment to the Housing Tax Credit Application for Parkdale Villas (HTC #16098)

**RECOMMENDED ACTION**

**WHEREAS**, Parkdale Villas (the “Development”) received an award of 9% Housing Tax Credits (“HTCs”) in 2016 for the new construction of 144 units of multifamily housing in Denison (the “City”), Grayson County;

**WHEREAS**, AMTEX Parkdale Fund, LP (the “Development Owner” or “Owner”) is now requesting approval for a significant modification of the site plan, a significant modification of the architectural design of the Development, and a modification of the residential density of at least five percent due to changes made by the City to planned road alignments and abandonments (also called vacations) along the Development site;

**WHEREAS**, the Development Owner is also requesting approval for modification of the building configurations, a slight decrease to net rentable area, changes in paving and entrance and exit points, and additions of detention ponds at the north and south ends of the site;

**WHEREAS**, Board approval is required for a significant modification of the site plan, significant modification of the architectural design of a Development, and a modification of the residential density of at least five percent as directed in Tex. Gov’t Code §2306.6712 and 10 TAC §10.405(a)(4)(A), (E), and (F), and the Owner has complied with the amendment requirements therein;

**WHEREAS**, the requested changes do not materially alter the Development in a negative manner, were not reasonably foreseeable or preventable by the Owner at the time of Application, and would not have adversely affected the selection of the Application in the Application Round; and

**WHEREAS**, the Development Owner acknowledges that the Development will still meet the construction requirements in 10 TAC Chapter 1, Subchapter B;

**NOW, therefore, it is hereby**

**RESOLVED**, that the requested material amendments to the Application for Parkdale Villas are approved as presented at this meeting, and the Acting Director and his designees are each authorized, directed, and empowered to take all necessary action to effectuate the Board’s determination.

## **BACKGROUND**

Parkdale Villas (the “Development”) received an award of 9% Housing Tax Credits in 2016 for the new construction of 144 units of multifamily housing in Denison, Grayson County. The Development, as originally proposed, would have consisted of seven walk-up, garden style buildings comprised of four three-story buildings and three two-story buildings with raised roofs and decorative stone veneer siding. The Development is owned by AMTEX Parkdale Fund, LP with AT Parkdale GP, LLC as its 0.01% General Partner owned by its 30% member, AMTEX Multi-Housing LLC (ultimately owned by Percival Vaz, Alicia Vaz, Sabrina Vaz, Nicole Vaz-Huerta, and Vanessa Vaz) and its 70% member and HUB, OM Affordable Housing, LLC (ultimately owned by Preethi Sulakhe).

On September 20, 2018, Lisa Davis submitted an amendment request identifying multiple changes to the Application, including the site plan, building plans, and changes in acreage/density.

According to the request, the changes were necessary due to the City making changes to the Parkdale Lane road alignment after submission of the Application, which made it necessary to reconfigure the placement of the buildings on the site plan, remove one building, and re-design the remaining six buildings as all three-story buildings to retain the number of units and unit mix. In addition, the request states that the City vacated portions of Fuller Circle and Skyline and Innwood Drive (a total of 1.192 acres), which led to driveway entrance changes and parking reconfigurations in the southern and mid-portions of the site due to grade changes for Parkdale Lane. The revised site plan also shows the addition of two detention ponds on the top and bottom of the Development site and a reconfiguration of the offered resident amenities, which the Owner clarified will remain the same. The Owner’s request states that there were no changes to the building elevations, architectural details or common area square footages and that the changes to the site plan and reduction in buildings had no substantive financial impact on the project.

Based on the revised information submitted for the amendment request, staff noted that in addition to the deletion of one of the buildings on the left side of the lower tract of the site, the recorded plat shows a legal description that includes 5.245 acres of land in the top tract (lot 1, Block 1) of the site and 7.195 acres of land in the bottom tract (lot 1, Block 2) of the site, for a combined total of 12.44 acres for the overall Development site. The change in acreage from the 11.25 acres included at Application (which the Owner states was in error at the time of Application due to the 1.14 acres having been described as a dedication instead of a vacation) leads to an increase in acreage and therefore a reduction in density that exceeds a five percent change (9.57%). In addition, staff also noted small changes in one of the 1 Bedroom, two of the 2 Bedroom, and one of the 3 Bedroom unit square footages, leading to a minimal, non-material net rentable area (“NRA”) increase of 4,482 (a 3.17% increase) from 141,516 at Application to 145,998 at the time of the amendment request (accounted for by a change in square footage in 1 Bedroom unit plans from 759 to 758, 2 Bedroom unit plans from 1,008 to 1,019, 1,026 to 1,141 and a change in one 3 Bedroom unit plan from 1,174 to 1,184). Common area square footage appears to have increased as well, from 5,576 square feet at the time of initial application and underwriting to 6,316 with a deck space of 758 square feet based on revised plans submitted at the time of amendment, resulting in an increase of 26.87%. The Owner’s revised plans for paving and entrance changes also now include two entrances in addition to the originally planned main entrance (one at the top right of the site and another at the lower left)

with parking more closely aligned to the buildings and accessible pathways. There has been no change to the parking or parking structures the Owner intends to provide to residents.

The Mobility and Visual/Hearing accessible units are distributed throughout all floors and buildings. The requested changes are further described below.

**Material Alterations as defined in Texas Government Code §2306.6712(d) and 10 TAC §10.405(a)(4)**

**Application**

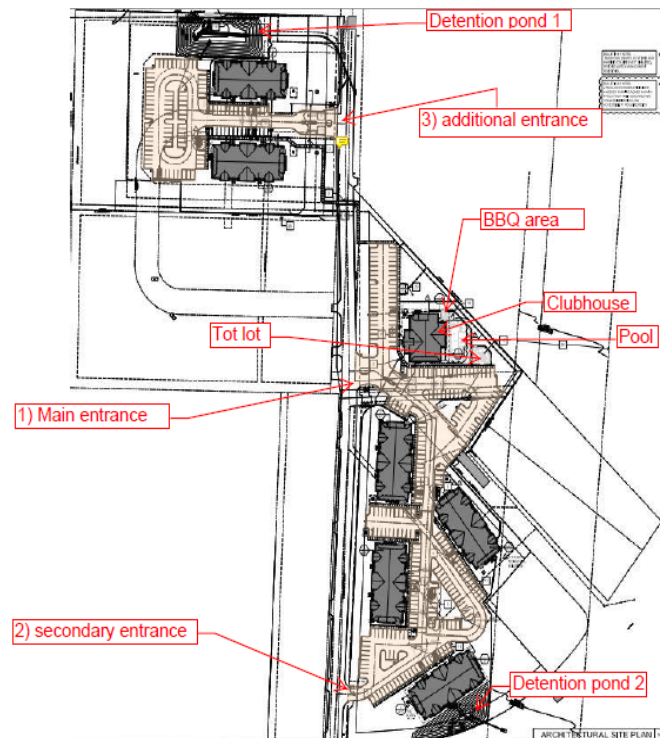


Development Site: 11.25 acres  
 Total Units: 144  
 Density: 12.8 units/acre  
 Residential Buildings: 7  
 Residential Net Rentable Area (NRA) SF: 141,516  
 Common Area SF: 5,576

Total Parking: 290

30% units: 13  
 50% units: 52  
 60% units: 63  
 MR units: 16

**Amendment**



**Development Site: 12.44 acres**  
 Total Units: 144  
**Density: 11.58 units/acre**  
**Residential Buildings: 6**  
**Residential Net Rentable Area (NRA) SF: 145,998**  
**Common Area SF: 7,074 including deck space (+26.87%)**

Total Parking: 290

30% units: 13  
 50% units: 52  
 60% units: 63  
 MR units: 16

**Material Alterations as defined in Texas Government Code §2306.6712(d) and 10 TAC §10.405(a)(4)**

Application	Amendment
1 BR/1 BA: 36 2 BR/2 BA: 72 3 BR/2 BA: 36	1 BR/1 BA: 36 2 BR/2 BA: 72 3 BR/2 BA: 36

The Owner states that overall changes were necessary to reconfigure the site to accommodate the City’s changes and adjustments with the aligning roadways and that the changes have increased cost efficiency with streamlining to one building type. The Owner states that the changes by the City were not foreseeable or preventable at the time of application.

Revised costs were requested and reviewed based on the change in the number of constructed buildings. According to the new financing exhibits submitted, the financing parties and terms have changed from what was submitted at the time of last underwriting. Original debt in the amount of \$5,698,853 at an interest rate of 5.75% amortizing over 35 years with an 18 year term offered by BBVA Compass was replaced by slightly reduced conventional debt in the amount of \$5,360,000 at a higher (5.86%) interest rate amortizing over 35 years with a 35 year term. Hudson Housing Capital, the original equity provider, has not changed, but the syndication proceeds were greatly reduced from a total of \$15,750,000 at a credit price of \$1.05 to \$13,943,551 reflecting a reduced credit price of \$0.93, leaving the Owner to account for a source difference of \$1,806,449 from the time of last approved underwriting.

To make up for the decrease in conventional debt and equity, the financing exhibits show a greatly reduced developer fee (from \$2.4M at the time of Application to \$835,000 at the time of the amendment request), reduced overall Development costs (from \$22,139,836 to \$21,573,212 based on the most recent contractor’s application for payment (AIA Forms G702/3) submitted showing total revised construction contract costs), and deferred related party General Contractor (“GC”) fees in the amount of \$983,164 (the GC’s overhead and profit). By assuming a portion of deferred developer fee at the terms of the senior debt, the deal underwrites to a 1.35 DCR. Staff performed a re-costing of the Development using Marshall & Swift estimates, but the estimate was substantially greater than the Owner’s represented costs.

The costs ultimately used in staff’s analysis were then verified by use of the revised construction contract costs, which yielded only a slight difference of \$355,219 between the Owner’s and staff’s development cost estimates, which seems largely due to slight increases in offsites and building costs in the construction contract that slightly exceed the representations on the revised financial exhibits submitted by the Owner. Though the Owner has represented deferred GC fees in addition to deferred developer fees on the revised sources & uses, staff has determined that, given the amount of cash flow based on the property’s demonstrated ability to collect gross market rents at all rent levels, the Development shows the ability to repay deferred GC fees and deferred developer fee debt in addition to supporting the property’s expenses. The capital structure identified by the Owner also includes a \$109,000 equity adjustment that has not been documented but this amount does not significantly impact the analysis. The underwriting analysis performed is attached to this Board item.

Multifamily staff has reviewed the original Application and scoring documentation against this amendment request and has concluded that none of the changes would have resulted in selection or threshold criteria changes that would have affected the application score.

Staff recommends approval of the requested material amendments to the Application.

**UNIT MIX/RENT SCHEDULE**  
**Parkdale Villas, Denison, 9% HTC #16098**

LOCATION DATA	
CITY:	Denison
COUNTY:	Grayson
PROGRAM REGION:	3

UNIT DISTRIBUTION						
# Beds	# Units	% Total	Assisted	Income	# Units	% Total
Eff	-	0.0%	0	30%	13	9.0%
1	36	25.0%	0	40%	-	0.0%
2	72	50.0%	0	50%	52	36.1%
3	36	25.0%	0	60%	63	43.8%
4	-	0.0%	0	MR	16	11.1%
<b>TOTAL</b>	<b>144</b>	<b>100.0%</b>	<b>-</b>	<b>TOTAL</b>	<b>144</b>	<b>100.0%</b>

Applicable Programs
9% Housing Tax Credits

Pro Forma ASSUMPTIONS	
Revenue Growth	2.00%
Expense Growth	3.00%
Basis Adjust	130%
Applicable Fraction	88.43%
APP % Acquisition	3.37%
APP % Construction	9.00%
Average Unit Size	1,014 sf

UNIT MIX / MONTHLY RENT SCHEDULE																			
HTC		UNIT MIX				APPLICABLE PROGRAM RENT			APPLICANT'S PRO FORMA RENTS				TDHCA PRO FORMA RENTS				MARKET RENTS		
Type	Gross Rent	# Units	# Beds	# Baths	NRA	Gross Rent	Utility Allow	Max Net Program Rent	Delta to Max	Rent psf	Net Rent per Unit	Total Monthly Rent	Total Monthly Rent	Rent per Unit	Rent psf	Delta to Max	Underwritten	Mrkt Analyst	
TC 30%	\$367	3	1	1	758	\$367	\$31	\$336	\$0	\$0.44	\$336	\$1,008	\$1,008	\$336	\$0.44	\$0	\$820	\$1.08	\$820
TC 50%	\$611	13	1	1	758	\$611	\$31	\$580	\$0	\$0.77	\$580	\$7,540	\$7,540	\$580	\$0.77	\$0	\$820	\$1.08	\$820
TC 60%	\$734	16	1	1	758	\$734	\$31	\$703	\$0	\$0.93	\$703	\$11,248	\$11,248	\$703	\$0.93	\$0	\$820	\$1.08	\$820
TC 30%	\$440	7	2	2	973	\$440	\$31	\$409	\$0	\$0.42	\$409	\$2,863	\$2,863	\$409	\$0.42	\$0	\$940	\$0.97	\$940
TC 50%	\$733	11	2	2	973	\$733	\$31	\$702	\$0	\$0.72	\$702	\$7,722	\$7,722	\$702	\$0.72	\$0	\$940	\$0.97	\$940
TC 50%	\$733	15	2	2	1,019	\$733	\$31	\$702	\$0	\$0.69	\$702	\$10,530	\$10,530	\$702	\$0.69	\$0	\$975	\$0.96	\$975
TC 60%	\$880	3	2	2	1,019	\$880	\$31	\$849	\$0	\$0.83	\$849	\$2,547	\$2,547	\$849	\$0.83	\$0	\$975	\$0.96	\$975
TC 60%	\$880	28	2	2	1,141	\$880	\$31	\$849	\$0	\$0.74	\$849	\$23,772	\$23,772	\$849	\$0.74	\$0	\$990	\$0.87	\$990
TC 30%	\$508	3	3	2	1,137	\$508	\$38	\$470	\$0	\$0.41	\$470	\$1,410	\$1,410	\$470	\$0.41	\$0	\$1,115	\$0.98	\$1,115
TC 50%	\$848	13	3	2	1,137	\$848	\$38	\$810	\$0	\$0.71	\$810	\$10,530	\$10,530	\$810	\$0.71	\$0	\$1,115	\$0.98	\$1,115
TC 60%	\$1,017	2	3	2	1,137	\$1,017	\$38	\$979	\$0	\$0.86	\$979	\$1,958	\$1,958	\$979	\$0.86	\$0	\$1,115	\$0.98	\$1,115
TC 60%	\$1,017	14	3	2	1,184	\$1,017	\$38	\$979	\$0	\$0.83	\$979	\$13,706	\$13,706	\$979	\$0.83	\$0	\$1,155	\$0.98	\$1,155
MR		4	1	1	758	\$0	\$31		NA	\$0.92	\$699	\$2,796	\$2,936	\$734	\$0.97	NA	\$734	\$0.97	\$820
MR		8	2	2	1,141	\$0	\$31		NA	\$0.73	\$838	\$6,704	\$7,040	\$880	\$0.77	NA	\$880	\$0.77	\$990
MR		4	3	2	1,184	\$0	\$38		NA	\$0.82	\$969	\$3,876	\$4,068	\$1,017	\$0.86	NA	\$1,017	\$0.86	\$1,155
<b>TOTALS/AVERAG</b>		<b>144</b>			<b>145,998</b>				<b>(\$0)</b>	<b>\$0.74</b>	<b>\$751</b>	<b>\$108,210</b>	<b>\$108,878</b>	<b>\$756</b>	<b>\$0.75</b>	<b>\$0</b>	<b>\$963</b>	<b>\$0.95</b>	<b>\$976</b>

<b>ANNUAL POTENTIAL GROSS RENT:</b>	<b>\$1,298,520</b>	<b>\$1,306,540</b>
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**CAPITALIZATION / TOTAL DEVELOPMENT BUDGET / ITEMIZED BASIS**

*Parkdale Villas, Denison, 9% HTC #16098*

DEBT / GRANT SOURCES																	
APPLICANT'S PROPOSED DEBT/GRANT STRUCTURE									Prior Underwriting		AS UNDERWRITTEN DEBT/GRANT STRUCTURE						
DEBT (Must Pay)	Fee	Cumulative DCR		Pmt	Rate	Amort	Term	Principal	Prior Underwriting		Principal	Term	Amort	Rate	Pmt	Cumulative	
		UW	App						Applicant	TDHCA						DCR	LTC
City		1.35	1.40	360,719	5.86%	35	35	\$5,360,000	\$5,698,853	\$5,698,853	\$5,360,000	35	35	5.86%	\$360,719	1.40	25.3%
0		1.35	1.40		0.00%	0	0	\$0			\$204,000	35	35	5.86%	\$13,729	1.35	1.0%
<b>CASH FLOW DEBT / GRANTS</b>																	
City of Denison Fee Waiver		1.35	1.40		0.00%	0	0	\$100	\$100	\$100	\$100	0	0	0.00%		1.35	0.0%
AMTEX Construction LLC		1.35	1.40		0.00%	0	0	\$983,164			\$983,164	0	0	0.00%		1.35	4.6%
AMTEX Multi-Housing LLC		1.35	1.40		0.00%	0	0	\$0			\$0	0	0	0.00%		1.35	0.0%
AMTEX Multi-Housing LLC		1.35	1.40		0.00%	0	0	\$7,178			\$0	0	0	0.00%		1.35	0.0%
				\$360,719	<b>TOTAL DEBT / GRANT SOURCES</b>			\$6,350,442			\$6,547,264	<b>TOTAL DEBT SERVICE</b>			\$374,448	1.35	30.9%
<b>NET CASH FLOW</b>		\$125,131	\$144,783					<b>APPLICANT NET OPERATING INCOME</b>				\$505,502	\$131,054	<b>NET CASH FLOW</b>			

EQUITY SOURCES														
APPLICANT'S PROPOSED EQUITY STRUCTURE						Prior Underwriting		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						Total Developer Fee:	\$835,000
Hudson Housing Capital	LIHTC Equity	65.7%	\$1,500,000	0.93	\$13,943,551	\$15,750,000	\$15,750,000	\$13,943,551	\$0.9296	\$1,500,000	65.7%	\$10,417	Applicant Request	
Hudson Housing Capital	Equity Adj. (Commercial tax rate change)	0.5%		#DIV/0!	\$109,000						0.0%			
AMTEX Development LLC	Deferred Developer Fees	3.8%	(98% Deferred)		\$815,000	\$690,883	\$615,260	\$727,178	(87% Deferred)		3.4%		<b>Total Developer Fee: \$835,000</b>	
Additional (Excess) Funds Req'd		0.0%			\$0	-\$75,623	\$0	\$0			0.0%			
<b>TOTAL EQUITY SOURCES</b>		70.1%			\$14,867,551	\$16,365,260	\$16,365,260	\$14,670,729			69.1%	15-Year Cash Flow:	<b>\$2,249,669</b>	
<b>TOTAL CAPITALIZATION</b>					\$21,217,993	\$22,064,213	\$22,064,213	\$21,217,993					15-Yr Cash Flow after Deferred Fee:	\$1,522,491

\$20,286,815

DEVELOPMENT COST / ITEMIZED BASIS														
APPLICANT COST / BASIS ITEMS				Prior Underwriting		TDHCA COST / BASIS ITEMS				COST VARIANCE				
Acquisition	New Const. Rehab	Total Costs		Applicant	TDHCA	Total Costs		New Const. Rehab	Acquisition	%	\$			
Land Acquisition		\$12,322 / Unit	\$1,774,400	\$1,774,400	\$1,774,400	\$12,322 / Unit				0.0%	\$0			
Building Acquisition	\$0	\$ / Unit	\$0	\$0	\$0	\$ / Unit			\$0	0.0%	\$0			
Closing costs & acq. legal fees			\$25,000	\$34,000	\$34,000	\$25,000					\$0			
Off-Sites		\$4,773 / Unit	\$687,323	\$545,000	\$545,000	\$730,226	\$5,071 / Unit			-5.9%	(\$42,903)			
Site Work	\$1,804,642	\$13,363 / Unit	\$1,924,307	\$1,428,000	\$1,428,000	\$2,647,115	\$18,383 / Unit	\$1,804,642		-27.3%	(\$722,808)			
Site Amenities	\$1,032,695	\$7,171 / Unit	\$1,032,695	\$560,000	\$560,000	\$229,568	\$1,594 / Unit	\$1,032,695		349.8%	\$803,127			
Building Cost	\$8,990,246	\$61.58 /sf	\$62,432/Unit	\$8,990,246	\$9,171,331	\$9,455,831	\$9,436,608	\$65,532/Unit	\$64.64 /sf	\$9,436,608	-4.7%	(\$446,362)		
Contingency	\$0	0.00%	0.00%	\$0	\$740,117	\$740,117	\$0	0.00%	0.00%	\$0	0.0%	\$0		
Contractor Fees	\$1,636,040	13.83%	13.62%	\$1,720,537	\$1,720,536	\$1,720,536	\$1,666,810	13.19%	13.33%	\$1,636,040	3.2%	\$53,727		
Soft Costs	0	\$2,133,053	\$17,486 / Unit	\$2,518,053	\$1,894,855	\$1,894,855	\$2,518,053	\$17,486 / Unit	\$2,133,053	\$0	0.0%	\$0		
Financing	0	\$796,161	\$8,684 / Unit	\$1,250,432	\$1,518,027	\$1,518,027	\$1,250,432	\$8,684 / Unit	\$796,161	\$0	0.0%	\$0		
Developer Fee	\$0	\$835,000	5.09%	4.85%	\$835,000	\$2,489,290	\$2,481,314	\$835,000	4.74%	4.96%	\$835,000	\$0	0.0%	\$0
Reserves			\$3,194 / Unit	\$460,000	\$264,280	\$264,280	\$460,000	\$3,194 / Unit			0.0%	\$0		
<b>TOTAL HOUSING DEVELOPMENT COST (UNADJUSTED BASIS)</b>		\$0	\$17,227,837	\$147,347 / Unit	\$21,217,993	\$22,139,836	\$22,416,361	\$21,573,212	\$149,814 / Unit	\$17,674,199	\$0	-1.6%	(\$355,219)	
Acquisition Cost	\$0			\$0										
Contingency		\$0		\$0										
Contractor's Fee		\$0		\$0										
Financing/Soft Costs		\$0		\$0										
Developer Fee	\$0	\$0		\$0										
Reserves		\$0		\$0										
<b>ADJUSTED BASIS / COST</b>		\$0	\$17,227,837	\$147,347/unit	\$21,217,993	\$22,064,213	\$22,416,361	\$21,573,212	\$149,814/unit	\$17,674,199	\$0	-1.6%	(\$355,219)	
<b>TOTAL HOUSING DEVELOPMENT COSTS (Applicant's Uses are within 5% of TDHCA Estimate):</b>					\$21,217,993									

**CAPITALIZATION / DEVELOPMENT COST BUDGET / ITEMIZED BASIS ITEMS**

*Parkdale Villas, Denison, 9% HTC #16098*

CREDIT CALCULATION ON QUALIFIED BASIS				
	Applicant		TDHCA	
	Acquisition	Construction Rehabilitation	Acquisition	Construction Rehabilitation
<b>ADJUSTED BASIS</b>	\$0	\$17,227,837	\$0	\$17,674,199
Deduction of Federal Grants	\$0	\$0	\$0	\$0
<b>TOTAL ELIGIBLE BASIS</b>	\$0	\$17,227,837	\$0	\$17,674,199
High Cost Area Adjustment		130%		130%
<b>TOTAL ADJUSTED BASIS</b>	\$0	\$22,396,188	\$0	\$22,976,459
Applicable Fraction	88.43%	88.43%	88.43%	88.43%
<b>TOTAL QUALIFIED BASIS</b>	\$0	\$19,804,331	\$0	\$20,317,448
Applicable Percentage	3.37%	9.00%	3.37%	9.00%
<b>ANNUAL CREDIT ON BASIS</b>	\$0	\$1,782,390	\$0	\$1,828,570
<b>CREDITS ON QUALIFIED BASIS</b>		\$1,782,390		\$1,828,570

Method	ANNUAL CREDIT CALCULATION BASED ON APPLICANT BASIS		FINAL ANNUAL LIHTC ALLOCATION		
	Annual Credits	Proceeds	Credit Price \$0.9296	Variance to Request	
			Credit Allocation	Credits	Proceeds
<b>Eligible Basis</b>	\$1,782,390	\$16,568,562	----	----	----
<b>Needed to Fill Gap</b>	\$1,578,227	\$14,670,729	----	----	----
<b>Applicant Request</b>	\$1,500,000	\$13,943,551	<b>\$1,500,000</b>	<b>\$0</b>	<b>\$0</b>

	Development Cost/SF	
	Application	TDHCA
<b>Acquisition &amp; Hard Costs</b>	\$99.05	\$100.76
<b>Hard Costs</b>	\$99.05	\$100.76
<b>Building Costs</b>	\$64.84	\$64.64
<b>Total Points Claimed:</b>		12

BUILDING COST ESTIMATE				
CATEGORY	FACTOR	UNITS/SF	PER SF	AMOUNT
Base Cost:	Garden (Up to 4-story)	145,998 SF	\$65.44	9,553,700
<b>Adjustments</b>				
Exterior Wall Finish	2.40%		1.57	\$229,289
Elderly	0.00%		0.00	0
9-Ft. Ceilings	3.30%		2.16	315,272
Roof Adjustment(s)			1.18	172,800
Subfloor			(0.15)	(21,900)
Floor Cover			2.56	373,755
Breezeways	\$28.36	3,057	0.59	86,691
Balconies	\$28.33	15,626	3.03	442,718
Plumbing Fixtures	\$1,020	324	2.26	330,480
Rough-ins	\$500	288	0.99	144,000
Built-In Appliances	\$1,730	144	1.71	249,120
Exterior Stairs	\$2,330	12	0.19	27,960
Heating/Cooling			2.14	312,436
Enclosed Corridors	\$48.63	0	0.00	0
Carports	\$11.94	0	0.00	0
Garages		0	0.00	0
Comm &/or Aux Bldgs	\$84.46	6,316	3.65	533,467
Elevators		0	0.00	0
<b>Other:</b>			0.00	0
Fire Sprinklers	\$2.59	155,371	2.76	402,411
<b>SUBTOTAL</b>			<b>90.08</b>	<b>13,152,199</b>
Current Cost Multiplier	1.01		0.90	131,522
Local Multiplier	0.90		(9.01)	(1,315,220)
<b>TOTAL BUILDING COSTS</b>			<b>81.98</b>	<b>\$11,968,502</b>
Plans, specs, survey, bldg permits	3.30%		(2.71)	(\$394,961)
Contractor's OH & Profit	11.50%		(9.43)	(1,376,378)
<b>NET BUILDING COSTS</b>		\$70.814/unit	\$69.84/sf	\$10,197,163

## Long-Term Pro Forma

*Parkdale Villas, Denison, 9% HTC #16098*

	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%	\$1,225,107	\$1,249,609	\$1,274,601	\$1,300,093	\$1,326,095	\$1,464,116	\$1,616,503	\$1,784,750	\$2,175,600	\$2,402,038
TOTAL EXPENSES	3.00%	\$719,605	\$740,703	\$762,424	\$784,787	\$807,811	\$933,547	\$1,079,005	\$1,247,294	\$1,667,341	\$1,931,926
<b>NET OPERATING INCOME ("NOI")</b>		<b>\$505,502</b>	<b>\$508,906</b>	<b>\$512,177</b>	<b>\$515,306</b>	<b>\$518,284</b>	<b>\$530,569</b>	<b>\$537,498</b>	<b>\$537,456</b>	<b>\$508,259</b>	<b>\$470,112</b>
<b>MUST -PAY DEBT SERVICE</b>											
TOTAL DEBT SERVICE		\$374,448	\$374,448	\$374,448	\$374,448	\$374,448	\$374,448	\$374,448	\$374,448	\$374,448	\$374,448
<b>ANNUAL CASH FLOW</b>		<b>\$131,054</b>	<b>\$134,458</b>	<b>\$137,729</b>	<b>\$140,858</b>	<b>\$143,837</b>	<b>\$156,122</b>	<b>\$163,050</b>	<b>\$163,008</b>	<b>\$133,811</b>	<b>\$95,664</b>
<b>CUMULATIVE NET CASH FLOW</b>		<b>\$131,054</b>	<b>\$265,513</b>	<b>\$403,242</b>	<b>\$544,100</b>	<b>\$687,937</b>	<b>\$1,445,832</b>	<b>\$2,249,669</b>	<b>\$3,067,946</b>	<b>\$4,574,660</b>	<b>\$5,137,684</b>
DEBT COVERAGE RATIO		1.35	1.36	1.37	1.38	1.38	1.42	1.44	1.44	1.36	1.26
EXPENSE/INCOME RATIO		58.7%	59.3%	59.8%	60.4%	60.9%	63.8%	66.7%	69.9%	76.6%	80.4%
Deferred Developer Fee Balance		\$596,124	\$461,665	\$323,936	\$183,078	\$39,241	\$0	\$0	\$0	\$0	\$0



30141 AGOURA RD. ♦ STE. #100 ♦ AGOURA HILLS, CA ♦ 91301-4332  
PHONE: (818) 706-0694 ♦ FAX: (818) 706-3752

October 5, 2018

Laura DeBellas  
Senior Asset Manager (Region 3)  
Asset Management Division  
Texas Department of Housing & Community Affairs (TDHCA)  
221 E. 11th St.  
Austin, TX 78701-2410

**RE: 16098 – Parkdale Villas Application Amendment - Resubmittal**

Dear Ms. DeBellas:

As part of the LURA Origination Request we are submitting additional information for our Application Amendment request.

All of the information with regards to the changes is specified below:

The change to the application is a new site plan with a reduction in the number of residential buildings; originally there were seven buildings comprised of four 3-story buildings and three 2-story buildings. The building configuration now consists of six 3-story buildings, thereby allowing the total number of units and the unit mix to remain the same.

The change was necessary due to the City of Denison making changes to the Parkdale Lane road alignment after the application submission which made it necessary to reconfigure the placement of the buildings on the site plan while maintaining the same unit mix (see side by side site summary comparison attached. )

In addition to this the City vacated portions of Fuller Circle and Skyline and Innwood Drive (total of 1.192 acres). The driveway entrance and parking configuration in the southern portion of the site and the mid-portion of the site at Skyline/Innwood section were also adjusted due to grade changes for Parkdale Lane (see side by side site plan comparison and final recorded plat attached).

There were no changes to the elevations, architectural details or common area square footage as a result of the road alignment changes.

The changes to the site plan and the reduction of a building had no real financial impact on the project due to the fact that the unit mix remained the same and we gained cost efficiency with having only one building type. I have attached a revised development cost schedule for where we are currently, however, the majority of the changes stem from going from conceptual drawings (at application time) to final construction drawings and actual bids during construction.

The changes to the road alignment by the City of Denison were not foreseeable at the time of the application.

Thank you for your consideration. Should you have any additional questions, please contact me at (818) 706-0694, Extension 112 or email me directly at [ldavis@amcalhousing.com](mailto:ldavis@amcalhousing.com).

Sincerely,



Lisa M. Davis  
Project Manager

## SIDE BY SIDE SITE SUMMARY COMPARISON

SITE SUMMARY	
SITE AREA	+/-539,6360 (12.39 ACRES)
DENSITY	11.6 DU/AC

UNIT SUMMARY						
	UNIT 1	UNIT 2	UNIT 3	UNIT 3ALT	UNIT 4	UNIT 4ALT
UNIT NET RENTABLE SQUARE FOOTAGE	759	1026	973	1008	1137	1174
# OF BEDS / BATHS PER UNIT	1 BED/ 1 BATH	2 BED/ 2 BATH		3 BED/ 2 BATH		
# OF UNITS PER BUILDING						
16 UNIT - BLDG TYPE I (2 STORY)	4	4	2	2	2	2
24 UNIT - BLDG TYPE II (3 STORY)	6	6	3	3	3	3

UNIT MIX								
	BLDG TYPE I	BLDG TYPE II	UNIT 1	UNIT 2	UNIT 3	UNIT 3ALT	UNIT 4	UNIT 4ALT
BUILDING AND UNIT SITE TOTALS	3	4	36	36	18	18	18	18
TOTAL NET RENTABLE SQUARE FOOTAGES			27324	36936	17514	18144	20466	21132
BEDROOM MIX			36	72			36	
PERCENTAGE			25%	50%			25%	
TOTAL UNITS	144							
GRAND TOTAL NET RENTABLE SQ. FT.	141516							

PARKING SUMMARY	
SURFACE SPACES PROVIDED	290
PARKING REQUIRED PER CITY OF DENISON, ZONE MF-1	
1.5 SPACE/ 1BD	54
2.0 SPACE/ 2BD	144
2.5 SPACE/ 3BD	90
TOTAL SPACES REQUIRED	288

### DENISON UNIT SUMMARY AND SITE BUILDING AREA:

UNIT TYPE	1	2	3	3-ALT	4	4-ALT	TOTAL	CORRIDORS	UTILITY	AMENITY	TOTAL
BEDROOMS	1 BR	2 BR	2 BR	2 BR	3 BR	3 BR					
AREA	900	1,188	1,073	1,119	1,238	1,285					
BUILDING TYPE 1	6	6	3	3	3	3	24	1,356	100		1,456
BUILDING 1 ON SITE							6				6
TOTAL NO. UNITS	36	36	18	18	18	18	144	8,136	600		8,736
TOTAL UNIT S.F. AREA	32,400	42,768	19,314	20,142	22,284	23,130	160,038				
UNIT TYPE %	25.0%	25.0%	12.5%	12.5%	12.5%	12.5%					
BEDROOM TYPE %	25.0%	50.0%		25.0%							

RESIDENTIAL BUILDING AREA TOTAL:					170,236
RECREATION CENTER AREA:				6,767	
TOTAL BUILDING AREA:					177,003
SITE AREA: 11.67 ACRES =	11.67	X	43,560 =	508,444	
DENSITY:			12.3 UNITS PER ACRE		

### DENISON OPEN SPACE SUMMARY:

TYPE			
TOTAL SITE AREA	11.67 ACRES	508,444	S.F.
15% OF SITE			
TOTAL		76,267	S.F.

### OPEN SPACE PROVIDED:

TYPE			
TOTAL SITE AREA	11.67 ACRES	508,444	S.F.
TOTAL BUILDING AREA			177,003 S.F.
TOTAL TRASH ENCLOSURES			400 S.F.
TOTAL PARKING AREA			129,667 S.F.
TOTAL			307,070 S.F.

### DENISON UNIT RENTABLE AREA:

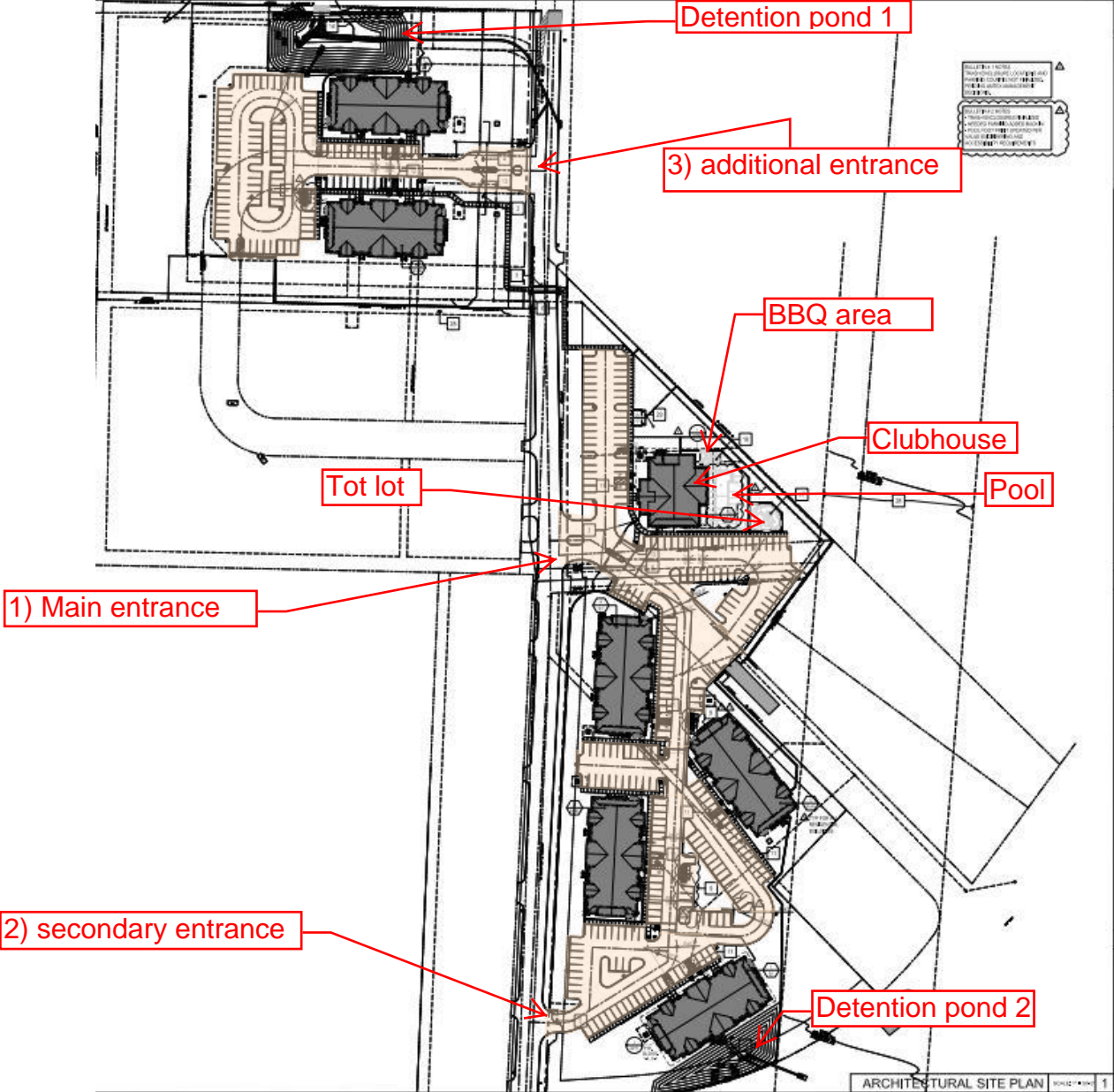
UNIT TYPE	1	2	3	3-ALT	4	4-ALT	TOTAL
BEDROOMS	1 BR	2 BR	2 BR	2 BR	3 BR	3 BR	
RENTABLE AREA	758	1,141	973	1,019	1,137	1,184	
BUILDING TYPE 1	6	6	3	3	3	3	24
BUILDING 1 ON SITE							6
TOTAL NO. UNITS	36	36	18	18	18	18	144
TOTAL UNIT RENTABLE AREA	27,288	41,076	17,514	18,342	20,466	21,312	145,998



SIDE BY SIDE SITE PLAN COMPARISON



Conceptual Site Plan @ Application Submittal

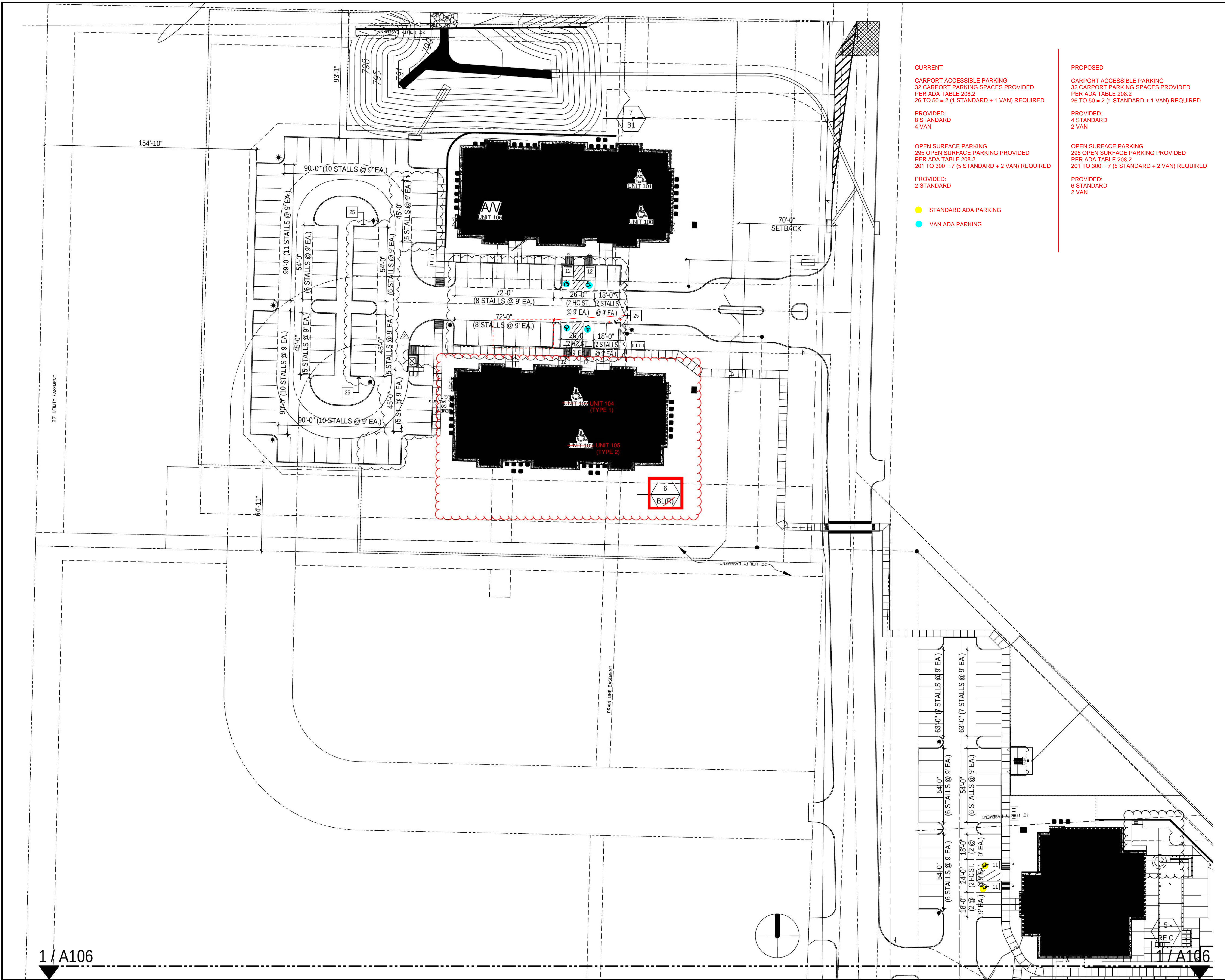


Permitted/ Built Site Plan









- CURRENT**
- CARPORT ACCESSIBLE PARKING  
32 CARPORT PARKING SPACES PROVIDED  
PER ADA TABLE 208.2  
26 TO 50 = 2 (1 STANDARD + 1 VAN) REQUIRED
  - PROVIDED:  
8 STANDARD  
4 VAN
  - OPEN SURFACE PARKING  
295 OPEN SURFACE PARKING PROVIDED  
PER ADA TABLE 208.2  
201 TO 300 = 7 (5 STANDARD + 2 VAN) REQUIRED
  - PROVIDED:  
2 STANDARD
- PROPOSED**
- CARPORT ACCESSIBLE PARKING  
32 CARPORT PARKING SPACES PROVIDED  
PER ADA TABLE 208.2  
26 TO 50 = 2 (1 STANDARD + 1 VAN) REQUIRED
  - PROVIDED:  
4 STANDARD  
2 VAN
  - OPEN SURFACE PARKING  
295 OPEN SURFACE PARKING PROVIDED  
PER ADA TABLE 208.2  
201 TO 300 = 7 (5 STANDARD + 2 VAN) REQUIRED
  - PROVIDED:  
6 STANDARD  
2 VAN
- STANDARD ADA PARKING  
● VAN ADA PARKING

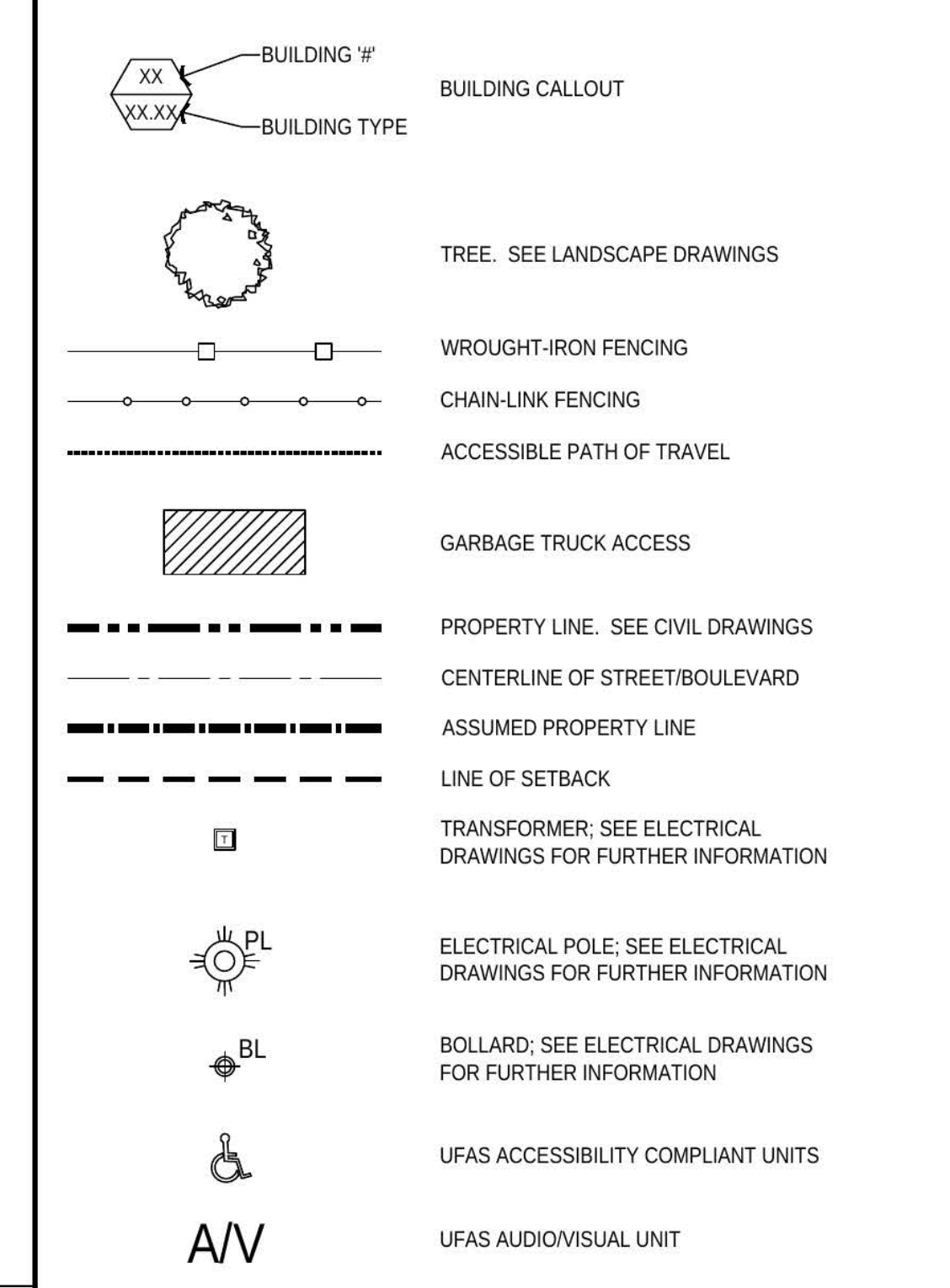
**ARCHITECTURAL SITE PLAN KEYNOTES**

- ± 2.5 ACRE PASSIVE GREEN AREA
- DOG PARK
- PEDESTRIAN GATE
- VEHICLE ENTRY GATE
- FIRE DEPARTMENT ACCESS GATE / SECONDARY ROAD (ASPHALT)
- ACCESSIBLE CURB CUT
- CROSSWALK
- BICYCLE RACK/PARKING
- TRASH ENCLOSURE; SEE SHEET A20 FOR FURTHER INFORMATION
- LIFT STATION
- STANDARD DISABLED ACCESSIBLE PARKING STALL WITH STANDARD ACCESSIBLE PARKING STALL SIGNAGE
- VAN DISABLED ACCESSIBLE PARKING STALL WITH STANDARD VAN ACCESSIBLE PARKING STALL SIGNAGE
- VEHICLE EXIT GATE
- SEE CIVIL DRAWINGS FOR DETENTION AREA SIZE
- SLIDING VEHICLE EXIT GATE
- PICNIC / BBQ AREA
- CHILDRENS PLAY AREA
- FIRE DEPARTMENT CONNECTION
- KNOX BOX LOCATION
- CONCRETE SIDEWALK
- LOUNGE AREA
- OPEN SPACE / LAWN AREA
- DECOMPOSED GRANITE WALKING PATH
- AC CONDENSER UNITS BANK
- CAR PORT ROOF ABOVE
- MONUMENT SIGN (DEFERRED SUBMITTAL)
- RECYCLE BIN; FORT WORTH REQUIRED
- EASEMENT; SEE CIVIL DRAWINGS
- DOG PARK AREA; SEE LANDSCAPE DRAWINGS

**ARCHITECTURAL SITE PLAN GENERAL NOTES**

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- REFER TO LANDSCAPE DRAWINGS FOR ALL FENCING, PLANTING, GATES, AND HARDSCAPE.
- UFAS COMPLIANT UNITS (2 PER UNIT TYPE = 12 UNITS); SEE SITE PARKING A105 / A106
- AUDIOVISUAL ALARMS TO BE PROVIDED (2% OF ACCESSIBLE UNITS = 1); BUILDING 01 - UNIT 104 (UNIT 1 TYPE)  
BUILDING 03 - UNIT 100 (UNIT 4 TYPE)  
BUILDING 04 - UNIT 103 (UNIT 2 TYPE)  
BUILDING 07 - UNIT 106 (UNIT 3 TYPE)
- BUILDING ADDRESS TO BE LOCATED ON MONUMENT SIGN

**SITE PLAN LEGEND**



**KTGY Group, Inc.**  
12555 West Jefferson Blvd.,  
Suite 100  
Los Angeles, California 90066  
ktgy.com  
310.394.2623

**KTGY Project No:** 160630

**Project Contact:** Gary Leus  
**Email:** gleus@ktgy.com

**Principal:** Manny Gonzalez  
**Project Designer:** Doug Heaton

**Developer**

AMTEX  
30141 AGOURA ROAD,  
SUITE 100  
AGOURA HILLS, CA  
PHONE NO. 818-706-0694  
FAX NO. 818-889-9158

DENISON FAMILY HOMES  
DENISON, TX.

No.	Date	Description
1	10/28/16	100% DESIGN DEVELOPMENT
2	11/14/16	50% CONSTRUCTION DOCUMENTS
3	12/01/16	100% C.D.; 1ST BLDG. SUBMITTAL
4	02/21/17	PERMIT SET
5	05/24/17	BULLETIN #1
6	08/02/17	BULLETIN #2
7	08/07/17	ASK 8.0
8	09/18/17	ASK 9.0

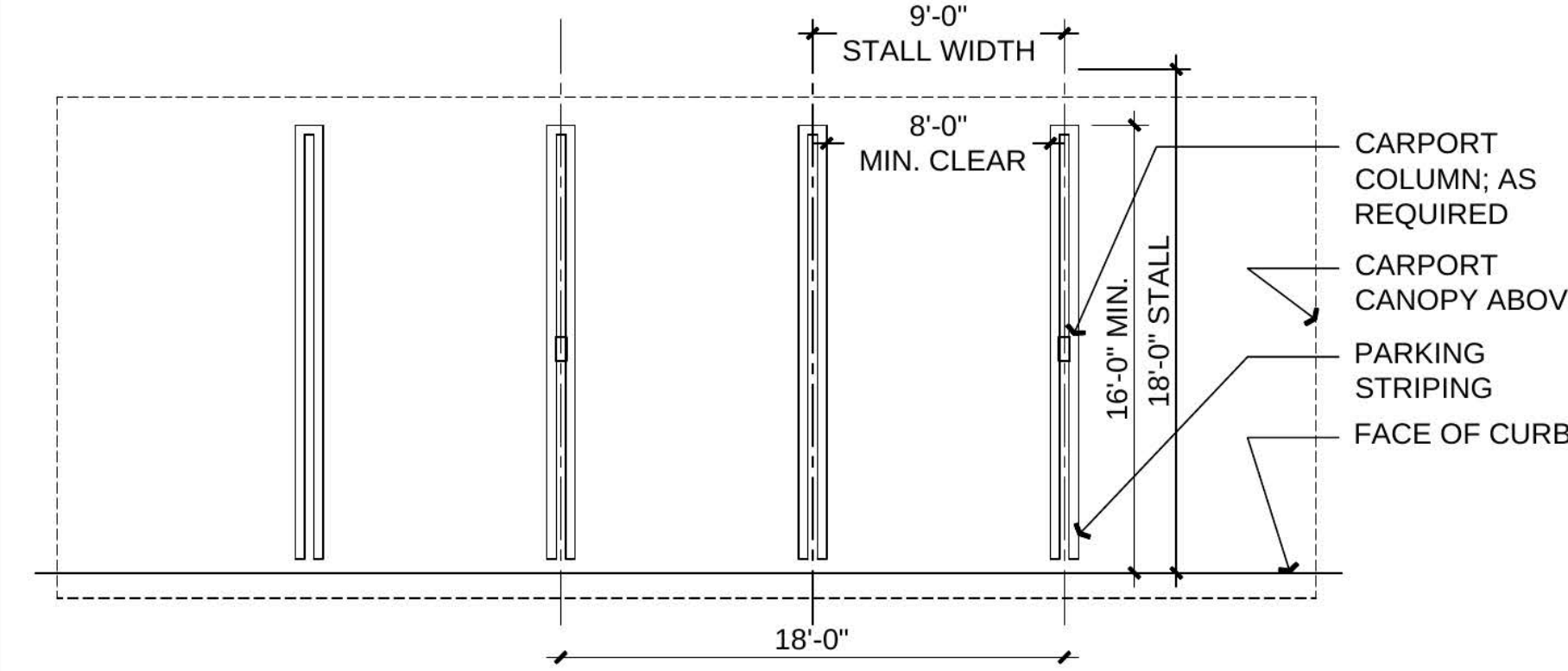
It is the clients responsibility prior to or during construction to notify the architect in writing of any proposed work or conditions in the plans and specifications of which a contractor thoroughly investigate with the building codes and methods of construction should be responsible for errors. Written instructions addressing such proposed errors or conditions shall be received from the architect prior to the start or clients subcontractors proceeding with the work. The client will be responsible for any delays in construction if these procedures are not followed.

**PARKING BREAKDOWN**

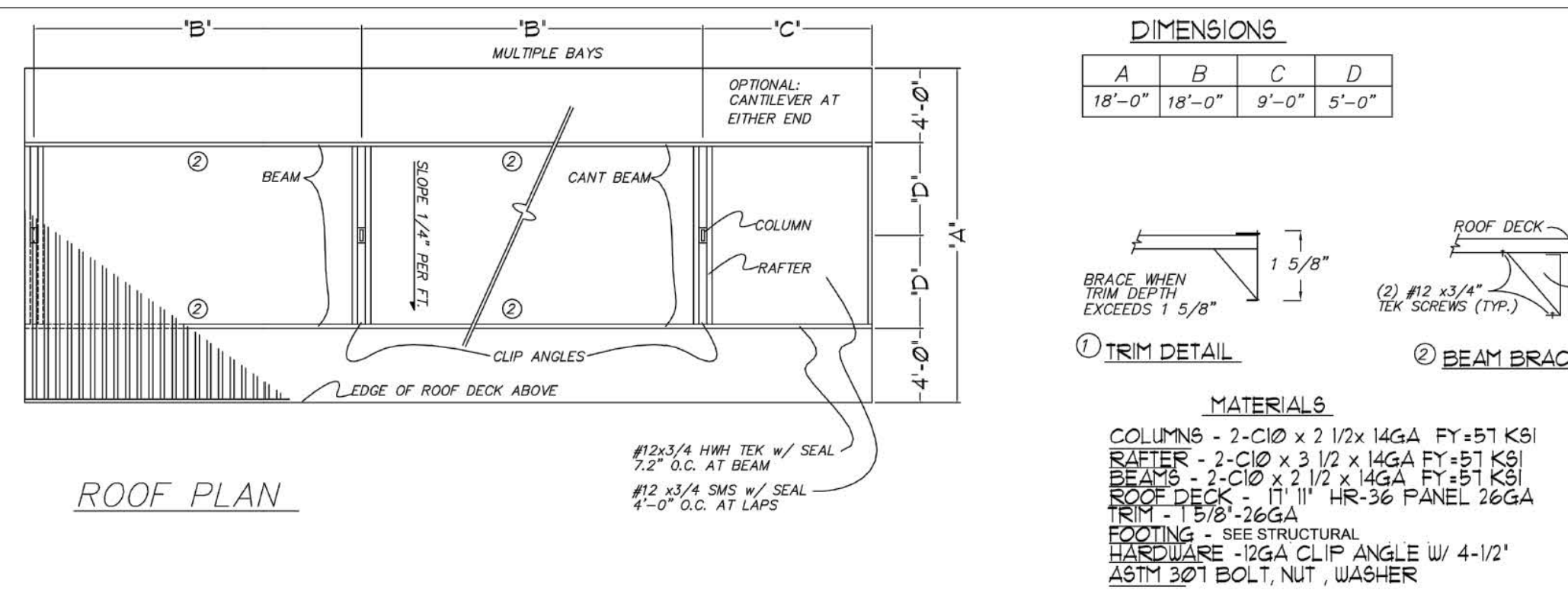
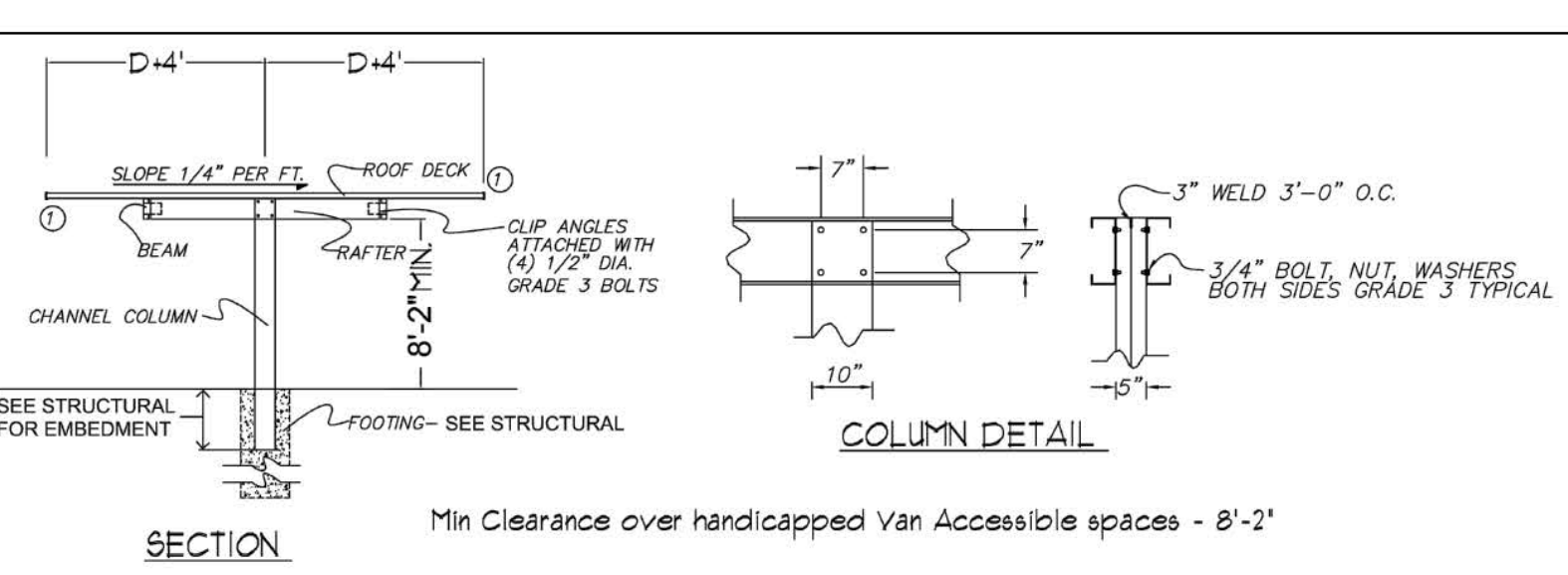
PROVIDED STANDARD PARKING STALLS (9'x18'):	315
PROVIDED HANDICAP STALLS:	10
PROVIDED VAN HANDICAP STALLS:	4
TOTAL PROVIDED PARKING STALLS:	329
CAR PORT STRUCTURES:	6
CAR PORT COVERAGE OF PARKING STALLS:	32

1 / A106

**SITE PARKING - NORTH** SCALE: 1" = 30'-0"



CARPORT COLUMN; AS REQUIRED  
CARPORT CANOPY ABOVE  
PARKING STRIPING  
FACE OF CURB



TYPICAL CARPORT ROOF PLAN AND SECTION SCALE: N.T.S. 3

TYPICAL CARPORT COLUMN LOCATION & PARKING STALL SCALE: N.T.S. 1

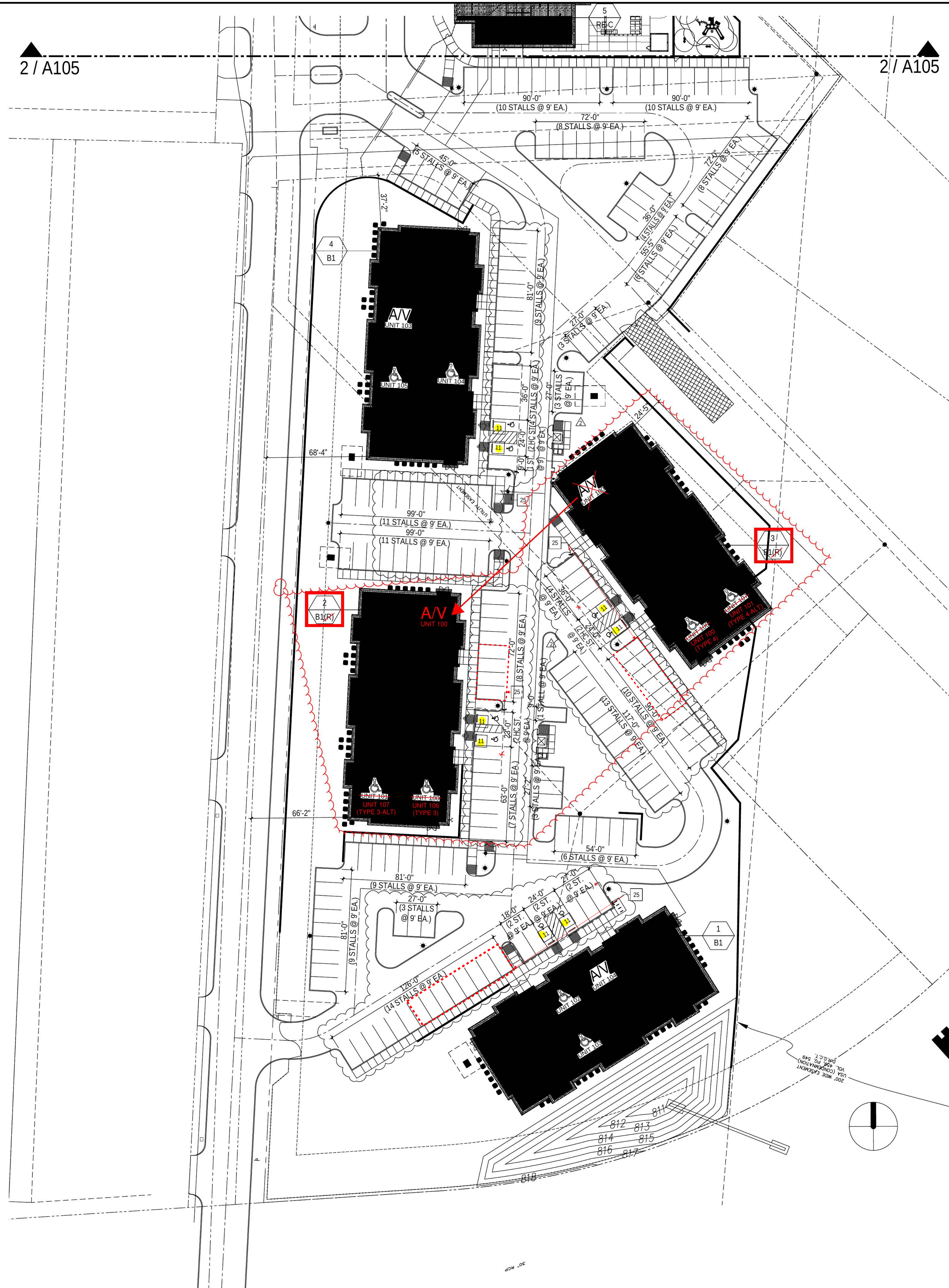
License Stamp  
**SITE PARKING**  
RESPONSE RFI 032  
DATE: 11/29/2017

A105



27 A105

27 A105



### ARCHITECTURAL SITE PLAN KEYNOTES

- 1 +/- 2.5 ACRE PASSIVE GREEN AREA
- 2 DOG PARK
- 3 PEDESTRIAN GATE
- 4 VEHICLE ENTRY GATE
- 5 FIRE DEPARTMENT ACCESS GATE / SECONDARY ROAD (ASPHALT)
- 6 ACCESSIBLE CURB CUT
- 7 CROSSWALK
- 8 BICYCLE RACK/PARKING
- 9 TRASH ENCLOSURE; SEE SHEET A220 FOR FURTHER INFORMATION
- 10 LIFT STATION
- 11 STANDARD DISABLED ACCESSIBLE PARKING STALL WITH STANDARD ACCESSIBLE PARKING STALL SIGNAGE
- 12 VAN DISABLED ACCESSIBLE PARKING STALL WITH STANDARD VAN ACCESSIBLE PARKING STALL SIGNAGE
- 13 VEHICLE EXIT GATE
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- 24 AC CONDENSER UNITS BANK
- 25 CAR PORT ROOF ABOVE
- 26 MONUMENT SIGN (DEFERRED SUBMITTAL)
- 27 RECYCLE BIN; PORT WORTH REQUIRED
- 28 EASEMENT; SEE CIVIL DRAWINGS
- 29 DOG PARK AREA; SEE LANDSCAPE DRAWINGS

### ARCHITECTURAL SITE PLAN GENERAL NOTES

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3. REFER TO LANDSCAPE DRAWINGS FOR ALL FENCING, PLANTING, GATES, AND HARDSCAPE.
4. UFAS COMPLIANT UNITS (2 PER UNIT TYPE = 12 UNITS); SEE SITE PARKING A105 / A106
5. AUDIOVISUAL ALARMS TO BE PROVIDED (2% OF ACCESSIBLE UNITS = 1); B  
 BUILDING 01 - UNIT 104 (UNIT 1 TYPE)  
 BUILDING 03 - UNIT 100 (UNIT 4 TYPE)  
 BUILDING 04 - UNIT 103 (UNIT 2 TYPE)  
 BUILDING 07 - UNIT 106 (UNIT 3 TYPE)
6. BUILDING ADDRESS TO BE LOCATED ON MONUMENT SIGN

### SITE PLAN LEGEND

- XX - BUILDING "IF" BUILDING CALLOUT
- XX-XX - BUILDING TYPE
- TREE - SEE LANDSCAPE DRAWINGS
- WROUGHT-IRON FENCING
- CHAIN-LINK FENCING
- ACCESSIBLE PATH OF TRAVEL
- GARBAGE TRUCK ACCESS
- PROPERTY LINE - SEE CIVIL DRAWINGS
- CENTERLINE OF STREET/BOULEVARD
- ASSUMED PROPERTY LINE
- LINE OF SETBACK
- TRANSFORMER; SEE ELECTRICAL DRAWINGS FOR FURTHER INFORMATION
- ELECTRICAL POLE; SEE ELECTRICAL DRAWINGS FOR FURTHER INFORMATION
- BOLLARD; SEE ELECTRICAL DRAWINGS FOR FURTHER INFORMATION
- UFAS ACCESSIBILITY COMPLIANT UNITS
- AV - UFAS AUDIOVISUAL UNIT

### PARKING BREAKDOWN

PROVIDED STANDARD PARKING STALLS (9'x18')	315
PROVIDED HANDICAP STALLS:	10
PROVIDED VAN HANDICAP STALLS:	4
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CAR PORT COVERAGE OF PARKING STALLS:	32



**KTGY Group, Inc.**  
 12555 West Jefferson Blvd.,  
 Suite 100  
 Los Angeles, California 90066  
 ktgy.com  
 310.394.2623

**KTGY Project No:** 160630

**Project Contact:** Gary Leus  
**Email:** gleus@ktgy.com

**Principal:** Manny Gonzalez  
**Project Designer:** Doug Heaton

### Developer

AMTEX  
 30141 AGOURA ROAD,  
 SUITE 100  
 AGOURA HILLS, CA  
 PHONE NO. 818-706-0694  
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DENISON FAMILY HOMES

DENISON, TX.

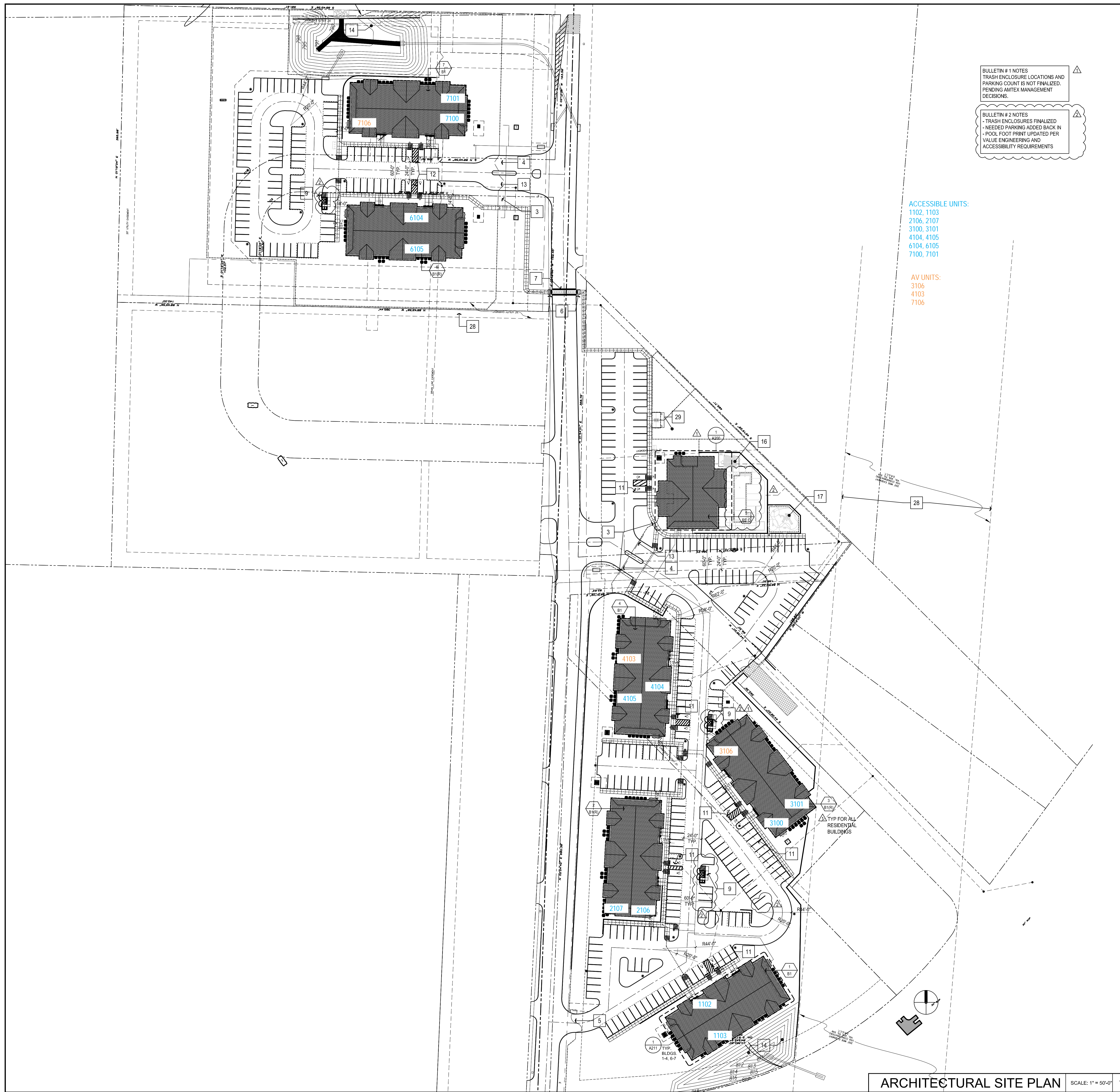
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4	02/21/17	PERMIT SET
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8	09/18/17	ASK 9.0

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License Stamp

**SITE PARKING**  
**RESPONSE RFI 032**  
**DATE: 11/29/2017**





**BULLETIN # 1 NOTES**  
 TRASH ENCLOSURE LOCATIONS AND PARKING COUNT IS NOT FINALIZED. PENDING AMTEX MANAGEMENT DECISIONS.

**BULLETIN # 2 NOTES**  
 - TRASH ENCLOSURES FINALIZED  
 - NEEDED PARKING ADDED BACK IN  
 - POOL FOOT PRINT UPDATED PER VALUE ENGINEERING AND ACCESSIBILITY REQUIREMENTS

**ACCESSIBLE UNITS:**  
 1102, 1103  
 2106, 2107  
 3100, 3101  
 4104, 4105  
 6104, 6105  
 7100, 7101

**AV UNITS:**  
 3106  
 4103  
 7106

### ARCHITECTURAL SITE PLAN KEYNOTES

- 1 +/- 2.5 ACRE PASSIVE GREEN AREA
- 2 DOG PARK
- 3 PEDESTRIAN GATE
- 4 VEHICLE ENTRY GATE
- 5 FIRE DEPARTMENT ACCESS GATE / SECONDARY ROAD (ASPHALT)
- 6 ACCESSIBLE CURB CUT
- 7 CROSSWALK
- 8 BICYCLE RACK/PARKING
- 9 TRASH ENCLOSURE: SEE SHEET A220 FOR FURTHER INFORMATION
- 10 LIFT STATION
- 11 STANDARD DISABLED ACCESSIBLE PARKING STALL WITH STANDARD ACCESSIBLE PARKING STALL SIGNAGE
- 12 VAN DISABLED ACCESSIBLE PARKING STALL WITH STANDARD VAN ACCESSIBLE PARKING STALL SIGNAGE
- 13 VEHICLE EXIT GATE
- 14 SEE CIVIL DRAWINGS FOR DETENTION AREA SIZE
- 15 SLIDING VEHICLE EXIT GATE
- 16 PICNIC / BBQ AREA
- 17 CHILDRENS PLAY AREA
- 18 FIRE DEPARTMENT CONNECTION
- 19 KNOX BOX LOCATION
- 20 CONCRETE SIDEWALK
- 21 LOUNGE AREA
- 22 OPEN SPACE / LAWN AREA
- 23 DECOMPOSED GRANITE WALKING PATH
- 24 AC CONDENSER UNITS BANK
- 25 CAR PORT ROOF ABOVE
- 26 MONUMENT SIGN (DEFERRED SUBMITTAL)
- 27 RECYCLE BIN: FORT WORTH REQUIRED
- 28 EASEMENT: SEE CIVIL DRAWINGS
- 29 DOG PARK AREA: SEE LANDSCAPE DRAWINGS

### ARCHITECTURAL SITE PLAN GENERAL NOTES

1. THIS ARCHITECTURAL SITE PLAN IS FOR BUILDING IDENTIFICATION ONLY. SETBACKS AND ALL HORIZONTAL AND VERTICAL DIMENSIONS SHALL BE VERIFIED WITH THE CIVIL DRAWINGS.
2. REFER TO CIVIL DRAWINGS FOR ALL PROPERTY LINES, EASEMENTS, TOPOGRAPHY, ROUGH GRADING, PRECISE GRADING, STREET/SITE IMPROVEMENTS, CURBS, RAMPS, AND UTILITIES.
3. REFER TO LANDSCAPE DRAWINGS FOR ALL FENCING, PLANTING, GATES, AND HARDSCAPE.
4. UFAS COMPLIANT UNITS (2 PER UNIT TYPE = 12 UNITS); SEE SITE PARKING A105 / A106
5. AUDIO/VISUAL ALARMS TO BE PROVIDED (2% OF ACCESSIBLE UNITS -1); B BUILDING 01 - UNIT 104 (UNIT 1 TYPE)  
 BUILDING 03 - UNIT 100 (UNIT 4 TYPE)  
 BUILDING 04 - UNIT 103 (UNIT 2 TYPE)  
 BUILDING 07 - UNIT 106 (UNIT 3 TYPE)
6. BUILDING ADDRESS TO BE LOCATED ON MONUMENT SIGN

### SITE PLAN LEGEND

- BUILDING "X"  
 BUILDING TYPE
- TREE: SEE LANDSCAPE DRAWINGS
- WROUGHT-IRON FENCING
- CHAIN-LINK FENCING
- ACCESSIBLE PATH OF TRAVEL
- GARBAGE TRUCK ACCESS
- PROPERTY LINE: SEE CIVIL DRAWINGS
- CENTERLINE OF STREET/BOULEVARD
- ASSUMED PROPERTY LINE
- LINE OF SETBACK
- TRANSFORMER: SEE ELECTRICAL DRAWINGS FOR FURTHER INFORMATION
- ELECTRICAL POLE: SEE ELECTRICAL DRAWINGS FOR FURTHER INFORMATION
- BOLLARD: SEE ELECTRICAL DRAWINGS FOR FURTHER INFORMATION
- UFAS ACCESSIBILITY COMPLIANT UNITS
- AV UFAS AUDIO/VISUAL UNIT

### PARKING BREAKDOWN

PROVIDED STANDARD PARKING STALLS (9'x18')	315
PROVIDED HANDICAP STALLS:	10
PROVIDED VAN HANDICAP STALLS:	4
<b>TOTAL PROVIDED PARKING STALLS:</b>	<b>329</b>

CAR PORT STRUCTURES: 21  
 CAR PORT COVERAGE OF PARKING STALLS: 144



**KTGY Group, Inc.**  
 12555 West Jefferson Blvd.,  
 Suite 100  
 Los Angeles, California 90066  
 ktgy.com  
 310.394.2623

**KTGY Project No:** 160630

**Project Contact:** Gary Leus  
**Email:** gleus@ktgy.com

**Principal:** Manny Gonzalez  
**Project Designer:** Doug Heaton



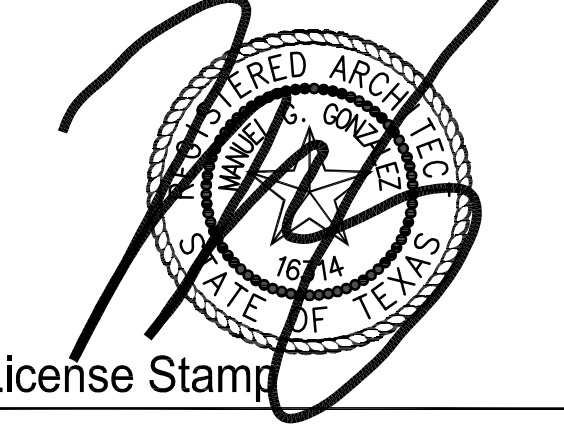
**AMTEX**  
 30141 AGOURA ROAD,  
 SUITE 100  
 AGOURA HILLS, CA  
 PHONE NO. 818-706-0694  
 FAX NO. 818-889-9158

DENISON FAMILY HOMES

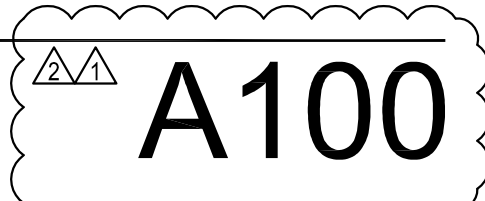
DENISON, TX.

No.	Date	Description
1	10/28/16	100% DESIGN DEVELOPMENT
2	11/14/16	50% CONSTRUCTION DOCUMENTS
3	12/01/16	100% C.D.; 1ST BLDG. SUBMITTAL
4	02/21/17	PERMIT SET
5	05/24/17	BULLETIN #1
6	08/02/17	BULLETIN #2

It is the client's responsibility prior to or during construction to notify the architect in writing of any perceived errors or omissions in the plans and specifications of which a contractor should reasonably be aware. Written instructions addressing such perceived errors or omissions shall be received from the architect prior to the start or during construction proceeding with the work. The client will be responsible for any defects in construction if these instructions are not followed.



License Stamp  
**ARCHITECTURAL SITE PLAN**





~ GENERAL NOTES ~  
(continued from sheet 2)

- The maintenance of paving, water lines and other utilities within the fire lane and utility easements is the responsibility of the owner, and the owner shall cause such fire lanes and utility easements to be maintained free and unobstructed at all times for Fire Department and emergency use.

WILLIAM A. EAST SURVEY  
ABST. NO. 1408

LINE	BEARING	DISTANCE
L1	N 86°51'09" E	25.04
L2	N 02°55'31" E	20.87
L3	N 87°04'29" W	5.00
L4	N 00°01'04" E	28.42
L5	S 88°50'32" W	11.06
L6	N 88°45'56" W	11.78
L7	S 01°21'19" W	49.99
L8	S 88°45'56" E	11.03

51.956 AC.  
CHARLES E. WATSON  
VOL. 1208, PG. 817  
D.R.G.C.T.

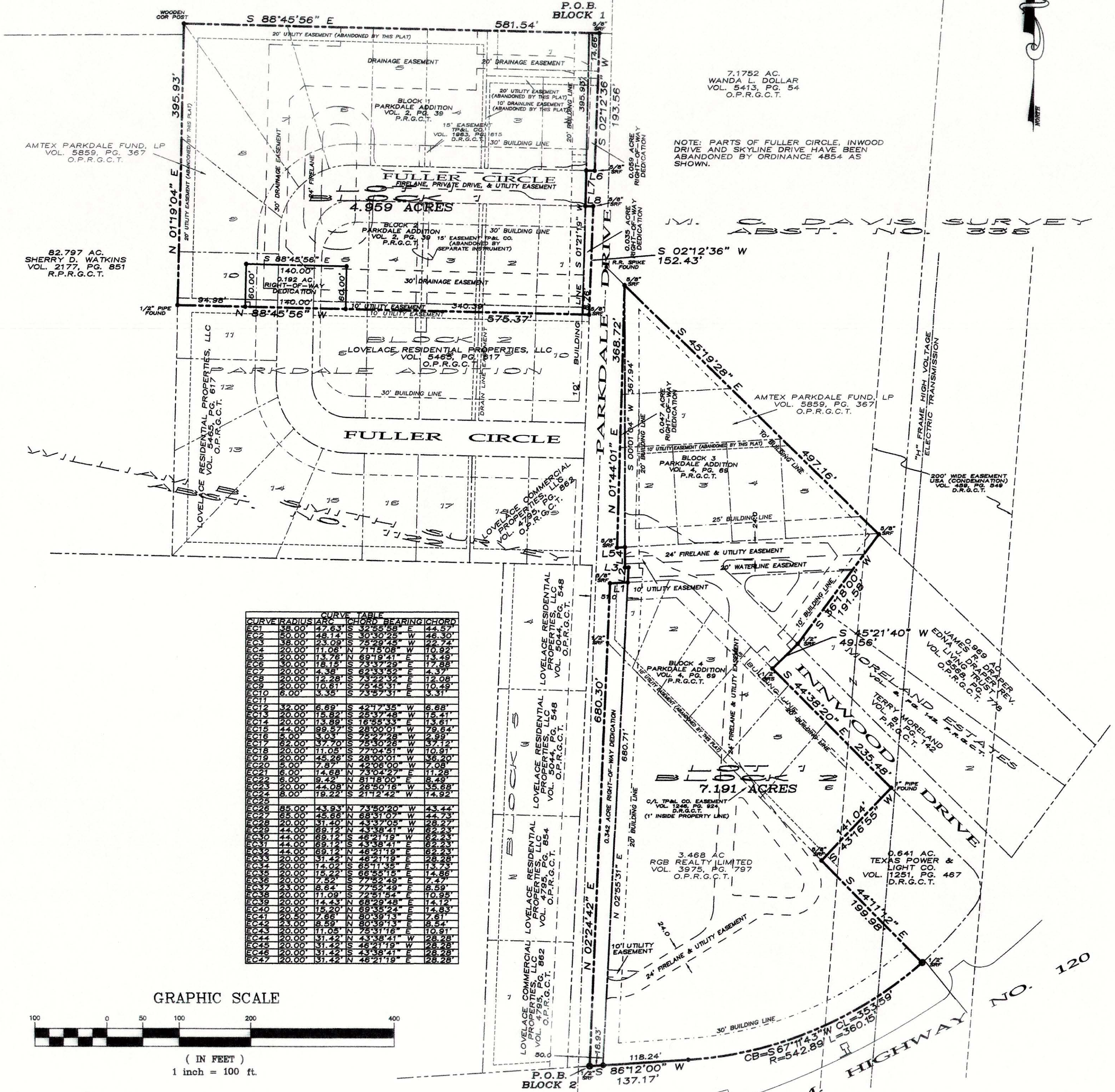
7.1752 AC.  
WANDA L. DOLLAR  
VOL. 5413, PG. 54  
O.P.R.G.C.T.

NOTE: PARTS OF FULLER CIRCLE, INWOOD DRIVE AND SKYLINE DRIVE HAVE BEEN ABANDONED BY ORDINANCE 4854 AS SHOWN.

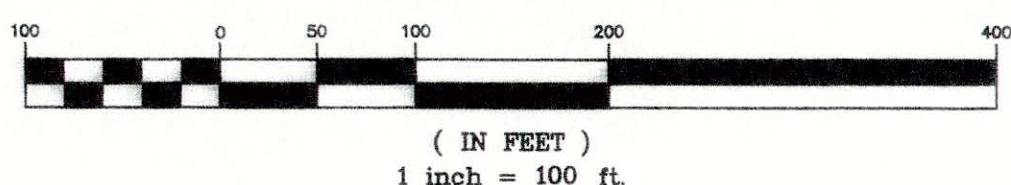
AMTEX PARKDALE FUND, LP  
VOL. 5859, PG. 367  
O.P.R.G.C.T.

82.797 AC.  
SHERRY D. WATKINS  
VOL. 2177, PG. 851  
R.P.R.G.C.T.

M.C. DAVIS SURVEY  
ABST. NO. 336



GRAPHIC SCALE



5490  
FILED FOR RECORD  
at 9:16 o'clock AM  
Recorded in Vol. 24 Page 46  
PLAT  
Records Grayson County.  
WILMA BLACKSHEAR BUSH  
County Clerk, Grayson Co., Texas  
By Deputy

OWNERS/DEVELOPER  
AMTEX PARKDALE FUND, LP  
30141 AGOURA ROAD  
SUITE 100  
AGOURA HILLS, CALIFORNIA 91301

SURVEYOR  
DOUGLAS W. UNDERWOOD  
R.P.L.S. NO. 4709  
3404 INTERURBAN ROAD  
DENISON, TEXAS



FINAL PLAT  
**PARKDALE VILLAS**

AN ADDITION TO THE  
CITY OF DENISON, GRAYSON COUNTY, TEXAS  
BEING A REPLAT OF LOTS 1 THRU 10, BLOCK 1; LOTS 1 THRU 5, BLOCK 2 OF  
PARKDALE ADDITION VOL. 2, PG. 39, P.R.G.C.T.;  
AND LOTS 1 THRU 5, BLOCK 3; LOTS 1 THRU 6, BLOCK 4, PARKDALE ADDITION  
VOL. 4, PG. 69, P.R.G.C.T.  
BEING 12.436 ACRES IN THE  
WILLIAM B. SMITH SURVEY, ABSTRACT NO. 1122;  
WILLIAM A. EAST SURVEY, ABSTRACT NO. 1409  
M.C. DAVIS SURVEY, ABSTRACT NO. 336



LEGAL DESCRIPTIONS

LOT 1, BLOCK 1

Situated in the City of Denison, County of Grayson, State of Texas, being all of Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 in Block 1 & all of Lots 1, 2, 3, 4, and 5 in Block 2 of Parkdale Addition to the City of Denison, Texas as shown by plat of Blocks 1 and 2 of said addition of record in Volume 2, Page 39, Plat Records, Grayson County, Texas and being a part of Fuller Circle adjacent to said Lots and being more particularly described by metes and bounds as follows:

- Beginning at a 5/8" steel rod found in the west line of Parkdale Drive maintaining the northeast corner of said Lot 1, Block 1;
Thence South 02°12'36" West, along the east line of Block 1, a distance of 193.56 feet to a 5/8" steel rod found maintaining the southeast corner of said Block 1;
Thence North 88°45'56" West, along the South line of Block 1, a distance of 11.78 feet to a point;
Thence South 01°21'19" West, a distance of 49.99 feet to a point in the north line of Block 2;
Thence South 88°45'56" East, along the north line of said Block 2, a distance of 11.03 feet to a 5/8" steel rod found maintaining the northeast corner of said Block 2;
Thence South 02°12'36" West, along the east line of said Block 2, a distance of 152.43 feet to a 5/8" steel rod found maintaining the southeast corner of Lot 1, Block 2;
Thence North 88°45'56" West, along the south line of Lots 1, 2, 3, 4, & 5, Block 2, and Lot 10, Block 1, a distance of 575.37 feet to a 1/2" pipe found maintaining the southwest corner of said Lot 10;
Thence North 01°19'04" East, along the west line of said Block 1 a distance of 395.93 feet to a wooden fence corner post being the northwest corner of said Block 1;
Thence South 88°45'56" East, along the north line of said Block 1, a distance of 581.54 feet to the Point-of-Beginning and containing 5.245 acres (228,460 square feet) of land.

LOT 1, BLOCK 2

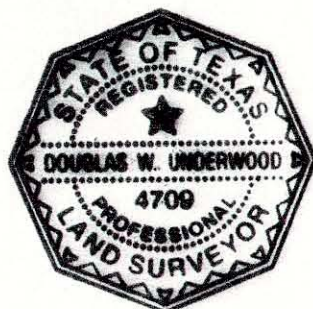
Situated in the City of Denison, County of Grayson, State of Texas, being all of Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 in Block 1 & all of Lots 1, 2, 3, 4, and 5 in Block 2 of Parkdale Addition to the City of Denison, Texas as shown by plat of Blocks 1 and 2 of said addition of record in Volume 2, Page 39, Plat Records, Grayson County, Texas, being a part of the M. C. Davis Survey, Abstract No. 336, and being the same tract of land described as 1.536 acres and referred to as Tract Three, 0.188 acres and referred to as Tract Four and 1.439 acres and referred to as Tract Five, as conveyed by Dunn Investment Holdings, LLC to Amtex Parkdale Fund, LP by deed dated August 19, 2016, recorded in Volume 5859, Page 367, Official Public Records, Grayson County, Texas, and also being all of Block 3 of Parkdale Addition to the City of Denison, Texas as shown by plat of record in Volume 4, Page 69, Plat Records, Grayson County, Texas and being a part of Fuller Circle adjacent to said Lots abandoned by Ordinance No. 4546 and being more particularly described by metes and bounds as follows:

- Beginning at a 1/2" steel rod found at the intersection of the North right-of-way line of F.M. Highway No. 120 and the East line of Parkdale Drive, said rod maintaining the southwest corner of said Tract 5;
Thence North 02°24'42" East, along the west line of said Tract 5, a distance of 580.30 feet to a 5/8" steel rod found;
Thence North 86°51'09" East, a distance of 25.04 feet to a point;
Thence North 02°55'31" East, a distance of 20.87 feet to a point;
Thence North 87°04'29" West, a distance of 5.00 feet to a point;
Thence North 00°01'04" East, a distance of 28.42 feet to a point in the south line of said Block 3;
Thence South 86°50'32" West, along the south line of said Block 3, a distance of 11.06 feet to a 5/8" steel rod found maintaining the southwest corner of said Block 3;
Thence North 01°44'01" East, along the west line of Block 3 also being the west line of said Tract 3, a distance of 368.72 feet to a 5/8" steel rod found in the south line of a 7.1752 acre tract conveyed to Wanda L. Dollar by deed of record in Volume 5413, Page 54, Official Public Records, Grayson County, Texas;
Thence South 45°19'28" East, along the south line of said 7.1752 acre tract, a distance of 497.16 feet to a 5/8" steel rod found maintaining the north corner of a 0.969 acre tract of land conveyed to James R. Draper & Edna J. Draper Revocable Living Trust, as shown by deed of record in Volume 5568, Page 778, of said Official Public Records said rod also maintaining the southeast corner of said Block 3;
Thence South 36°18'00" West, along the north line of said 0.969 acre tract passing the north corner of Moreland Estates addition to said City of Denison as shown by plat of record in Volume 8, Page 142, said Plat Records and continuing along the east line of said Moreland Estates for a total distance of 191.58 feet to a point in the east line of Inwood Drive;
Thence South 45°21'40" West, over and across said Inwood Drive, a distance of 49.56 feet to a 1/2" steel rod set on the west line of Inwood Drive said rod being in the east line of said Block 4;
Thence South 44°38'20" East, along the east line of said Block 4 and west line of said Inwood Drive, a distance of 235.48 feet to a 1" pipe found maintaining the north corner of a 0.641 acre tract of land conveyed to Texas Power & Light Company by deed of record in Volume 1251, Page 467, Deed Records, Grayson County, Texas and the southeast corner of said Block 4;
Thence South 43°16'55" West, along the south line of said Block 4, a distance of 141.04 feet to a 5/8" steel rod found maintaining the west corner of said 0.641 acre tract;
Thence South 44°11'12" East, along the west line of said 0.641 acre tract, a distance of 199.98 feet to a 1/2" steel rod found in the north right-of-way line of said F.M. Highway No. 120 said rod maintaining the south corner of said 0.641 acre tract;
Thence along the north line of said Highway with a non-tangent curve to the right having a radius of 542.89 feet, (chord bears South 67°11'43" West, a distance of 353.59 feet) an arc length of 360.15 feet;
Thence South 86°12'00" West, continuing along the north line of said Highway, a distance of 137.17 feet to the Point-of-Beginning and containing 7.195 acres (313,396 square feet) of land.

KNOWN ALL MEN BY THESE PRESENTS:

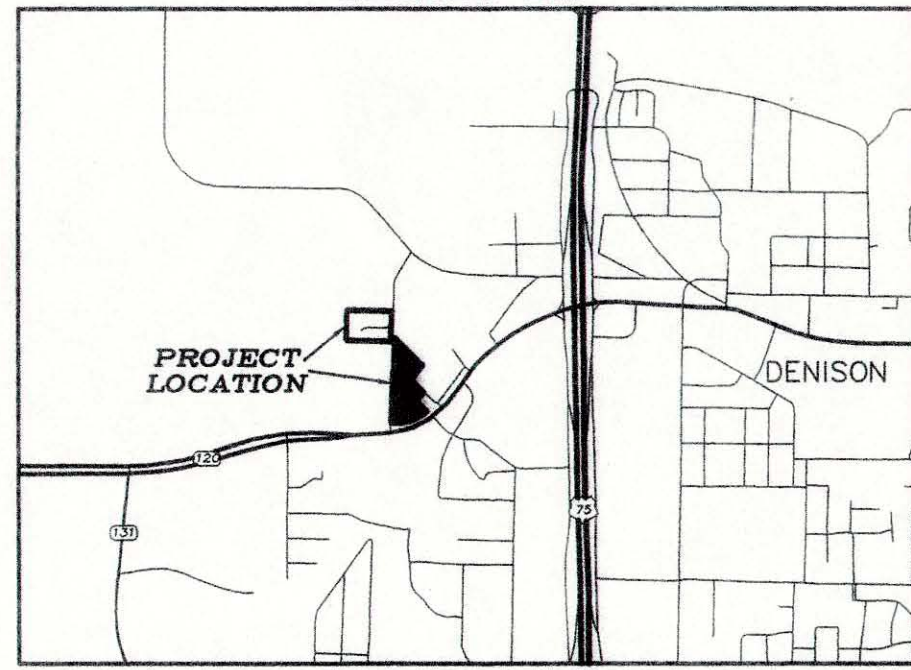
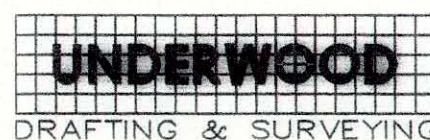
That I, Douglas W. Underwood, Registered Professional Land Surveyor, do hereby certify that I prepared this plat from an actual and accurate survey of the land and that the corner monuments thereon were properly placed, under my personal supervision, in accordance with the subdivision regulations of the City of Denison, Texas.

Signature of Douglas W. Underwood, Registered Professional Land Surveyor, No. 4709, dated 2/23/17.



OWNERS/DEVELOPER: AMTEX PARKDALE FUND, LP, 30141 AGOURA ROAD, SUITE 100, AGOURA HILLS, CALIFORNIA 91301

SURVEYOR: DOUGLAS W. UNDERWOOD, R.P.L.S. NO. 4709, 3404 INTERURBAN ROAD, DENISON, TEXAS



(NOT TO SCALE) OWNER'S DEDICATION

STATE OF TEXAS, COUNTY OF GRAYSON

We, AMTEX Parkdale Fund, LP and RGB Realty, LTD, Owner and Developer of Parkdale Villas, an addition to the City of Denison, Texas, and whose name is subscribed hereto, hereby dedicate to the use of the public forever all streets, alleys, parks, water courses, drains, easements and public places thereon shown on the purpose and consideration therein expressed. I (we) further certify that all other parties who have a mortgage or lien interest in the Parkdale Villas have been notified and signed this plat.

I (we) further acknowledge that the dedications and/or exactions made herein are proportional to the impact of the subdivision upon the public services required in order that the development will comport with the present and future growth needs of the City; I (we), my (our) successors and assigns hereby waive any claim, damage, or cause of action that I (we) may have as a result of the dedication of exactions made herein.

WITNESS MY HAND this 6th day of March 2017.

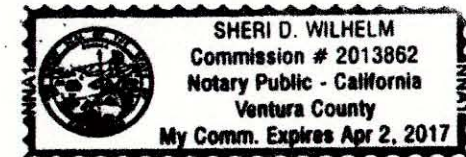
Signatures of Arjun Nagarkatti, President for AMTEX Multi-housing LLC as General Partner, and Robert G. Burlingame, President of RGB Management LC, General Partner of RGB Realty, LTD.

STATE OF TEXAS, COUNTY OF GRAYSON

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared Arjun Nagarkatti, known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purpose and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 6th day of March 2017.

Signature of Notary Public Sheri D. Wilhelm, Commission Expires 4/2/17.

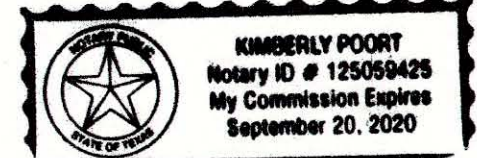


STATE OF TEXAS, COUNTY OF GRAYSON

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared Robert G. Burlingame, known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purpose and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 23rd day of Feb 2017.

Signature of Notary Public Kimberly Poort, Commission Expires 9/20/20.



Approved this day of February, 2017, by the City Planning Commission to the City of Denison, Texas.

Signatures of Chairwoman and Secretary of the City Planning Commission.

~ GENERAL NOTES ~

- 1. Water Supply to be provided by the City of Denison.
2. Sewer service to be provided by the City of Denison.
3. Electrical service is provided by Oncor Electrical Delivery.
4. Blocking the flow of water or construction of Improvements in drainage easements, and filling or obstruction of the floodway is prohibited.
5. Any existing creeks or drainage channels traversing along or across the addition will remain as open channels and will be maintained by the individual owners of the lot or lots that are traversed by or adjacent to the drainage courses along or across said lots.
6. The City of Denison will not be responsible for the maintenance and operation of said drainage ways or for the control of erosion.
7. Neither the City of Denison nor the undersigned surveyor will be responsible for any damage, personal injury, or loss of life or property occasioned by flooding or flooding conditions.
8. The owners and builders must comply with all other local, state and federal regulations regarding developments of this type.
9. Bearings are based on the City of Denison Control Monument Network.
10. The City of Denison reserves the right to require submission of Development Plat based on proposed use of each lot.
11. Property is Zoned as a Planned Development with Multifamily Residential use.
12. Part of Fuller Circle, Skyline Drive & Inwood Drive have been abandoned by Ordinance No. 4854.
13. The subject property does not lie within a Federal Emergency Management Agency (FEMA) designated flood plain as shown by FIRM Map No. 48181C0165F, Dated September 29, 2010.
14. Property owner will be responsible for maintaining private water, sewer and storm lines. Property owner will also be responsible for maintenance of stormwater detention facilities.

FINAL PLAT PARKDALE VILLAS

AN ADDITION TO THE CITY OF DENISON, GRAYSON COUNTY, TEXAS BEING A REPLAT OF LOTS 1 THRU 10, BLOCK 1; LOTS 1 THRU 5, BLOCK 2 OF PARKDALE ADDITION VOL. 2, PG. 39, P.R.G.C.T.; AND LOTS 1 THRU 5, BLOCK 3; LOTS 1 THRU 6, BLOCK 4, PARKDALE ADDITION VOL. 4, PG. 69, P.R.G.C.T. BEING 12.436 ACRES IN THE WILLIAM B. SMITH SURVEY, ABSTRACT NO. 1122; WILLIAM A. EAST SURVEY, ABSTRACT NO 1409 M.C. DAVIS SURVEY, ABSTRACT NO. 336



EASEMENT DETAIL SHEET

WILLIAM A. EAST SURVEY  
ABST. NO. 1408

L1	N 86°51'09" E	25.04'
L2	N 02°55'31" E	20.87'
L3	N 87°04'29" W	5.00'
L4	N 00°01'04" E	28.42'
L5	S 86°50'32" W	11.06'
L6	N 88°45'56" W	11.78'
L7	S 01°21'19" W	49.99'
L8	S 88°45'56" E	11.03'

51.956 AC.  
CHARLES E. WATSON  
VOL. 1208, PG. 817  
D.R.G.C.T.

7.1752 AC.  
WANDA L. DOLLAR  
VOL. 5413, PG. 54  
O.P.R.G.C.T.

AMTEX PARKDALE FUND, LP  
VOL. 5859, PG. 367  
O.P.R.G.C.T.

82.797 AC.  
SHERRY D. WATKINS  
VOL. 2177, PG. 851  
R.P.R.G.C.T.

NOTE: PARTS OF FULLER CIRCLE, INWOOD DRIVE AND SKYLINE DRIVE HAVE BEEN ABANDONED BY ORDINANCE 4854 AS SHOWN.

M. C. DAVIS SURVEY  
ABST. NO. 336

5490  
FILED FOR RECORD  
at 10:00 a.m.  
March 11, 2017  
Records Grayson County,  
Texas  
WILMA BLACKSHEAR BUSH  
County Clerk, Grayson Co., Texas  
By: [Signature]

LINE	BEARING	DISTANCE
E1	N 02°55'31" E	29.98'
E2	N 87°04'29" W	107.66'
E3	S 86°50'32" W	11.06'
E4	N 88°45'56" W	11.78'
E5	S 01°21'19" W	49.99'
E6	S 88°45'56" E	11.03'
E7	N 86°51'09" E	25.04'
E8	N 02°55'31" E	20.87'
E9	N 87°04'29" W	5.00'
E10	N 00°01'04" E	28.42'
E11	S 86°50'32" W	11.06'
E12	N 88°45'56" W	11.78'
E13	S 01°21'19" W	49.99'
E14	S 88°45'56" E	11.03'
E15	N 86°51'09" E	25.04'
E16	N 02°55'31" E	20.87'
E17	N 87°04'29" W	5.00'
E18	N 00°01'04" E	28.42'
E19	S 86°50'32" W	11.06'
E20	N 88°45'56" W	11.78'
E21	S 01°21'19" W	49.99'
E22	S 88°45'56" E	11.03'
E23	N 86°51'09" E	25.04'
E24	N 02°55'31" E	20.87'
E25	N 87°04'29" W	5.00'
E26	N 00°01'04" E	28.42'
E27	S 86°50'32" W	11.06'
E28	N 88°45'56" W	11.78'
E29	S 01°21'19" W	49.99'
E30	S 88°45'56" E	11.03'
E31	N 86°51'09" E	25.04'
E32	N 02°55'31" E	20.87'
E33	N 87°04'29" W	5.00'
E34	N 00°01'04" E	28.42'
E35	S 86°50'32" W	11.06'
E36	N 88°45'56" W	11.78'
E37	S 01°21'19" W	49.99'
E38	S 88°45'56" E	11.03'
E39	N 86°51'09" E	25.04'
E40	N 02°55'31" E	20.87'
E41	N 87°04'29" W	5.00'
E42	N 00°01'04" E	28.42'
E43	S 86°50'32" W	11.06'
E44	N 88°45'56" W	11.78'
E45	S 01°21'19" W	49.99'
E46	S 88°45'56" E	11.03'
E47	N 86°51'09" E	25.04'
E48	N 02°55'31" E	20.87'
E49	N 87°04'29" W	5.00'
E50	N 00°01'04" E	28.42'
E51	S 86°50'32" W	11.06'
E52	N 88°45'56" W	11.78'
E53	S 01°21'19" W	49.99'
E54	S 88°45'56" E	11.03'
E55	N 86°51'09" E	25.04'
E56	N 02°55'31" E	20.87'
E57	N 87°04'29" W	5.00'
E58	N 00°01'04" E	28.42'
E59	S 86°50'32" W	11.06'
E60	N 88°45'56" W	11.78'
E61	S 01°21'19" W	49.99'
E62	S 88°45'56" E	11.03'
E63	N 86°51'09" E	25.04'
E64	N 02°55'31" E	20.87'
E65	N 87°04'29" W	5.00'
E66	N 00°01'04" E	28.42'
E67	S 86°50'32" W	11.06'
E68	N 88°45'56" W	11.78'
E69	S 01°21'19" W	49.99'
E70	S 88°45'56" E	11.03'
E71	N 86°51'09" E	25.04'
E72	N 02°55'31" E	20.87'
E73	N 87°04'29" W	5.00'
E74	N 00°01'04" E	28.42'
E75	S 86°50'32" W	11.06'
E76	N 88°45'56" W	11.78'
E77	S 01°21'19" W	49.99'
E78	S 88°45'56" E	11.03'
E79	N 86°51'09" E	25.04'
E80	N 02°55'31" E	20.87'
E81	N 87°04'29" W	5.00'
E82	N 00°01'04" E	28.42'
E83	S 86°50'32" W	11.06'
E84	N 88°45'56" W	11.78'
E85	S 01°21'19" W	49.99'
E86	S 88°45'56" E	11.03'
E87	N 86°51'09" E	25.04'
E88	N 02°55'31" E	20.87'
E89	N 87°04'29" W	5.00'
E90	N 00°01'04" E	28.42'
E91	S 86°50'32" W	11.06'
E92	N 88°45'56" W	11.78'
E93	S 01°21'19" W	49.99'
E94	S 88°45'56" E	11.03'
E95	N 86°51'09" E	25.04'
E96	N 02°55'31" E	20.87'
E97	N 87°04'29" W	5.00'
E98	N 00°01'04" E	28.42'
E99	S 86°50'32" W	11.06'
E100	N 88°45'56" W	11.78'

CURVE	RADIUS	ARC	CHORD	BEARING	CHORD
EC1	38.00'	47.63'	32.55'58"	N 44.57'	44.57'
EC2	50.00'	48.14'	30.50'22"	W 48.30'	48.30'
EC3	38.00'	47.63'	32.55'58"	N 44.57'	44.57'
EC4	20.00'	11.08'	N 71°15'08" W	10.92'	10.92'
EC5	20.00'	13.78'	N 69°19'41" E	13.49'	13.49'
EC6	30.00'	18.15'	N 65°33'29" E	17.98'	17.98'
EC7	20.00'	6.38'	N 73°22'32" E	4.33'	4.33'
EC8	20.00'	12.28'	N 73°22'32" E	12.08'	12.08'
EC9	20.00'	10.61'	N 75°45'31" E	10.29'	10.29'
EC10	8.00'	3.35'	N 73°57'31" E	3.31'	3.31'
EC11	32.00'	6.89'	N 42°17'35" W	6.68'	6.68'
EC12	20.00'	15.89'	N 25°37'48" W	15.41'	15.41'
EC13	20.00'	13.89'	N 18°55'33" E	13.61'	13.61'
EC14	44.00'	99.57'	N 28°00'01" W	79.64'	79.64'
EC15	5.00'	3.03'	N 75°27'28" W	2.99'	2.99'
EC16	62.00'	37.70'	N 75°30'28" W	37.12'	37.12'
EC17	20.00'	11.05'	N 77°04'27" E	10.91'	10.91'
EC18	20.00'	45.26'	N 28°00'01" W	36.20'	36.20'
EC19	5.00'	7.87'	N 42°06'00" W	7.08'	7.08'
EC20	6.00'	14.68'	N 73°04'27" E	11.28'	11.28'
EC21	6.00'	9.42'	N 81°18'00" E	8.43'	8.43'
EC22	20.00'	44.08'	N 28°50'18" W	35.68'	35.68'
EC23	8.00'	19.22'	N 21°12'42" W	14.92'	14.92'
EC24	8.00'	19.22'	N 21°12'42" W	14.92'	14.92'
EC25	8.00'	19.22'	N 21°12'42" W	14.92'	14.92'
EC26	85.00'	43.93'	N 73°50'20" W	43.44'	43.44'
EC27	85.00'	45.68'	N 68°31'07" W	44.73'	44.73'
EC28	20.00'	31.40'	N 43°37'05" W	28.27'	28.27'
EC29	44.00'	69.12'	N 43°38'41" W	62.23'	62.23'
EC30	44.00'	69.12'	N 43°38'41" W	62.23'	62.23'
EC31	44.00'	69.12'	N 43°38'41" W	62.23'	62.23'
EC32	44.00'	69.12'	N 43°38'41" W	62.23'	62.23'
EC33	44.00'	69.12'	N 43°38'41" W	62.23'	62.23'
EC34	20.00'	14.02'	N 65°11'35" E	13.73'	13.73'
EC35	20.00'	15.22'	N 65°55'15" E	14.86'	14.86'
EC36	20.00'	15.22'	N 65°55'15" E	14.86'	14.86'
EC37	23.00'	8.84'	N 77°52'49" E	8.59'	8.59'
EC38	20.00'	11.09'	N 72°51'54" E	10.95'	10.95'
EC39	20.00'	11.09'	N 72°51'54" E	10.95'	10.95'
EC40	20.00'	11.09'	N 72°51'54" E	10.95'	10.95'
EC41	20.00'	11.09'	N 72°51'54" E	10.95'	10.95'
EC42	20.00'	11.09'	N 72°51'54" E	10.95'	10.95'
EC43	20.00'	11.09'	N 72°51'54" E	10.95'	10.95'
EC44	20.00'	11.09'	N 72°51'54" E	10.95'	10.95'
EC45	20.00'	11.09'	N 72°51'54" E	10.95'	10.95'
EC46	20.00'	11.09'	N 72°51'54" E	10.95'	10.95'
EC47	20.00'	11.09'	N 72°51'54" E	10.95'	10.95'

GRAPHIC SCALE



( IN FEET )  
1 inch = 100 ft.

**OWNERS/DEVELOPER**  
AMTEX PARKDALE FUND, LP  
30141 AGOURA ROAD  
SUITE 100  
AGOURA HILLS, CALIFORNIA 91301

**SURVEYOR**  
DOUGLAS W. UNDERWOOD  
R.P.L.S. NO. 4709  
3404 INTERURBAN ROAD  
DENISON, TEXAS



3404 INTERURBAN ROAD DENISON, TEXAS 75021 (903)465-2151

FINAL PLAT  
PARKDALE VILLAS

AN ADDITION TO THE  
CITY OF DENISON, GRAYSON COUNTY, TEXAS  
BEING A REPLAT OF LOTS 1 THRU 10, BLOCK 1; LOTS 1 THRU 5, BLOCK 2 OF  
PARKDALE ADDITION VOL. 2, PG. 39, P.R.G.C.T.;  
AND LOTS 1 THRU 5, BLOCK 3; LOTS 1 THRU 6, BLOCK 4, PARKDALE ADDITION  
VOL. 4, PG. 69, P.R.G.C.T.  
BEING 12.436 ACRES IN THE  
WILLIAM B. SMITH SURVEY, ABSTRACT NO. 1122;  
WILLIAM A. EAST SURVEY, ABSTRACT NO. 1409  
M.C. DAVIS SURVEY, ABSTRACT NO. 336







**DENISON UNIT RENTABLE AREA:**

UNIT TYPE	1	2	3	3-ALT	4	4-ALT	TOTAL
BEDROOMS	1 BR	2 BR	2 BR	2 BR	3 BR	3 BR	
RENTABLE AREA	756	1,141	973	1,019	1,137	1,184	
BUILDING TYPE 1	6	6	3	3	3	3	24
BUILDING 1 ON SITE							6
TOTAL NO. UNITS	36	36	18	18	18	18	144
TOTAL UNIT RENTABLE AREA	27,288	41,076	17,514	18,342	20,466	21,312	145,998

**DENISON UNIT SUMMARY AND SITE BUILDING AREA:**

UNIT TYPE	1	2	3	3-ALT	4	4-ALT	TOTAL	CORRIDORS	UTILITY	AMENITY	TOTAL
BEDROOMS	1 BR	2 BR	2 BR	2 BR	3 BR	3 BR					
AREA	900	1,188	1,073	1,119	1,238	1,285					
BUILDING TYPE 1	6	6	3	3	3	3	24	1,356	100		1,456
BUILDING 1 ON SITE							6				6
TOTAL NO. UNITS	36	36	18	18	18	18	144	8,136	600		8,736
TOTAL UNIT S.F. AREA	32,400	42,768	19,314	20,142	22,284	23,130	160,038				
UNIT TYPE %	25.0%	25.0%	12.5%	12.5%	12.5%	12.5%					
BEDROOM TYPE %	25.0%		50.0%		25.0%						

RESIDENTIAL BUILDING AREA TOTAL: 170,236  
 RECREATION CENTER AREA: 6,767  
 TOTAL BUILDING AREA: 177,003  
 SITE AREA: 11.67 ACRES = 11.67 X 43,560 = 508,444  
 DENSITY: 12.3 UNITS PER ACRE

**DENISON OPEN SPACE SUMMARY:**

TYPE	ACRES	S.F.
TOTAL SITE AREA	11.67 ACRES	508,444 S.F.
15% OF SITE		
TOTAL		76,267 S.F.

**OPEN SPACE PROVIDED:**

TYPE	ACRES	S.F.
TOTAL SITE AREA	11.67 ACRES	508,444 S.F.
TOTAL BUILDING AREA		177,003 S.F.
TOTAL TRASH ENCLOSURES		400 S.F.
TOTAL PARKING AREA		129,667 S.F.
TOTAL		307,070 S.F.

**DENISON PARKING SUMMARY:**

UNIT TYPE	# OF UNITS	PARKING FACTOR	TOTAL
1 BEDROOM	36	1.5 PER UNIT	54
2 BEDROOM	72	1 PER UNIT	144
3 BEDROOM	36	2.5 PER UNIT	90
TOTAL			288

**PARKING PROVIDED:**

AREA TYPE	STANDARD	*HANDICAP	TOTAL PARKING
SURFACE PARKING	313	12	325

\*HANDICAP ACCESSIBLE STALLS: 201-300 = 7 SPACES (2 VAN ACCESSIBLE)



**KTGY Group, Inc.**  
 12555 West Jefferson Blvd.,  
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 Los Angeles, California 90066  
 ktgy.com  
 310.394.2623

**KTGY Project No:** 160630

Project Contact: Gary Leus  
 Email: gleus@ktgy.com

Principal: Manny Gonzalez  
 Project Designer: Doug Heaton

**Developer**



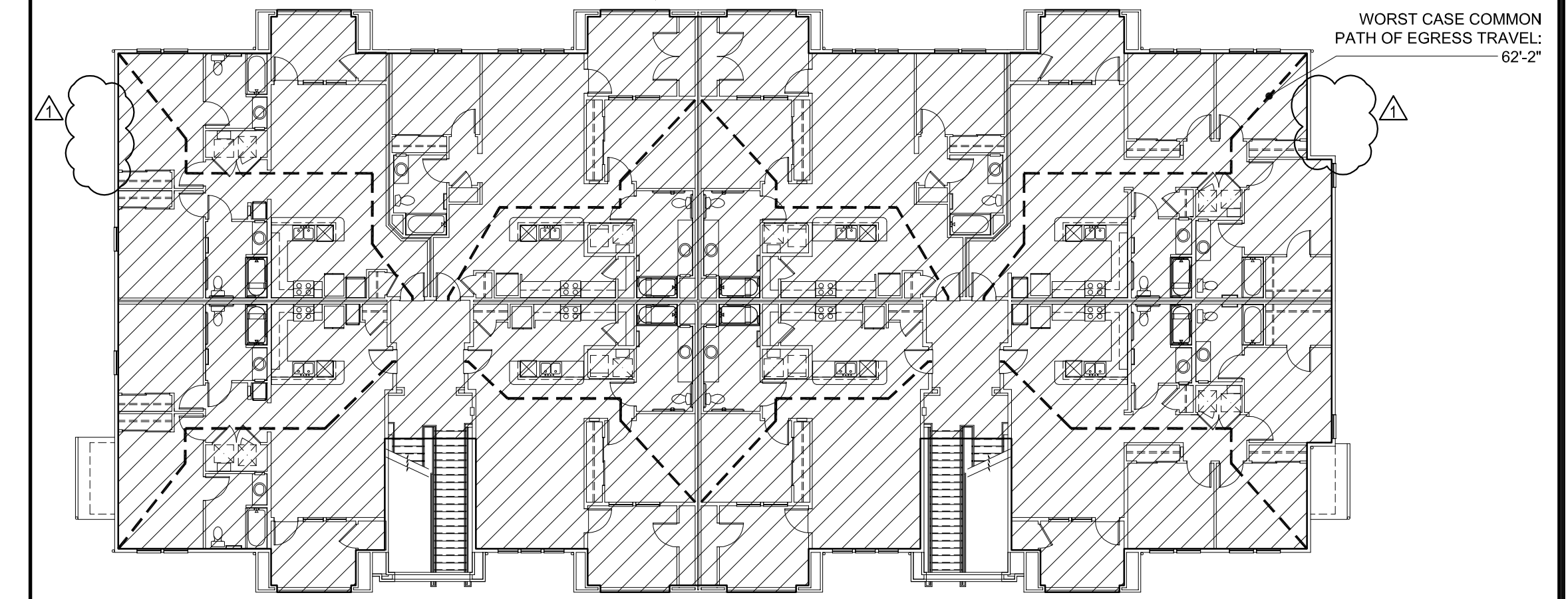
**AMTEX**  
 30141 AGOURA ROAD,  
 SUITE 100  
 AGOURA HILLS, CA  
 PHONE NO. 818-706-0694  
 FAX NO. 818-889-9158

**PROJECT AREAS AND PARKING REQUIREMENTS** SCALE: NTS 3

**2ND & 3RD FLOOR EXIT REQUIREMENTS:** 2ND & 3RD FLOOR EXITS PROVIDED:

2ND & 3RD FLOOR AREA: 9,549 S.F. / 200 OCC. LOAD FACTOR = 48 OCCUPANTS  
 48 X .3 INCHES PER OCC. = 15" STAIR WIDTH REQUIRED.  
 48 X .2 INCHES PER OCC. = 10" EGRESS WIDTH REQUIRED.

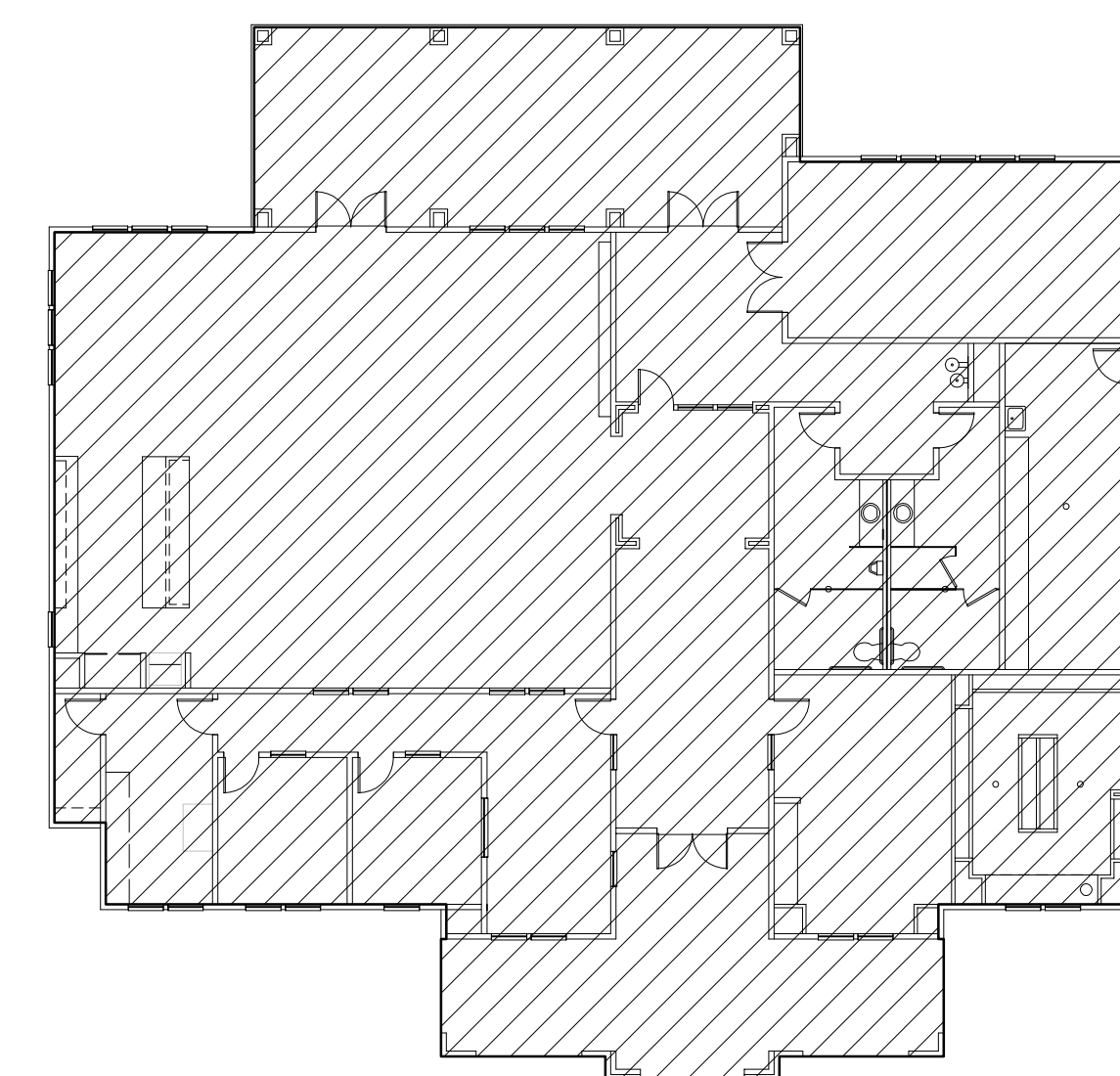
STAIR #1 = 48" STAIR WIDTH 48" EGRESS WIDTH  
 STAIR #2 = 48" STAIR WIDTH 48" EGRESS WIDTH  
 TOTAL 72" STAIR WIDTH 72" EGRESS WIDTH



**BUILDING 1 2ND & 3RD FLOORS:**  
 9,549 SQ. FT.

**RECREATION BUILDING OCCUPANT LOAD AND EXIT ANALYSIS**

ROOM	AREA	OCCUPANT LOAD FACTOR	OCCUPANT LOAD	EXITS PROVIDED
LOBBY / MAIL ROOM	394	15 GROSS	26	1
YOGA ROOM / FITNESS	435	50 GROSS	9	2
CLUB ROOM	1,840	15 GROSS	123	2
RESTROOMS	362	200 GROSS	2	2
ACCESSORY	316	200 GROSS	2	1
LAUNDRY	153	200 GROSS	1	1
OFFICES	808	100 GROSS	8	1
HALLWAY	904			
PATIO	758			
TOTAL:	5,970		171	

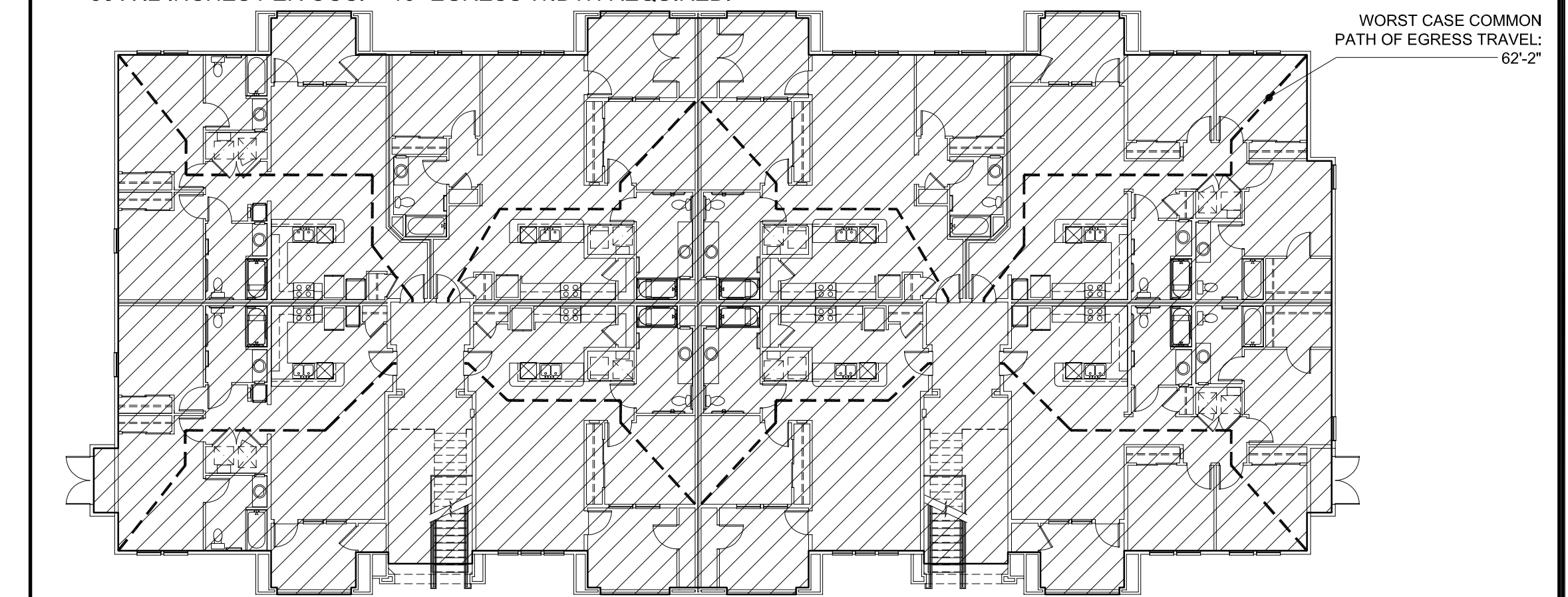


**RECREATION GROUND FLOOR:**  
 6,767 SQ. FT.

**GROUND FLOOR EXIT REQUIREMENTS:** GROUND FLOOR EXITS PROVIDED:

GROUND FLOOR AREA: 9,949 S.F. / 200 OCC. LOAD FACTOR = 50 OCCUPANTS  
 50 X .3 INCHES PER OCC. = 15" STAIR WIDTH REQUIRED.  
 50 X .2 INCHES PER OCC. = 10" EGRESS WIDTH REQUIRED.

STAIR #1 = 0" STAIR WIDTH 48" EGRESS WIDTH  
 STAIR #2 = 0" STAIR WIDTH 48" EGRESS WIDTH  
 TOTAL 0" STAIR WIDTH 72" EGRESS WIDTH



**BUILDING 1 GROUND FLOOR:**  
 9,949 SQ. FT.

COMMON PATH OF EGRESS TRAVEL THAT PORTION OF EXIT ACCESS WHICH THE OCCUPANTS ARE REQUIRED TO TRAVERSE BEFORE TWO SEPARATE AND DISTINCT PATHS OF EGRESS TRAVEL TO TWO EXITS ARE AVAILABLE. COMMON PATH OF EGRESS TRAVEL SHALL BE INCLUDED WITHIN PERMITTED TRAVEL DISTANCE.

IBC 1014.3: THE LENGTH OF A COMMON PATH OF EGRESS TRAVEL IN A GROUP R-2 OCCUPANCY SHALL NOT BE MORE THAN 125 FEET. PROVIDED THAT THE BUILDING IS PROTECTED THROUGHOUT WITH AN APPROVED AUTOMATIC SPRINKLER SYSTEM IN ACCORDANCE WITH SECTION 903.3.1.1 OR 903.3.1.2

EXIT AND EXIT ACCESS DOORWAYS IBC 1015.1.1 EXCEPTION #1: IN GROUP R-2 AND R-3 OCCUPANCIES ONE MEANS OF EGRESS IS PERMITTED WITHIN AND FROM INDIVIDUAL DWELLING UNITS WITH A MAXIMUM OCCUPANT LOAD OF 20 WHERE THE DWELLING UNIT IS EQUIPPED THROUGHOUT WITH AN AUTOMATIC FIRE SPRINKLER SYSTEM IN ACCORDANCE WITH SECTION 903.3.1.1 OR 903.3.1.2

LEVEL	RECREATION BUILDING
GROUND FLOOR	6,767
TOTAL	6,767

NOTE: MAXIMUM ALLOWABLE AREA FOR TYPE-VB BUILDING WITH A-3 OCCUPANCY = 10,500 S.F. SEE A001 FOR CALCULATIONS

COMMON PATH OF EGRESS TRAVEL THAT PORTION OF EXIT ACCESS WHICH THE OCCUPANTS ARE REQUIRED TO TRAVERSE BEFORE TWO SEPARATE AND DISTINCT PATHS OF EGRESS TRAVEL TO TWO EXITS ARE AVAILABLE. COMMON PATH OF EGRESS TRAVEL SHALL BE INCLUDED WITHIN PERMITTED TRAVEL DISTANCE.

IBC 1014.3: THE LENGTH OF A COMMON PATH OF EGRESS TRAVEL IN A GROUP R-2 OCCUPANCY SHALL NOT BE MORE THAN 125 FEET. PROVIDED THAT THE BUILDING IS PROTECTED THROUGHOUT WITH AN APPROVED AUTOMATIC SPRINKLER SYSTEM IN ACCORDANCE WITH SECTION 903.3.1.1 OR 903.3.1.2

EXIT AND EXIT ACCESS DOORWAYS IBC 1015.1.1 EXCEPTION #1: IN GROUP R-2 AND R-3 OCCUPANCIES ONE MEANS OF EGRESS IS PERMITTED WITHIN AND FROM INDIVIDUAL DWELLING UNITS WITH A MAXIMUM OCCUPANT LOAD OF 20 WHERE THE DWELLING UNIT IS EQUIPPED THROUGHOUT WITH AN AUTOMATIC FIRE SPRINKLER SYSTEM IN ACCORDANCE WITH SECTION 903.3.1.1 OR 903.3.1.2

LEVEL	BUILDING 1
1ST FLOOR	10,060
2ND FLOOR	9,549
3RD FLOOR	9,549
TOTAL	29,158

NOTE: MAXIMUM ALLOWABLE AREA FOR TYPE-VA BUILDING WITH R-2 OCCUPANCY = 63,000 S.F. SEE A001 FOR CALCULATIONS

**RECREATION BUILDING ALLOWABLE AREA** SCALE: 1/16"=1'-0" 2

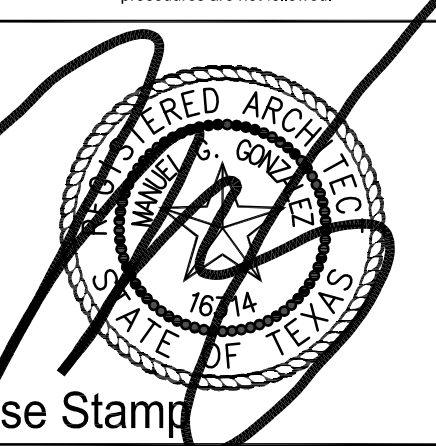
**BUILDING 1 ALLOWABLE AREA** SCALE: 1/16"=1'-0" 1

DENISON FAMILY HOMES

DENISON, TX.

No.	Date	Description
1	10/28/16	100% DESIGN DEVELOPMENT
2	11/14/16	50% CONSTRUCTION DOCUMENTS
3	12/01/16	100% C.D.; 1ST BLDG. SUBMITTAL
4	02/21/17	PERMIT SET
5	05/24/17	BULLETIN #1

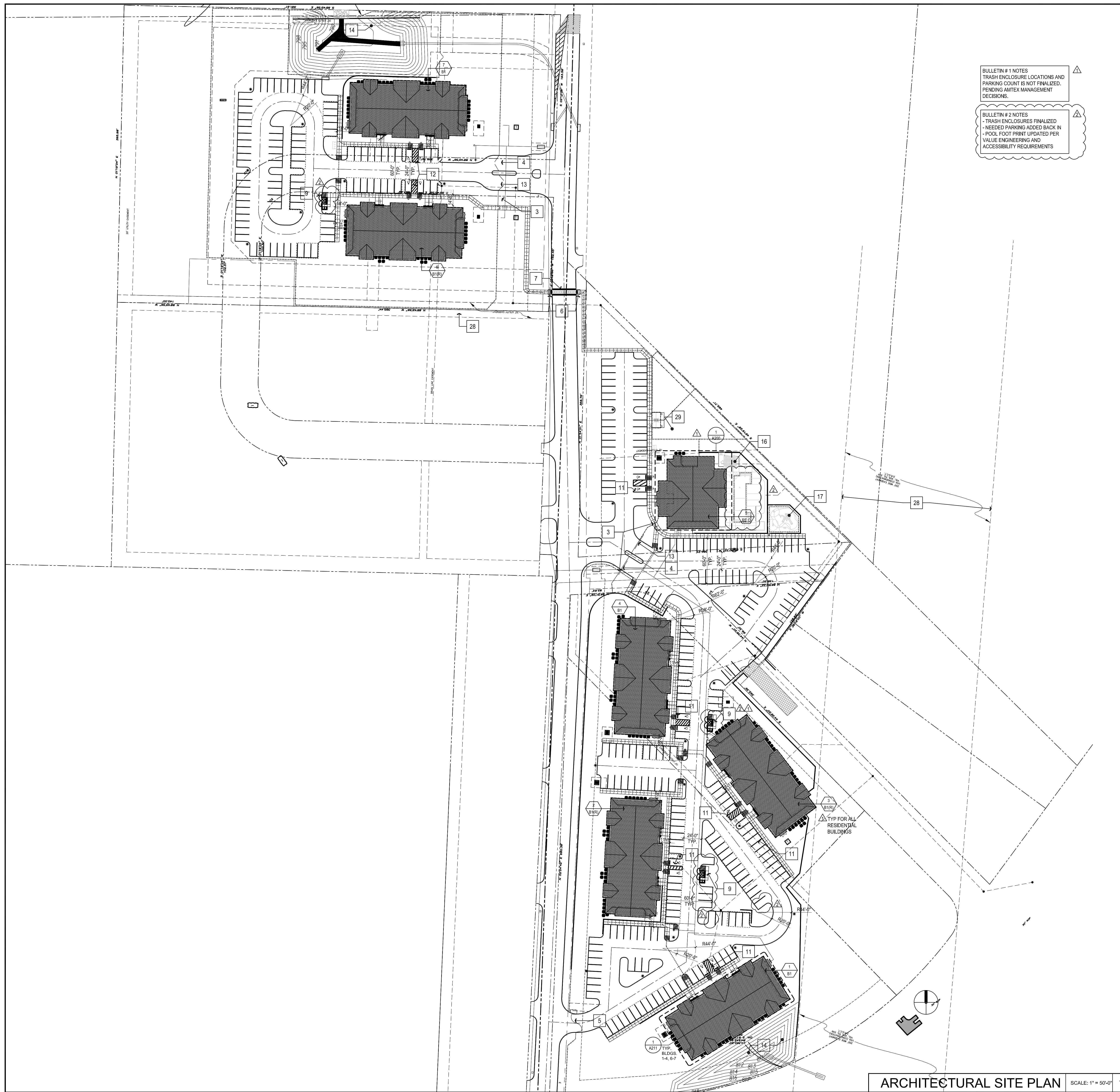
It is the client's responsibility prior to or during construction to verify the accuracy of all drawings. If any perceived errors or omissions in the plans and specifications of which a contractor is normally knowledgeable with the building codes and methods of construction should reasonably be aware. Written instructions addressing such perceived errors or omissions shall be received from the architect prior to the start or commencement of construction proceeding with the work. The client will be responsible for any defects in construction if these provisions are not followed.



License Stamp  
**BUILDING AREAS AND EGRESS CALCS.**

A002





**BULLETIN # 1 NOTES**  
 TRASH ENCLOSURE LOCATIONS AND PARKING COUNT IS NOT FINALIZED. PENDING AMTEX MANAGEMENT DECISIONS.

**BULLETIN # 2 NOTES**  
 - TRASH ENCLOSURES FINALIZED  
 - NEEDED PARKING ADDED BACK IN  
 - POOL FOOT PRINT UPDATED PER VALUE ENGINEERING AND ACCESSIBILITY REQUIREMENTS

### ARCHITECTURAL SITE PLAN KEYNOTES

- 1 +/- 2.5 ACRE PASSIVE GREEN AREA
- 2 DOG PARK
- 3 PEDESTRIAN GATE
- 4 VEHICLE ENTRY GATE
- 5 FIRE DEPARTMENT ACCESS GATE / SECONDARY ROAD (ASPHALT)
- 6 ACCESSIBLE CURB CUT
- 7 CROSSWALK
- 8 BICYCLE RACK/PARKING
- 9 TRASH ENCLOSURE; SEE SHEET A220 FOR FURTHER INFORMATION
- 10 LIFT STATION
- 11 STANDARD DISABLED ACCESSIBLE PARKING STALL WITH STANDARD ACCESSIBLE PARKING STALL SIGNAGE
- 12 VAN DISABLED ACCESSIBLE PARKING STALL WITH STANDARD VAN ACCESSIBLE PARKING STALL SIGNAGE
- 13 VEHICLE EXIT GATE
- 14 SEE CIVIL DRAWINGS FOR DETENTION AREA SIZE
- 15 SLIDING VEHICLE EXIT GATE
- 16 PICNIC / BBQ AREA
- 17 CHILDRENS PLAY AREA
- 18 FIRE DEPARTMENT CONNECTION
- 19 KNOX BOX LOCATION
- 20 CONCRETE SIDEWALK
- 21 LOUNGE AREA
- 22 OPEN SPACE / LAWN AREA
- 23 DECOMPOSED GRANITE WALKING PATH
- 24 AC CONDENSER UNITS BANK
- 25 CAR PORT ROOF ABOVE
- 26 MONUMENT SIGN (DEFERRED SUBMITTAL)
- 27 RECYCLE BIN; FORT WORTH REQUIRED
- 28 EASEMENT; SEE CIVIL DRAWINGS
- 29 DOG PARK AREA; SEE LANDSCAPE DRAWINGS

### ARCHITECTURAL SITE PLAN GENERAL NOTES

1. THIS ARCHITECTURAL SITE PLAN IS FOR BUILDING IDENTIFICATION ONLY. SETBACKS AND ALL HORIZONTAL AND VERTICAL DIMENSIONS SHALL BE VERIFIED WITH THE CIVIL DRAWINGS.
2. REFER TO CIVIL DRAWINGS FOR ALL PROPERTY LINES, EASEMENTS, TOPOGRAPHY, ROUGH GRADING, PRECISE GRADING, STREET/SITE IMPROVEMENTS, CURBS, RAMPS, AND UTILITIES.
3. REFER TO LANDSCAPE DRAWINGS FOR ALL FENCING, PLANTING, GATES, AND HARDSCAPE.
4. UFAS COMPLIANT UNITS (2 PER UNIT TYPE = 12 UNITS); SEE SITE PARKING A105 / A106
5. AUDIO/VISUAL ALARMS TO BE PROVIDED (2% OF ACCESSIBLE UNITS -1); B  
 BUILDING 01 - UNIT 104 (UNIT 1 TYPE)  
 BUILDING 03 - UNIT 100 (UNIT 4 TYPE)  
 BUILDING 04 - UNIT 103 (UNIT 2 TYPE)  
 BUILDING 07 - UNIT 106 (UNIT 3 TYPE)
6. BUILDING ADDRESS TO BE LOCATED ON MONUMENT SIGN

### SITE PLAN LEGEND

	BUILDING "X"	BUILDING CALLOUT
	BUILDING TYPE	
	TREE	SEE LANDSCAPE DRAWINGS
	WROUGHT-IRON FENCING	
	CHAIN-LINK FENCING	
	ACCESSIBLE PATH OF TRAVEL	
	GARBAGE TRUCK ACCESS	
	PROPERTY LINE	SEE CIVIL DRAWINGS
	CENTERLINE OF STREET/BOULEVARD	
	ASSUMED PROPERTY LINE	
	LINE OF SETBACK	
	TRANSFORMER	SEE ELECTRICAL DRAWINGS FOR FURTHER INFORMATION
	ELECTRICAL POLE	SEE ELECTRICAL DRAWINGS FOR FURTHER INFORMATION
	BOLLARD	SEE ELECTRICAL DRAWINGS FOR FURTHER INFORMATION
	UFAS ACCESSIBILITY COMPLIANT UNITS	
	AV	UFAS AUDIO/VISUAL UNIT

### PARKING BREAKDOWN

PROVIDED STANDARD PARKING STALLS (9'x18')	315
PROVIDED HANDICAP STALLS:	10
PROVIDED VAN HANDICAP STALLS:	4
<b>TOTAL PROVIDED PARKING STALLS:</b>	<b>329</b>

CAR PORT STRUCTURES: 21  
 CAR PORT COVERAGE OF PARKING STALLS: 144



**KTGY Group, Inc.**  
 12555 West Jefferson Blvd.,  
 Suite 100  
 Los Angeles, California 90066  
 ktgy.com  
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**KTGY Project No:** 160630

**Project Contact:** Gary Leus  
**Email:** gleus@ktgy.com

**Principal:** Manny Gonzalez  
**Project Designer:** Doug Heaton

**Developer**



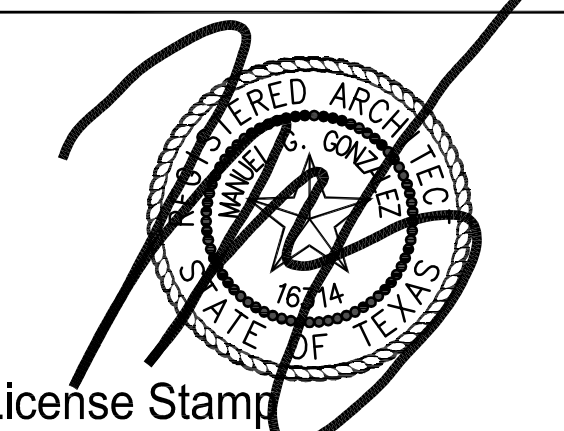
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DENISON FAMILY HOMES

DENISON, TX.

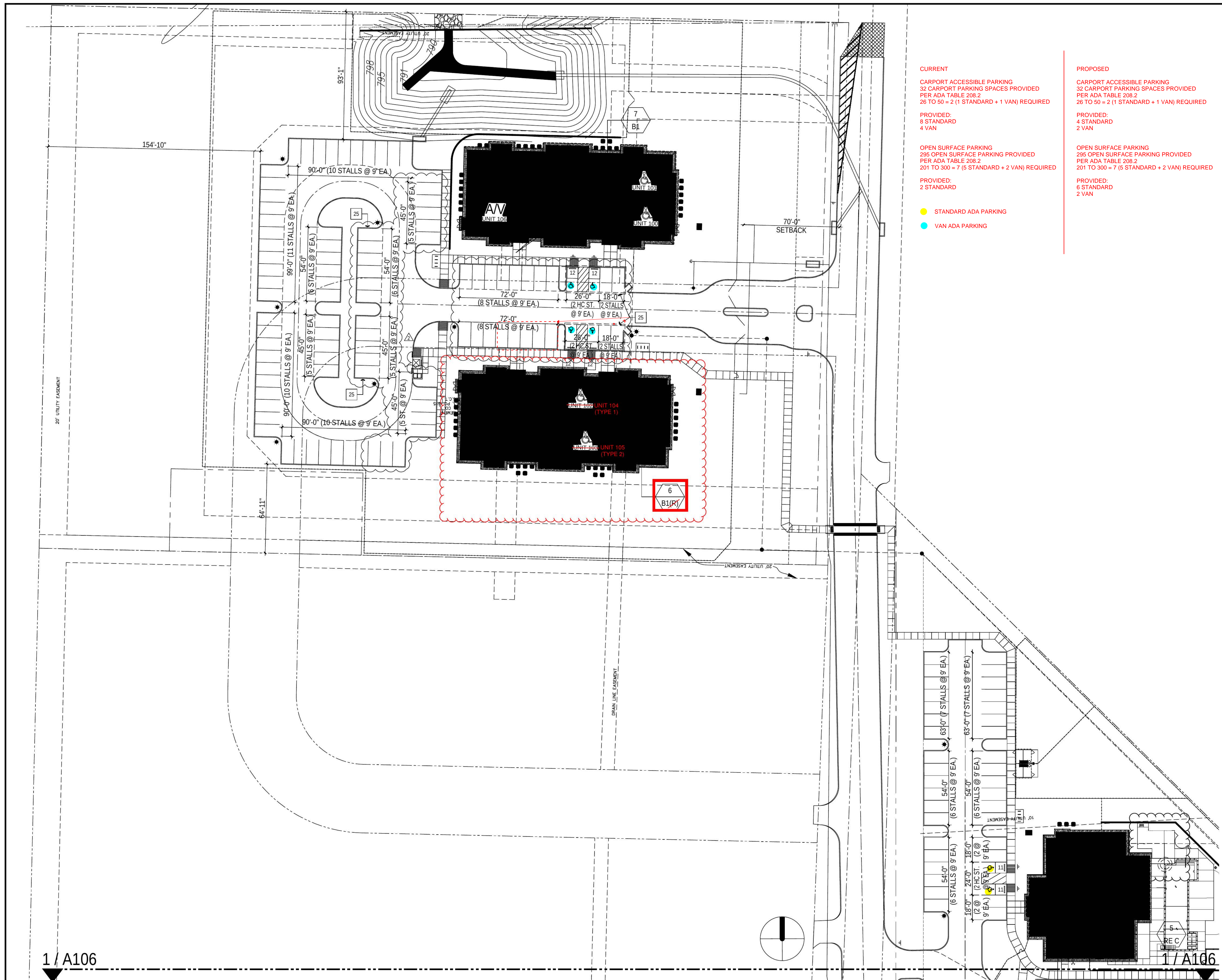
No.	Date	Description
1	10/28/16	100% DESIGN DEVELOPMENT
2	11/14/16	50% CONSTRUCTION DOCUMENTS
3	12/01/16	100% C.D.; 1ST BLDG. SUBMITTAL
4	02/21/17	PERMIT SET
5	05/24/17	BULLETIN #1
6	08/02/17	BULLETIN #2

It is the clients responsibility prior to or during construction to notify the architect in writing of any perceived errors or omissions in the plans and specifications of which a contractor should reasonably be aware. Written instructions addressing such perceived errors or omissions shall be received from the architect prior to the start or during construction proceeding with the work. The client will be responsible for any defects in construction if these instructions are not followed.



License Stamp  
**ARCHITECTURAL SITE PLAN**





- CURRENT**
- CARPORT ACCESSIBLE PARKING  
32 CARPORT PARKING SPACES PROVIDED  
PER ADA TABLE 208.2  
26 TO 50 = 2 (1 STANDARD + 1 VAN) REQUIRED
  - PROVIDED:  
8 STANDARD  
4 VAN
  - OPEN SURFACE PARKING  
295 OPEN SURFACE PARKING PROVIDED  
PER ADA TABLE 208.2  
201 TO 300 = 7 (5 STANDARD + 2 VAN) REQUIRED
  - PROVIDED:  
2 STANDARD
- PROPOSED**
- CARPORT ACCESSIBLE PARKING  
32 CARPORT PARKING SPACES PROVIDED  
PER ADA TABLE 208.2  
26 TO 50 = 2 (1 STANDARD + 1 VAN) REQUIRED
  - PROVIDED:  
4 STANDARD  
2 VAN
  - OPEN SURFACE PARKING  
295 OPEN SURFACE PARKING PROVIDED  
PER ADA TABLE 208.2  
201 TO 300 = 7 (5 STANDARD + 2 VAN) REQUIRED
  - PROVIDED:  
6 STANDARD  
2 VAN
- STANDARD ADA PARKING  
● VAN ADA PARKING

### ARCHITECTURAL SITE PLAN KEYNOTES

- ± 2.5 ACRE PASSIVE GREEN AREA
- DOG PARK
- PEDESTRIAN GATE
- VEHICLE ENTRY GATE
- FIRE DEPARTMENT ACCESS GATE / SECONDARY ROAD (ASPHALT)
- ACCESSIBLE CURB CUT
- CROSSWALK
- BICYCLE RACK/PARKING
- TRASH ENCLOSURE; SEE SHEET A20 FOR FURTHER INFORMATION
- LIFT STATION
- STANDARD DISABLED ACCESSIBLE PARKING STALL WITH STANDARD ACCESSIBLE PARKING STALL SIGNAGE
- VAN DISABLED ACCESSIBLE PARKING STALL WITH STANDARD VAN ACCESSIBLE PARKING STALL SIGNAGE
- VEHICLE EXIT GATE
- SEE CIVIL DRAWINGS FOR DETENTION AREA SIZE
- SLIDING VEHICLE EXIT GATE
- PICNIC / BBQ AREA
- CHILDRENS PLAY AREA
- FIRE DEPARTMENT CONNECTION
- KNOX BOX LOCATION
- CONCRETE SIDEWALK
- LOUNGE AREA
- OPEN SPACE / LAWN AREA
- DECOMPOSED GRANITE WALKING PATH
- AC CONDENSER UNITS BANK
- CAR PORT ROOF ABOVE
- MONUMENT SIGN (DEFERRED SUBMITTAL)
- RECYCLE BIN; FORT WORTH REQUIRED
- EASEMENT; SEE CIVIL DRAWINGS
- DOG PARK AREA; SEE LANDSCAPE DRAWINGS

### ARCHITECTURAL SITE PLAN GENERAL NOTES

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- REFER TO CIVIL DRAWINGS FOR ALL PROPERTY LINES, EASEMENTS, TOPOGRAPHY, ROUGH GRADING, PRECISE GRADING, STREET/SITE IMPROVEMENTS, CURBS, RAMPS, AND UTILITIES.
- REFER TO LANDSCAPE DRAWINGS FOR ALL FENCING, PLANTING, GATES, AND HARDSCAPE.
- UFAS COMPLIANT UNITS (2 PER UNIT TYPE = 12 UNITS); SEE SITE PARKING A105 / A106
- AUDIOVISUAL ALARMS TO BE PROVIDED (2% OF ACCESSIBLE UNITS = 1); BUILDING 01 - UNIT 104 (UNIT 1 TYPE)  
BUILDING 03 - UNIT 100 (UNIT 4 TYPE)  
BUILDING 04 - UNIT 103 (UNIT 2 TYPE)  
BUILDING 07 - UNIT 106 (UNIT 3 TYPE)
- BUILDING ADDRESS TO BE LOCATED ON MONUMENT SIGN

### SITE PLAN LEGEND

- XX - BUILDING "IF"
- XX-XX - BUILDING TYPE
- TREE - SEE LANDSCAPE DRAWINGS
- WROUGHT-IRON FENCING
- CHAIN-LINK FENCING
- ACCESSIBLE PATH OF TRAVEL
- GARBAGE TRUCK ACCESS
- PROPERTY LINE - SEE CIVIL DRAWINGS
- CENTERLINE OF STREET/BOULEVARD
- ASSUMED PROPERTY LINE
- LINE OF SETBACK
- TRANSFORMER; SEE ELECTRICAL DRAWINGS FOR FURTHER INFORMATION
- ELECTRICAL POLE; SEE ELECTRICAL DRAWINGS FOR FURTHER INFORMATION
- BOLLARD; SEE ELECTRICAL DRAWINGS FOR FURTHER INFORMATION
- UFAS ACCESSIBILITY COMPLIANT UNITS
- AV - UFAS AUDIOVISUAL UNIT



**KTGY Group, Inc.**  
12555 West Jefferson Blvd.,  
Suite 100  
Los Angeles, California 90066  
ktgy.com  
310.394.2623

**KTGY Project No:** 160630

**Project Contact:** Gary Leus  
**Email:** gleus@ktgy.com

**Principal:** Manny Gonzalez  
**Project Designer:** Doug Heaton

**Developer**

**AMTEX**  
30141 AGOURA ROAD,  
SUITE 100  
AGOURA HILLS, CA  
PHONE NO. 818-706-0694  
FAX NO. 818-889-9158

DENISON FAMILY HOMES  
DENISON, TX.

No.	Date	Description
1	10/28/16	100% DESIGN DEVELOPMENT
2	11/14/16	50% CONSTRUCTION DOCUMENTS
3	12/01/16	100% C.D.; 1ST BLDG. SUBMITTAL
4	02/21/17	PERMIT SET
5	05/24/17	BULLETIN #1
6	08/02/17	BULLETIN #2
7	08/07/17	ASK 8.0
8	09/18/17	ASK 9.0

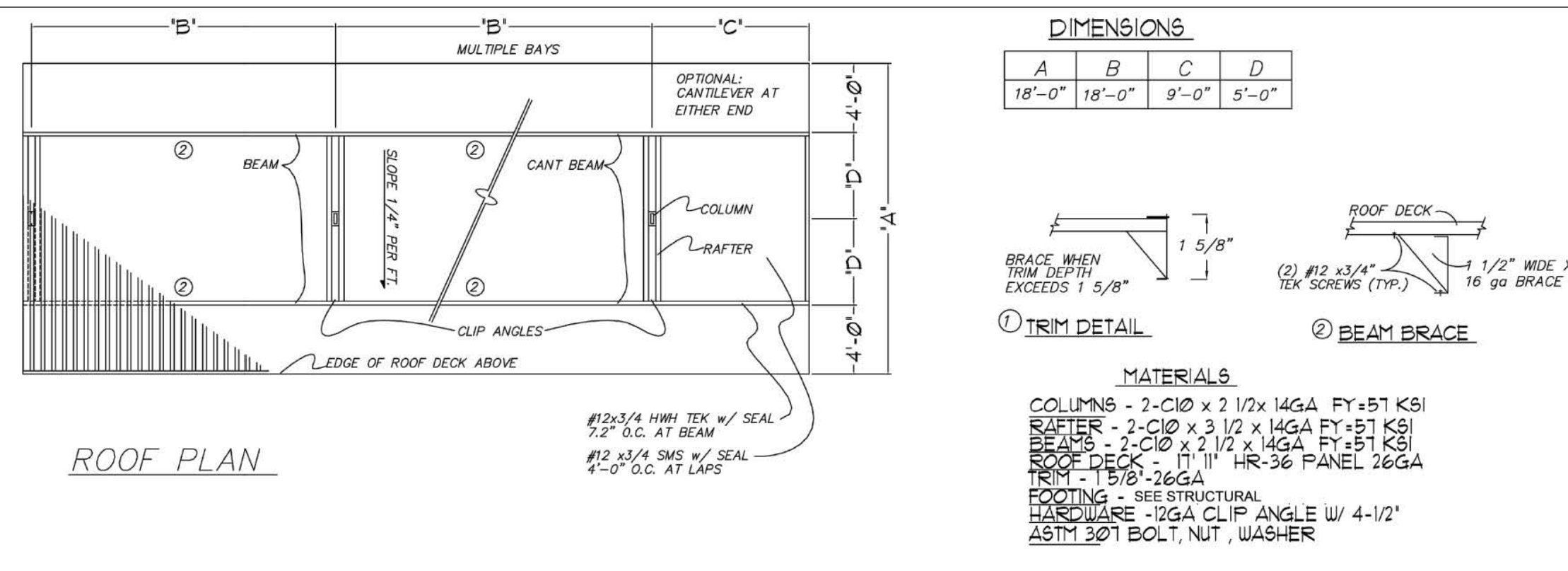
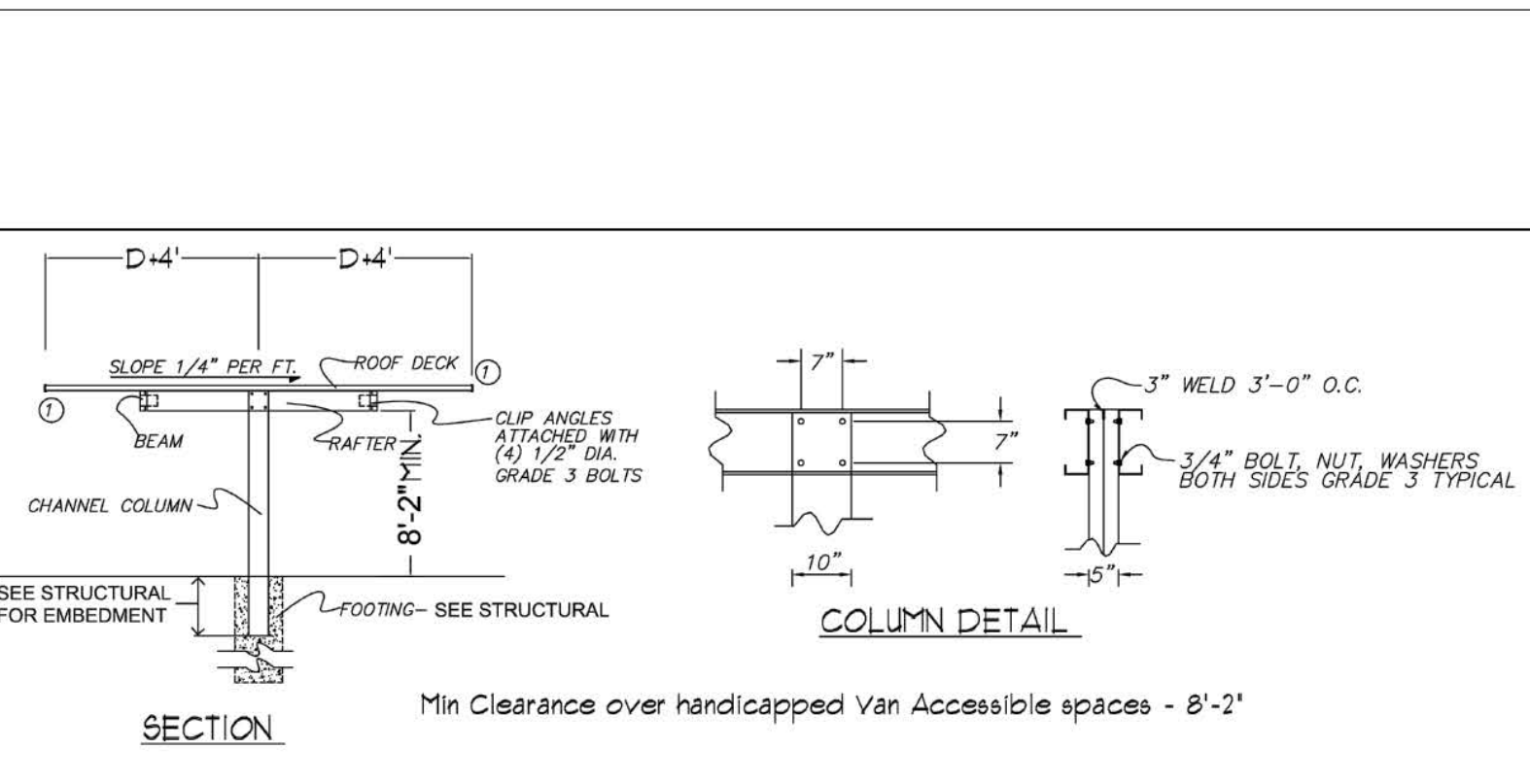
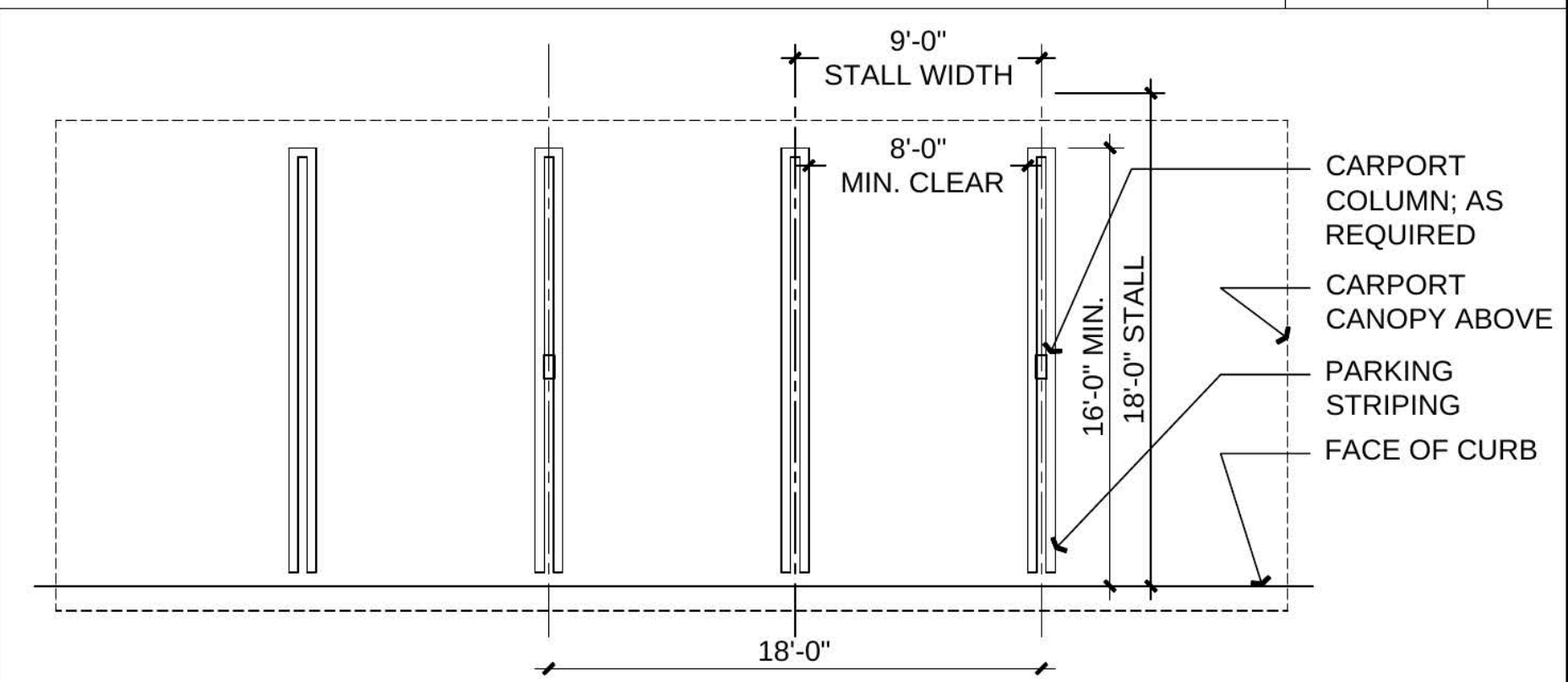
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### PARKING BREAKDOWN

PROVIDED STANDARD PARKING STALLS (9'x18')	315
PROVIDED HANDICAP STALLS:	10
PROVIDED VAN HANDICAP STALLS:	4
TOTAL PROVIDED PARKING STALLS:	329
CAR PORT STRUCTURES:	6
CAR PORT COVERAGE OF PARKING STALLS:	32

1 / A106

### SITE PARKING - NORTH



TYPICAL CARPORT ROOF PLAN AND SECTION SCALE: N.T.S. 3

TYPICAL CARPORT COLUMN LOCATION & PARKING STALL SCALE: N.T.S. 1

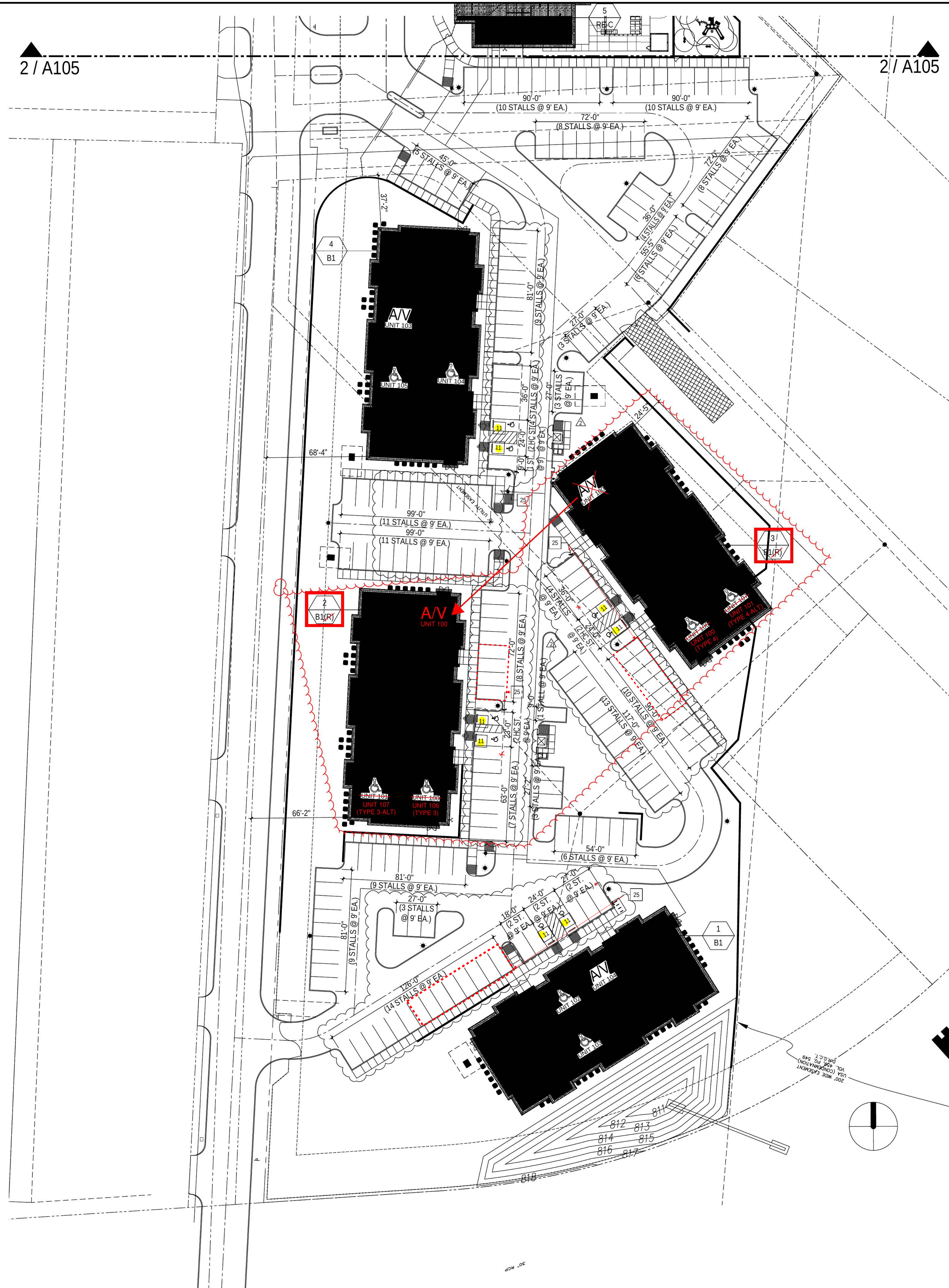
License Stamp  
**SITE PARKING**  
RESPONSE RFI 032  
DATE: 11/29/2017

A105



27 A105

27 A105



### ARCHITECTURAL SITE PLAN KEYNOTES

- 1 +/- 2.5 ACRE PASSIVE GREEN AREA
- 2 DOG PARK
- 3 PEDESTRIAN GATE
- 4 VEHICLE ENTRY GATE
- 5 FIRE DEPARTMENT ACCESS GATE / SECONDARY ROAD (ASPHALT)
- 6 ACCESSIBLE CURB CUT
- 7 CROSSWALK
- 8 BICYCLE RACK/PARKING
- 9 TRASH ENCLOSURE; SEE SHEET A220 FOR FURTHER INFORMATION
- 10 LIFT STATION
- 11 STANDARD DISABLED ACCESSIBLE PARKING STALL WITH STANDARD ACCESSIBLE PARKING STALL SIGNAGE
- 12 VAN DISABLED ACCESSIBLE PARKING STALL WITH STANDARD VAN ACCESSIBLE PARKING STALL SIGNAGE
- 13 VEHICLE EXIT GATE
- 14 SEE CIVIL DRAWINGS FOR DETENTION AREA SIZE
- 15 SLIDING VEHICLE EXIT GATE
- 16 PICNIC / BBQ AREA
- 17 CHILDRENS PLAY AREA
- 18 FIRE DEPARTMENT CONNECTION
- 19 KNOX BOX LOCATION
- 20 CONCRETE SIDEWALK
- 21 LOUNGE AREA
- 22 OPEN SPACE / LAWN AREA
- 23 DECOMPOSED GRANITE WALKING PATH
- 24 AC CONDENSER UNITS BANK
- 25 CAR PORT ROOF ABOVE
- 26 MONUMENT SIGN (DEFERRED SUBMITTAL)
- 27 RECYCLE BIN; PORT WORTH REQUIRED
- 28 EASEMENT; SEE CIVIL DRAWINGS
- 29 DOG PARK AREA; SEE LANDSCAPE DRAWINGS

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6. BUILDING ADDRESS TO BE LOCATED ON MONUMENT SIGN

### SITE PLAN LEGEND

- XX - BUILDING "IF" BUILDING CALLOUT
- XX-XX - BUILDING TYPE
- TREE - SEE LANDSCAPE DRAWINGS
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License Stamp  
**SITE PARKING**

**RESPONSE RFI 032**  
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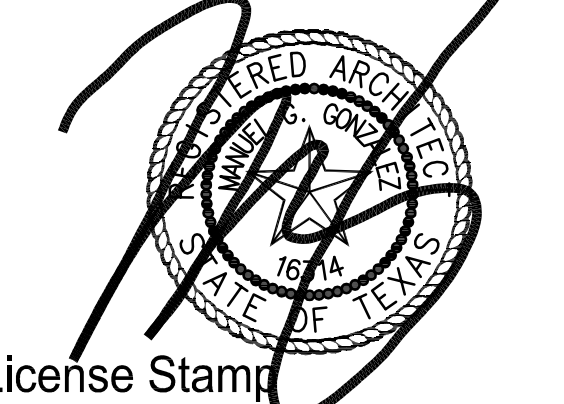
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**RECREATION CENTER - SLAB, FIRST FLOOR & ROOF PLAN**

**A200**

BUILDING PLAN KEYNOTES	
B1	LINE OF ROOF ABOVE
B2	UTILITY ROOM: CLAD INTERIOR WITH ONE LAYER OF PLYWOOD IN LIEU OF DRYWALL (AT TYPE VB BUILDINGS ONLY); SEE MEP DRAWING FOR FURTHER INFORMATION.
B3	DOWNSPOUT: SEE BUILDING ELEVATIONS FOR FURTHER INFORMATION
B4	WARP WATERPROOFING MEMBRANE AND/OR CONCRETE TO PROVIDE POSITIVE DRAINAGE AND A CONTINUOUS ACCESSIBLE THRESHOLD.
BUILDING PLAN GENERAL NOTES	
1.	THE COMPOSITE BUILDING PLAN IS PROVIDED FOR PLAN TO PLAN RELATIONSHIPS, OVERALL BUILDING DIMENSIONS, PARTY WALLS AND GENERAL BUILDING DETAILING. REFER TO 1/4" = 1'-0" PLANS FOR SPECIFIC UNIT PLAN INFORMATION. 1/4" SCALE PLANS TAKE PRECEDENCE OVER UNIT PLAN IMAGE SHOWN HEREWITH.
2.	DRAFT STOPS ARE NOT REQUIRED FOR THE A-3 PORTION OF FULLY SPRINKLERED BUILDINGS. (IBC SECTION 718.4.3)
3.	REFER TO SHEETS A801 AND A802 FOR FIRE DETAILS.
4.	FIRESTOPPING WILL BE PROVIDED AT PLUMBING, ELECTRICAL AND SPRINKLER PENETRATIONS THROUGH RATED FLOOR/CEILING ASSEMBLIES PER IBC SECTION 718.2.1.
5.	ALL VERTICAL DIMENSIONS NOTED (I.E. SOFFITS, CEILING HEIGHTS, ETC.) ARE FROM THE TOP OF FLOOR SHEATHING OR FIRST FLOOR UNITS FINISH FLOOR SLAB AT THE INTERIOR OF THE UNITS.
6.	WALL STUD DIMENSIONS INDICATED IN KEYNOTES AND ON PLAN ARE PROVIDED TO SET WALL WIDTH. SEE STRUCTURAL PLANS FOR MINIMUM STRUCTURAL REQUIREMENTS.
7.	AIRBORNE SOUND INSULATION SHALL COMPLY WITH IBC SECTION 1207.2: A. WALL AND FLOOR/CEILING ASSEMBLIES SEPARATING DWELLING UNITS FROM EACH OTHER AND FROM PUBLIC OR SERVICE AREAS SUCH AS INTERIOR CORRIDORS SHALL PROVIDE AIRBORNE SOUND INSULATION EQUIVALENT TO THAT REQUIRED TO MEET A SOUND TRANSMISSION CLASS (STC) OF 50 OR NOISE ISOLATION CLASS (NIC) OF 45, IF FIELD TESTED. PENETRATIONS OR OPENINGS IN ACOUSTICALLY RATED WALL AND FLOOR/CEILING ASSEMBLIES FOR PIPING, ELECTRICAL DEVICES, RECESSED CABINETS, BATHTUBS, SOFFITS OR HEATING, VENTILATING OR EXHAUST DUCTS SHALL BE SEALED, LINED, INSULATED OR OTHERWISE TREATED TO MAINTAIN THE REQUIRED RATINGS.
8.	IMPACT SOUND INSULATION SHALL COMPLY WITH IBC SECTION 1207.3: B. FLOOR/CEILING ASSEMBLIES BETWEEN DWELLING UNITS OR BETWEEN A DWELLING UNIT AND A PUBLIC OR SERVICE AREA WITHIN THE STRUCTURE SHALL HAVE AN IMPACT INSULATION CLASS (IIC) RATING OF NOT LESS THAN 50 (45 IF FIELD TESTED) WHEN TESTED IN ACCORDANCE WITH ASTM E 492.
C.	PENETRATIONS OR OPENINGS IN ACOUSTICALLY RATED WALL AND FLOOR/CEILING ASSEMBLIES FOR PIPING, ELECTRICAL DEVICES, RECESSED CABINETS, BATHTUBS, SOFFITS OR HEATING, VENTILATING OR EXHAUST DUCTS SHALL BE SEALED, LINED, INSULATED OR OTHERWISE TREATED TO MAINTAIN THE REQUIRED RATINGS. (IBC 714.3)
9.	COMMON WALLS SHALL NOT CONTAIN PLUMBING, MECHANICAL EQUIPMENT, DUCTS OR VENTS WITHIN THE CAVITY OF THE COMMON WALL. FIRE-STOPPED THROUGH PENETRATIONS ARE ALLOWED.

ROOF PLAN KEYNOTES	
R1	LINE / EDGE OF ROOF OVERHANG; SEE WALL SECTIONS FOR EAVE AND RAKE DIMENSIONS
R2	LINE OF BUILDING / ROOF WALL BELOW
R3	4" ROUND GUTTER. SEE BUILDING ELEVATIONS FOR DOWNSPOUT LOCATIONS; PAINT TO MATCH ADJACENT FINISH COLOR

ROOF PLAN GENERAL NOTES	
1.	CLASS A COMPOSITION SHINGLE TO BE INSTALLED OVER MINIMUM (2) LAYERS 30 LB ROOFING FELT WEATHER BOARD LAPPED.
2.	REFER TO EXTERIOR ELEVATIONS FOR ROOF TO WALL FLASHING DETAILS.
3.	NO ROOF PENETRATIONS (I.E. ATTIC VENTS, CHIMNEYS, PLUMBING OR DRYER VENTS, ETC.) TO OCCUR WITHIN 14" OF VALLEYS, HIPS OR RIDGES.
4.	PROVIDE MIN 22" x 30" CUT OUTS IN LOW ROOF SHEATHING BELOW CALIFORNIA FRAMED ROOF AREAS.
5.	PLUMBING VENT STACK TERMINATIONS TO BE LOCATED A MIN. OF 10'-0" AWAY FROM ATTIC VENTS PER U.P.C. SEC 906.2
6.	ALL ROOF VENTILATION MUST BE TRUE AND VERTICAL. PENETRATIONS SHOULD BE GANGED WHEREVER POSSIBLE. ROOF PENETRATIONS SHOULD BE LOCATED ON ALLEY OR COURTYARD SIDE OF BUILDINGS WHEREVER POSSIBLE.
7.	AN APPROVED RADIANT BARRIER SHALL BE INSTALLED ON THE UNDERSIDE OF THE ROOF SHEATHING AND ALL EXTERIOR VERTICAL SURFACES EXPOSED TO THE ATTIC INCLUDING GABLE ENDS AND TRUSS HEELS.

ATTIC VENTILATION	
1.	PER IBC SECTION 1203.2 THE MIN. REQUIRED NET FREE VENTILATING AREA SHALL BE 1/300 OF THE AREA OF THE SPACE VENTILATED, PROVIDED A VAPOR BARRIER HAVING A TRANSMISSION RATE NOT EXCEEDING 1 PERM IN ACCORDANCE WITH ASTM E 96 IS INSTALLED ON THE WARM SIDE OF THE ATTIC INSULATION AND PROVIDED 50 PERCENT OF THE REQUIRED VENTILATING AREA IS PROVIDED BY VENTILATORS LOCATED IN THE UPPER PORTION OF THE SPACE TO BE VENTILATED AT LEAST 3 FEET ABOVE THE EAVE OR CORNICE VENTS, WITH THE BALANCE OF THE REQUIRED VENTILATION PROVIDED BY EAVE OR CORNICE VENTS.
2.	ATTIC VENT OPENING SHALL HAVE CORROSION-RESISTANT WIRE MESH OR OTHER APPROVED MATERIAL WITH 1/16-IN. MINIMUM AND 1/4-IN. MAXIMUM OPENING.
3.	A MINIMUM OF 1-IN. AIRSPACE SHALL BE PROVIDED BETWEEN INSULATION AND ROOF SHEATHING.

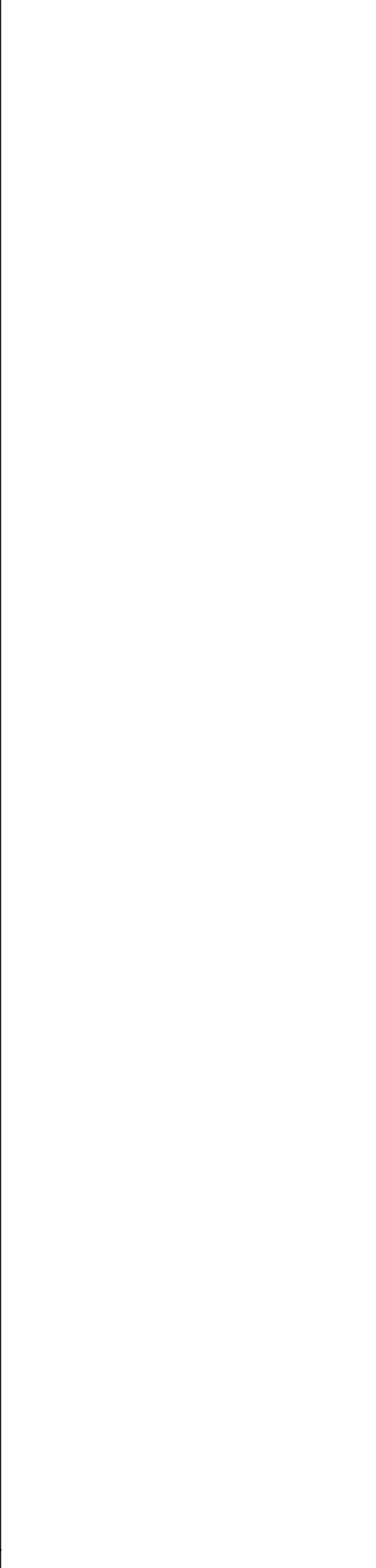
ROOF SYMBOL LEGEND	
# : 1/2	DIRECTION OF ROOF SLOPE - PITCH / SLOPE INDICATED ON ROOF PLAN

SLAB INTERFACE KEYNOTES	
S1	CONCRETE POST-TENSION SLAB PER STRUCTURAL DRAWINGS
S2	CONCRETE SLAB, SINGLE POUR BROOM FINISH, SLOPED MIN. 1/4" PER FOOT U.N.O.
S3	9 3/4" DROPPED SLAB
S4	FLUSH SLAB, SLOPE OUT FROM THRESHOLD ASK 6.0R
S5	CONCRETE CURB PER STRUCTURAL DRAWINGS
S6	CONNECTION TO PAD OR WALKWAY: REFER TO CIVIL DRAWINGS FOR VARIATION IN RISE AND RUN DIMENSIONS. REFER TO LANDSCAPE DRAWINGS FOR CONNECTION DETAILS TO COMMON WALKWAYS OR PADS
S7	FLOOR DRAINS

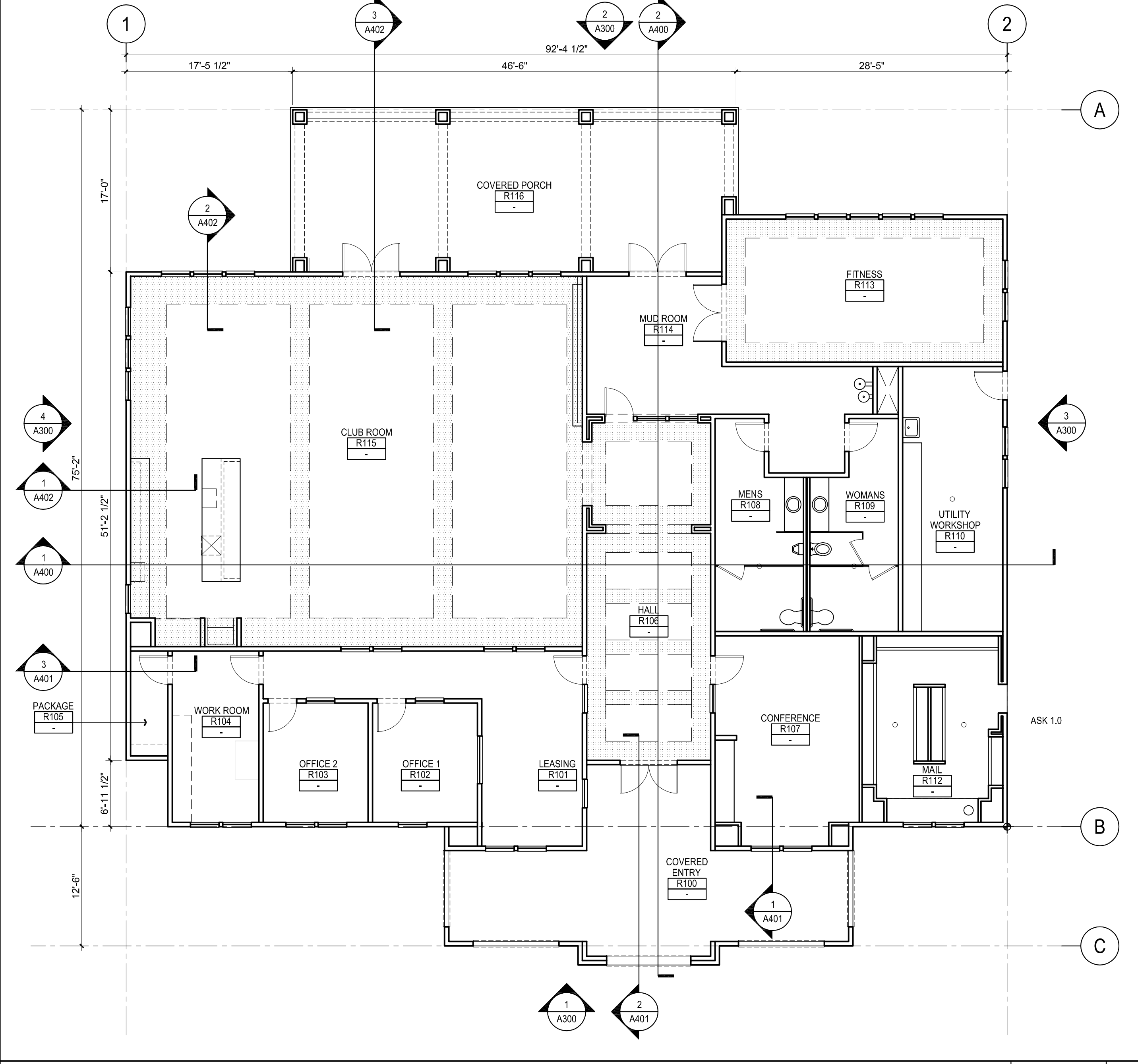
SLAB INTERFACE NOTES	
1.	REFER TO CIVIL DRAWINGS FOR TOP OF SLAB (T.O.S.) & TOP OF CURB (T.O.C.) ELEVATIONS
2.	THIS DRAWING IS FOR DESIGN INTENT ONLY - REFER TO STRUCTURAL & POST-TENSION DRAWINGS FOR DIMENSIONS, FOOTINGS, STRUCTURAL DETAILS, HARDWARE AND ALL STRUCTURAL REQUIREMENTS
3.	WHERE DISCREPANCIES BETWEEN SOILS REPORT AND STRUCTURAL DRAWINGS OCCUR, CONTACT THE STRUCTURAL ENGINEER PRIOR TO CONSTRUCTION
4.	REFER TO CIVIL DRAWINGS FOR STAKING AND SURVEY INFORMATION - EXACT LOCATIONS OF BUILDING SHALL BE VERIFIED BY CIVIL ENGINEER
5.	SLAB TOP OF CONC. HEIGHTS AS SHOWN ARE FOR DESIGN INTENT ONLY. VERIFY WITH CIVIL DRAWINGS. ANY DISCREPANCIES SHALL BE REPORTED TO ARCHITECT PRIOR TO CONSTRUCTION.

SLOPE SLAB TO EXTERIOR. MIN. 1/4" PER FOOT U.N.O. PER STRUCTURAL DRAWINGS

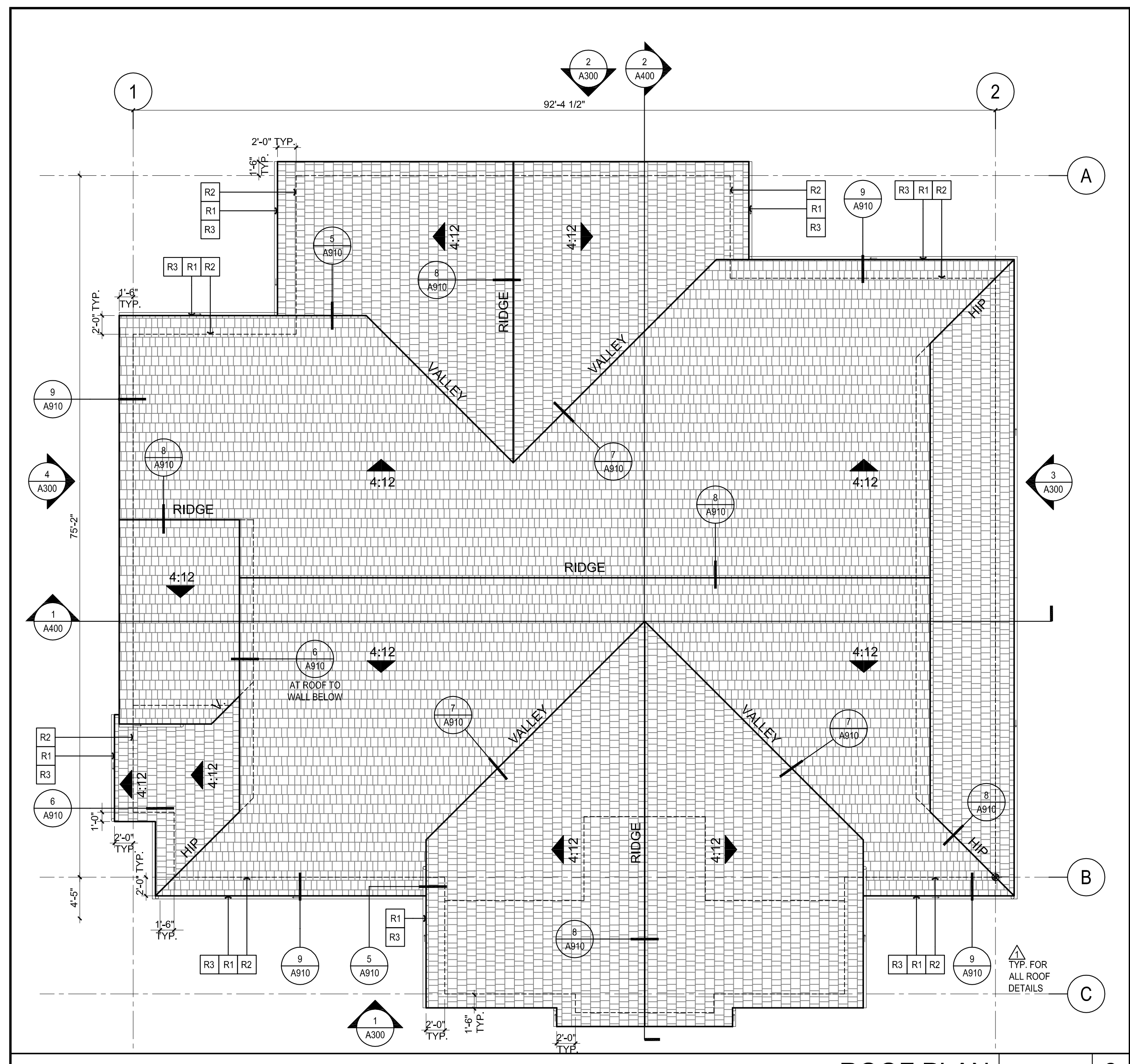
**ATTIC VENTILATION CALCULATIONS:**  
 ROOF AREA: 6,869 S.F.  
 REQUIRED VENTILATION = 1/300 \* 22.90 S.F. NET FREE AREA  
 PROVIDED VENTILATION = 49 S.F. LOUVERED AREA AT 50% OPEN = 28 S.F. NET FREE AREA (SEE ELEVATIONS FOR LOUVERED AREAS)



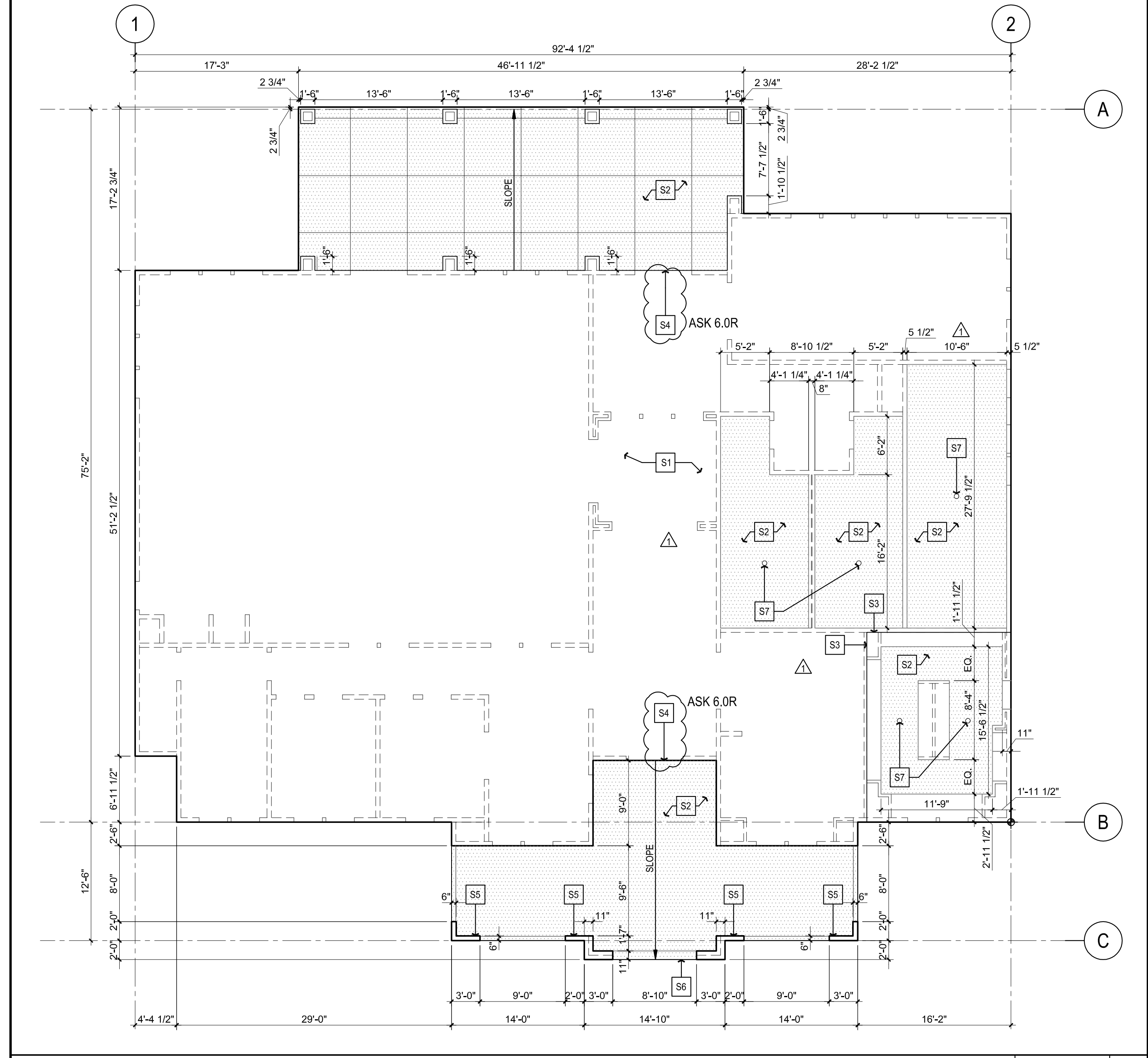
**ROOF PLAN** SCALE: 1/8"=1'-0" 3



**FIRST FLOOR PLAN** SCALE: 1/8"=1'-0" 1

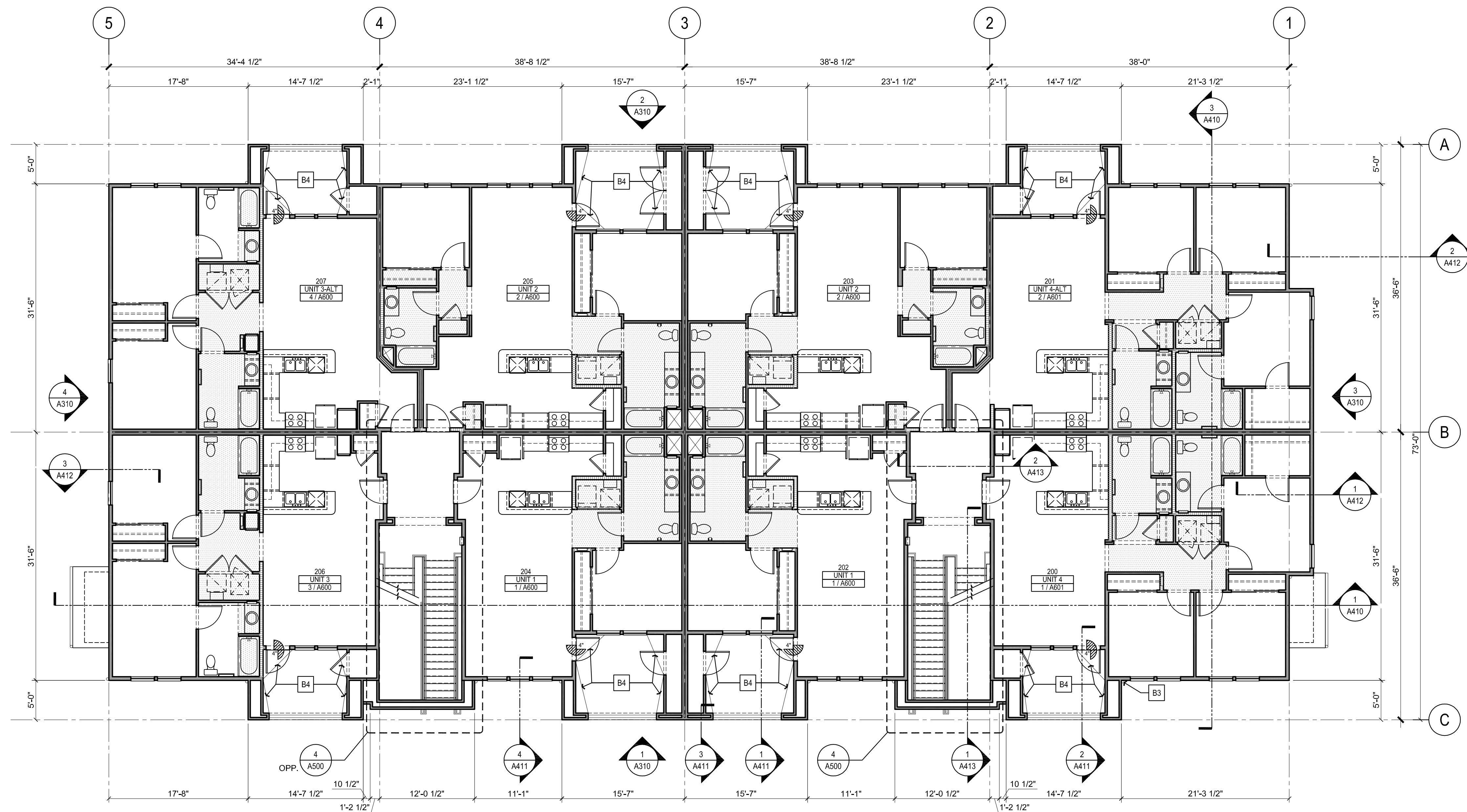


**SLAB PLAN** SCALE: 1/8"=1'-0" 2

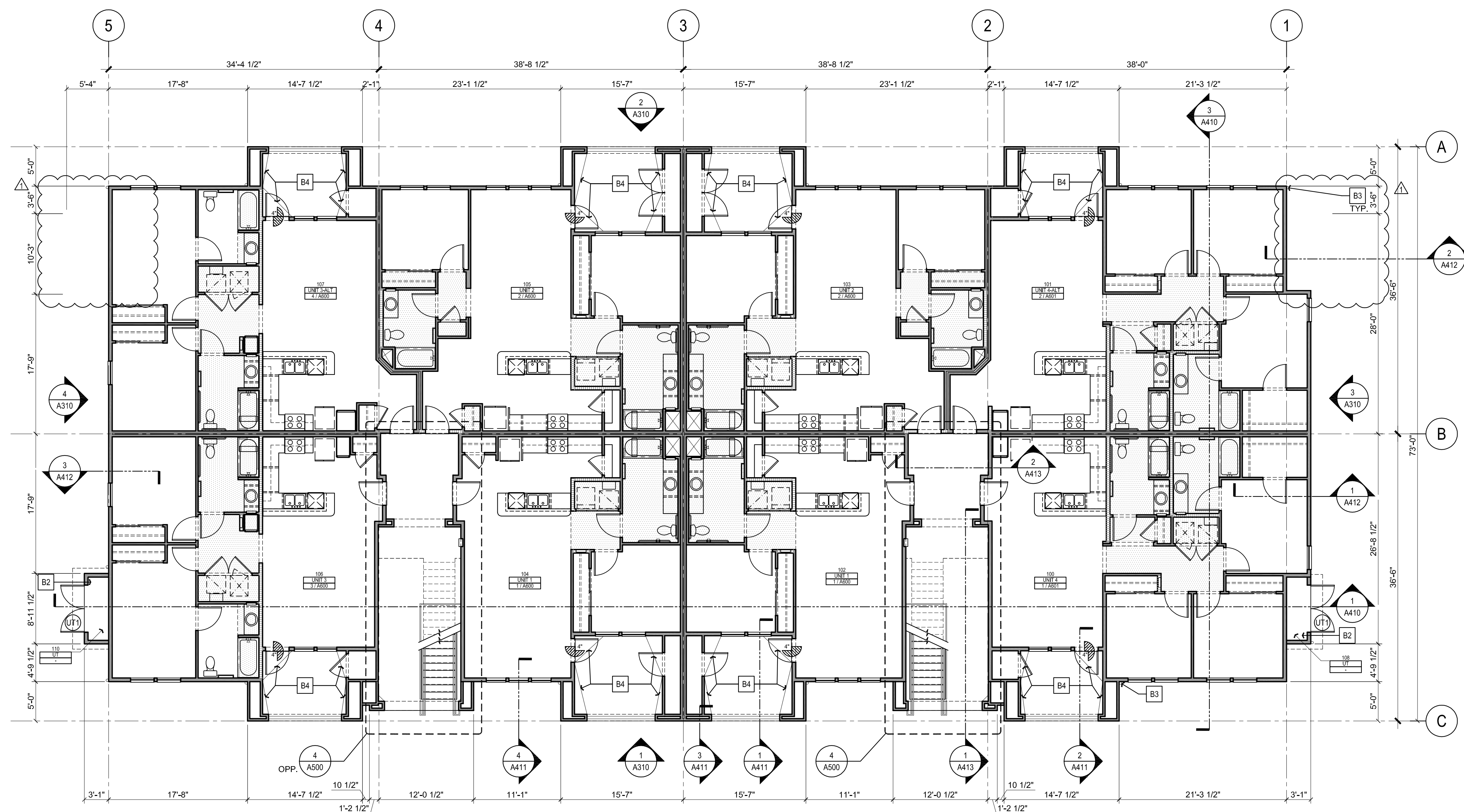


**SLAB PLAN** SCALE: 1/8"=1'-0" 2





SECOND FLOOR PLAN SCALE: 1/8"=1'-0" 2



FIRST FLOOR PLAN SCALE: 1/8"=1'-0" 1

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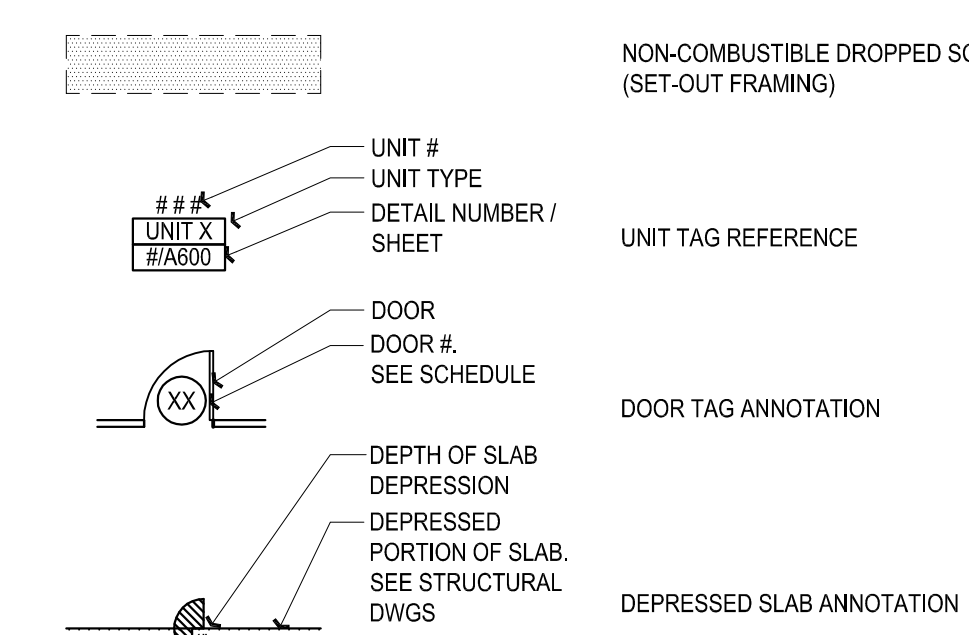
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4. FIRESTOPPING WILL BE PROVIDED AT PLUMBING, ELECTRICAL AND SPRINKLER PENETRATIONS THROUGH RATED FLOOR/CEILING ASSEMBLIES PER IBC SECTION 718.2.1.
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6. WALL STUD DIMENSIONS INDICATED IN KEYNOTES AND ON PLAN ARE PROVIDED TO SET WALL WIDTH. SEE STRUCTURAL PLANS FOR MINIMUM STRUCTURAL REQUIREMENTS.
7. ARBORNE SOUND INSULATION SHALL COMPLY W/ IBC SECTION 1207.2.
  - A. WALL AND FLOOR-CEILING ASSEMBLIES SEPARATING DWELLING UNITS FROM EACH OTHER AND FROM PUBLIC OR SERVICE AREAS SUCH AS INTERIOR CORRIDORS SHALL PROVIDE ARBORNE SOUND INSULATION EQUAL TO THAT REQUIRED TO MEET A SOUND TRANSMISSION CLASS (STC) OF 50 OR NOISE ISOLATION CLASS (NIC) OF 45, IF FIELD TESTED.
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  - C. IMPACT SOUND INSULATION SHALL COMPLY W/ IBC SECTION 1207.3.
  - D. FLOOR-CEILING ASSEMBLIES BETWEEN DWELLING UNITS OR BETWEEN A DWELLING UNIT AND A PUBLIC OR SERVICE AREA WITHIN THE STRUCTURE SHALL HAVE AN IMPACT INSULATION CLASS (IIC) RATING OF NOT LESS THAN 50 (45 IF FIELD TESTED) WHEN TESTED IN ACCORDANCE WITH ASTM E 492.
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9. COMMON WALLS SHALL NOT CONTAIN PLUMBING, MECHANICAL EQUIPMENT, DUCTS OR VENTS WITHIN THE CAVITY OF THE COMMON WALL. FIRE-STOPPED THROUGH PENETRATIONS ARE ALLOWED.

DIMENSION NOTE

ANY DIMENSIONS THAT AFFECT CODE CLEARANCES AND STRUCTURAL STACKING THAT CANNOT BE RESOLVED IN FIELD SHALL BE DIRECTED TO ARCHITECT FOR REVIEW PRIOR TO CONSTRUCTION.

PLAN SYMBOLS



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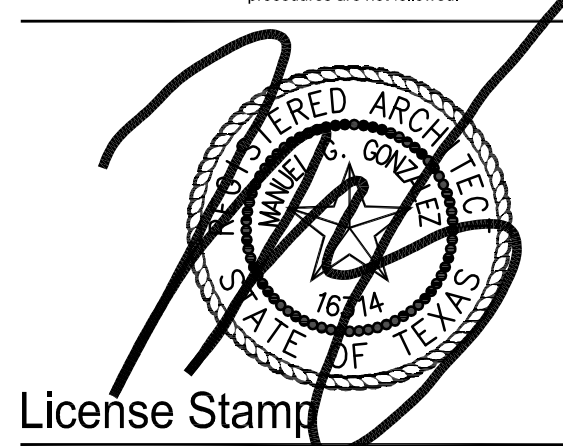
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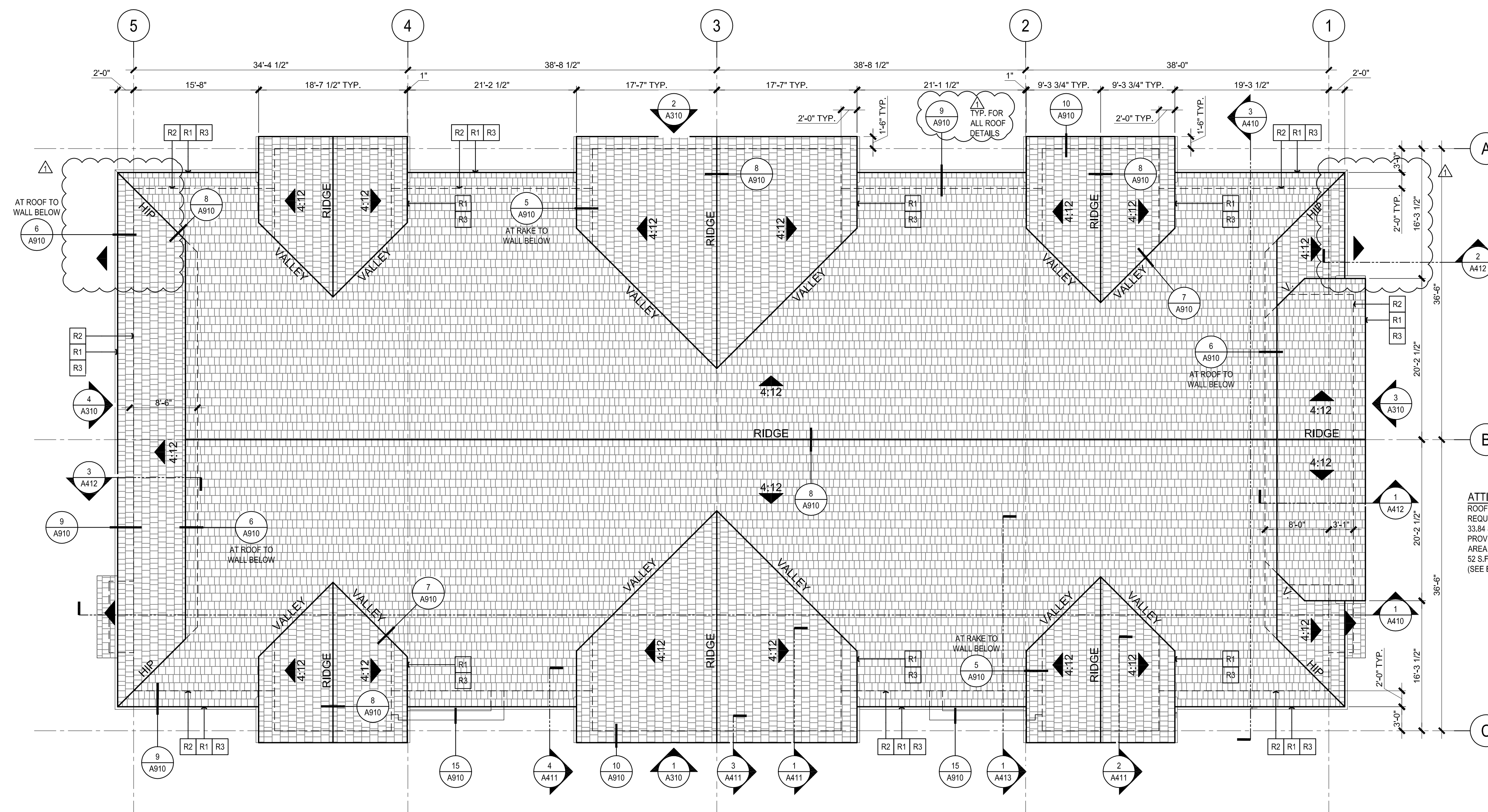
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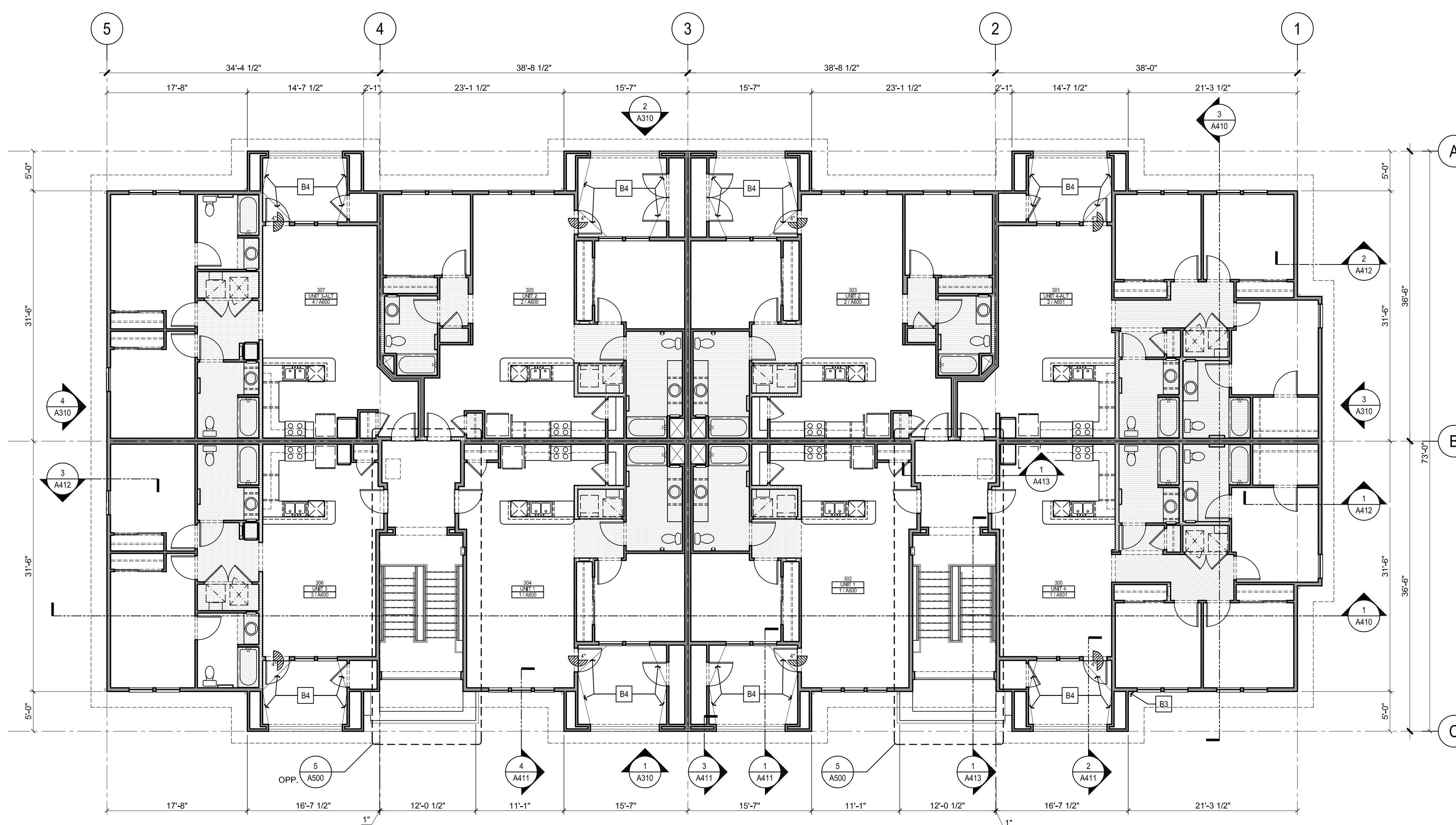
**License Stamp**  
**BUILDING 1 - SLAB & FIRST FLOOR COMPOSITE PLAN**

**A211**





ROOF PLAN SCALE: 1/8"=1'-0" 2



THIRD FLOOR PLAN SCALE: 1/8"=1'-0" 1

**BUILDING PLAN KEYNOTES**

- R1** LINE OF ROOF ABOVE
- R2** UTILITY ROOM; CLAD INTERIOR WITH ONE LAYER OF PLYWOOD IN LIEU OF DRYWALL (AT TYPE VB BUILDINGS ONLY); SEE MEP DRAWING FOR FURTHER INFORMATION.
- B3** DOWNSPOUT; SEE BUILDING ELEVATIONS FOR FURTHER INFORMATION
- B4** WARP WATERPROOFING MEMBRANE AND/OR CONCRETE TO PROVIDE POSITIVE DRAINAGE AND A CONTINUOUS ACCESSIBLE THRESHOLD.

**BUILDING PLAN GENERAL NOTES**

1. THE COMPOSITE BUILDING PLAN IS PROVIDED FOR PLAN TO PLAN RELATIONSHIPS, OVERALL BUILDING DIMENSIONS, PARTY WALLS AND GENERAL BUILDING DETAILING. REFER TO 1/4" = 1'-0" PLANS FOR SPECIFIC UNIT PLAN INFORMATION. 1/4" SCALE PLANS TAKE PRECEDENT OVER UNIT PLAN IMAGE SHOWN HEREWITH.
2. DRAFT STOPS ARE NOT REQUIRED FOR THE A-3 PORTION OF FULLY SPRINKLERED BUILDINGS. (IBC SECTION 718.4.3)
3. REFER TO SHEETS A901 AND A902 FOR FIRE DETAILS.
4. FIRESTOPPING WILL BE PROVIDED AT PLUMBING, ELECTRICAL AND SPRINKLER PENETRATIONS THROUGH RATED FLOOR/CEILING ASSEMBLIES PER IBC SECTION 718.2.1.
5. ALL VERTICAL DIMENSIONS NOTED (I.E. SOFFITS, CEILING HEIGHTS, ETC.) ARE FROM THE TOP OF FLOOR SHEATHING OR FIRST FLOOR UNITS FINISH FLOOR SLAB AT THE INTERIOR OF THE UNITS.
6. WALL STUD DIMENSIONS INDICATED IN KEYNOTES AND ON PLAN ARE PROVIDED TO SET WALL WIDTH. SEE STRUCTURAL PLANS FOR MINIMUM STRUCTURAL REQUIREMENTS.
7. AIRBORNE SOUND INSULATION SHALL COMPLY WITH IBC SECTION 1207.2:  
 A. WALL AND FLOOR-CEILING ASSEMBLIES SEPARATING DWELLING UNITS FROM EACH OTHER AND FROM PUBLIC OR SERVICE AREAS SUCH AS INTERIOR CORRIDORS SHALL PROVIDE AIRBORNE SOUND INSULATION EQUAL TO THAT REQUIRED TO MEET A SOUND TRANSMISSION CLASS (STC) OF 50 OR NOISE ISOLATION CLASS (NIC) OF 45, IF FIELD TESTED.  
 PENETRATIONS OR OPENINGS IN ACOUSTICALLY RATED WALL AND FLOOR-CEILING ASSEMBLIES FOR PIPING, ELECTRICAL DEVICES, RECESSED CABINETS, BATHTUBS, SOFFITS OR HEATING, VENTILATING OR EXHAUST DUCTS SHALL BE SEALED, LINED, INSULATED OR OTHERWISE TREATED TO MAINTAIN THE REQUIRED RATINGS.  
 B. FLOOR/CEILING ASSEMBLIES BETWEEN DWELLING UNITS OR BETWEEN A DWELLING UNIT AND A PUBLIC OR SERVICE AREA WITHIN THE STRUCTURE SHALL HAVE AN IMPACT INSULATION CLASS (IIC) RATING OF NOT LESS THAN 50 (45 IF FIELD TESTED) WHEN TESTED IN ACCORDANCE WITH ASTM E 492.  
 C. PENETRATIONS OR OPENINGS IN ACOUSTICALLY RATED WALL AND FLOOR-CEILING ASSEMBLIES FOR PIPING, ELECTRICAL DEVICES, RECESSED CABINETS, BATHTUBS, SOFFITS OR HEATING, VENTILATING OR EXHAUST DUCTS SHALL BE SEALED, LINED, INSULATED OR OTHERWISE TREATED TO MAINTAIN THE REQUIRED RATINGS. (IBC 714.3)
9. COMMON WALLS SHALL NOT CONTAIN PLUMBING, MECHANICAL, EQUIPMENT, DUCTS OR VENTS WITHIN THE CAVITY OF THE COMMON WALL. FIRE-STOPPED THROUGH PENETRATIONS ARE ALLOWED.

**ATTIC VENTILATION CALCULATIONS:**  
 ROOF AREA: 10,152 S.F.  
 REQUIRED VENTILATION = 1/300 \* 33,84 S.F. NET FREE AREA  
 PROVIDED VENTILATION = 104 S.F. LOUVERED AREA AT 50% OPEN = 52 S.F. NET FREE AREA  
 (SEE ELEVATIONS FOR LOUVERED AREAS)

**ROOF PLAN KEYNOTES**

- R1** LINE / EDGE OF ROOF OVERHANG; SEE WALL SECTIONS FOR EAVE AND RAKE DIMENSIONS
- R2** LINE OF BUILDING / ROOF WALL BELOW
- R3** 4" ROUND GUTTER; SEE BUILDING ELEVATIONS FOR DOWNSPOUT LOCATIONS; PAINT TO MATCH ADJACENT FINISH COLOR

**ROOF PLAN GENERAL NOTES**

1. CLASS A COMPOSITION SHINGLE TO BE INSTALLED OVER MINIMUM (2) LAYERS 30 LB ROOFING FELT WEATHER BOARD LAPPED.
2. REFER TO EXTERIOR ELEVATIONS FOR ROOF TO WALL FLASHING DETAILS.
3. NO ROOF PENETRATIONS (I.E. ATTIC VENTS, CHIMNEYS, PLUMBING OR DRYER VENTS, ETC.) TO OCCUR WITHIN 1'-6" OF VALLEYS, HIPS OR RIDGES.
4. PROVIDE MIN 22" x 30" CUT OUTS IN LOW ROOF SHEATHING BELOW CALIFORNIA FRAMED ROOF AREAS.
5. PLUMBING VENT STACK TERMINATIONS TO BE LOCATED A MIN. OF 10'-0" AWAY FROM ATTIC VENTS PER U.P.C. SEC 909.2
6. ALL ROOF VENTILATION MUST BE TRUE AND VERTICAL. PENETRATIONS SHOULD BE GANGED WHERE POSSIBLE. ROOF PENETRATIONS SHOULD BE LOCATED ON ALLEY OR COURTYARD SIDE OF BUILDING WHEREVER POSSIBLE.
7. AN APPROVED RADIANT BARRIER SHALL BE INSTALLED ON THE UNDERSIDE OF THE ROOF SHEATHING AND ALL EXTERIOR VERTICAL SURFACES EXPOSED TO THE ATTIC INCLUDING GABLE ENDS AND TRUSS HEELS.

**ATTIC VENTILATION**

1. PER IBC SECTION 1203.2 THE MIN. REQUIRED NET FREE VENTILATING AREA SHALL BE 1/300 OF THE AREA OF THE SPACE VENTILATED. PROVIDED A VAPOR RETARDER HAVING A TRANSMISSION RATE NOT EXCEEDING 1 PERM IN ACCORDANCE WITH ASTM E 96 IS INSTALLED ON THE WARM SIDE OF THE ATTIC INSULATION AND PROVIDED 90 PERCENT OF THE REQUIRED VENTILATING AREA IS PROVIDED BY VENTILATORS LOCATED IN THE UPPER PORTION OF THE SPACE TO BE VENTILATED AT LEAST 3 FEET ABOVE THE EAVE OR CORNICE VENTS, WITH THE BALANCE OF THE REQUIRED VENTILATION PROVIDED BY EAVE OR CORNICE VENTS.
2. ATTIC VENT OPENINGS SHALL HAVE CORROSION-RESISTANT WIRE MESH OR OTHER APPROVED MATERIAL WITH 1/16-IN. MINIMUM AND 1/4-IN. MAXIMUM OPENING.
3. A MINIMUM OF 1-IN. AIRSPACE SHALL BE PROVIDED BETWEEN INSULATION AND ROOF SHEATHING.

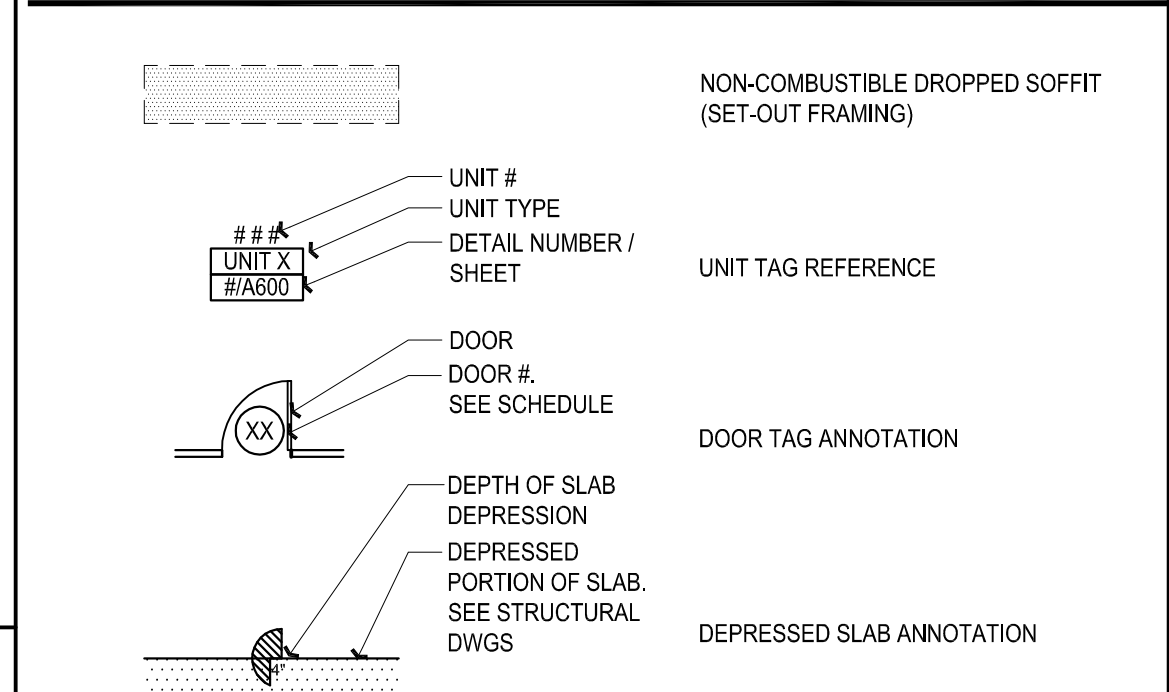
**ROOF SYMBOL LEGEND**

# : 12 DIRECTION OF ROOF SLOPE - PITCH / SLOPE INDICATED ON ROOF PLAN

**DIMENSION NOTE**

ANY DIMENSIONS THAT AFFECT CODE CLEARANCES AND STRUCTURAL STACKING THAT CANNOT BE RESOLVED IN FIELD SHALL BE DIRECTED TO ARCHITECT FOR REVIEW PRIOR TO CONSTRUCTION.

**PLAN SYMBOLS**



**KTGY Group, Inc.**  
 12555 West Jefferson Blvd.,  
 Suite 100  
 Los Angeles, California 90066  
 ktgy.com  
 310.394.2623

**KTGY Project No:** 160630

**Project Contact:** Gary Leus  
**Email:** gleus@ktgy.com

**Principal:** Manny Gonzalez  
**Project Designer:** Doug Heaton

**Developer**



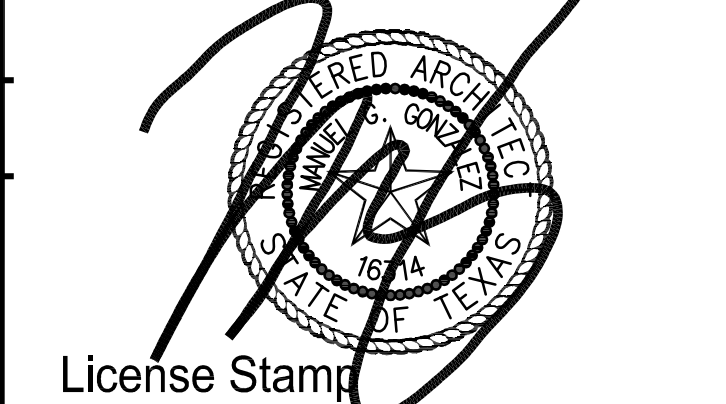
**AMTEX**  
 30141 AGOURA ROAD,  
 SUITE 100  
 AGOURA HILLS, CA  
 PHONE NO. 818-706-0694  
 FAX NO. 818-889-9158

**DENISON FAMILY HOMES**

DENISON, TX.

No.	Date	Description
1	10/28/16	100% DESIGN DEVELOPMENT
2	11/14/16	50% CONSTRUCTION DOCUMENTS
3	12/01/16	100% C.D.; 1ST BLDG. SUBMITTAL
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**BUILDING 1 - THIRD FLOOR & ROOF PLAN**

**A212**





**KTGY Group, Inc.**  
 12555 West Jefferson Blvd.,  
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 Los Angeles, California 90066  
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 310.394.2623

**KTGY Project No:** 160630

**Project Contact:** Gary Leus  
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**DENISON FAMILY HOMES**

DENISON, TX.

**ELEVATION KEYNOTES**

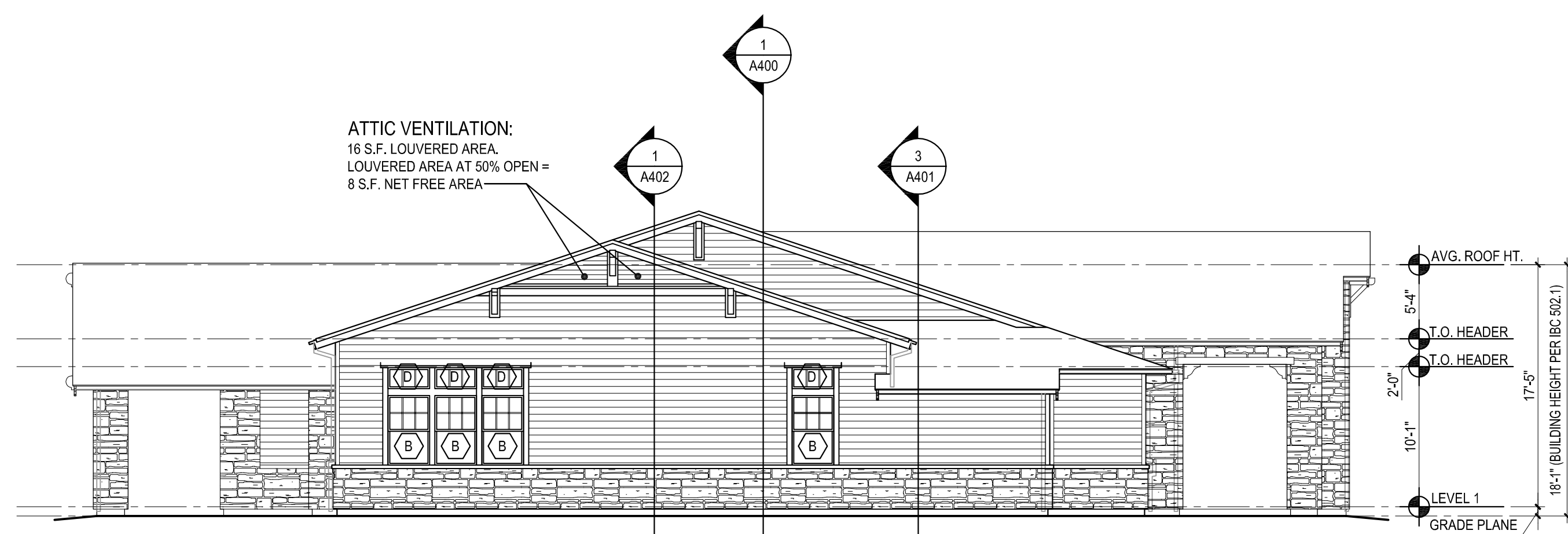
- 1 8" WOOD GRAIN TEXTURE, FIBER CEMENT, LAP SIDING; PRIMED AND PAINTED. MANUFACTURE: JAMES HARDIE. PAINT COLOR: ARCTIC WHITE OR PAINT EQUAL
- 2 1X SMOOTH FIBER CEMENT TRIM; SEE WALL SECTIONS AND DETAILS FOR FURTHER INFORMATION. MANUFACTURE: JAMES HARDIE. PAINT COLOR: ARCTIC WHITE OR PAINT EQUAL
- 3 1X1 SMOOTH FIBER CEMENT CORNER BOARDS; AT ALL INNER AND OUTER CORNERS UNLESS NOTED OR IF SPACE WILL NOT ALLOW - INSTALL AT LEAST ONE BOARD. MANUFACTURE: JAMES HARDIE. PAINT COLOR: ARCTIC WHITE OR PAINT EQUAL
- 4 WINDOW; SEE A800
- 5 FIBER CEMENT BEAD BOARD PANEL CEILING; TYP. AT ALL EXTERIOR CEILINGS; MATCH PAINT COLOR TO RECREATION CENTER INTERIOR PAINT COLOR @ FOYER BEAD BOARD CEILING
- 6 HVAC CONDENSERS; VERIFY LOCATION AND DETAILS WITH MECHANICAL DRAWINGS
- 7 WROUGHT IRON GUARDRAIL; SHOP PAINT DARK BRONZE; TOUCH UP ON SITE AS NEEDED. SEE WALL SECTIONS FOR FURTHER INFORMATION
- 8 ARCHITECTURAL GRADE COMPOSITION SHINGLE ROOFING, MUST BE ENERGY STAR RATED COOL ROOF. MANUFACTURE: OWENS CORNING OR EQUAL. COLOR: HARBOR FOG
- 9 DECK DOOR; SEE A800
- 10 ENTRY DOOR; SEE A800
- 11 MER-KO WEATHER DECK SYSTEM OR EQUAL OVER DECKING; TYP. OF ALL UPPER LEVEL EXTERIOR WALKING SURFACE. SEE STRUCTURAL DRAWING FOR FURTHER INFORMATION. COLOR: TAUPE DUST (M-1033); TEXTURE: SMOOTH
- 12 STONE VENEER; MANUFACTURE: CORONADO STONE PRODUCTS. COLOR/STYLE: COUNTRY CASTLE CS931
- 13 STONE VENEER SILL; MANUFACTURE: CORONADO STONE PRODUCTS. STYLE: CHISELED STONE SILL. COLOR: LOMPOC. SIZE: 24" L X 3" W X 2-1/2" H
- 14 STONE VENEER WALL CAP; MANUFACTURE: CORONADO STONE PRODUCTS. STYLE: FLAGSTONE WALL CAP. COLOR: LOMPOC. SIZE: 24" L X 18" W X 2-1/2" H
- 15 STONE VENEER POST CAP; INSTALL FINISH SIDE DOWN. MANUFACTURE: CORONADO STONE PRODUCTS. STYLE: FLAGSTONE POST CAP. COLOR: LOMPOC. SIZE: 20" L X 20" W X 2-1/2" H
- 16 STONE VENEER LINTEL; MANUFACTURE: CORONADO STONE PRODUCTS. STYLE: CHISELED STONE LINTEL. COLOR: LOMPOC. SIZE: 40" L X 5" W X 5" H
- 17 GALVANIZED METAL DOWNSPOUT; PAINT OR FACTORY FINISH TO MATCH ADJACENT FINISH COLOR. TERMINATE INTO SPLASH BLOCK
- 18 DRYER EXHAUST HOOD; PAINT OR FACTORY FINISH TO MATCH ADJACENT FINISH. SEE MECHANICAL DRAWING
- 19 TOILET EXHAUST LOUVER; PAINT OR FACTORY FINISH TO MATCH ADJACENT FINISH. SEE MECHANICAL DRAWING
- 20 A-STYLE OPERATIONAL GABLE VENT; LOMANCO OR EQUAL; PAINT OR FACTORY FINISH TO MATCH ADJACENT FINISHES
- 21 OUTLOOKER; CEDAR, SHOP CUT, SANDED, PRIMED AND PAINTED; MATCH ADJACENT TRIM; SEE DETAILS, WALL SECTIONS, EXTERIOR ELEVATIONS FOR FURTHER INFORMATION
- 22 FAUX A-STYLE GABLE VENT TO MATCH OPERATIONAL VENTS ON SITE
- 23 BUILDING NUMBER
- 24 FIRE DEPARTMENT CONNECTION; SEE PLUMBING DRAWINGS FOR LOCATION

**ELEVATION GENERAL NOTES**

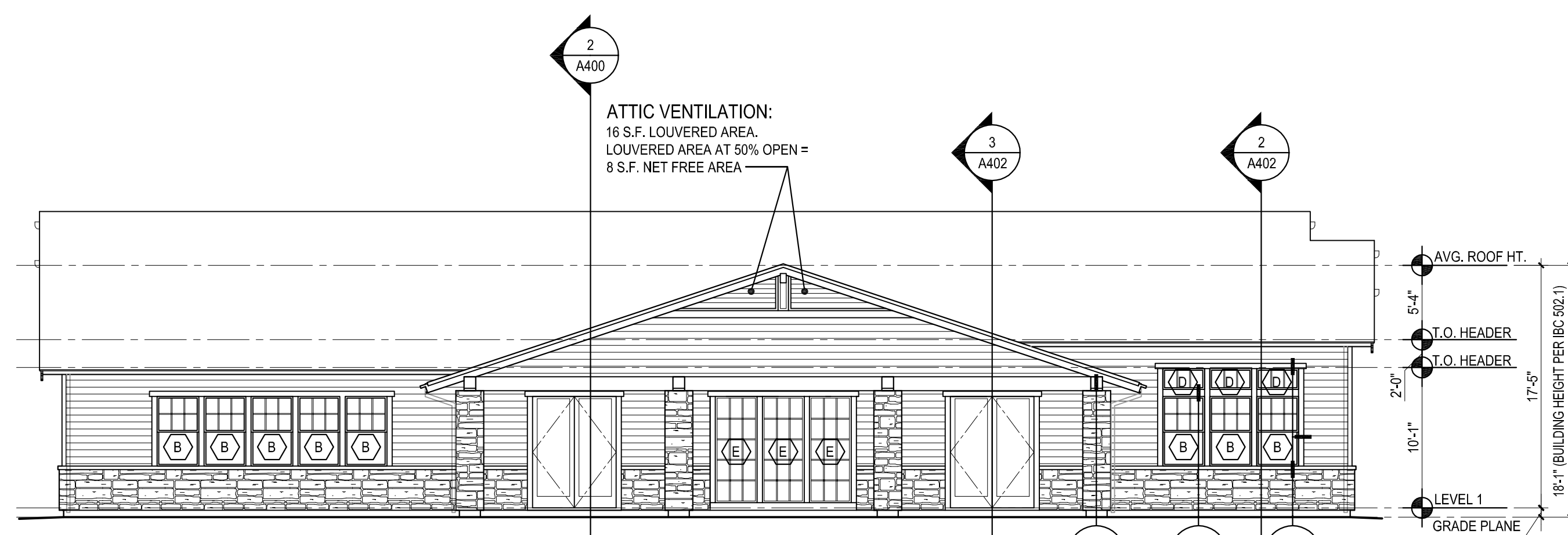
1. STONE VENEER JOINTS AND CUTS - CENTER FULL UNLCUT PIECE ON SPACE. CUT FLANKING PIECES AS REQUIRED, TOUCH UP ANY VISIBLE CUTS WITH CORONADO TOUCH UP KIT.
2. KEEP JOINTS TO A MINIMUM PER MANUFACTURER'S RECOMMENDATION. RAKE JOINT. GROUT TO MATCH AVERAGE OF STONE SURROUNDING.

**ELEVATION SYMBOLS**

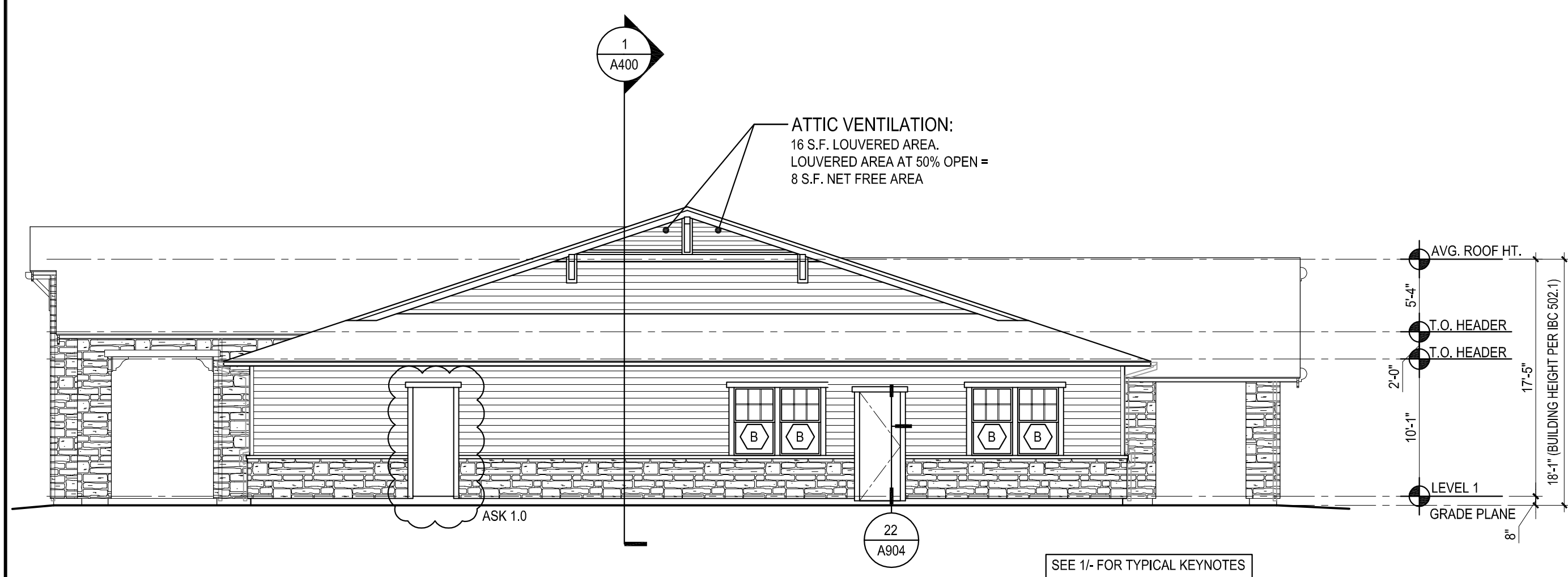
(X) WINDOW CALLOUT; SEE SHEET A800 FOR FURTHER WINDOW INFORMATION



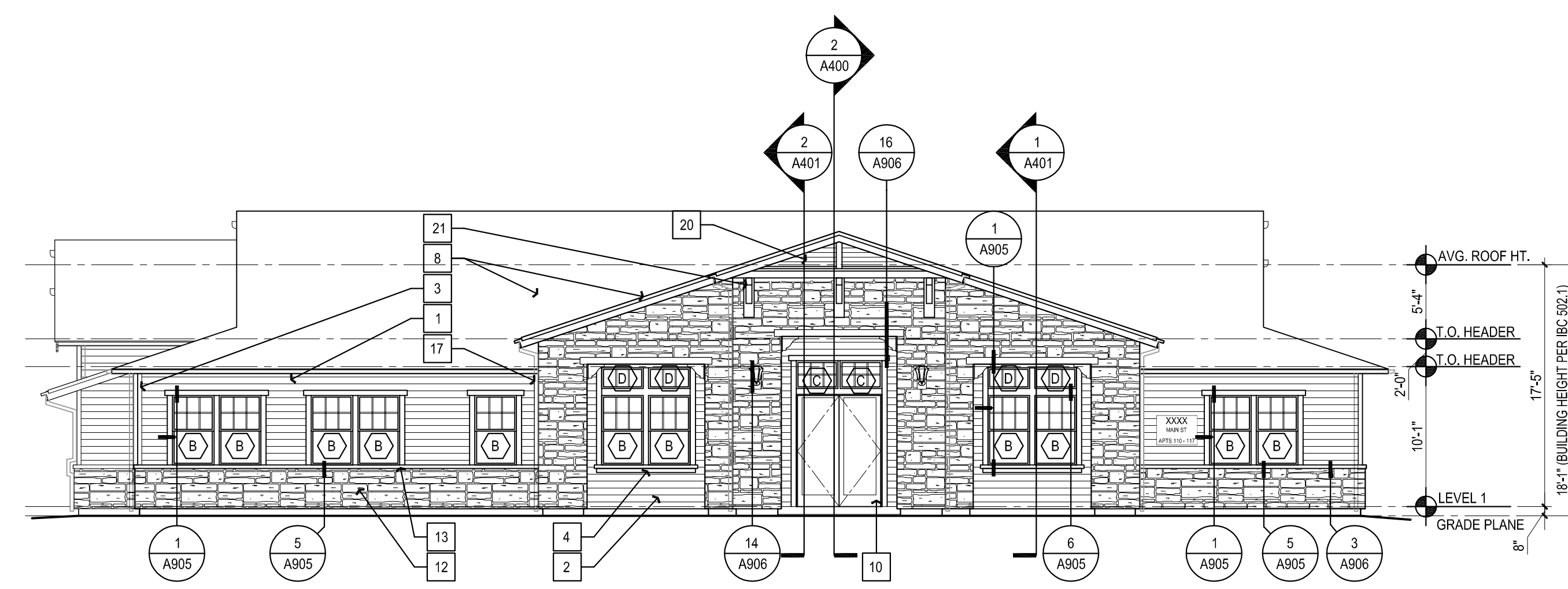
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**REAR ELEVATION** SCALE: 1/8"=1'-0" **2**



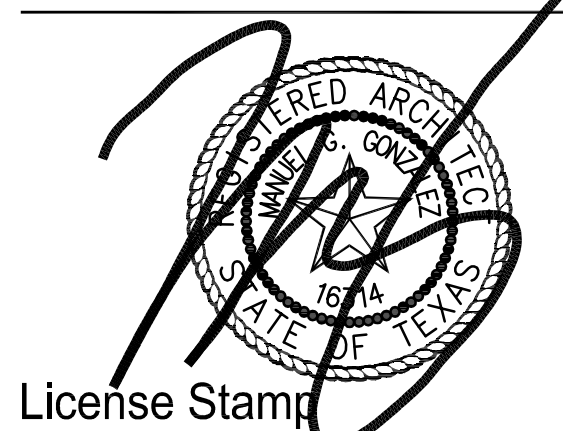
**RIGHT ELEVATION** SCALE: 1/8"=1'-0" **3**



**FRONT ELEVATION** SCALE: 1/8"=1'-0" **1**

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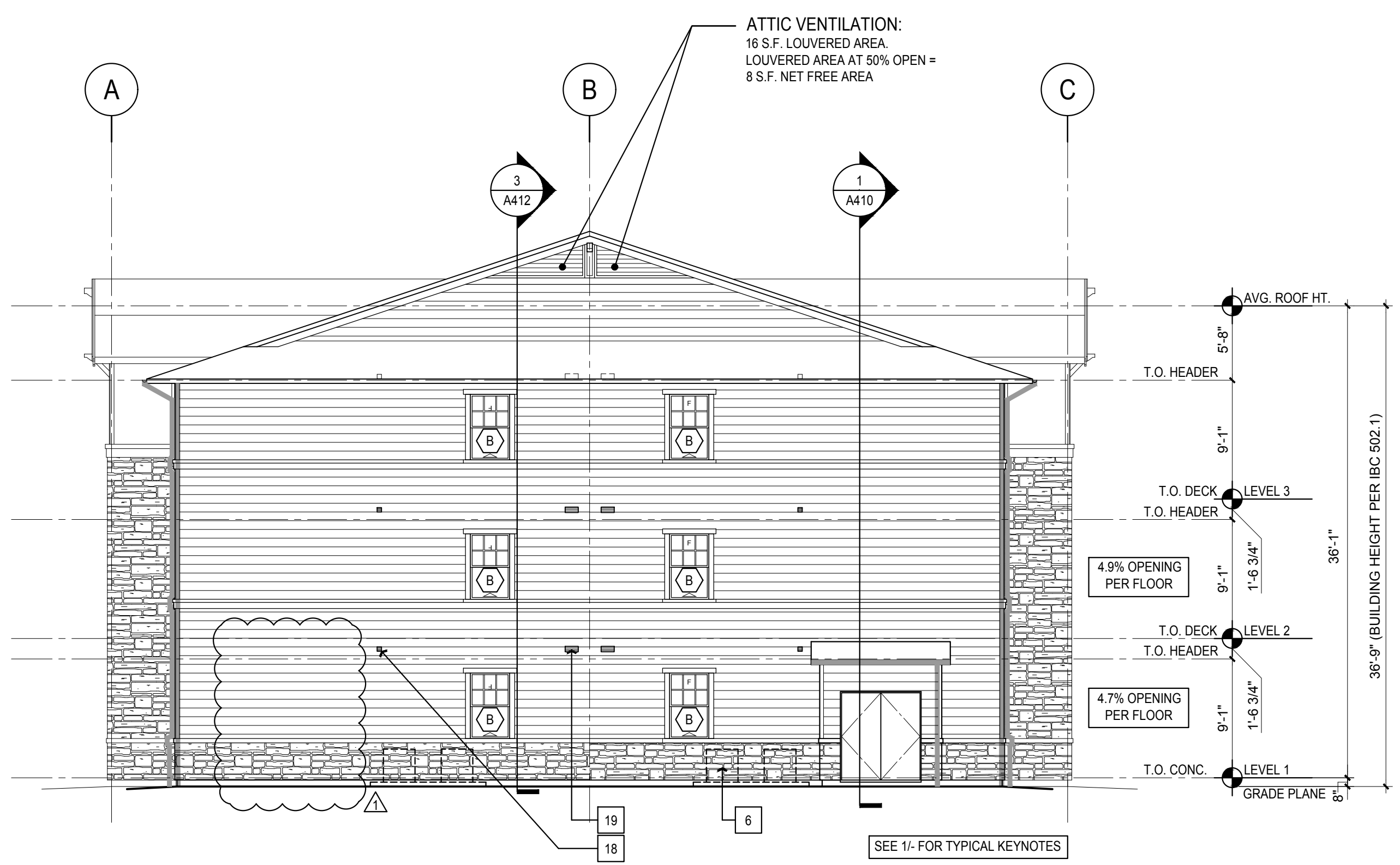
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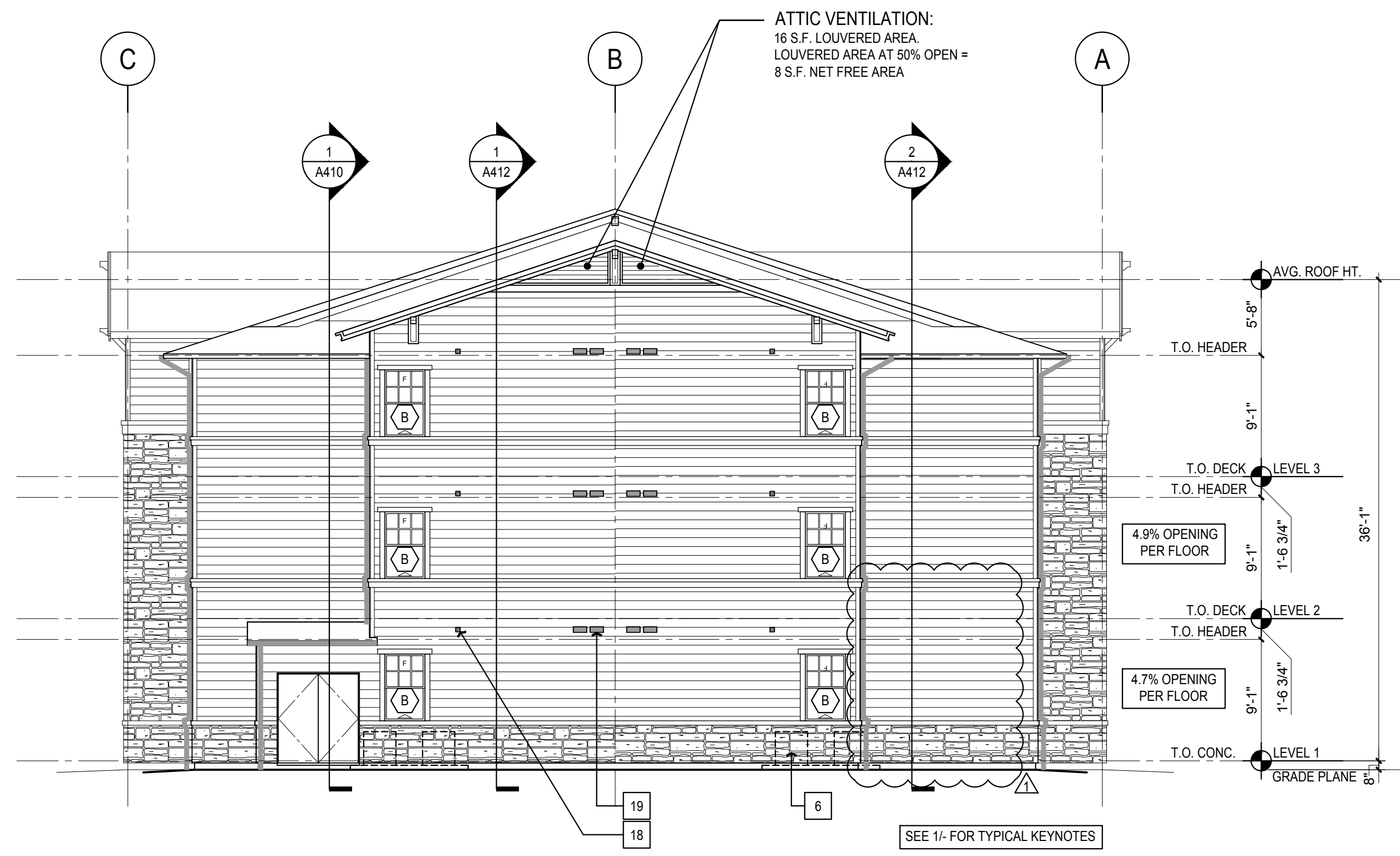
**RECREATION CENTER  
 EXTERIOR ELEVATION**

**A300**

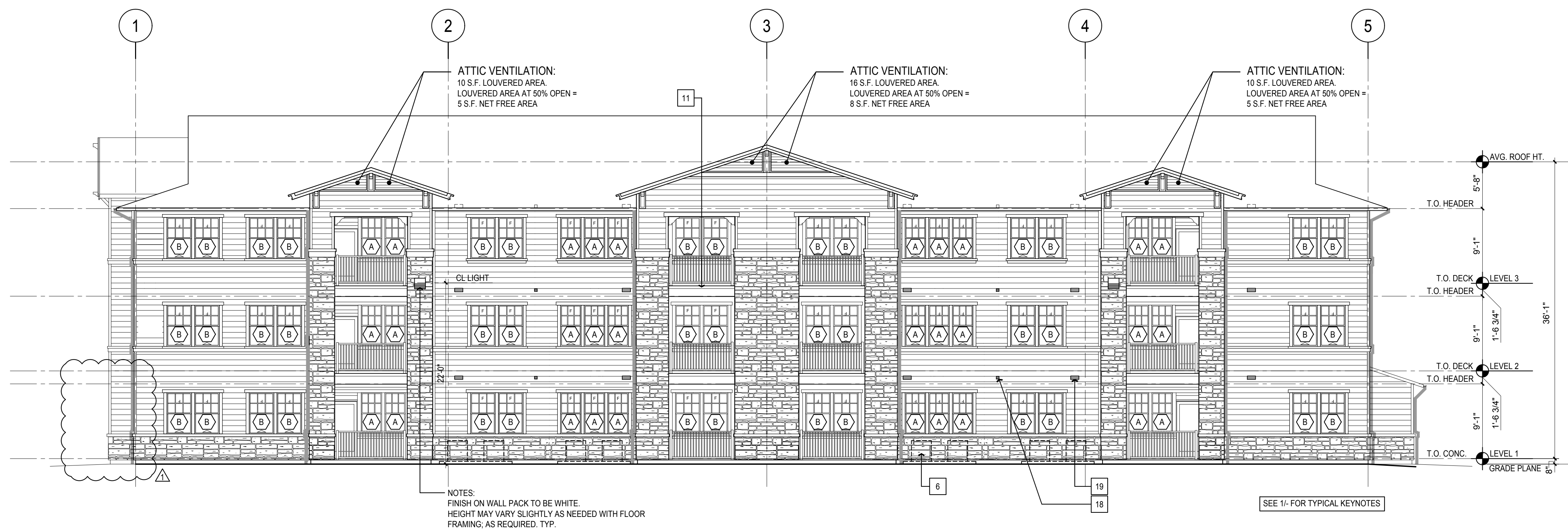




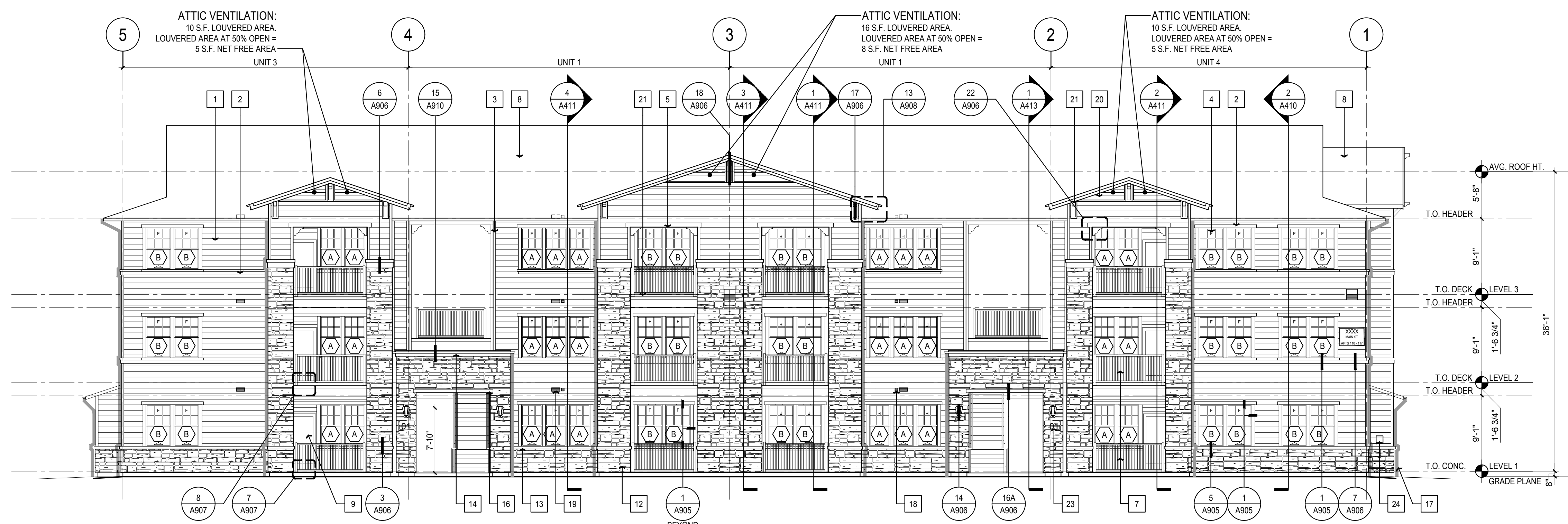
LEFT ELEVATION SCALE: 1/8"=1'-0" 4



RIGHT ELEVATION SCALE: 1/8"=1'-0" 3



REAR ELEVATION SCALE: 1/8"=1'-0" 2



FRONT ELEVATION SCALE: 1/8"=1'-0" 1

ELEVATION KEYNOTES

- 1 8" WOOD GRAIN TEXTURE, FIBER CEMENT, LAP SIDING, PRIMED AND PAINTED. MANUFACTURE: JAMES HARDIE. PAINT COLOR: ARCTIC WHITE OR PAINT EQUAL.
- 2 1X SMOOTH FIBER CEMENT TRIM. SEE WALL SECTIONS AND DETAILS FOR FURTHER INFORMATION.
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- 6 WINDOW. SEE A800.
- 7 FIBER CEMENT BEAD BOARD PANEL CEILING. TYP. AT ALL EXTERIOR CEILINGS. MATCH PAINT COLOR: HARBOR FOG.
- 8 HVAC CONDENSERS. VERIFY LOCATION AND DETAILS WITH MECHANICAL DRAWINGS.
- 9 WROUGHT IRON GUARDRAIL. SHOP PAINT DARK BRONZE. TOUCH UP ON SITE AS NEEDED. SEE WALL SECTIONS FOR FURTHER INFORMATION.
- 10 ARCHITECTURAL GRADE COMPOSITION SINGLE ROOFING. MUST BE ENERGY STAR RATED COOL ROOF.
- 11 MANUFACTURE: OWENS CORNING OR EQUAL. COLOR: HARBOR FOG.
- 12 DECK DOOR. SEE A800.
- 13 ENTRY DOOR. SEE A800.
- 14 MERRID WEATHER DECK SYSTEM OR EQUAL OVER DECKING. TYP. OF ALL UPPER LEVEL. EXTERIOR WALKING SURFACE. SEE STRUCTURAL DRAWING FOR FURTHER INFORMATION. COLOR: TAUPE DUST (M-1033); TEXTURE: SMOOTH.
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- 24 OUTLOOKER: CEDAR. SHOP CUT, SANDED, PRIMED AND PAINTED. MATCH ADJACENT TRIM. SEE DETAILS, WALL SECTIONS, EXTERIOR ELEVATIONS FOR FURTHER INFORMATION.
- 25 FAUX A-STYLE GABLE VENT TO MATCH OPERATIONAL VENTS ON SITE.
- 26 BUILDING NUMBER.
- 27 FIRE DEPARTMENT CONNECTION. SEE PLUMBING DRAWINGS FOR LOCATION.

ELEVATION GENERAL NOTES

- 1 STONE VENEER JOINTS AND CUTS - CENTER FULL UNICUT PIECE ON SPACE. CUT FLANKING PIECES AS REQUIRED. TOUCH UP ANY VISIBLE CUTS WITH CORONADO TOUCH UP KIT.
- 2 KEEP JOINTS TO A MINIMUM PER MANUFACTURE'S RECOMMENDATION. RAKE JOINT. GROUT TO MATCH AVERAGE OF STONE SURROUNDING.

ELEVATION SYMBOLS

(X) WINDOW CULLOUT. SEE SHEET A800 FOR FURTHER WINDOW INFORMATION.



**KTGY Group, Inc.**  
12555 West Jefferson Blvd.,  
Suite 100  
Los Angeles, California 90066  
ktgy.com  
310.394.2623

**KTGY Project No:** 160630

**Project Contact:** Gary Leus  
**Email:** gleus@ktgy.com

**Principal:** Manny Gonzalez  
**Project Designer:** Doug Heaton

**Developer**



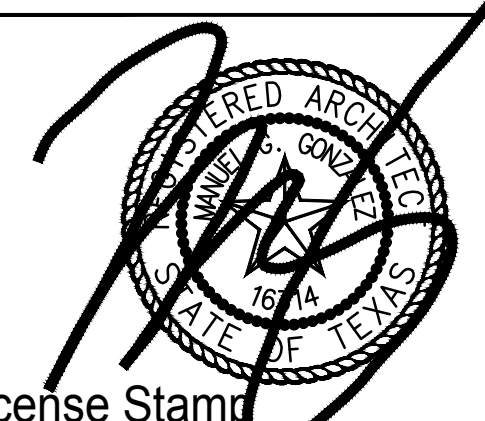
**AMTEX**  
30141 AGOURA ROAD,  
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PHONE NO. 818-706-0694  
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DENISON FAMILY HOMES

DENISON, TX.

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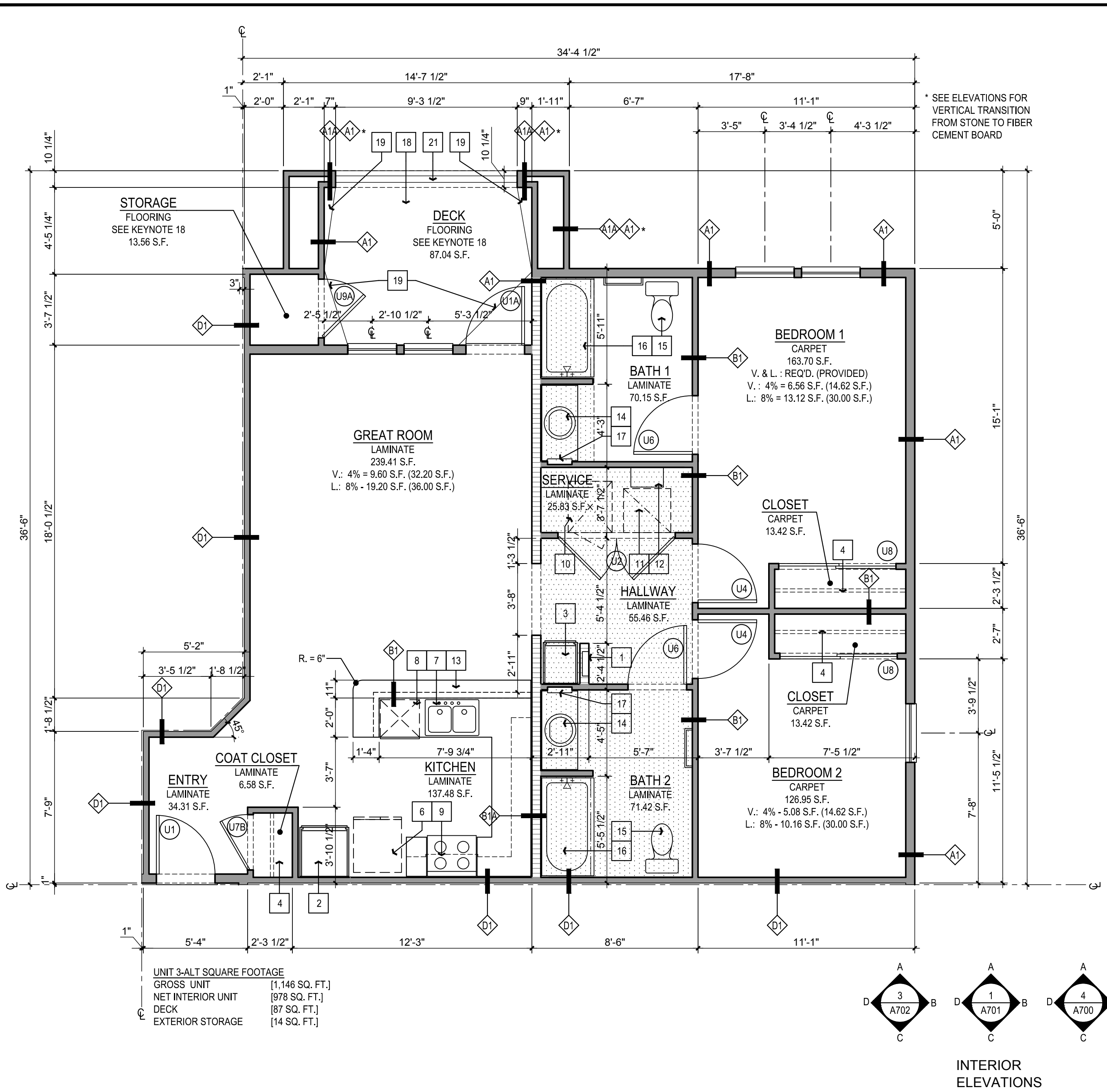
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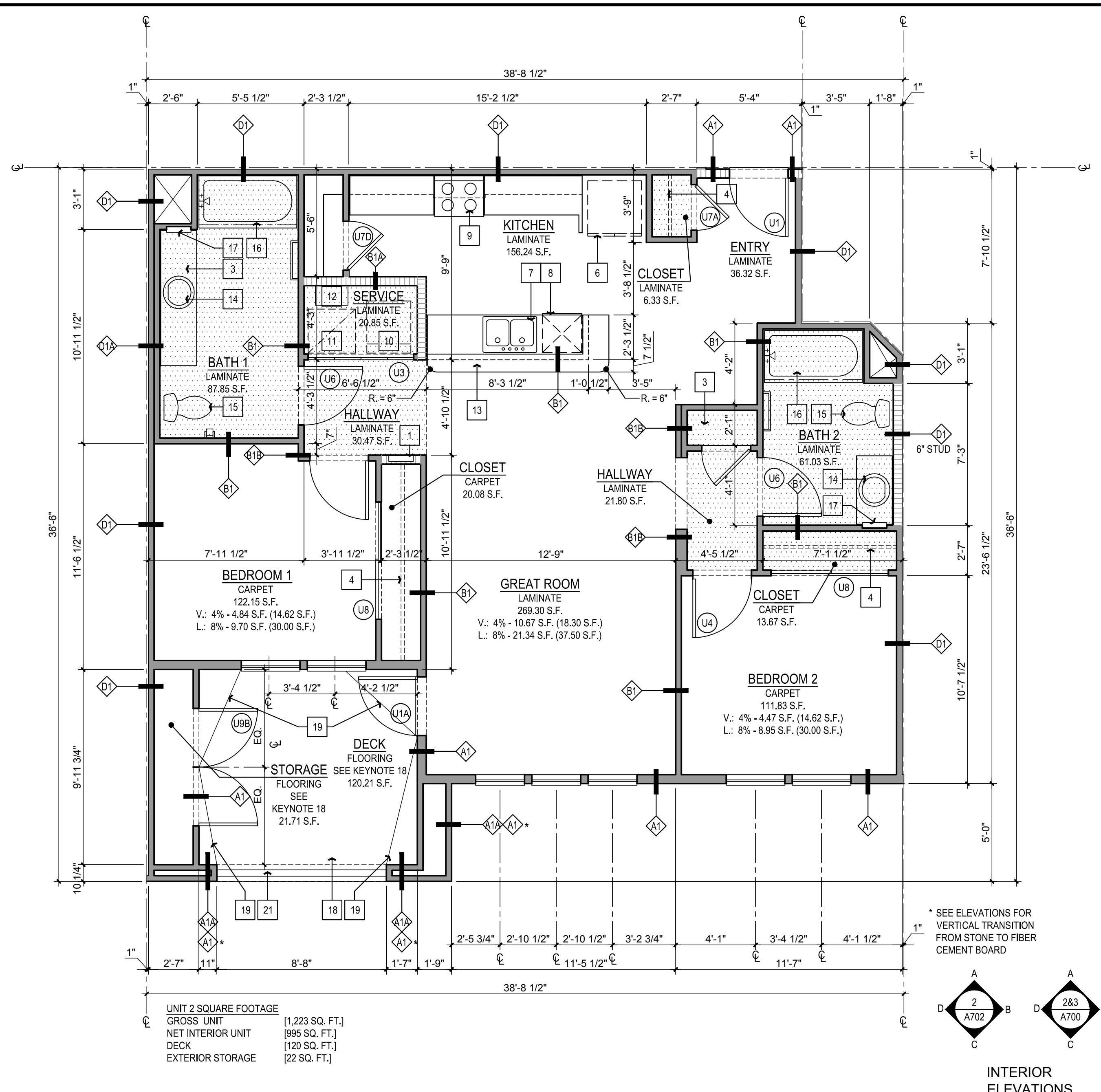
License Stamp  
**BUILDING 1 EXTERIOR ELEVATION**

**A310**

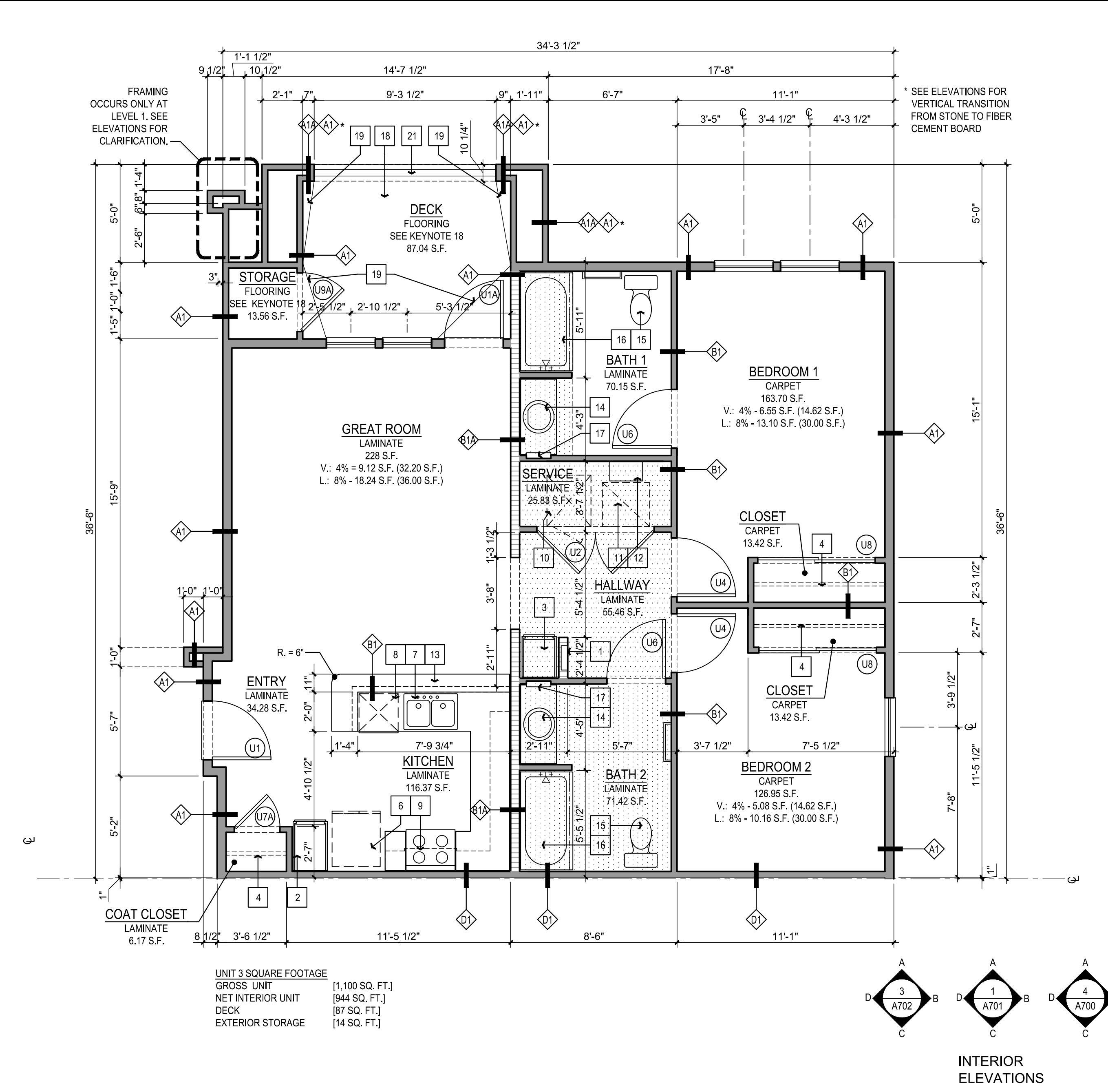




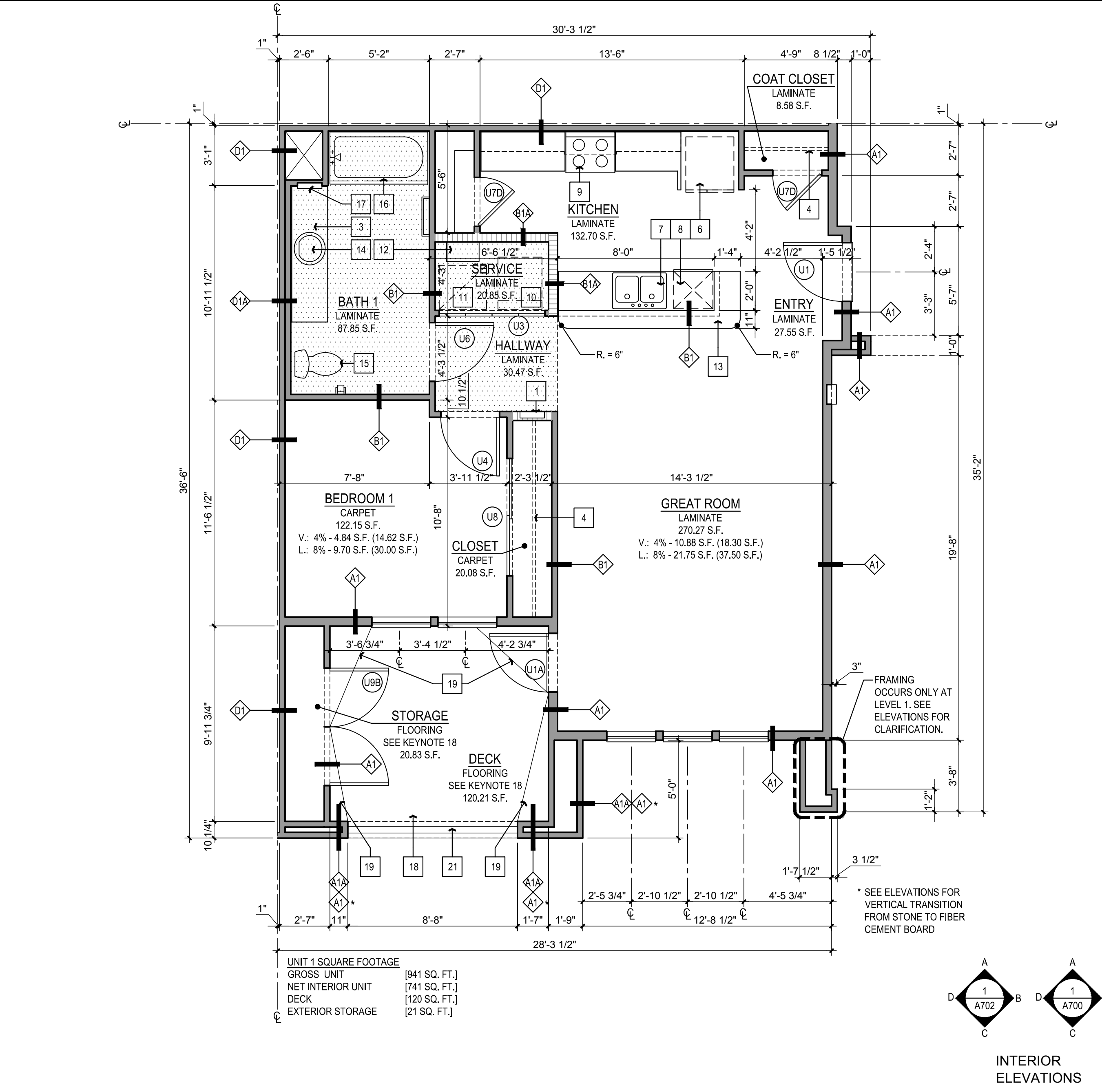
UNIT 3 ALT - ENLARGED PLAN SCALE: 1/4"=1'-0" 4



UNIT 2 - ENLARGED PLAN SCALE: 1/4"=1'-0" 2



UNIT 3 - ENLARGED PLAN SCALE: 1/4"=1'-0" 3



UNIT 1 - ENLARGED PLAN SCALE: 1/4"=1'-0" 1

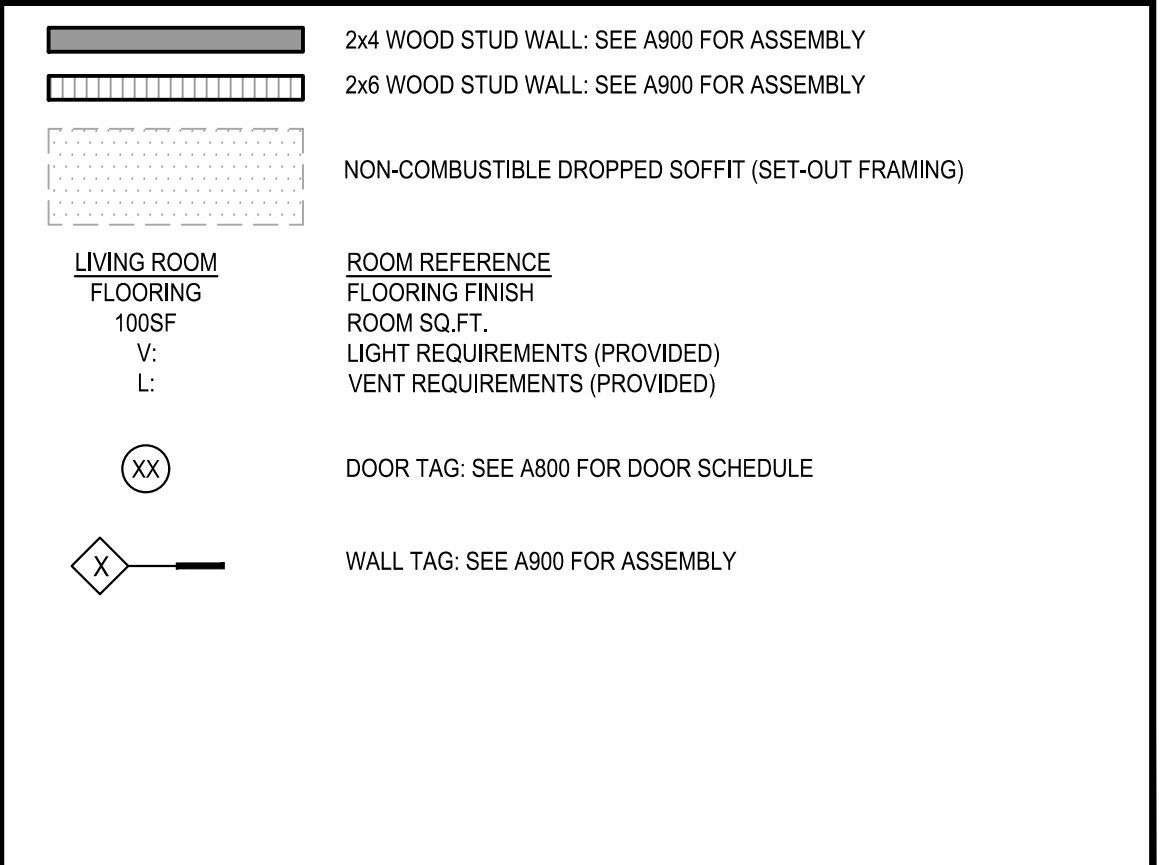
UNIT PLAN KEYNOTES

- 1 RECESSED ELECTRICAL SUB-PANEL. SEE ELECTRICAL PLANS.
- 2 CASEWORK PANTRY. SEE INTERIOR ELEVATIONS
- 3 CASEWORK LINEN CLOSET. SEE INTERIOR ELEVATIONS
- 4 SINGLE POLE AT 48" AFF. & SINGLE SHELF AT 72" AFF. FORWARD/RETREE FREE MOD. WITH 1-1/4" DIA. WOOD POLE & METAL BRACKETS
- 5 DOUBLE POLE AT 48" AFF. & 48" AFF. SINGLE SHELF AT 72" AFF. FORWARD/RETREE FREE MOD. WITH 1-1/4" DIA. WOOD POLE & METAL BRACKETS
- 6 REFRIGERATOR
- 7 DOUBLE SINK W/ GARBAGE DISPOSAL. SEE PLUMBING DRAWINGS (6" DIA. MAX. UFAS REQ)
- 8 UNDER COUNTER DISHWASHER. SEE PLUMBING DRAWINGS (VERIFY TO FIT WITH 30" COUNTER)
- 9 ELECTRIC RANGE AND OVEN / RANGE HOOD AND MICROWAVE COMBO ABOVE
- 10 ELECTRIC DRYER - SEE PLUMBING DRAWINGS
- 11 WASHER - SEE PLUMBING DRAWINGS
- 12 ELECTRIC WATER HEATER - SEE PLUMBING DRAWINGS
- 13 34" H HARD SURFACE COUNTER TOP WITH 4" BACKSPLASH. 42" H HARD SURFACE COUNTER AT BAR.
- 14 LAVATORY - SEE PLUMBING DRAWINGS
- 15 ELONGATED WATER CLOSET, 15" MIN. SEAT H. FLUSH HANDLE ON OPEN SIDE - SEE PLUMBING DRAWINGS
- 16 FIBERGLASS TUB WITH TILE SURROUND. PROVIDE INTEGRAL GRAB BAR BACKING, ROD AND CURTAIN.
- 17 RECESSED MEDICINE CABINET
- 18 BALCONY DECK WITH 1/4" PER 12" SLOPE. PROVIDE BONDENRICH SHEET METAL EDGE GUTTER. PROVIDE WITH BROOMED BRUSH CONCRETE FINISH @ GRADE LEVEL. PROVIDE WITH MERKO OR APPROVED EQUAL @ UPPER LEVELS.
- 19 DECK CRICKET - 1/4"=1'-0" SLOPE TO SCUPPER OR DECK EDGE
- 20 NOT USED.
- 21 42" H DECORATIVE METAL GUARDRAIL.

UNIT PLAN GENERAL NOTES

1. ALL INTERIOR UNIT DOORS SHALL BE HOLLOW CORE UNLESS NOTED OTHERWISE.
2. TYPICAL 4 1/2" CLEAR FROM DOOR TO PERPENDICULAR WALL OR LOCATE CENTER OF DOOR IN ROOM UNLESS NOTED OTHERWISE OR CONFLICT WITH OTHER REQUIREMENTS.
3. ALL EXTERIOR DOORS OF CONDITIONED SPACES SHALL BE FULLY WEATHERSTRIPPED.
4. SMOKE DETECTORS SHALL BE INTERCONNECTED TO SOUND AN ALARM IN ALL SLEEPING AREAS OF THE DWELLING. BE INSTALLED IN EACH SLEEPING ROOM AND IN THE CORRIDOR OR AREA GIVING ACCESS TO EACH SEPARATE SLEEPING AREA AND BE EQUIPPED WITH A BATTERY BACKUP.
5. PROVIDE EMERGENCY ESCAPE AND RESCUE FROM SLEEPING ROOMS. MIN. NET CLEAR OPENING DIMENSIONS OF 24" HEIGHT, 20" CLEAR WIDTH, 5.7 SQ. FT. AREA (5.0 SQ. FT. AT GRADE FLOOR) AND 44" MAX TO BOTTOM OF CLEAR OPENING IS REQUIRED PER I.B.C. SECTION 1029.
6. GLAZING IN DOORS AND WINDOWS SHALL BE PROVIDED WITH TEMPERED GLASS AS REQUIRED INCLUDING GLAZING IN BATHTUB AND SHOWER ENCLOSURES AND GLAZING IN ANY PORTION OF A BUILDING WALL ENCLOSED THESE COMPARTMENTS WHERE THE BOTTOM EXPOSED EDGE OF THE GLAZING IS LESS THAN 60 INCHES ABOVE A STANDING SURFACE AND DRAIN INLET. GLAZING IN FIXED OR OPERABLE PANELS ADJACENT TO A DOOR WHERE THE NEAREST EXPOSED EDGE OF THE GLAZING IS WITHIN A 24-INCH ARC OF EITHER VERTICAL EDGE OF THE DOOR IN A CLOSED POSITION AND WHERE THE BOTTOM EXPOSED EDGE OF THE GLAZING IS LESS THAN 60 INCHES ABOVE THE WALKING SURFACE.
7. EXHAUST FANS REQUIRED IN BATH AND/OR LAUNDRY ROOMS MUST CONNECT DIRECTLY TO THE OUTSIDE AND MUST PROVIDE 5 AIR CHANGES PER HOUR.
8. DISCHARGE POINT FOR EXHAUST AIR SHALL BE AT LEAST 3 FEET FROM ANY OPENING WHICH ALLOWS AIR ENTRY INTO OCCUPIED PORTIONS OF THE BUILDING.
9. PROVIDE NATURAL VENTILATION IN HABITABLE ROOMS OR BATHROOMS BY MEANS OF OPERABLE EXTERIOR WALL OPENINGS WITH AN AREA NOT LESS THAN 4% OF THE ROOM FLOOR AREA. MECHANICAL VENTILATING SYSTEMS MAY BE PERMITTED IF DESIGNED IN ACCORDANCE WITH IBC CHAPTER 12, SECTION 1203 AND THE INTERNATIONAL MECHANICAL CODE.
10. ROOMS CONTAINING BATHTUBS, SHOWERS, SPAS AND SIMILAR BATHING FIXTURES SHALL BE MECHANICALLY VENTILATED. PROVIDE AN EXHAUST FAN WITH A MIN. CAPACITY OF 50 CFM. DUCTLESS FANS ARE UNACCEPTABLE PER IBC SECTION 1203.4.2.1.
11. PROVIDE NATURAL LIGHT FOR ADJOINING SPACES. IN ORDER TO CONSIDER ANY ROOM AS A PORTION OF AN ADJOINING ROOM, AT LEAST 1/2 OF THE COMMON WALL AREA SHALL BE OPEN AND UNOBSTRUCTED AND SHALL PROVIDE AN OPENING OF NOT LESS THAN 1/10 THE FLOOR AREA OF THE INTERIOR ROOM OR 25 SQ. FT., WHICHEVER IS GREATER. REFER TO IBC SECTION 1205.2 AND SECTION 1205.3.
12. ALL SHOWER COMPARTMENTS, REGARDLESS OF SHAPE, SHALL HAVE A MIN. FINISHED INTERIOR AREA OF NOT LESS THAN 1.024 SQ. IN. AND SHALL BE CAPABLE OF ENCOMPASSING A 3'-0" CIRCLE. SHOWER DOORS SHALL SWING OUT. THE MIN. AREA AND DIMENSIONS SHALL BE MAINTAINED TO A POINT 7" ABOVE THE SHOWER DRAIN OUTLET PER IBC SECTION 1210.3.
13. SHOWER COMPARTMENTS AND WALLS ABOVE BATHTUBS WITH INSTALLED SHOWER HEADS SHALL BE FINISHED WITH A SMOOTH AND NONABSORBENT SURFACE TO A HEIGHT NOT LESS THAN 7'0" ABOVE THE DRAIN INLET PER IBC SECTION 1210.3. USE OF WATER-RESISTANT GYPSUM BACKING BOARD SHALL BE PER IBC SECTION 1210.
14. BUILT-IN TUBS WITH SHOWERS SHALL HAVE WATERPROOF JOINTS BETWEEN THE TUB AND ADJACENT WALL PER IBC SECTION 1210.4.
15. FLUSH VOLUMES FOR LOW-CONSUMPTION AND WATER SAVER WATER CLOSETS SHALL BE PROVIDED WITH A MAX. 1.6 GALLONS OF WATER PER FLUSH.
16. VERIFY ALL APPLIANCE, EQUIPMENT AND FIXTURE DIMENSIONS AND INSTALLATION REQUIREMENTS PRIOR TO CASEWORK FABRICATION/INSTALLATION.
17. EXTEND FLOORING UNDER SINKS AND LAVATORIES WITH REMOVABLE CABINET AND TOE BOARD. FINISH END WALLS OF CABINETS FLANKING OPENING TO MATCH CABINET FACE. PRIME & PAINT EXPOSED GYP. BD. WALL TO MATCH WALLS. INSTALL MATCHING BASE BD.
18. FOR RECESSED FIXTURES AND EQUIPMENT INSTALLED IN A RATED WALL REFER TO: 14A801 APPLY 5/8" TYPE 'X' GYP. BD. ON STUD WALLS EXTENDING INTO SOFFITS REFER TO NON-COMBUSTIBLE SOFFIT INSTALLATION.
19. PROVIDE 2x BLOCKING AT CLOSET POLE AND SHELF. POLES TO BE 1 1/4" DIA. WOOD.
20. CREATE THE TILE LAYOUT TO MINIMIZE CUT TILES. BEGIN WALL AND FLOOR TILE LAYOUT AT ENTRY DOOR. LOCATE CUT TILES UNDER FIXTURES, EQUIPMENT AND CABINETS. LOCATE CUT WALL TILES AT INSIDE WALL CORNERS.
21. PROVIDE BACKING FOR ALL ACCESSORIES, HANDRAILS, GRAB BARS, AND WINDOW COVERINGS.
22. EXTEND FLOORING UNDER EQUIPMENT RESTING ON FLOOR.
23. FOR ALL UFAS UNITS ALL LIGHTING CONTROLS, ELECTRICAL SWITCHES & RECEPTACLE OUTLETS, ENVIRONMENTAL CONTROLS, OPERATING HARDWARE FOR OPERABLE WINDOWS, PLUMBING FIXTURE CONTROLS AND USER CONTROLS FOR SECURITY OR INTERCOM SYSTEMS TO BE MOUNTED BETWEEN 15" MIN. AFF. TO 48" MAX. AFF. TO TOP PER ANSIA117.1 SECTIONS 308 & 309.

PLAN LEGEND



**KTGY Group, Inc.**  
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Los Angeles, California 90066  
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**KTGY Project No:** 160630

**Project Contact:** Gary Leus  
**Email:** gleus@ktgy.com

**Principal:** Manny Gonzalez  
**Project Designer:** Doug Heaton

**Developer**  
**AMTEX**

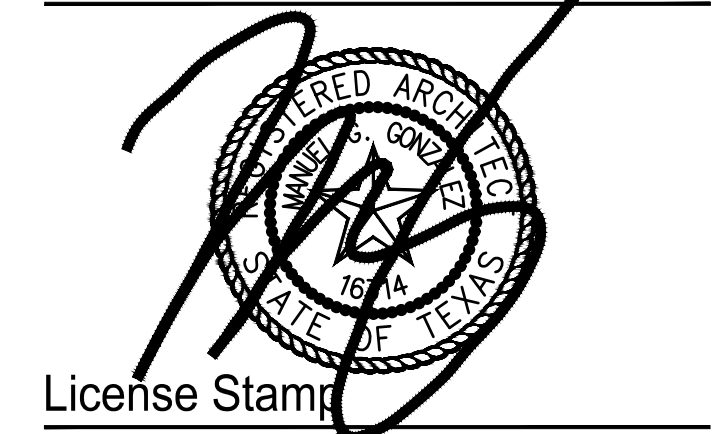
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DENISON FAMILY HOMES

DENISON, TX.

No.	Date	Description
1	10/28/16	100% DESIGN DEVELOPMENT
2	11/14/16	50% CONSTRUCTION DOCUMENTS
3	12/01/16	100% C.D., 1ST BLDG. SUBMITTAL
4	02/21/17	PERMIT SET

It is the client's responsibility prior to or during construction to notify the architect in writing of any proposed areas or conditions in the plans and specifications of which a contractor is not knowledgeable with the building codes and methods of construction should be responsible for review. Written instructions addressing such proposed areas or conditions shall be received from the architect prior to the start of construction or subcontractor proceeding with the work. The client will be responsible for any defects in construction if those procedures are not followed.

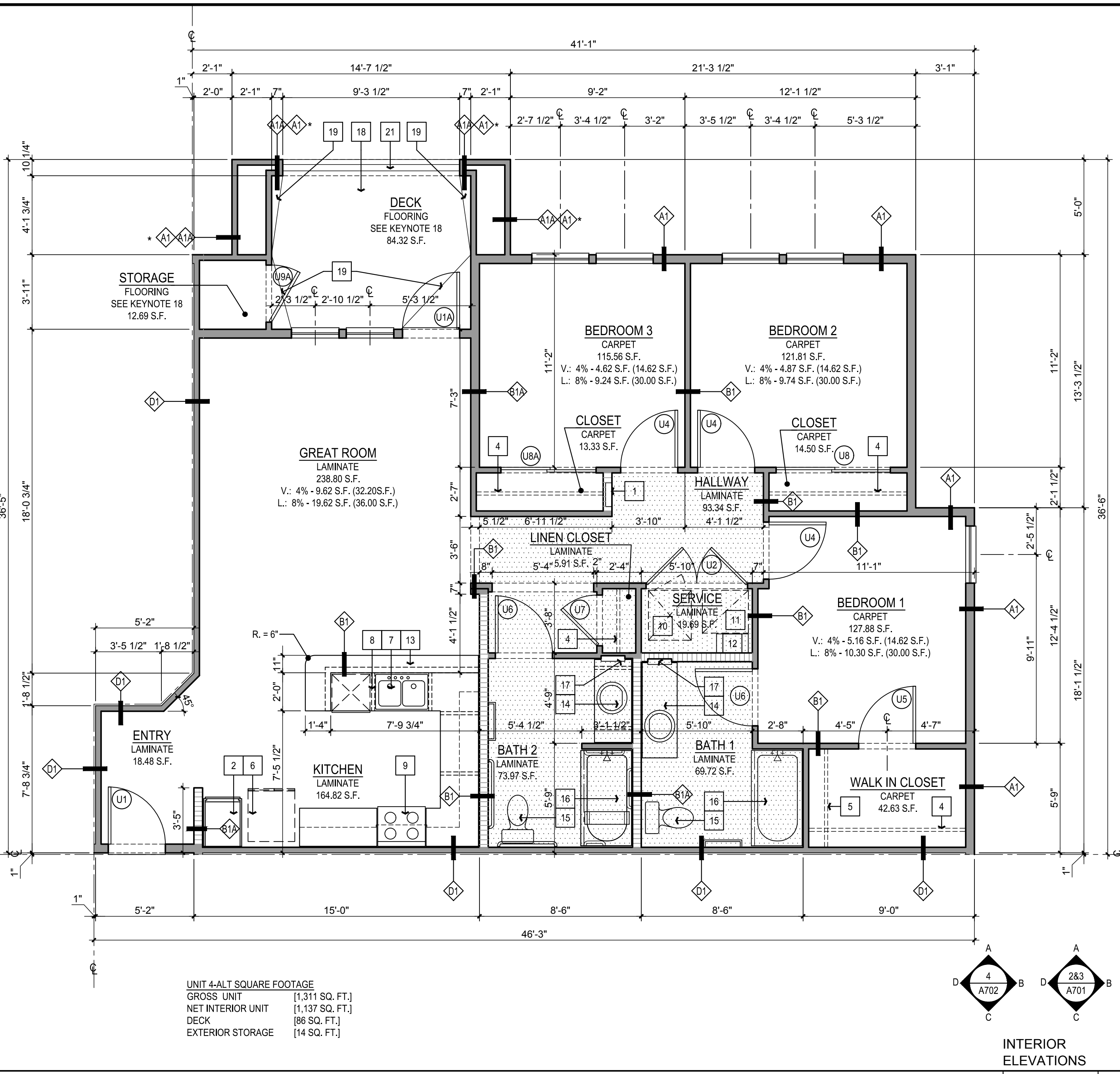


License Stamp

UNIT 1, 2 & 3 - PLANS

A600



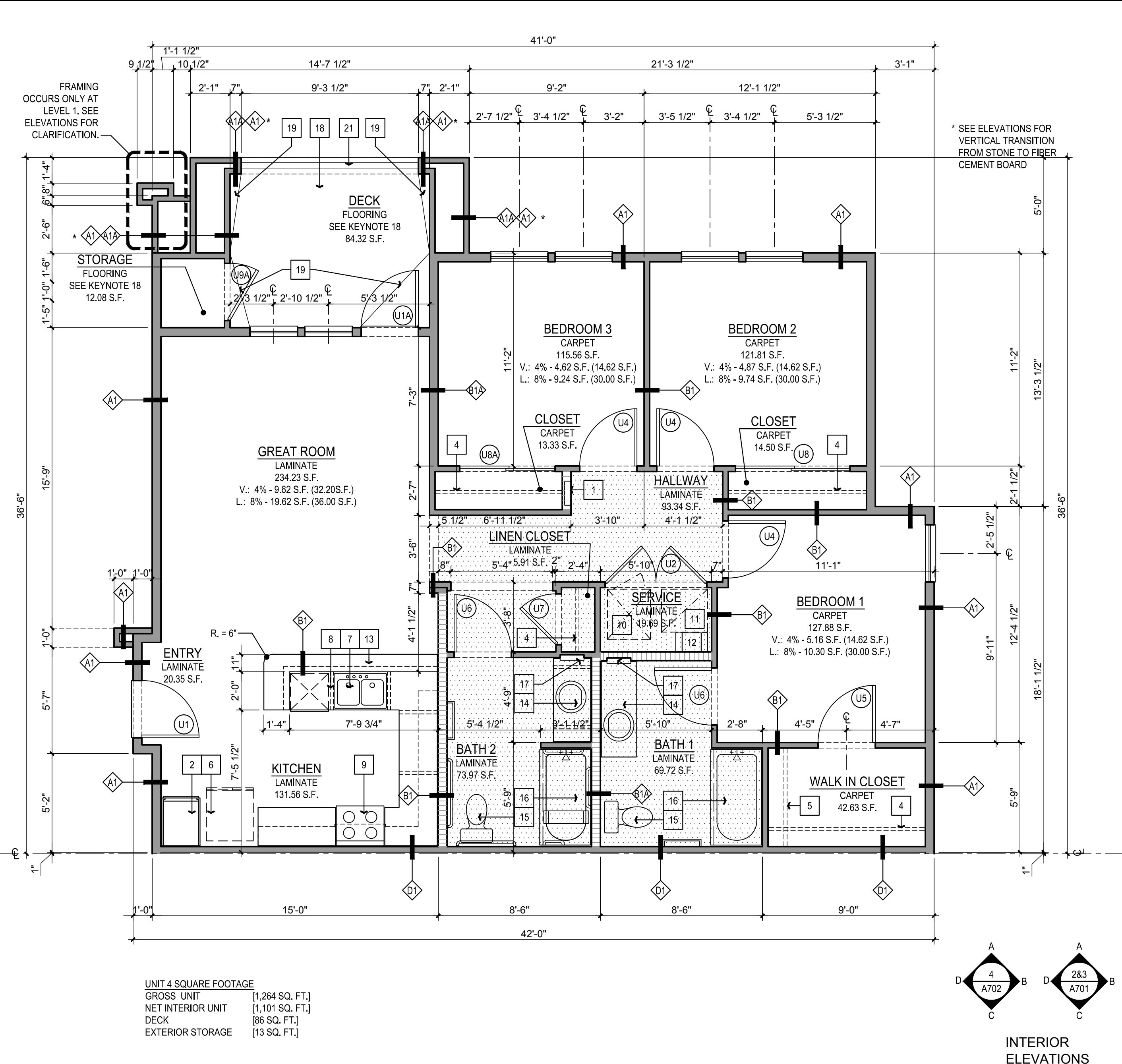


NOT USED SCALE: 1/4"=1'-0" 4

- ### UNIT PLAN KEYNOTES
- RECESSED ELECTRICAL SUB-PANEL. SEE ELECTRICAL PLANS.
  - CASEWORK PANTRY. SEE INTERIOR ELEVATIONS
  - CASEWORK LINEN CLOSET. SEE INTERIOR ELEVATIONS
  - SINGLE POLE AT 48" A.F.F. & SINGLE SHELF AT 42" A.F.F. FORWARD/TYPE FREE MOD. WITH 1-1/4" DIA. WOOD POLE & METAL BRACKETS.
  - DOUBLE POLE AT 48" A.F.F. & SINGLE SHELF AT 42" A.F.F. FORWARD/TYPE FREE MOD. WITH 1-1/4" DIA. WOOD POLE & METAL BRACKETS.
  - REFRIGERATOR
  - DOUBLE SINK W/ GARBAGE DISPOSAL. SEE PLUMBING DRAWINGS (6" DIA. UFAS REQ.)
  - UNDER COUNTER DISHWASHER. SEE PLUMBING DRAWINGS (VERIFY TO FIT WITHIN 3/4" COUNTER)
  - ELECTRIC RANGE AND OVEN / RANGE HOOD AND MICROWAVE COMBO ABOVE
  - ELECTRIC DRYER - SEE PLUMBING DRAWINGS
  - WASHER - SEE PLUMBING DRAWINGS
  - ELECTRIC WATER HEATER - SEE PLUMBING DRAWINGS
  - 3/4" H HARD SURFACE COUNTER TOP WITH 4" BACKSPLASH. 42" H HARD SURFACE COUNTER AT BAR.
  - LAVATORY - SEE PLUMBING DRAWINGS
  - ELONGATED WATER CLOSET, 15" MIN. SEAT H. FLUSH HANDLE ON OPEN SIDE - SEE PLUMBING DRAWINGS
  - FIBERGLASS TUB WITH TILE SURROUND. PROVIDE INTEGRAL GRAB BAR BACKING, ROD AND CURTAIN.
  - RECESSED MEDICINE CABINET
  - BALCONY DECK WITH 1/4" PER 12" SLOPE. PROVIDE BONDENURED SHEET METAL EDGE GUTTER. PROVIDE WITH BROOMED BRUSH CONCRETE FINISH @ GRADE LEVEL. PROVIDE WITH MERKRO OR APPROVED EQUAL @ UPPER LEVELS.
  - DECK CRICKET - 1/4"-1/2" SLOPE TO SCUPPER OR DECK EDGE
  - NOT USED.
  - 42" H DECORATIVE METAL GUARDRAIL.

- ### UNIT PLAN GENERAL NOTES
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  - TYPICAL 4 1/2" CLEAR FROM DOOR TO PERPENDICULAR WALL OR CLEAR CENTER OF DOOR IN ROOM UNLESS NOTED OTHERWISE OR CONFLICT WITH OTHER REQUIREMENTS.
  - ALL EXTERIOR DOORS OF CONDITIONED SPACES SHALL BE FULLY WEATHERSTRIPPED.
  - SMOKE DETECTORS SHALL BE INTERCONNECTED TO SOUND AN ALARM IN ALL SLEEPING AREAS OF THE DWELLING. BE INSTALLED IN EACH SLEEPING ROOM AND IN THE CORRIDOR OR AREA GIVING ACCESS TO EACH SEPARATE SLEEPING AREA AND BE EQUIPPED WITH A BATTERY BACKUP.
  - PROVIDE EMERGENCY ESCAPE AND RESCUE FROM SLEEPING ROOMS. MIN. NET CLEAR OPENING DIMENSIONS OF 24" HEIGHT, 20" CLEAR WIDTH, 5.7 SQ. FT. AREA (5.0 SQ. FT. AT GRADE FLOOR) AND 44" MAX TO BOTTOM OF CLEAR OPENING IS REQUIRED PER I.B.C. SECTION 1029.
  - GLAZING IN DOORS AND WINDOWS SHALL BE PROVIDED WITH TEMPERED GLASS AS REQUIRED INCLUDING GLAZING IN BATHTUB AND SHOWER ENCLOSURES AND GLAZING IN ANY PORTION OF A BUILDING WALL ENCLOSING THESE COMPARTMENTS WHERE THE BOTTOM EXPOSED EDGE OF THE GLAZING IS LESS THAN 60 INCHES ABOVE A STANDING SURFACE AND DRAIN INLET. GLAZING IN FIXED OR OPERABLE PANELS ADJACENT TO A DOOR WHERE THE NEAREST EXPOSED EDGE OF THE GLAZING IS WITHIN A 24-INCH ARC OF EITHER VERTICAL EDGE OF THE DOOR IN A CLOSED POSITION AND WHERE THE BOTTOM EXPOSED EDGE OF THE GLAZING IS LESS THAN 60 INCHES ABOVE THE WALKING SURFACE.
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  - PROVIDE NATURAL VENTILATION IN HABITABLE ROOMS OR BATHROOMS BY MEANS OF OPERABLE EXTERIOR WALL OPENINGS WITH AN AREA NOT LESS THAN 4% OF THE ROOM FLOOR AREA. MECHANICAL VENTILATING SYSTEMS MAY BE PERMITTED IF DESIGNED IN ACCORDANCE WITH IBC CHAPTER 12, SECTION 1203 AND THE INTERNATIONAL MECHANICAL CODE.
  - ROOMS CONTAINING BATHTUBS, SHOWERS, SPAS AND SIMILAR BATHING FIXTURES SHALL BE MECHANICALLY VENTILATED. PROVIDE AN EXHAUST FAN WITH A MIN. CAPACITY OF 50 CFM. DUCTLESS FANS ARE UNACCEPTABLE PER IBC SECTION 1203.4.2.1.
  - PROVIDE NATURAL LIGHT FOR ADJOINING SPACES. IN ORDER TO CONSIDER ANY ROOM AS A PORTION OF AN ADJOINING ROOM, AT LEAST 1/2 OF THE COMMON WALL AREA SHALL BE OPEN AND UNOBSTRUCTED AND SHALL PROVIDE AN OPENING OF NOT LESS THAN 1/10 THE FLOOR AREA OF THE INTERIOR ROOM OR 25 SQ. FT., WHICHEVER IS GREATER. REFER TO IBC SECTION 1205.2 AND SECTION 1205.3.
  - ALL SHOWER COMPARTMENTS, REGARDLESS OF SHAPE, SHALL HAVE A MIN. FINISHED INTERIOR AREA OF NOT LESS THAN 1.024 SQ. IN. AND SHALL BE CAPABLE OF ENCOMPASSING A 3'-0" CIRCLE. SHOWER DOORS SHALL SWING OUT. THE MIN. AREA AND DIMENSIONS SHALL BE MAINTAINED TO A POINT 7" ABOVE THE SHOWER DRAIN OUTLET PER IBC SECTION 1210.3.
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  - BUILT-IN TUBS WITH SHOWERS SHALL HAVE WATERPROOF JOINTS BETWEEN THE TUB AND ADJACENT WALL PER IBC SECTION 1210.4.
  - FLUSH VOLUMES FOR LOW-CONSUMPTION AND WATER SAVER WATER CLOSETS SHALL BE PROVIDED WITH A MAX. 1.6 GALLONS OF WATER PER FLUSH.
  - VERIFY ALL APPLIANCE, EQUIPMENT AND FIXTURE DIMENSIONS, AND INSTALLATION REQUIREMENTS PRIOR TO CASEWORK FABRICATION/INSTALLATION.
  - EXTEND FLOORING UNDER SINKS AND LAVATORIES WITH REMOVABLE CABINET AND TOE BOARD. FINISH END WALLS OF CABINETS FLANKING OPENING TO MATCH CABINET FACE. PRIME & PAINT EXPOSED GYP. BD. WALL TO MATCH WALLS. INSTALL MATCHINGS BASE BD.
  - FOR RECESSED FIXTURES AND EQUIPMENT INSTALLED IN A RATED WALL REFER TO: 14A801
  - APPLY 5/8" TYPE 'X' GYP. BD. ON STUD WALLS EXTENDING INTO SOFFITS PRIOR TO NON-COMBUSTIBLE SOFFIT INSTALLATION.
  - SURFACE SLOPES INDICATED ON PLAN ARE FOR FINISH SURFACES.
  - PROVIDE 2x BLOCKING AT CLOSET POLE AND SHELF. POLES TO BE 1 1/4" DIA. WOOD.
  - CREATE TILE LAYOUT TO MINIMIZE CUT TILES. BEGIN WALL AND FLOOR TILE LAYOUT AT ENTRY DOOR. LOCATE CUT TILES UNDER FIXTURES, EQUIPMENT AND CABINETS. LOCATE CUT WALL TILES AT INSIDE WALL CORNERS.
  - PROVIDE BACKING FOR ALL ACCESSORIES, HANDRAILS, GRAB BARS, AND WINDOW COVERINGS.
  - EXTEND FLOORING UNDER EQUIPMENT RESTING ON FLOOR.
  - FOR ALL UFAS UNITS ALL LIGHTING CONTROLS, ELECTRICAL SWITCHES & RECEPTACLE OUTLETS, ENVIRONMENTAL CONTROLS, OPERATING HARDWARE FOR OPERABLE WINDOWS, PLUMBING FIXTURE CONTROLS AND USER CONTROLS FOR SECURITY OR INTERCOM SYSTEMS TO BE MOUNTED BETWEEN 15" MIN. AT BOTT. & 44" MAX. A.F.F. TO TOP PER ANSIA117.1 SECTIONS 308 & 309.

UNIT 4 ALT - ENLARGED PLAN SCALE: 1/4"=1'-0" 2



NOT USED SCALE: 1/4"=1'-0" 3

- ### PLAN LEGEND
- 2x4 WOOD STUD WALL - SEE A800 FOR ASSEMBLY
  - 2x6 WOOD STUD WALL - SEE A800 FOR ASSEMBLY
  - NON-COMBUSTIBLE DROPPED SOFFIT (SET-OUT FRAMING)
  - LIVING ROOM FLOORING 100SF
  - ROOM REFERENCE FLOORING FINISH ROOM SQ. FT.
  - V: LIGHT REQUIREMENTS (PROVIDED)
  - L: VENT REQUIREMENTS (PROVIDED)
  - DOOR TAG: SEE A800 FOR DOOR SCHEDULE
  - WALL TAG: SEE A800 FOR ASSEMBLY

UNIT 4 - ENLARGED PLAN SCALE: 1/4"=1'-0" 1



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**KTGY Project No:** 160630  
**Project Contact:** Gary Leus  
**Email:** gleus@ktgy.com

**Principal:** Manny Gonzalez  
**Project Designer:** Doug Heaton

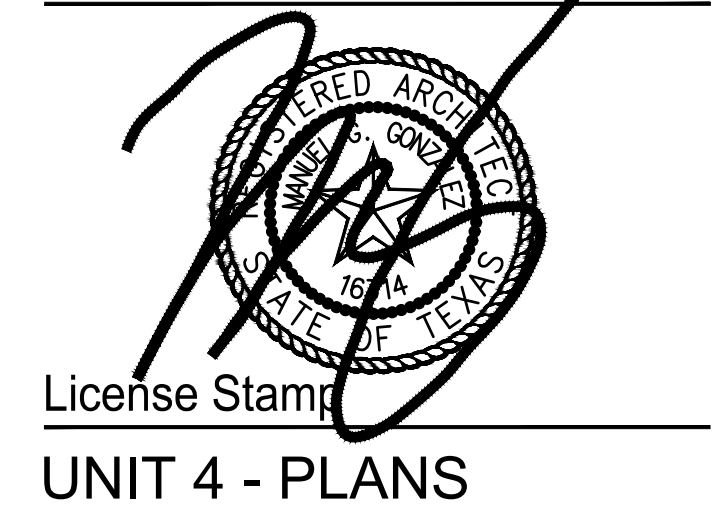
**Developer**  
**AMTEX**  
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30141 AGOURA ROAD,  
SUITE 100  
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FAX NO. 818-889-9158

DENISON FAMILY HOMES

DENISON, TX.

No.	Date	Description
1	10/28/16	100% DESIGN DEVELOPMENT
2	11/14/16	50% CONSTRUCTION DOCUMENTS
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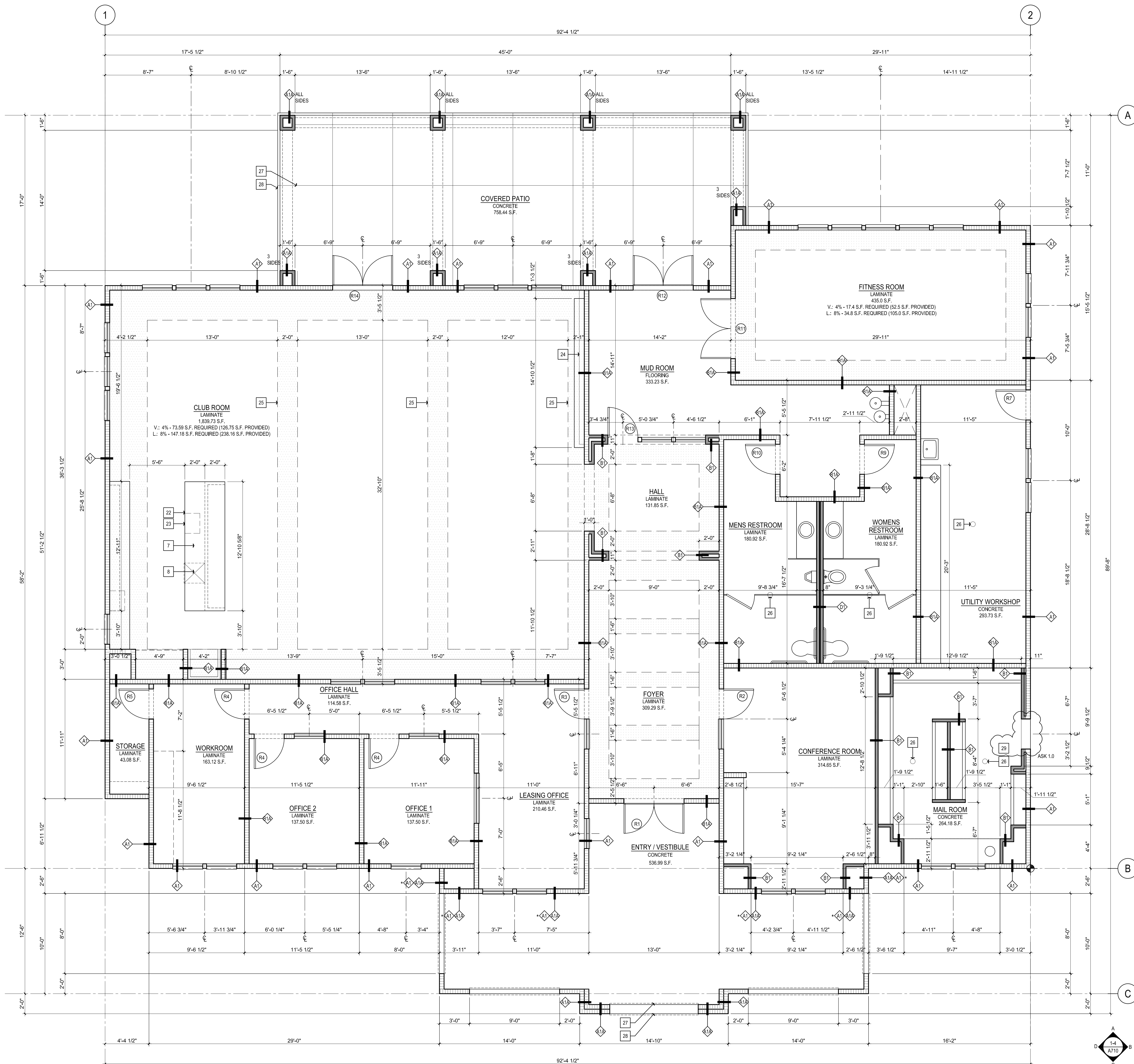
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License Stamp  
UNIT 4 - PLANS

A601





RECREATION CENTER [6,316 S.F.]  
DECK [758 S.F.]

UNIT PLAN KEYNOTES

- 1 RECESSED ELECTRICAL SUB-PANEL - SEE ELECTRICAL PLANS.
- 2 CASEWORK PANTRY - SEE INTERIOR ELEVATIONS
- 3 CASEWORK LINEN CLOSET - SEE INTERIOR ELEVATIONS
- 4 SINGLE POLE AT 48" A.F.F. & SINGLE SHELF AT 72" A.F.F. FORMALDYDE FREE W/OF. WITH 1/4" DIA. WOOD POLE & METAL BRACKETS.
- 5 DOUBLE POLE @ 36" & 48" A.F.F. & SINGLE SHELF AT 72" A.F.F. FORMALDYDE FREE W/OF. WITH 1/4" DIA. WOOD POLE & METAL BRKTS.
- 6 REFRIGERATOR
- 7 DOUBLE SINK W/ GARBAGE DISPOSAL - SEE PLUMBING DRAWINGS (8" D MAX - UFAS REQ)
- 8 UNDER COUNTER DISHWASHER - SEE PLUMBING DRAWINGS (VERIFY TO FIT WITH 3" COUNTER)
- 9 ELECTRIC RANGE AND OVEN / RANGE HOOD AND MICROWAVE COMBO ABOVE
- 10 ELECTRIC DRYER - SEE PLUMBING DRAWINGS
- 11 WASHER - SEE PLUMBING DRAWINGS
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- 17 RECESSED MEDICINE CABINET
- 18 BALCONY DECK WITH 1/4" PER 12" SLOPE. PROVIDE BONDERIZED SHEET METAL EDGE GUTTER. PROVIDE WITH BROOKING BRUSH CONCRETE FINISH @ GRADE LEVEL. PROVIDE WITH MER-KO OR APPROVED EQUAL @ UPPER LEVELS.
- 19 DECK CRICKET - 1/4"-1'-0" SLOPE TO SCUPPER OR DECK EDGE
- 20 NOT USED.
- 21 42" H DECORATIVE METAL GUARDRAIL.
- 22 UNDERCOUNTER MICROWAVE
- 23 WARMING DRAWER
- 24 DRINK LEDGE
- 25 LINE OF SOFFIT ABOVE
- 26 FLOOR DRAIN. SLOPE TO DRAIN (SEE PLUMBING DWGS).
- 27 CONCRETE JOINT. ALIGN PORCH JOINTS WITH JOINTS IN LANDSCAPE CONCRETE
- 28 ACID WASHED CONCRETE PORCH. MATCH COLOR AND FINISH OF ADJACENT LANDSCAPE CONCRETE
- 29 BROOM FINISH CONCRETE FLOOR. ASK 1.0

UNIT PLAN GENERAL NOTES

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17. EXTEND FLOORING UNDER SINKS AND LAVATORIES WITH REMOVABLE CABINET AND TOE BOARD. FINISH END WALLS OF CABINETS FLANKING OPENING TO MATCH CABINET FACE, PRIME & PAINT EXPOSED GYP. BD. WALL TO MATCH WALLS. INSTALL MATCHING BASE BD.
18. FOR RECESSED FIXTURES AND EQUIPMENT INSTALLED IN A RATED WALL REFER TO: 14A901
19. APPLY 5/8" TYPE 'X' GYP. BD. ON STUD WALLS EXTENDING INTO SOFFITS PRIOR TO NON-COMBUSTIBLE SOFFIT INSTALLATION.
20. SURFACE SLOPES INDICATED ON PLAN ARE FOR FINISH SURFACES.
21. PROVIDE 2x BLOKING AT CLOSET POLE AND SHELF. POLES TO BE 1 1/4" DIA. WOOD.
22. CREATE TILE LAYOUT TO MINIMIZE CUT TILES. BEGIN WALL AND FLOOR TILE LAYOUT AT ENTRY DOOR. LOCATE CUT TILES UNDER FIXTURES, EQUIPMENT AND CABINETS. LOCATE CUT WALL TILES AT INSIDE WALL CORNERS.
23. PROVIDE BACKING FOR ALL ACCESSORIES, HANDRAILS, GRAB BARS, AND WINDOW COVERINGS.
24. EXTEND FLOORING UNDER EQUIPMENT RESTING ON FLOOR.
25. FOR ALL UFAS UNITS ALL LIGHTING CONTROLS, ELECTRICAL SWITCHES & RECEPTACLE OUTLETS, ENVIRONMENTAL CONTROLS, OPERATING HARDWARE FOR OPERABLE WINDOWS, PLUMBING FIXTURE CONTROLS AND USER CONTROLS FOR SECURITY OR INTERCOM SYSTEMS TO BE MOUNTED BETWEEN 15" MIN. A.F.F TO BOTTL. & 44" MAX. A.F.F TO TOP PER ANSI-A117.1 SECTIONS 308 & 309.

PLAN LEGEND

- 2x4 WOOD STUD WALL: SEE A800 FOR ASSEMBLY
- 2x6 WOOD STUD WALL: SEE A800 FOR ASSEMBLY
- NON-COMBUSTIBLE DROPPED SOFFIT (SET-OUT FRAMING)
- LIVING ROOM FLOORING
- ROOM REFERENCE FLOORING FINISH
- 100SF ROOM SQ.FT.
- VENT REQUIREMENTS (PROVIDED)
- L: VENT REQUIREMENTS (PROVIDED)
- DOOR TAG: SEE A800 FOR DOOR SCHEDULE
- WALL TAG: SEE A800 FOR ASSEMBLY

INTERIOR ELEVATIONS



**KTGY Group, Inc.**  
12555 West Jefferson Blvd.,  
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310.394.2623

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**Email:** gleus@ktgy.com

**Principal:** Manny Gonzalez  
**Project Designer:** Doug Heaton

**Developer**



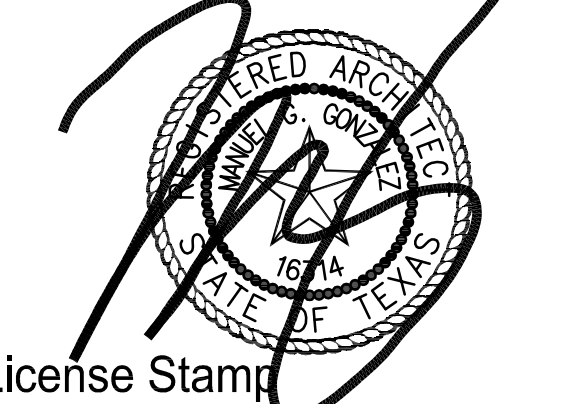
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30141 AGOURA ROAD,  
SUITE 100  
AGOURA HILLS, CA  
PHONE NO. 818-706-0694  
FAX NO. 818-889-9158

DENISON FAMILY HOMES

DENISON, TX.

No.	Date	Description
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2	11/14/16	50% CONSTRUCTION DOCUMENTS
3	12/01/16	100% C.D.; 1ST BLDG. SUBMITTAL
4	02/21/17	PERMIT SET
5	05/24/17	BULLETIN #1

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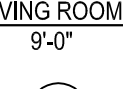

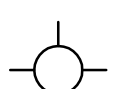
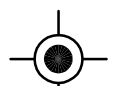
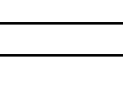
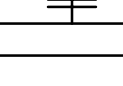
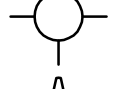
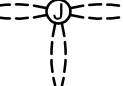

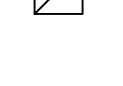
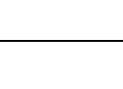
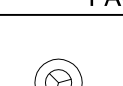
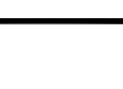


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**RECREATION CENTER - PLANS**

**A602**



R.C.P. LEGEND

-  NON-COMBUSTIBLE DROPPED SOFFIT (SET-OUT FRAMING) 1'-0" BELOW MAIN CEILING HEIGHT
- LIVING ROOM 9'-0"** ROOM REFERENCE AND CEILING HEIGHT A.F.F.
-  CS HARD-WIRED COMBO CARBON MONOXIDE/SMOKE DETECTORS W/ BATTERY BACK-UP. MULTIPLE SMOKE ALARMS WITHIN THE DWELLING UNIT TO BE INTERCONNECTED.
-  S HARD-WIRED SMOKE DETECTORS W/ BATTERY BACK-UP. MULTIPLE SMOKE ALARMS WITHIN THE DWELLING UNIT TO BE INTERCONNECTED.
-  RECESSED LIGHT FIXTURE. SEE ELECTRICAL DRAWINGS.
-  PENDANT LIGHT FIXTURE. SEE ELECTRICAL DRAWINGS.
-  FL SURFACE MOUNTED FLUORESCENT LIGHT FIXTURE. SEE ELECTRICAL DRAWINGS.
-  V WALL MOUNTED VANITY LIGHT FIXTURE. SEE ELECTRICAL DRAWINGS.
-  S WALL MOUNTED SCONCE LIGHT FIXTURE. SEE ELECTRICAL DRAWINGS.
-  CEILING FAN. SEE ELECTRICAL DRAWINGS.
-  BATHROOM EXHAUST FAN. SEE MECHANICAL DRAWINGS.
-  RETURN GRILL. SEE MECHANICAL DRAWINGS.
-  SUPPLY GRILL. SEE MECHANICAL DRAWINGS.
-  FAU SUPPLY GRILL. SEE MECHANICAL DRAWINGS.
-  TABLE LAMP

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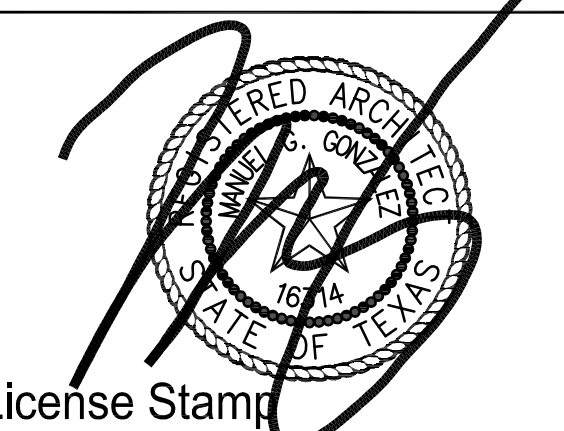
**AMTEX**  
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 30141 AGOURA ROAD,  
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 PHONE NO. 818-706-0694  
 FAX NO. 818-889-9158

DENISON FAMILY HOMES

DENISON, TX.

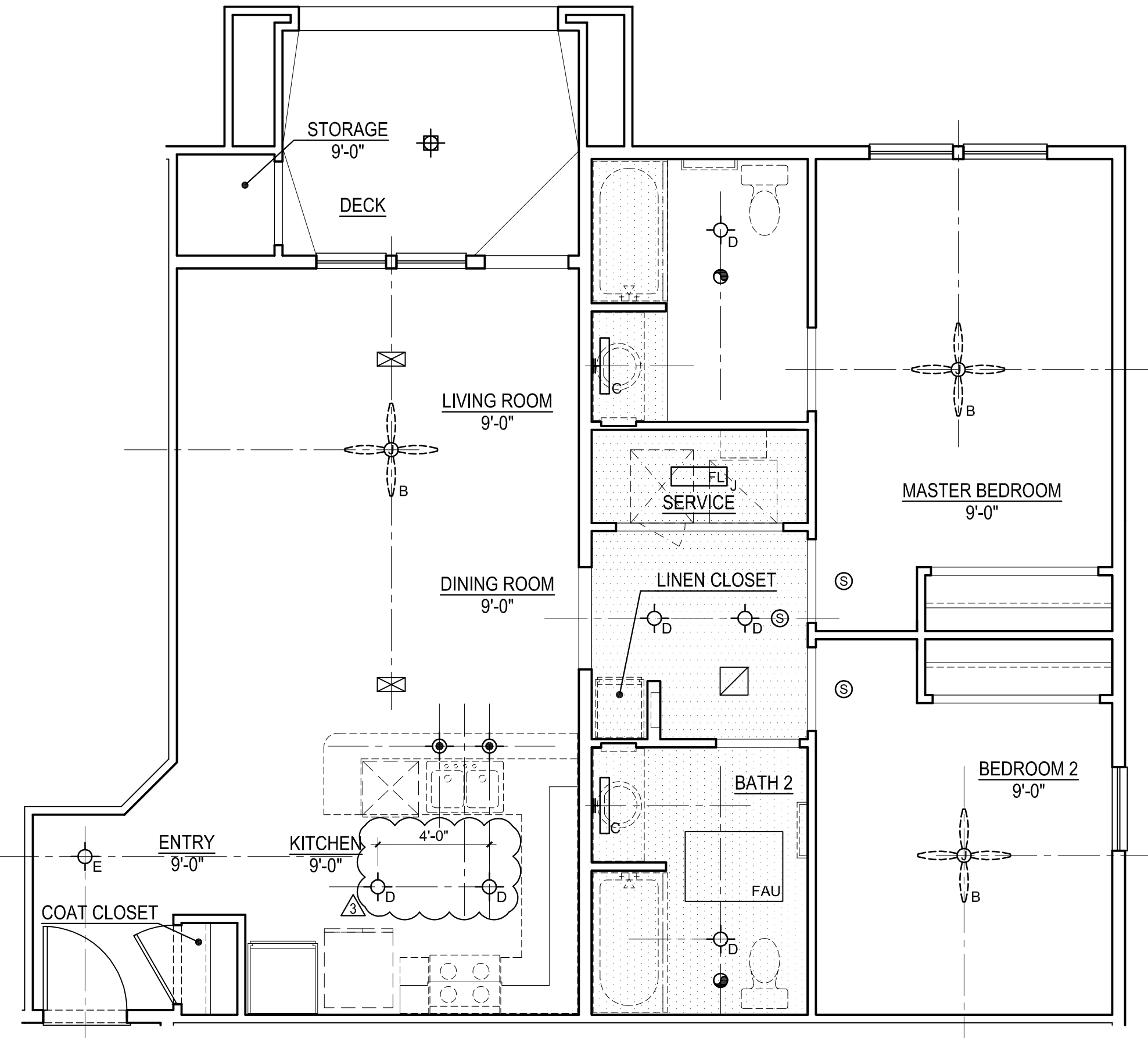
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6	08/02/17	BULLETIN #2
7	08/22/17	BULLETIN #3

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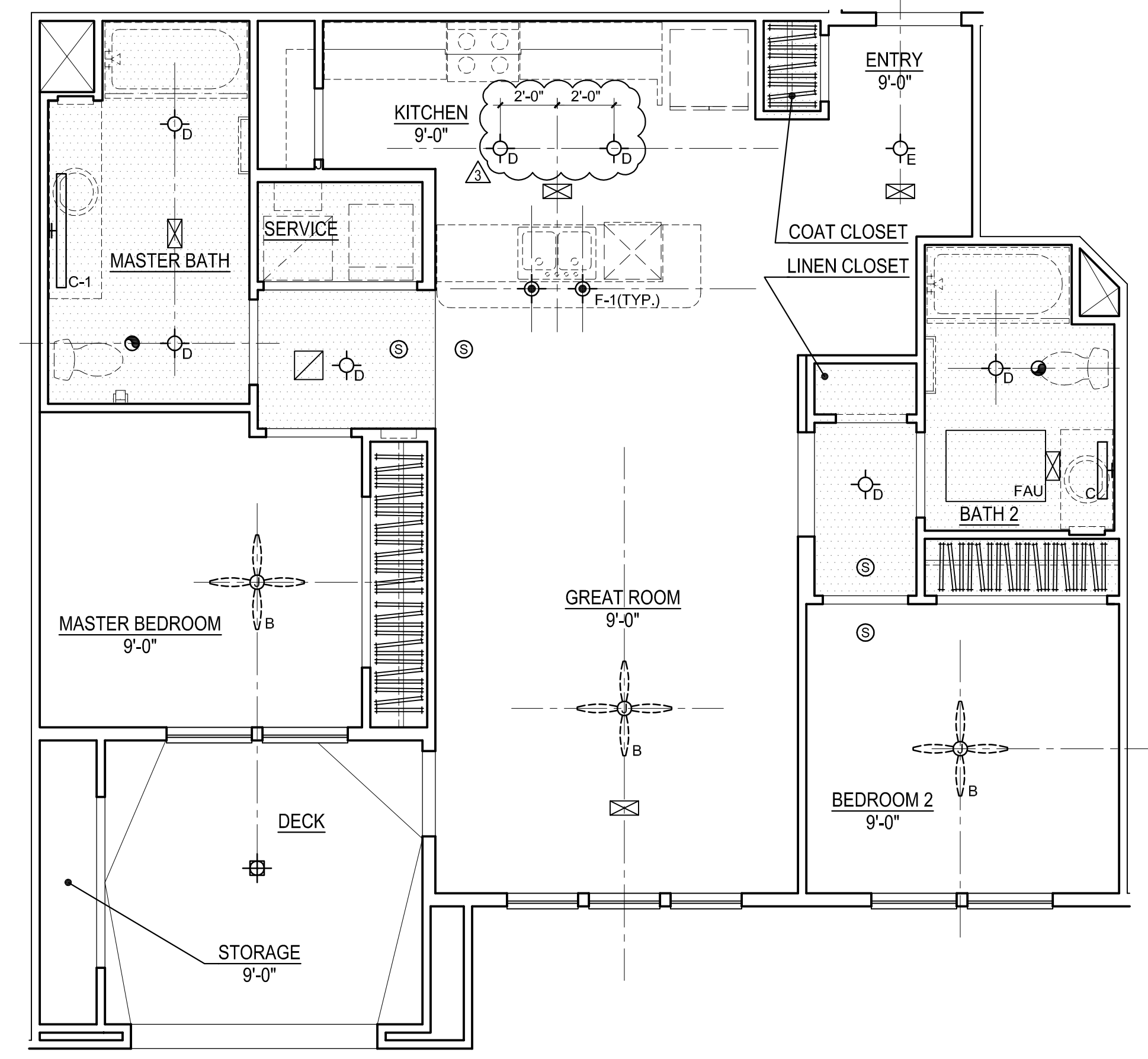


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 UNIT 1, 2 & 3 - RCP

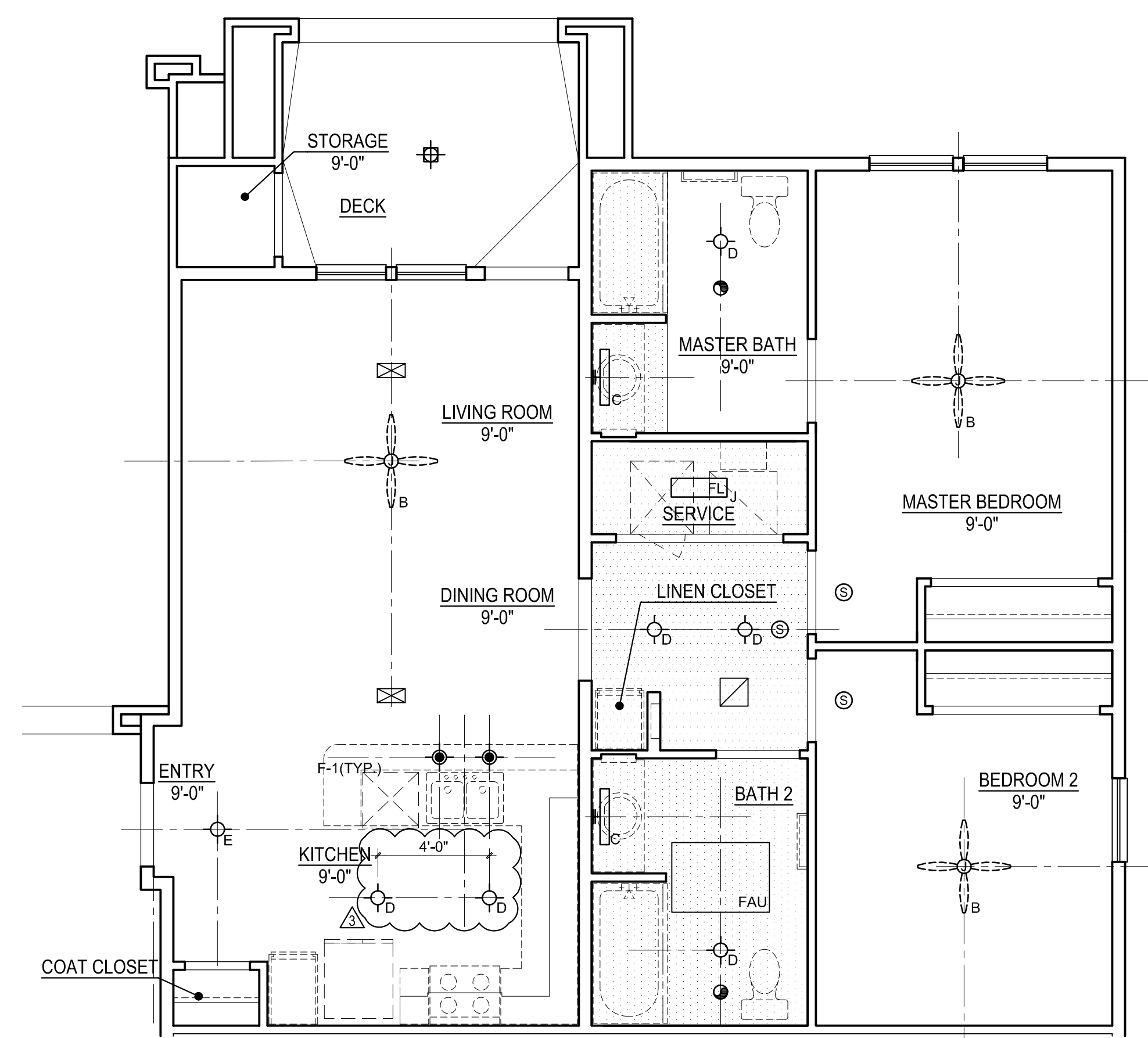
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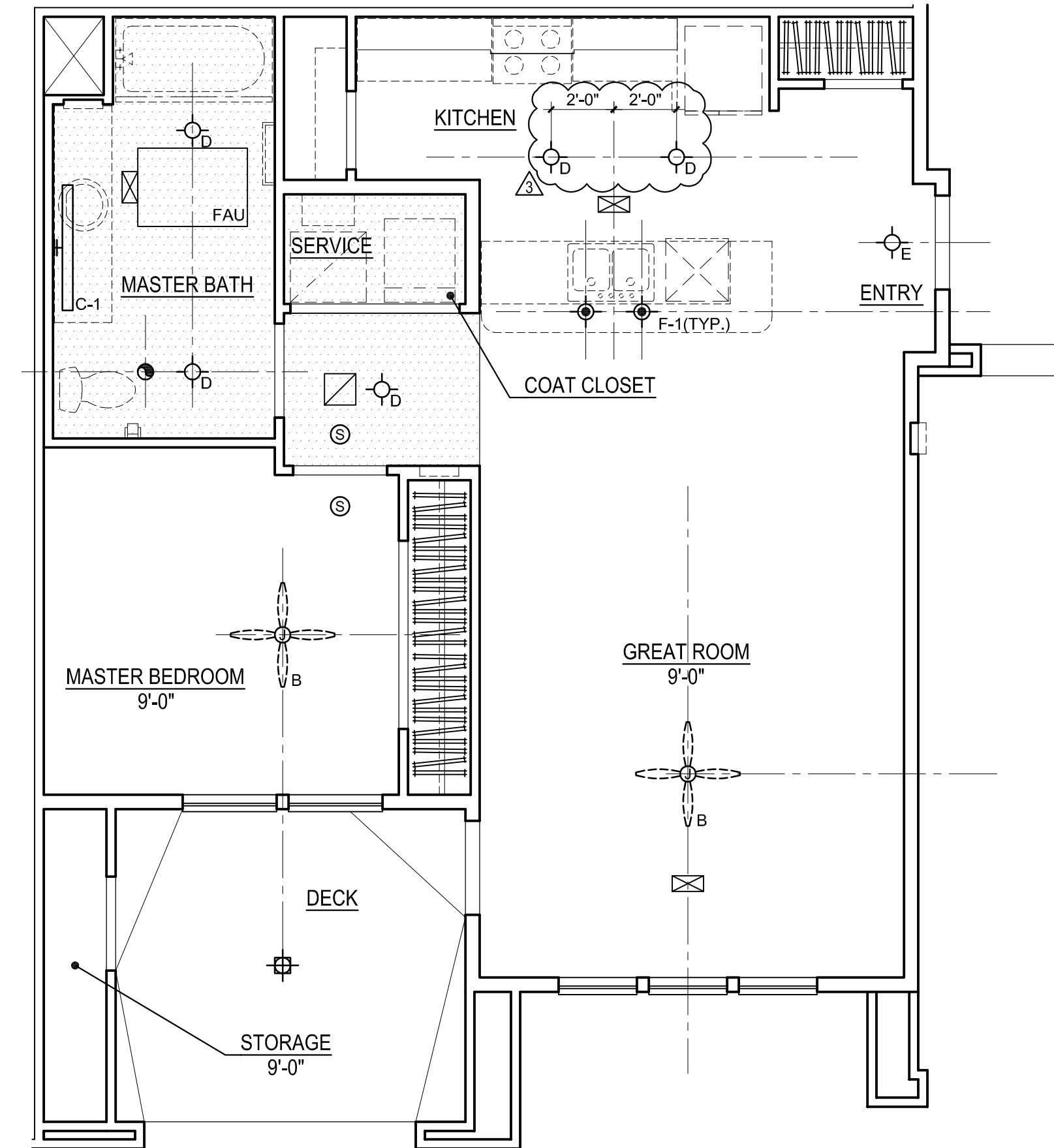
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UNIT 2 - RCP SCALE: 1/4"=1'-0" 2



UNIT 3 - RCP SCALE: 1/4"=1'-0" 3



UNIT 1 - RCP SCALE: 1/4"=1'-0" 1

R.C.P. LEGEND

	NON-COMBUSTIBLE DROPPED SOFFIT (SET-OUT FRAMING) 1'-0" BELOW MAIN CEILING HEIGHT
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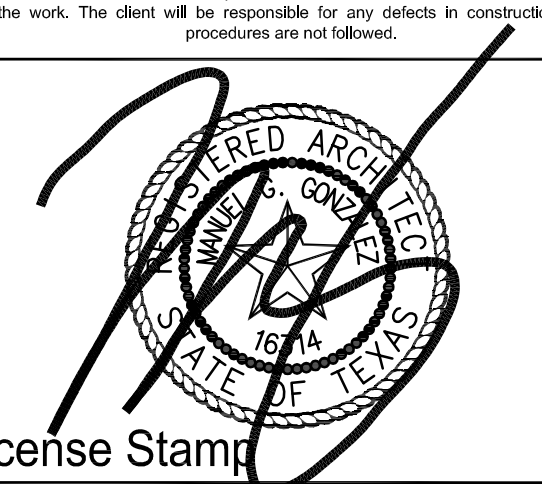
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DENISON FAMILY HOMES

DENISON, TX.

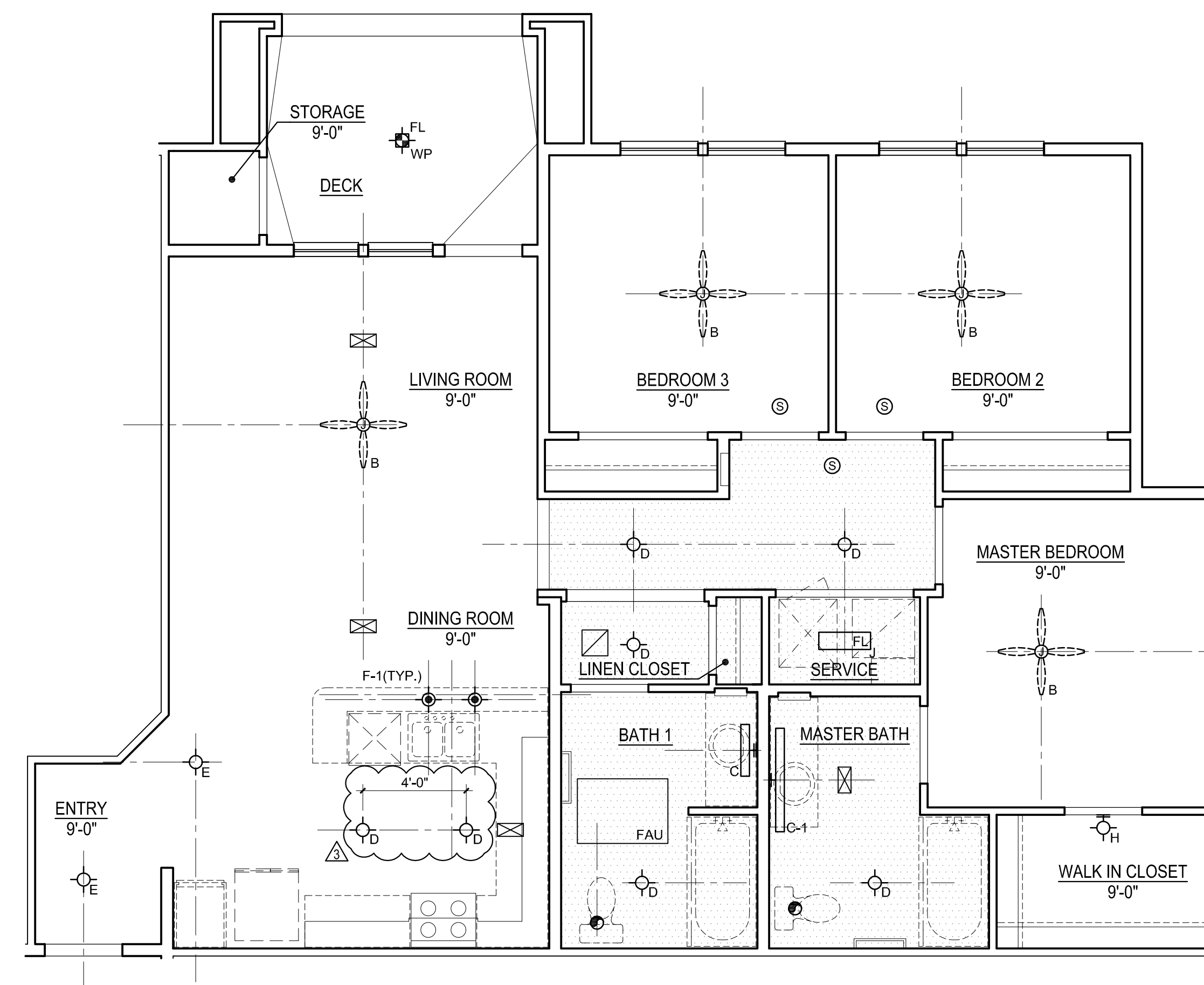
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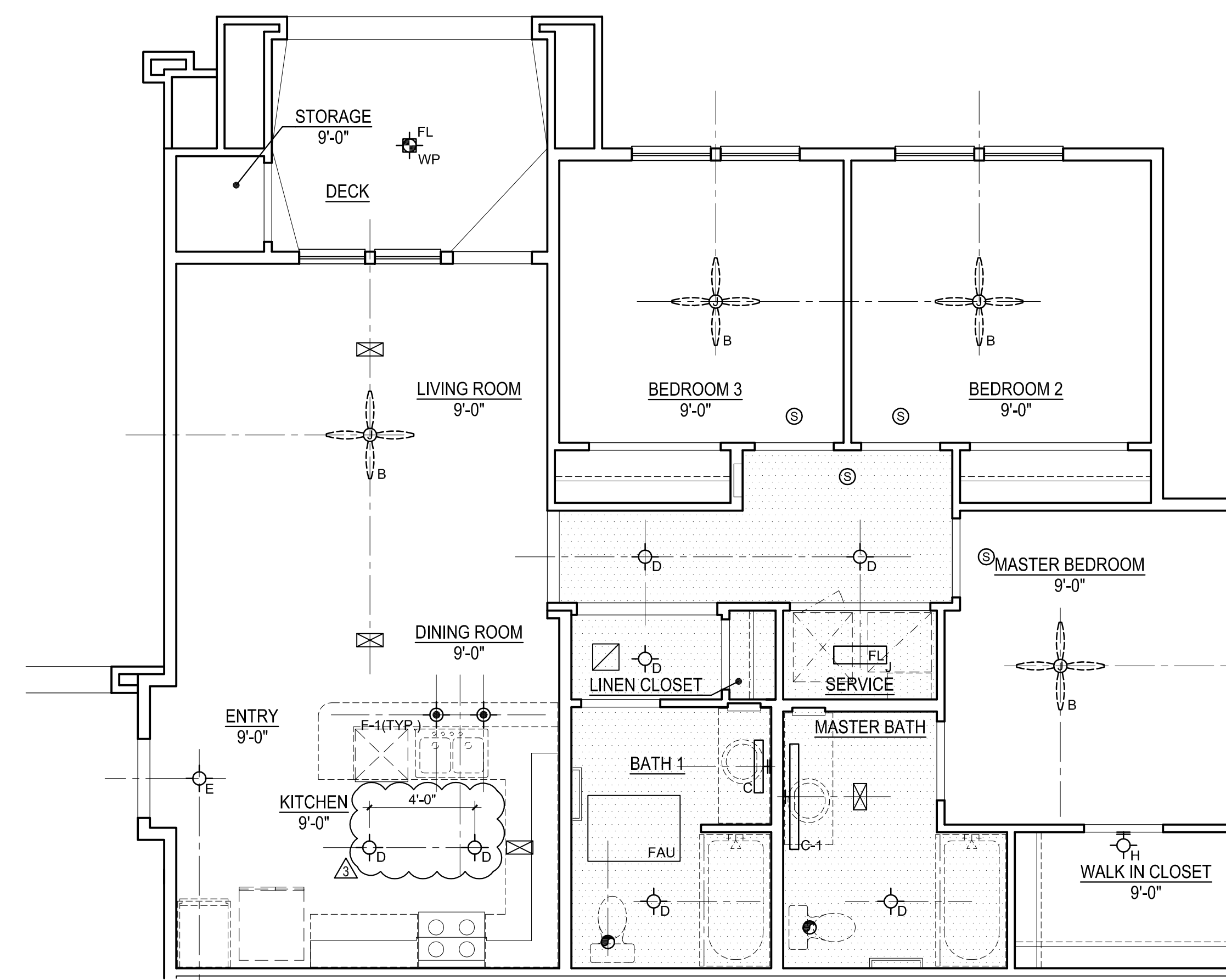
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 UNIT 4 - RCP

**A611**



NOT USED SCALE: 1/4"=1'-0" 4

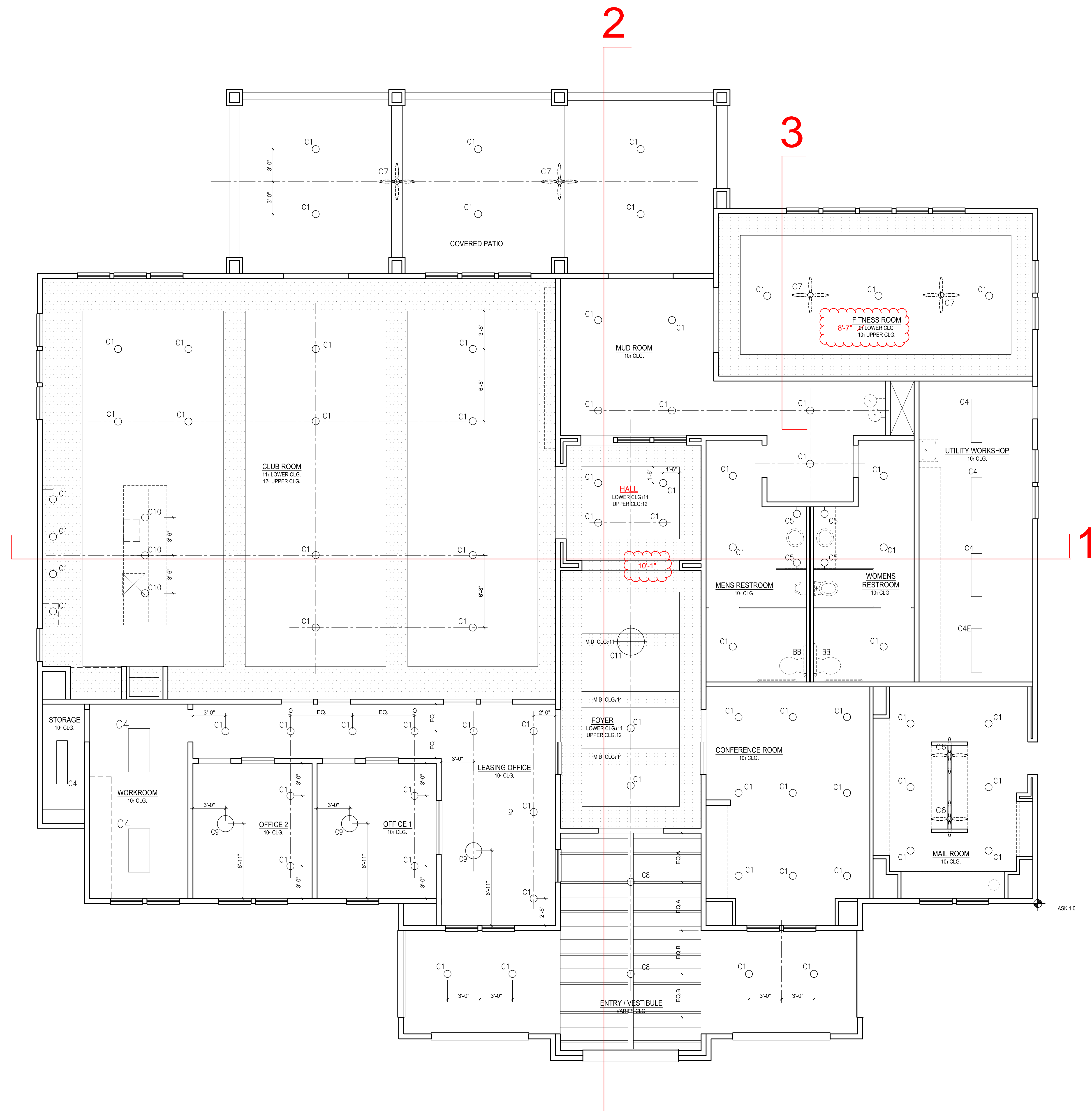
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











NOT USED SCALE: 1/4"=1'-0" 3

UNIT 4 - RCP SCALE: 1/4"=1'-0" 1





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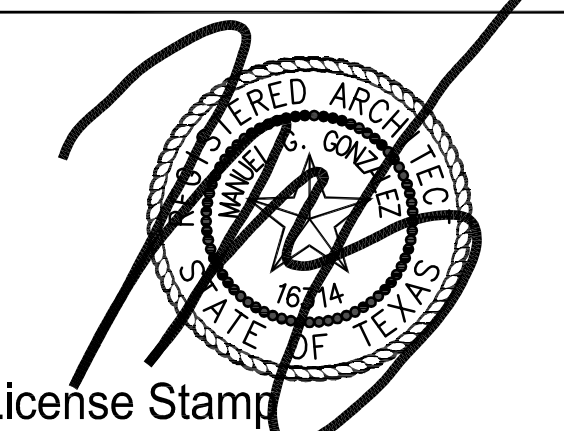
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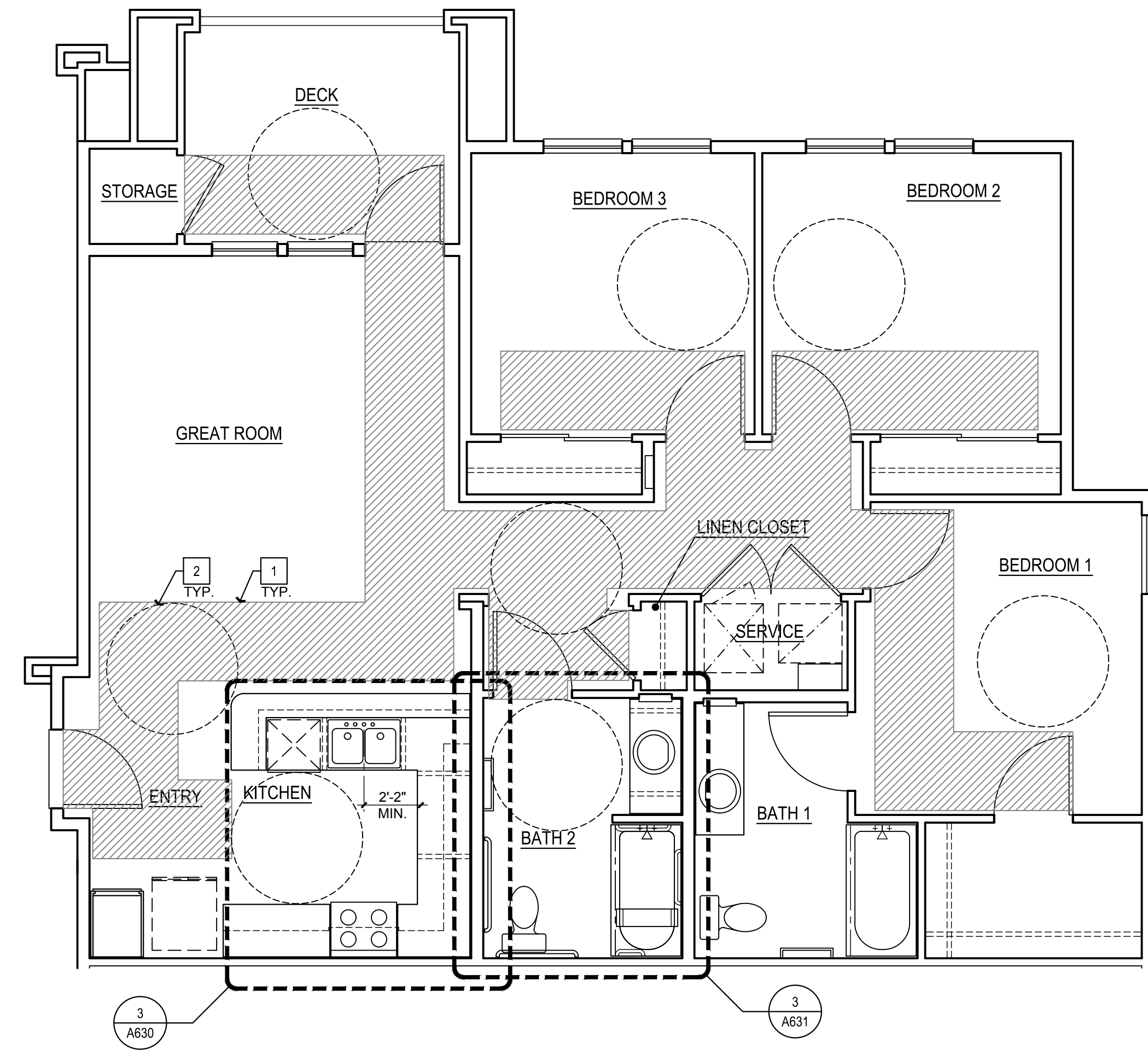
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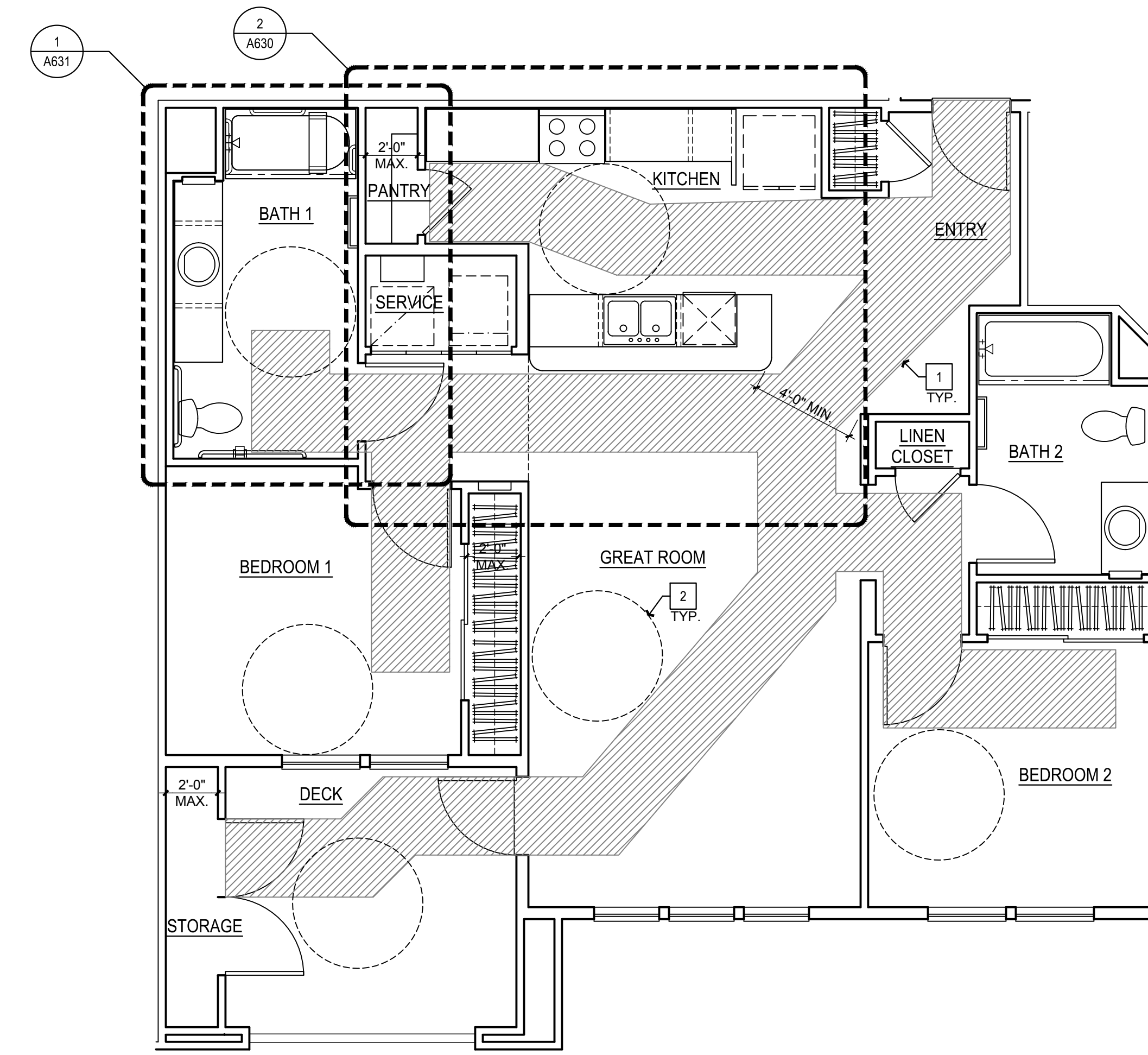
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 RECREATION CENTER  
 - RCP

**ASK 14.1**  
**RESPONSE TO RFI #28**  
**CLUBHOUSE FURDOWN**  
**INITIATED BY: STEPHEN**  
**DATE: 11/08/2017**

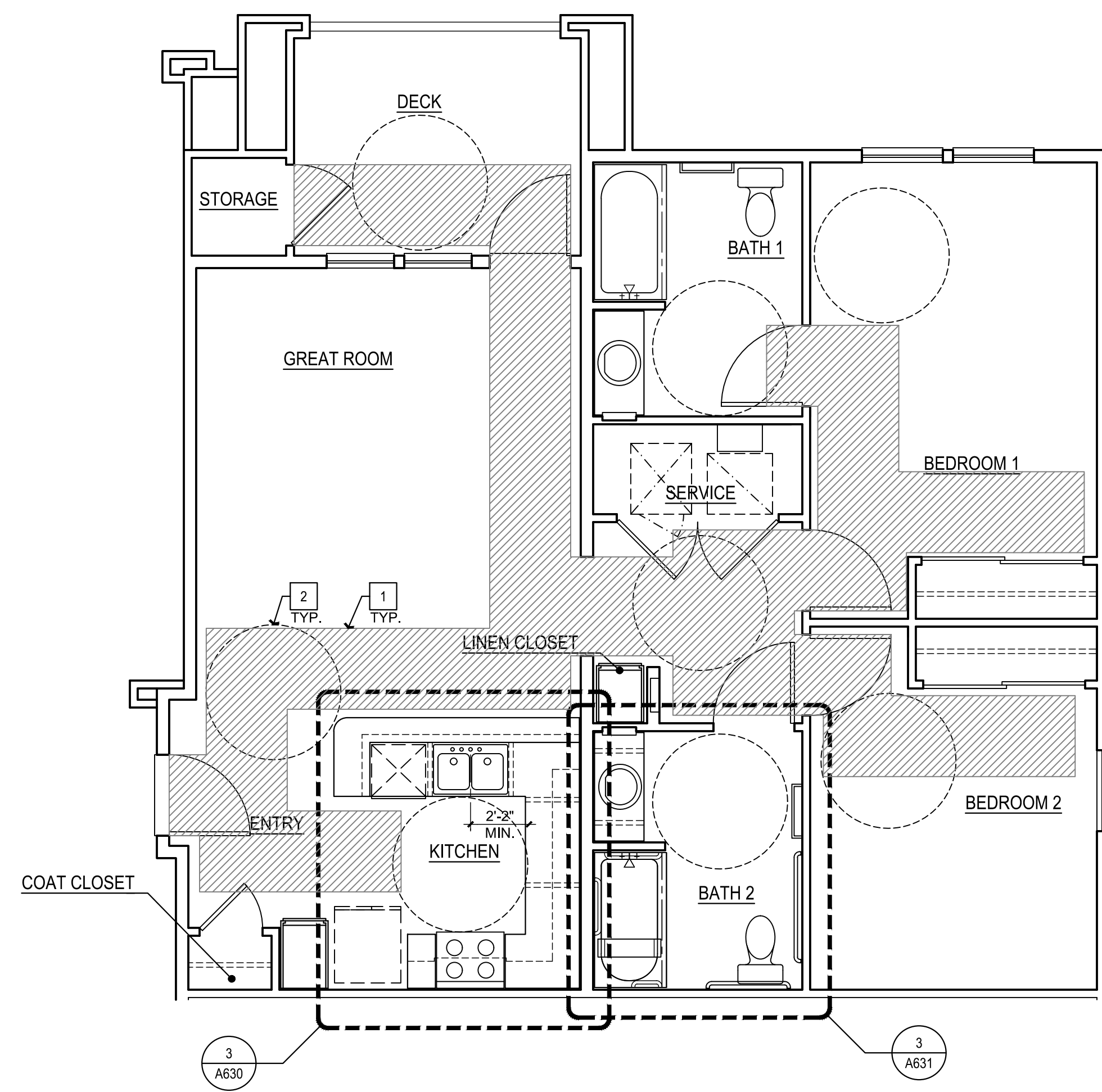




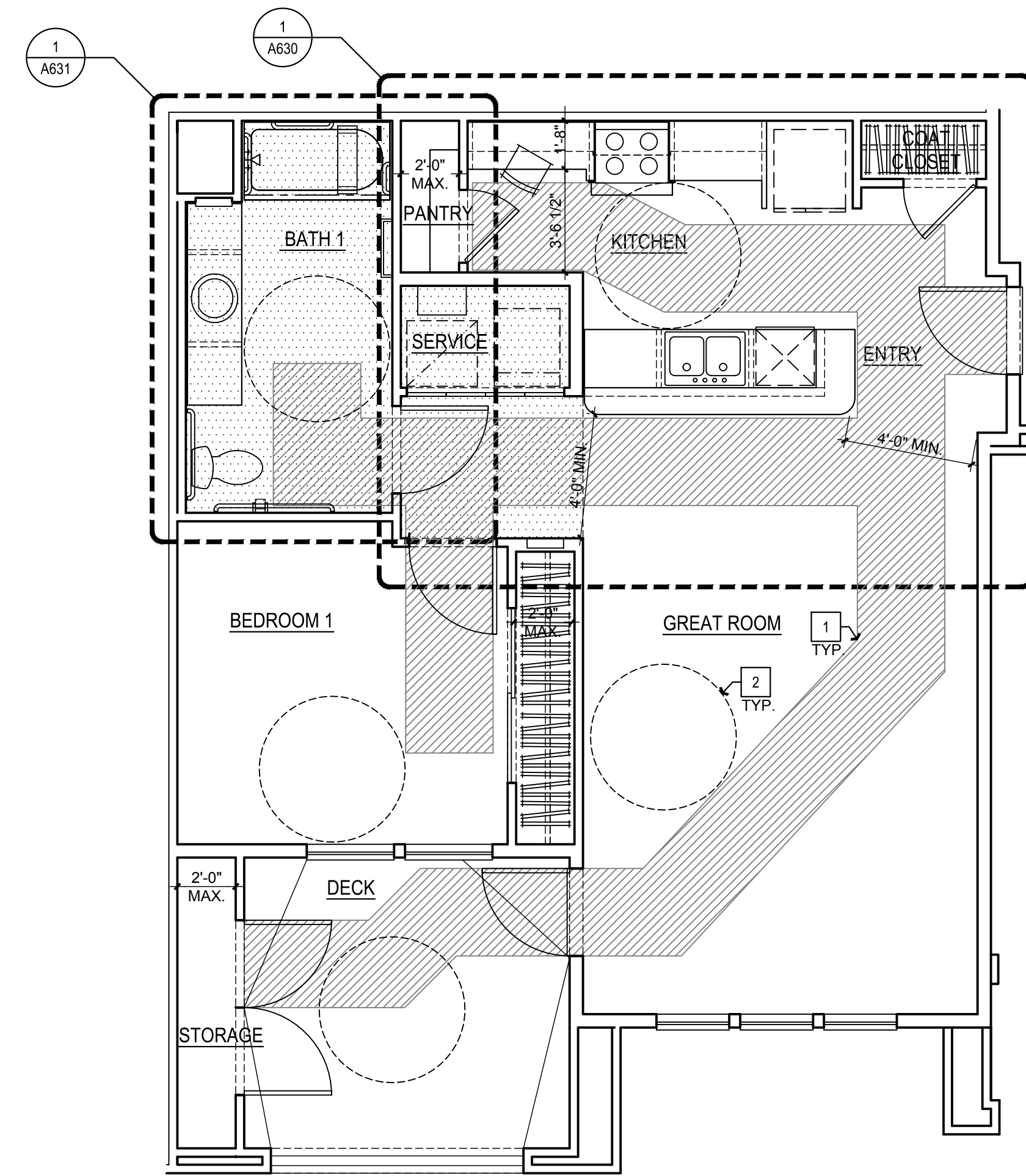
UNIT 3 ALT - ENLARGED PLAN SCALE: 1/4"=1'-0" 4



UNIT 2 - ENLARGED PLAN SCALE: 1/4"=1'-0" 2



UNIT 3 - ENLARGED PLAN SCALE: 1/4"=1'-0" 3



UNIT 1 - ENLARGED PLAN SCALE: 1/4"=1'-0" 1

UFAS GENERAL NOTE

- 2'-0" MAX. DEPTH FOR ALL CLOSETS UNLESS A CLEAR FLOOR SPACE OR GROUND SPACE AND MANEUVERING CLEARANCES IS PROVIDED PER UFAS 4.2

UFAS KEYNOTES

- GENERAL
- 36" MIN. PATH OF TRAVEL WIDTH.
  - MANEUVERING CLEARANCE 5'-0"



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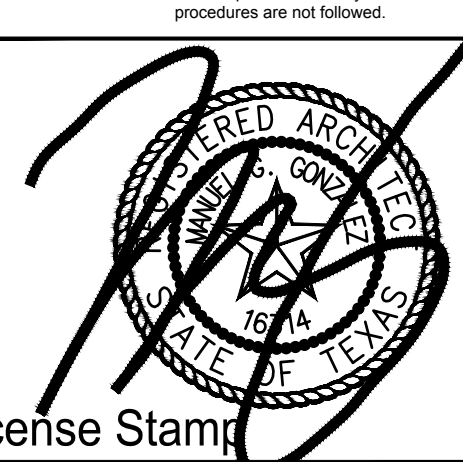
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License Stamp  
 UNIT 1, 2 & 3 - UFAS  
 COMPLIANCE PLANS

**UFAS GENERAL NOTE**

1. 2'-0" MAX. DEPTH FOR ALL CLOSETS UNLESS A CLEAR FLOOR SPACE OR GROUND SPACE AND MANEUVERING CLEARANCES IS PROVIDED PER UFAS 4.2



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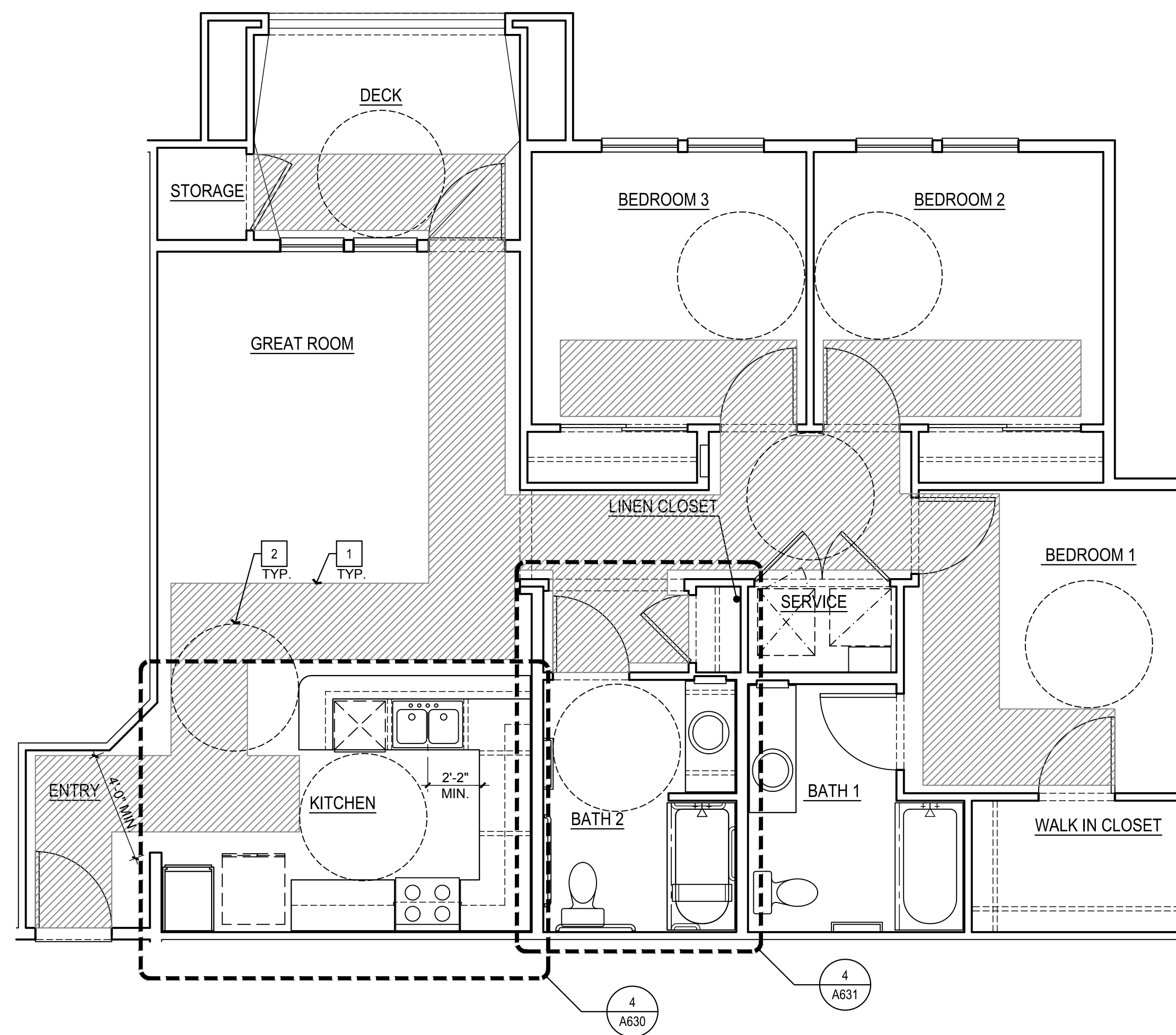
**Developer**



**AMTEX**  
 30141 AGOURA ROAD,  
 SUITE 100  
 AGOURA HILLS, CA  
 PHONE NO. 818-706-0694  
 FAX NO. 818-889-9158

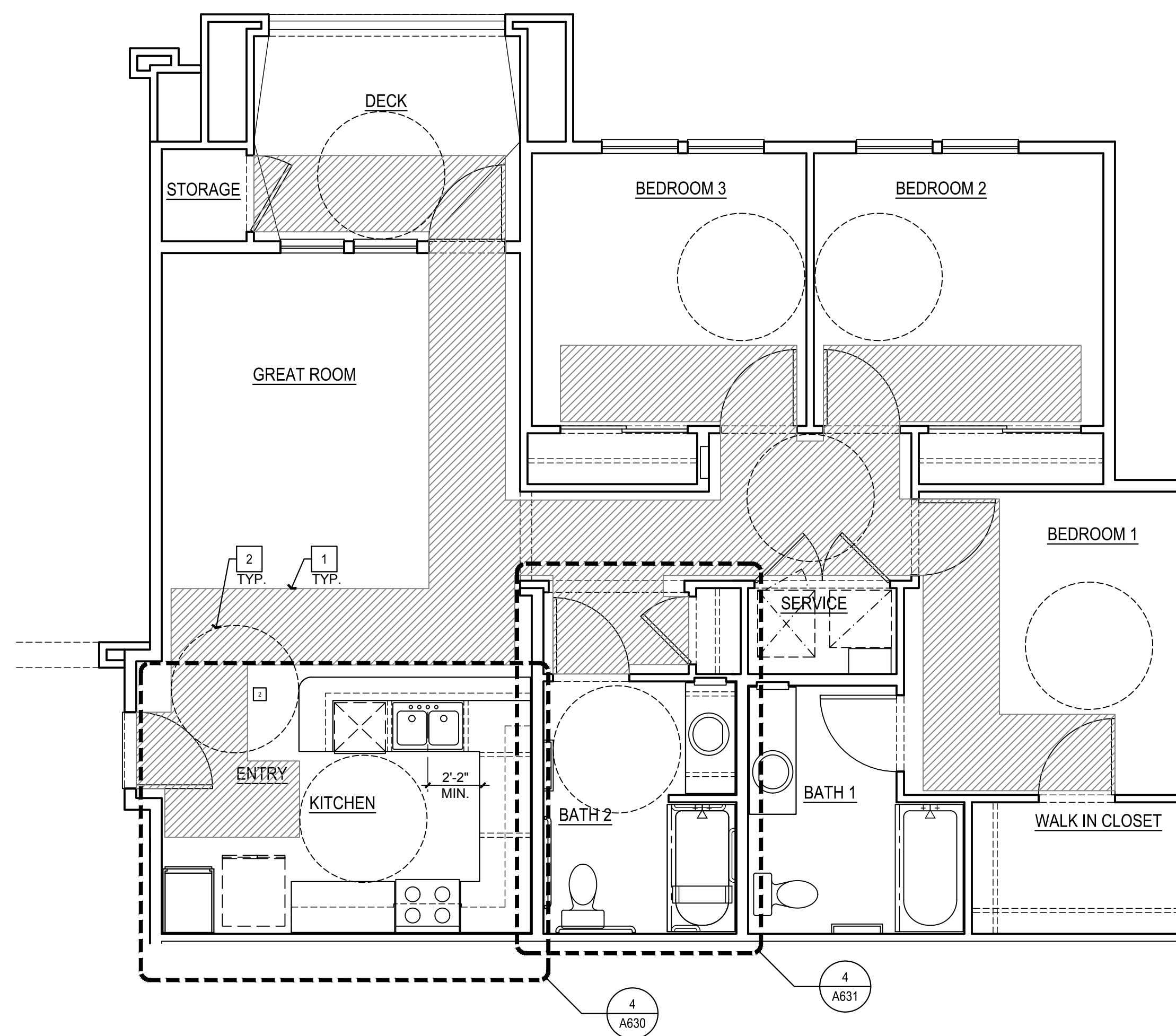
**UFAS KEYNOTES**

- GENERAL**
- 1 36" MIN. PATH OF TRAVEL WIDTH.
  - 2 MANEUVERING CLEARANCE 5'-0"



NOT USED SCALE: 1/4"=1'-0" 4

UNIT 4 ALT - ENLARGED PLAN SCALE: 1/4"=1'-0" 2



NOT USED SCALE: 1/4"=1'-0" 3

UNIT 4 - ENLARGED PLAN SCALE: 1/4"=1'-0" 1

DENISON FAMILY HOMES

DENISON, TX.

No.	Date	Description
1	10/28/16	100% DESIGN DEVELOPMENT
2	11/14/16	50% CONSTRUCTION DOCUMENTS
3	12/01/16	100% C.D., 1ST BLDG. SUBMITTAL
4	02/21/17	PERMIT SET

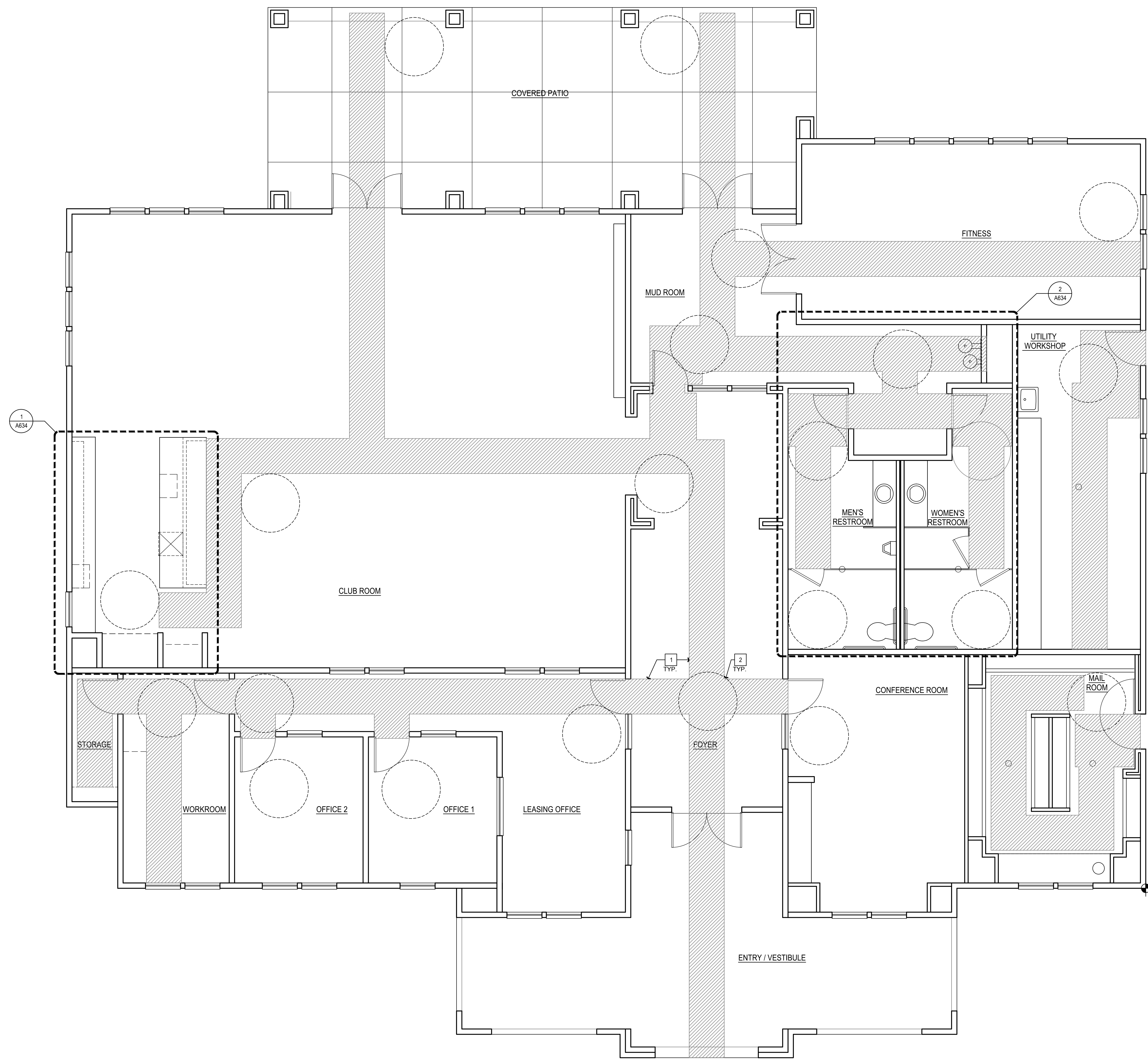
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License Stamp  
 UNIT 4 - UFAS  
 COMPLIANCE PLANS

A621





**UFAS GENERAL NOTE**

1. 2'-0" MAX. DEPTH FOR ALL CLOSETS UNLESS A CLEAR FLOOR SPACE OR GROUND SPACE AND MANEUVERING CLEARANCES IS PROVIDED PER UFAS 4.2

**UFAS KEYNOTES**

- GENERAL
- 1 36" MIN. PATH OF TRAVEL WIDTH.
  - 2 MANEUVERING CLEARANCE 5'-0"
  - 3 MANEUVERING CLEARANCE AT ENTRY
- 



**KTGY Group, Inc.**  
 12555 West Jefferson Blvd.,  
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 Los Angeles, California 90066  
 ktgy.com  
 310.394.2623

**KTGY Project No:** 160630

**Project Contact:** Gary Leus  
**Email:** gleus@ktgy.com

**Principal:** Manny Gonzalez  
**Project Designer:** Doug Heaton

**Developer**

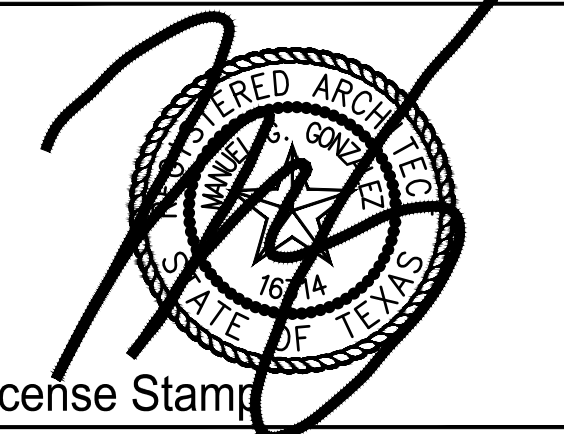
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**DENISON FAMILY HOMES**

DENISON, TX.

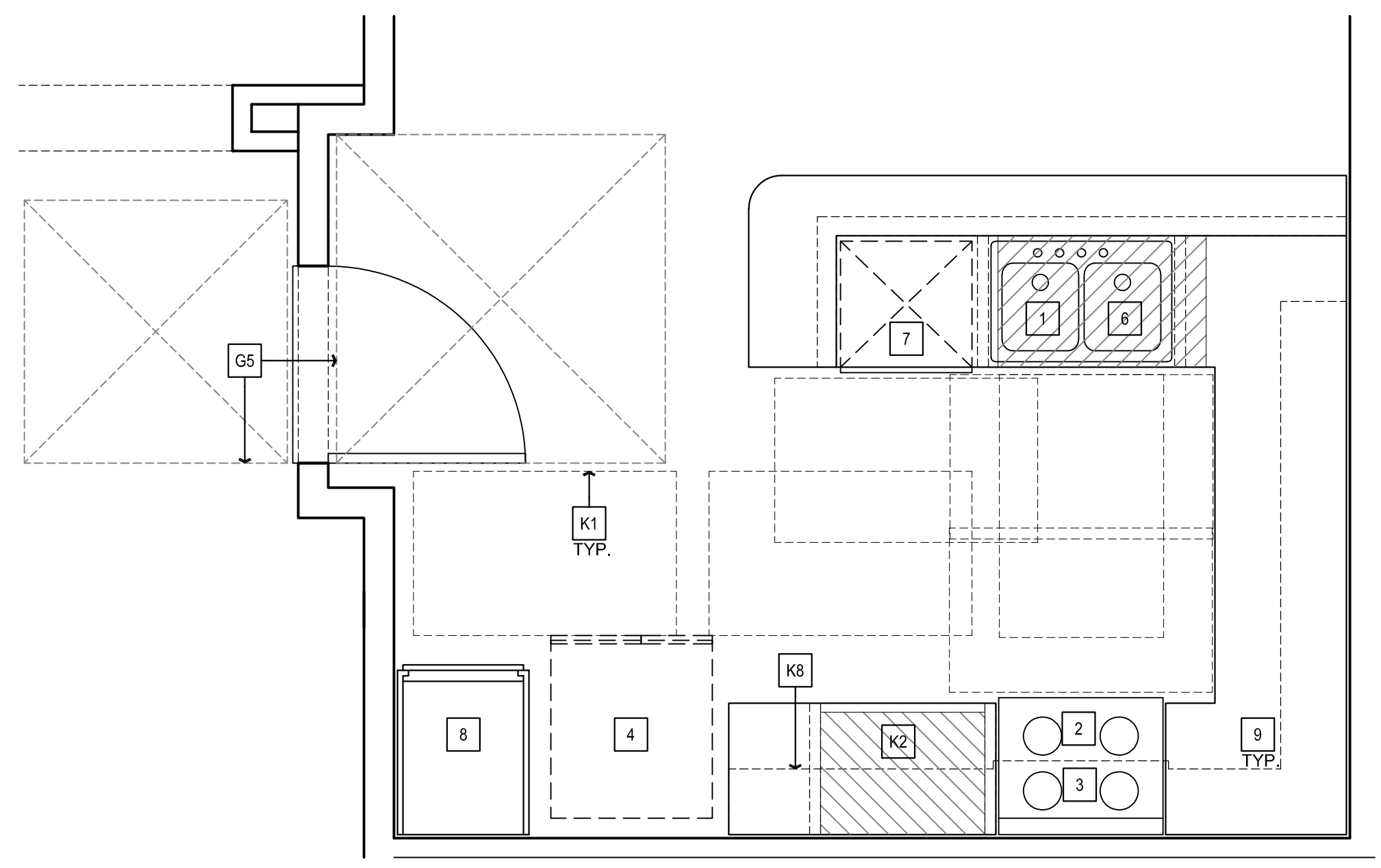
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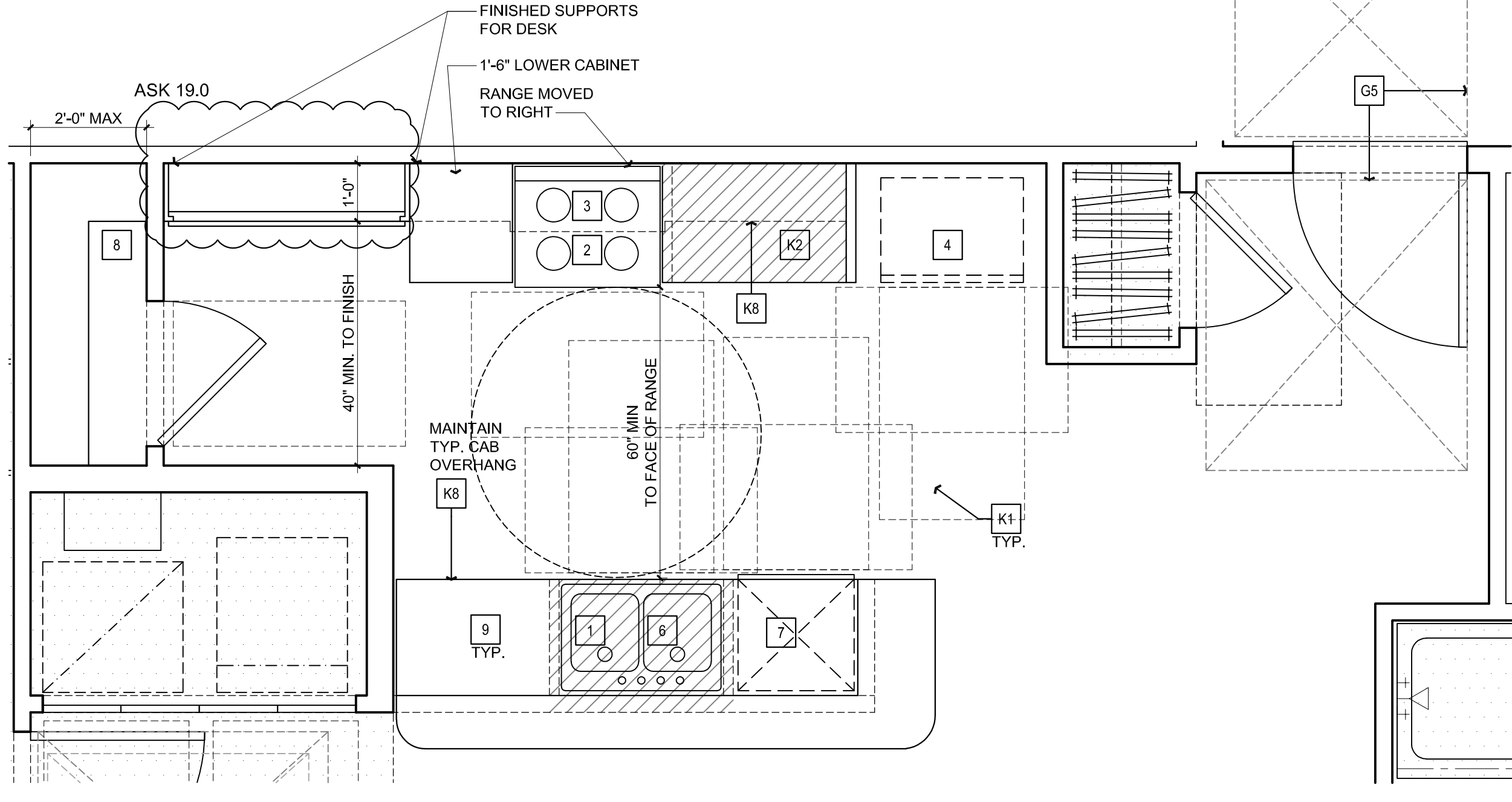


License Stamp  
**RECREATION CENTER**  
**- UFAS COMPLIANCE**  
**PLANS**

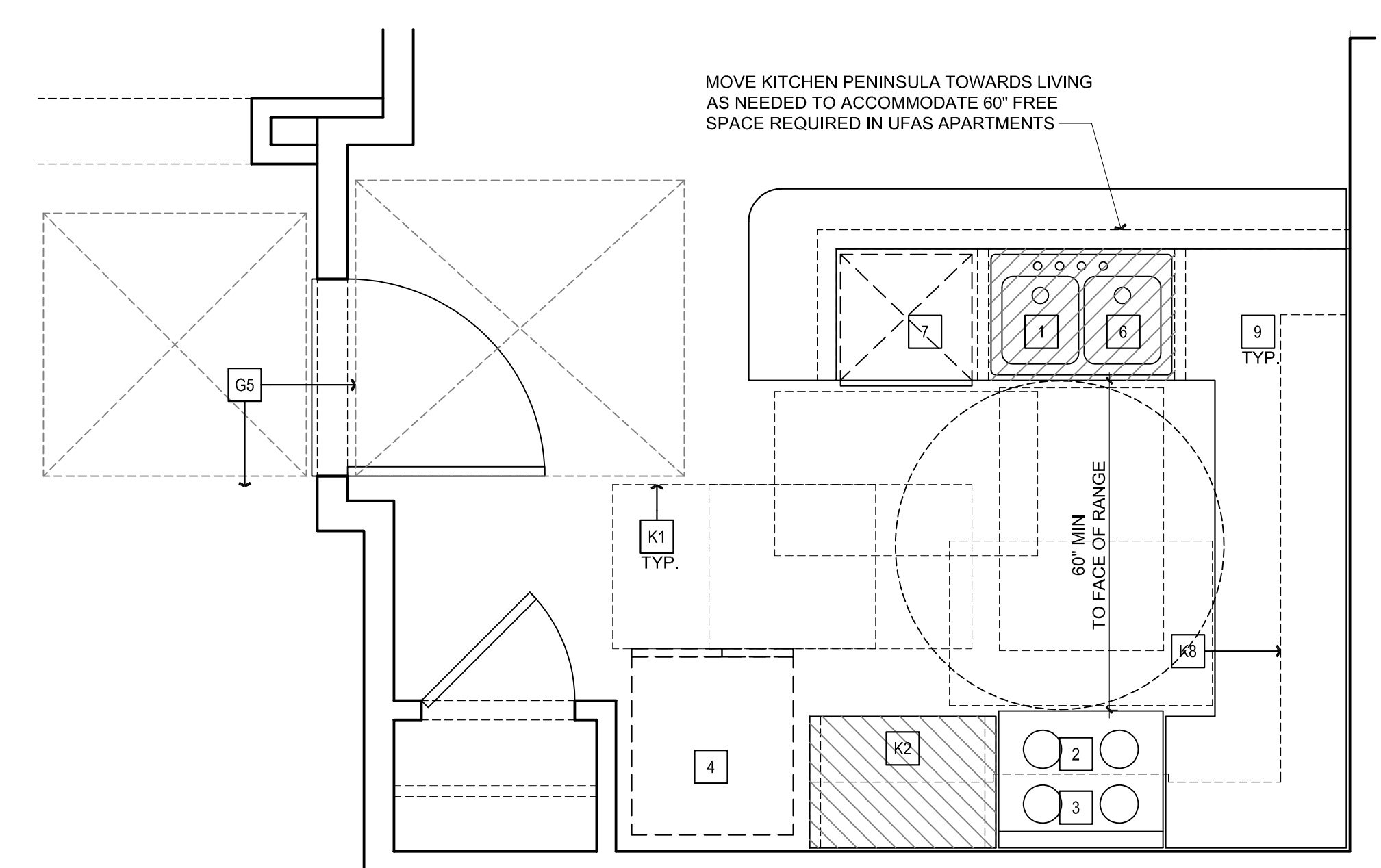




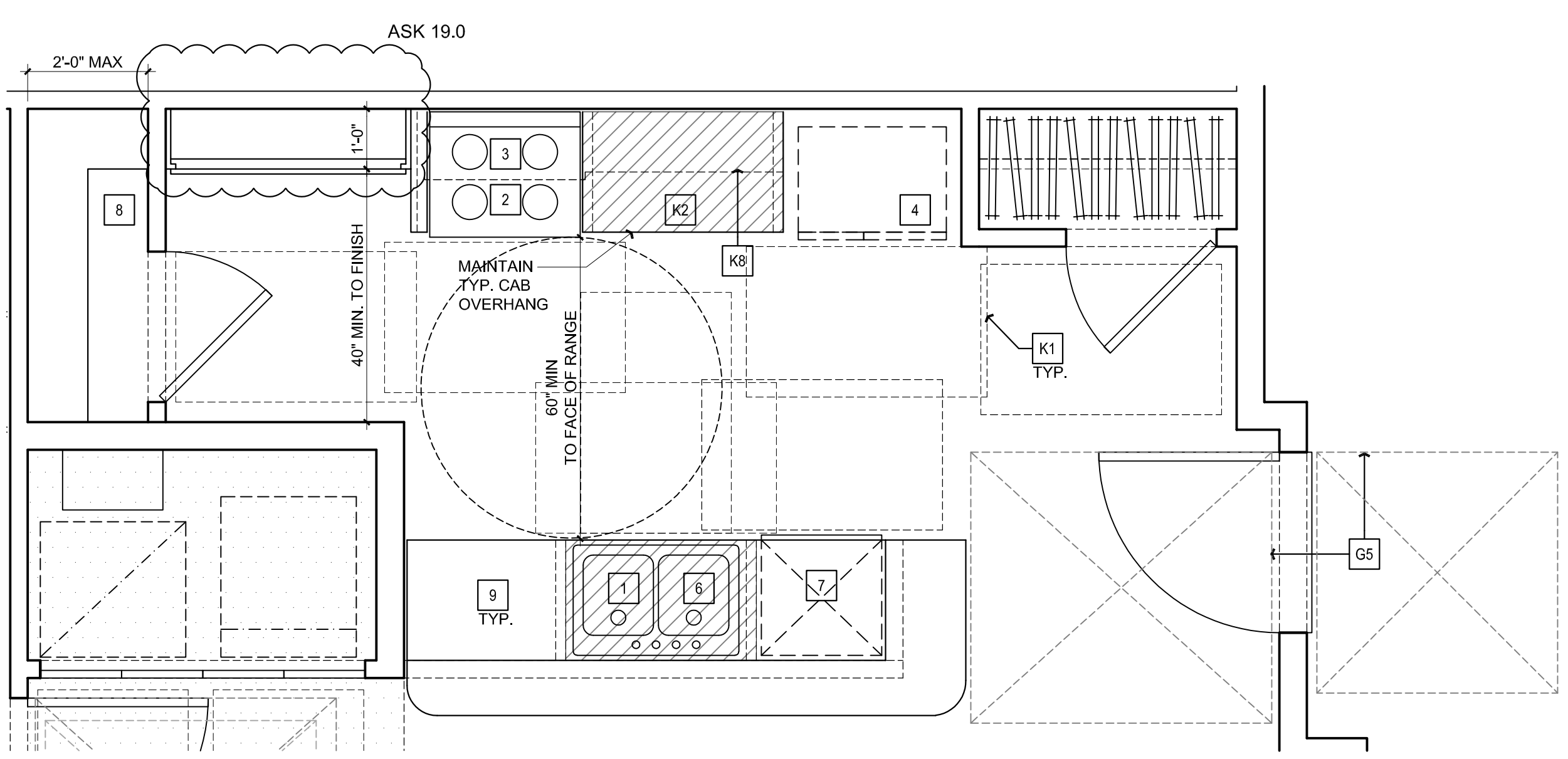
UNIT 4 - UFAS KITCHEN PLAN SCALE: 1/2"=1'-0" 4



UNIT 2 - UFAS KITCHEN PLAN SCALE: 1/2"=1'-0" 2



UNIT 3 - UFAS KITCHEN PLAN SCALE: 1/2"=1'-0" 3



UNIT 1 - UFAS KITCHEN PLAN SCALE: 1/2"=1'-0" 1

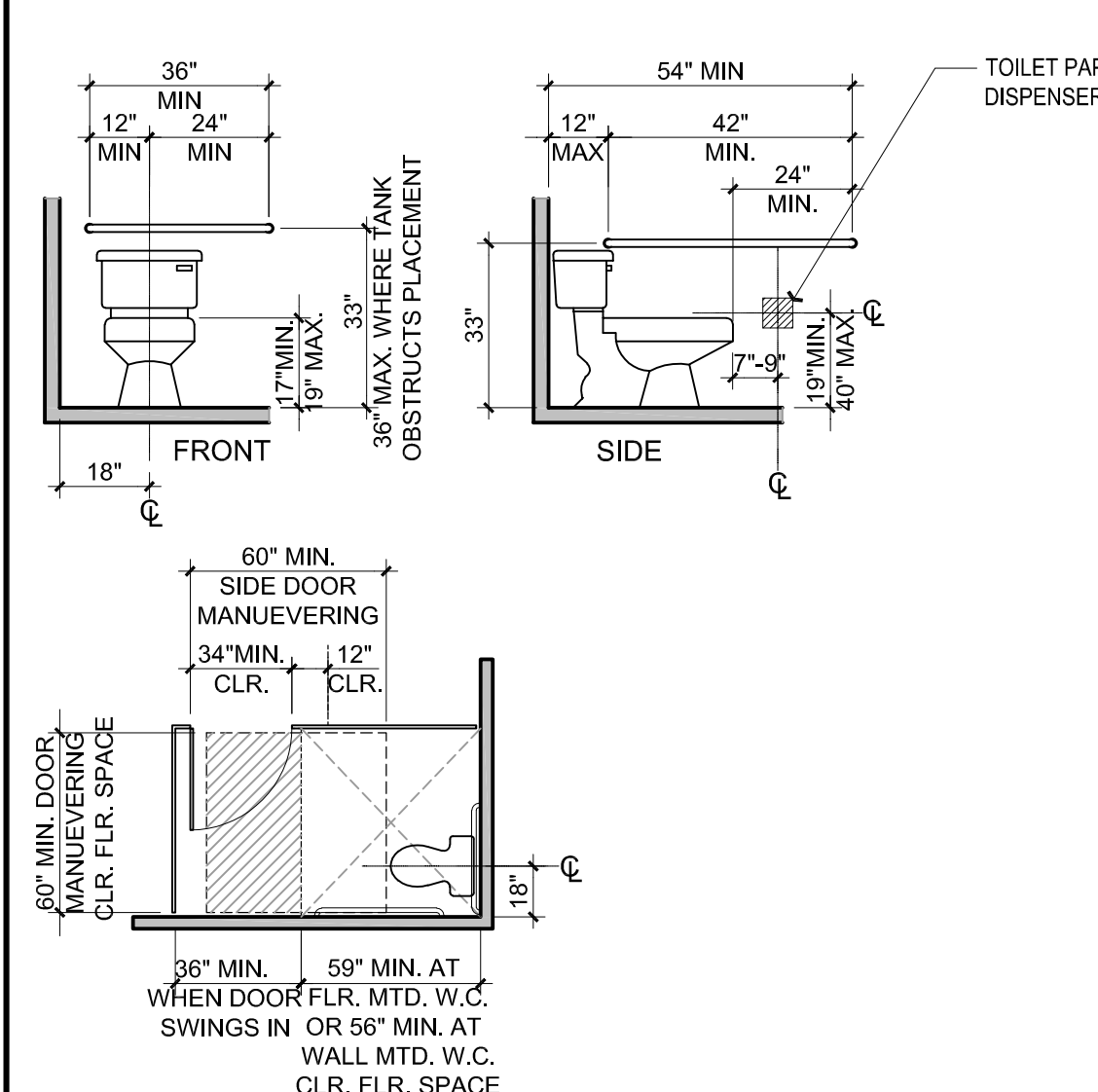
KITCHEN ACCESSIBILITY

- KITCHEN**
- 1 DOUBLE SINK - 6-1/2" MAX BOWL DEPTH DRAIN AND DISPOSAL OFFSET TO REAR. HOT WATER SUPPLY, DISPOSAL AND DRAIN PIPES BELOW SINK TO BE INSULATED.
  - 2 NOT USED.
  - 3 NOT USED.
  - 4 34" W. CLEAR ALCOVE - SIDE-BY-SIDE OR TOP FREEZER W/ CONTROLS & AT LEAST 50% OF FREEZER SHELF SPACE NO MORE THAN 54" AFF
  - 6 SHELF AND TOE SPACE BELOW SINK - MIN 30" WIDE NO SHARP OR ABRASIVE SURFACES BELOW SINK 12/A022 EXTEND FINISH FLOORING TO THE WALL
  - 7 UNDER COUNTER 24" WIDE DISHWASHER
  - 8 PANTRY
  - 9 +34" A.F.F. STONE, CULTURED STONE OR TILED KITCHEN COUNTERTOP WITH 4" BACKSPLASH
  - K1 30"x48" CLEAR FLOOR SPACE AT FIXTURE OR APPLIANCE
  - K2 34" HIGH WORK COUNTER - MIN 30" WIDE - MIN 29" HIGH KNEE SPACE BELOW
  - K3 HORIZ DUPLEX RECEPTACLE - TOP AT 44" MAX AFF
  - K4 HORIZ SWITCH & SINGLE RECEPTACLE - TOP AT 44" MAX AFF
  - K6 DUPLEX RECEPTACLE - TOP AT 33" AFF
  - K7 T-SHAPED OR 5' RADIUS TURNING SPACE
  - K8 UPPER CABINET W/ LOWEST SHELF AT 48" MAX AFF.

COMMON ACCESSIBILITY

- GENERAL**
- G1 REFER TO SHEET A023 AND A024
  - G2 TOP OF RECEPTACLE BOX AT 44" MAX AFF
  - G3 TOP OF SWITCH BOX AT 44" MAX AFF
  - G4 T-SHAPED OR 5' RADIUS TURNING SPACE
  - G5 MANUEVERING CLEARANCE AT ENTRY
- LAVATORY**
- L1 SHELF AND TOE - KNEE SPACE BELOW 12/A026 EXTEND FINISH FLOORING TO THE WALL
  - L2 +34" A.F.F. STONE, CULTURED STONE COUNTERTOP WITH 4" SPLASH
  - L3 LAVATORY - 6-1/2" MAX DEEP BOWL 34" MAX HIGH RIM. HOT WATER SUPPLY AND DRAIN PIPES BELOW LAVATORY TO BE INSULATED.
  - L4 30"x48" CLEAR FLOOR SPACE AT LAV PARALLEL APPROACH
  - L5 30"x48" CLEAR FLOOR SPACE AT LAV FORWARD APPROACH
- WATER CLOSET**
- W1 WATER CLOSET W/ 17"-19" HIGH SEAT W/ FLUSH CONTROL ON OPEN SIDE
  - W2 WATER CLOSET CLEAR FLOOR SPACE
  - W3 36" LONG GRAB BAR AT 33"-36" AFF
  - W4 42" LONG GRAB BAR AT 33" AFF
- BATH ACCESSORIES**
- A1 NOT USED
  - A2 NOT USED
  - A3 TOILET PAPER HOLDER AT 19" MIN AFF - PROVIDE 2x8 BACKING AT WALL
  - A4 NOT USED
  - A5 BOTTOM EDGE OF MIRROR AT 40" MAX. AFF
- BATH ACCESSORIES**
- A1 NOT USED
  - A2 NOT USED
  - A3 TOILET PAPER HOLDER AT 19" MIN AFF - PROVIDE 2x8 BACKING AT WALL
  - A4 NOT USED
  - A5 BOTTOM EDGE OF MIRROR AT 40" MAX. AFF
- DRINKING FOUNTAINS (PER UFAS 4.15) REFER TO SHEET A025**
- D1 SPOUT - 36" MAX. AFF TO THE SPOUT OUTLET (SPOUTS SHALL BE AT THE FRONT OF THE UNIT AND SHALL DIRECT WATER FLOW IN A TRAJECTORY THAT IS PARALLEL OR NEARLY PARALLEL TO THE FRONT OF THE UNIT. THE SPOUT SHALL PROVIDE A FLOW OF WATER AT LEAST 4" HIGH TO ALLOW THE INSERTION OF A CUP OR GLASS UNDER THE FLOW OF WATER)
  - D2 UNIT CONTROLS SHALL BE FRONT MOUNTED OR SIDE MOUNTED NEAR THE FRONT EDGE AND COMPLY WITH UFAS 4.27.4
  - D3 KNEE SPACE BELOW WALL-AND POST MOUNTED CANTILEVER UNITS - 27" HEIGHT, 30" WIDE AND 17"-19" DEEP. PROVIDE 30"x48" MIN. FORWARD APPROACH CLEAR SPACE.
- FREE-STANDING OR BUILT-IN UNITS NOT HAVING A CLEAR SPACE UNDER THEM SHALL HAVE A 30"x48" MIN. PARALLEL APPROACH CLEAR SPACE.

WALL REINFORCING



- NOTE:**
- A. IN ALL UFAS BATHROOMS, GRAB BAR BACKING SHALL BE PROVIDED.
  - B. THE REINFORCEMENT SHALL BE OF SUFFICIENT LENGTH TO PERMIT THE INSTALLATION OF GRAB BARS AS NOTED.
  - C. THE REINFORCED WALL SHALL BE CAPABLE OF SUPPORTING A LOAD OF AT LEAST 250 POUNDS IN CONFORMANCE WITH UFAS: 4.26.3



**KTGY Group, Inc.**  
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**KTGY Project No:** 160630

**Project Contact:** Gary Leus  
**Email:** gleus@ktgy.com

**Principal:** Manny Gonzalez  
**Project Designer:** Doug Heaton

**Developer**  
**AMTEX**

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PHONE NO. 818-706-0694  
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DENISON FAMILY HOMES

DENISON, TX.

No.	Date	Description
1	10/28/16	100% DESIGN DEVELOPMENT
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4	02/21/17	PERMIT SET
5	05/24/17	BULLETIN #1
6	08/02/17	BULLETIN #2
7	08/23/17	BULLETIN #3
8	11/16/17	BULLETIN #4
9	01/22/17	ASK 16.0
10	02/26/18	ASK 18.0

It is the clients responsibility prior to or during construction to notify the architect in writing of any proposed errors or omissions in the plans and specifications of which a contractor is responsible. Knowledgeable with the building codes and methods of construction should be responsible for errors. Written instructions acknowledging such proposed errors or omissions shall be received from the architect prior to the client or clients subcontractors proceeding with the work. The client will be responsible for any orders to construction if these procedures are not followed.

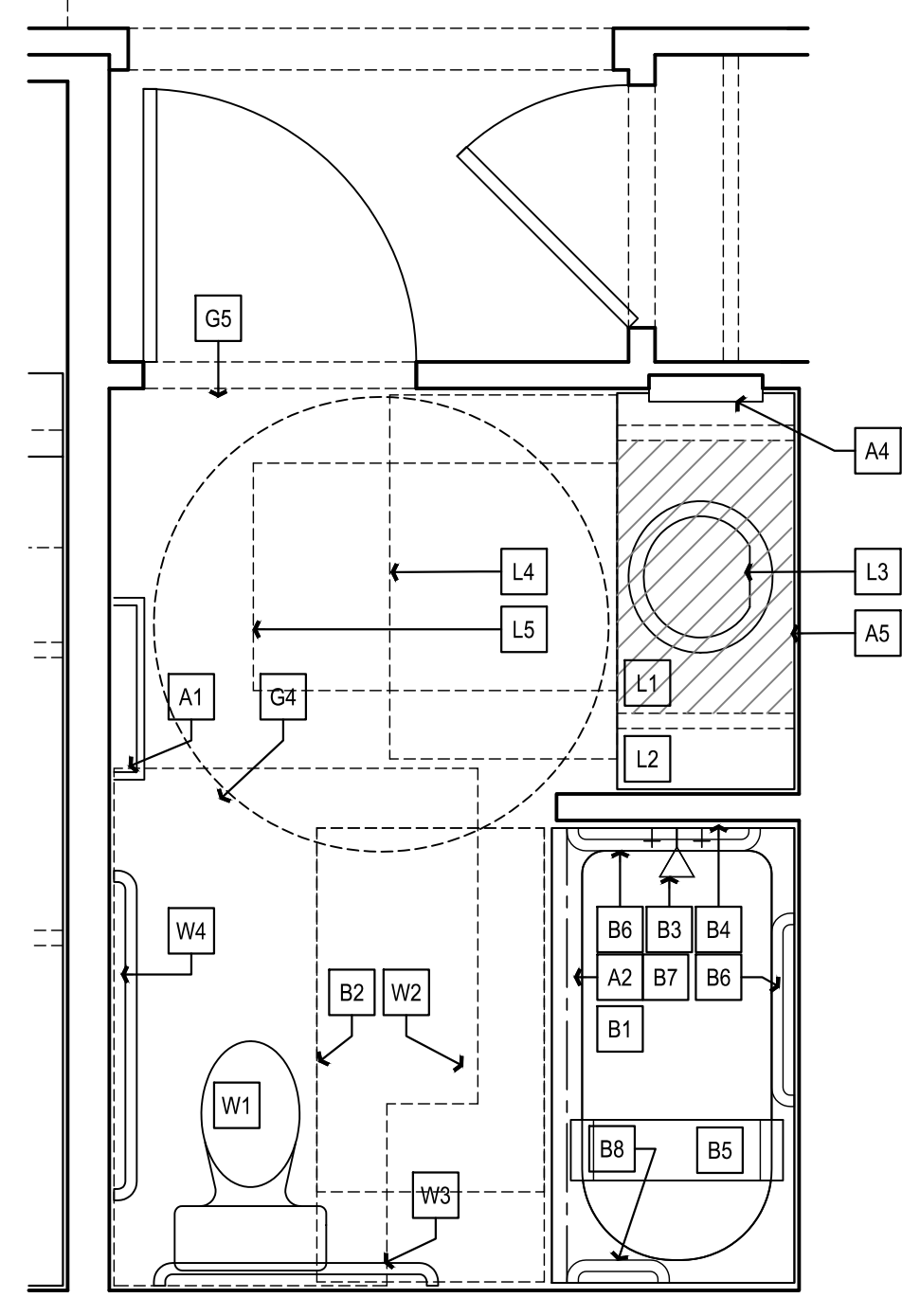


**License Stamp**  
**UNITS 1-4 UFAS**  
**ACCESSIBLE KITCHEN**

ASK 19.0  
ASK 16.0

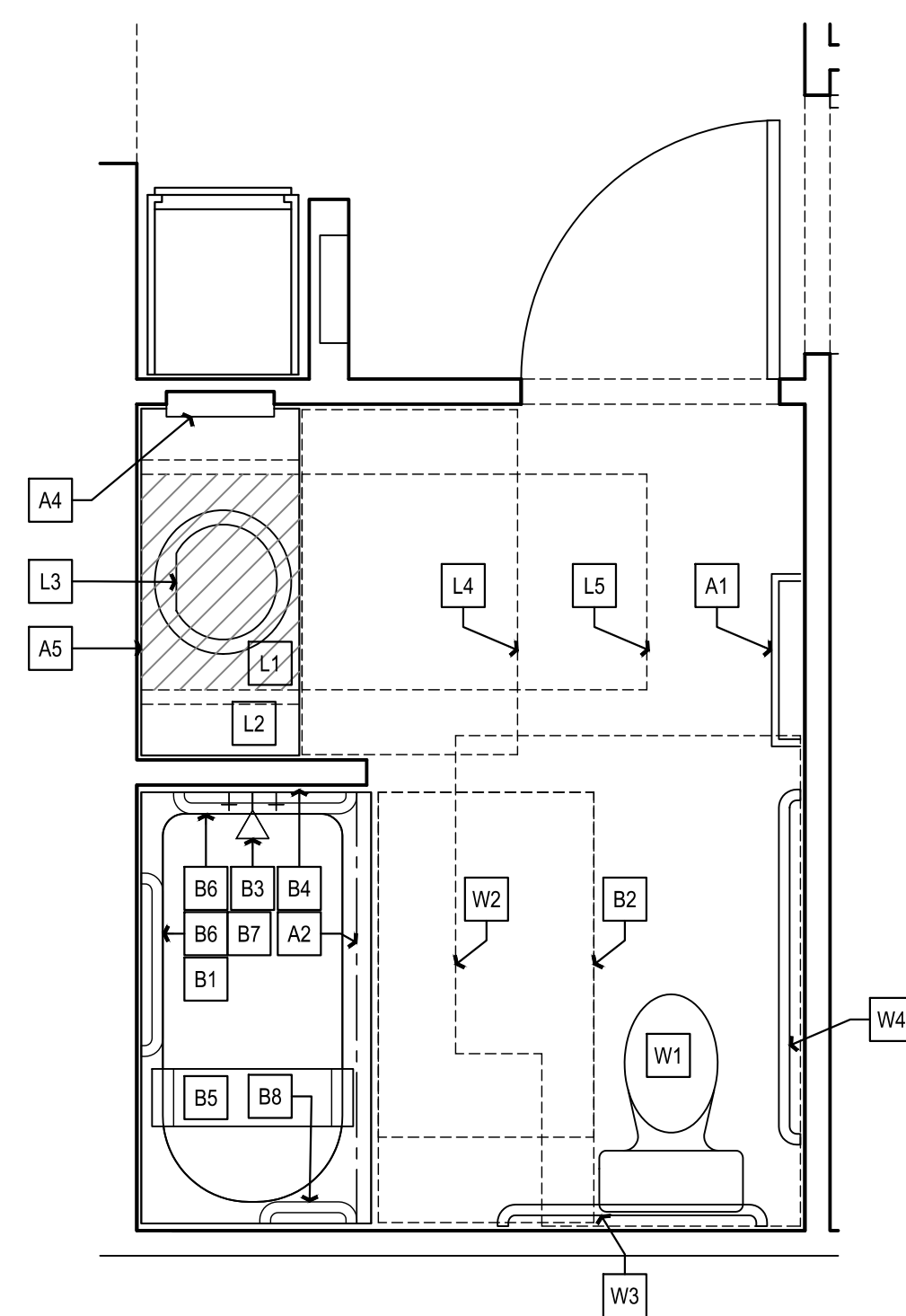
**A630**



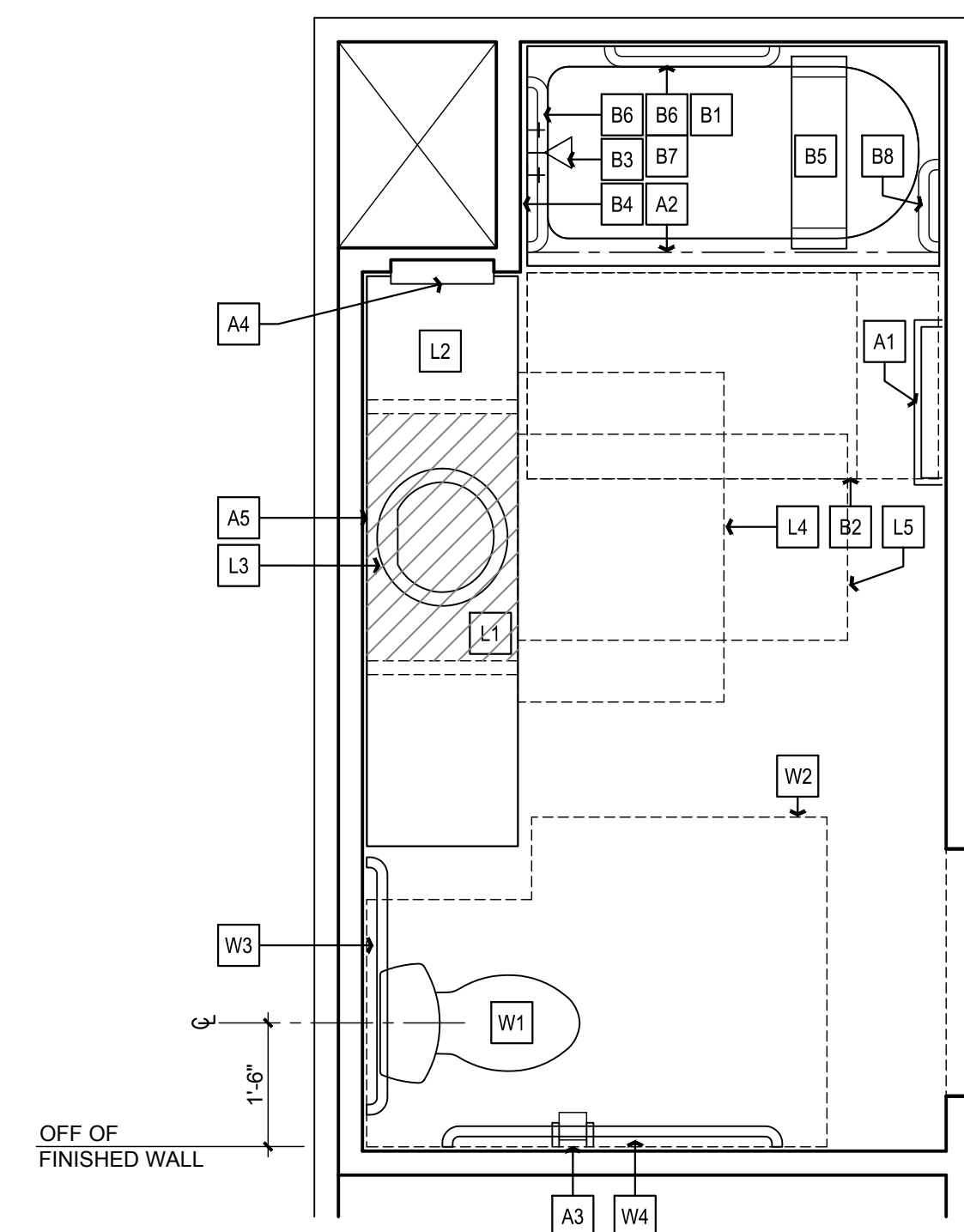


UNIT 4 PLAN SCALE: 1/2"=1'-0" 4

NOT USED SCALE: 1/2"=1'-0" 2



UNIT 3 PLAN SCALE: 1/2"=1'-0" 3



UNIT 1 & 2 BATHROOM PLAN - UFAS SCALE: 1/2"=1'-0" 1

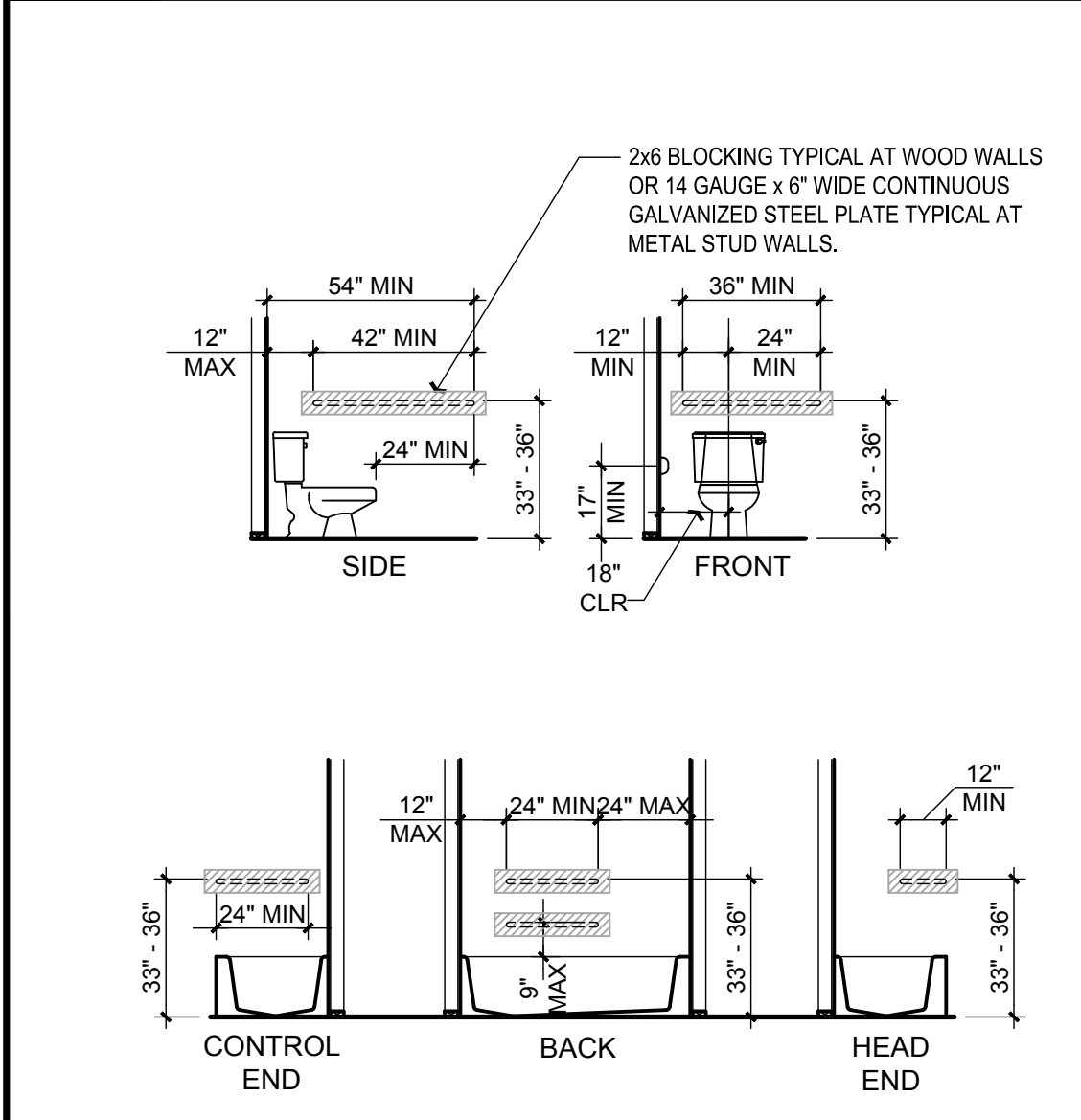
UNIT KITCHEN ACCESSIBILITY

- KITCHEN**
- 1 DOUBLE SINK - 6-1/2" MAX BOWL DEPTH DRAIN AND DISPOSAL OFFSET TO REAR. HOT WATER SUPPLY, DISPOSAL AND DRAIN PIPES BELOW SINK TO BE INSULATED.
  - 2 30" WIDE ELECTRIC RANGE w/ SELF-CLEANING OVEN AND CONTROLS AT FRONT
  - 3 30" WIDE METAL HOOD w/ FAN & LIGHT ABOVE - VENT TO EXTERIOR
  - 4 34" W. CLEAR ALCOVE - SIDE-BY-SIDE OR TOP FREEZER w/ CONTROLS & AT LEAST 50% OF FREEZER SHELF SPACE NO MORE THAN 54" AFF
  - 6 REMOVABLE CABINET DOORS, SHELF AND TOE SPACE BELOW SINK - MIN 30" WIDE NO SHARP OR ABRASIVE SURFACES BELOW SINK - 182/A909 EXTEND FINISH FLOORING TO THE WALL
  - 7 UNDER COUNTER 24" WIDE DISHWASHER
  - 8 PANTRY
  - 9 +36" A.F.F. STONE, CULTURED STONE OR TILED KITCHEN COUNTERTOP WITH 4" BACKSPASH
  - K1 30"x48" CLEAR FLOOR SPACE AT FIXTURE OR APPLIANCE
  - K2 34" HIGH WORK COUNTER - MIN 30" WIDE - MIN 29" HIGH KNEE SPACE BELOW
  - K3 HORIZ DUPLEX RECEPTACLE - TOP AT 44" MAX AFF
  - K4 HORIZ SWITCH & SINGLE RECEPTACLE - TOP AT 44" MAX AFF
  - K5 1/2 HOT RECEPTACLE FOR HOOD
  - K6 DUPLEX RECEPTACLE - TOP AT 33" AFF
  - K7 T-SHAPED OR 5' RADIUS TURNING SPACE
  - K8 UPPER CABINET w/ LOWEST SHELF AT 48" MAX AFF. DO NOT PROVIDE UPPER CABINETS ABOVE REFRIGERATOR & HOOD VENT AT 5% UFAS UNITS.

UNIT ACCESSIBILITY

- GENERAL**
- G1 REFER TO SHEET A021 AND A022
  - G2 TOP OF RECEPTACLE BOX AT 44" MAX AFF
  - G3 TOP OF SWITCH BOX AT 44" MAX AFF
  - G4 T-SHAPED OR 5' RADIUS TURNING SPACE
  - G5 MANUEVERING CLEARANCE AT UNIT ENTRY
- 
- LAVATORY**
- L1 REMOVABLE BASE CABINET, SHELF AND TOE - KNEE SPACE BELOW 182/A909 EXTEND FINISH FLOORING TO THE WALL
  - L2 +34" A.F.F. STONE, CULTURED STONE COUNTERTOP WITH 4" SPLASH
  - L3 LAVATORY - 6-1/2" MAX DEEP BOWL, 34" MAX HIGH RIM. HOT WATER SUPPLY AND DRAIN PIPES BELOW LAVATORY TO BE INSULATED.
  - L4 30"x48" CLEAR FLOOR SPACE AT LAV PARALLEL APPROACH
  - L5 30"x48" CLEAR FLOOR SPACE AT LAV FORWARD APPROACH
- 
- BATH TUB / SHOWER**
- B1 32"x60" FGL TUB/SHOWER w/ 70" MIN HIGH FGL WAINS ABV DRAIN & INTEGRAL GRAB BAR REINF
  - B2 60"x30" CLEAR FLOOR SPACE AT TUB
  - B3 SHOWER SPRAY UNIT w/ 60" MIN HOSE
  - B4 TUB/SHOWER CONTROLS BTW GRAB BAR AND TUB RIM
  - B5 IN-TUB SEAT
  - B6 24" LONG GRAB BAR AT 33"-36" AFF
  - B7 2ND 24" LONG GRAB BAR AT 9" ABV TUB RIM
  - B8 12" LONG GRAB BAR AT 33"-36" AFF
- 
- WATER CLOSET**
- W1 WATER CLOSET w/ 15"-19" HIGH SEAT w/ FLUSH CONTROL ON OPEN SIDE
  - W2 WATER CLOSET CLEAR FLOOR SPACE
  - W3 36" LONG GRAB BAR AT 33"-36" AFF
  - W4 48" LONG GRAB BAR AT 33"-36" AFF
- 
- BATH ACCESSORIES**
- A1 24" LONG TOWEL BAR AT 40" MAX AFF - PROVIDE 2x8 BACKING AT WALL
  - A2 SCREW MOUNTED SHOWER CURTAIN ROD
  - A3 TOILET PAPER HOLDER AT 19" MIN AFF - PROVIDE 2x8 BACKING AT WALL
  - A4 MEDICINE CABINET WITH USABLE SHELF AT 44" MAX. AFF
  - A5 BOTTOM EDGE OF MIRROR AT 40" MAX. AFF

WALL REINFORCING



- NOTE:**
- A. IN ALL UFAS BATHROOMS, GRAB BAR BACKING SHALL BE PROVIDED.
  - B. GRAB BARS NEED NOT BE INSTALLED IN BATHROOMS WITHIN DWELLING UNITS PROVIDED ALL STRUCTURAL REINFORCEMENTS FOR FUTURE INSTALLATION OF GRAB BARS ARE PROVIDED IN THE APPROPRIATE LOCATIONS IN THE ADJOINING WALLS.
  - C. THE REINFORCEMENT SHALL BE OF SUFFICIENT LENGTH TO PERMIT THE INSTALLATION OF GRAB BARS AS NOTED.
  - D. THE REINFORCED WALL SHALL BE CAPABLE OF SUPPORTING A LOAD OF AT LEAST 250 POUNDS IN CONFORMANCE WITH UFAS 4.26.3



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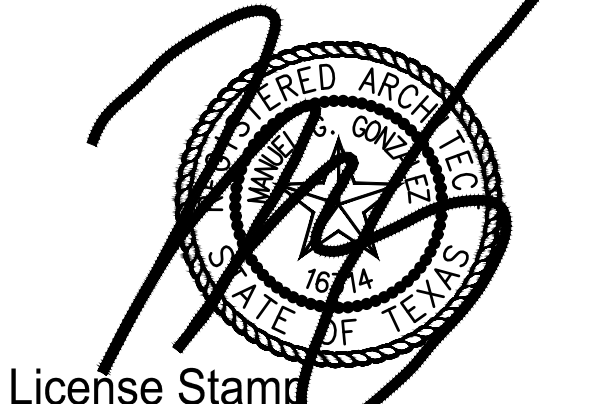
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DENISON FAMILY HOMES

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**License Stamp**  
**UNITS 1-4 UFAS**  
**ACCESSIBLE BATH**





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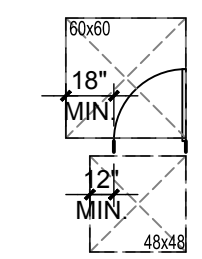
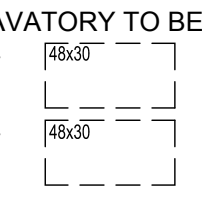
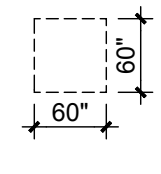
DENISON FAMILY HOMES

DENISON, TX.

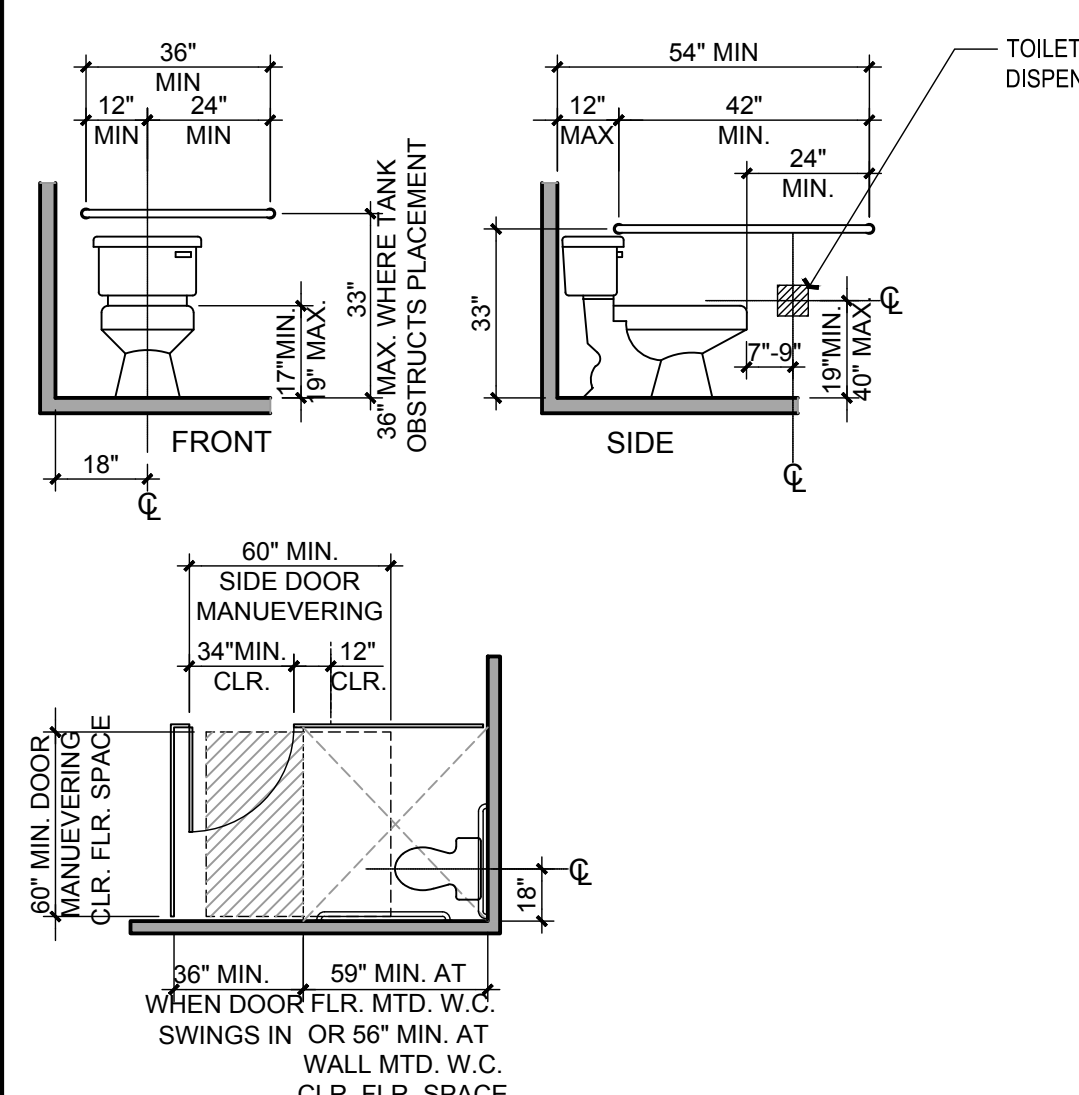
**KITCHEN ACCESSIBILITY**

- KITCHEN**
- 1 DOUBLE SINK - 6-1/2" MAX BOWL DEPTH DRAIN AND DISPOSAL OFFSET TO REAR. HOT WATER SUPPLY, DISPOSAL AND DRAIN PIPES BELOW SINK TO BE INSULATED.
  - 2 NOT USED.
  - 3 NOT USED.
  - 4 34" W. CLEAR ALCOVE - SIDE-BY-SIDE OR TOP FREEZER W/ CONTROLS & AT LEAST 50% OF FREEZER SHELF SPACE NO MORE THAN 54" AFF
  - 6 SHELF AND TOE SPACE BELOW SINK - MIN 30" WIDE NO SHARP OR ABRASIVE SURFACES BELOW SINK 12/A022 EXTEND FINISH FLOORING TO THE WALL
  - 7 UNDER COUNTER 24" WIDE DISHWASHER
  - 8 PANTRY
  - 9 +34" A.F.F. STONE, CULTURED STONE OR TILED KITCHEN COUNTERTOP WITH 4" BACKSPLASH.
  - K1 30"x48" CLEAR FLOOR SPACE AT FIXTURE OR APPLIANCE
  - K2 34" HIGH WORK COUNTER - MIN 30" WIDE - MIN 29" HIGH KNEE SPACE BELOW
  - K3 HORIZ DUPLEX RECEPTACLE - TOP AT 44" MAX AFF
  - K4 HORIZ SWITCH & SINGLE RECEPTACLE - TOP AT 44" MAX AFF
  - K6 DUPLEX RECEPTACLE - TOP AT 33" AFF
  - K7 T-SHAPED OR 5' RADIUS TURNING SPACE
  - K8 UPPER CABINET W/ LOWEST SHELF AT 48" MAX AFF.

**COMMON ACCESSIBILITY**

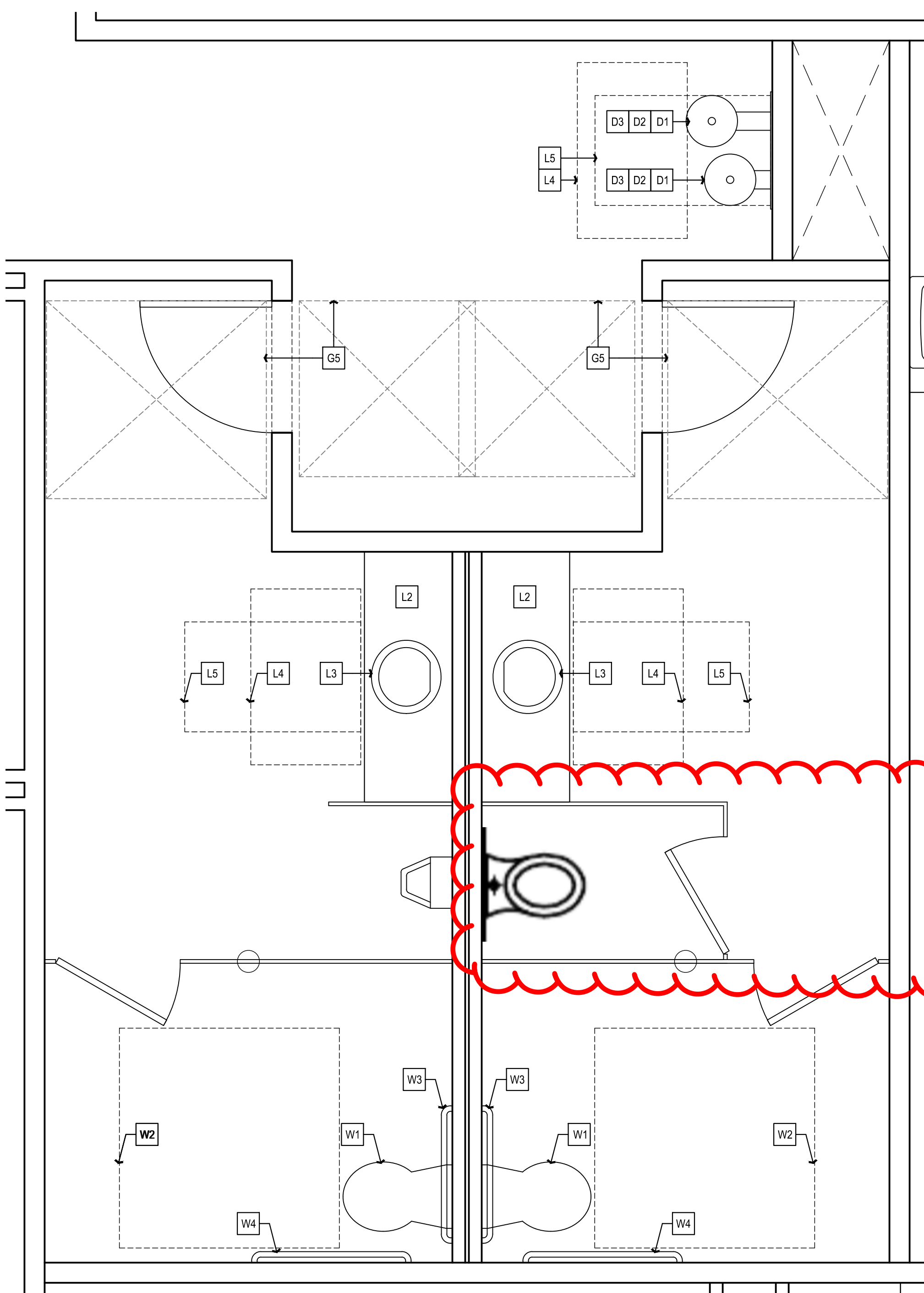
- GENERAL**
- G1 REFER TO SHEET A023 AND A024
  - G2 TOP OF RECEPTACLE BOX AT 44" MAX AFF
  - G3 TOP OF SWITCH BOX AT 44" MAX AFF
  - G4 T-SHAPED OR 5' RADIUS TURNING SPACE
  - G5 MANEUVERING CLEARANCE AT ENTRY
- 
- LAVATORY**
- L1 SHELF AND TOE - KNEE SPACE BELOW 12/A026 EXTEND FINISH FLOORING TO THE WALL
  - L2 +34" A.F.F. STONE, CULTURED STONE COUNTERTOP WITH 4" SPLASH
  - L3 LAVATORY - 6-1/2" MAX DEEP BOWL 34" MAX HIGH RIM. HOT WATER SUPPLY AND DRAIN PIPES BELOW LAVATORY TO BE INSULATED.
  - L4 30"x48" CLEAR FLOOR SPACE AT LAV PARALLEL APPROACH
  - L5 30"x48" CLEAR FLOOR SPACE AT LAV FORWARD APPROACH
- 
- WATER CLOSET**
- W1 WATER CLOSET W/ 17"-19" HIGH SEAT W/ FLUSH CONTROL ON OPEN SIDE
  - W2 WATER CLOSET CLEAR FLOOR SPACE
  - W3 36" LONG GRAB BAR AT 33"-36" AFF
  - W4 42" LONG GRAB BAR AT 33" AFF
- 
- BATH ACCESSORIES**
- A1 NOT USED
  - A2 NOT USED
  - A3 TOILET PAPER HOLDER AT 19" MIN AFF - PROVIDE 2x8 BACKING AT WALL
  - A4 NOT USED
  - A5 BOTTOM EDGE OF MIRROR AT 40" MAX. AFF
- BATH ACCESSORIES**
- A1 NOT USED
  - A2 NOT USED
  - A3 TOILET PAPER HOLDER AT 19" MIN AFF - PROVIDE 2x8 BACKING AT WALL
  - A4 NOT USED
  - A5 BOTTOM EDGE OF MIRROR AT 40" MAX. AFF
- DRINKING FOUNTAINS (PER UFAS 4.15) REFER TO SHEET A025**
- D1 SPOUT - 36" AFF TO THE SPOUT OUTLET (SPOUTS SHALL BE AT THE FRONT OF THE UNIT AND SHALL DIRECT WATER FLOW IN A TRAJECTORY THAT IS PARALLEL OR NEARLY PARALLEL TO THE FRONT OF THE UNIT. THE SPOUT SHALL PROVIDE A FLOW OF WATER AT LEAST 4" HIGH TO ALLOW THE INSERTION OF A CUP OR GLASS UNDER THE FLOW OF WATER)
  - D2 UNIT CONTROLS SHALL BE FRONT MOUNTED OR SIDE MOUNTED NEAR THE FRONT EDGE AND COMPLY WITH UFAS 4.27.4
  - D3 KNEE SPACE BELOW WALL-AND POST MOUNTED CANTILEVER UNITS - 27" HEIGHT, 30" WIDE AND 17"-19" DEEP. PROVIDE 30"x48" MIN. FORWARD APPROACH CLEAR SPACE.
- FREE-STANDING OR BUILT-IN UNITS NOT HAVING A CLEAR SPACE UNDER THEM SHALL HAVE A 30"x48" MIN. PARALLEL APPROACH CLEAR SPACE.

**WALL REINFORCING**

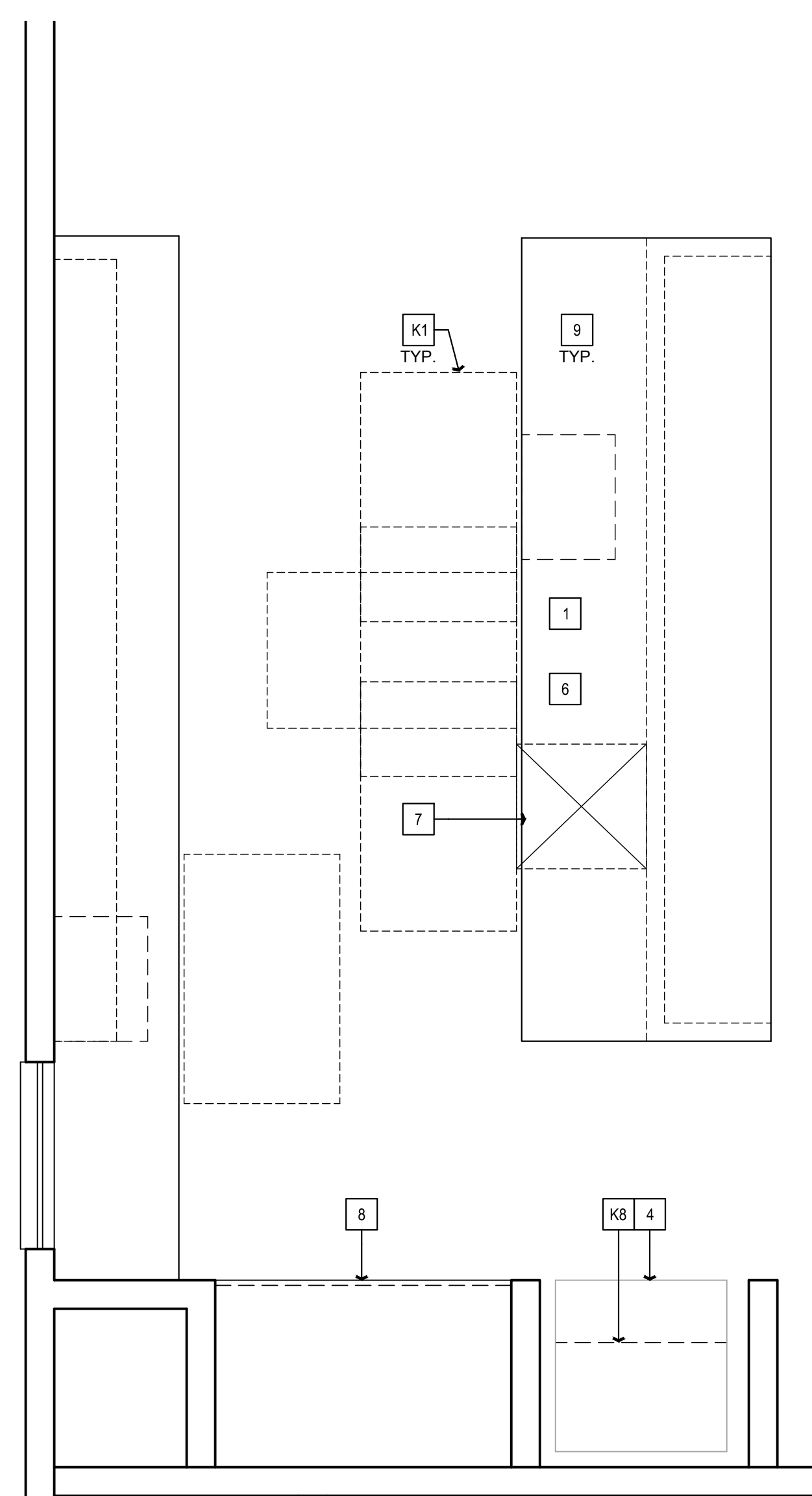


**NOTE:**

- A. IN ALL UFAS BATHROOMS, GRAB BAR BACKING SHALL BE PROVIDED.
- B. THE REINFORCEMENT SHALL BE OF SUFFICIENT LENGTH TO PERMIT THE INSTALLATION OF GRAB BARS AS NOTED.
- C. THE REINFORCED WALL SHALL BE CAPABLE OF SUPPORTING A LOAD OF AT LEAST 250 POUNDS IN CONFORMANCE WITH UFAS 4.26.3

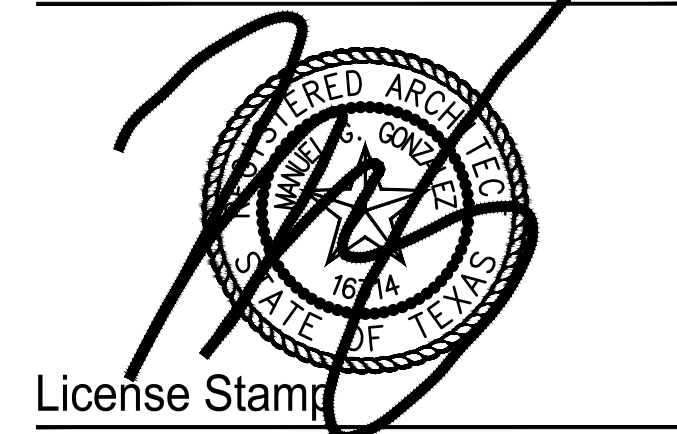


ASK 12.0  
 TOILET LEFT OFF DRAWING  
 IN PERMIT  
 DATE: 10/31/2017  
 INITIALED: JOHN BOWLEN



No.	Date	Description
1	10/28/16	100% DESIGN DEVELOPMENT
2	11/14/16	50% CONSTRUCTION DOCUMENTS
3	12/01/16	100% C.D., 1ST BLDG. SUBMITTAL
4	02/21/17	PERMIT SET

It is the clients responsibility prior to or during construction to notify the architect in writing of any proposed areas or conditions in the plans and specifications of which a contractor thoroughly knowledgeable with the building codes and methods of construction should reasonably be aware. Written instructions addressing such proposed areas or conditions shall be received from the architect prior to the start or clients subcontractors proceeding with the work. The client will be responsible for any defects in construction if these procedures are not followed.



**RECREATION CENTER  
 UFAS ACCESSIBLE  
 BATH & KITCHEN**

**BOARD ACTION REQUEST**  
**ASSET MANAGEMENT DIVISION**  
**DECEMBER 6, 2018**

Presentation, discussion, and possible action regarding a material amendment to the Housing Tax Credit Application for Charles R. Morehead Apartments (HTC #16402)

**RECOMMENDED ACTION**

**WHEREAS**, Charles R. Morehead Apartments (the “Development”) received an award of 4% Housing Tax Credits (“HTCs”) in 2016 for the acquisition and rehabilitation of 62 general units of multifamily housing in El Paso, El Paso County;

**WHEREAS**, El Paso RAD IB, Ltd. (the “Development Owner” or “Owner”) is now requesting material alterations to the Development’s total site area as stated in the Application for Housing Tax Credits due to a misunderstanding of the site survey to clarify that the total Development site is 1.82 acres instead of 1.67 acres as stated in the Application, resulting in a 8.2% change in the calculated residential density;

**WHEREAS**, Board approval is required for a modification of the residential density of at least five percent, as directed in Tex. Gov’t Code §2306.6712(d)(6) and 10 TAC §10.405(a)(4)(F), and the Owner has complied with the amendment requirements therein; and

**WHEREAS**, the requested changes do not negatively affect the Development, impact the viability of the transaction, impact the scoring of the application, or affect the amount of the tax credits awarded;

**NOW, therefore, it is hereby**

**RESOLVED**, that the requested application amendment for the Charles R. Morehead Apartments is approved as presented at this meeting, and the Acting Director and his designees are each authorized, directed, and empowered to take all necessary action to effectuate the Board’s determination.

**BACKGROUND**

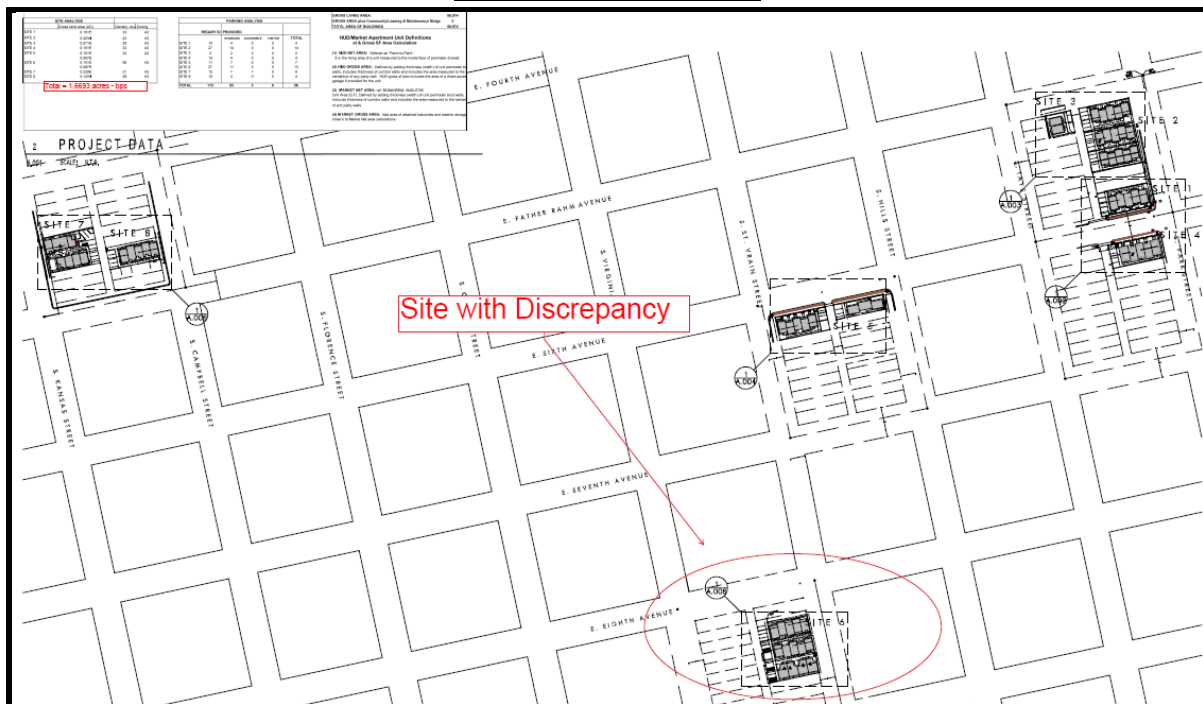
Charles R. Morehead Apartments received an award of 4% Housing Tax Credits for the acquisition and rehabilitation of 62 general multifamily units in El Paso. The Development and the George W. Baines Apartments (HTC 16401) are both owned by the same limited partnership, El Paso RAD IB, Ltd. This allows for the cross collateralization of the two properties to strengthen feasibility. The TDHCA Real Estate Analysis Division underwrote the two properties together as a portfolio for the purposes of feasibility and credit sizing. However, each property will be encumbered by its own, separate Land Use Restriction Agreement (“LURA”).

In the process of reviewing the Cost Certification for the Development, staff identified a discrepancy in the site area of the project compared to the original application. The total site area represented in the application was 1.67 acres. However, the as-built survey in the cost certification indicates a site area of 1.82 acres. This 0.15 acre difference results in a 8.2% decrease in residential density. According to 10 TAC §10.405(a)(4)(F), changes in residential density greater than 5% constitute a material amendment requiring approval of the TDHCA Board.

The Development has a scattered site arrangement that is disbursed among eight separate sites. These sites encompass twelve parcels, containing fourteen residential buildings. The discrepancy in area is due to a misinterpretation of the site surveys at parcels eight and nine. These two parcels are contiguous and contain three buildings. Parcel 8 has two buildings and an area of 0.2499 acres. Parcel 9 contains one building and has an area of approximately 0.1535 acres.

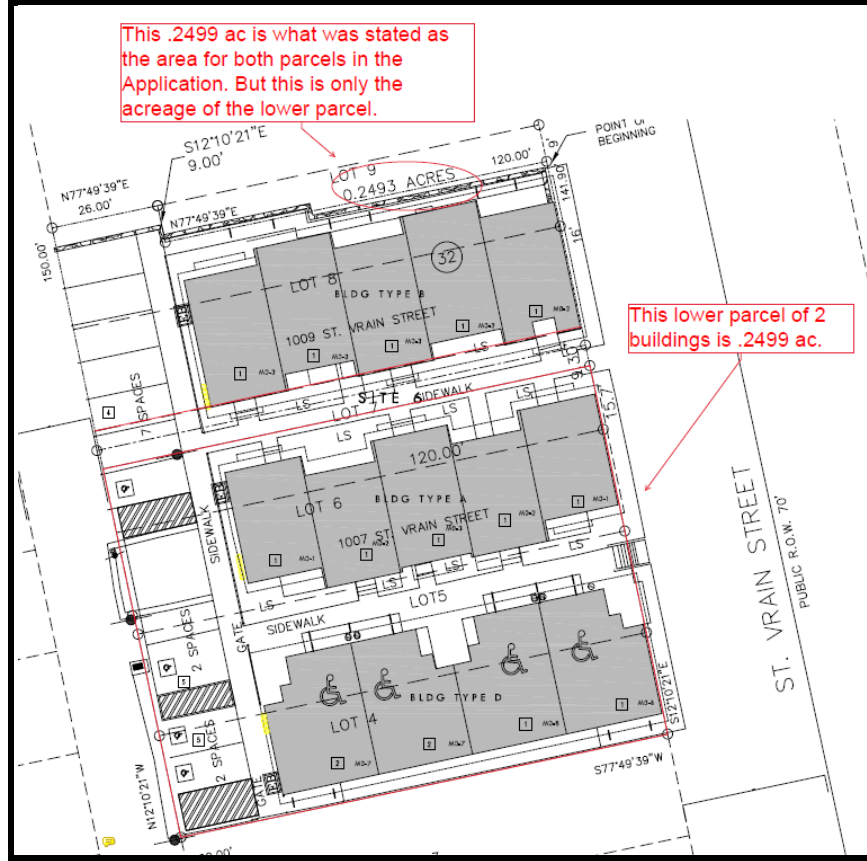
The error in the Application is due to the omission of the 0.1535 acres of parcel 9 from the total site area. It erroneously assigned the combined area of both parcels to be 0.2499 acres, which is only the area of parcel 8. This resulted in an area of 1.67 acres instead of 1.82 acres. However, the discrepancy is due to a miscalculation, so there is no physical change to the Development site. The legal description of the Development remains unchanged. The Application simply represented a different site area than is actually defined by the legal description. However, because 1.67 acres is what was represented throughout the application, staff believes that an amendment is necessary to correct the error and document the true site area.

### Scattered Site Plan

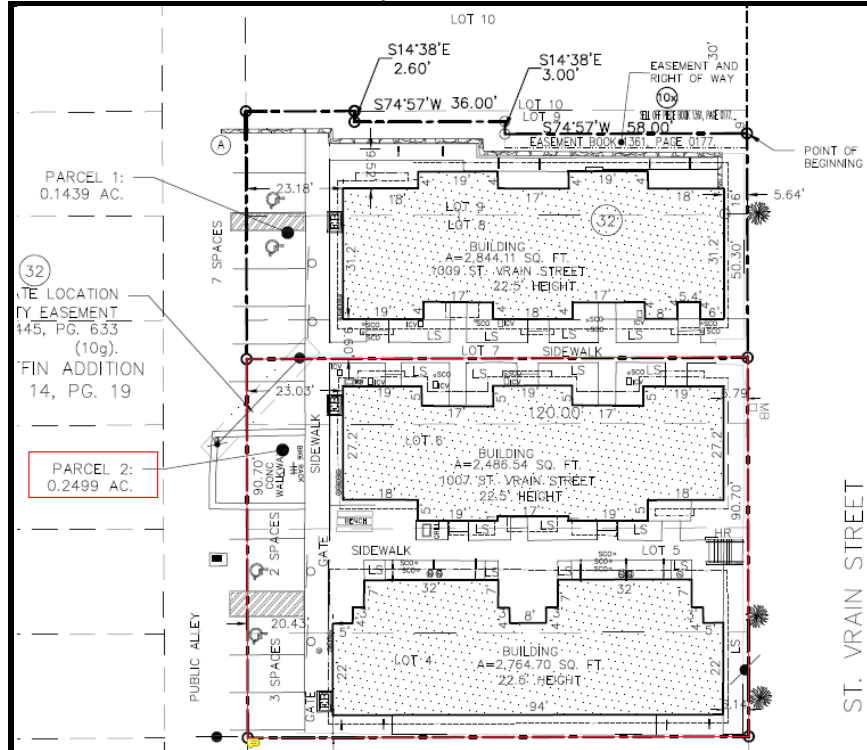




## Site Plan in Original Application



## As-Built Survey in Cost Certification



Staff has reviewed the original application and scoring documentation against this amendment request and has concluded that none of the changes would have resulted in selection or threshold criteria changes that would have affected the application score.

Staff recommends approval of the material amendment to the Application of Charles R. Morehead Apartments.



5300 E. Paisano Drive  
El Paso, TX 79905-2931

---

T: 915-227-0542  
F: 915-849-5555

October 18, 2018

Mitchell Bowman  
Associate Asset Manager (Region 13)  
Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup> Street  
Austin, TX 78711-3941

**RE: Request for Material Amendment to LIHTC Application - Charles R. Morehead Apartments (LIHTC #16402)**

Dear Mr. Bowman:

This correspondence is in response to the deficiency in the Charles R. Morehead Apartments Housing Tax Credit Application's legal description which indicates that Block 32 has a site area of .2499 acres.

However, the correct legal description for Block 32 is found in the site survey which was provided with the cost certification package which states that the actual area is .4037 acres. This difference of .1544 acres changes the overall site area to 1.82 acres which is 9% greater than the 1.67 acres represented at application, and results in a change in residential density of 8.5%. Subsequently, 10 TAC §10.405(a)(4) states that a material application amendment is necessary for "a modification of the residential density of at least 5 percent."

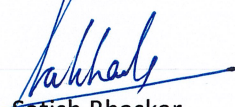
We are requesting that the Charles R. Morehead Apartments Housing Tax Credit Application's legal description be amended to reflect Block 32's correct .4037 acreage as well as overall site acreage to 1.82 acres.

The mistake was not foreseeable at the time of application, as the incorrect survey was identified at cost certification. While the amendment poses a material change to the Housing Tax Credit Application, it does no change or financial any sources, terms, conditions, or amounts of financing.

Enclosed please find an amendment fee check in the amount of \$2,500.

If you have any questions or require additional information, please contact me at (915) 849-3730.

Regards,



Satish Bhaskar  
Chief Operating Officer

Enc.

**BOARD ACTION REQUEST**  
**ASSET MANAGEMENT DIVISION**  
**DECEMBER 6, 2018**

Presentation, discussion, and possible action regarding a material amendment to the Housing Tax Credit Application for Garden City Apartments (HTC #16603)

**RECOMMENDED ACTION**

**WHEREAS**, Garden City Apartments (the “Development”) received an award of 4% Housing Tax Credits (“HTCs”) and \$16,740,000 in Private Activity Bonds in 2016 for the acquisition and rehabilitation of 252 multifamily units in Houston, Harris County;

**WHEREAS**, Steele Texas LIHTC LLC (the “Development Owner” or “Owner”) requests approval for the final as built common area of 6,453 square feet, representing a reduction of 46.86% or 5,690 square feet from the 12,143 square feet represented at Application;

**WHEREAS**, the request also involves the removal from the site plan of a tract of land containing one non-residential building that is currently used for storage and maintenance that also includes four two-bedroom units on the upstairs and a corresponding modification to the legal description in the Bond Regulatory and Land Use Restriction Agreement and the HTC Land Use Restriction Agreement to decrease the site acreage from 12.317 to 12.055 acres, a decrease of 0.262 acres or 2.127%;

**WHEREAS**, Board approval is required for a reduction of three percent or more in the square footage of the common areas as directed in Tex. Gov’t Code §2306.6712(d)(4) and 10 TAC §10.405(a)(4)(D), and the Owner has complied with the amendment requirements therein; and

**WHEREAS**, the requested changes do not negatively affect the Development, impact the viability of the transaction, impact the scoring of the application, or affect the amount of the tax credits awarded;

**NOW, therefore, it is hereby**

**RESOLVED**, that the requested application and Land Use Restriction Agreement amendments for Garden City Apartments are approved as presented at this meeting and the Acting Director and his designees are each authorized, directed, and empowered to take all necessary action to effectuate the foregoing.



**BACKGROUND**

Garden City Apartments received an award of 4% Housing Tax Credits and \$16,740,000 in Private Activity Bonds in 2016 for the acquisition and rehabilitation of 252 multifamily units in Houston, Harris County.

During the review of the cost certification submittal, the Department questioned the usage of the building on a 0.262 acre tract of land on the east side of the property listed on the legal description as Tract Two, Parcel C. The Owner stated that building is currently only used for maintenance and storage and the four units on the upstairs were used by maintenance staff. The building was not included as part of the Development rehabilitation.

In a letter dated November 8, 2018, the Owner requests to eliminate the building from the Development plan, resulting in changes to the site plan, the site acreage, and a material change to the common area square footage. The proposed amendment reduces the site acreage from 12.317 to 12.055 acres, a reduction of 0.262 acres or 2.127%. The square footage of the common areas was reduced from 12,143 to 6,453 square feet, a reduction of 46.86%. The Owner explains that the building on that 0.262 acre parcel of land, shown as Tract 2, Parcel C, was mistakenly and inadvertently included in the original Application but was never intended to be a part of the Development. Development funds were not used, and tax credits were not requested for this building. The four units in that building were not renovated and were not counted as residential units in the Application. The current amendment is being requested to correct a good-faith error in the Owner's initial Application submission, as this buildings should not have been included as part of the HTC application.

<b>Material Alterations as defined in Tex. Gov't Code §2306.6712(d)(4) and 10 TAC §10.405(a)(4)(D)</b>	
<b>Application</b>	<b>Amendment</b>
Common Area: 12,143 square feet	<b>Common Area: 6,453 square feet (5,690 square feet or 46.86% decrease)</b>
Acreage: 12.317 acres	Acreage: 12.055 acres (0.262 acres or 2.127% decrease)





November 8, 2018

VIA EMAIL ([lucy.trevino@tdhca.state.tx.us](mailto:lucy.trevino@tdhca.state.tx.us))

Texas Department of Housing and Community Affairs (TDHCA)  
221 East 11<sup>th</sup> Street  
P.O. Box 13941  
Austin, Texas 78711-3941  
Attention: Ms. Lucy Trevino, Senior Asset Manager  
Asset Management Division

**Re: "Garden City Apartments" – Request for Amendments**

Dear Ms. Trevino:

The undersigned, **STEELE TEXAS LIHTC LLC**, a Colorado limited liability company, is the Owner ("Owner") of the above-referenced project (the "Project") located at 9601 West Montgomery Road, Houston, Texas 77088, Harris County (the "Property"). Please let this letter serve as our formal request to TDHCA for consideration of the following proposed amendments and/or modification to the documents and agreements entered into between Owner and TDHCA with respect to the Property:

1. Please revise and replace: (A) "Exhibit A to Declaration – Legal Description" (the current legal description for the Property) attached to that certain Declaration of Land Use Restrictive Covenants Land Use Restriction Agreement for Low Income Housing Tax Credits (the "LURA"), dated as of November 30, 2016, by and between Owner and TDHCA and (B) the legal description attached to that certain Regulatory & Land Use Restriction Agreement (the "Regulatory Agreement"), dated as of May 1, 2016, by and among TDHCA, Owner and BOKF, NA, as fiscal agent, as follows:
  - Remove "Tract 2" from the current legal descriptions contained in the LURA and the Regulatory Agreement.

The Tract 2 building is being used as a maintenance facility, and the four (4) units located above the maintenance facility at this building did not receive any tax credits, nor was any money used towards the renovation of these units (these units were not renovated). Tract 2 was mistakenly and inadvertently included in the Owner's initial submission, but should not have been included. As a result, this amendment is being requested to correct this good-faith error in the Owner's initial submission by removing the building located on "Tract 2" from the current legal descriptions annexed to the existing LURA and Regulatory Agreement. If given effect, this amendment will correct and clarify the property subject to the LURA and Regulatory Agreement.



2. Please revise any and all references in the TDHCA documents submitted by Owner (including, in the plans and specifications) relating to the square footage measurements of the common areas at the Property, as follows:
  - Amend (reduce) common area square footage from 12,143 sq./ft. to 6,453 sq./ft.

Consistent with the response provided above in Paragraph #1, the current square footage of the common areas at the Property include as part of the calculation the building located on Tract 2. Since Tract 2 was mistakenly included in the Owner's initial submission, this resulted in the Tract 2 building's common area being included in the aggregate measurement of common area square footage. After removing Tract 2 from the current legal descriptions, this results in a reduction of the common area square footage calculation to the 6,453 sq./ft. figure reflected above. This amendment is being requested to correct the good-faith error made in Owner's original application submission.

3. Please disregard and remove all prior submissions by Owner of the "Approved Site Plan," for purposes of giving effect to the amendments/modification set forth in #1 and #2 above.

Consistent with the responses provided above in Paragraphs #1 and #2, the Approved Site Plan originally submitted by the Owner included the building located on Tract 2. Since Tract 2 was erroneously included in the original submission, this amendment is being requested to correct this error part of the initial application submitted by Owner by correcting the Approved Site Plan to remove the building located on Tract 2.

**The requested amendments set forth herein will not impact or change financing sources, terms, conditions or amounts.**

If you have any questions in regards to our Amendment Request, please contact Kyle Martin, Corporate Counsel, at (720) 510-3526 or by email at [kmartin@monroegroup.com](mailto:kmartin@monroegroup.com).

*[Remainder of Page Intentionally Left Blank]*





In consideration of the foregoing requests, we have submitted to TDHCA a check in the amount of \$2,500.00, which amount is intended to represent payment of the required "amendment fee" to TDHCA.

Sincerely,

**STEELE TEXAS LIHTC LLC,**  
a Colorado limited liability company

By: STEELE TEXAS LIHTC MM LLC,  
a Colorado limited liability company,  
its managing member

By: STEELE PROPERTIES HOLDINGS II  
LLC, a Colorado limited liability company,  
its managing member

By:

Name: David Asarch  
Title: Manager

Enclosures

**BOARD ACTION REQUEST**  
**ASSET MANAGEMENT DIVISION**  
**DECEMBER 6, 2018**

Presentation, discussion, and possible action regarding a material amendment to the Housing Tax Credit Application for Mistletoe Station (HTC #17259)

**RECOMMENDED ACTION**

**WHEREAS**, Mistletoe Station (the “Development”) received an award of 9% Housing Tax Credits (“HTCs”) in 2017 under the general set aside for the new construction of 78 units of multifamily housing in Fort Worth, Tarrant County;

**WHEREAS**, the Development Owner is now requesting approval for a modification of the residential density of 6.84%, related to changes due to the vacated public Right of Way (“ROW”) at the intersection of Beckham Place and Mistletoe Blvd and the dedication of a new ROW along a new street called Sandberry Drive;

**WHEREAS**, Board approval is required for a modification of the residential density of at least five percent, as directed in Tex. Gov’t Code §2306.6712 and 10 TAC §10.405(a)(4)(F), and the Owner has complied with the amendment requirements therein; and

**WHEREAS**, the requested changes do not negatively affect the Development, impact the viability of the transaction, impact the scoring of the application, or affect the amount of the tax credits awarded;

**NOW, therefore, it is hereby**


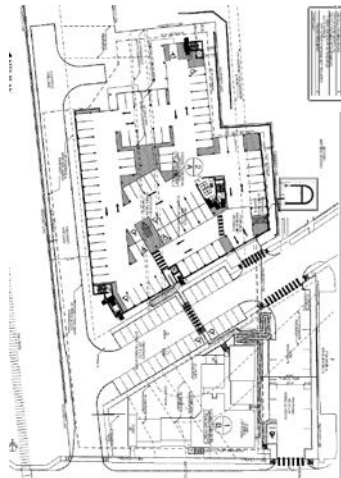
**RESOLVED**, that the requested material amendment to the Application is approved as presented at this meeting, and the Acting Director and his designees are each authorized, directed, and empowered to take all necessary action to effectuate the Board’s determination.

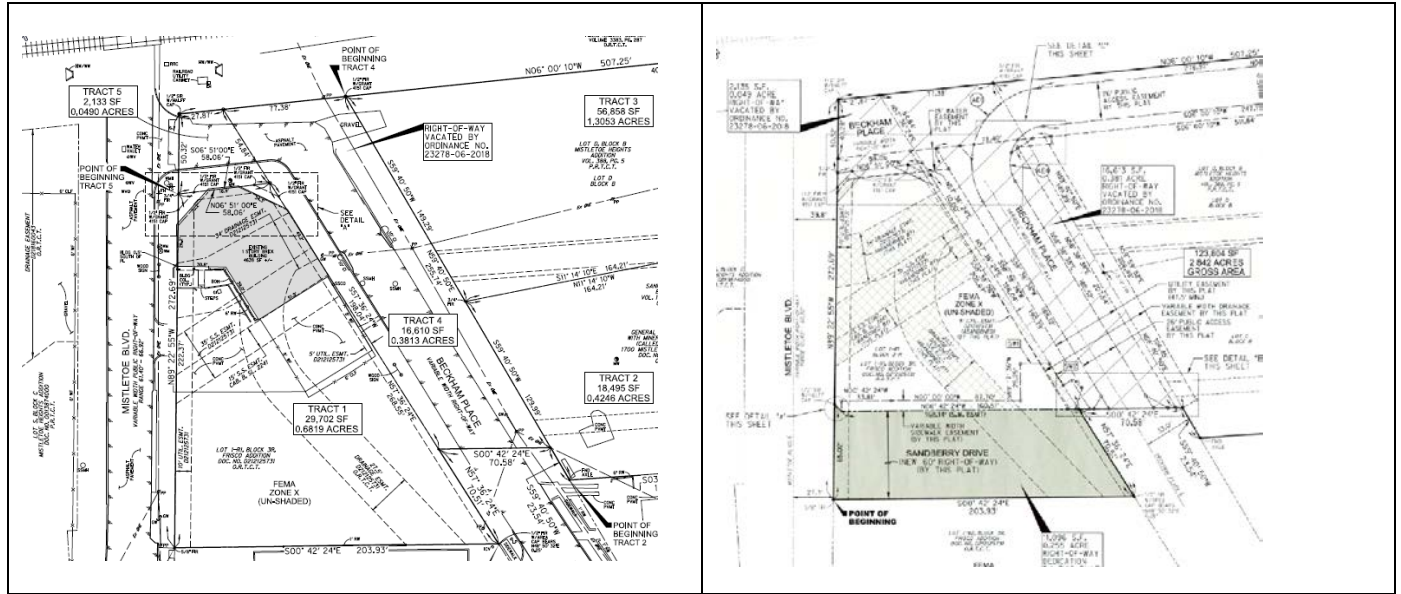
**BACKGROUND**

Mistletoe Station was approved during the 2017 competitive 9% Housing Tax Credit cycle to construct 78 units (amended to 110 by approved material amendment before the Board on July 26, 2018) of new construction, general multifamily housing in Fort Worth, Tarrant County. On October 17, 2018, Alyssa Carpenter, consultant of the Development Owner, Mistletoe Station, LLC

(Lisa Stephens) and the Administrative Member, O-SDA Mistletoe, LLC (Megan Lasch), submitted an amendment request identifying changes in the acreage noted during the request for origination of the LURA. The changes requested are described in detail below.

Based on the amendment request, at the time of Application submission, the site was 2.409 acres with a public ROW called Beckham Place that was not included in the acreage but split the site between proposed Buildings A and B. According to the consultant, following application and award, it became apparent that for the City of Fort Worth (the “City”) to designate the adjacent railroad track as a quiet zone, the intersection of Beckham Place and Mistletoe Blvd would need to be relocated further from the railroad track. The City voted in June 2018 to vacate the public ROW that was Beckham Place and sell a small portion of the road (0.049 acre “City-Owned Property”) to the Development Owner. The vacated street ROW was released and reverted to the adjacent owner and was included in the deeds conveying the property to the Development Owner. Due to the inclusion of the vacated ROW, the development site increased from 2.409 to 2.842 acres at closing. However, following the closing, a new street called Sandberry Drive was dedicated as a ROW out of the gross 2.842 acres (a portion of 0.255 acres) and will not be a part of the development site but served to relocate the intersection further from the railroad track and facilitate the creation of the quiet zone. These changes resulted in a final acreage for the development site of 2.587 acres.

<b>Material Alterations as defined in Texas Government Code §2306.6712(d) and 10 TAC §10.405(a)(4)</b>	
<b>Previous Amendment</b>	<b>Current Amendment</b>
 <p>Development Site: <b>2.41</b> acres Density: <b>45.64</b> units/acre</p> <p>Vacated ROW at Beckham Place:</p>	 <p>Development Site: <b>2.587</b> acres Density: <b>42.52</b> units/acre (-6.84%)</p> <p>(City-Owned Property) New ROW at Sandberry Drive:</p>



The consultant and Owner representative submitted, among other items, an email from the ESA provider confirming that the May 15, 2018, ESA examined Beckham Place and a letter from Halff Associates, Inc. confirming the reason for the street vacation.

The letter from the consultant explained that this amendment was not foreseeable or preventable at application because it was unknown that it would be necessary for the City of Fort Worth to vacate and relocate the existing street in order to obtain a quiet designation for the adjacent railroad track.

Staff has reviewed the original application and scoring documentation against this amendment request and has concluded that none of the changes would have resulted in selection or threshold criteria changes that would have affected the application score. Updated financial information was also submitted with the amendment request, but this information will be evaluated by staff as part of a separate Direct Loan application.

Staff recommends approval of the requested material amendment to the Application.



October 17, 2018

Laura DeBellas  
TDHCA  
PO Box 13941  
Austin, TX

RE: Amendment Request for 17259 Mistletoe Station

Dear Ms. DeBellas:

Please find this request for an amendment to 17259 Mistletoe Station in Fort Worth concerning an increase in site acreage that results in a change in density that is greater than 5 percent.

**Change to Site Acreage**

At the time of application, the site was 2.409 acres with a public ROW called Beckham Place not included in the acreage and splitting the site. Discussions with the City of Fort Worth subsequent to application and award revealed that in order for the City to designate the adjacent railroad track a quiet zone, the intersection of Beckham Place and Mistletoe Blvd would need to be relocated farther away from the railroad track. As a result, the City voted in June 2018 to vacate the public ROW that was Beckham Place and sell a small portion of Beckham Place (0.049-acre "City-Owned Property") that was legally owned by the City to the Development Owner. The vacated street ROW was released and reverted to the adjacent owner as provided by law, and is included in the deeds conveying the property to the Development Owner. The City-Owned Property was sold to the Development Owner for \$6,000. As a result, at closing, the development site increased from 2.409 acres to a gross 2.842 acres. However, as shown on the attached plat, a new street called Sandberry Drive is dedicated as a ROW out of the gross 2.842 acres and will not be part of the development site. Sandberry Drive is the relocated intersection that was moved farther away from the railroad track to facilitate creation of the quiet zone. The Sandberry Drive ROW is 0.255 acres, and when subtracted from the gross acreage results in a final acreage of 2.587 acres for the development site.

Please find the following documents regarding this change:

1. Closing Survey with 2.842 acres.
2. Recorded Plat with 2.842 gross acres, which is the total of Lot 1 Block A (2.580 acres) and Lot 2 Block A (0.262 acres). Sandberry Drive ROW (0.255 acres) as dedicated by the plat will be subtracted from Lot 1 Block A and the total 2.842 gross acres to leave a net final development site of 2.587 acres.
3. Ordinance from the City of Fort Worth vacating Beckham Place in June 2018 including City Council agenda item.
4. Deed from the City of Fort Worth for the 0.049-acre City Owned Property of a portion of Beckham Place
5. Deeds from 1700 Mistletoe Partners and Baylor All Saints Medical Center referencing Beckham Place ROW vacation and ordinance.
6. Email from the ESA provider confirming that the May 15, 2018, ESA (submitted with the 10% Test extension request) examined Beckham Place.
7. Letter from the Halff Associates Inc. confirming the reason for the street vacation.
8. Site Plan cover sheet with final acreage. The other architectural plans from the previous May 2018 amendment are correct.

Please find financing forms that include the costs related to this change in acreage including the offsite costs for the new Sandberry Drive. These forms are also being submitted in an application for TDHCA

MFDL funds for this project. Because this is a second amendment, a check for \$3,000 will be delivered to TDHCA.

This good cause for and reason this change is necessary is to assist the City of Fort Worth in obtaining a quiet zone designation for the adjacent railroad track. This amendment was not reasonably foreseeable or preventable at application because it was unknown that it would be necessary for the City of Fort Worth to vacate and relocate the existing street.

Thank you for your attention and please contact me with any questions.

Regards,

A handwritten signature in black ink, consisting of a stylized initial 'A' followed by a long horizontal line extending to the right.

Alyssa Carpenter



**OVERALL BOUNDARY LEGAL DESCRIPTION**

BEING a tract of land in the E.S. Harris Survey, Abstract No. 688 in the City of Fort Worth, Tarrant County, Texas, being all of that tract of land described as Tract 1 in Special Warranty Deed to 1700 Mistletoe Partners, Ltd., as recorded in County Clerk's Document No. D20719848 in the Official Records of Tarrant County, Texas (O.R.T.C.T.), and being all of Lot 1-R1 of Lots 1-R1 and 1-R2, Block 3R, Frisco Addition, an addition to the City of Fort Worth, Tarrant County, Texas, as recorded in County Clerk's Document No. D2125731 O.R.T.C.T., and being all of that tract of land described in Warranty Deed to All Saints Episcopal Hospital of Fort Worth, Inc., as recorded in Volume 10876, Page 1719 O.R.T.C.T., and being all of that called 0.424 acre tract of land described in General Warranty Deed With Mineral Reservations to 1700 Mistletoe Partners, Ltd., as recorded in County Clerk's Document No. D207307960 O.R.T.C.T., and being more particularly described as follows:

BEGINNING at a 5/8-inch found iron rod for the southeast corner of said Lot 1-R1, being on the north right-of-way line of Mistletoe Boulevard (a variable width right-of-way);

THENCE North 89 degrees 22 minutes 55 seconds West, along said north line, a distance of 272.69 feet to a 1/2-inch set iron rod with yellow plastic cap stamped "HALFF" (hereinafter referred to as "with cap") for the southeast corner of said Lot 1-R1, being on the north right-of-way line of Mistletoe Boulevard (a variable width right-of-way);

THENCE North 06 degrees 00 minutes 10 seconds West, departing said north line and along said east line, a distance of 507.25 feet to a 1/2-inch found iron rod with plastic cap stamped "FULTON SURVEYING" for the northeast corner of said All Saints tract;

THENCE North 84 degrees 06 minutes 47 seconds East, departing said east line and along the north line of said All Saints tract, a distance of 98.08 feet to a 1/2-inch found iron rod with plastic cap stamped "GRANT ENG RPLS 4151" for corner;

THENCE South 00 degrees 21 minutes 44 seconds East, continuing along said north line, a distance of 44.82 feet to a 1/2-inch found iron rod with plastic cap stamped "GRANT ENG RPLS 4151" for corner;

THENCE North 84 degrees 04 minutes 15 seconds East, continuing along said north line, a distance of 110.60 feet to a 5/8-inch found iron rod for the northeast corner of said All Saints tract;

THENCE South 03 degrees 50 minutes 10 seconds East, departing said north line and along the east line of said All Saints tract, a distance of 115.35 feet to a 5/8-inch found iron rod for all corner on the north line of said 0.424 acre tract;

THENCE North 86 degrees 13 minutes 12 seconds East, departing said east line and along said north line, a distance of 54.54 feet to a 1/2-inch set iron rod for the northeast corner of said 0.424 acre tract;

THENCE South 03 degrees 53 minutes 11 seconds East, departing said north line and along the east line of said 0.424 acre tract, a distance of 124.54 feet to a found ace for the southeast corner of said 0.424 acre tract, being on the north right-of-way line of Beckham Place (a variable width right-of-way);

THENCE South 09 degrees 40 minutes 50 seconds West, departing said east line and along said north line, a distance of 23.54 feet to a 1/2-inch set iron rod with cap for corner;

THENCE South 02 degrees 42 minutes 24 seconds East, departing said north line, a distance of 70.58 feet to a 1/2-inch set iron rod with cap for corner on the south right-of-way line of said Beckham Place;

THENCE North 57 degrees 36 minutes 24 seconds East, along said south line, a distance of 70.51 feet to a point for the northeast corner of said Lot 1-R1, from which a 1/2-inch found iron rod with plastic cap stamped "AREA SURVEYING" bears North 48 degrees 50 minutes 32 seconds East, a distance of 0.25 feet;

THENCE South 09 degrees 42 minutes 24 seconds East, departing said south line and along the east line of said Lot 1-R1, a distance of 203.93 feet to the POINT OF BEGINNING AND CONTAINING 123,799 square feet or 2.842 acres of land, more or less.

Basis of Bearing is the Texas Coordinate System North Central Zone (4202), North American Datum of 1983 (NAD 83) 2011 adjustment, observed by RTK using the Leica SmartNet Network on 10/06/2017. Distances shown are US Survey Feet displayed in surface values, scale factor is 1.00012.

**TRACT 1**  
BEING a tract of land in the E.S. Harris Survey, Abstract No. 688 in the City of Fort Worth, Tarrant County, Texas, being a part of that tract of land described as Tract 1 in Special Warranty Deed to 1700 Mistletoe Partners, Ltd., as recorded in County Clerk's Document No. D20719848 in the Official Records of Tarrant County, Texas (O.R.T.C.T.), and being all of Lot 1-R1 of Lots 1-R1 and 1-R2, Block 3R, Frisco Addition, an addition to the City of Fort Worth, Tarrant County, Texas, as recorded in County Clerk's Document No. D2125731 O.R.T.C.T., and being all of that tract of land described in Warranty Deed to All Saints Episcopal Hospital of Fort Worth, Inc., as recorded in Volume 10876, Page 1719 O.R.T.C.T., and being all of that called 0.424 acre tract of land described in General Warranty Deed With Mineral Reservations to 1700 Mistletoe Partners, Ltd., as recorded in County Clerk's Document No. D207307960 O.R.T.C.T., and being more particularly described as follows:

BEGINNING at the northeast corner of said Lot 1-R1, from which a 1/2-inch found iron rod with plastic cap stamped "AREA SURVEYING" bears North 48 degrees 50 minutes 32 seconds East, a distance of 0.25 feet, and being on the east line of Burlington Northern Santa Fe Railroad (a variable width right-of-way);

THENCE South 00 degrees 42 minutes 24 seconds East, a distance of 203.93 feet to a 5/8-inch found iron rod for the southeast corner of said Lot 1-R1, being on the north right-of-way line of Mistletoe Boulevard (a variable width right-of-way);

THENCE North 89 degrees 22 minutes 55 seconds West, passing a 1/2-inch found iron rod with plastic cap stamped "GRANT ENG RPLS 4151" for the south end of a corner city of said Lot 1-R1 at a distance of 212.37 feet, and continuing for a total distance of 222.37 feet to a 3/4-inch found iron rod for corner at the intersection of the projected said north-right-of-way line and the projected east right-of-way line of said Beckham Place;

THENCE North 06 degrees 05 minutes 00 seconds West, passing a 1/2-inch found iron rod with plastic cap stamped "GRANT ENG RPLS 4151" for the north end of a corner city of said Lot 1-R1 at a distance of 10.00 feet, passing a 1/2-inch found iron rod with plastic cap stamped "GRANT ENG RPLS 4151" for the south end of a corner city of said Lot 1-R1 at a distance of 46.06 feet, and continuing for a total distance of 58.06 feet to a point for corner;

THENCE North 57 degrees 36 minutes 24 seconds East, passing a 1/2-inch found iron rod with plastic cap stamped "GRANT ENG RPLS 4151" for the north end of a corner city of said Lot 1-R1 at a distance of 10.00 feet, and continuing for a total distance of 265.55 feet to the POINT OF BEGINNING AND CONTAINING 29,702 square feet or 0.6819 acres of land, more or less.

**TRACT 2**  
BEING a tract of land in the E.S. Harris Survey, Abstract No. 688 in the City of Fort Worth, Tarrant County, Texas, being all of that called 0.424 acre tract of land described in General Warranty Deed With Mineral Reservations to 1700 Mistletoe Partners, Ltd., as recorded in County Clerk's Document No. D207307960 in the Official Records of Tarrant County, Texas (O.R.T.C.T.), and being more particularly described as follows:

BEGINNING at a found ace for the southeast corner of said 0.424 acre tract, being on the north right-of-way line of Beckham Place (a variable width right-of-way);

THENCE South 59 degrees 40 minutes 50 seconds West, along said north right-of-way line, a distance of 123.20 feet to a 3/4-inch found iron rod for the common southeast corner of that tract of land described in Warranty Deed to All Saints Episcopal Hospital of Fort Worth, Inc., as recorded in Volume 10876, Page 1719 O.R.T.C.T., and the southwest corner of said 0.424 acre tract;

THENCE North 11 degrees 14 minutes 10 seconds West, departing said north right-of-way line, a distance of 164.21 feet to the common northwest corner of said 0.424 acre tract of land and an ell corner of said All Saints tract;

THENCE North 83 degrees 59 minutes 50 seconds East, a distance of 82.91 feet to a common ell corner of said All Saints tract and said 0.424 acre tract of land;

THENCE North 03 degrees 50 minutes 10 seconds West, a distance of 16.38 feet to a 5/8-inch found iron rod for an ell corner of said 0.424 acre tract of land, the most southerly southwest corner of Lot 1 in Block B-R of Mistletoe Heights as recorded in Volume 388-160, Page 1 in the Plat Records of Tarrant County, Texas, and being on the east line of said All Saints tract;

THENCE North 86 degrees 13 minutes 12 seconds East, a distance of 54.54 feet to a 5/8-inch found iron rod for the northeast corner of said 0.424 acre tract of land, and being on the south line of said Lot 1;

THENCE South 03 degrees 53 minutes 11 seconds East, a distance of 124.54 feet to the POINT OF BEGINNING AND CONTAINING 18,495 square feet or 0.4246 acres of land, more or less.

**TRACT 3**  
BEING a tract of land in the E.S. Harris Survey, Abstract No. 688 in the City of Fort Worth, Tarrant County, Texas, being all of that tract of land described in Warranty Deed to All Saints Episcopal Hospital of Fort Worth, Inc., as recorded in Volume 10876, Page 1719 in the Official Records of Tarrant County, Texas (O.R.T.C.T.), and being more particularly described as follows:

BEGINNING at a 1/2-inch found iron rod with plastic cap stamped "FULTON SURVEYING" for the common northwest corner of said All Saints tract, the most westerly southwest corner of Lot 1 in Block B-R of Mistletoe Heights as recorded in Volume 388-160, Page 1 in the Plat Records of Tarrant County, Texas, and being on the east line of Burlington Northern Santa Fe Railroad (100 foot wide right-of-way);

THENCE North 84 degrees 06 minutes 47 seconds East, along the common line between said All Saints tract and said Lot 1, a distance of 98.08 feet, along said east right of way line, passing at a distance of 27.87 feet, the northwest corner of said City of Fort Worth tract, and continuing for a total distance of 105.25 feet to the POINT OF BEGINNING AND CONTAINING 18,744 square feet or 0.4303 acres of land, more or less.

**LESS AND EXCEPT**  
BEING a tract or parcel of land situated in the E.S. Harris Survey Abstract No. 688, City of Fort Worth, Tarrant County, Texas and being all of that tract of land described in deed to the City of Fort Worth as recorded in Volume 3418, Page 632 D.R.T.C.T., and being part of that called 0.4304 acre tract of land described in City of Fort Worth Ordinance No. 22278-06-2018 Vacating and Extinguishing a portion of Beckham Place and being more particularly described below:

BEGINNING at a 3/4-inch found iron rod for the southeast corner of said City of Fort Worth tract, being on the north right of way line of Mistletoe Boulevard (a variable width right of way);

THENCE North 89 degrees 22 minutes 55 seconds West, along said south right of way line, a distance of 50.32 feet to a point for corner at the intersection of said north right of way line with the east right of way line of Burlington Northern Santa Fe Railroad (100 foot wide right-of-way);

THENCE North 06 degrees 00 minutes 10 seconds West, departing said north right of way line and along said east right of way line, a distance of 27.87 feet to a point for corner;

THENCE North 57 degrees 36 minutes 24 seconds East, departing said east right of way line, a distance of 54.84 feet to a point for corner;

THENCE South 06 degrees 51 minutes 00 seconds East, a distance of 58.06 feet to the POINT OF BEGINNING AND CONTAINING 2.133 square feet or 0.0490 acres of land, more or less.

**TRACT 4**  
Being a tract or parcel of land situated in the E.S. Harris Survey Abstract No. 688, City of Fort Worth, Tarrant County, Texas and being a portion of Beckham Place (a 60 foot right of way) as recorded in the Fort Worth Original Town, an addition to the City of Fort Worth (no recording information found) also shown on plat of Lots 1&2, Block 3-A Frisco Addition, as recorded in 388-173, Page 1 Plat Records Tarrant County, Texas and being all of that tract of land described in deed to the City of Fort Worth as recorded in Volume 3418, Page 632 D.R.T.C.T., and the south right of way line being described in Residue of Beckham Place vacated by Ordinance No. 9104, being all of that called 0.4304 acre tract of land described in City of Fort Worth Ordinance No. 22278-06-2018 Vacating and Extinguishing a portion of Beckham Place, and being more particularly described below:

BEGINNING at a 1/2-inch found iron rod with plastic cap stamped GRANT ENG RPLS 4151 being at the intersection of the north right of way line of Beckham Place (a variable width right-of-way) and the east right of way line of Burlington Northern Santa Fe Railroad (100 foot wide right-of-way), and being the southwest corner of that tract of land described in Warranty Deed to All Saints Episcopal Hospital of Fort Worth, Inc., recorded in Volume 10876, Page 1719 Official Records Tarrant County Texas (O.R.T.C.T.);

THENCE North 59 degrees 40 minutes 50 seconds West, along said east line and along said north right-of-way line, a distance of 149.29 feet to a 1/2-inch found iron rod with plastic cap stamped "GRANT ENG RPLS 4151" for corner on said east right-of-way line;

THENCE North 06 degrees 00 minutes 10 seconds West, departing said north right-of-way line and along said east right-of-way line, a distance of 402.00 feet to the POINT OF BEGINNING AND CONTAINING 56,858 square feet or 1.3053 acres of land, more or less.

**TRACT 5**  
Being a tract or parcel of land situated in the E.S. Harris Survey Abstract No. 688, City of Fort Worth, Tarrant County, Texas and being a portion of Beckham Place (a 60 foot right of way) as recorded in the Fort Worth Original Town, an addition to the City of Fort Worth (no recording information found) also shown on plat of Lots 1&2, Block 3-A Frisco Addition, as recorded in 388-173, Page 1 Plat Records Tarrant County, Texas and being all of that tract of land described in deed to the City of Fort Worth as recorded in Volume 3418, Page 632 D.R.T.C.T., and the south right of way line being described in Residue of Beckham Place vacated by Ordinance No. 9104, being all of that called 0.4304 acre tract of land described in City of Fort Worth Ordinance No. 22278-06-2018 Vacating and Extinguishing a portion of Beckham Place, and being more particularly described below:

BEGINNING at a 1/2-inch found iron rod with plastic cap stamped GRANT ENG RPLS 4151 being at the intersection of the north right of way line of Beckham Place (a variable width right-of-way) and the east right of way line of Burlington Northern Santa Fe Railroad (100 foot wide right-of-way), and being the southwest corner of that tract of land described in Warranty Deed to All Saints Episcopal Hospital of Fort Worth, Inc., recorded in Volume 10876, Page 1719 Official Records Tarrant County Texas (O.R.T.C.T.);

THENCE North 59 degrees 40 minutes 50 seconds East, along the north right of way line of said Beckham Place, passing at a distance of 149.29 feet, a 3/4-inch iron rod for the southeast corner of said All Saints tract and being the southwest corner of 1700 Mistletoe Partners, Ltd., recorded in Document No. D207307960 O.R.T.C.T., and continuing for a total distance of 255.74 feet to a point for corner;

THENCE South 00 degrees 42 minutes 24 seconds East, over and across said Beckham Place, a distance of 70.58 feet to a point for corner being on the south right of way line of said Beckham Place;

**TRACT 4 CONTINUED**  
THENCE South 57 degrees 36 minutes 24 seconds West, along said south right of way line, a distance of 198.04 feet to a point for corner at the point of intersection of said south right of way line and the east right of way line of said Beckham Place same being the east line of said City of Fort Worth tract;

THENCE South 06 degrees 51 minutes 00 seconds East, along said east right of way line, a distance of 50.36 feet to a point for corner being at the intersection of said east right of way line and the north right of way line of Mistletoe Boulevard (a variable width right of way);

THENCE North 89 degrees 22 minutes 55 seconds West, over and across said Beckham Place, a distance of 50.32 feet to a point for corner being on the east right of way line of said Burlington Northern Santa Fe Railroad;

THENCE North 06 degrees 00 minutes 10 seconds West, along said east right of way line, passing at a distance of 27.87 feet, the northwest corner of said City of Fort Worth tract, and continuing for a total distance of 105.25 feet to the POINT OF BEGINNING AND CONTAINING 18,744 square feet or 0.4303 acres of land, more or less.

**LESS AND EXCEPT**  
BEING a tract or parcel of land situated in the E.S. Harris Survey Abstract No. 688, City of Fort Worth, Tarrant County, Texas and being all of that tract of land described in deed to the City of Fort Worth as recorded in Volume 3418, Page 632 D.R.T.C.T., and being part of that called 0.4304 acre tract of land described in City of Fort Worth Ordinance No. 22278-06-2018 Vacating and Extinguishing a portion of Beckham Place and being more particularly described below:

BEGINNING at a 3/4-inch found iron rod for the southeast corner of said City of Fort Worth tract, being on the north right of way line of Mistletoe Boulevard (a variable width right of way);

THENCE North 89 degrees 22 minutes 55 seconds West, along said south right of way line, a distance of 50.32 feet to a point for corner at the intersection of said north right of way line with the east right of way line of Burlington Northern Santa Fe Railroad (100 foot wide right-of-way);

THENCE North 06 degrees 00 minutes 10 seconds West, departing said north right of way line and along said east right of way line, a distance of 27.87 feet to a point for corner;

THENCE North 57 degrees 36 minutes 24 seconds East, departing said east right of way line, a distance of 54.84 feet to a point for corner;

THENCE South 06 degrees 51 minutes 00 seconds East, a distance of 58.06 feet to the POINT OF BEGINNING AND CONTAINING 2.133 square feet or 0.0490 acres of land, more or less.

Note: The courthouse file of 1876 destroyed the record plats and conveyance instruments related to this property.

**TRACT 5**  
Being a tract or parcel of land situated in the E.S. Harris Survey Abstract No. 688, City of Fort Worth, Tarrant County, Texas and being all of that tract of land described in deed to the City of Fort Worth as recorded in Volume 3418, Page 632 D.R.T.C.T., and being part of that called 0.4304 acre tract of land described in City of Fort Worth Ordinance No. 22278-06-2018 Vacating and Extinguishing a portion of Beckham Place and being more particularly described below:

BEGINNING at a 3/4-inch found iron rod for the southeast corner of said City of Fort Worth tract, being on the north right of way line of Mistletoe Boulevard (a variable width right of way);

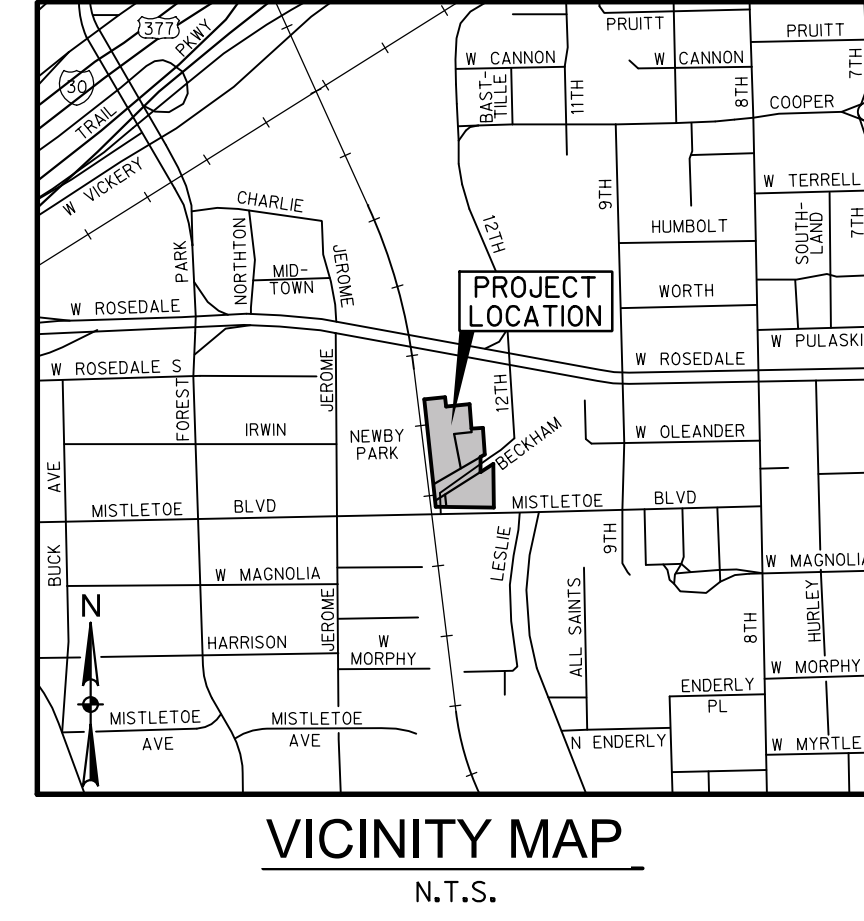
THENCE North 89 degrees 22 minutes 55 seconds West, along said south right of way line, a distance of 50.32 feet to a point for corner at the intersection of said north right of way line with the east right of way line of Burlington Northern Santa Fe Railroad (100 foot wide right-of-way);

THENCE North 06 degrees 00 minutes 10 seconds West, departing said north right of way line and along said east right of way line, a distance of 27.87 feet to a point for corner;

THENCE North 57 degrees 36 minutes 24 seconds East, departing said east right of way line, a distance of 54.84 feet to a point for corner;

THENCE South 06 degrees 51 minutes 00 seconds East, a distance of 58.06 feet to the POINT OF BEGINNING AND CONTAINING 2.133 square feet or 0.0490 acres of land, more or less.

**FLOOD PLAIN AND FLOODWAY NOTES**  
By graphical plotting, the premises lie within Zone "X" (unshaded), as delineated on the Tarrant County, Texas and Incorporated Areas, Flood Insurance Rate Map, Panel Number 484390303K, dated September 25, 2009. As published by the Federal Emergency Management Agency, Zone "X" (unshaded) is defined as "Areas determined to be outside the 0.2% annual chance floodplain." The Surveyor utilized the above referenced flood plain information for this determination and the Surveyor does not certify that revised flood plain information has or has not been published by the Federal Emergency Management Agency or some other source.



**GENERAL NOTES:**

- ALTA/ACSM Table A (6a) & 6(b): The existing zoning designation of the subject tract is NS-T5 Near Southside District, Zoning and site requirements as set forth in letter by the City of Fort Worth to 1916 Mistletoe Blvd., Frisco Addition Block 3R, Lot 1-R1 and 2116 Beckham Place Block B, Lot 6, Fort Worth, Texas, prepared for Lisa Stephens, Salgebrook Development, LLC dated February 8, 2017 are as follows:
  - Front setback\* 0 feet minimum, 20 feet maximum
  - Rear yard\* 3 feet minimum
  - Side yard\* 0 feet minimum
  - Units per acre No restriction
  - Units per building No restriction
  - Minimum heights: New facades along public streets and public places:
    - 15 feet for buildings < 4,000 square feet
    - 18 feet for buildings > 4,000 square feet
    - Ground floors of multi-story non-residential buildings:
      - minimum 10 feet, floor to ceiling
      - Maximum heights: 14 and 14-N-3 stories
      - 14-5 stories
      - 15-7-N-5 stories
      - 15-4-10 stories
  - Maximum heights with mix of use and/or public spaces bonuses: T14-N: mix or public space 4 stories
  - T4: mix or public space 5 stories
  - T4: mix and public space 6 stories
  - T5: mix or public space 6 stories
  - T5: mix and public space 10 stories
- Notes:
  - \* Additional setback standards and guidelines contained in Near Southside Development Standards and Guidelines.
  - See zone boundary map in Exhibit "C". Height bonus and Fairmount transitional height plane provisions contained in Near Southside Development Standards and Guidelines.

Parking and Driveways: Off-street Parking Requirement=None, except for properties located within 250 feet of a one-two family zoning district.

  - With respect to Table A, Item 16 in the Surveyor's Certificate, at the time of the survey there was no observed evidence of recent earth moving work, building construction, or building additions on the subject property.
  - With respect to Table A, Item 17 in the Surveyor's Certificate, Beckham Place Right of Way abandoned by Ordinance as noted. There was no evidence of street or sidewalk construction or repairs observed while conducting on the ground survey.
  - With respect to Table A, Item 18 in the Surveyor's Certificate, at the time of the survey, there was no observed evidence of wetland area delineated. Or knowledge of a qualified specialist hired by the client to delineate any wetlands.
  - With respect to Table A, Item 19 in the Surveyor's Certificate, there were no off-site easements or servitudes disclosed in title commitment.
  - With respect to Table A, Item 20 in the Surveyor's Certificate, Professional Liability Insurance policy obtained by the surveyor in the minimum amount of \$1,000,000.00 to be in effect throughout the contract term.
  - All 5 tracts are contiguous with each other and that there are no gas or groves.
  - All tracts being described herein are the same properties as described in First American Title Insurance Company Commitment GF Number NCS-92873-ORL, effective date August 7, 2018, issue date August 27, 2018.
  - Building to be demolished after purchase of property encroaches over Lot 1-R1, Block 3R lot lines to the north and south lines 0.50' and west line up to 10' and over the 35' SS easement by 19.5'. Building also sits over the 34' Drainage Easement. Which both easements will be abandoned by future Final Plat.

**SCHEDULE B NOTES:**

This tract is affected by the following items listed in Schedule B of First American Title Insurance Company Commitment GF Number NCS-92873-ORL, effective date August 7, 2018, issue date August 27, 2018:

  - (10g) 9' Utility Easement as dedicated by the plat recorded in Document No. D2125731 O.R.T.C.T.; (plotted, Tract I)
  - (10h) 10' Utility Easement as dedicated by the plat recorded in Document No. D2125731 O.R.T.C.T.; (plotted, Tract I)
  - (10i) 35' Sanitary Sewer Easement as dedicated by the plat recorded in Document No. D2125731 O.R.T.C.T.; (plotted, Tract I)
  - (10j) Drainage Easement as dedicated by the plat recorded in Document No. D2125731 O.R.T.C.T.; (plotted, Tract I)
  - (10k) The remains of 20'x20' public open space easements as dedicated by the plat recorded in Volume 388-173, Page 11 P.R.T.C.T., and shown on the plat recorded in Document No. D2125731 O.R.T.C.T.; (plotted, Tract I)
  - (10m) Distribution Easement and Right-of-Way to Texas Electric Service Company as recorded in Volume 3288, Page 619 D.R.T.C.T.; (plotted, Tract II)
  - (10n) Covenant and Agreement Regarding Storm Drain with the City of Fort Worth as recorded in Volume 7977, Page 806 D.R.T.C.T.; (blanket in nature, Tract I)
  - (10o) Sanitary Sewer Easement to the City of Fort Worth as recorded in Volume 10602, Page 1477 O.R.T.C.T.; (plotted, Tract II)
  - (10q) Mineral and/or royalty interest as referenced in Special Warranty Deed recorded in Document No. D20738948 O.R.T.C.T.; (blanket in nature, Tract II)
  - (10r) Mineral and/or royalty interest with waiver of surface rights as referenced in General Warranty Deed as recorded in Document No. D207307960 O.R.T.C.T.; (blanket in nature, Tract II)
  - (10u) Oil, Gas and Mineral Lease to Four Seasons Energy Co., LLC. As recorded in Document No. D207354966 O.R.T.C.T., and Designation of Unit as recorded in Document No. D211087357 O.P.R.T.C.T.; (blanket in nature, Tract I)
  - (10v) Oil Gas and Mineral Lease to XTO Energy Inc. as recorded in Document No. D209315968 O.P.R.T.C.T., and Designation of Unit as recorded in Document No. D211087357 O.P.R.T.C.T.; (blanket in nature, Tract II)
  - (10w) Sanitary Sewer Easement to the City of Fort Worth as recorded in Volume 10737, Page 1243 O.R.T.C.T.; (plotted, Tract III)
  - (10bb) Permanent Utility Easement to the City of Fort Worth as recorded in Document No. D199046006 O.R.T.C.T.; (plotted, Tract III)
  - (10cc) Memorandum of Oil and Gas Lease to XTO Energy Inc. as recorded in Document No. D210002800 O.P.R.T.C.T., and Designation of Unit as recorded in Document No. D211087357 O.P.R.T.C.T.; (blanket in nature, Tract I)

This tract is not affected by the following items listed in Schedule B of First American Title Insurance Company Commitment GF Number NCS-92873-ORL, effective date August 7, 2018, issue date August 27, 2018:

  - (10x) Intentionally Deleted

This tract may or may not be affected by the following items listed in Schedule B of First American Title Insurance Company Commitment GF Number NCS-92873-ORL, effective date August 7, 2018, issue date August 27, 2018:

  - (10p) Sanitary Sewer Lines referenced in Volume 9720, Page 1514 O.R.T.C.T., and Document No. D207307960 O.R.T.C.T.; (Tract II, Surveyor cannot locate by the documents provided)
  - (10z) Intentionally Deleted
  - (10aa) Sanitary Sewer Lines referenced in Volume 5619, Page 93 D.R.T.C.T., and Volume 10876, Page 1719 O.R.T.C.T.; (Tract III, Surveyor cannot locate by the documents provided)

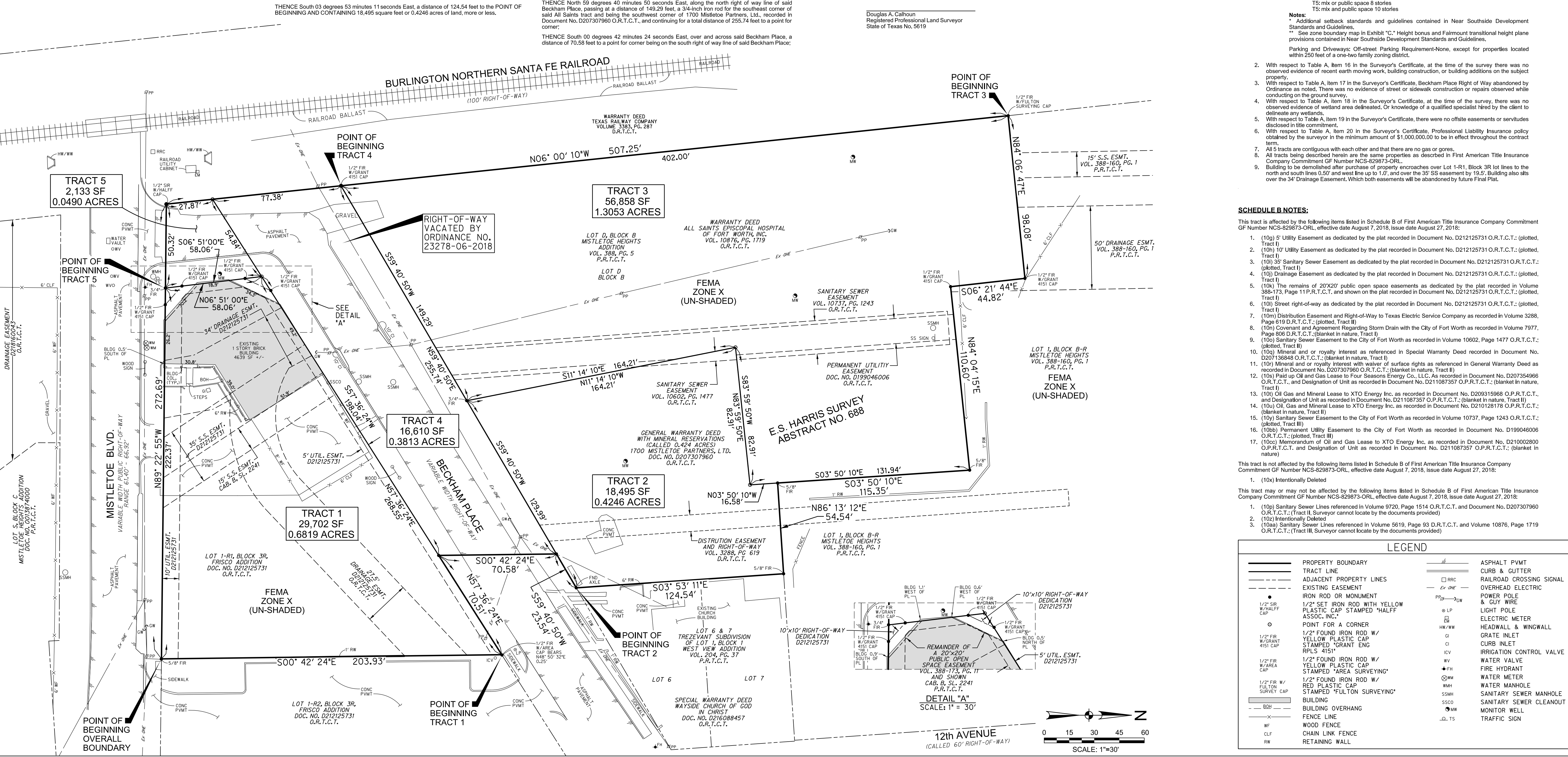
**SURVEYOR'S CERTIFICATE**

To: Mistletoe Station, LLC, a Texas limited liability company; Hunt Mortgage Partners, LLC, a Delaware limited liability company; Federal Home Loan Mortgage Corporation and its successors and/or assigns; Fort Worth Housing Finance Corporation; JPMorgan Chase Bank, N.A., its successors and/or assigns; HCP-FL, LLC, a Nevada limited liability company, its successors and assigns; Hunt Capital Partners, LLC, a Delaware limited liability company, its successors and assigns; First American Title Insurance Company.

This is to certify that this map or plat and the survey on which it is based were made in accordance with the 2016 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, jointly established and adopted by ALTA and NSPS, and includes Items 1-4, (6)a, (6)b, (7)a, (7)b(1), (7)c, 8, 9, 11, 13, 14, 16, 17, 18, 19 and 20 of Table A thereof. The fieldwork was completed on April 27, 2018.

Date of Plat or Map: August 24, 2018

Douglas A. Calhoun  
Registered Professional Land Surveyor  
State of Texas No. 9619



**ALTA / NSPS LAND TITLE SURVEY**  
OF  
**LOT 1-R1, BLOCK 3R FRISCO ADDITION AND LOT D, BLOCK B MISTLETOE HEIGHTS ADDITION**  
OUT OF THE  
**E.S. HARRIS SURVEY, ABSTRACT NO. 688**  
CITY OF FORT WORTH, TARRANT COUNTY, TEXAS

Revision No.	Date	Description

**OWNER / DEVELOPER**  
MISTLETOE STATION, LLC  
ATTN: MEGAN LASCH  
5501-A BALCONES DR. #302  
AUSTIN, TEXAS 78731  
(817) 330-0762 BUSINESS  
megan@o-sda.com

**SURVEYOR**  
DOUGLAS A. CALHOUN, RPLS  
SURVEY MANAGER  
HALFF ASSOCIATES, INC.  
4000 FOSSIL CREEK BLVD.  
FORT WORTH, TEXAS 76137  
(817) 334-7505 DIRECT  
(817) 232-9784 FAX  
dcalhoun@halff.com

Project No.: 32590  
Issued: 08/29/2018  
Drawn By: RLS  
Checked By: DAC  
Scale: 1" = 30'  
Sheet Title  
ALTA / NSPS  
LAND  
TITLE SURVEY  
**V3.01**  
Sheet Number



**FLOOD PLAIN AND FLOODWAY NOTES**

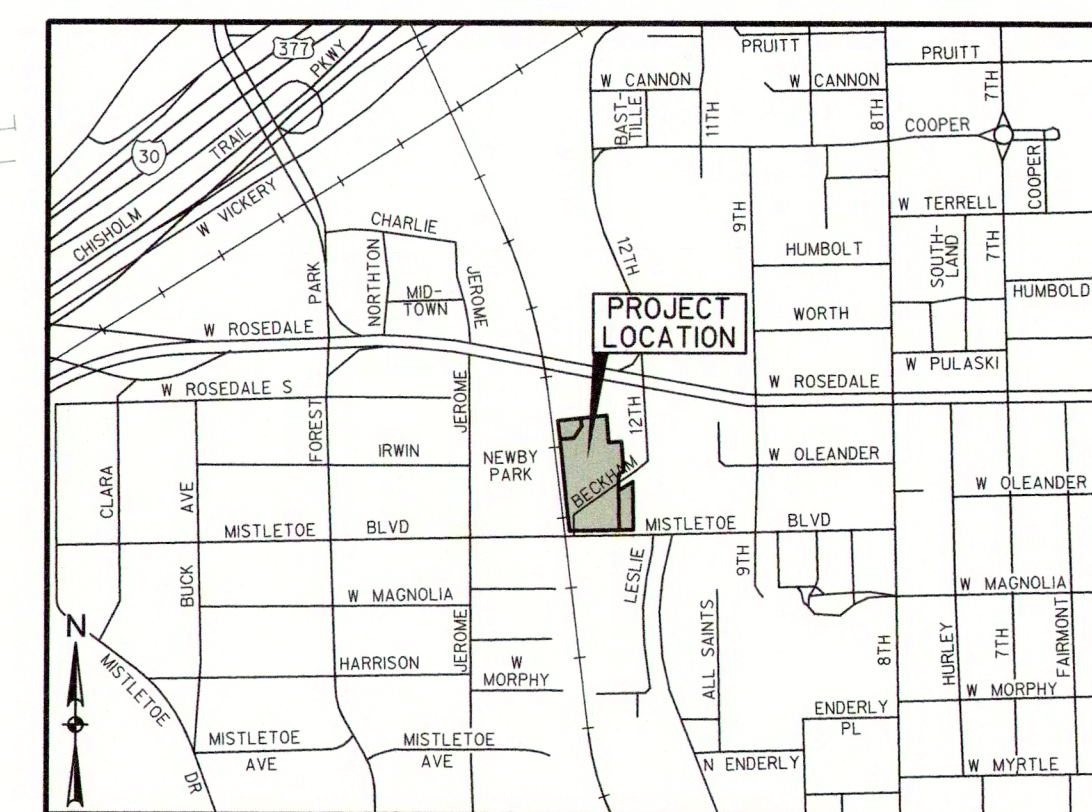
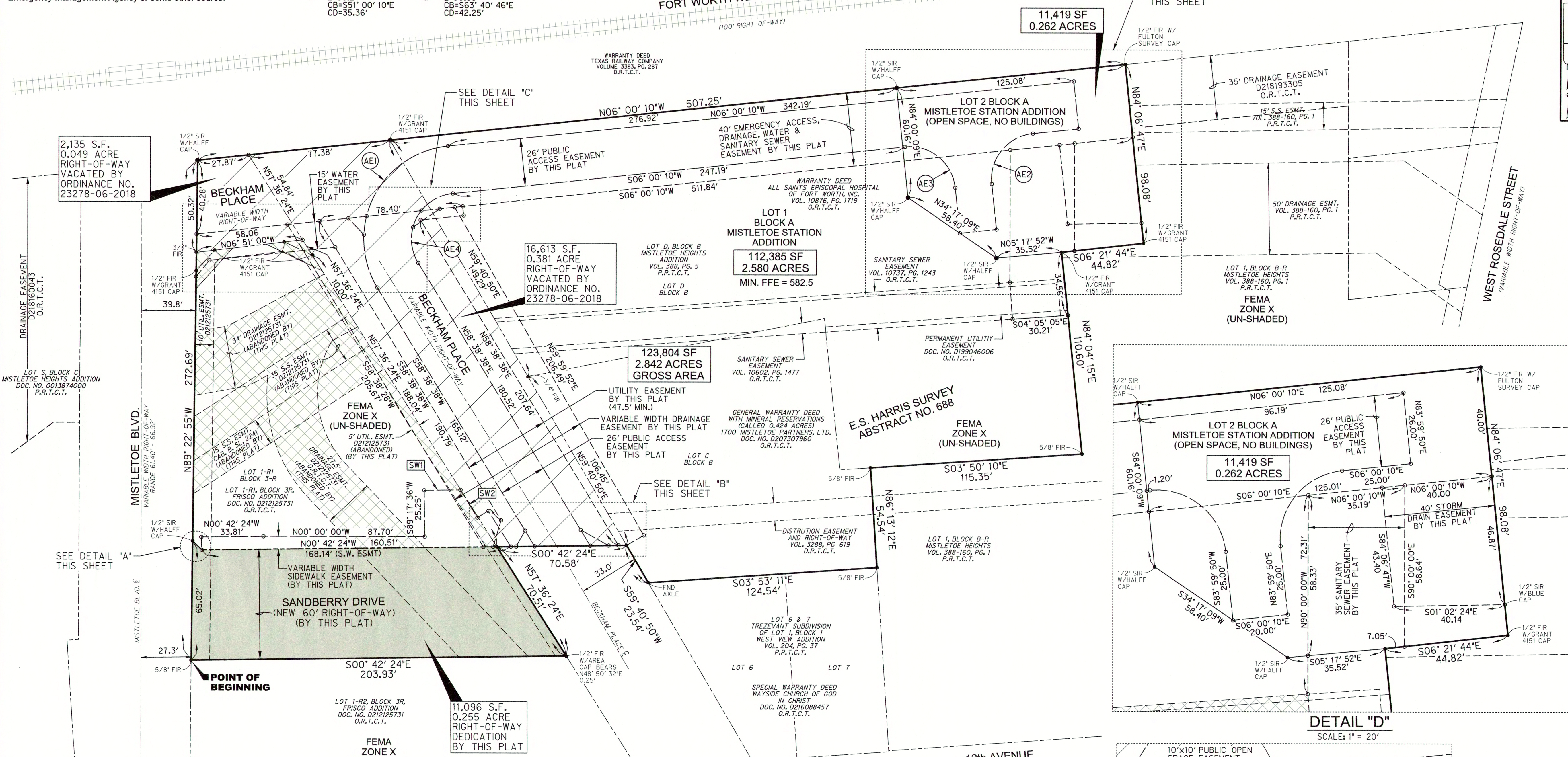
By graphical plotting, the premises lies within Zone "X" (unshaded), as delineated on the Tarrant County, Texas and Incorporated Areas, Flood Insurance Rate Map, Panel Number 48439C0305K, dated September 25, 2009, as published by the Federal Emergency Management Agency. Zone "X" (unshaded) is defined as "Areas determined to be outside the 0.2% annual chance floodplain." The Surveyor utilized the above referenced flood plain information for this determination and the Surveyor does not certify that revised flood plain information has or has not been published by the Federal Emergency Management Agency or some other source.

**PUBLIC ACCESS EASEMENT CURVE DATA TABLE**

AE1	A=115° 21' 12" R=51.00' T=80.60' L=102.68' CB=N63° 40' 46"W CD=86.19'	AE3	A=90° 00' 00" R=25.00' T=25.00' L=39.27' CB=S31° 00' 10"E CD=35.36'
AE2	A=90° 00' 00" R=25.00' T=25.00' L=39.27' CB=S31° 00' 10"E CD=35.36'	AE4	A=115° 21' 12" R=51.00' T=80.60' L=102.68' CB=N63° 40' 46"W CD=86.19'

**SIDEWALK EASEMENT BEARING/DISTANCE TABLE**

SW1	N00° 42' 24"W 19.81'	SW3	N31° 21' 22"W 6.94'
SW2	N58° 38' 38"E 17.57'	SW4	N57° 36' 24"E 23.02'



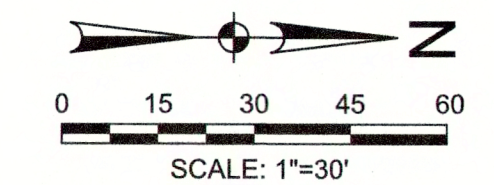
**VICINITY MAP**

N.T.S.

**LEGEND**

- NEW BOUNDARY
- NEW RIGHT-OF-WAY LINE
- NEW LOT LINE
- NEW EASEMENT LINE
- ADJACENT PROPERTY LINES
- EXISTING EASEMENT
- EXISTING LOT LINE
- EXISTING 5' CONTOUR
- NEW RIGHT-OF-WAY BY THIS PLAT
- RIGHT-OF-WAY VACATED BY CITY ORDINANCE
- EXISTING EASEMENTS TO BE ABANDONED
- IRON ROD OR MONUMENT
- 1/2" SIR W/HALFF CAP 1/2" SET IRON ROD WITH YELLOW PLASTIC CAP STAMPED "HALFF ASSOC. INC."
- 1/2" SIR W/BLUE CAP 1/2" SET IRON ROD WITH BLUE PLASTIC CAP STAMPED "HALFF ESMT."
- 1/2" FIR W/GRANT 4151 CAP 1/2" FOUND IRON ROD W/ YELLOW PLASTIC CAP STAMPED "GRANT ENG RPLS 4151"
- 1/2" FIR W/AREA CAP 1/2" FOUND IRON ROD W/ YELLOW PLASTIC CAP STAMPED "AREA SURVEYING"
- 1/2" FIR W/SURVEY CAP 1/2" FOUND IRON ROD W/ RED PLASTIC CAP STAMPED "FULTON SURVEYING"
- o POINT FOR A CORNER

**NOTE:**  
 1. PRIVATE P.R.V. WILL BE REQUIRED; WATER PRESSURE EXCEEDS 80 P.S.I.  
 2. PARKWAY IMPROVEMENTS SUCH AS CURB AND GUTTER PAVEMENT TIE-IN DRIVE APPROACHES, SIDEWALKS AND DRAINAGE INLETS MAY BE REQUIRED AT THE BUILDING PERMIT ISSUANCE VIA PARKWAY PERMIT.

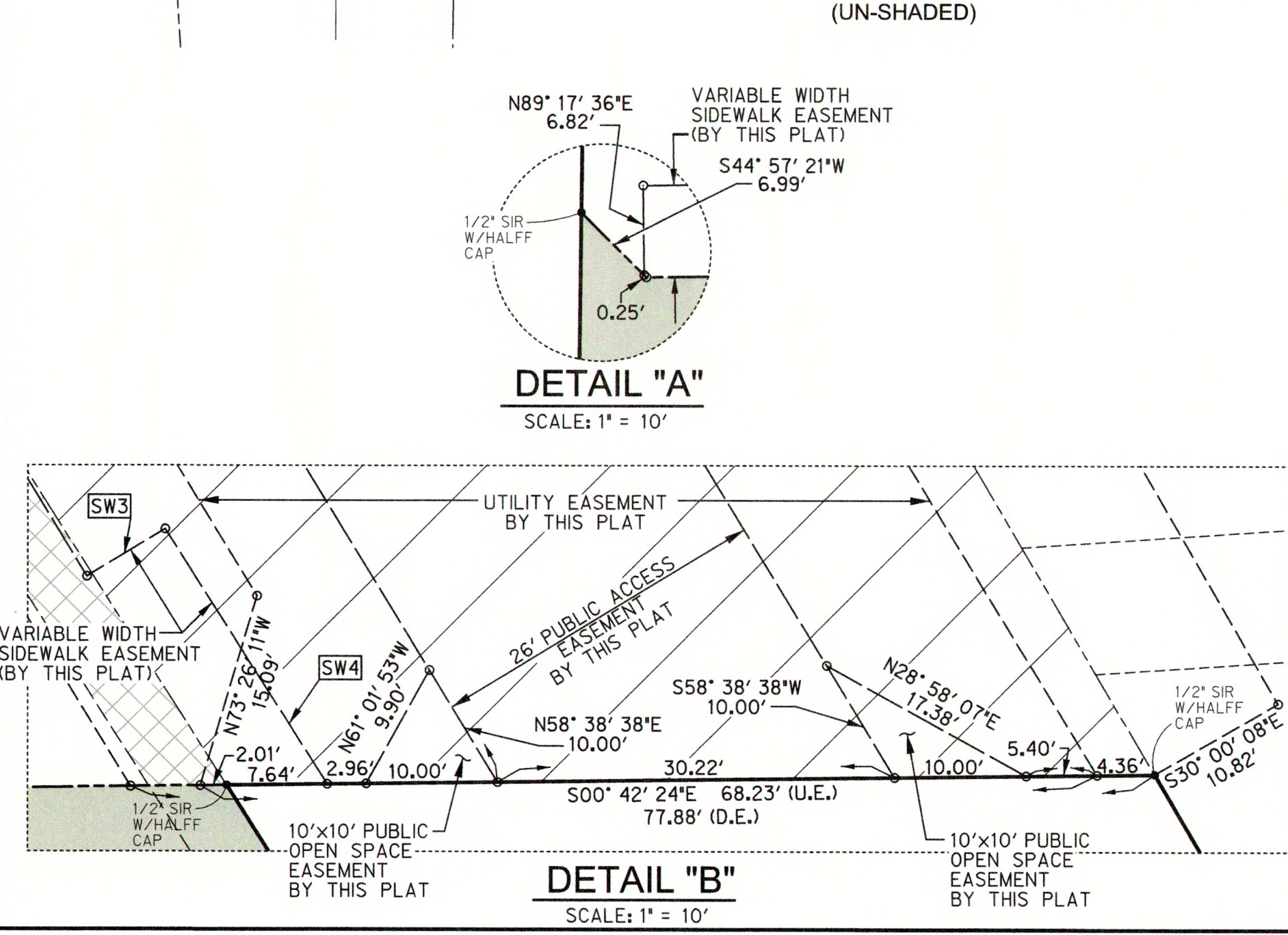


**FINAL PLAT**  
 OF  
**LOT 1 & 2, BLOCK A**  
**MISTLETOE STATION ADDITION**  
 BEING A  
**RE-PLAT**  
 OF  
**LOTS C & D, BLOCK B**  
**MISTLETOE HEIGHTS ADDITION**  
 AND  
**LOT 1-1R, BLOCK 3R**  
**FRISCO ADDITION**  
 A  
**2.842 ACRE TRACT**  
 SITUATED IN THE  
**E.S. HARRIS SURVEY, ABSTRACT NO. 688**  
 IN THE  
**CITY OF FORT WORTH, TARRANT COUNTY, TEXAS**  
 FOR  
**MISTLETOE STATION, LLC**  
 BY

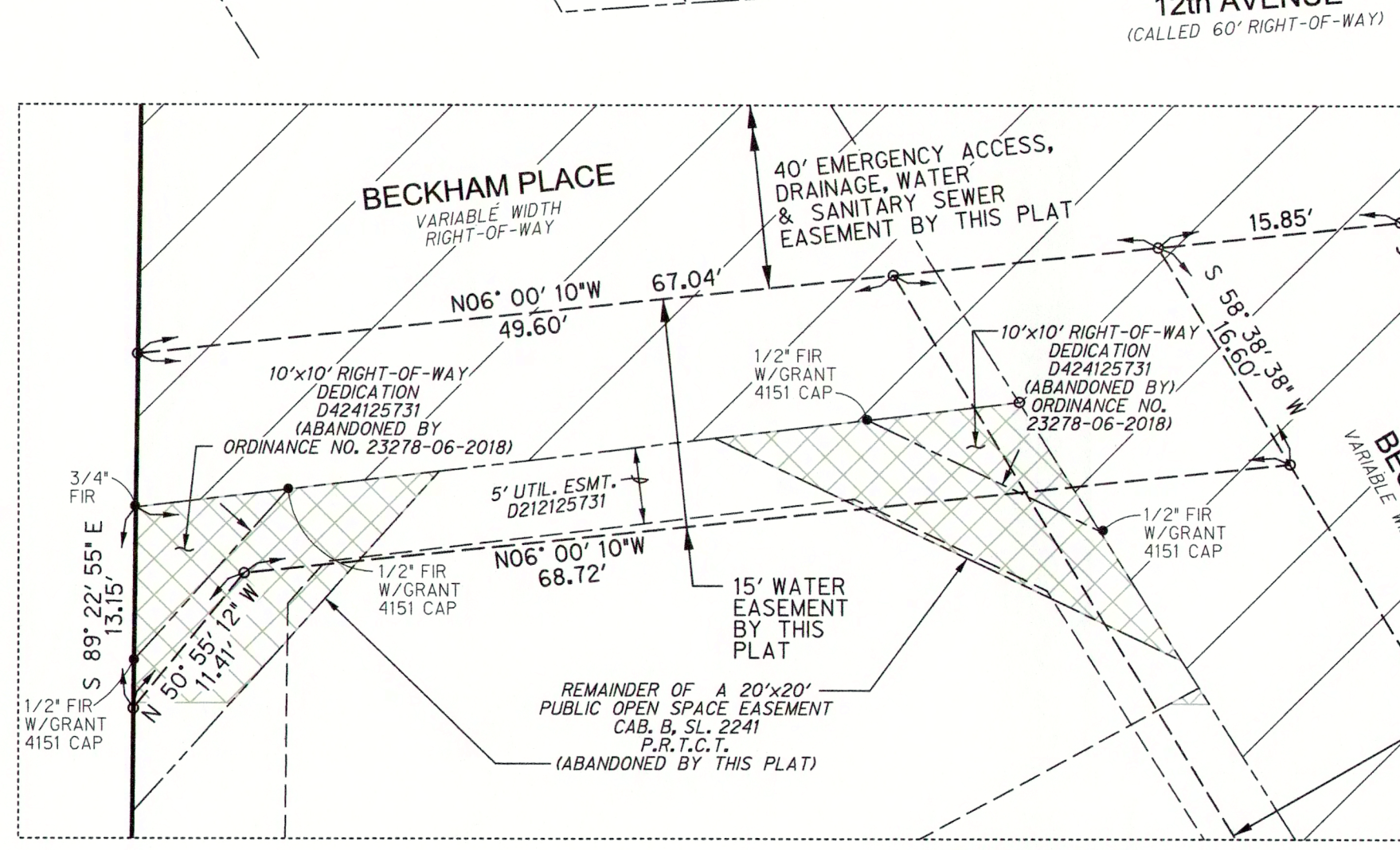
FOR WORTH  
 L. L. Halff  
 09-20-2018



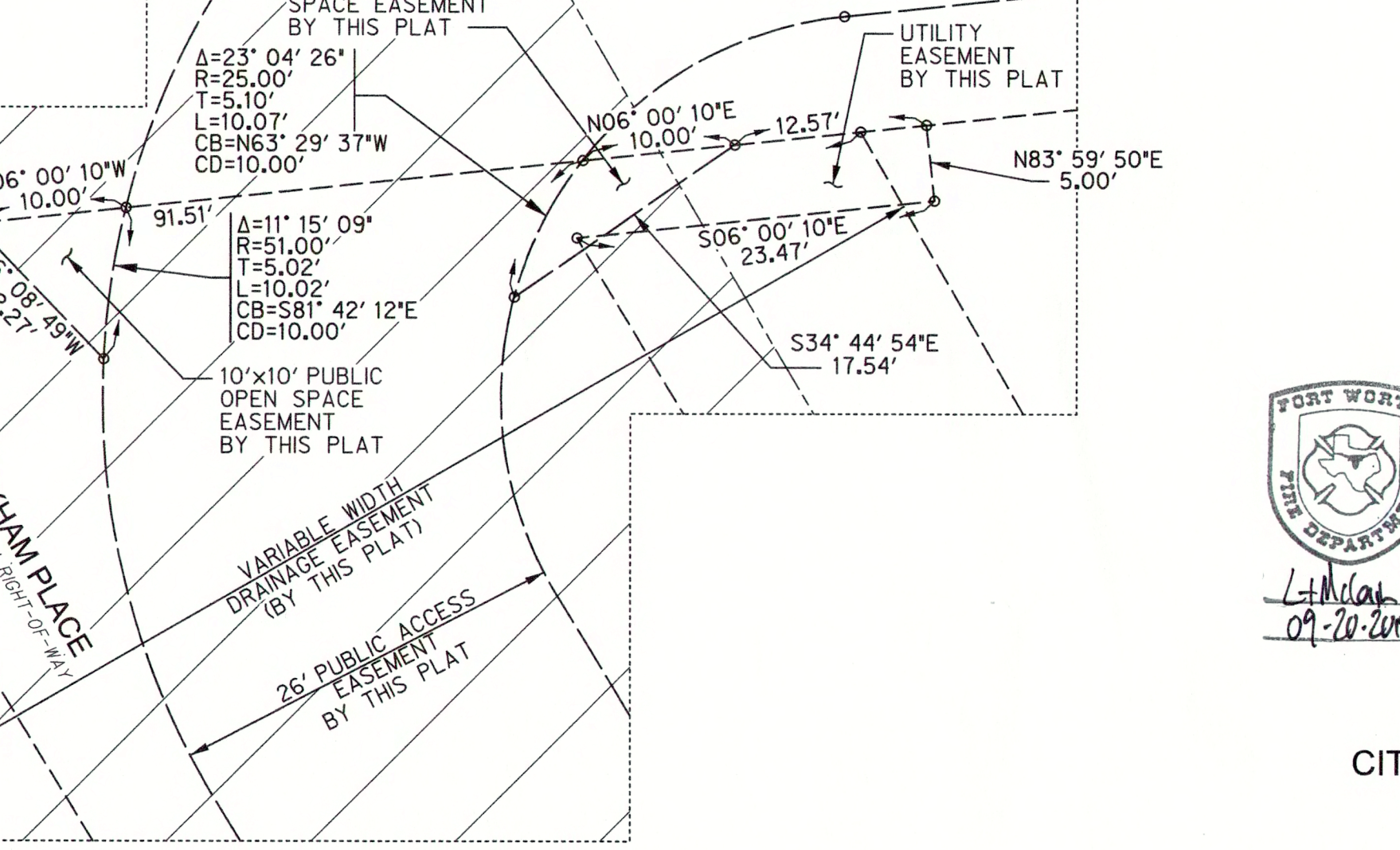
4000 FOSSIL CREEK BLVD., FORT WORTH, TEXAS 76137 (817) 847-1422  
 TBPLS FIRM NO. 10029605  
 AUG. 29, 2018



**DETAIL "A"**  
SCALE: 1" = 10'



**DETAIL "C"**  
SCALE: 1" = 10'



**DETAIL "D"**  
SCALE: 1" = 20'

**OWNER / DEVELOPER**  
 MISTLETOE STATION, LLC  
 ATTN: MEGAN LASCH  
 5501-A BALCONES DR. #302  
 AUSTIN, TEXAS 78731  
 (830) 330-0762 BUSINESS  
 megan@sdm.com

**SURVEYOR**  
 DOUGLAS A. CALHOUN, RPLS  
 SURVEY MANAGER  
 HALFF ASSOCIATES, INC.  
 4000 FOSSIL CREEK BLVD.  
 FORT WORTH, TEXAS 76137  
 (817) 764-7505 DIRECT  
 (817) 232-9784 FAX  
 dacalhoun@halff.com

CASE No.: FP-18-037

PLAT FILED AS INSTRUMENT No. 2218211501

DATE: 9/21/2018





Planning and Development Department
STANDARD PLAT NOTES
April 1, 2017

Water/Wastewater Impact Fees
The City of Fort Worth has an ordinance implementing the assessment and collection of water and wastewater impact fees.

Utility Easements
Any public utility, including the City of Fort Worth, shall have the right to move and keep moved all or part of any building, fence, trees, shrub, other growth or improvement which in any way endangers or interferes with the construction, maintenance, or efficiency of its respective systems on any of the easements shown on the plat.

Transportation Impact Fees
The City of Fort Worth has an ordinance implementing the assessment and collection of transportation impact fees. The total amount assessed is established on the approval date of this plat application, based on Schedule 1 of the impact fee ordinance in effect as of the date of the plat.

Site Drainage Study
A site drainage study, showing conformance with the approved roadway drainage plan, may be required before any building permit will be issued on this site (a grading plan in some instances may be adequate).

Sidewalks
Sidewalks are required adjacent to both sides of all public and private streets in conformance with the Sidewalk Policy per "City Development Design Standards".

Private Common Areas and Facilities
The City of Fort Worth shall not be held responsible for the construction, maintenance or operation of any lots containing private common areas or facilities identified as such on this plat.

Public Open Space Easement
No structure, object, or plant of any type may obstruct vision from a height of 24-inches to a height of 11-feet above the top of the curb, including, but not limited to buildings, fences, walks, signs, trees, shrubs, cars, trucks, etc., in the public open space easement as shown on this plat.

The land owners and subsequent owners of the lots and parcels in this subdivision, acting jointly and severally as a land owners association, shall be responsible for such construction, reconstruction, maintenance and operation of the subdivision's private common areas and facilities, and shall agree to indemnify and hold harmless the City of Fort, Texas, from all claims, damages and losses arising out of, or resulting from the performance of the obligations of said owners association, as set forth herein.

Construction Prohibited Over Easements
No permanent buildings or structures shall be constructed over any existing or platted water, sanitary sewer, drainage, gas, electric, cable or other utility easement of any type.

Building Permits
No building permits shall be issued for any lot in this Subdivision until an appropriate CFA or other acceptable provisions are made for the construction of any applicable water, sewer, storm drain, street lights, sidewalks, or paving improvements; and approval is first obtained from the City of Fort Worth.

Covenants or Restrictions are Un-altered
This Replat does not vacate the previous "Plat of Record" governing the remainder of the subdivision nor does it amend or remove any deed covenants or restrictions.

Floodplain Restriction
No construction shall be allowed within the floodplain easement, without the written approval of the Director of Transportation and Public Works. In order to secure approval, detailed engineering plans and/or studies for the improvements satisfactory to the Director, shall be prepared and submitted by the party(s) wishing to construct within the floodplain.

Flood Plain/Drainage-Way: Maintenance
The existing creek, stream, river, or drainage channel traversing along or across portions of this addition, will remain unobstructed at all times and will be maintained by the individual lot owners whose lots are traversed by, or adjacent to, the drainage-ways. The City of Fort Worth will not be responsible for the maintenance, erosion control, and/or operation of said drainage-ways. Property owners shall keep the adjacent drainage-ways traversing their property clean and free of debris, silt or other substances which would result in unsanitary conditions, and the City shall have the right of entry for the purpose of inspecting the maintenance work by the property owners.

LEGAL DESCRIPTION

BEING a tract of land in the E.S. Harris Survey, Abstract No. 688 in the City of Fort Worth, Tarrant County, Texas, being all of that tract of land described as Tract 1 in Special Warranty Deed to 1700 Mistletoe Partners, Ltd., as recorded in County Clerk's Document No. D207136848 in the Official Records of Tarrant County, Texas (O.R.T.C.T.), and being all of Lot 1-R1 of Lots 1-R1 and 1-R2, Block 3R, Frisco Addition, an addition to the City of Fort Worth, Tarrant County, Texas, as recorded in County Clerk's Document No. D212125731 O.R.T.C.T., and being all of that tract of land described in Warranty Deed to All Saints Episcopal Hospital of Fort Worth, Inc., as recorded in Volume 10876, Page 1719 O.R.T.C.T., and being all of that called 0.424 acre tract of land described in General Warranty Deed With Mineral Reservations to 1700 Mistletoe Partners, Ltd., as recorded in County Clerk's Document No. D207307960 O.R.T.C.T., and being more particularly described as follows:

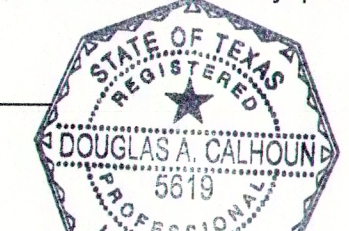
BEGINNING at a 5/8-inch found iron rod for the southeast corner of said Lot 1-R1, being on the north right-of-way line of Mistletoe Boulevard (a variable width right-of-way);
THENCE North 89 degrees 22 minutes 55 seconds West, along said north line, a distance of 272.69 feet to a 1/2-inch set iron rod with yellow plastic cap stamped "HALFF" (hereinafter referred to as "with cap") for corner on the east line of Burlington Northern Santa Fe Railroad (100 foot wide right-of-way);
THENCE North 06 degrees 00 minutes 10 seconds West, departing said north line and along said east line, a distance of 507.25 feet to a 1/2-inch found iron rod with plastic cap stamped "FULTON SURVEYING" for the northwest corner of said All Saints tract;
THENCE North 84 degrees 06 minutes 47 seconds East, departing said east line and along the north line of said All Saints tract, a distance of 98.08 feet to a 1/2-inch found iron rod with plastic cap stamped "GRANT ENG RPLS 4151" for corner;
THENCE South 06 degrees 21 minutes 44 seconds East, continuing along said north line, a distance of 44.82 feet to a 1/2-inch found iron rod with plastic cap stamped "GRANT ENG RPLS 4151" for corner;
THENCE North 84 degrees 04 minutes 15 seconds East, continuing along said north line, a distance of 110.60 feet to a 5/8-inch found iron rod for the northeast corner of said All Saints tract;
THENCE South 03 degrees 50 minutes 10 seconds East, departing said north line and along the east line of said All Saints tract, a distance of 115.35 feet to a 5/8-inch found iron rod for all corner on the north line of said 0.424 acre tract;
THENCE North 86 degrees 13 minutes 12 seconds East, departing said east line and along said north line, a distance of 54.54 feet to a 5/8-inch found iron rod for the northeast corner of said 0.424 acre tract;
THENCE South 03 degrees 53 minutes 11 seconds East, departing said north line and along the east line of said 0.424 acre tract, a distance of 124.54 feet to a found axle for the southeast corner of said 0.424 acre tract, being on the north right-of-way line of Beckham Place (a variable width right-of-way);
THENCE South 59 degrees 40 minutes 50 seconds West, departing said east line and along said north line, a distance of 23.54 feet to a 1/2-inch set iron rod with cap for corner;
THENCE South 00 degrees 42 minutes 24 seconds East, departing said north line, a distance of 70.58 feet to a 1/2-inch set iron rod with cap for corner on the south right-of-way line of said Beckham Place;
THENCE North 57 degrees 36 minutes 24 seconds East, along said south line, a distance of 70.51 feet to a point for the northeast corner of said Lot 1-R1, from which a 1/2-inch found iron rod with plastic cap stamped "AREA SURVEYING" bears North 48 degrees 50 minutes 32 seconds East, a distance of 0.25 feet;
THENCE South 00 degrees 42 minutes 24 seconds East, departing said south line and along the east line of said Lot 1-R1, a distance of 203.93 feet to the POINT OF BEGINNING AND CONTAINING 123,799 square feet or 2.842 acres of land, more or less.

Basis of Bearing is the Texas Coordinate System North Central Zone (4202), North American Datum of 1983 (NAD 83) 2011 adjustment, observed by RTK using the Leica SmartNet Network on 10/06/2017. Distances shown are US Survey feet displayed in surface values, scale factor is 1.00012.

SURVEYOR CERTIFICATE

KNOW ALL MEN BY THESE PRESENTS:
THAT I, Douglas A. Calhoun do hereby certify that I prepared this plat from an actual and accurate survey of the land, and that the corner monuments shown thereon were properly placed or found under my personal supervision.

Signature of Douglas A. Calhoun, Registered Professional Land Surveyor, State of Texas No. 5619, dated 9/27/16.

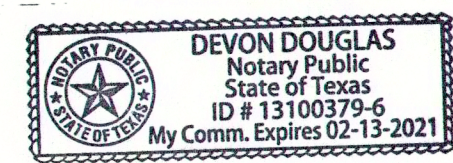


STATE OF TEXAS
COUNTY OF TARRANT

BEFORE ME, the undersigned authority, on this day personally appeared Douglas A. Calhoun, known 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.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 30th day of August, 2018.

Signature of Devon Douglas, Notary Public (Agent's Name), My Commission Expires 02-13-2021.



OWNER CERTIFICATE
MISTLETOE HEIGHTS ADDITION
LOT 1 and LOT 2, BLOCK A;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

THAT I, Lisa Stephens, acting by and through the undersigned, their duly authorized agents, do hereby adopt this plat designating the herein described real property as the herein stated portions of Mistletoe Heights Addition, Lot 1 and Lot 2, Block A, an addition to The City of Fort Worth, Tarrant County, Texas, and do hereby dedicate to the public's use the Right of Way and Easements shown thereon, and do hereby adopt this Final Plat.

OWNER:

Mistletoe Station, LLC
a Texas limited liability company

By: Saigebrook Mistletoe, LLC
a Texas limited liability company
its managing member

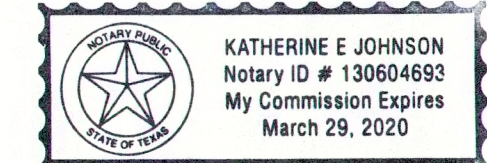
Signature of Lisa Stephens, President, dated 8-30-18.

STATE OF TEXAS
COUNTY OF TARRANT

BEFORE ME, the undersigned authority, on this day personally appeared Lisa Stephens, known 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.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 30th day of August, 2018.

Signature of Katherin E. Johnson, Notary Public (Agent's Name), My Commission Expires March 29, 2020.



LIEN HOLDER:
JPMorgan Chase Bank, N.A.,

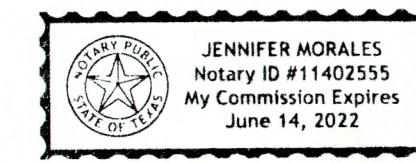
By: Oliver C. Deha, GENERAL MANAGER

STATE OF TEXAS
COUNTY OF TARRANT

BEFORE ME, the undersigned authority, on this day personally appeared Oliver C. Deha, known 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.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 6th day of September, 2018.

Signature of Jennifer Morales, Notary Public (Agent's Name), My Commission Expires 6-14-2022.



LIEN HOLDER:
Fort Worth Housing Finance Corporation,

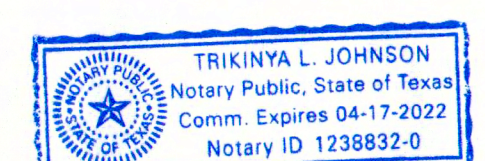
By: Fernando Costa, GENERAL MANAGER

STATE OF TEXAS
COUNTY OF TARRANT

BEFORE ME, the undersigned authority, on this day personally appeared Fernando Costa, known 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.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 13th day of September, 2018.

Signature of Trikinia L. Johnson, Notary Public (Agent's Name), My Commission Expires 4-17-2022.



LIEN HOLDER:
City of Fort Worth

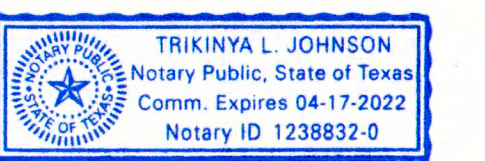
By: Jan J. Ch... ASSISTANT CITY MANAGER

STATE OF TEXAS
COUNTY OF TARRANT

BEFORE ME, the undersigned authority, on this day personally appeared Jesus J. Chapa, known 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.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 13th day of September, 2018.

Signature of Trikinia L. Johnson, Notary Public (Agent's Name), My Commission Expires 4-17-2022.



LENDER:
HUNT MORTGAGE PARTNERS, LLC,
a Delaware limited liability company

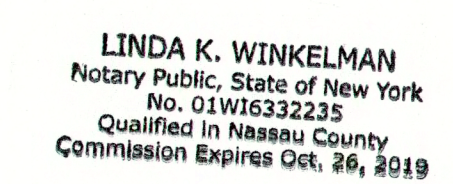
By: Tom Purtil, Vice President

STATE OF TEXAS
COUNTY OF TARRANT

BEFORE ME, the undersigned authority, on this day personally appeared Tom Purtil, known 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.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 11 day of September, 2018.

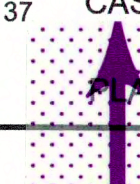
Signature of Linda K. Winkelman, Notary Public (Agent's Name), My Commission Expires...



OWNER / DEVELOPER
MISTLETOE STATION, LLC
ATTN: MEGAN LASCH
5501-A BALCONES DR. #302
AUSTIN, TEXAS 78731
(830) 330-0762 BUSINESS
megan@o-sda.com

SURVEYOR
DOUGLAS A. CALHOUN, RPLS
SURVEY MANAGER
HALFF ASSOCIATES, INC.
4000 FOSSIL CREEK BLVD.
FORT WORTH, TEXAS 76137
(776) 764-7505 DIRECT
(817) 232-9784 FAX
dcalhoun@halff.com

CASE No.: FP-18-037



FILED AS INSTRUMENT No.: 20180921001

DATE: 09/21/2018

CITY PLAN COMMISSION
CITY OF FORT WORTH, TEXAS
THIS PLAT IS VALID ONLY IF RECORDED WITHIN NINETY (90) DAYS AFTER DATE OF APPROVAL.
Plat Approval Date: 9/21/2018
By: Ronald R. Bowen, Chairman
By: Daniel Snydoff, Secretary

FINAL PLAT
OF
LOT 1 & 2, BLOCK A
MISTLETOE STATION ADDITION
BEING A
RE-PLAT
OF
LOTS C & D, BLOCK B
MISTLETOE HEIGHTS ADDITION
AND
LOT 1-1R, BLOCK 3R
FRISCO ADDITION
A
2.842 ACRE TRACT
SITUATED IN THE
E.S. HARRIS SURVEY, ABSTRACT NO. 688
IN THE
CITY OF FORT WORTH, TARRANT COUNTY, TEXAS
FOR
MISTLETOE STATION, LLC
BY



4000 FOSSIL CREEK BLVD., FORT WORTH, TEXAS 76137 (817) 847-1422
TPLS FIRM NO. 10028605
AUG. 29, 2018



**ORDINANCE NO. 23278-06-2018**

**AN ORDINANCE VACATING AND EXTINGUISHING A PORTION OF BECKHAM PLACE, SITUATED IN THE E.S. HARRIS SURVEY, ABSTRACT NO. 688 OF THE CITY OF FORT WORTH, TARRANT COUNTY, TEXAS, AS SHOWN IN VOLUME 388-173, PAGE 11 OF THE REAL PROPERTY RECORDS OF TARRANT COUNTY, TEXAS, CONTAINING APPROXIMATELY 0.4304 ACRES OF LAND MORE OR LESS; PROVIDING FOR REVERSION OF FEE IN SAID LAND; PROVIDING THAT THE CITY SHALL RETAIN ALL EXISTING UTILITIES EASEMENTS; REPEALING ALL ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING AN EFFECTIVE DATE.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FORT WORTH, TEXAS:**

**SECTION 1.**

That a portion of Beckham Place, a sixty (60) foot right-of-way, situated in the E.S. Harris Survey, Abstract No. 688 in the City of Fort Worth, Tarrant County, Texas, as shown in the plat thereof recorded in Volume 388-173, Page 11 of the Real Property Records of Tarrant County, and containing 18,748 square feet or 0.4304 acres of land more or less, and as more specifically described in Exhibits "A" attached hereto and incorporated herein by reference be and the same is vacated and extinguished.

**SECTION 2.**

That the easement to the land in the above-described vacated street right of way is hereby released and shall revert to the adjacent owner as provided by law.

**SECTION 3.**

All existing utility easement be shall be retained by the City until such time all utilities located in that easement are relocated at the owner's expense.

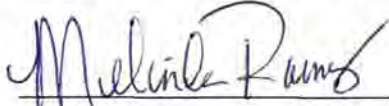
**SECTION 4.**

That all ordinances or parts of ordinances in conflict herewith are hereby repealed.

**SECTION 5.**

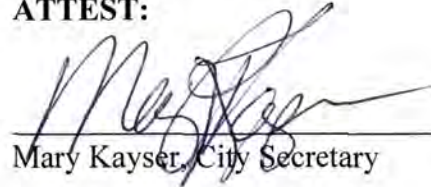
That this ordinance shall take effect upon adoption.

**APPROVED AS TO FORM AND LEGALITY:**



Melinda Ramos, Sr. Assistant City Attorney

**ATTEST:**



Mary Kayser, City Secretary

Adopted & Effective: June 26, 2018

**EXHIBIT "A"**  
**PORTION OF**  
**BECKHAM PLACE**  
**VACATION**

Being a tract or parcel of land situated in the E.S. Harris Survey Abstract No. 688, City of Fort Worth, Tarrant County, Texas and being a portion of Beckham Place (a 60 foot right of way) as recorded in the Fort Worth Original Town, an addition to the City of Fort Worth (no recording information found) also shown on plat of Lots 1&2, Block 3-A Frisco Addition, as recorded in 388-173, Page 11 Plat Records Tarrant County Texas and the south right of way line being described in Residue of Beckham Place vacated by Ordinance No. 9104 and being more particularly described below:

BEGINNING at a 1/2-inch found iron with cap stamped GRANT ENG RPLS 4151 being at the intersection of the north right of way line of Beckham Place and the east right of way line of Texas Railway Company and being the southwest corner of that tract of land described in Warranty Deed to All Saints Episcopal Hospital of Fort Worth Inc., recorded in Volume 10876, Page 1719 Official Records Tarrant County Texas (O.R.T.C.T.);

THENCE North 59 degrees 40 minutes 50 seconds East, along the north right of way line of said Beckham Place, passing at a distance of 149.29 feet, a 3/4-inch iron rod for the southeast corner of said All Saints Episcopal Hospital of Fort Worth Inc. tract and being the southwest corner of 1700 Mistletoe Partners, Ltd., recorded in Document No. D207307960 O.R.T.C.T., and continuing a total distance of 255.74 feet to a point for corner;

THENCE South 00 degrees 42 minutes 24 seconds East, over and across said Beckham Place, a distance of 70.58 feet to a point for corner being on the south right of way line of said Beckham Place;

THENCE South 57 degrees 35 minutes 58 seconds West, along said south right of way line, a distance of 198.06 feet to a point for corner at the point of intersection of said south right of way line and the east right of way line of said Beckham Place same being the east line of said City of Fort Worth tract;

THENCE South 06 degrees 51 minutes 00 seconds East, along said east right of way line, a distance of 58.06 feet to a point for corner being at the intersection of said east right of way line and the north right of way line of Mistletoe Boulevard (a variable width right of way);

THENCE North 89 degrees 22 minutes 55 seconds West, over and across said Beckham Place, a distance of 50.32 feet to a point for corner being on the east right of way line of said Texas Railway Company;



THENCE North 06 degrees 00 minutes 10 seconds West, along said east right of way line, a distance of 27.87 feet to a point for corner being the northwest corner of said City of Fort Worth tract;

THENCE North 06 degrees 00 minutes 02 seconds West, continuing along said east right of way line, a distance of 77.41 feet to the POINT OF BEGINNING and Containing 18,748 square feet or 0.4304 acres of land, more or less.

Note: The courthouse fire of 1876 destroyed the record plats and conveyance instruments related to this property.



LOT 6 & 7  
TRICREANT SUBDIVISION  
OF LOT 1, BLOCK 1  
WEST VIEW ADDITION  
VOL. 204, PG. 37  
P.R.T.C.T.

DISTRIBUTION EASEMENT  
AND RIGHT-OF-WAY  
VOL. 328, PG. 619  
D.R.T.C.T.

GENERAL WARRANTY DEED  
WITH MINERAL RESERVATIONS  
1700 MISTLETOE PARTNERS, LTD.  
DOC. NO. 0207307960  
O.R.T.C.T.

SANITARY SEWER  
EASEMENT  
VOL. 10737, PG. 1243  
O.R.T.C.T.

PERMANENT UTILITY  
EASEMENT  
DOC. NO. 0199046006  
O.R.T.C.T.

WARRANTY DEED  
ALL SAINTS EPISCOPAL HOSPITAL  
OF FORT WORTH, INC.  
VOL. 110876, PG. 1719  
O.R.T.C.T.

E.S. HARRIS SURVEY  
ABSTRACT NO. 688

ROW AREA  
18,748 SQ.FT.  
0.4304 ACRES

TEXAS RAILWAY COMPANY

1/2" FIR  
W/GRANT ENG.  
RPLS 4151  
CAP

POINT OF  
BEGINNING

BECKHAM PLACE VACATION  
ORDINANCE No. 4329

BECKHAM PLACE  
80' RIGHT-OF-WAY

LOT 1-R-1, BLOCK 3R,  
FRISCO ADDITION  
DOC. NO. D 212125731  
O.R.T.C.T.

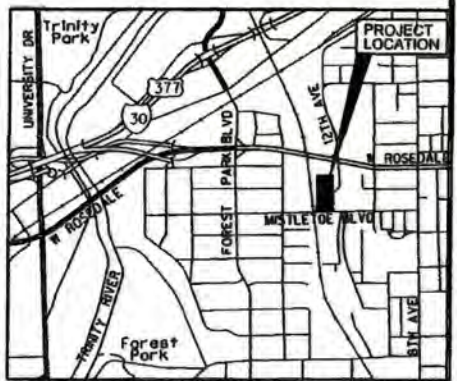
BECKHAM STREET  
(NEW 60' RIGHT-OF-WAY  
BY SEPARATE INSTRUMENT)

REMAINDER OF  
20'x20' PUBLIC OPEN  
SPACE EASEMENT  
CAB. B. SL. 2241  
P.R.T.C.T.

CITY OF FORT WORTH  
VOLUME 3418, PG. 632  
O.R.T.C.T.

REMAINDER OF  
20'x20' PUBLIC OPEN  
SPACE EASEMENT  
CAB. B. SL. 2241  
P.R.T.C.T.

MISTLETOE BLVD.  
VARIABLE WIDTH RIGHT-OF-WAY



LOCATION MAP

N.T.S.  
A LEGAL DESCRIPTION  
ACCOMPANIES THIS EXHIBIT



SCALE: 1"=50'

EXHIBIT "A"  
BECKHAM PLACE  
RIGHT OF WAY VACATION  
IN THE

E. S. HARRIS SURVEY  
ABSTRACT NO. 688  
CITY OF FORT WORTH, TARRANT COUNTY TEXAS

LEGEND

- MON ● FOUND TXDOT CONC MON
- FIR ● FOUND IRON ROD
- PFC▲ CALCULATED POINT FOR CORNER
- SIR ○ 1/2" SET IRON ROD W/PLASTIC YELLOW CAP STAMPED "HALFF ASSOC., INC."
- (CM) CONTROL MONUMENT
- PROPOSED CENTER LINE
- - - PROPOSED RIGHT-OF-WAY LINE
- - - EXISTING PROPERTY LINE
- - - PROPOSED EASEMENT LINE
- ▭ RIGHT-OF-WAY TO BE VACATED



Basis of Bearing is the Texas Coordinate System North Central Zone (4202), North American Datum of 1983 (NAD 83) 2011 adjustment, observed by RTK using the Leica SmartNet Network on 10/06/2017. Distances shown are US Survey feet displayed in surface values, scale factor is 1.00012.



4000 FOSSIL CREEK BLVD FORT WORTH, TEXAS 78137 (817) 847-1422  
TBPLS FIRM NO. 10029605

DGN: 32590-EXH001.dgn

AVO: 32590

DATE: 01/04/2018

PAGE NO.: 3 OF 3

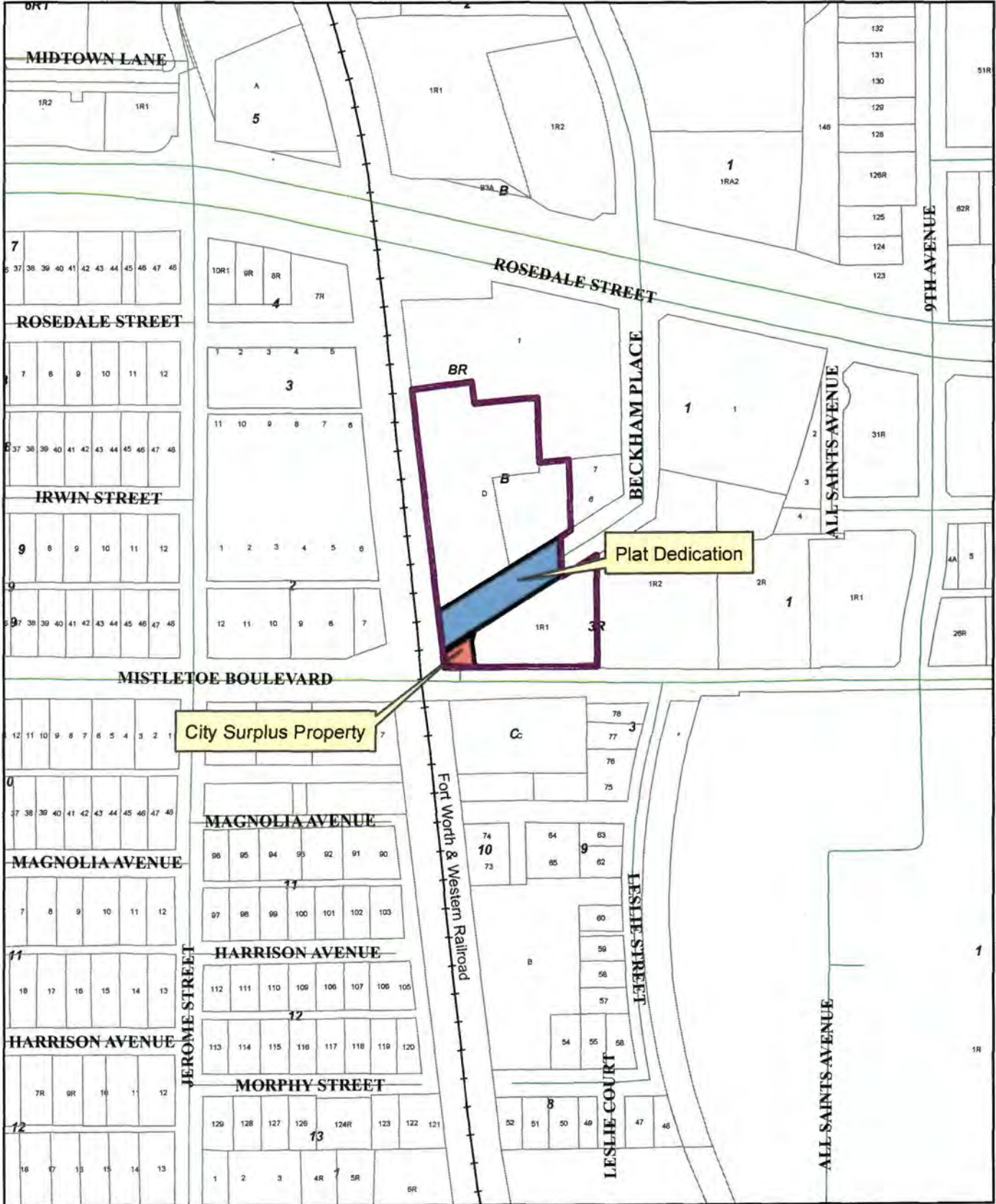
I, Douglas A. Calhoun, Registered Professional Land Surveyor, do hereby certify that this parcel was prepared from a survey made on the ground under my supervision and direction.

1/8/2018 8:55:34 AM aha02 HALFF I:\32009\32590\001\CA\DD\Sheet\32590-EXH001.dgn






# VA-18-001 Vicinity Map



1 inch = 250 feet

 Property to be replatted  
with vacated right-of-way







October 4, 2018  
32590

RE: Mistletoe Station Beckham Vacation

Dear Tim Irvine,

Beckham Place was vacated on the Mistletoe Station project to facilitate for a future quiet zone by moving the public Beckham Place connection to Mistletoe Blvd farther away from the railroad. The existing location did not meet the quiet zone spacing requirements from the railroad.

Sincerely,

HALFF ASSOCIATES, INC.

A handwritten signature in blue ink, appearing to read "Brian Haynes", is written over the typed name.

Brian Haynes, P.E.  
Vice President

10

**BOARD ACTION REQUEST**  
**ASSET MANAGEMENT DIVISION**  
**DECEMBER 6, 2018**

Presentation, discussion, and possible action to approve a Material Amendment to the Housing Tax Credit Land Use Restriction Agreement for La Vista Townhomes (HTC #01002)

**RECOMMENDED ACTION**

**WHEREAS**, La Vista Townhomes (the “Development”) received a 9% Housing Tax Credit (“HTC”) award in 2001 to construct 76 multifamily units in Del Rio, Val Verde 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 and for having a Historically Underutilized Business (“HUB”) participate in the ownership of the Development;

**WHEREAS**, the Land Use Restriction Agreement (“LURA”) for the Development requires a two-year ROFR period and requires that throughout the Compliance Period, unless otherwise permitted by the Department, the HUB shall remain the Managing General Partner, and must maintain regular, continuous, and substantial participation in the development, operation and ownership of the Development;

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

**WHEREAS**, in Spring 2015, the Texas Legislature 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 an entity controlled by an entity described by, §42(i)(7)(A), Internal Revenue Code of 1986;

**WHEREAS**, removal of a HUB requirement from the LURA is a non-material amendment under 10 TAC §10.405(b)(1), and amendment to the ROFR period in the LURA is a material change requiring Board approval under 10 TAC §10.405(b)(2)(E); and

**WHEREAS**, the 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 at which no negative public comment was received;

**NOW, therefore, it is hereby**



**RESOLVED**, that the material LURA amendment for La Vista Townhomes is approved, as presented to this meeting, and the Acting Director and his designees are hereby, authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

### **BACKGROUND**

The Development was approved in 2001 for a 9% HTC award to construct 76 multifamily units in Del Rio, Val Verde County. In a letter dated October 17, 2018, Housing Associates of Del Rio, Ltd. (the “Development Owner”) through its General Partner (MGroup Holdings, Inc., Mark Musemeche, Vice President) requested approval to amend the LURA related to the ROFR provision and to eliminate the requirement for a HUB to hold an ownership interest and to maintain regular, continuous, and substantial participation in the development and operation of the Development in order to facilitate a proposed sale of the property.

The additional use restrictions in the current LURA require, among other things, a 25-year Compliance Period, a 40-year Extended Use Period, material participation by a HUB throughout the Compliance Period and a two-year ROFR to sell the Development based on a set order of priority to a community housing development organization (as defined for purposes of the federal HOME Investment Partnership Program at 24 CFR Part 92), to a qualified nonprofit organization (as defined in Internal Revenue Code §42(h)(5)(C)), or to a tenant organization if at any time after the fifteenth year of the Compliance Period the Owner decides to sell the property.

The request letter states that the Development Owner desires to pursue a proposed sale of the property. Therefore, the HUB General Partner is requesting approval to remove the HUB requirement and has stated that it is acting of its own volition in making this request, and that the HUB’s participation regarding the Development has been substantive and meaningful and will continue to be until the sale is effectuated. The HUB General Partner intends to remain as General Partner of this Development until the anticipated sale is closed and ownership is transferred to a new owner, subject to the Department’s review and approval of said transfer.

In 2015, the 84<sup>th</sup> Texas Legislature passed HB 3576, which amended Tex. Gov’t Code §2306.6725 and §2306.6726 to allow for a 180-day ROFR period and to allow for a Qualified Entity to purchase a development under a ROFR provision of the LURA and satisfy the ROFR requirement. Additionally, §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 2018 Uniform Multifamily Rules, Subchapter E, §10.407 implemented 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 the Department’s rule at Tex. Gov’t Code §2306.6712 and 10 TAC §10.405(b). The Development Owner held a public hearing on the matter on November 7, 2018, at 11:00 a.m. at the Development’s management office/clubhouse. No negative public comment was received regarding the requested amendment.

Staff recommends approval of the LURA amendment as presented herein.

# HOUSING ASSOCIATES OF DEL RIO LTD.

1013 Van Buren Street  
Houston, Texas 77019

October 17, 2018

Via Email to [rosalio.banuelos@tdhca.state.tx.us](mailto:rosalio.banuelos@tdhca.state.tx.us)

Rosalio Banuelos, Interim Director  
Asset Management Division  
Texas Department of Housing and Community Affairs  
221 East 11th Street  
Austin, Texas 78701-2410

Re: # 01002; La Vista Townhomes, Del Rio, Val Verde County, Texas  
(the **Property**).

Dear Rosalio:

Housing Associates of Del Rio Ltd., a Texas limited partnership (the "**Project Owner**") and the current owner of the Property, hereby submits this letter as a request for a material LURA amendment in accordance with §10.405(b)(2)(E) of the 2018 Uniform Multifamily Rules (the "**Rules**"). We hereby request that the Right of First Refusal ("**ROFR**") period be changed as permitted by §2306.6725 of the Tex. Gov't Code. We simultaneously request that the HUB Participation Requirement be removed pursuant to §10.405(a)(1)(A) of the Rules. It is anticipated that the HUB participation will conclude upon the sale of the Property pursuant to the amended ROFR. A check for the \$2,500 LURA Amendment Fee is enclosed.

### **180-day ROFR Period Requested.**

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)(vi) of the Rules permits a LURA amendment in order to conform a ROFR to the provisions of Section 2306.6726. The undersigned, acting as general partner on behalf of the Project Owner, hereby requests a LURA amendment to eliminate the two-year ROFR period and replace it with the 180-day ROFR period, and permit the Owner to transfer the Property to certain kinds of entities through the ROFR process.

### **Removal of HUB Requirement Requested.**

You are aware that we are requesting this change to the ROFR process as a preliminary step in contemplation of a future sale of the Project to a Qualified Nonprofit Organization, as defined in the Rules. For flexibility in the future operation of the Project, we are requesting that the LURA also be amended to remove the requirement for material participation by a HUB. It is our understanding that pursuant to §10.406(g) of the Rules, the TDHCA is willing to amend the LURA in this regard if the following conditions apply:

- (i) The selling HUB is acting of its own volition;
- (ii) The participation by the HUB has been substantive and meaningful, enabling the HUB to realize financial benefit and to acquire skills relating to the ownership and operation of affordable housing; and

(iii) The proposed purchaser meets the Department's standards for ownership transfers.

We enclose an Affidavit regarding the above conditions by Mark Musemeche, Vice President of MGroup Holdings, Inc., a Texas corporation and certified HUB, which serves as the sole and managing General Partner of the Project Owner.

In accordance with Section 10.405(b) of the Rules, the sole General Partner, acting on behalf of the Owner, is delivering a fee in the amount of \$2,500 and commits to hold a public hearing, as required by the Rules, and to notify all residents, investors, lenders, and appropriate elected officials of the proposed amendment. Drafts of the public hearing notices are attached for your consideration. Upon approval from TDHCA, the Project Owner will proceed to set a date and time for the Public Hearing and will provide TDHCA with evidence that the notice has been delivered and the hearing has been conducted. We request that a Staff recommendation in support of this request be considered at the December 6, 2018 Board meeting.

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

Sincerely,

A handwritten signature in black ink, consisting of a stylized, overlapping circular scribble.

Mark Musemeche, Vice President  
MGroup Holdings, Inc.  
General Partner

Enclosures



STATE OF TEXAS

COUNTY OF HARRIS

AFFIDAVIT

I, MARK MUSEMECHE, on behalf of MGROUP HOLDINGS, INC., a Texas corporation and a certified Historically Underutilized Business ("HUB"), being first duly sworn on oath, depose and say that:

1. I am the Vice President and a Director of MGroup Holdings, Inc., a Texas corporation (the "Corporation"). I am fully familiar with all the Corporation's business and financial affairs, including, without limiting the generality of the foregoing, all of the matters herein described.

2. The Corporation is the sole and managing General Partner of Housing Associates of Del Rio Ltd., a Texas limited partnership (the "Partnership"). The Partnership owns and operates La Vista Townhomes in Del Rio, Val Verde County, Texas (the "Project").

3. This Affidavit is given in connection with the Partnership's application to the Texas Department of Housing and Community Affairs ("TDHCA") to amend the Land Use Restriction Agreement ("LURA") filed in the real property records of Val Verde County, Texas. The amendment request includes the elimination of the requirement that the owner of the Project include a certified Historically Underutilized Business ("HUB") acting as managing general partner, and that the HUB maintain regular, continuous and substantial participation in the development, operation and ownership of the Project.

4. This LURA amendment is being requested in connection with the proposed sale of the Project pursuant to the Right of First Refusal contained in the LURA.

5. The Corporation is the current HUB serving in the role of sole and managing General Partner of the Partnership.

6. The Corporation has agreed to have the Partnership sell the Project, and is acting of its own volition.

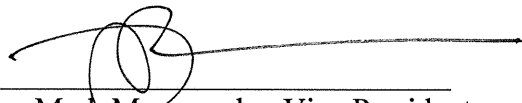
7. The participation by the Corporation has been substantive and meaningful. The Corporation has realized financial

benefit from its involvement in the Partnership and the Project, and has been able to acquire skills relating to the ownership and operation of affordable housing.

8. The Corporation and the affiant believe that the proposed purchaser meets the TDHCA's standards for ownership transfers.

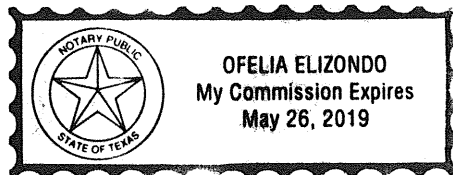
Corporation:


MGROUP HOLDINGS, INC.,  
a Texas corporation and HUB

By:   
Mark Musemeche, Vice President

SWORN to before me on this 17 day of October 2018.

[SEAL]



  
Notary Public, State of Texas

# HOUSING ASSOCIATES OF DEL RIO LTD.

1013 Van Buren Street  
Houston, Texas 77019  
713.522.4141

October 25, 2018

Dear Resident:

La Vista Townhomes (the “Community”) is owned by Housing Associates of Del Rio Ltd. (the “Owner”). Some years ago, 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, 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.

Additionally, the Owner is requesting that there be a further change to the contract to remove the requirement that the ownership structure of the Owner include a Historically Underutilized Business for the remainder of a 25-year Compliance Period.

In making its decision whether to approve Owner’s request, the Department considers the opinions and views of the members of the Community. Accordingly, there will be a public meeting to discuss this matter. This meeting will take place at the Community’s management office/clubhouse at **1715 Kingsway, Del Rio, Val Verde County, Texas 78840**, on **Wednesday, November 7, 2018 at 11:00 a.m.**

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

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.managment@tdhca.state.tx.us](mailto:asset.managment@tdhca.state.tx.us) or you may mail them to:

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



**HOUSING ASSOCIATES OF DEL RIO LTD.**

1013 Van Buren Street  
Houston, Texas 77019  
713.522.4141

We appreciate that La Vista Townhomes is your home and we invite you to attend and give your input on this proposal.

Sincerely,

HOUSING ASSOCIATES OF DEL RIO LTD.,

By: MGroup Holdings, Inc.,  
General Partner

By:   
Mark Musemeche, Vice President

# HOUSING ASSOCIATES OF DEL RIO LTD.

1013 Van Buren Street  
Houston, Texas 77019  
713.522.4141

October 25, 2018

Boston Financial Investment Management  
3102 Maple Avenue, Suite 400  
Dallas, Texas 75201  
Attention: Mr. Eric Bonney

Dear Mr. Bonney:

Housing Associates of Del Rio Ltd. (the "Owner") is the owner of La Vista Townhomes (the "Community") which is located at 1715 Kings Way, Del Rio, Val Verde County, Texas 78840. Some years ago, 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 "TDHCA").

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.

Additionally, the Owner is requesting that there be a further change to the contract to remove the requirement that the ownership structure of the Owner include a Historically Underutilized Business for the remainder of a 25-year Compliance Period.

In making its decision whether to approve Owner's request, the TDHCA 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 at 1715 Kingsway, Del Rio, Texas 78840, on Wednesday, November 7, 2018 at 11:00 a.m.

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

Sincerely,

HOUSING ASSOCIATES OF DEL RIO LTD.,

By: MGroup Holdings, Inc.,  
General Partner

By:   
Mark Musemeche, Vice President

# HOUSING ASSOCIATES OF DEL RIO LTD.

1013 Van Buren Street  
Houston, Texas 77019  
713.522.4141

October 25, 2018

Servicing & Asset Management  
2177 Youngman Avenue  
St. Paul, MN 55116  
Attn: Bill Johnson

Dear Mr. Johnson:

Housing Associates of Del Rio Ltd. (the "Owner") is the owner of La Vista Townhomes (the "Community") which is located at 1715 Kings Way, Del Rio, Val Verde County, Texas 78840. Some years ago, 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 "TDHCA").

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.

Additionally, the Owner is requesting that there be a further change to the contract to remove the requirement that the ownership structure of the Owner include a Historically Underutilized Business for the remainder of a 25-year Compliance Period.

In making its decision whether to approve Owner's request, the TDHCA 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 at **1715 Kingsway, Del Rio, Texas 78840**, on **Wednesday, November 7, 2018 at 11:00 a.m.**

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

Sincerely,

HOUSING ASSOCIATES OF DEL RIO LTD.,

By: MGroup Holdings, Inc.,  
General Partner

By: 

Mark Musemeche, Vice President



# HOUSING ASSOCIATES OF DEL RIO LTD.

1013 Van Buren Street  
Houston, Texas 77019  
713.522.4141

October 25, 2018

Kevin Sullivan, National Director  
Servicing & Asset Management  
2177 Youngman Avenue  
St. Paul, MN 55116

Dear Mr. Sullivan:

Housing Associates of Del Rio Ltd. (the "Owner") is the owner of La Vista Townhomes (the "Community") which is located at 1715 Kings Way, Del Rio, Val Verde County, Texas 78840. Some years ago, 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 "TDHCA").

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.

Additionally, the Owner is requesting that there be a further change to the contract to remove the requirement that the ownership structure of the Owner include a Historically Underutilized Business for the remainder of a 25-year Compliance Period.

In making its decision whether to approve Owner's request, the TDHCA 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 at **1715 Kingsway, Del Rio, Texas 78840**, on **Wednesday, November 7, 2018 at 11:00 a.m.**

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

Sincerely,

HOUSING ASSOCIATES OF DEL RIO LTD.,

By: MGroup Holdings, Inc.,  
General Partner

By: 

Mark Musemeche, Vice President

**HOUSING ASSOCIATES OF DEL RIO LTD.**

**1013 Van Buren Street  
Houston, Texas 77019  
713.522.4141**

October 25, 2018

FedX

Honorable Mayor Bruno Lozano  
City of Del Rio  
100 West Broadway  
Del Rio, Texas 78840

Dear Mayor Lozano:

Housing Associates of Del Rio Ltd. (the "Owner") is the owner of La Vista Townhomes (the "Community") which is located at 1715 Kings Way, Del Rio, Val Verde County, Texas 78840. Some years ago, 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.

Additionally, the Owner is requesting that there be a further change to the contract to remove the requirement that the ownership structure of the Owner include a Historically Underutilized Business for the remainder of a 25-year Compliance Period.

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 at 1715 Kingsway, Del Rio, Texas 78840, on **Wednesday, November 7, 2018 at 11:00 a.m.**

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

Sincerely,

HOUSING ASSOCIATES OF DEL RIO LTD.,

By: MGroup Holdings, Inc.,  
General Partner

By:   
Mark Musemeche, Vice President

**HOUSING ASSOCIATES OF DEL RIO LTD.**

1013 Van Buren Street  
Houston, Texas 77019  
713.522.4141

October 25, 2018

State Representative Poncho Nevárez  
Texas State House District 74  
P.O. Box 2910  
Austin, TX 78768

*Certified mail  
NOV 01 09:50 AM '18  
0003 0084 1788*

Dear Representative Nevárez:

Housing Associates of Del Rio Ltd. (the "Owner") is the owner of La Vista Townhomes (the "Community") which is located at 1715 Kings Way, Del Rio, Val Verde County, Texas 78840. Some years ago, 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.

Additionally, the Owner is requesting that there be a further change to the contract to remove the requirement that the ownership structure of the Owner include a Historically Underutilized Business for the remainder of a 25-year Compliance Period.

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 at 1715 Kingsway, Del Rio, Texas 78840, on **Wednesday, November 7, 2018 at 11:00 a.m.**

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

Sincerely,

HOUSING ASSOCIATES OF DEL RIO LTD.,

By: MGroup Holdings, Inc.,  
General Partner

By:   
Mark Musemeche, Vice President



**HOUSING ASSOCIATES OF DEL RIO LTD.**

1013 Van Buren Street  
Houston, Texas 77019  
713.522.4141

October 25, 2018

Texas State Senator Peter P. Flores  
Texas State Senate District 19  
P.O. Box 12068, Capitol Station  
Austin, TX 78711

*Certified mail  
7004 0150 0003 0054 1771*

Dear Senator Flores:

Housing Associates of Del Rio Ltd. (the "Owner") is the owner of La Vista Townhomes (the "Community") which is located at 1715 Kings Way, Del Rio, Val Verde County, Texas 78840. Some years ago, 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.

Additionally, the Owner is requesting that there be a further change to the contract to remove the requirement that the ownership structure of the Owner include a Historically Underutilized Business for the remainder of a 25-year Compliance Period.


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 at 1715 Kingsway, Del Rio, Texas 78840, on **Wednesday, November 7, 2018 at 11:00 a.m.**

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

Sincerely,

HOUSING ASSOCIATES OF DEL RIO LTD.,

By: MGroup Holdings, Inc.,  
General Partner

By:   
Mark Musemeche, Vice President

November 7, 2018

Public Hearing For La Vista Townhomes

MINUTES

At 11:00 am on Wednesday November 7, 2018, Mr. Mark Musemeche representing the Property Ownership introduced himself via tele-conference and explained the purpose of the public hearing and the proposed change to the ROFR as well as the change in the LURA to no longer require a HUB (Historically Underutilized Business) to participate in the ownership of the property. Mr. Musemeche went on to explain that the ownership group is considering selling the property to a qualified non-profit and pursuant to such possibly, they need to modify certain conditions in the existing property LURA which were outlined in the notice letter provided. Also in attendance representing the ownership management was Ms. Leticia Clark. Mr. Musemeche then opened the meeting for questions:

Questions asked by residents:

1. Danny Archer #101 Main concerns were – “Was management going to change? Was his rent going to go up?”

Reply- Mr. Musemeche replied saying that the affordable rent restrictions were not going to be affected by the ROFR modification and that the affordability of the rents is restricted in the LURA which is a recorded agreement and is in effect for at least another 15-20 years. Mr. Musemeche re-emphasized the change being made was to the time period that the property could be offered to purchase by qualified non-profits or tenant organizations, not the affordability of the rents.

2. Zahara Burton #204 Quoted “Don’t fix something that is not broken”. “I am on a fixed income”

Reply- Mr. Musemeche again replied that the requested changes to the ROFR time period and HUB certification would not affect her rental affordability.

No other questions or comments were made by the participants.

Mr. Musemeche thanked all that participated in the meeting and concluded the Hearing at 11:20 a.m.

LA VISTA TOWNHOMES

PUBLIC HEARING FOR LA VISTA TOWNHOMES

DATE: November 7, 2018 TIME: 11:00 am

LOCATION: 1715 Kingsway, Del Rio, Texas 78840

DATE TIME NAME APT # PHONE #

DATE	TIME	NAME	APT #	PHONE #
Nov 11 2018	10:55	Charles J. Brown		
11/11/2018	10:56	Danny K. Archer		
11/7/2018	10:58	Esmeralda Flores		
11/7/2018	10:59	M <sup>a</sup> Alicia Reyes C		
11/7/2018	11:00	Zahra Burton		
11/7/2018	11:00	Maria G. Villanuel		
11/7/2018	11:00	Maria Mtz de Tolares		
11/7/2018	11:00	Sylvia Gonzalez		
11/7/2018	11:00	Glenn Morales		
11/7/18	11:00	JULIA BERAIN		
11-7-2018	11:00	Alicia McGinnis		
11-7-18	11:00	Victoria Garcia		



1p

**BOARD ACTION REQUEST**  
**ASSET MANAGEMENT DIVISION**  
**DECEMBER 6, 2018**

Presentation, discussion, and possible action regarding changes in the structures of the Development Owner, Developer and Guarantor prior to issuance of IRS Form(s) 8609 for Village at Palm Center (HTC #13428)

**RECOMMENDED ACTION**

**WHEREAS**, Village at Palm Center (the “Development”) received an award of 4% Housing Tax Credits (“HTCs”) in 2013 for the construction of 222 multifamily units in Houston, Harris County;

**WHEREAS**, there was an unfortunate, involuntary change in the ownership structure of The ITEX Group, LLC due to the death of K.T. (Ike) Akbari;

**WHEREAS**, Mr. Akbari’s interests were transferred to the Estate of K.T. Akbari and other related party entities;

**WHEREAS**, Christopher A. Akbari has purchased the interest in the Estate of K.T. Akbari and the Akbari Family Dynasty Trust FBO Crystal Maryam Akbari; and

**WHEREAS**, the transfer of ownership is being requested prior to the issuance of IRS Forms 8609, and 10 TAC §10.406(e) requires that parties reflected in the Application that have control must remain in the ownership structure and retain such control, unless approved otherwise by the Board, and changes in Developers or Guarantors are considered nonmaterial amendments under 10 TAC §10.405(a)(3)(C) but are included as part of this board action request;

**NOW, therefore, it is hereby**

**RESOLVED**, that the ownership transfer and amendments in the Developer and Guarantors for the Village at Palm Center are approved as presented in this meeting, and the Acting Director and his designees are hereby authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

## **BACKGROUND**

The cost certification for the Village at Palm Center was submitted and included a letter notifying the Department of an involuntary change in the ownership structure of the Development. The change involves The ITEX Group, LLC (“ITEX”). Specifically, the change is due to the unfortunate passing of Mr. K.T. (Ike) Akbari, the original sole member of ITEX. Ownership transferred to The Estate of K.T. (Ike) Akbari (86% member) with Christopher A. Akbari as independent executor; Christopher A. Akbari (10% member); The Akbari Family Dynasty Trust FBO Christopher Ali Akbari U/A, Trustee-Christopher A. Akbari (2% member); and The Akbari Family Dynasty Trust FBO Crystal Maryam Akbari U/A, Trustee-Christopher A. Akbari (2% member).

Christopher A. Akbari has now purchased the interests in the Estate of K.T. Akbari and the Akbari Family Trust FBO Crystal Maryam Akbari. ITEX is now composed of Christopher A. Akbari (30% member) and The Akbari Family Dynasty Trust FBO Christopher Ali Akbari U/A, Trustee-Christopher A. Akbari (70% member).

ITEX is a Co-Owner, Co-Developer, and Co-Guarantor of several entities that are involved in the Development. Pursuant to 10 TAC §10.406(e), prior to the issuance of IRS Form(s), the party(ies) reflected in the Application as having control must remain in the ownership structure and retain such control, unless approved otherwise by the Board. The changes in Developer or Guarantors are considered nonmaterial amendments under 10 TAC §10.405(a)(3)(C) but are included as part of this board action request. The Application score for the Development is not affected by the changes in the ownership structure.

Houston 5110 Griggs Road Residential, LP remains as the Development Owner. Houston 5110 Griggs Road GP, LLC (the “General Partner”) remains the general partner with 0.01% interest. The members of the General Partner are ITEX Partners, LLC (90% interest), with The ITEX Group, LLC (80% interest) and Christopher A. Akbari (20% interest) as members, and AHDPC Holdings, LLC (10% interest), with Gerald Womack as its sole member.

Griggs Road SLP, LLC remains as the Special Limited Partner with 0.01% interest with ITEX Partners, LLC (85% interest) and Nautical Affordable Housing, Inc. (15% interest) as members. Nautical Affordable Housing, Inc. was originally a member of the General Partner, but in 2014, its interest was transferred to the Special Limited Partner. ITEX Partners, LLC was also added as a member of the Special Limited Partner in 2014. AHP Housing Fund 196, LLC remains as the Investment Partner with 99.98% interest. Other than the change made to the ITEX Group, LLC, the Developer and the Guarantors remain the same.

Staff recommends approval of the requested change in the structure of the Development Owner, the Developer, and the Guarantors for the Development indicated above.



TDHCA – Multifamily Housing Specialist  
Attn: Elizabeth Henderson  
221 E. 11<sup>th</sup> Street  
Austin, TX 78701

RE: App 13428 – Village at Palm Center

Dear Ms. Henderson,

I would like to inform you that there has been an ownership change to Village at Palm Center's organization structure.

Per the organization chart attached titled, "Original Organizational Chart," you can see that the ITEX Group, LLC was originally composed of the following entities:

- Estate of K.T. (Ike) Akbari, Deceased; Independent Executor – Christopher A. Akbari – 86% Member
- Christopher A. Akbari – 10% Member
- The Akbari Family Dynasty Trust FBO Christopher Ali Akbari U/A; Trustee – Christopher A. Akbari – 2% Member
- The Akbari Family Dynasty Trust FBO Crystal Maryam Akbar U/A; Trustee – Christopher A. Akbari – 2% Member

Christopher A. Akbari has purchased the interests in the Estate of K.T. Akbari and the The Akbari Family Dynasty Trust FBO Crystal Maryam Akbari. As reflected in the attached organization chart titled, "Updated Organizational Chart," you can see that The ITEX Group, LLC is now composed of the following entities:

- Christopher A. Akbari – 30% Member
- The Akbari Family Dynast Trust FBO Christopher Ali Akbari U/A; Trustee – Christopher A. Akbari – 70% Member.

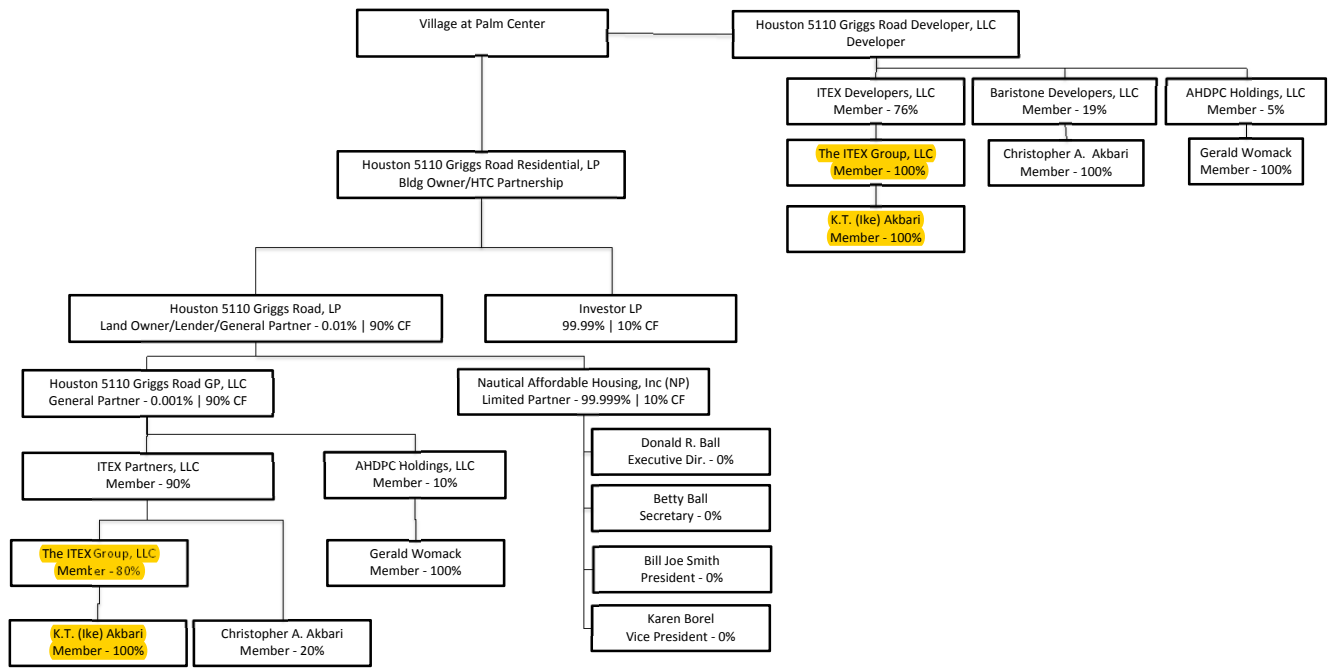
As you can see there have not been any new principals added to the organization chart. The only change made was to the structure of The ITEX Group, LLC entity. If you have any questions, please feel free to call me directly at 832-941-5345.

Sincerely,



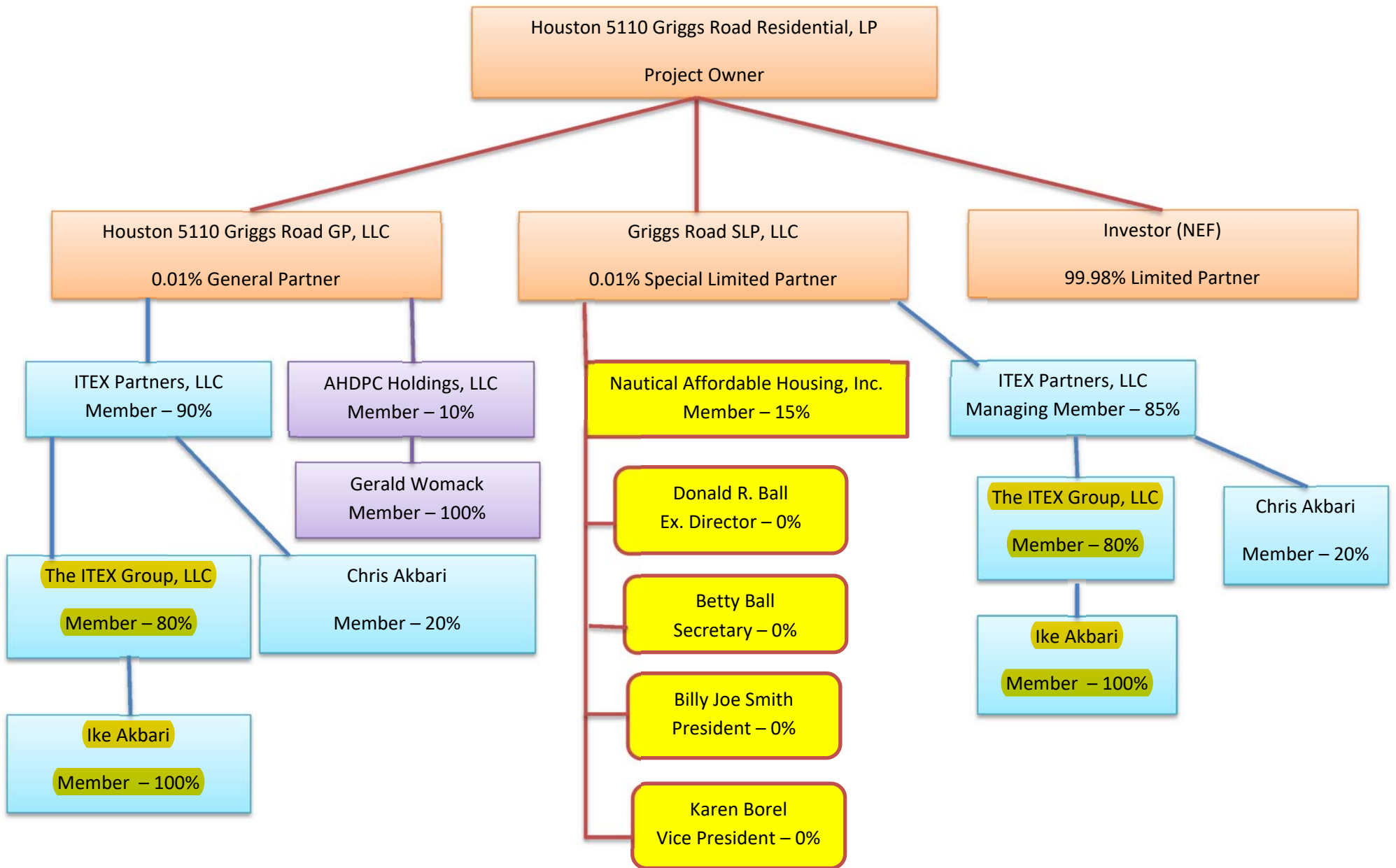
Tim Nolan  
Executive Vice President

FROM ORIGINAL APPLICATION



# Original Organizational Chart

## VILLAGE AT PALM CENTER (AUGUST 2014)

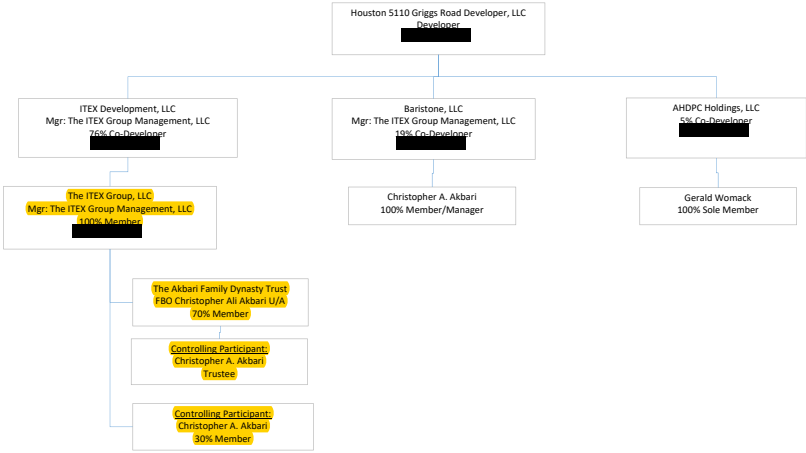




# Updated Organizational Chart

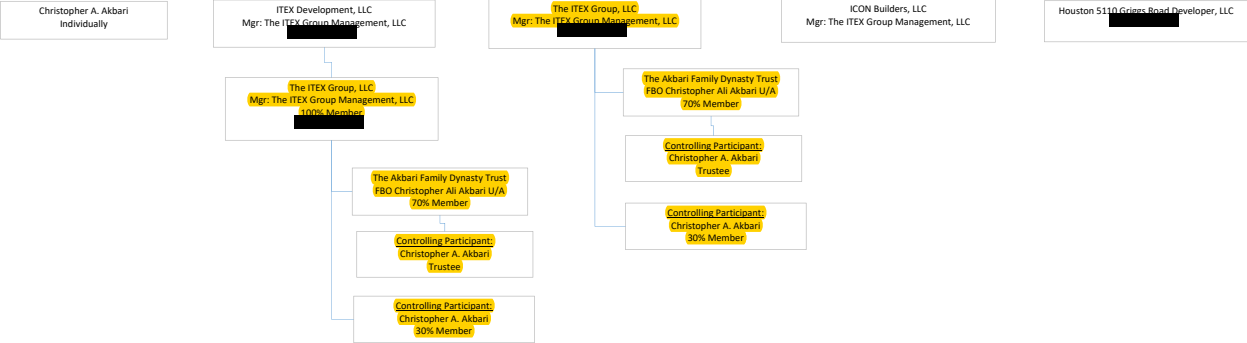


# Updated Organizational Chart



# Updated Organizational Chart

Guarantors





**BOARD ACTION REQUEST**  
**ASSET MANAGEMENT DIVISION**  
**DECEMBER 6, 2018**

Presentation, discussion, and possible action regarding changes in the structures of the Development Owner, Developer and Guarantor prior to the issuance of IRS Form(s) 8609 for The Retreat at Westlock (HTC #15414)

**RECOMMENDED ACTION**

**WHEREAS**, The Retreat at Westlock (the “Development”) received an award of 4% Housing Tax Credits (“HTCs”) in 2015 for the construction of 140 multifamily units in Tomball, Harris County;

**WHEREAS**, there was an unfortunate, involuntary change in the ownership structure of The ITEX Group, LLC due to the death of K.T. (Ike) Akbari;

**WHEREAS**, Mr. Akbari’s interests were transferred to the Estate of K.T. Akbari and other related party entities;

**WHEREAS**, Christopher A. Akbari has purchased the interest in the Estate of K.T. Akbari and the Akbari Family Dynasty Trust FBO Crystal Maryam Akbari; and

**WHEREAS**, the transfer of ownership is being requested prior to the issuance of IRS Forms 8609, and 10 TAC §10.406(e) requires that parties reflected in the Application that have control must remain in the ownership structure and retain such control, unless approved otherwise by the Board, and changes in Developers or Guarantors are considered nonmaterial amendments under 10 TAC §10.405(a)(3)(C) but are included as part of this board action request;

**NOW, therefore, it is hereby**

**RESOLVED**, that the ownership transfer and amendments in the Developer and Guarantors for The Retreat at Westlock are approved as presented in this meeting, and the Acting Director and his designees are hereby authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

## **BACKGROUND**

The cost certification for The Retreat at Westlock was submitted and included a letter notifying the Department of an involuntary change in the ownership structure of the Development. The change involves The ITEX Group, LLC (“ITEX”). Specifically, the change is due to the unfortunate passing of Mr. K.T. (Ike) Akbari, the original sole member of ITEX. Ownership transferred to The Estate of K.T. (Ike) Akbari (86% member) with Christopher A. Akbari as independent executor; Christopher A. Akbari (10% member); The Akbari Family Dynasty Trust FBO Christopher Ali Akbari U/A, Trustee-Christopher A. Akbari (2% member); and The Akbari Family Dynasty Trust FBO Crystal Maryam Akbari U/A, Trustee-Christopher A. Akbari (2% member).

Christopher A. Akbari has now purchased the interests in the Estate of K.T. Akbari and the Akbari Family Trust FBO Crystal Maryam Akbari. ITEX is now composed of Christopher A. Akbari (30% member) and The Akbari Family Dynasty Trust FBO Christopher Ali Akbari U/A, Trustee-Christopher A. Akbari (70% member).

ITEX is a Co-Owner, Co-Developer, and Co-Guarantor of several entities that are involved in the Development. Pursuant to 10 TAC §10.406(e), prior to the issuance of IRS Form(s), the party(ies) reflected in the Application as having control must remain in the ownership structure and retain such control, unless approved otherwise by the Board. The changes in Developer or Guarantors are considered nonmaterial amendments under 10 TAC §10.405(a)(3)(C) but are included as part of this board action request. The Application score for the Development is not affected by the changes in the ownership structure.

Retreat at Westlock, Ltd. remains as the Development Owner. HCHA Westlock, LLC remains the general partner with 0.0075% interest and with HCHA Redevelopment Authority, Inc. as its sole member. Retreat at Westlock SLP, LLC remains as the Class A Limited Partner with 0.0025% interest and with ITEX Partners, LLC as its sole member. The ITEX Group, LLC (80% interest) and Christopher A. Akbari (20% interest) are the members of ITEX Partners, LLC. Hudson SLP, LLC remains as the Special Limited Partners with 0.01% interest, and Hudson Retreat at Westlock, LLC remains as the Investment Partner with 99.98% interest. At Application, the Developer, Retreat at Westlock Developer, LLC, consisted of Harris County Housing Authority Public Facility Corporation (50% member) and ITEX Development, LLC (50% member). However, Harris County Housing Authority Public Facility Corporation has been replaced by HCHA Redevelopment Authority, Inc., but both entities are controlled by the same officers. Other than the change made to the ITEX Group, LLC, no other changes were made to the Developer and the Guarantors.

Staff recommends approval of the requested change in the structure of the Development Owner, the Developer, and the Guarantors for the Development indicated above.



9 Greenway Plaza, Suite 1250  
Houston, TX 77046  
P: 713.963.8660 F: 713.963.8164

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TDHCA – Multifamily Housing Specialist  
Attn: Elizabeth Henderson  
221 E. 11<sup>th</sup> Street  
Austin, TX 78701

RE: App 15414 – Retreat at Westlock

Dear Ms. Henderson,

I would like to inform you that there has been an ownership change to Retreat at Westlock's organization structure. Per the organization chart attached titled, "Original Organizational Chart," you can see that the ITEX Group, LLC was originally composed of the following entities:

- Estate of K.T. (Ike) Akbari, Deceased; Independent Executor – Christopher A. Akbari – 86% Member
- Christopher A. Akbari – 10% Member
- The Akbari Family Dynasty Trust FBO Christopher Ali Akbari U/A; Trustee – Christopher A. Akbari – 2% Member
- The Akbari Family Dynasty Trust FBO Crystal Maryam Akbar U/A; Trustee – Christopher A. Akbari – 2% Member

Christopher A. Akbari has purchased the interests in the Estate of K.T. Akbari and the The Akbari Family Dynasty Trust FBO Crystal Maryam Akbari. As reflected in the attached organization chart titled, "Updated Organizational Chart," you can see that The ITEX Group, LLC is now composed of the following entities:

- Christopher A. Akbari – 30% Member
- The Akbari Family Dynast Trust FBO Christopher Ali Akbari U/A; Trustee – Christopher A. Akbari – 70% Member.

As you can see there have not been any new principals added to the organization chart. The only change made was to the structure of The ITEX Group, LLC entity. If you have any questions, please feel free to call me directly at 832-941-5345.

Sincerely,

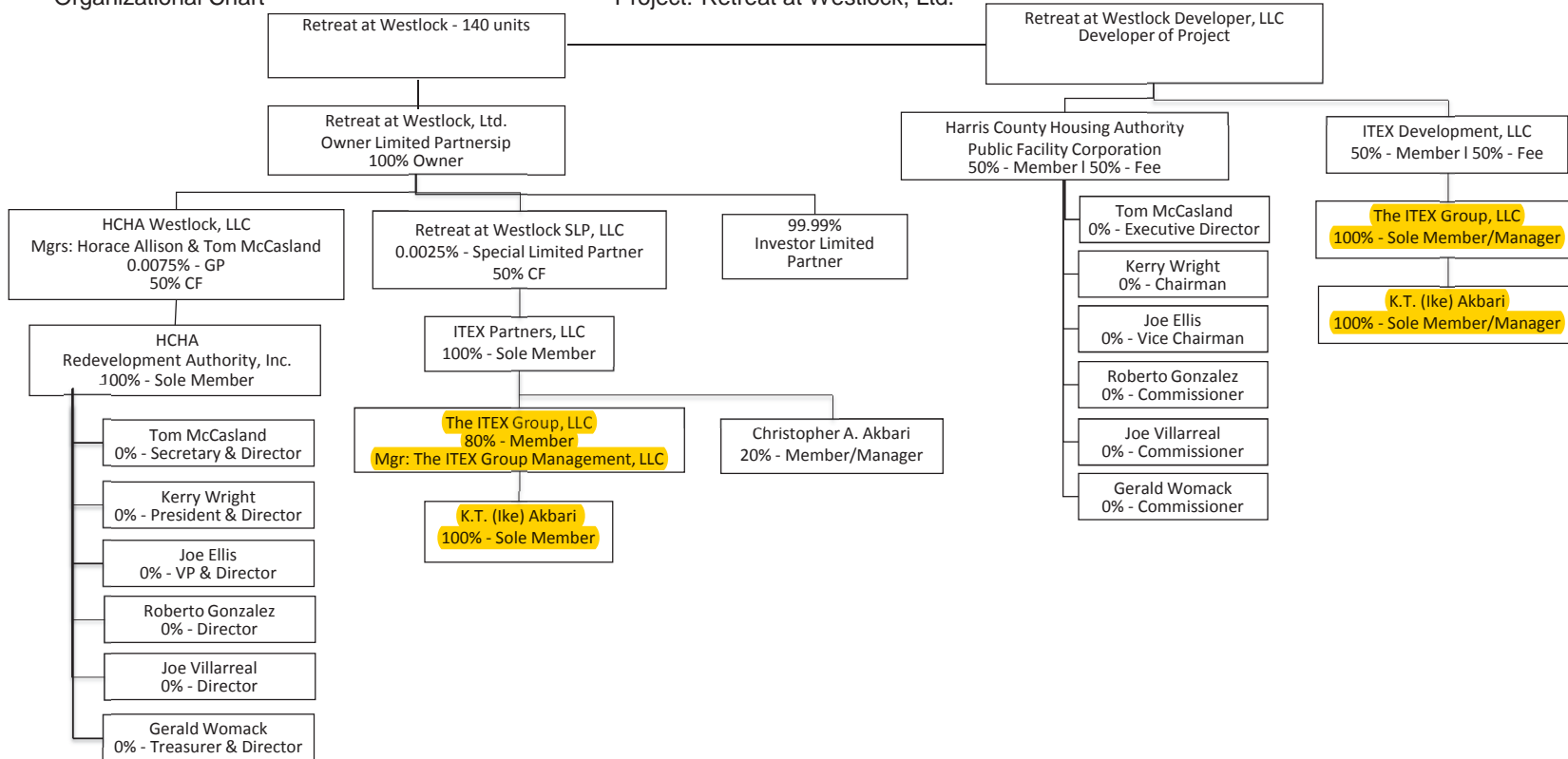
A handwritten signature in blue ink, appearing to read 'T. Nolan'.

Tim Nolan  
Executive Vice President



Organizational Chart

Project: Retreat at Westlock, Ltd.

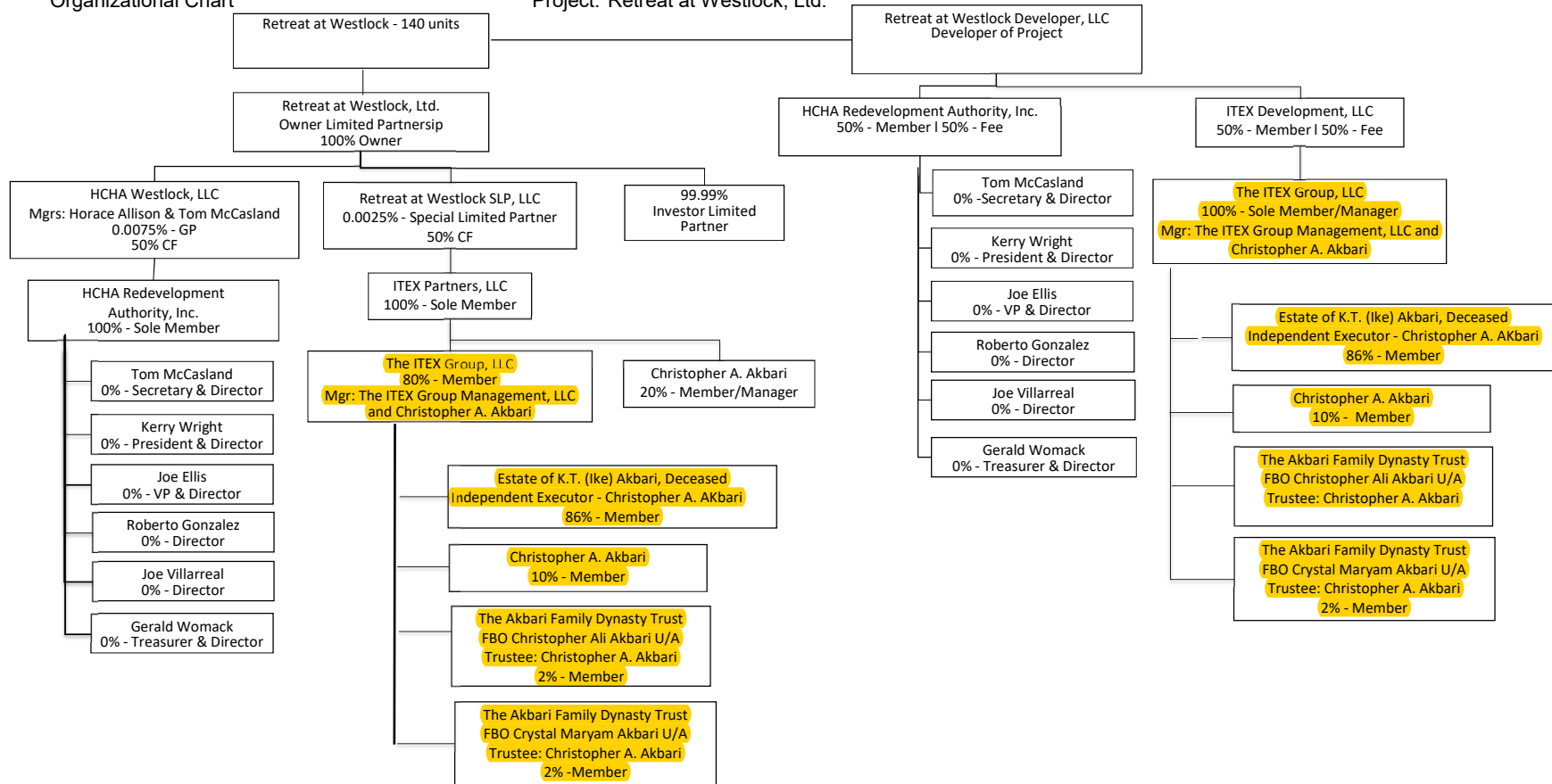


# Original Organizational Chart



## Organizational Chart

## Project: Retreat at Westlock, Ltd.



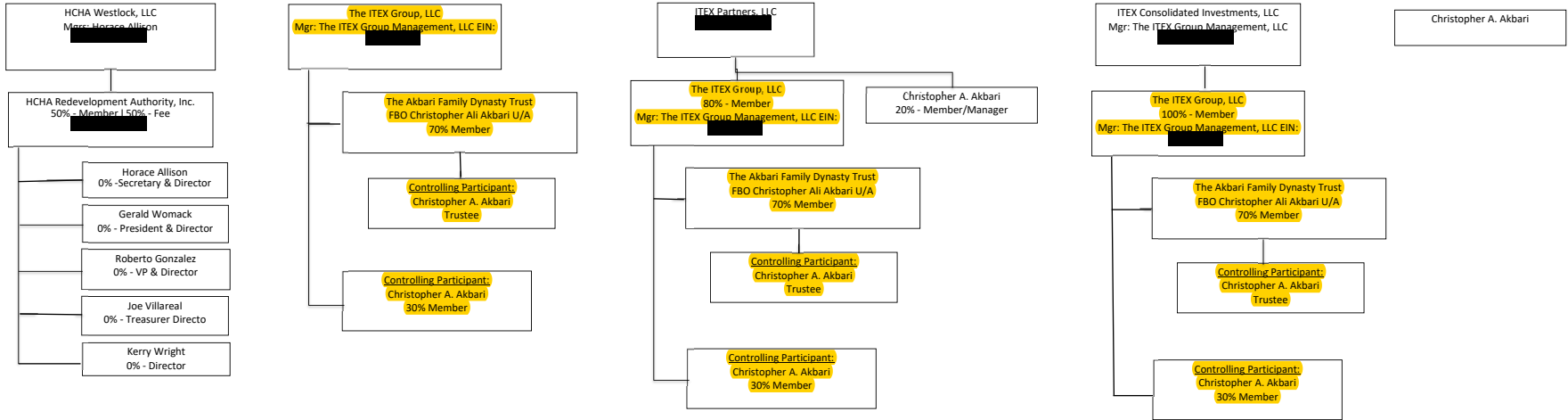




# Updated Organizational Chart



Guarantors



1q

**BOARD ACTION REQUEST**  
**ASSET MANAGEMENT DIVISION**  
**DECEMBER 6, 2018**

Presentation, discussion, and possible action regarding a change in the ownership structure of the Development Owner and Developer prior to issuance of IRS Form(s) 8609 for Kirby Park Villas (HTC #16200)

**RECOMMENDED ACTION**

**WHEREAS**, Kirby Park Villas (the “Development”) received a 9% Housing Tax Credit (“HTC”) award in 2016 for the construction of 72 units in San Angelo, Tom Green County;

**WHEREAS**, the HTC Application proposed O’Brien Companies, LLC as the Historically Underutilized Business (“HUB”) and 37.5% member of the General Partner for the Development and the 5% member of the Developer;

**WHEREAS**, O’Brien Companies, LLC has decided to withdraw from participation in the ownership structure;

**WHEREAS**, the Development Owner requests approval to replace O’Brien Companies, LLC in the structure of the Development Owner with Albatross Development, LLC, another HUB, and for the withdrawal of O’Brien Companies, LLC from the Developer; and

**WHEREAS**, the transfer of ownership is being requested prior to the issuance of IRS Form(s) 8609, and 10 TAC §10.406(e) requires that parties reflected in the Application that have control must remain in the ownership structure and retain such control, unless approved otherwise by the Board. Changes in Developers are considered amendments requiring Executive Director approval under 10 TAC §10.405(a)(3)(C);

**NOW, therefore, it is hereby**

**RESOLVED**, that the ownership transfer and amendment to the Developer for Kirby Park Villas 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.

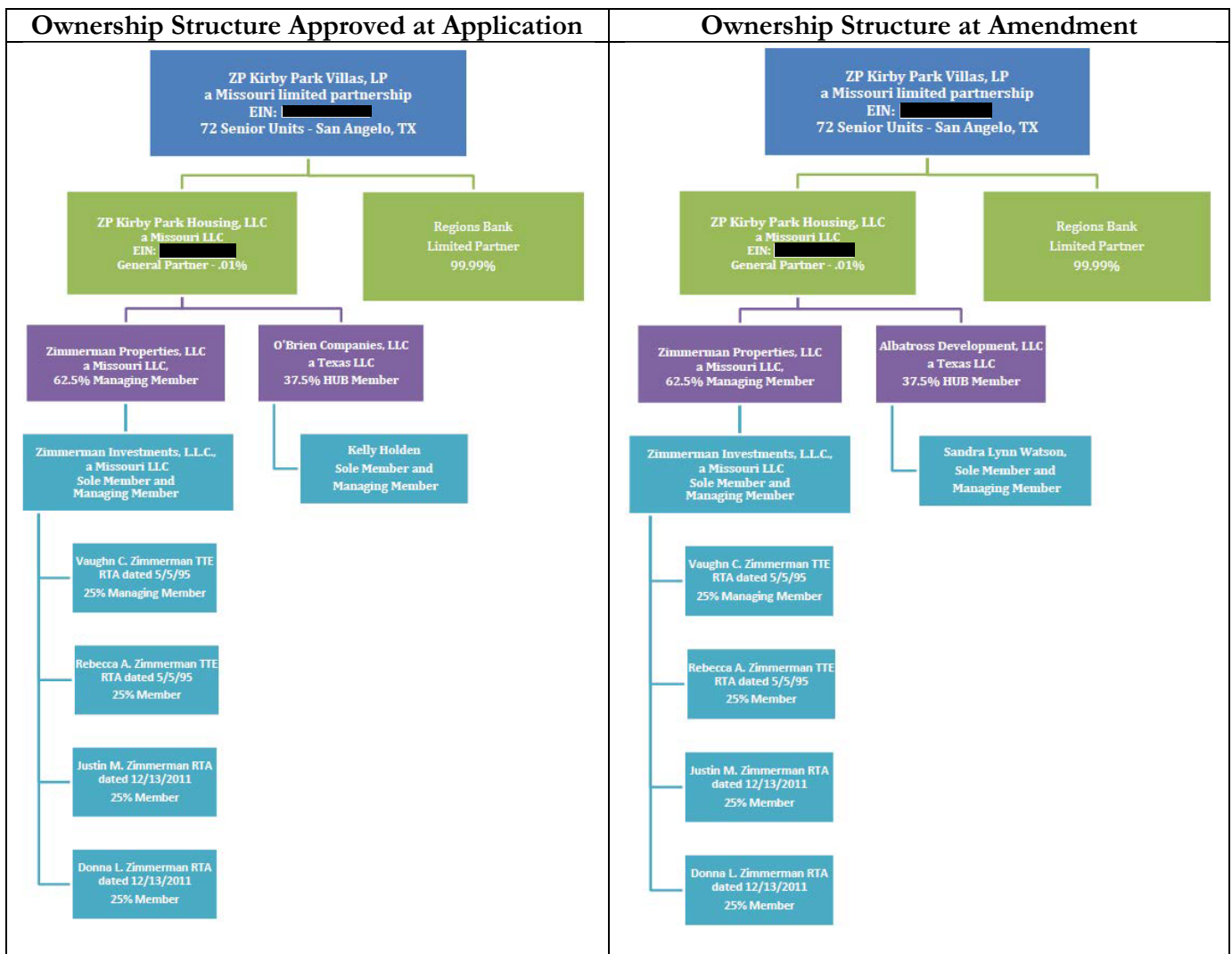
**BACKGROUND**

Kirby Park Villas was approved for a 9% HTC award in 2016 for the construction of 72 units in San Angelo. The Development is currently under construction and is required by the Carryover Allocation Agreement to place in service by December 31, 2018. On October 26, 2018, Cynthia Bast, the representative of Kirby Park Villas, LP (the “Development Owner”), submitted a request for an amendment



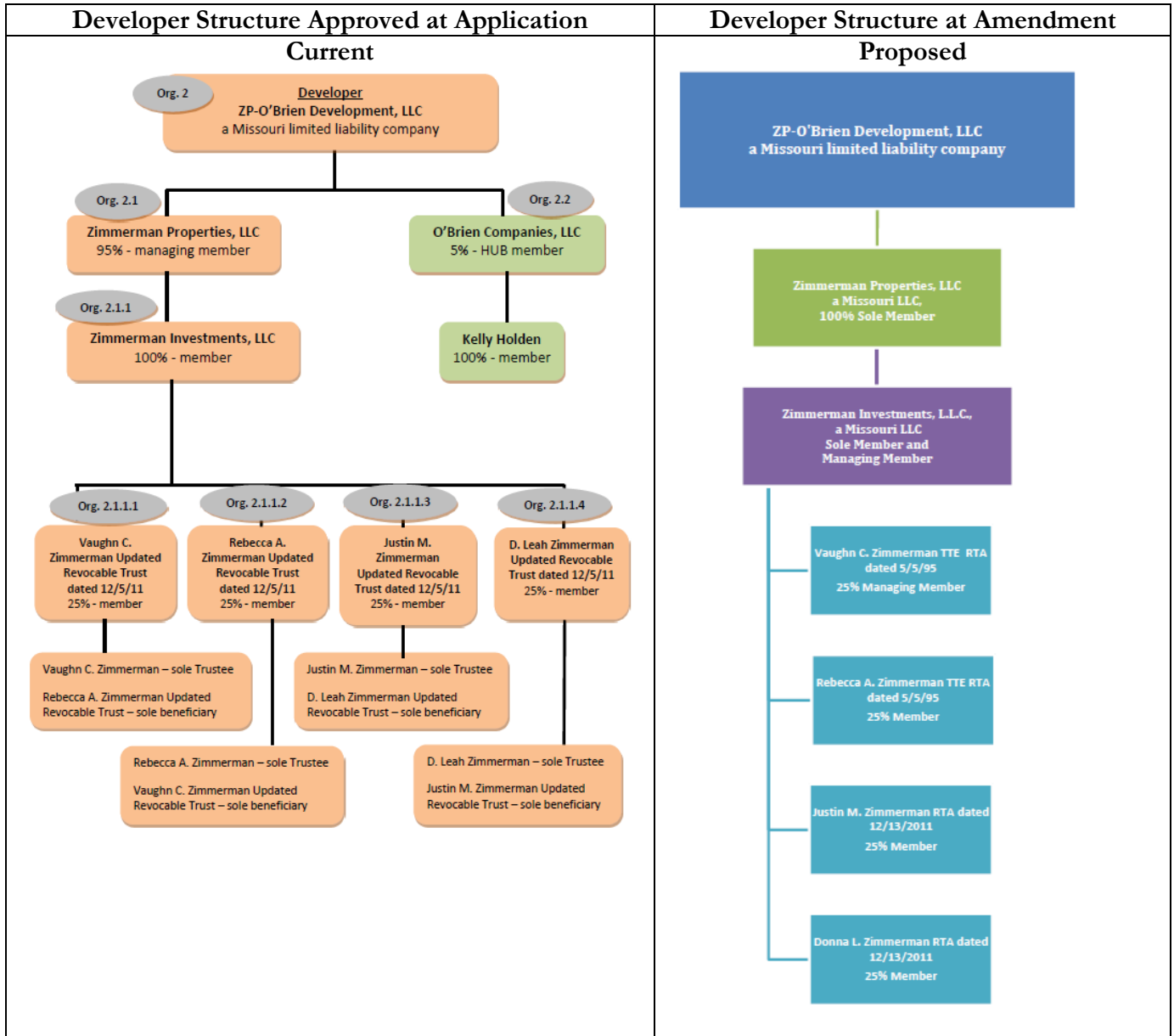
to the Application to change the structure of the Development Owner. Specifically, the Development Owner seeks approval to replace O'Brien Companies, LLC ("O'Brien") as the HUB and 37.5% member of the General Partner. The owner of O'Brien, Kelly O'Brien (f/k/a Kelly Holden), has advised that she believes it is in her best interest to withdraw from all tax credit transactions in order to pursue other activities. According to the Owner's request, O'Brien has further elected to forfeit its HUB certification. The Development Owner explains that the HUB's withdrawal was unexpected and unforeseeable at the time the Application was submitted. Staff has also confirmed that the person used to meet the Experience requirement under 10 TAC §10.204(e) of the Uniform Multifamily Rules (Vaughn C. Zimmerman) will remain in the ownership structure of the Development Owner and Developer. Therefore, the Development Owner requests approval to transfer the interest and position currently held by O'Brien in the Development Owner to Albatross Development, LLC ("Albatross"). Albatross is a Texas limited liability company and certified HUB that is solely owned by Sandra Lynn Watson.

Under 10 TAC §10.406(e), prior to the issuance of IRS Form(s) 8609, the parties reflected in the Application as having control must remain in the ownership structure and retain such control, unless approved otherwise by the Board. A comparison of the structure of the Development Owner between Application and the current amendment is reflected below:



The withdrawal of O'Brien also affects the Developer, ZP O'Brien Development, LLC. The change from the original structure indentified in the Application will be the transfer of the 5% interest previously held by O'Brien to Zimmerman Properties, LLC, which will continue to be the managing member with 100% interest.

A comparison of the Developer between Application and the current amendment is reflected below:



The Application score will not be affected by the requested changes because a qualified HUB will continue to hold the same interest and position as originally proposed by the Development Owner.

Staff recommends approval of the requested change in the structure of the Development Owner and Developer contingent upon the results of the previous participation and EARAC review, if applicable.



600 Congress Avenue, Suite 2200  
Austin, Texas 78701-3055  
Telephone: 512-305-4700  
Fax: 512-305-4800  
www.lockelord.com

October 26, 2018

**Via Hand Delivery**

Ms. Dee Patience  
Texas Department of Housing  
and Community Affairs  
221 East 11th Street  
Austin, Texas 78711-3941

RE: **Change in Ownership Structure Prior to Issuance of 8609s**  
Kirby Park Villas (the "**Property**")  
TDHCA Development Number: 16200

Dear Dee:

We represent ZP Kirby Park Villas, LP, a Missouri limited partnership (the "**Partnership**"), which is the owner of the Property. The general partner of the Partnership is Kirby Park Housing, LLC, a Missouri limited liability company (the "**General Partner**"). The General Partner consists of Zimmerman Properties, LLC ("**Zimmerman**"), the managing member, and O'Brien Companies, LLC ("**O'Brien**"). In the Partnership's tax credit application (the "**Application**"), O'Brien was identified as an historically underutilized business ("**HUB**") with a 37.5% interest in the General Partner. Since the time that the Application was submitted, O'Brien has made the decision to terminate its participation in all tax credit development transactions to focus on other activities and has further elected to forfeit its HUB certification. O'Brien's decision to terminate its participation from the Partnership was not foreseeable at the time of the Application submission.

The Partnership has successfully negotiated for O'Brien's withdrawal from the General Partner and the admission of Albatross Development, LLC, a Texas limited liability company and certified HUB ("**Albatross**"). As reflected by the Assignment of Membership Interest ("**Assignment**"), Albatross has agreed to assume the 37.5% membership interest in the General Partner. Consequently, the addition of Albatross to the Partnership structure will allow the Partnership to continue to fulfill the HUB participation requirements.

On behalf of the Partnership, we are submitting this ownership transfer package and associated \$1000 filing fee to seek the Department's approval of the transfer of the general partner interest.

Per the Department's change of ownership requirements, we have enclosed the following documentation:

- Tab 1.**        **Letter of Explanation.** Provided above.
- Tab 2.**        **Ownership Transfer Information.** Enclosed.
- Tab 3.**        **Organizational Chart.** Enclosed are the pre-transfer and post-transfer organizational charts.
- Tab 4.**        **New Organizational Chart Information.** Enclosed
- Tab 5.**        **Uniform Previous Participation Form.** Enclosed are previous participation forms for Albatross and Sandra Watson, its sole member.
- Tab 6.**        **Agreements Among Parties to Transfer.** Enclosed is the First Amendment to Operating Agreement, Amended and Restated Operating Agreement and Assignment of Membership Interest of the General Partner.
- Tab 7.**        **Certification of Tenant Notification.** Not applicable. The Property is has recently completed construction and is not occupied.
- Tab 8.**        **Credit Limit Certification Form.** Enclosed.
- Tab 9.**        **Owner Certificate and Agreement to Comply.** Enclosed.
- Tab 10.**       **Release of Credit Information Certification.** Enclosed together with the audited financial statements of Albatross.
- Exhibit A.**    **Organizational Documents.** Enclosed is the Certificate of Formation, Company Agreement, EIN, and good standing certificates of Albatross.
- Exhibit B.**    **Nonprofit Set-Aside, CHDO, or Joint Venture.** Not applicable.
- Exhibit C.**    **Historically Underutilized Business (HUB) Participation.** Attached is the HUB Certificate, Material Participation Plan, and Executive Summary of Albatross together with O'Brien's voluntary withdrawal statement.
- Exhibit D.**    **Right of First Refusal (ROFR).** Not applicable.
- Exhibit E.**    **New Financing Proforma.** Not applicable.
- Exhibit F.**    **Compliance Plan.** Not applicable




October 26, 2018

Page 3

Furthermore, in accordance with Section 42(h)(1)(E)(i) of the Internal Revenue Code, the Partnership is required to place the Project in service by December 31, 2018. In consideration of this impending deadline, we respectfully request the change in ownership request to be considered at the December 6, 2018 Board Meeting in order to allow for the finalization and recordation of the LURA by December 31, 2018.

We appreciate the Department's consideration of this request. If there is any additional information that is needed, please do not hesitate to let us know.

Sincerely,

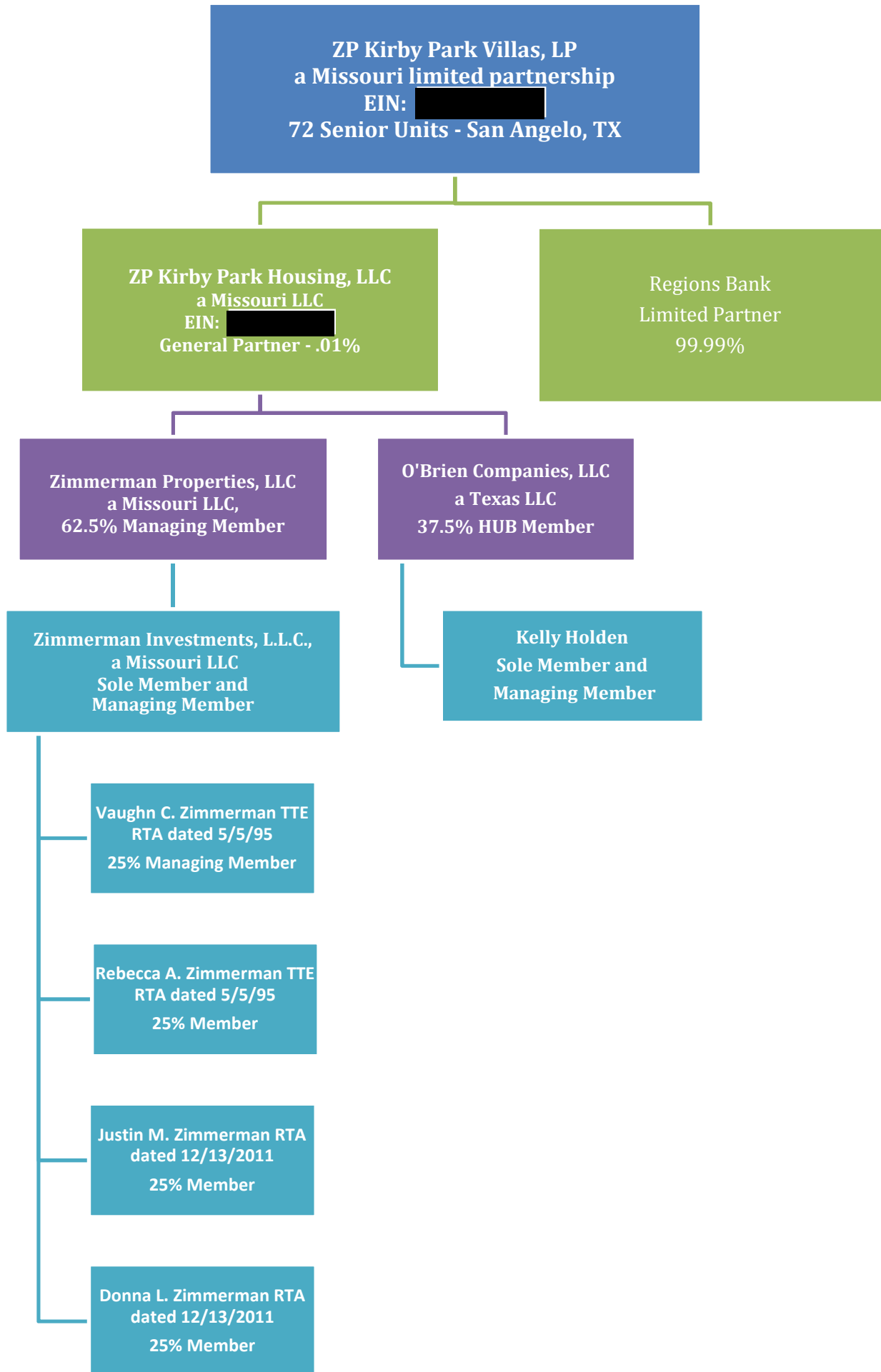


Cynthia L. Bast

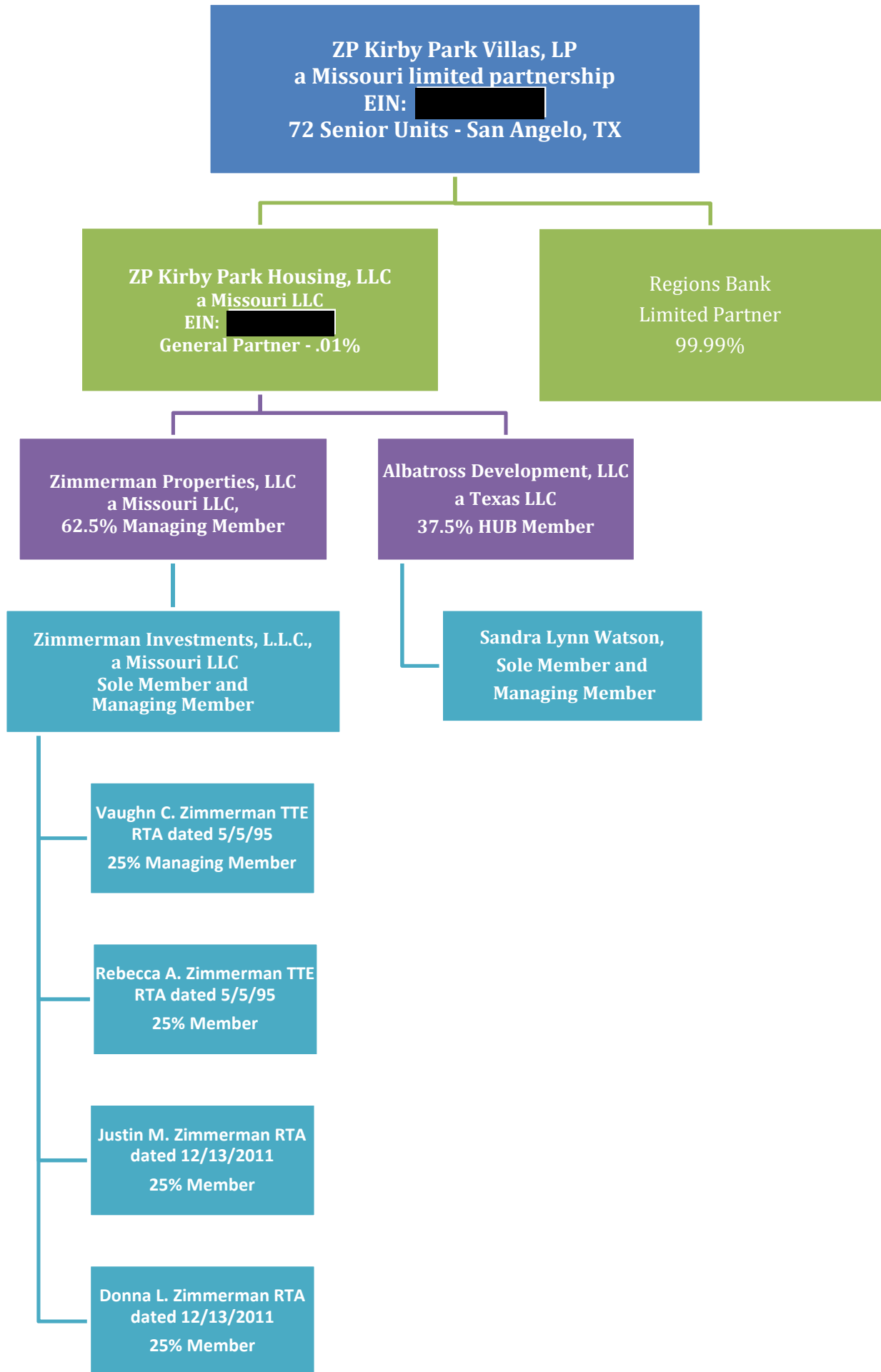
Encl.

cc: Kendall McPhail  
Vaughn C. Zimmerman  
Marie Koeneman  
Sandra Watson

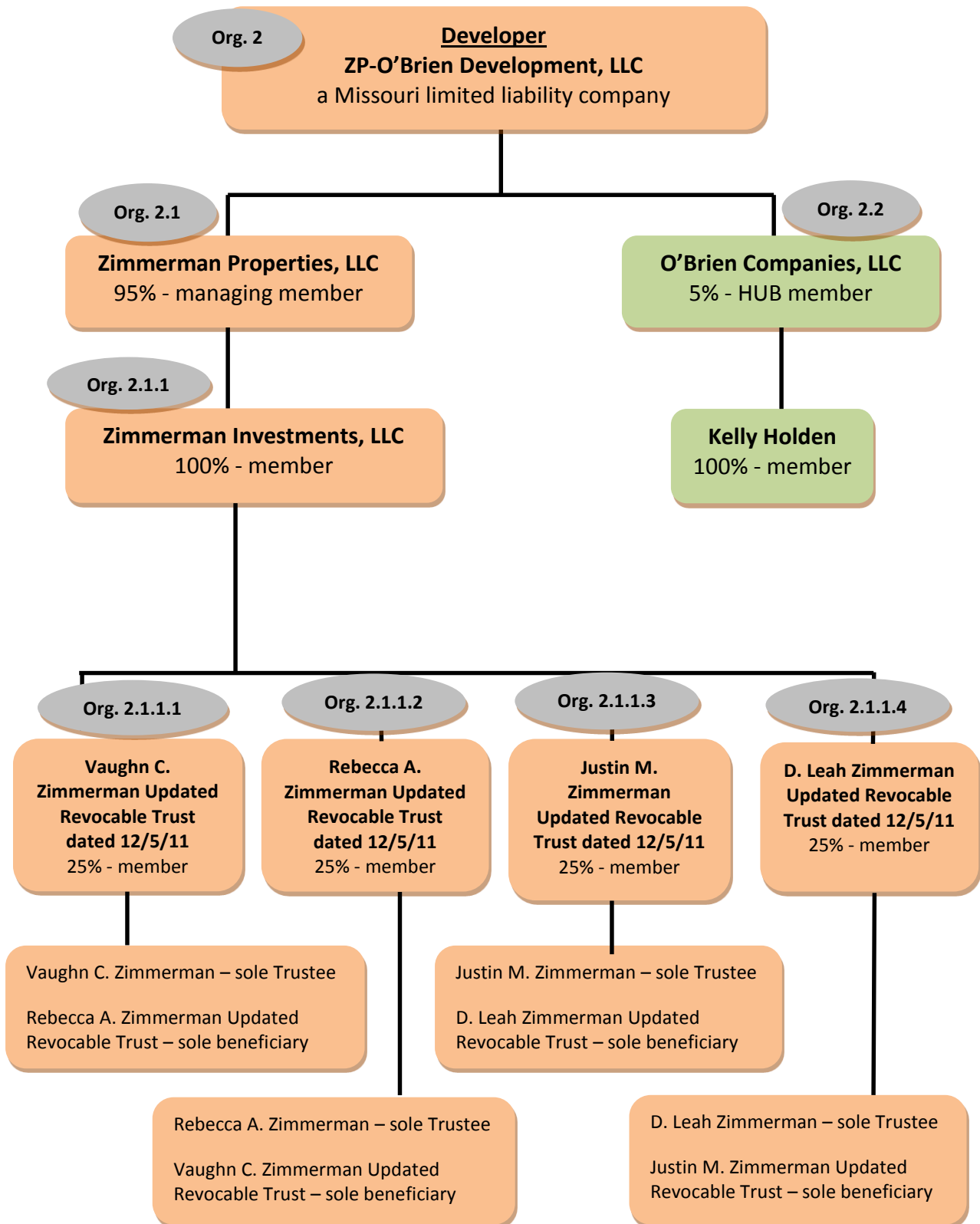
# CURRENT



# PROPOSED

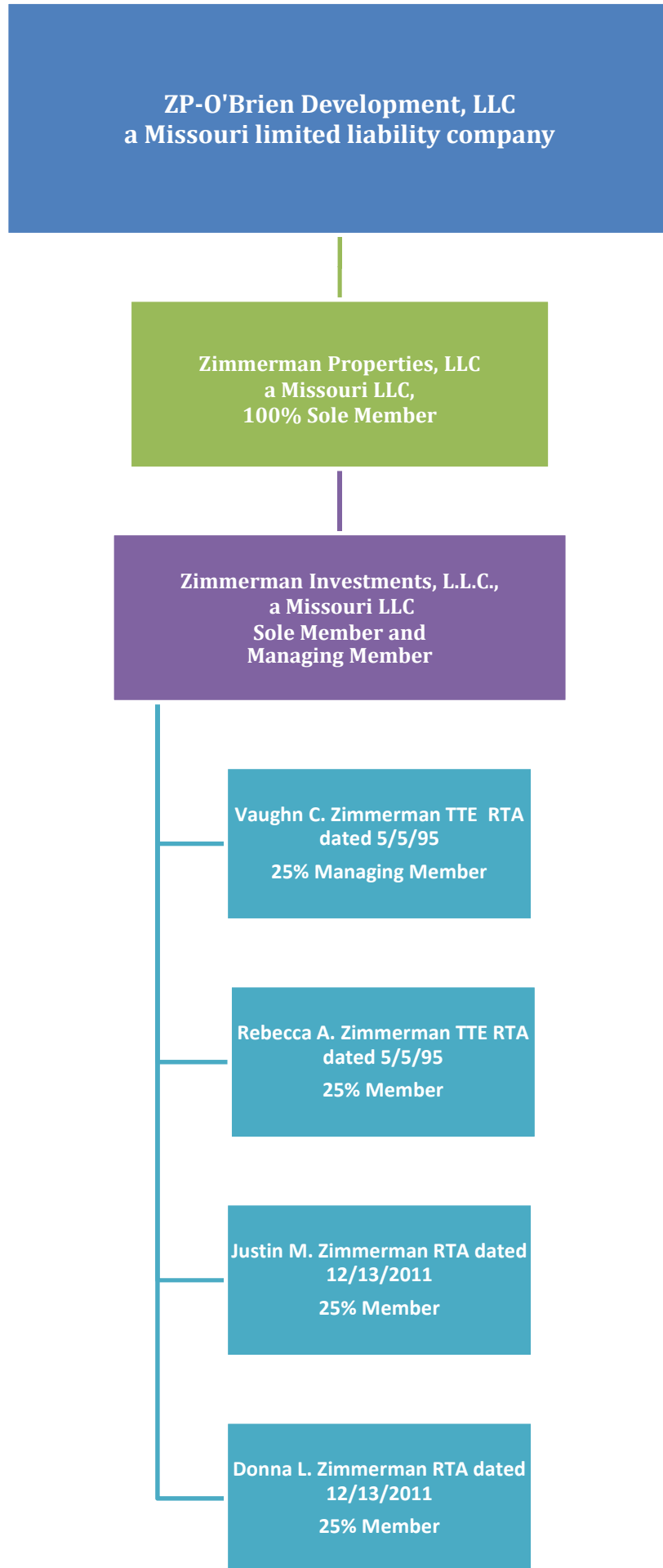


Developer Chart approved at Application





Proposed Developer Org Chart





**GLENN HEGAR** TEXAS COMPTROLLER OF PUBLIC ACCOUNTS

The Texas Comptroller of Public Accounts (CPA) administers the Statewide Historically Underutilized Business (HUB) Program for the State of Texas, which includes certifying minority and woman-owned businesses as HUBs and is designed to facilitate the participation of minority and woman-owned businesses in state agency procurement opportunities.

We are pleased to inform you that your application for certification/re-certification as a HUB has been approved. Your company's profile is listed in the State of Texas HUB Directory and may be viewed online at <http://www.window.state.tx.us/procurement/cmb/hubonly.html>. Provided that your company continues to meet HUB eligibility requirements, the enclosed HUB certificate is valid for four years.

You must notify the HUB Program in writing of any changes affecting your company's compliance with the HUB eligibility requirements, including changes in ownership, day-to-day management, control and/or principal place of business. *Note: Any changes made to your company's information may require the HUB Program to re-evaluate your company's eligibility.*

Please reference the enclosed pamphlet for additional resources, such as the state's Centralized Master Bidders List (CMBL), that can increase your chance of doing business with the state.

Thank you for your participation in the HUB Program! If you have any questions, you may contact a HUB Program representative at 512-463-5872 or toll-free in Texas at 1-888-863-5881.

**Texas Historically Underutilized Business (HUB) Certificate**



Certificate/VID Number:	<b>1454077231700</b>
File/Vendor Number:	<b>473619</b>
Approval Date:	<b>03-DEC-2015</b>
Scheduled Expiration Date:	<b>03-DEC-2019</b>

The Texas Comptroller of Public Accounts (CPA), hereby certifies that

**ALBATROSS DEVELOPMENT, LLC**

has successfully met the established requirements of the State of Texas Historically Underutilized Business (HUB) Program to be recognized as a HUB. This certificate printed 04-DEC-2015, supersedes any registration and certificate previously issued by the HUB Program. If there are any changes regarding the information (i.e., business structure, ownership, day-to-day management, operational control, business location) provided in the submission of the business' application for registration/certification as a HUB, you must immediately (within 30 days of such changes) notify the HUB Program in writing. The CPA reserves the right to conduct a compliance review at any time to confirm HUB eligibility. HUB certification may be suspended or revoked upon findings of ineligibility.

*Paul Gibson, Statewide HUB Program Manager  
Texas Procurement and Support Services*

Note: In order for State agencies and institutions of higher education (universities) to be credited for utilizing this business as a HUB, they must award payment under the Certificate/VID Number identified above. Agencies and universities are encouraged to validate HUB certification prior to issuing a notice of award by accessing the Internet (<http://www.window.state.tx.us/procurement/cmb/cmbhub.html>) or by contacting the HUB Program at 1-888-863-5881 or 512-463-5872.

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**BOARD ACTION REQUEST**  
**ASSET MANAGEMENT DIVISION**  
**DECEMBER 6, 2018**

Presentation, discussion, and possible action regarding a change in the ownership structure of the Development Owner prior to issuance of IRS Form(s) 8609 and Application Amendment for El Sereno Senior Apartments f/k/a Borgfeld Manor (HTC #16128)

**RECOMMENDED ACTION**

**WHEREAS**, El Sereno Senior Apartments (the “Development”) received an award of 9% Housing Tax Credits (“HTCs”) in 2016 for the construction of 136 multifamily units in Cibolo, Guadalupe County;

**WHEREAS**, the HTC Application proposed Casa Linda Development Corporation as the Historically Underutilized Business (“HUB”) and 100% sole owner of Borgfeld Housing GP, LLC, the Administrative General Partner with 0.0045% ownership in Borgfeld Housing, LP, the Development Owner;

**WHEREAS**, 10 TAC §11.9(b)(2) of the 2016 Qualified Action Plan (“QAP”) required combination of ownership interest in the General Partner of the Applicant, cash flow from operations, and developer fee, which taken together equal at least 80 percent and no less than five percent for any category and the Application received a point for HUB participation;

**WHEREAS**, a representative for Borgfeld Housing, LP (the “Development Owner”) requested approval for a change to the ownership structure of the Development Owner that involves the addition of new principals and removal of the HUB requirement to help ensure long-term financial feasibility of the project;

**WHEREAS**, all original members, including the HUB, will remain in the ownership structure; and

**WHEREAS**, the transfer of ownership is being requested prior to the issuance of IRS Form(s) 8609, and 10 TAC §10.406(e) requires that parties reflected in the Application that have control must remain in the ownership structure and retain such control, unless approved otherwise by the Board;

**NOW, therefore, it is hereby**

**RESOLVED**, that the ownership transfer for El Sereno Senior Apartments is approved as presented to this meeting, and the Acting Director and his designees are hereby, authorized, empowered, and directed to take all necessary action to effectuate the foregoing.



## **BACKGROUND**

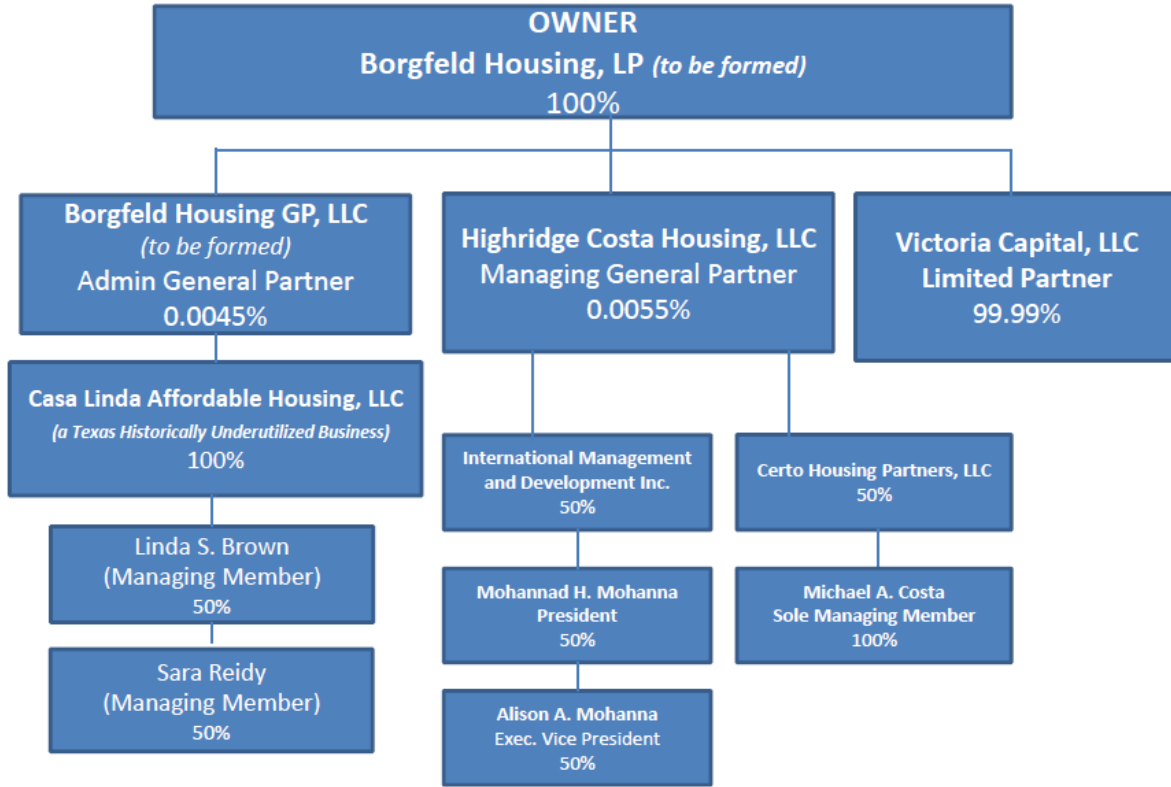
El Sereno Senior Apartments (the “Development”) received an award of 9% Housing Tax Credits (“HTCs”) in 2016 for the construction of 136 multifamily units for elderly persons in Cibola, Guadalupe County. On October 22, 2018, Cynthia Bast, the representative for Borgfeld Housing, LP (the “Development Owner”), submitted a request for an amendment to the Application to change the structure of the Development Owner. According to the request, the Development is concluding construction and has had significant cost overruns due to a combination of weather delays and construction cost increases. The Partnership has proposed a restructuring of the ownership structure to help ensure the long-term feasibility of the Development. The restructuring includes admitting a nonprofit organization as the sole general partner of the Partnership, which would help the Development obtain a 50 percent ad valorem tax exemption. The Development Owner explained that the need to admit new principals was unexpected and unforeseeable at the time the Application was submitted. According to the request letter, the Development would not qualify for a 50 percent property tax exemption if the HUB retains any control or ownership interest as a General Partner. Therefore the owner requested an Application amendment to remove the HUB requirement although the HUB will remain a part of the ownership structure.

Due to the addition of the new General Partner, Highridge Costa Housing, LLC (“Managing General Partner”) and Borgfeld Housing GP, LLC (“Administrative General Partner”) will become Administrative Limited Partners with reduced ownership interests. Highridge Costa Housing, LLC’s ownership interest will be 0.005% and Borgfeld Housing GP, LLC’s interest will be 0.004%. Ms. Bast’s letter states that the Development Owner has negotiated with Crossroads Housing Development Corporation (“CHDC”) to serve as the sole Managing General Partner under a new entity, Crossroads ES, LLC, the incoming General Partner.

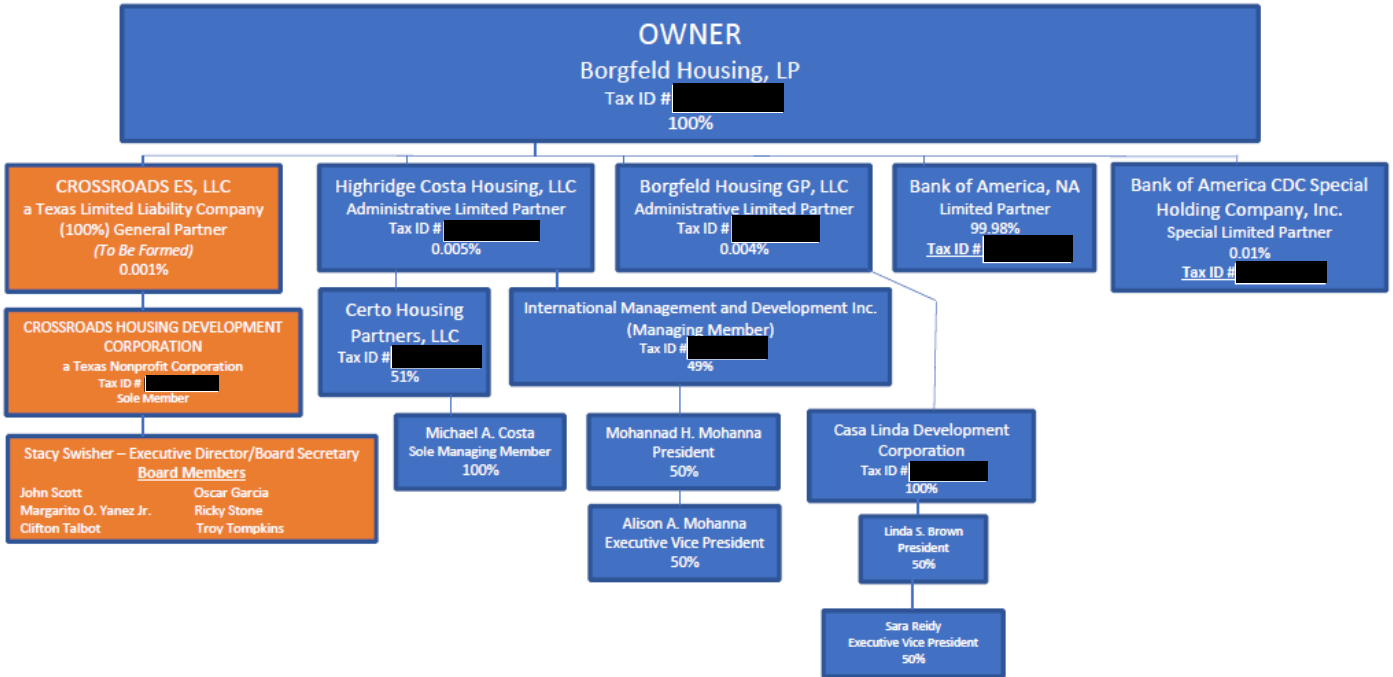
Under 10 TAC §10.406(e), prior to the issuance of IRS Form(s) 8609, the parties reflected in the Application as having control must remain in the ownership structure and retain such control, unless approved otherwise by the Board.

A comparison of the structure of the Development Owner between Application and the current proposed structure is reflected on the page below:

## Ownership Structure Approved at Application



## Proposed Ownership Structure



Staff performed a financial analysis of the project to ensure long-term feasibility. Total development costs were \$19,057,244 at Application and have increased to \$21,914,418 (approximately \$2.86M). Soft costs were \$13,082 per unit at Application and increased to \$15,511 per unit. The total construction contract amount increased from \$12,135,069 to \$13,485,439 due to change orders related to delays, increased labor, and cost of materials. Due to a late delivery of tax credits, a \$544,116 downward timing adjuster to the equity amount is anticipated, reducing equity from \$14,773,524 to \$14,229,408. The current capital structure also includes a \$729,347 advance from the general partner.

Construction and permanent debt was initially anticipated to be provided by CitiBank but is now being provided by Bank of America. According to the new term sheet, the permanent loan is in the amount of \$5,876,938 at an underwritten interest rate of 5.60%. The loan is amortized over a 35-year period.

The original application estimated annual expenses of \$4,170 per unit. The Applicant's revised per unit expense of \$4,641 includes an increase in estimated expenses for General and Administrative, payroll, repairs and maintenance, utilities and property taxes, along with a decrease in secondary income from \$15, as initially underwritten, to approximately \$6 per unit. At application, the Applicant estimated property tax expenses to be \$519 per unit, and TDHCA calculated \$554 per unit based on an 11% capitalization rate. The Owner's revised estimates assume property taxes to be \$892 per unit (\$446 per unit after 50% exemption). However, recent data from the Guadalupe County Appraisal District for three similar tax credit properties reflect a tax expense ranging from \$609 to \$692 per unit before exemptions. Staff estimated property taxes for the subject property to be \$669 per unit (\$334 per unit after 50% exemption) based on a cap rate of 10%. However, with a 50% property tax exemption, the Owner's pro forma is within 5% of staff's pro forma on Effective Gross Income, total expenses, and Net Operating Income; and therefore, the Owner's pro forma is used for the analysis.

Using 2018 maximum rents and the revised expenses without a property tax exemption, staff's pro forma indicates that the Development can support \$5,183,000 in permanent debt at an interest rate of 5.60%, leaving a financing gap of \$1,772,413 to be filled with deferred developer fee. At this debt amount, the 30 year pro forma indicates that this amount of deferred developer fee could not be repaid out of cash flow within 15 years. However, with a 50% tax exemption, staff's analysis indicates that the Development can support \$5,876,938 in permanent debt, leaving a gap of \$1,078,725 to be filled by deferred developer fee, which is projected to be repaid out of cash flow within 15 years.

The HTC application for the Development received one point for having a HUB participate in the ownership structure. Staff has confirmed that, by removing this point, the Development could still have received a 2016 HTC award.

Staff recommends approval of the ownership transfer and Application Amendment for El Sereno Senior Apartments.

No change to the HTC amount is recommended as a result of the changes to the development costs and financing structure.







**CAPITALIZATION / TOTAL DEVELOPMENT BUDGET / ITEMIZED BASIS**

*Borgfeld Manor, Cibolo, 9% HTC #16128*

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	
CitiBank		1.13	1.15	\$383,354	5.60%	35	35	\$5,876,938	\$4,280,000	\$4,280,000	\$5,876,938	35	35	5.60%	\$383,354	1.15	26.8%	
<b>CASH FLOW DEBT / GRANTS</b>																		
City of Cibolo EDC		1.13	1.15		0.00%	0	0	\$0	\$250	\$250	\$0	0	0	0.00%		1.15	0.0%	
GP advance		1.13	1.15		0.00%	0	0	\$729,347			\$729,347	0	0	0.00%		1.15	3.3%	
				<b>\$383,354</b>	<b>TOTAL DEBT / GRANT SOURCES</b>				<b>\$6,606,285</b>	<b>\$4,280,250</b>	<b>\$6,606,285</b>	<b>TOTAL DEBT SERVICE</b>				<b>\$383,354</b>	<b>1.15</b>	<b>30.1%</b>
<b>NET CASH FLOW</b>		\$50,926	\$57,924							<b>APPLICANT</b>	<b>NET OPERATING INCOME</b>		\$441,278	\$57,924	<b>NET CASH FLOW</b>			

\$14,997,000.15

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	64.9%	\$1,500,000	0.95	\$14,229,407	\$14,248,575	\$14,248,575	\$14,229,408	\$0.9486	\$1,500,000	64.9%	\$11,029	Applicant Request	
0		0.0%		#DIV/0!	\$0						0.0%			
0		0.0%		#DIV/0!	\$0						0.0%			
DDF	Deferred Developer Fees	4.9%	(46% Deferred)		\$1,078,726	\$531,529	\$528,419	\$1,078,725	(46% Deferred)		4.9%	Total Developer Fee:	\$2,320,004	
Additional (Excess) Funds Req'd		0.0%			\$0	(\$3,110)	\$0	\$0			0.0%			
<b>TOTAL EQUITY SOURCES</b>			<b>69.9%</b>		<b>\$15,308,133</b>	<b>\$14,776,994</b>	<b>\$14,776,994</b>	<b>\$15,308,133</b>			<b>69.9%</b>	<b>15-Year Cash Flow:</b>	<b>\$1,202,291</b>	
<b>TOTAL CAPITALIZATION</b>						<b>\$21,914,418</b>	<b>\$19,057,244</b>	<b>\$19,057,244</b>	<b>\$21,914,418</b>	<b>15-Yr Cash Flow after Deferred Fee:</b>				<b>\$123,566</b>

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			\$1,507 / Unit	\$205,000	\$204,000	\$204,000	\$186,000	\$1,368 / Unit			10.2%	\$19,000		
Site Work		\$986,867	\$7,624 / Unit	\$1,036,867	\$1,836,000	\$1,836,000	\$1,373,070	\$10,096 / Unit	\$986,867		-24.5%	(\$336,203)		
Site Amenities		\$455,212	3347.147059	\$455,212	\$340,000	\$340,000	\$540,876	\$3,977 / Unit	\$455,212		-15.8%	(\$85,664)		
Building Cost		\$9,919,940	\$99.08 /sf	\$72,941/Unit	\$9,919,940	\$7,409,250	\$7,890,975	\$10,127,218	\$74,465/Unit	\$101.15 /sf	\$10,127,218	-2.0%	(\$207,278)	
Contingency		\$551,245	4.85%	4.75%	\$551,245	\$489,463	\$513,549	\$19,000	0.16%	0.16%	\$19,000	2801.3%	\$532,245	
Contractor Fees		\$1,545,561	12.97%	12.70%	\$1,545,561	\$1,409,060	\$1,409,060	\$1,239,275	12.62%	13.34%	\$1,239,275	24.7%	\$306,286	
Soft Costs	0	\$2,011,950		\$15,511 / Unit	\$2,109,450	\$1,779,163	\$1,409,060	\$2,109,450	\$15,511 / Unit	\$2,011,950	\$0	0.0%	\$0	
Financing	0	\$779,273		\$7,199 / Unit	\$979,119	\$874,809	\$874,809	\$979,119	\$7,199 / Unit	\$779,273	\$0	0.0%	\$0	
Developer Fee	\$0	\$2,320,004	14.28%	14.05%	\$2,320,004	\$2,082,746	\$2,082,476	\$2,320,004	14.25%	14.85%	\$2,320,004	\$0	0.0%	\$0
Reserves				\$3,974 / Unit	\$540,418	\$435,151	\$428,764	\$419,554	\$3,085 / Unit			28.8%	\$120,864	
<b>TOTAL HOUSING DEVELOPMENT COST (UNADJUSTED BASIS)</b>			<b>\$0</b>	<b>\$18,570,052</b>	<b>\$161,135 / Unit</b>	<b>\$21,914,418</b>	<b>\$19,057,244</b>	<b>\$19,186,295</b>	<b>\$21,565,168</b>	<b>\$158,567 / Unit</b>	<b>\$17,938,799</b>	<b>\$0</b>	<b>1.6%</b>	<b>\$349,250</b>
Acquisition Cost	\$0			\$0	\$13,082									
Contingency		\$0		\$0										
Contractor's Fee		\$0		\$0										
Interim Interest		\$0		\$0										
Developer Fee	\$0	\$0		\$0										
Reserves				\$0										
<b>ADJUSTED BASIS / COST</b>			<b>\$0</b>	<b>\$18,570,052</b>	<b>\$161,135/unit</b>	<b>\$21,914,418</b>	<b>\$19,070,326</b>	<b>\$19,186,295</b>	<b>\$21,565,168</b>	<b>\$158,567/unit</b>	<b>\$17,938,799</b>	<b>\$0</b>	<b>1.6%</b>	<b>\$349,250</b>
<b>TOTAL HOUSING DEVELOPMENT COSTS (Applicant's Uses are within 5% of TDHCA Estimate):</b>							<b>\$21,914,418</b>							

**CAPITALIZATION / DEVELOPMENT COST BUDGET / ITEMIZED BASIS ITEMS**

*Borgfeld Manor, Cibola, 9% HTC #16128*

\$2,857,174

CREDIT CALCULATION ON QUALIFIED BASIS				
	Applicant		TDHCA	
	Acquisition	Construction Rehabilitation	Acquisition	Construction Rehabilitation
<b>ADJUSTED BASIS</b>	\$0	\$18,570,052	\$0	\$17,938,799
Deduction of Federal Grants	\$0	\$0	\$0	\$0
<b>TOTAL ELIGIBLE BASIS</b>	\$0	\$18,570,052	\$0	\$17,938,799
High Cost Area Adjustment		130%		130%
<b>TOTAL ADJUSTED BASIS</b>	\$0	\$24,141,068	\$0	\$23,320,439
Applicable Fraction	87.50%	87.50%	87.50%	87.50%
<b>TOTAL QUALIFIED BASIS</b>	\$0	\$21,123,434	\$0	\$20,405,384
Applicable Percentage	3.37%	9.00%	3.37%	9.00%
<b>ANNUAL CREDIT ON BASIS</b>	\$0	\$1,901,109	\$0	\$1,836,485
<b>CREDITS ON QUALIFIED BASIS</b>	\$1,901,109		\$1,836,485	

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>	\$1,901,109	\$18,034,438	----	---	----
<b>Needed to Fill Gap</b>	\$1,613,714	\$15,308,133	----	---	----
<b>Applicant Request</b>	\$1,500,000	\$14,229,408	<b>\$1,500,000</b>	<b>\$0</b>	<b>\$0</b>

Development Cost/SF		
	Application	TDHCA
Acquisition & Hard Costs	\$116.75	\$134.69
Hard Costs	\$116.75	\$134.69
Building Costs	\$74.00	\$101.15
<b>Total Points Claimed:</b>		12

BUILDING COST ESTIMATE				
CATEGORY	FACTOR	UNITS/SF	PER SF	AMOUNT
Base Cost: Wrap Style (3 or 4-story)		100,125 SF	\$65.10	6,518,465
Adjustments				
Exterior Wall Finish	3.52%		2.29	\$229,450
Eldery	3.00%		1.95	195,554
9-Ft. Ceilings	3.44%		2.24	224,235
Roof Adjustment(s)			1.36	136,000
Subfloor			(0.15)	(15,353)
Floor Cover			2.56	256,320
Breezeways	\$0.00	0	0.00	0
Balconies	\$27.52	10,205	2.81	280,874
Plumbing Fixtures	\$990	0	0.00	0
Rough-ins	\$485	136	0.66	65,960
Built-In Appliances	\$1,725	136	2.34	234,600
Exterior Stairs	\$2,250	8	0.18	18,000
Heating/Cooling			2.14	214,268
Enclosed Corridors	\$57.12	21,248	12.12	1,213,755
Carports	\$11.94	0	0.00	0
Garages		0	0.00	0
Comm &/or Aux Bldgs	\$78.33	7,045	5.51	551,821
Elevators	\$102,250	2	2.04	204,500
<b>Other:</b>			0.00	0
Fire Sprinklers	\$2.47	128,418	3.17	317,192
<b>SUBTOTAL</b>			<b>106.32</b>	<b>10,645,641</b>
Current Cost Multiplier	0.99		(1.06)	(106,456)
Local Multiplier	0.88		(12.76)	(1,277,477)
<b>TOTAL BUILDING COSTS</b>			<b>92.50</b>	<b>\$9,261,707</b>
Plans, specs, survey, bldg permits	3.30%		(3.05)	(305,636)
Contractor's OH & Profit	11.50%		(10.64)	(1,065,096)
<b>NET BUILDING COSTS</b>		\$58,022/unit	\$78.81/sf	\$7,890,975

## Long-Term Pro Forma

**Borgfeld Manor, Cibolo, 9% HTC #16128**

	Growth Rate	Year 1	Year 2	Year 3	Year 4	Year 5	Year 10	Year 15	Year 20	Year 30	Year 35
POTENTIAL GROSS RENT		\$1,084,176	\$1,105,860	\$1,127,977	\$1,150,536	\$1,173,547	\$1,295,691	\$1,430,547	\$1,579,440	\$1,925,328	\$2,125,718
Total Secondary Income		\$0	0	0	0	0	0	0	0	0	0
POTENTIAL GROSS INCOME		\$1,093,691	\$1,115,564	\$1,137,876	\$1,160,633	\$1,183,846	\$1,307,061	\$1,443,101	\$1,593,301	\$1,942,225	\$2,144,373
Vacancy & Collection Loss		(\$82,027)	(83,667)	(85,341)	(87,047)	(88,788)	(98,030)	(108,233)	(119,498)	(145,667)	(160,828)
EFFECTIVE GROSS INCOME	2.00%	\$1,011,664	\$1,031,897	\$1,052,535	\$1,073,586	\$1,095,057	\$1,209,032	\$1,334,869	\$1,473,803	\$1,796,558	\$1,983,545
General & Administrative Management		\$44,000	\$45,320	\$46,680	\$48,080	\$49,522	\$57,410	\$66,554	\$77,154	\$103,689	\$120,204
Payroll & Payroll Tax	5%	\$50,583	\$51,595	\$52,627	\$53,679	\$54,753	\$60,451	\$66,743	\$73,690	\$89,828	\$99,177
Repairs & Maintenance		\$165,242	170,199	175,305	180,564	185,981	215,603	249,943	289,753	389,404	451,425
Electric/Gas		\$87,284	89,903	92,600	95,378	98,239	113,886	132,025	153,053	205,690	238,452
Water, Sewer, & Trash		\$40,828	42,053	43,314	44,614	45,952	53,271	61,756	71,592	96,214	111,538
Property Insurance		\$49,847	51,342	52,883	54,469	56,103	65,039	75,398	87,407	117,468	136,177
Property Tax		\$26,520	27,316	28,135	28,979	29,848	34,603	40,114	46,503	62,496	72,450
Reserve for Replacements		\$60,662	62,482	64,356	66,287	68,276	79,150	91,757	106,371	142,954	165,723
Cable TV		\$34,000	35,020	36,071	37,153	38,267	44,362	51,428	59,619	80,123	92,885
Supportive Services		\$0	0	0	0	0	0	0	0	0	0
TDHCA LIHTC/HOME Compliance Fees		\$0	0	0	0	0	0	0	0	0	0
TDHCA Bond Compliance Fee		\$4,760	4,903	5,050	5,201	5,357	6,211	7,200	8,347	11,217	13,004
Security		\$0	0	0	0	0	0	0	0	0	0
describe		\$6,660	6,860	7,066	7,278	7,496	8,690	10,074	11,678	15,695	18,194
describe		\$0	0	0	0	0	0	0	0	0	0
describe		\$0	0	0	0	0	0	0	0	0	0
TOTAL EXPENSES	3.00%	\$570,386	\$586,992	\$604,086	\$621,682	\$639,796	\$738,676	\$852,992	\$985,168	\$1,314,777	\$1,519,229
<b>NET OPERATING INCOME ("NOI")</b>		<b>\$441,278</b>	<b>\$444,905</b>	<b>\$448,449</b>	<b>\$451,904</b>	<b>\$455,262</b>	<b>\$470,355</b>	<b>\$481,877</b>	<b>\$488,635</b>	<b>\$481,780</b>	<b>\$464,315</b>
<b>MUST -PAY DEBT SERVICE</b>											
CitiBank		\$383,354	\$383,354	\$383,354	\$383,354	\$383,354	\$383,354	\$383,354	\$383,354	\$383,354	\$383,354
TOTAL DEBT SERVICE		\$383,354	\$383,354	\$383,354	\$383,354	\$383,354	\$383,354	\$383,354	\$383,354	\$383,354	\$383,354
<b>ANNUAL CASH FLOW</b>		<b>\$57,924</b>	<b>\$61,551</b>	<b>\$65,096</b>	<b>\$68,550</b>	<b>\$71,908</b>	<b>\$87,002</b>	<b>\$98,523</b>	<b>\$105,282</b>	<b>\$98,426</b>	<b>\$80,962</b>
<b>CUMULATIVE NET CASH FLOW</b>		<b>\$57,924</b>	<b>\$119,475</b>	<b>\$184,571</b>	<b>\$253,121</b>	<b>\$325,029</b>	<b>\$731,068</b>	<b>\$1,202,291</b>	<b>\$1,717,355</b>	<b>\$2,758,740</b>	<b>\$3,202,973</b>
DEBT COVERAGE RATIO		1.15	1.16	1.17	1.18	1.19	1.23	1.26	1.27	1.26	1.21
EXPENSE/INCOME RATIO		56.4%	56.9%	57.4%	57.9%	58.4%	61.1%	63.9%	66.8%	73.2%	76.6%
Deferred Developer Fee Balance		\$1,020,801	\$959,249	\$894,154	\$825,604	\$753,696	\$347,656	\$0	\$0	\$0	\$0





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Direct Fax: 512-391-4707  
cbast@lockelord.com

October 22, 2018

**VIA HAND DELIVERY**

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

Re: **Ownership Transfer Package**  
El Sereno Senior Apartments f/k/a Borgfeld Manor (the "**Property**")  
TDHCA File No. 16128

Dear Dee:

We represent Borgfeld Housing, LP (the "**Partnership**"), which owns the Property. The Partnership received an award of low-income housing tax credits in 2016. The general partners of the Partnership are Highridge Costa Housing, LLC, as the Managing General Partner and Borgfeld Housing GP, LLC, as the Administrative General Partner. The Administrative General Partner is wholly-owned by Casa Linda Affordable Housing, LLC, which is qualified as an historically underutilized business (a "**HUB**"). Thus, the Partnership received one point in its application for participation by a HUB.

The Partnership is concluding the construction of the Property, which has been plagued with significant cost overruns. To ensure the long-term feasibility of the Property, the Partnership believes it would be in its best interest to obtain a 50% ad valorem tax exemption by admitting a non-profit organization as the sole general partner of the Partnership. Concurrently with that admission, the Managing General Partner and Administrative General Partner would move to Administrative Limited Partner positions. The Partnership has negotiated with Crossroads Housing Development Corporation ("**CHDC**") to serve this purpose. Principals of the Managing General Partner have a pre-existing business relationship with CHDC and believe it would be best suited for this purpose. CHDC would form a new entity called Crossroads ES, LLC (the "**Incoming General Partner**") to serve as the sole general partner.

Thus, we are submitting this ownership transfer package together with the associated \$1,000 filing fee to seek approval of the change in general partner. At the same time, under separate cover, we are submitting an application amendment to remove the HUB requirement.

Per the Department's change of ownership requirements, we have enclosed the following documentation:

- Tab 1.**        **Letter of Explanation.** Provided above.
- Tab 2.**        **Ownership Transfer Information.** Enclosed.
- Tab 3.**        **Organizational Chart.** Enclosed are the pre-transfer and post-transfer organizational charts.
- Tab 4.**        **New Organizational Chart Information.** Enclosed
- Tab 5.**        **Uniform Previous Participation Form.** Enclosed are previous participation forms for the Incoming General Partner, CHDC and its Board Members.
- Tab 6.**        **Agreements Among Parties to Transfer.** Enclosed is the Memorandum of Understanding.
- Tab 7.**        **Certification of Tenant Notification.** Not applicable. The Property is currently under construction and not occupied.
- Tab 8.**        **Credit Limit Certification Form.** Enclosed.
- Tab 9.**        **Owner Certificate and Agreement to Comply.** Enclosed.
- Tab 10.**       **Release of Credit Information Certification.** Enclosed together with the audited financial statements of CHDC.
- Exhibit A.**    **Organizational Documents.** Enclosed is (i) the draft Certificate of Formation and draft Company Agreement of the Incoming General Partner; (ii) Articles of Incorporation, Bylaws, as amended, EIN and good standing certificates of CHDC. The final organizational documents of the Incoming General Partner will be supplemented under separate cover.
- Exhibit B.**    **Nonprofit Set-Aside, CHDO, or Joint Venture.** Enclosed is Board Roster of CHDC.
- Exhibit C.**    **Historically Underutilized Business (HUB) Participation.** We are contemporaneously requesting approval of an application amendment to remove the requirement for HUB participation.
- Exhibit D.**    **Right of First Refusal (ROFR).** Not applicable.

**Exhibit E.**     **New Financing Proforma.** Not applicable.

**Exhibit F.**     **Compliance Plan.** Not applicable

Thank you very much for your assistance. Please do not hesitate to contact me if you require any additional information. We anticipate this change will required Board approval because it is being implemented prior to the receipt of Forms 8609, and respectfully request to be placed on the December agenda for consideration.

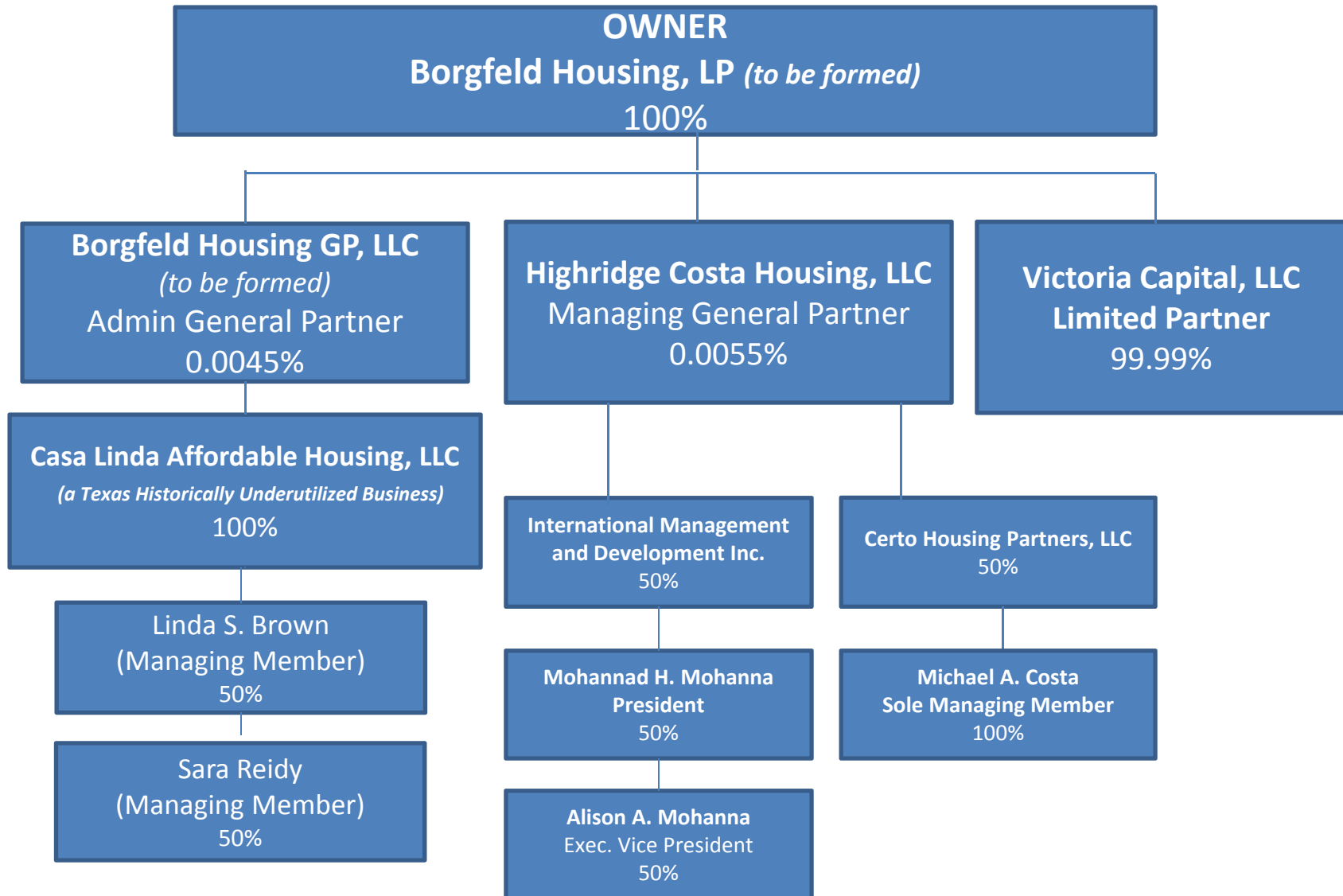
Sincerely,



Cynthia L. Bast

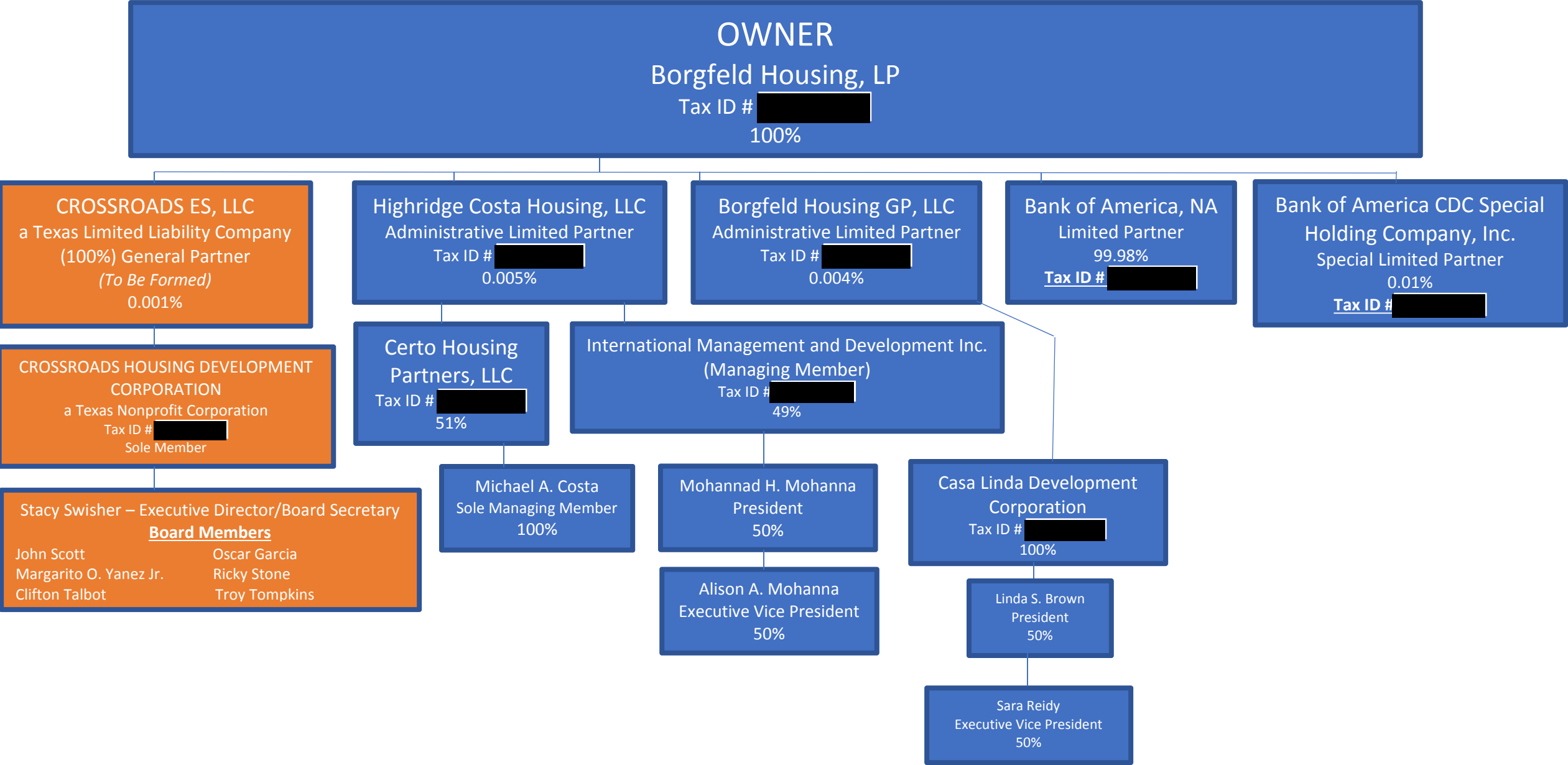
cc:     Simon Fraser (*via email*)  
       Sara Reidy and Linda Brown (*via email*)  
       Stacy Swisher (*via email*)

# Organizational Chart Of Owner





# Organizational Chart of Ownership (proposed)





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October 22, 2018

**VIA HAND DELIVERY**

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

Re: **Request to Amend Tax Credit Application**  
El Sereno Senior Apartments f/k/a Borgfeld Manor (the "**Property**")  
TDHCA File No. 16128

Dear Dee:

We represent Borgfeld Housing, LP (the "**Partnership**"), which owns the Property. The Partnership submitted an Application<sup>1</sup> and received an award of Housing Tax Credits in 2016. The purpose of this letter is to seek TDHCA's approval of an amendment to the Application. Specifically, the Partnership proposes to admit a new General Partner, prior to receipt of Forms 8609. This admission has implications for points received by the Partnership in the Application process.

**Background Information**

The current General Partners of the Partnership are Highridge Costa Housing, LLC, as Managing General Partner, and Borgfeld Housing GP, LLC, as Administrative General Partner, as anticipated in the Application. The Administrative General Partner is wholly owned by Casa Linda Affordable Housing, LLC, which is an historically underutilized business (a "**HUB**"). When the Partnership applied for Housing Tax Credits, it took one (1) point for HUB participation under Section 11.9(b)(2) of the 2016 Qualified Allocation Plan (the "**QAP**").

The Partnership is nearing completion of construction of the Property. During the process, it has experienced significant cost overruns, due to a combination of weather delays and construction cost increases. As a result, the Managing General Partner has made an advance to the Partnership in excess of \$700,000, and all remaining Developer Fee has been deferred. These overruns have implications for the financial viability of the Partnership and the

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<sup>1</sup> Capitalized terms used but not defined have the meanings given them in TDHCA's Uniform Multifamily Rules.

Property. In particular, the Partnership believes that it may not be able to fully repay the Deferred Developer Fee within 15 years, if virtually all of the Developer Fee must be deferred.

With regard to the cost overruns, please see the following attachments:

- Exhibit A - Change Order #2, reflecting delay of 81 working construction days due to sever rain between September and December 2017.
- Exhibit B - Change Order #3, reflecting \$43,626 in general conditions, due to delays.
- Exhibit C - Change Order #4, reflecting \$68,723 in insurance costs, due to delays.
- Exhibit D - Change Order #5, reflecting \$1,165,177.72 increase in construction budget, due to weather-related costs, increased labor, and cost of materials.

These overruns were unforeseeable by the Partnership and not a result of negligence on the part of the Partnership or the Developer.

### **Proposal**

To address this problem, the Partnership proposes to obtain a 50% ad valorem tax exemption by admitting a non-profit organization as its sole general partner. The exemption will allow the Partnership to increase its permanent loan by about \$800,000 from where it is currently projected (and about \$1,400,000 from the amount that was anticipated in the Application). For supporting documentation, please see updated tabs from the Application, showing the difference between financial information for the Property, with and without the tax exemption, as follows:

- Exhibit E - Tab 24, Rent Schedule, utilizing most recent HUD-established rents (same, whether or not the Property has a tax exemption).
- Exhibit F -1 - Tab 26, Operating Expenses, showing that the 50% property tax exemption will yield savings of approximately \$60,000 per year on taxes.
- Exhibit F-2 - Tab 26, Operating Expenses, using full property taxes.
- Exhibit G -1 - Tab 27, Pro Forma, showing the Deferred Developer Fee can be paid in full by the end of the Compliance Period, with the tax exemption.

- Exhibit G-2 - Tab 27, Pro Forma, showing the Deferred Developer Fee cannot be paid in full by the end of the Compliance Period. This exhibit assumes that the Property pays full taxes and uses a lower permanent loan amount, due to the lack of tax exemption.
- Exhibit H - Tab 30, Cost Schedule, showing Total Housing Development Costs increase by about \$3,000,000 (same, whether or not the Property has a tax exemption).
- Exhibit I-1 - Tab 31, Sources and Uses, showing an increase in the permanent loan from the time of Application due to the tax exemption, an increase in the Deferred Developer Fee from the time of Application, and a new "GP Advance," reflecting the contribution by the Managing General Partner. The Partnership is in the process of obtaining a new term sheet from its permanent lender, reflecting the increased loan amount, and will forward same to TDHCA promptly upon receipt.
- Exhibit I-2 - Tab 31, Sources and Uses, showing the permanent loan amount without the tax exemption, the increase in Deferred Developer Fee without the tax exemption and increased permanent loan, and a new "GP Advance," reflecting the contribution by the Managing General Partner.

The Partnership has identified Crossroads Housing Development Corporation, a Texas non-profit corporation ("**CHDC**") as a proper candidate to fill this role. Principals of the Managing General Partner have a pre-existing business relationship with CHDC. Crossroads has formed a wholly-owned subsidiary, Crossroads ES, LLC, (the "**Incoming General Partner**") to take the general partner position in the Partnership. The Managing General Partner and Administrative General Partner will remain in the Partnership and will move over to Administrative Limited Partner positions. In such capacity, they will remain materially involved with the Partnership, assisting the Incoming General Partner and providing approval for all significant Partnership or Property matters. See "before and after" organizational charts attached as Exhibit J.

#### **Application Matters – Amendment**

With this proposed change, the Partnership will no longer qualify for one (1) point on its Application under Section 11.9(b)(2) of the QAP with regard to participation by a HUB. Ideally, the Partnership would retain the one (1) point with the admission of the Incoming General Partner, as a Qualified Nonprofit Organization that would be eligible for the Nonprofit Set-Aside. However, while CHDC is a 501(c)(3) organization, it is not eligible for the Nonprofit Set-



Aside for this Property because of its board composition. More specifically, a majority of the members of the board of CHDC do not reside within 90 miles of the Property. Therefore, in order to implement this change, TDHCA must confirm that the loss of the one (1) point would not have changed the Application's competitive position. We believe this to be correct. Even with the loss of the one (1) point, the tie breaker would have caused the Application to receive an award. Thus, the Partnership hereby requests an amendment to its application to remove the requirement that a HUB participate in the ownership in accordance with Section 11.9(b)(2) of the QAP. If this amendment is approved, we anticipate the LURA for this Property will not include any HUB requirements.

### **Request**

The Partnership believes the financial feasibility of the Property and the inability to foresee the weather delays presents good cause for TDHCA to grant this request. An ownership transfer package is being submitted under separate cover. We understand that, because this request is being made prior to receipt of Forms 8609, Board approval will be required. We respectfully request to have this matter placed on the agenda for December.

If additional information is required, please feel free to contact our client, or our firm. Thank you for your time.

Sincerely,



Cynthia L. Bast

cc: Simon Fraser (*via email*)  
Linda Brown and Sara Reidy (*via email*)  
Stacy Swisher (*via email*)

1s

**BOARD ACTION REQUEST**  
**ASSET MANAGEMENT DIVISION**  
**DECEMBER 6, 2018**

Presentation, Discussion, and Possible Action regarding a Placed in Service deadline extension for a development located in a major disaster area as allowed under Section 6 of IRS Revenue Procedure 2014-49 for El Sereno (HTC #16128)

**RECOMMENDED ACTION**

**WHEREAS**, Borgfeld Housing, LP (the “Development Owner” or “Owner”) was allocated \$1,500,000 in 9% Housing Tax Credits in 2016 for El Sereno formerly known as Borgfeld Manor (the “Development”), a development consisting of 136 new multifamily units for elderly persons in Cibolo, Guadalupe County;

**WHEREAS**, the Development Owner is required by the Carryover Allocation Agreement to place all Units in service no later than December 31, 2018, and required by Internal Revenue Code §42(h)(1) to place each building in service by no later than December 31, 2018;

**WHEREAS**, IRS Revenue Procedure 2014-49 allows for and the Development Owner is requesting an extension to the placed in service deadline because the buildings are located in and impacted by a major disaster area, as declared by the President, during the two-year period described in §42(h)(1)(E)(i) as long as the Development Owner plans to place the Development in service no later than December 31 of the year following the end of the two-year period;

**WHEREAS**, on October 11, 2017, the Federal Emergency Management Agency (“FEMA”) amended the major disaster declaration for the State of Texas (FEMA-4332-DR), originally dated August 25, 2017, to include Guadalupe County, among others, as areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of August 25, 2017;

**WHEREAS**, the Owner has indicated that the Development has incurred significant construction delays related to inclement weather in the area and is requesting relief under IRS Revenue Procedure 2014-49 in the form of a 120 day extension, from December 31, 2018, to April 30, 2019, and an additional 60 day extension at the Acting Director’s discretion, to the Development’s placed in service (“PIS”) deadline;

**WHEREAS**, aside from delaying the availability of affordable units, the requested change does not negatively affect the Development or impact the long term viability of the transaction, and the requested relief is commensurate with the delay which occurred and does not exceed the relief period specified in IRS Revenue Procedure 2014-49; and

**WHEREAS**, under 10 TAC §10.405(c), staff has determined that Board approval is warranted based on the extenuating circumstances in the Owner's request;

**NOW, therefore, it is hereby**

**RESOLVED**, that the requested extension of the PIS deadline to April 30, 2019, is hereby approved, and the Acting Director and his designees are each authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

**FURTHER RESOLVED**, that the Acting Director is authorized and empowered to determine and provide an appropriate amount of relief, up to an additional 60 days, based on an assessment of the request made and factors addressed to support the extension, as provided for in Revenue Procedure 2014-49 for placed in service. Any request for extension beyond 60 days will necessitate further Board action.

### **BACKGROUND**

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 has 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.

On November 13, 2018, the Owner submitted a request for an extension of the deadline to place this Development in service to April 30, 2019, with one additional 60 day extension period to be provided at the Acting Director's discretion. The 120 day extension is less than the number of documented days lost to weather delays.

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. The Department's determination may be made on an individual project basis or the Department may determine, because of the extent of the damage in a major disaster area, that all Owners or a certain group of Owners in the major disaster area warrant the relief. Staff believes that the heavy rains caused by Hurricane Harvey affected the construction progress of this Development, and staff recommends an extension of the PIS date to the date requested.

Extension requests are normally considered under the Uniform Multifamily Rules, Subchapter E, 10 TAC §10.405(c); however, extensions are only considered in this section if the original deadline associated with Carryover, the 10 Percent Test, construction status reports, or cost certification requirements will not be met. The provisions in the Rule do not specifically address extensions to the placed in service deadline. The IRS, however, provides for the subject disaster related extension. Staff has the ability, in accordance with provisions in 10 TAC §10.405(c), to bring to the Board material determinations that warrant Board approval due to extraordinary circumstances such as those discussed above.

Staff recommends approval of the extension, from December 31, 2018, to April 30, 2019, as presented herein. Furthermore, staff recommends that the Acting Director be authorized to determine and provide an appropriate amount of additional relief for placed in service, as provided for in Revenue Procedure 2014-49, up to an additional 60 days, based on an assessment of a subsequent extension request.



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Cynthia L. Bast  
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Direct Fax: 512-391-4707  
cbast@lockelord.com

November 13, 2018

**Via Email**

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

Re: El Sereno Apartments in Cibolo, Texas (the "**Development**")  
TDHCA No. 16128

Dear Dee:

Our firm represents Borgfeld Manor, LP ("**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, 2018.

The Development is located in Guadalupe County, Texas, which was directly and indirectly impacted by Hurricane Harvey. Pursuant to FEMA-4332-DR, Guadalupe County was declared eligible for Public Assistance.

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. See Exhibit A attached hereto for the Change Order, accompanied by a Delay Log and USGS Rainfall Data for September through December 2017.

Because of these challenges, Owner submits this request for an extension of the deadline to place this Development in service to April 30, 2019, with one (1) additional sixty (60) day extension period to be provided at the Executive Director's discretion. The one hundred twenty (120) day extension is less than the number of documented days lost to weather delays. This request is submitted, and can be granted by the Texas Department of

Housing and Community Affairs, pursuant to Rev. Proc. 2014-49. Section 6.03 of that Revenue Procedure states:

If an Owner has a carryover allocation for a building located in a Major Disaster Area and the Major Disaster occurs on or after the date of the carryover allocation, the [governmental housing credit agency that has jurisdiction over the Project ("the Agency")] may grant the Owner an extension under section 7 of this revenue procedure. If the Agency grants such an extension, the [Internal Revenue] Service will treat the Owner as having satisfied the placed in service requirement of § 42(h)(1)(E)(i) if the Owner places the building in service no later than the expiration of that extension.

Section 5 of that Revenue Procedure defines a Major Disaster as "an event for which the President has declared a major disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq." and a Major Disaster Area as any city, county, or other local jurisdiction for which a Major Disaster has been declared by the President and which has been designated by FEMA as eligible for Individual Assistance, Public Assistance, or both." Furthermore, Section 7.02 states, "The Agency may approve the carryover allocation relief provided in sections 6.02 and 6.03 of this revenue procedure only for Projects whose Owners cannot reasonably satisfy the deadlines of § 42(h)(1)(E) because of a Major Disaster."

In the alternative, 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 2018 Qualified Allocation Plan (the "QAP"). We believe Owner and the Development meet all of the requirements of Section 11.6(5), in that:

1. The delays in construction were a direct result of significant weather events referenced above.
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 Hurricane Harvey and other rain events on the construction schedule of the Development is attached as Exhibit A.
4. Owner and the Contractor are experienced developers of these types of properties, and each took any steps available to them to mitigate the delays; however, the weather was not within their control.
5. Owner substantially fulfilled all of its obligations that were not impeded by the weather events and the Development was properly insured.
6. The weather events may prevent Owner from meeting the placement 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 viable.

I would greatly appreciate you confirming the requested relief and am happy to address any questions you may have. We are grateful for your assistance with this matter.

Respectfully submitted,



Cynthia L. Bast

cc: Highridge Costa Housing, LLC

*Simon Fraser*

*Tom Erickson*

*Moe Mohanna*

*Monte Heaton*

*Michele Peutet*

*Brian Suess*

Casa Linda Affordable Housing, LLC

*Sara Reidy*

*Linda Brown*





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 blue 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



<b>Borgfeld Manor</b>
Pete Harispuru
<b>01/04/18</b>

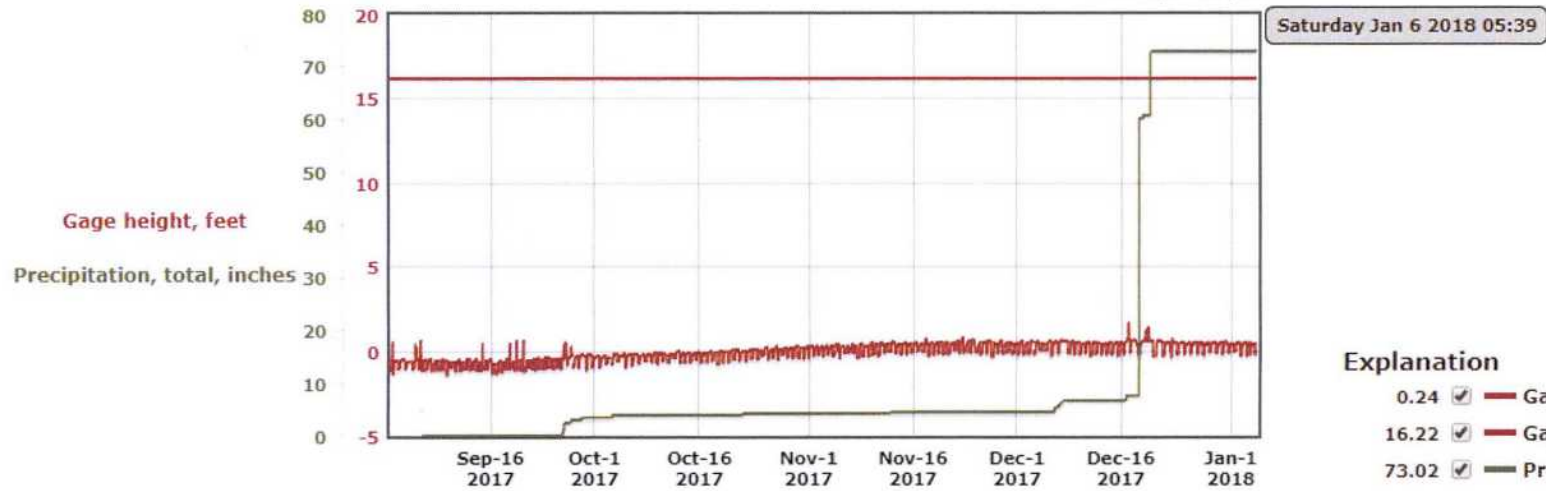
<b>Total # of Days Delayed:</b>	148
<b>Delays AVG Days:</b>	11
<b>No. of Delays:</b>	0

**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 intervened 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

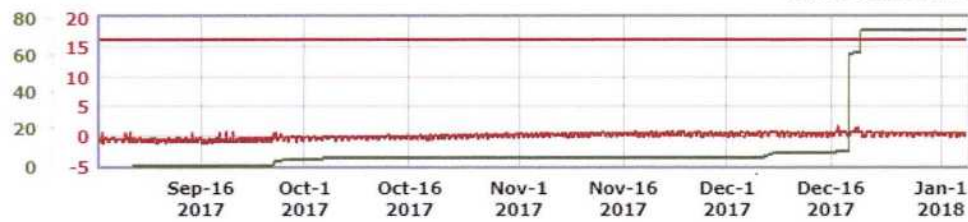
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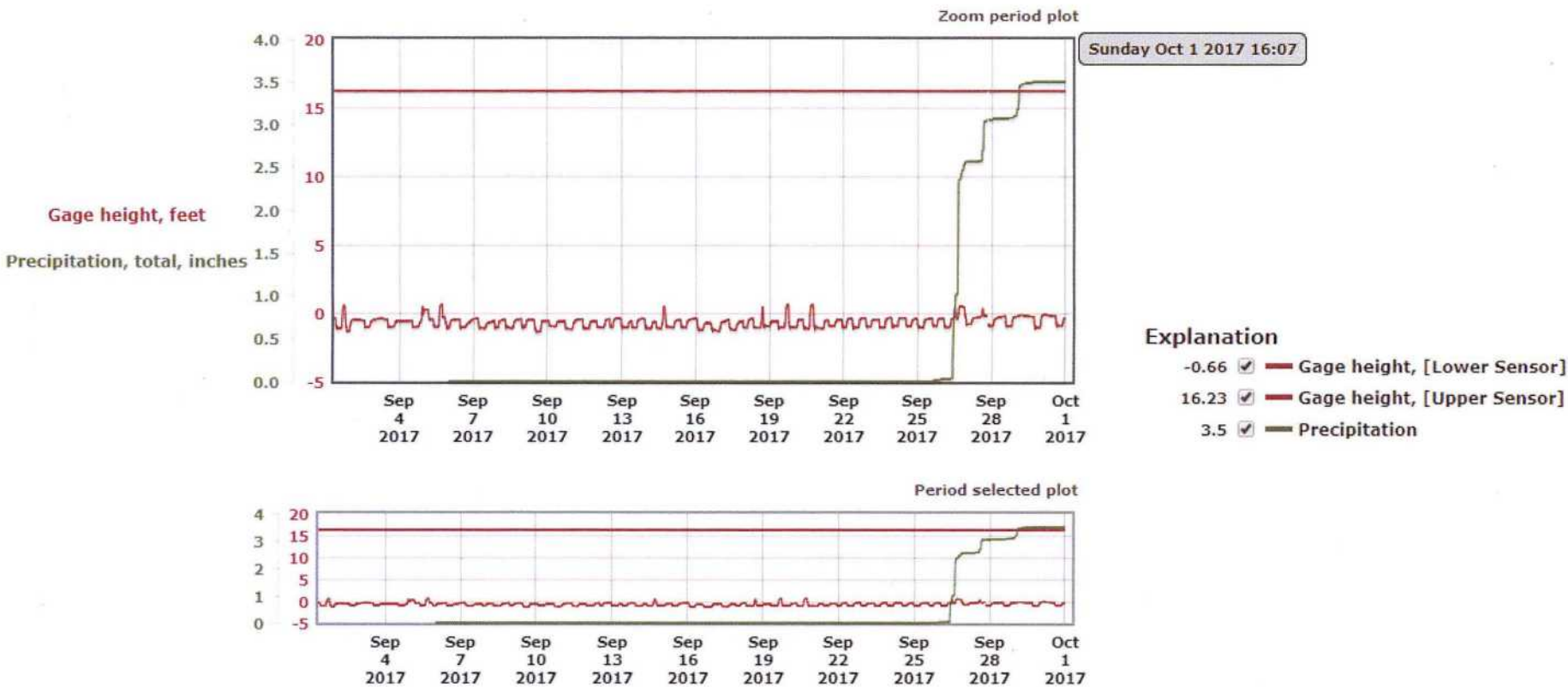
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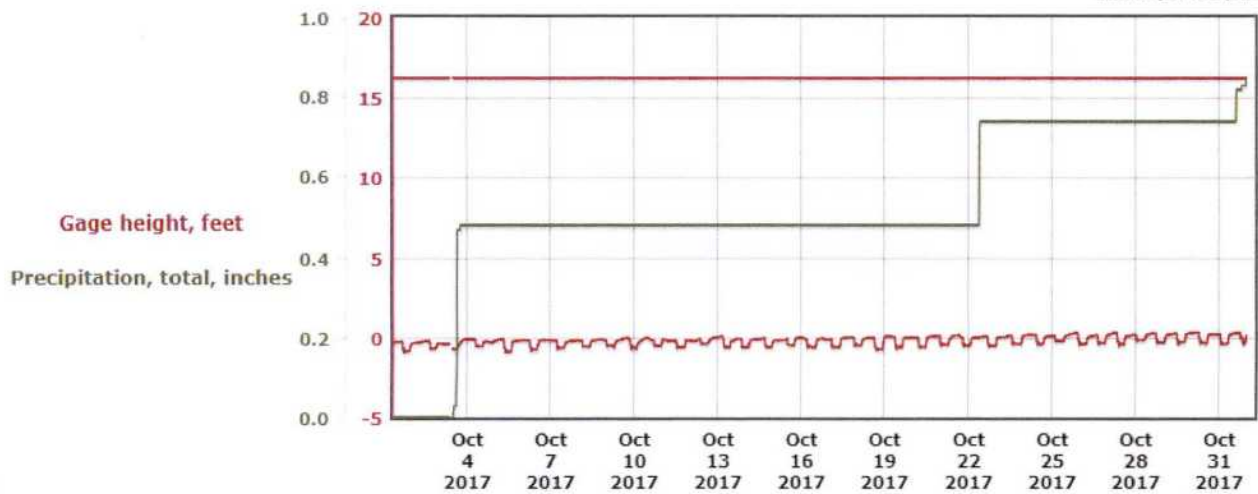
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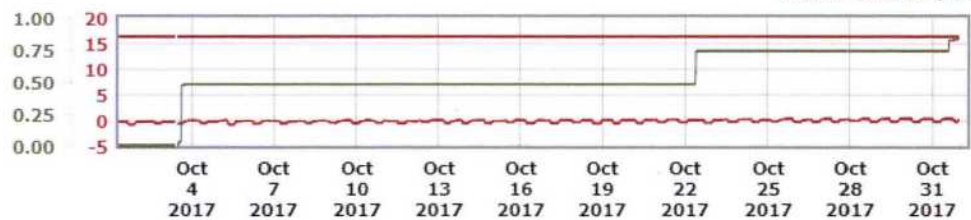
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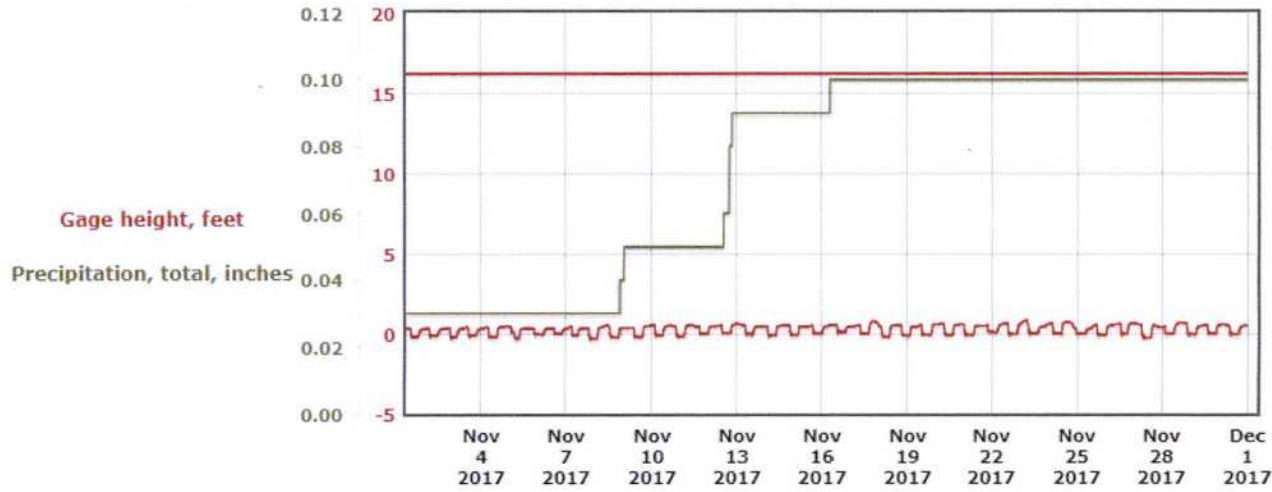
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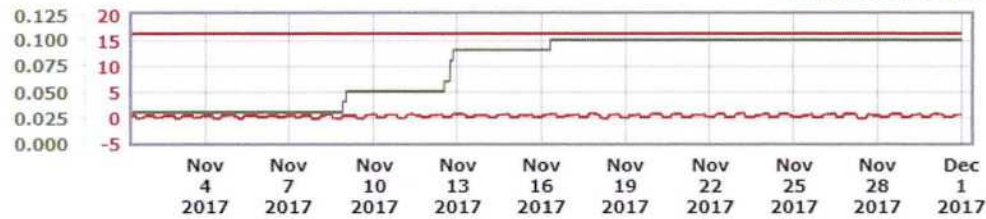
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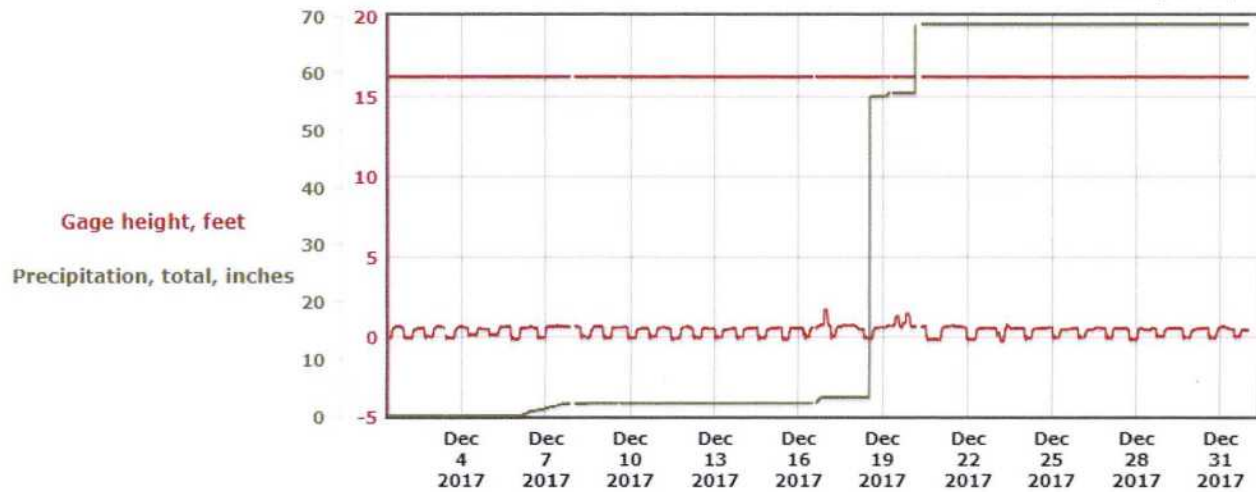
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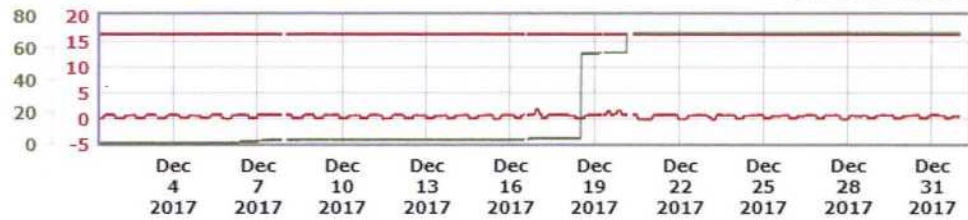
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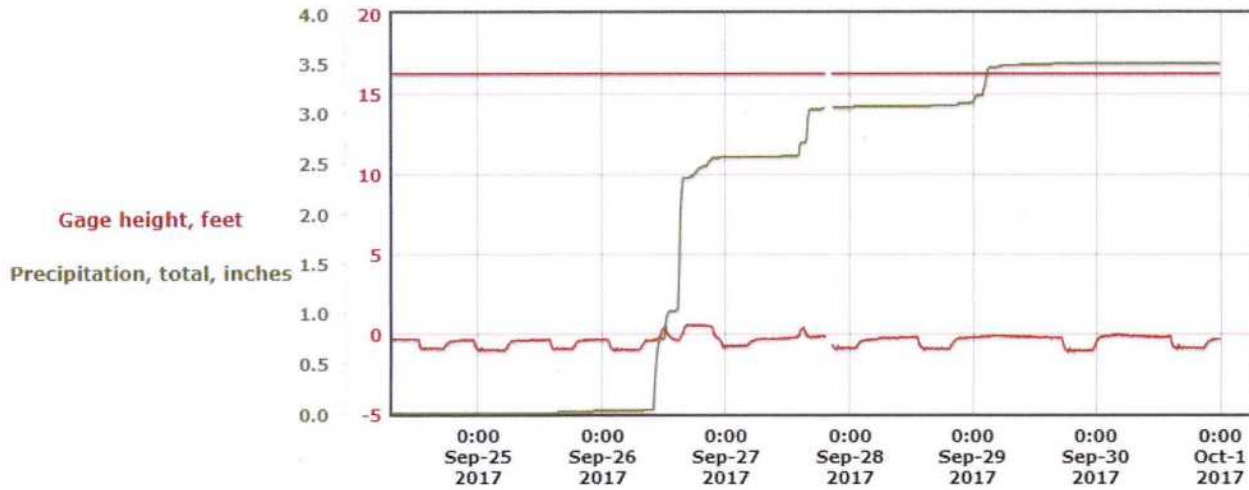
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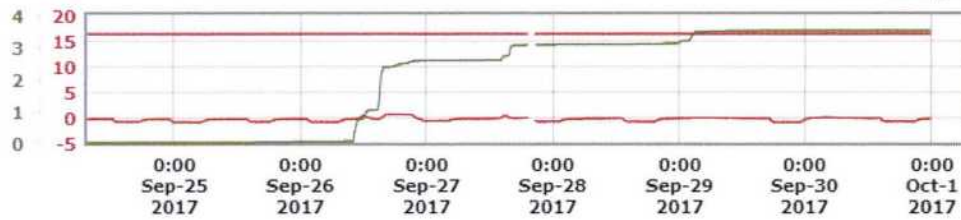
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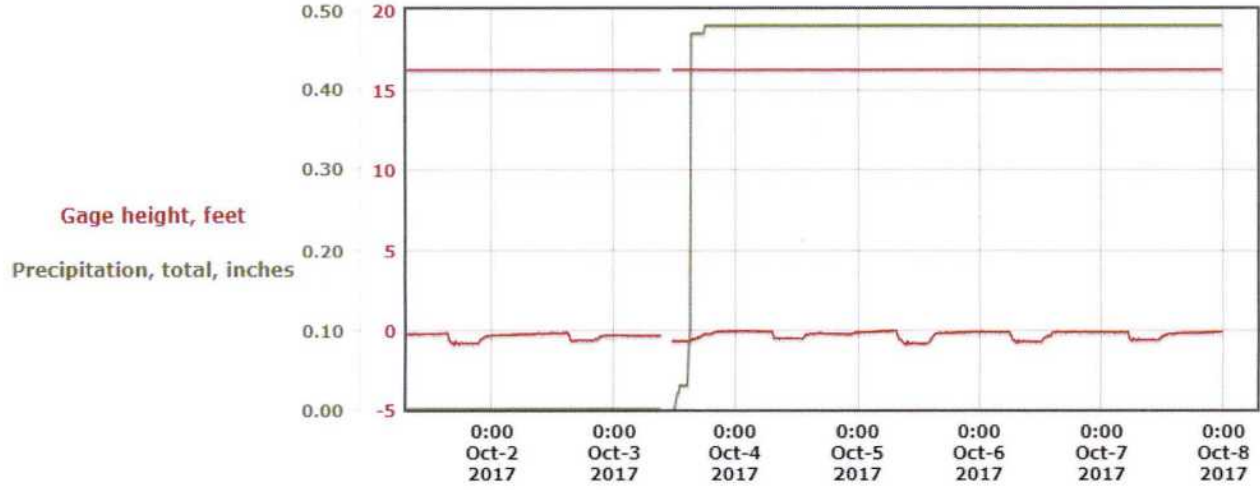
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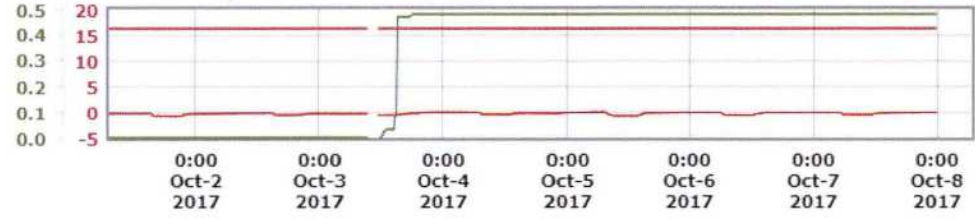
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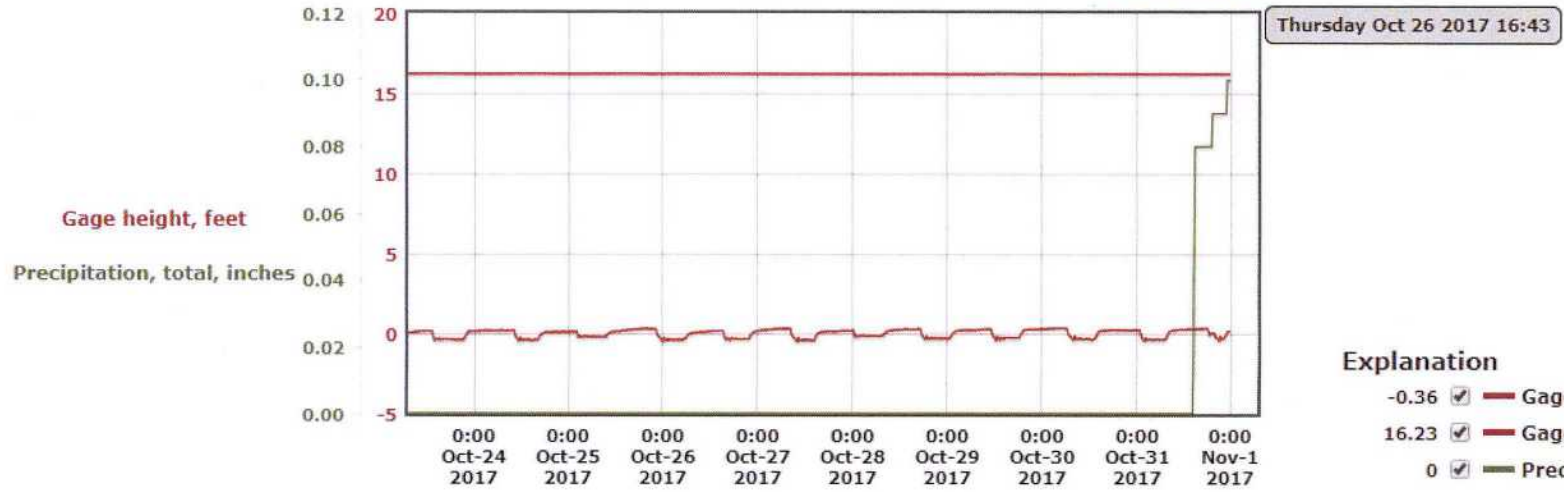
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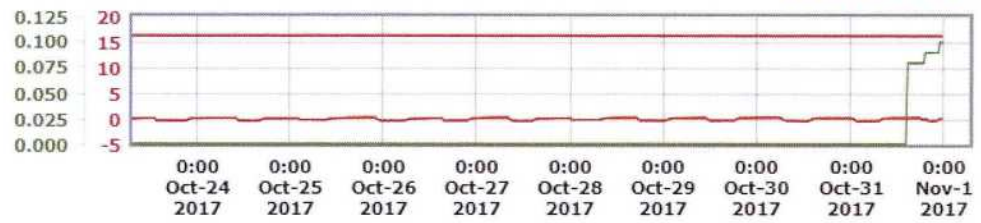


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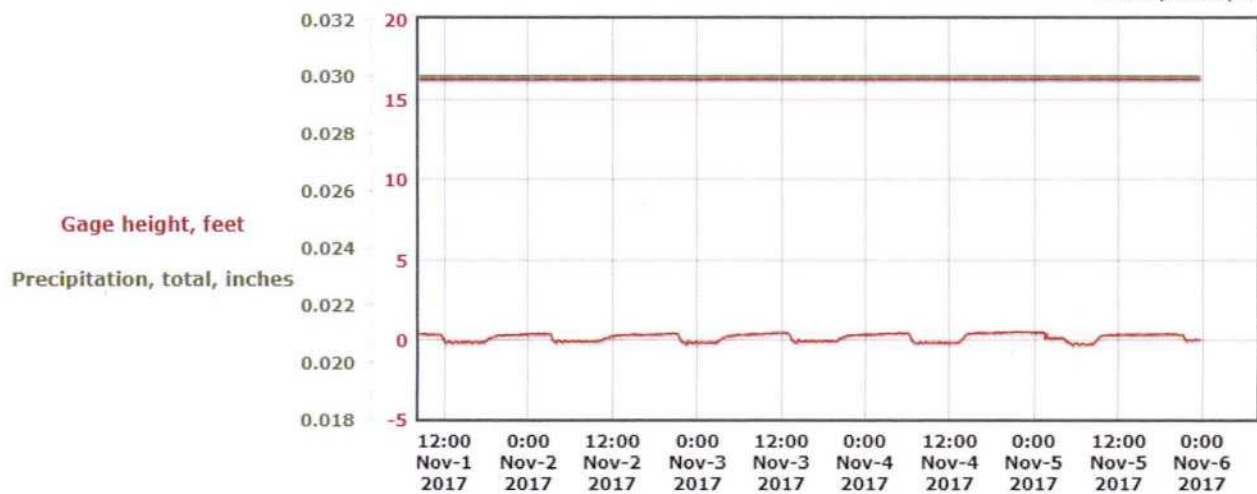


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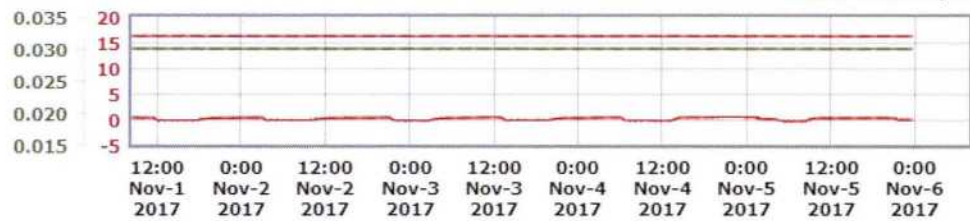


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**Explanation**

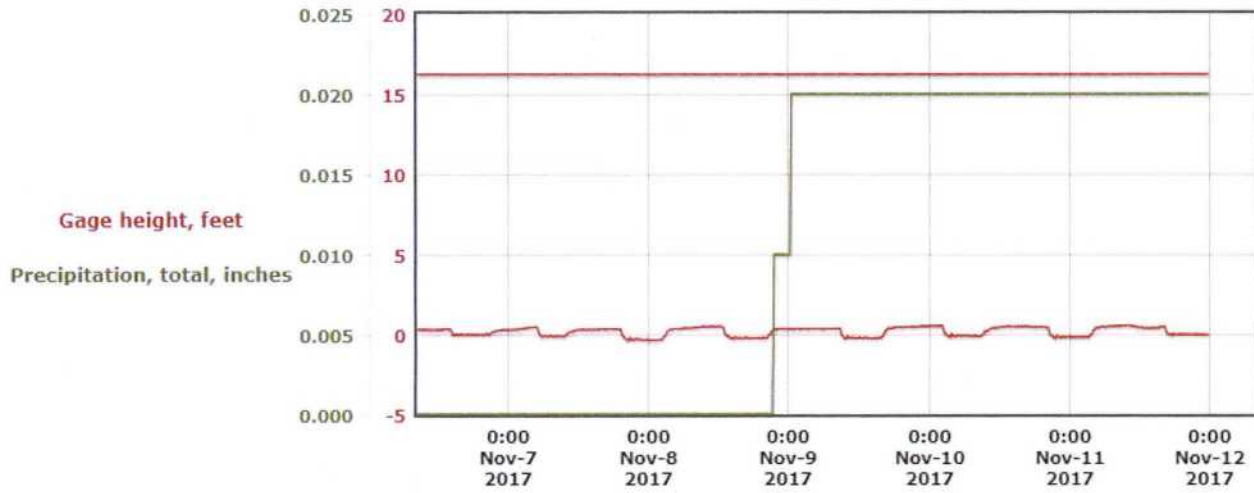
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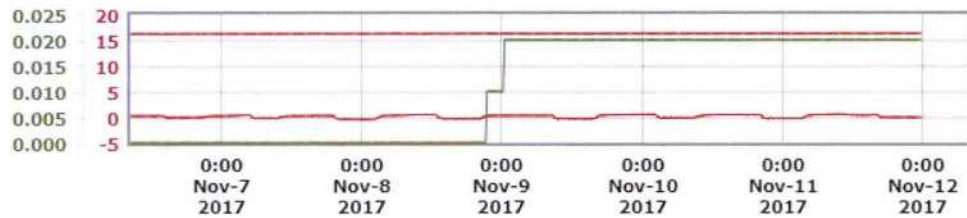
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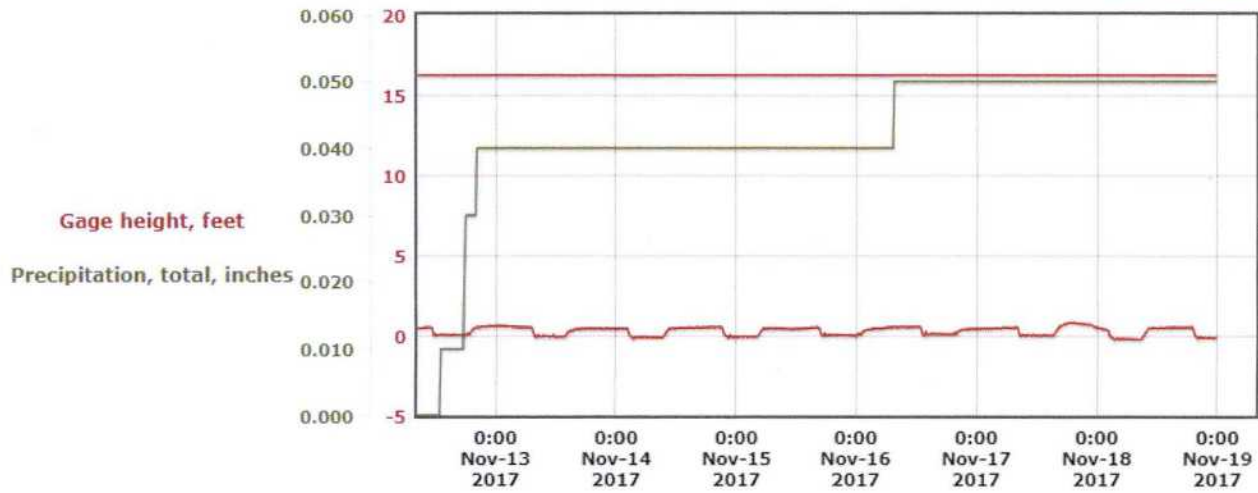
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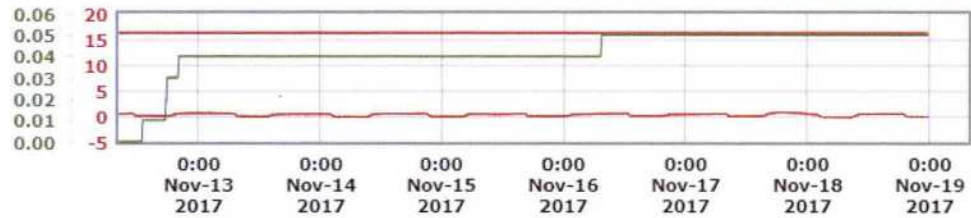
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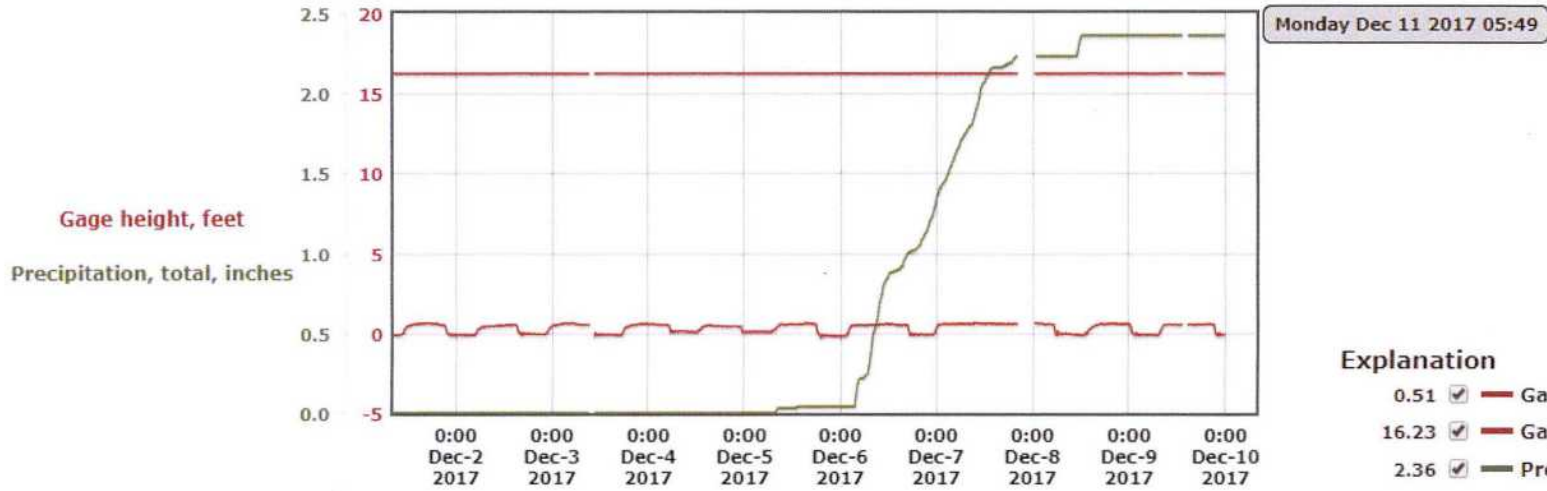
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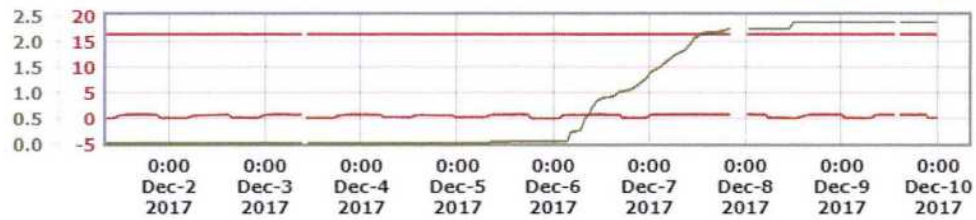
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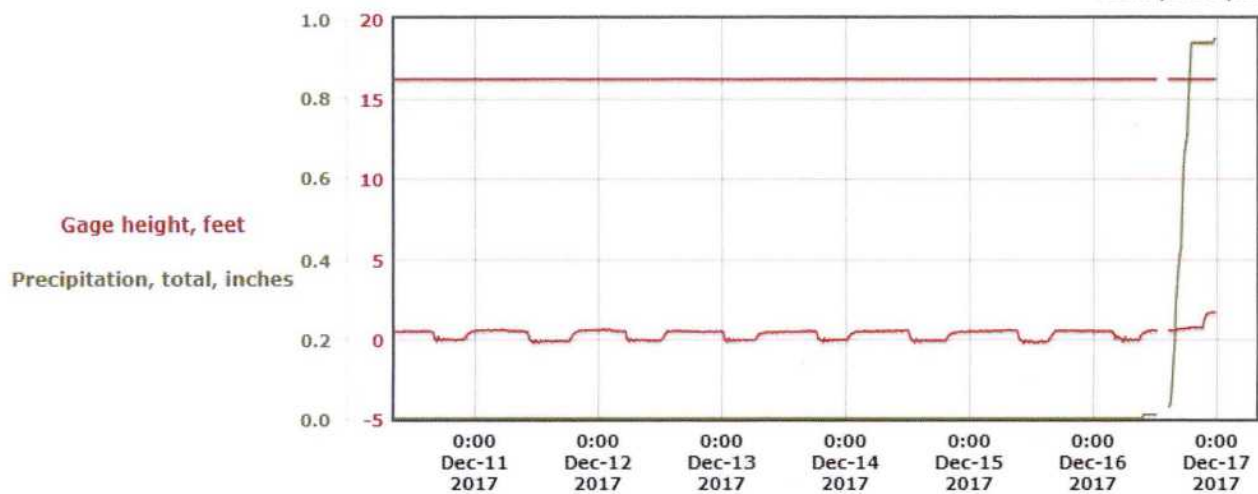
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### USGS 08169740 Guadalupe Rv at Hwy 123-BR at Seguin, TX

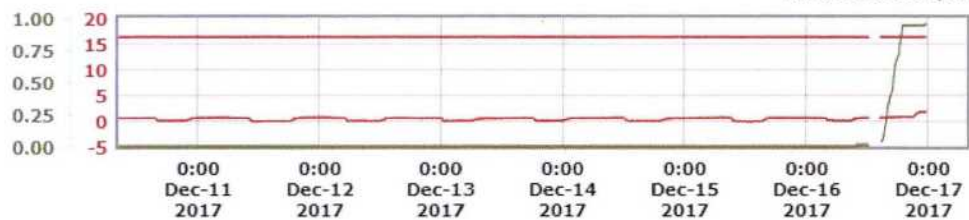
Zoom period plot



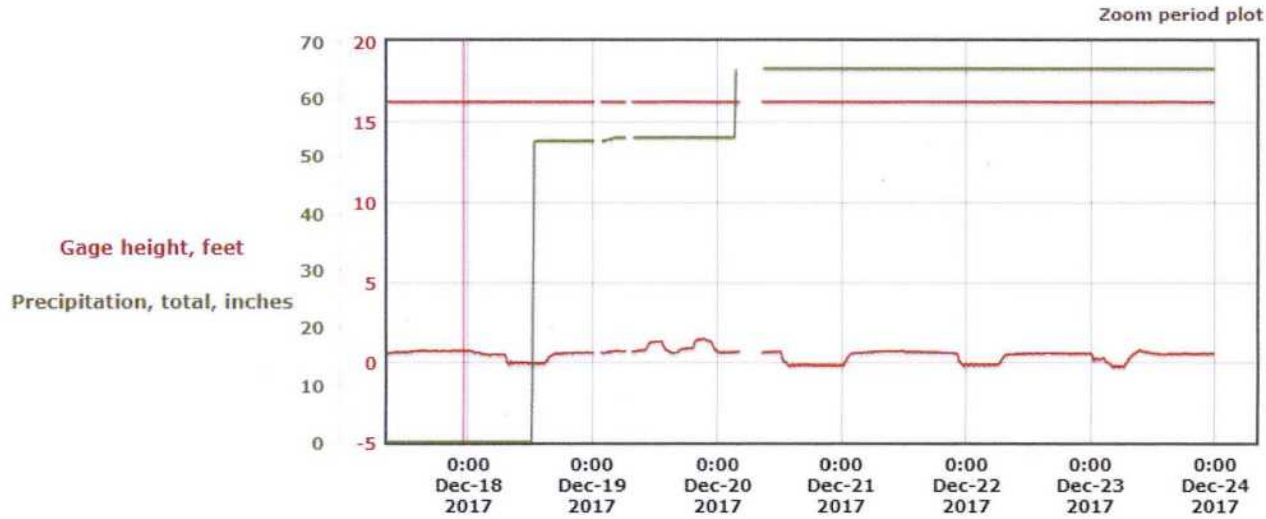
#### Explanation

- Gage height, [Lower Sensor]
- Gage height, [Upper Sensor]
- Precipitation

Period selected plot

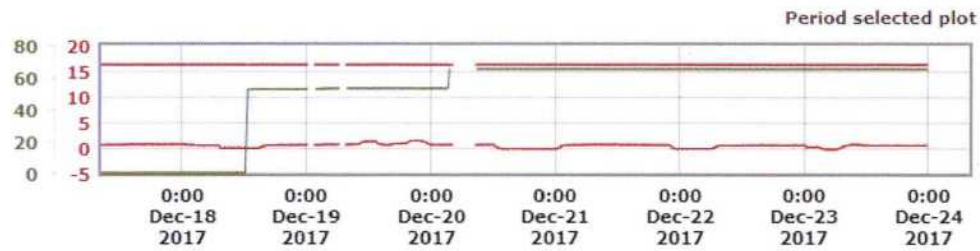


### USGS 08169740 Guadalupe Rv at Hwy 123-BR at Seguin, TX



#### Explanation

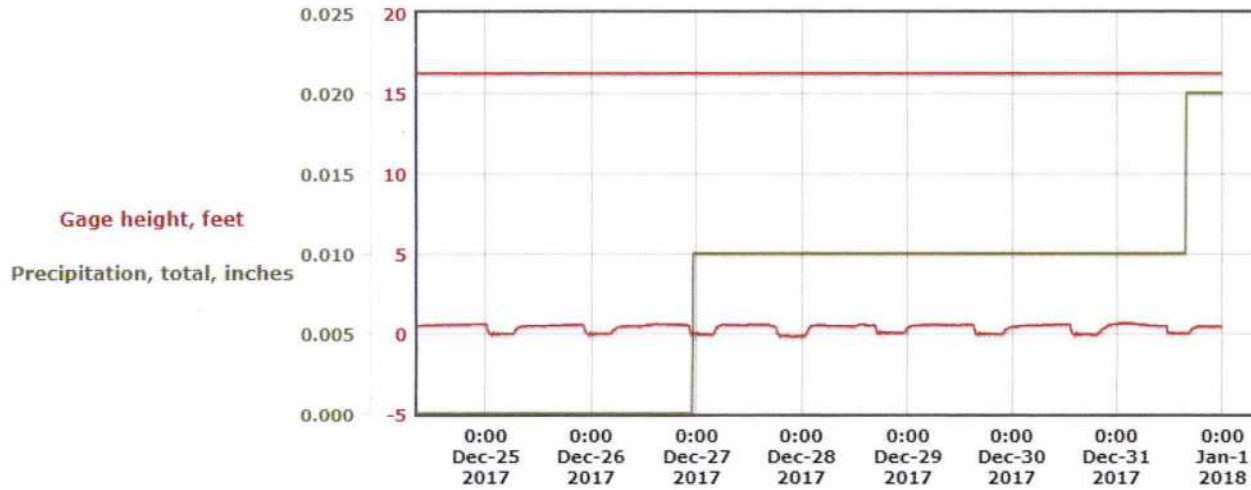
- 0.69  Gage height, [Lower Sensor]
- 16.22  Gage height, [Upper Sensor]
- 0  Precipitation





### USGS 08169740 Guadalupe Rv at Hwy 123-BR at Seguin, TX

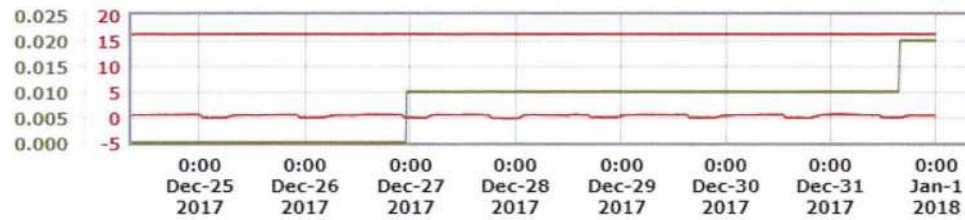
Zoom period plot



#### Explanation

- Gage height, [Lower Sensor]
- Gage height, [Upper Sensor]
- Precipitation

Period selected plot





# Initial Notice

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**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/

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Brock Long,

Administrator,

Federal Emergency Management Agency.

Last Updated: 08/26/2017 - 15:09

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# Amendment No. 10

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**Date of Notice:**

Wednesday, October 11, 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; Amendment No. 10 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas (FEMA-4332-DR), dated

August 25, 2017, and related determinations.

DATE: This amendment was issued October 11, 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: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of August 25, 2017.

Caldwell County for Individual Assistance.

Grimes County for Individual Assistance (already designated for Public Assistance).

Caldwell, Comal, Guadalupe, Jim Wells, Milam, and San Augustine Counties for Public Assistance.

DeWitt, Gonzales, Lavaca, and Sabine Counties for Public Assistance [Categories C-G] (already designated for Individual Assistance and assistance for debris removal and emergency protective measures [Categories A and B], including direct federal assistance, under the Public Assistance 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/

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Brock Long,

*Administrator,*

*Federal Emergency Management Agency.*

Last Updated: 10/11/2017 - 14:35

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Administrative, Procedural, and Miscellaneous

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability.

(Also: Part I, §§ 42 and 142; 1.42-5, 1.42-6, 1.42-13, 1.42-14)

Rev. Proc. 2014-49

SECTION 1. PURPOSE

In the context of a Major Disaster, this revenue procedure provides temporary relief from certain requirements of § 42 of the Internal Revenue Code for Agencies and Owners. This revenue procedure also provides emergency housing relief for individuals who are displaced by a Major Disaster from their principal residences in certain Major Disaster Areas. For low-income buildings financed with exempt facility bonds under § 142, see also Rev. Proc. 2014-50, I.R.B. 2014-37, which provides for emergency housing relief under § 142(d) in response to Major Disasters. This revenue procedure modifies and supersedes Rev. Proc. 2007-54, 2007-2 C.B. 293. See section 5 of this

revenue procedure for definitions of certain capitalized terms appearing throughout this revenue procedure.

## SECTION 2. BACKGROUND

.01 Upon issuance of the President's declaration of a Major Disaster, the Federal Emergency Management Agency (FEMA) may designate particular cities, counties, or other local jurisdictions covered by the declaration as eligible for Individual Assistance, Public Assistance, or both.<sup>1</sup> With respect to some previous Presidential declarations of Major Disasters, the Internal Revenue Service (Service) issued notices providing relief from certain requirements under §§ 42 and 142(d) to facilitate emergency housing relief for Displaced Individuals without regard to the income of those Displaced Individuals.<sup>2</sup>

.02 Under §1.42-13(a) of the Income Tax Regulations, the Secretary may provide guidance to carry out the purposes of § 42 through various publications in the Internal Revenue Bulletin.

## SECTION 3. CHANGES

.01 Rev. Proc. 2007-54 established temporary relief from certain requirements of § 42 for Owners and Agencies in Major Disaster Areas. In particular, Rev. Proc. 2007-54 (1) provided relief from the carryover allocation provisions; (2) clarified the consequences if an Owner failed to restore a building within a reasonable restoration

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<sup>1</sup> FEMA generally publishes this designation in a notice in the Federal Register.

<sup>2</sup> For relief under § 42, see e.g., Notice 2012-7, 2012-4 I.R.B. 308 (flooding in Iowa); Notice 2012-68, 2012-48 I.R.B. 574 (Hurricane Sandy); Notice 2013-40, 2013-25 I.R.B. 1254, and Notice 2013-47, 2013-31 I.R.B. 120 (severe storms and tornadoes in Oklahoma); and Notice 2013-64, 2013-44 I.R.B. 438 (weather-related disasters in Colorado). For relief under § 142(d), see Notice 2013-9, 2013-9 I.R.B. 529 (Hurricane Sandy); Notice 2013-39, 2013-25 I.R.B. 1252, and Notice 2013-47(severe storms and tornadoes in Oklahoma); and Notice 2013-63, 2013-44 I.R.B. 436 (weather-related disasters in Colorado).

period; (3) provided relief from certain compliance monitoring requirements; (4) allowed Agencies to provide relief for buildings severely damaged or destroyed in the first year of the credit period; and (5) described the amount of credit allowable for a restored building.

.02 Rev. Proc. 2007-54 also allowed Owners to rely on the self-certification of income eligibility of an individual who was displaced from his or her principal residence as a result of a Major Disaster and whose principal residence was in a city, county, or other local jurisdiction designated for Individual Assistance by FEMA as a result of the Major Disaster. The self-certification could not extend for more than four months beyond the date of the President's Major Disaster declaration. During the four-month self-certification period, the self-certified tenant was deemed a qualified low-income tenant. After the four-month self-certification period, the self-certified tenant was treated as a qualified low-income tenant only if the Owner obtained all documentation required under § 42 to support the tenant's continued status as a qualified low-income individual.

.03 The key modifications to Rev. Proc. 2007-54 in this revenue procedure include: (1) changing the reasonable restoration period for recapture relief and the tolling period for severely damaged, destroyed, or uninhabitable buildings in the first year of the credit period; (2) in determining qualified basis, using the building's qualified basis at the end of the taxable year immediately preceding the first day of the incident period as determined by FEMA, rather than at the end of the taxable year preceding the President's Major Disaster declaration; (3) incorporating a temporary suspension of certain income limitations for Displaced Individuals; (4) eliminating the need for self-

certification of income eligibility; (5) permitting an Agency to allow an Owner within its jurisdiction to provide emergency housing relief to Displaced Individuals from other jurisdictions; (6) describing the consequences of providing emergency housing relief in the first year of the credit period and after the first year of the credit period; and (7) modifying the safe harbor relating to the amount of credit allowable to a restored building to provide relief in circumstances where the restoration cost is less than the eligible basis cost.

#### SECTION 4. SCOPE

This revenue procedure applies when the President has declared a Major Disaster. This revenue procedure applies to Displaced Individuals and to all § 42 buildings (including buildings financed with exempt facility bonds under § 142), Agencies, and Owners both inside and outside States containing a Major Disaster Area.

#### SECTION 5. DEFINITIONS

The following definitions apply for this revenue procedure.

.01 Agency. With respect to a Project, the Agency is the governmental housing credit agency that has jurisdiction over the Project.

.02 Displaced Individual. A Displaced Individual is an individual who is displaced from his or her principal residence as a result of a Major Disaster and whose principal residence was located in a Major Disaster Area designated as eligible for Individual Assistance by FEMA.



.03 Major Disaster. A Major Disaster is an event for which the President has declared a major disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq.

.04 Major Disaster Area. A Major Disaster Area is any city, county, or other local jurisdiction for which a Major Disaster has been declared by the President and which has been designated by FEMA as eligible for Individual Assistance, Public Assistance, or both.

.05 Market-Rate Unit. A Market-Rate Unit is a unit that is not a low-income unit under § 42(i)(3).

.06 Owner. An Owner is the owner of a Project.

.07 Project. A Project is a project that is subject to low-income requirements under § 42.

.08 Temporary Housing Period. A Temporary Housing Period is the period, if any, beginning on the first day of the incident period, as determined by FEMA, and ending on the date determined by the Agency under section 12.02 of this revenue procedure.

## SECTION 6. RELIEF FOR CARRYOVER ALLOCATIONS

.01 A carryover allocation is defined in § 1.42-6(a)(1) as an allocation that meets the requirements of § 42(h)(1)(E) (relating to carryover allocations for single buildings) or § 42(h)(1)(F) (relating to carryover allocations for multiple-building Projects).

.02 If an Owner has a carryover allocation for a building located in a Major Disaster Area and the incident period for the Major Disaster began prior to the deadline

in § 42(h)(1)(E), the Agency may grant the Owner an extension under section 7 of this revenue procedure. If the Agency grants such an extension, the Service will treat the Owner as having satisfied the 10-percent basis requirement of § 42(h)(1)(E)(ii) if the Owner incurs more than 10 percent of the Owner's reasonably expected basis in the building (land and depreciable basis) no later than the expiration of that extension. See § 1.42-6 for specific rules on carryover allocations.

.03 If an Owner has a carryover allocation for a building located in a Major Disaster Area and the Major Disaster occurs on or after the date of the carryover allocation, the Agency may grant the Owner an extension under section 7 of this revenue procedure. If the Agency grants such an extension, the Service will treat the Owner as having satisfied the placed in service requirement of § 42(h)(1)(E)(i) if the Owner places the building in service no later than the expiration of that extension. See § 1.42-6 for specific rules on carryover allocations.

.04 If either section 6.04(1) or section 6.04(2) of this revenue procedure applies, then the Service will treat the carryover allocation as a credit returned to the Agency on the day following the end of the extension period granted under the authority of section 6.02 of this revenue procedure, provided the Agency complies with the requirements of § 1.42-14(d)(3).

(1) Under the procedure described in section 7 of this revenue procedure, an Owner obtains the relief provided in section 6.02 of this revenue procedure but fails to satisfy the 10-percent basis requirement of § 42(h)(1)(E)(ii) before the expiration of the

extension period granted under the authority of section 6.02. See § 1.42-14 for specific rules on returned credits.

(2) Under the procedure described in section 7 of this revenue procedure, an Owner obtains the relief provided in section 6.03 of this revenue procedure but fails to satisfy the placed in service requirement of § 42(h)(1)(E)(i) before the expiration of the extension period granted under the authority of section 6.03.

#### SECTION 7. PROCEDURE TO OBTAIN CARRYOVER ALLOCATION RELIEF

.01 An Owner may obtain the carryover allocation relief described in section 6.02 or 6.03 of this revenue procedure only if the Owner receives approval for the relief from the Agency that issued the carryover allocation pursuant to the procedures in this section 7.

.02 The Agency may approve the carryover allocation relief provided in sections 6.02 and 6.03 of this revenue procedure only for Projects whose Owners cannot reasonably satisfy the deadlines of § 42(h)(1)(E) because of a Major Disaster. Depending on the extent of the damage in a Major Disaster Area, an Agency may make this determination on an individual Project basis or determine that all Owners or a particular group of Owners in the Major Disaster Area warrant the relief provided in sections 6.02 and 6.03 of this revenue procedure. An extension under section 6.02 must not extend beyond six months after the date the Owner would otherwise be required to meet the 10-percent requirement of § 42(h)(1)(E)(ii). An extension under section 6.03 must not extend beyond December 31 of the year following the end of the two-year period described in § 42(h)(1)(E)(i). See § 1.42-6 for specific rules on

carryover allocations. Based upon all facts and circumstances, an Agency has the discretion to provide shorter periods of relief than the maximum periods allowed by this section 7.02, or no relief at all.

.03 An Agency that chooses to approve the relief provided in sections 6.02 and 6.03 of this revenue procedure must do so before filing the Form 8610, Annual Low-Income Housing Credit Agencies Report, that covers the preceding calendar year. The Form 8610 is due by February 28 of the year following the year to which the Form 8610 applies.

.04 An Agency that approves the relief under sections 6.02 and 6.03 of this revenue procedure must report to the Service the Projects granted relief by attaching the documentation required in the instructions to Form 8610. The Agency should identify only those buildings, including buildings granted relief in January and February of the year in which the Agency files the Form 8610, that received the Agency's approval of the carryover allocation relief provided in sections 6.02 and 6.03 of this revenue procedure since the Agency last filed the Form 8610.

## SECTION 8. RECAPTURE RELIEF

.01 In general, under § 42(j)(1), if (1) a building is beyond the first year of the credit period, and (2) at the end of the taxable year, the building's qualified basis with respect to the taxpayer is less than the qualified basis with respect to the taxpayer at the end of the preceding taxable year, then the credits, if any, for the year of the reduction are determined using the reduced qualified basis, and the taxpayer's Federal



income tax liability for the year of the reduction is increased by the credit recapture amount prescribed in § 42(j)(2).

.02 If the building's qualified basis is reduced by reason of a casualty loss, then under § 42(j)(4)(E), a building is not subject to recapture to the extent the loss is restored by reconstruction or replacement within a reasonable restoration period. The Agency must determine what constitutes a reasonable restoration period in the case of a Major Disaster that causes a reduction in qualified basis that would result in recapture or loss of credit. The reasonable restoration period established by the Agency must not extend beyond the end of the 25<sup>th</sup> month following the close of the month of the Major Disaster declaration.

.03 To determine the credit amount allowable during the reasonable restoration period for a building described in section 8.02 of this revenue procedure, an Owner must use the building's qualified basis at the end of the taxable year immediately preceding the first day of the incident period for the Major Disaster.

.04 If the Owner fails to restore the building within the reasonable restoration period determined by the Agency, then section 8.01 of this revenue procedure applies to the Owner and section 8.03 of this revenue procedure does not apply. The credit amount allowable, if any, after the Major Disaster is determined using the building's qualified basis at the end of each year of the credit period.

.05 Section 1.42-5(c)(1) requires an Owner to report any reduction in qualified basis to the Agency. This requirement applies regardless of whether an Owner obtains the relief provided in section 8.02 of this revenue procedure.

.06 As part of its review procedure adopted under § 1.42-5(c)(2), an Agency must determine whether the Owner described in section 8.01 of this revenue procedure has restored the building's qualified basis by the end of the reasonable restoration period established by the Agency. The Agency must report on Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition, any failure to restore qualified basis within the reasonable restoration period.

#### SECTION 9. COMPLIANCE MONITORING RELIEF

.01 An Agency may extend the due date for its scheduled compliance reviews for up to one calendar year from the date of the building's restoration and placement again into service.

.02 The extension permitted under section 9.01 of this revenue procedure does not extend the compliance monitoring deadlines for Owners in Major Disaster Areas. If an Agency discovers that an Owner has failed to comply with the rules of § 42 because of a Major Disaster, the Agency must report the noncompliance on Form 8823 and describe how the Major Disaster contributed to the noncompliance.

#### SECTION 10. BUILDINGS IN THE FIRST YEAR OF THE CREDIT PERIOD

.01 For buildings during the first year of the credit period that are severely damaged or destroyed in a Major Disaster Area, or uninhabitable as a result of a Major Disaster, an Agency has the discretion to treat the allocation as a returned credit to the Agency in accordance with the requirements of § 1.42-14(d)(3), or may toll the beginning of the first year of the credit period under § 42(f)(1). The tolling period must not extend beyond the end of the 25<sup>th</sup> month following the close of the month of the

Major Disaster declaration. Owners may not claim any low-income housing credit during the restoration period of these first-year buildings.

.02 An Agency that provides the relief in section 10.01 of this revenue procedure must report to the Service those Projects granted relief by attaching the required documentation as provided in the instructions to Form 8610.

## SECTION 11. AMOUNT OF CREDIT ALLOWABLE TO A RESTORED BUILDING

.01 No additional credit for restoration expenditures. If a Major Disaster causes a building to suffer a reduction in qualified basis as described in section 8.01 of this revenue procedure in a taxable year during the compliance period, then § 42 does not allow the Owner to receive any additional credit amounts for costs to restore the building's qualified basis.

.02 Additional credits allowed for rehabilitation expenditures. As a result of either an allocation by an Agency or financing by exempt facility bonds, an Owner may receive an additional amount of credits for rehabilitation expenditures (as described in § 42(e)(2)) if those expenditures are used for rehabilitation and not for restoring qualified basis. A taxpayer may treat as rehabilitation expenditures any expenditures that are described in § 42(e)(2) and that exceed the amount expended for restoration. The amount expended for restoration is generally determined under all of the relevant facts and circumstances. However, if a Major Disaster causes a reduction in qualified basis, the Owner may alternatively treat as restoration expenditures the amount of—

(1) The building's eligible basis immediately before the Major Disaster;  
multiplied by

(2) The excess, if any, of—

a. 1.0 over

b. The fraction whose numerator is the building's post-Major Disaster qualified basis (determined for this purpose immediately after the Major Disaster) and whose denominator is the building's pre-Major Disaster qualified basis (determined for this purpose immediately before the Major Disaster).

.03 Example.

(a) Facts. Immediately before the Major Disaster described below, a low-income building contained 60 Market-Rate Units and 40 low-income units. Thus, the unit fraction under § 42(c)(1)(C) was 40/100. The eligible basis of the building was \$10,000,000. Based on the unit fraction, the qualified basis was \$4,000,000, which is the unit fraction multiplied by the eligible basis. A Major Disaster rendered 10 of the low-income units and several of the Market-Rate Units uninhabitable and damaged some building common areas. As a result of this damage to the common areas and to the residential units, the building's eligible basis was reduced to \$8,500,000. Thus, immediately after the Major Disaster, the qualified basis is \$2,550,000, which is the unit fraction of 30/100 (the unit fraction immediately after the Major Disaster), multiplied by \$8,500,000 (the eligible basis at that time).

(b) Analysis. Under section 11.02(2) of this revenue procedure, the restoration amount is \$3,625,000, and the building owner may treat any amount expended in excess of the restoration amount as rehabilitation expenditures (assuming the requirements of § 42(e) are met). The restoration amount is derived as the amount of—



- a. \$10,000,000, which is the building's eligible basis immediately before the Major Disaster; multiplied by
  - b. 0.3625, which is the excess of—
    - i. 1.0 over
    - ii. 0.6375, which is the fraction whose numerator is \$2,550,000 (the qualified basis immediately after the Major Disaster) and whose denominator is \$4,000,000 (the qualified basis immediately before the Major Disaster).

## SECTION 12. EMERGENCY HOUSING RELIEF — REQUIREMENTS AND RESTRICTIONS

.01 Requirements for Relief. For an Owner to use the relief provided in section 13 of this revenue procedure, the conditions in this section 12 must be satisfied.

.02 Agency Approval.

(1) The Agency provides written approval to the Owner for use of the Project to house Displaced Individuals and specifies the date on which the Temporary Housing Period for the Project ends. The Temporary Housing Period cannot exceed 12 months from the end of the month in which the President declared the Major Disaster.

(2) For low-income buildings financed with exempt facility bonds under § 142, see section 5.02 of Rev. Proc. 2014-50, I.R.B. 2014-37.

.03 Protection of Existing Tenants. No existing tenant whose income is, or is treated as, at or below an applicable income limit under § 42(g)(2) may be evicted or otherwise have his or her occupancy terminated solely to provide emergency housing relief for a Displaced Individual.

.04 Recordkeeping Requirements. The Owner complies with the recordkeeping requirements in section 14 of this revenue procedure.

.05 Rent Restrictions. Gross rents for the low-income units that house Displaced Individuals do not exceed the maximum gross rent for those units that would apply under § 42(g)(2).

.06 Project Meets All Remaining Requirements. Except as expressly provided in this revenue procedure, a Project meets all other rules and requirements of § 42.

#### SECTION 13. EMERGENCY HOUSING RELIEF — IMPLEMENTATION

.01 Discretion to Apply Relief.

(1) This revenue procedure authorizes but does not require provision of emergency housing relief to Displaced Individuals during the Temporary Housing Period. If an Owner chooses not to provide emergency housing relief under sections 12, 13, and 14 of this revenue procedure, then all of the rules under § 42 apply.

(2) If an Owner chooses to provide emergency housing relief under sections 12, 13, and 14 of this revenue procedure then –

(A) The Owner may provide emergency housing relief for less than the full Temporary Housing Period;

(B) If a Displaced Individual has demonstrated qualification as low income and the Owner wishes to accept the individual as a tenant, the Owner may either accept the Displaced Individual as a low-income tenant applying all the rules under § 42 or provide emergency housing relief to the Displaced Individual under sections 12, 13, and 14 of this revenue procedure; and

(C) If a Displaced Individual has not demonstrated qualification as low income and the Owner wishes to accept the individual as a tenant, the Owner may either accept the Displaced Individual as a tenant that is not a low-income tenant or provide emergency housing relief to the Displaced Individual under sections 12, 13, and 14 of this revenue procedure.

.02 Satisfaction of the Non-Transient Use Requirement. The occupancy of a unit in a Project by a Displaced Individual during the Temporary Housing Period is treated as satisfying the non-transient use requirement under § 42(i)(3)(B)(i).

.03 Treatment of Displaced Individuals Under the Next-Available-Unit Rule. During the Temporary Housing Period, for purposes of determining compliance with the next-available-unit rule under § 42(g)(2)(D)(ii), an Owner disregards any unit then occupied by one or more Displaced Individuals and applies the rule based solely on occupancy by persons who are not Displaced Individuals.

.04 Treatment of Units in the First Year of the Credit Period. If a Displaced Individual begins occupancy of a unit at a time that is within both the Temporary Housing Period and the first year of the credit period under § 42(f)(1), then during the Temporary Housing Period, while occupied by the Displaced Individual, the unit is treated as a low-income unit for the following purposes:

- (1) Determining the Project's qualified basis under § 42(c)(1); and
- (2) Meeting the Project's 20-50 test under § 42(g)(1)(A), 40-60 test under § 42(g)(1)(B), or 25-60 test under §§ 42(g)(4) and 142(d)(6) for New York City, as

applicable. See section 13.06 of this revenue procedure for the treatment of a unit vacated by a Displaced Individual.

.05 Treatment of Units After the First Year of the Credit Period. If a Displaced Individual begins occupancy of a unit during the Temporary Housing Period but after the first year of the credit period under § 42(f)(1), then the unit retains the status it had immediately before that occupancy. That is –

(1) The actual income of the Displaced Individual occupying the unit is disregarded during the Temporary Housing Period for purposes of § 42;

(2) If a unit is a low-income unit, a Market-Rate Unit, or a unit never previously occupied, then the unit remains as such while occupied by a Displaced Individual during the Temporary Housing Period, regardless of the occupancy by, or income of, the Displaced Individual; and

(3) The income of the Displaced Individual occupying the unit does not affect the building's applicable fraction under § 42(c)(1)(B) for purposes of determining the building's qualified basis under § 42(c)(1), nor does it affect the satisfaction of the 20-50 test under § 42(g)(1)(A), 40-60 test under § 42(g)(1)(B), or 25-60 test under §§ 42(g)(4) and 142(d)(6) for New York City, as applicable.

.06 Treatment of a Unit Vacated by a Displaced Individual. If a Displaced Individual vacates a unit in a Project before the end of the Temporary Housing Period, that unit retains the status provided under sections 13.04 or 13.05 of this revenue procedure until it is occupied by the next tenant, even if the next tenant takes occupancy after the end of the Temporary Housing Period. If the next tenant is also a



Displaced Individual and begins occupancy during the Temporary Housing Period, the status of the unit is determined under section 13.04 or 13.05 of this revenue procedure. If the next tenant is not a Displaced Individual or begins occupancy after the end of the Temporary Housing Period, the status of the unit is determined under § 42.

.07 Income Qualifications when Temporary Housing Period Ends.

(1) If a Displaced Individual continues to occupy a unit in the Project at the end of the Temporary Housing Period, then except as provided in section 13.07(3) of this revenue procedure, the status of the unit occupied by the Displaced Individual and the income of that individual are re-evaluated as though the individual commenced occupancy of the unit on the day immediately following the end of the Temporary Housing Period. For example, a unit is a Market-Rate Unit beginning immediately after the end of the Temporary Housing Period if, immediately after the end of the Temporary Housing Period, the Displaced Individual's income exceeds the applicable income limit.

(2) If the Project fails to comply with the set-aside requirement of § 42(g)(1) solely because of continued occupancy of a unit after the Temporary Housing Period by a Displaced Individual, a 60-day period is allowed for correction.

(3) If the Displaced Individual was accepted as a low-income tenant applying all the rules under § 42 as permitted by section 13.01(2)(B) of this revenue procedure, then all the rules under § 42 apply to the Displaced Individual, including § 42(g)(2)(D)(ii).

.08 No Recapture. The emergency housing of Displaced Individuals in low-income units during the Temporary Housing Period (and, if applicable, the 60-day correction period under section 13.07 under this revenue procedure) does not cause the

building to suffer a reduction in qualified basis (which would cause the recapture of low-income housing credits).

#### SECTION 14. EMERGENCY HOUSING RELIEF — RECORDKEEPING

.01 Owners must maintain certain information concerning each Displaced Individual temporarily housed in the Project under sections 12 and 13 of this revenue procedure. For each Displaced Individual, the records must contain the following items in a statement signed by the Displaced Individual under penalties of perjury:

(1) The name of the Displaced Individual;

(2) The address of the principal residence at the time of the Major Disaster of the Displaced Individual;

(3) The Displaced Individual's social security number; and

(4) A statement that he or she was displaced from his or her principal residence as a result of a Major Disaster and that his or her principal residence was located in a city, county, or other local jurisdiction that is covered by the President's declaration of a Major Disaster and that is designated as eligible for Individual Assistance by FEMA because of the Major Disaster.

.02 The Owner must maintain a record both of the Agency's approval of the Project's use for Displaced Individuals and of the approved Temporary Housing Period. The Owner must report to the Agency at the end of the Temporary Housing Period a list of the names of the Displaced Individuals and the dates the Displaced Individuals began occupancy. The Owner must also provide any dates Displaced Individuals ceased

occupancy and, if applicable, the date each unit occupied by a Displaced Individual becomes occupied by a subsequent tenant.

.03 The Owner must maintain the records described in this section as part of the annual compliance monitoring process with the Agency imposed by § 42 and provide this information to the Service upon request.

#### SECTION 15. EFFECT ON OTHER DOCUMENTS

This revenue procedure modifies and supersedes Rev. Proc. 2007-54, 2007-2 C.B. 293.

#### SECTION 16. EFFECTIVE DATE

This revenue procedure is effective for Major Disasters declared on or after August 21, 2014.

#### SECTION 17. PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-2237.

A Federal Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collection of information in this revenue procedure is in sections 6, 7, 8, 9, 10, 12, 13, and 14. This information is required to enable the Service to verify whether the Owners and Displaced Individuals satisfy various requirements for the relief provided in this revenue procedure. The collection of information is required to obtain a

benefit. The likely respondents are individuals, businesses, and state and local governments.

The estimated total annual recordkeeping burden is 1,750 hours.

The estimated annual burden per recordkeeper is approximately 30 minutes. The estimated number of recordkeepers is 3,500.

Books or records relating to a collection of information must be retained as long as their contents may become material to the administration of the internal revenue law. Generally, tax returns and tax return information are confidential, as required by § 6103.

#### SECTION 18. DRAFTING INFORMATION

The principal author of this revenue procedure is David Selig of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue procedure contact Mr. Selig at (202) 317-4137 (not a toll free call).



**BOARD ACTION REQUEST**  
**ASSET MANAGEMENT DIVISION**  
**DECEMBER 6, 2018**

Presentation, Discussion, and Possible Action regarding a Placed in Service deadline extension for a development located in a major disaster area as allowed under Section 6 of IRS Revenue Procedure 2014-49 for La Stella (HTC #16263)

**RECOMMENDED ACTION**

**WHEREAS**, VDC Alberta Longoria, LP (the “Development Owner” or “Owner”) was allocated \$1,500,000 in 9% Housing Tax Credits in 2016 for La Stella formerly known as Starlight (the “Development”), a development consisting of 107 new multifamily units in Edinburg, Hidalgo County;

**WHEREAS**, the Development Owner is required by the Carryover Allocation Agreement to place all Units in service no later than December 31, 2018, and required by Internal Revenue Code §42(h)(1) to place each building in service by no later than December 31, 2018;

**WHEREAS**, IRS Revenue Procedure 2014-49 allows for and the Development Owner is requesting an extension to the placed in service deadline because the buildings are located in and impacted by a major disaster area, as declared by the President, during the two-year period described in §42(h)(1)(E)(i) as long as the Development Owner plans to place the Development in service no later than December 31 of the year following the end of the two-year period;

**WHEREAS**, on July 6, 2018, under FEMA-4377-DR, initial notice was given that the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act due to severe storms and flooding that included Hidalgo County in a list of Texas counties eligible to receive individual and/or public assistance;

**WHEREAS**, the Owner has indicated that the Development has incurred significant construction delays related to inclement weather in the area and is requesting relief under IRS Revenue Procedure 2014-49 in the form of a twenty-seven day extension, from December 31, 2018, to January 27, 2019, to the Development’s placed in service (“PIS”) deadline;

**WHEREAS**, aside from delaying the availability of affordable units, the requested change does not negatively affect the Development or impact the long term viability of the transaction, and the requested relief is commensurate with the delay which occurred and does not exceed the relief period specified in IRS Revenue Procedure 2014-49; and

**WHEREAS**, under 10 TAC §10.405(c), staff has determined that Board approval is warranted based on the extenuating circumstances in the Owner's request;

**NOW, therefore, it is hereby**

**RESOLVED**, that the requested extension of the PIS deadline to January 27, 2019, is hereby approved, and the Acting Director and his designees are each authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

### **BACKGROUND**

La Stella was approved for a 9% Housing Tax Credit ("HTC") award in 2016. The Development is a 107-unit, new construction property located in Edinburg, Hidalgo County. The Development Owner, VDC Alberta Longoria, LP, and its General Partner, VDC Alberta Longoria GP, LLC, are ultimately owned by Versa Development, LLC, which is owned by Manish Verma.

On November 9, 2018, the Owner submitted to the Department a letter requesting a twenty-seven 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 Owner has submitted evidence that Hidalgo County is included in the area that is eligible for individual assistance. Staff verified that the FEMA Notice of Major Disaster Declaration released on July 6, 2018, (FEMA-4377-DR) confirms the President's issuing of a major disaster declaration due to damage in the State of Texas resulting from severe storms and flooding from the period of June 19 to July 13, 2018. The Owner indicated that 8.93" of rain fell in June when they were framing the property. According to the Owner, this is 5.72" above the normal precipitation for this area. Due to the flooding from the heavy rains, they were unable to access the site, which created delays in framing and every other critical path that followed framing. They also lost time getting the framers back on the site, as crews found work on other sites that were not affected by the storms.

The Development began construction in December 2017 and initially anticipated to complete construction in December 2018. The Owner was delayed in commencing with construction because the Owner's original equity provider pulled out of the deal in November 2016 and the Owner did not find a replacement equity provider until June 2017. Furthermore, their original credit price was \$0.97, but the replacement equity provider's equity price was \$0.90. As a result in the drop in the credit price and rising construction costs the Development would be infeasible as it was originally proposed at Application. Therefore, they had to change the site plan by reducing the total unit count from 141 to 107, reduce the site acreage from 8.25 to 7.14 acres, and reduce the number of residential buildings from four to three. Therefore, the development construction was already on a very tight timeline to be completed.

In a September 12, 2018, letter, Albert Gomez, Project Manager for Galaxy Builders, Ltd., provided an update regarding the delays in construction due to the heavy rains in June of 2018. He indicated that 12 days were lost to rain and mud, five days lost to the destroyed entrance due to flooding, seven days lost to re-

mobilization of framing to buildings one and two, and three days lost to re-mobilization of framing to building three.

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 agency, 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. The agency's determination may be made on an individual project basis or the agency may determine, because of the extent of the damage in a major disaster area, that all Owners or a certain group of Owners in the major disaster area warrant the relief. Staff believes that the heavy rains and flooding caused by the storms from June, 19, 2018, to July 13, 2018, affected the construction progress of this Development, and staff recommends an extension of the PIS date to the date requested.

Extension requests are normally considered under the Uniform Multifamily Rules, Subchapter E, 10 TAC §10.405(c); however, extensions are only considered in this section if the original deadline associated with Carryover, the 10 Percent Test, construction status reports, or cost certification requirements will not be met. The provisions in the Rule do not specifically address extensions to the placed in service deadline. The IRS, however, provides for the subject disaster related extension. Staff has the ability, in accordance with provisions in 10 TAC §10.405(c), to bring to the Board material determinations that warrant Board approval due to extraordinary circumstances such as those discussed above.

Staff recommends approval of the extension, from December 31, 2018, to January 27, 2019, as presented herein.

November 8, 2018

Kent Bedell  
Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup> Street  
Austin, Texas 78701-2410

RE: Request for Time Extension  
TDHCA 16263 – La Stella (aka Starlight)

Dear Mr. Bedell,

Please accept this letter as a formal request for the approval of time extension for the Placed-In-Service date originally documented to be December 31, 2018 for the Starlight Senior Apartments, TDHCA #16263, located at 5215 S. Raul Longoria Rd., Edinburg, Hidalgo, Texas 78542. This property is located in a federally declared disaster area which allows relief to the PIS deadline for affordable housing communities affected by the disaster.

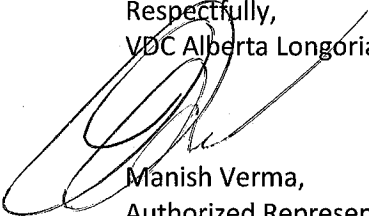
In June of this year, and during framing, a critical path activity, this area received a total of 8.93" of rain; 5.72" above the normal precipitation for this area. This rain seriously impacted the ability to access the site, let alone continue working. This of course created delays, not only in this work, but in the scope of every other critical path activity that follows framing. There was also time lost in getting the framers immediately back on site after rains stopped as these crews left the area to find work on dry projects.

While the contractor has been working to make up some of the time, there have been additional rains and more expected in the current and future months. They are working to complete buildings and obtain TCO's by the original PIS date of December 31, 2018, but it is still unknown and any further delays of any kind will make meeting this date unachievable.

This request is for an additional 27 days to extend the PIS date now documented as December 31, 2018. If granted this extension, the new PIS date would be January 27, 2019. After review of this letter and the attached supporting documents, we hope that you find our request favorable for approval and an extension granted.

Should you have any further questions or need additional information, please contact Christopher Franklin at (210) 530-0090 x211.

Respectfully,  
VDC Alberta Longoria, LP



Manish Verma,  
Authorized Representative

Enclosures



# Starlight Senior Apartments

Edinburg, Texas

6-Nov-18

TDHCA

16263 -Starlight

Date of P6 Schedule

Building 1			April 24, 2018		September 28, 2018		Delay @	Delay @
Activity ID	Activity Name	Duration	Est. Start	Est. Finish	Act. Start	Act. Finish	Start	Finish
A1980	Roof Trusses and Decking	10	06/06/18	06/19/18	06/14/18	07/09/18	8	20
A1990	Exterior Sheathing & Building Wrap	7	06/20/18	06/28/18	06/12/18	08/01/18	-8	34
A2480	TCO	1		11/23/18		12/05/18		12
Building 2								
A2690	3rd Floor Walls & Elevator Shaft	7	06/06/18	06/14/18	06/19/18	06/23/18	13	9
A2700	4th Floor Joists & Decking	5	06/15/18	06/21/18	07/05/18	07/09/18	20	18
A3200	TCO	1		11/23/18		12/05/18		12
Building 3								
A3240	3rd Floor Joists and Decking	5	06/08/18	06/14/18	08/01/18	08/11/18	54	58
A3250	3rd Floor Walls and Elevator Shaft	7	06/15/18	06/25/18	08/14/18	08/17/18	60	53
A3760	TCO	1		12/13/18		01/01/19		19
Average Delay Days							24.50	26.11





























September 12, 2018

VDC Alberta Longoria, LP  
4733 College Park, Suite 200  
San Antonio, TX 78249

Re: Starlight Seniors Apartments  
5215 S. Raul Longoria Rd  
Edinburg, Texas 78542

To Whom It May Concern;

Please see attached request for time extension due to "Natural Disaster" declaration from the storms in Hidalgo County starting on or around May 26th, 2018 and lasting into June 2018. This directly impacted production as follows:

1. Weather delays due to rain and mud dry days – 6 rain days & 6 dry days or mud days total days of (12)
  2. Regarding of destroyed entrance and flooding to access site total of days of (5)
  3. Framing re-mobilization on production framing buildings #1 & 2 – total days of (7)
  4. Framing re-mobilization on production framing building #3 for slab to dry for redlines (3)
- Please accept this narrative and the pictures attached the request for a total time extension of (27) days to extend the contract to January 27, 2019.

Sincerely,

Galaxy Builders, Ltd.



Albert Gomez  
Project Manager





FEMA (/)

# Texas Severe Storms And Flooding (DR-4377)

Navigation

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Languages

Incident Period: June 19, 2018 - July 13, 2018

Major Disaster Declaration declared on July 06, 2018

[Apply for Assistance \(https://www.disasterassistance.gov/\)](https://www.disasterassistance.gov/)

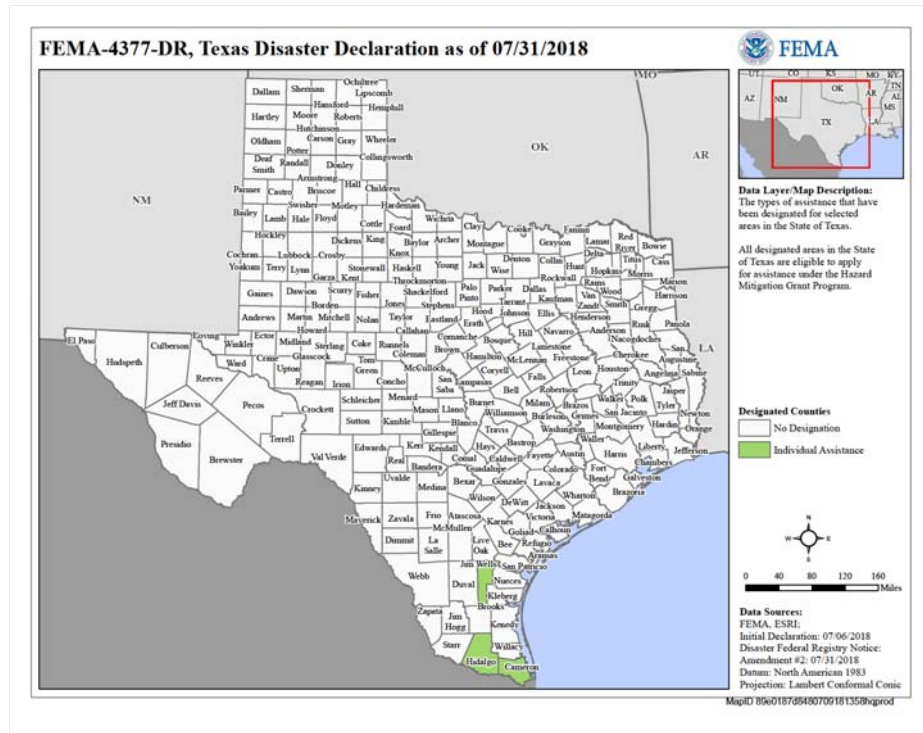
Texas Severe Storms And Flooding (DR-4377) (/disaster/4377)

Designated Areas (/disaster/4377/designated-areas)

Disaster Federal Register Notices (/disaster/4377/notices)

FOIA Statistics (/disaster/4377/foia)

News (/disaster/4377/updates-blog-and-news)



[PDF of Map \(//gis.fema.gov/maps/dec\\_4377.pdf\)](https://gis.fema.gov/maps/dec_4377.pdf) [Google Earth \(//gis.fema.gov/maps/dec\\_4377.kmz\)](https://gis.fema.gov/maps/dec_4377.kmz) [Need help with this map? \(//webform/ask-question\)](https://webform.ask-question)

Individual Assistance Applications

Approved: 5,103

Total Individual & Households Program

Dollars Approved: \$30,336,977.86

### Designated Counties (Individual Assistance):

Cameron, Hidalgo, Jim Wells

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> [Financial Assistance](#)

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> [Related Links](#)

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Last Updated: 2018-07-19 04:00

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(<https://www.oig.dhs.gov/hotline>)

 Official website of the Department of Homeland Security

Administrative, Procedural, and Miscellaneous

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability.

(Also: Part I, §§ 42 and 142; 1.42-5, 1.42-6, 1.42-13, 1.42-14)

Rev. Proc. 2014-49

SECTION 1. PURPOSE

In the context of a Major Disaster, this revenue procedure provides temporary relief from certain requirements of § 42 of the Internal Revenue Code for Agencies and Owners. This revenue procedure also provides emergency housing relief for individuals who are displaced by a Major Disaster from their principal residences in certain Major Disaster Areas. For low-income buildings financed with exempt facility bonds under § 142, see also Rev. Proc. 2014-50, I.R.B. 2014-37, which provides for emergency housing relief under § 142(d) in response to Major Disasters. This revenue procedure modifies and supersedes Rev. Proc. 2007-54, 2007-2 C.B. 293. See section 5 of this



revenue procedure for definitions of certain capitalized terms appearing throughout this revenue procedure.

## SECTION 2. BACKGROUND

.01 Upon issuance of the President's declaration of a Major Disaster, the Federal Emergency Management Agency (FEMA) may designate particular cities, counties, or other local jurisdictions covered by the declaration as eligible for Individual Assistance, Public Assistance, or both.<sup>1</sup> With respect to some previous Presidential declarations of Major Disasters, the Internal Revenue Service (Service) issued notices providing relief from certain requirements under §§ 42 and 142(d) to facilitate emergency housing relief for Displaced Individuals without regard to the income of those Displaced Individuals.<sup>2</sup>

.02 Under §1.42-13(a) of the Income Tax Regulations, the Secretary may provide guidance to carry out the purposes of § 42 through various publications in the Internal Revenue Bulletin.

## SECTION 3. CHANGES

.01 Rev. Proc. 2007-54 established temporary relief from certain requirements of § 42 for Owners and Agencies in Major Disaster Areas. In particular, Rev. Proc. 2007-54 (1) provided relief from the carryover allocation provisions; (2) clarified the consequences if an Owner failed to restore a building within a reasonable restoration

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<sup>1</sup> FEMA generally publishes this designation in a notice in the Federal Register.

<sup>2</sup> For relief under § 42, see e.g., Notice 2012-7, 2012-4 I.R.B. 308 (flooding in Iowa); Notice 2012-68, 2012-48 I.R.B. 574 (Hurricane Sandy); Notice 2013-40, 2013-25 I.R.B. 1254, and Notice 2013-47, 2013-31 I.R.B. 120 (severe storms and tornadoes in Oklahoma); and Notice 2013-64, 2013-44 I.R.B. 438 (weather-related disasters in Colorado). For relief under § 142(d), see Notice 2013-9, 2013-9 I.R.B. 529 (Hurricane Sandy); Notice 2013-39, 2013-25 I.R.B. 1252, and Notice 2013-47(severe storms and tornadoes in Oklahoma); and Notice 2013-63, 2013-44 I.R.B. 436 (weather-related disasters in Colorado).

period; (3) provided relief from certain compliance monitoring requirements; (4) allowed Agencies to provide relief for buildings severely damaged or destroyed in the first year of the credit period; and (5) described the amount of credit allowable for a restored building.

.02 Rev. Proc. 2007-54 also allowed Owners to rely on the self-certification of income eligibility of an individual who was displaced from his or her principal residence as a result of a Major Disaster and whose principal residence was in a city, county, or other local jurisdiction designated for Individual Assistance by FEMA as a result of the Major Disaster. The self-certification could not extend for more than four months beyond the date of the President's Major Disaster declaration. During the four-month self-certification period, the self-certified tenant was deemed a qualified low-income tenant. After the four-month self-certification period, the self-certified tenant was treated as a qualified low-income tenant only if the Owner obtained all documentation required under § 42 to support the tenant's continued status as a qualified low-income individual.

.03 The key modifications to Rev. Proc. 2007-54 in this revenue procedure include: (1) changing the reasonable restoration period for recapture relief and the tolling period for severely damaged, destroyed, or uninhabitable buildings in the first year of the credit period; (2) in determining qualified basis, using the building's qualified basis at the end of the taxable year immediately preceding the first day of the incident period as determined by FEMA, rather than at the end of the taxable year preceding the President's Major Disaster declaration; (3) incorporating a temporary suspension of certain income limitations for Displaced Individuals; (4) eliminating the need for self-

certification of income eligibility; (5) permitting an Agency to allow an Owner within its jurisdiction to provide emergency housing relief to Displaced Individuals from other jurisdictions; (6) describing the consequences of providing emergency housing relief in the first year of the credit period and after the first year of the credit period; and (7) modifying the safe harbor relating to the amount of credit allowable to a restored building to provide relief in circumstances where the restoration cost is less than the eligible basis cost.

#### SECTION 4. SCOPE

This revenue procedure applies when the President has declared a Major Disaster. This revenue procedure applies to Displaced Individuals and to all § 42 buildings (including buildings financed with exempt facility bonds under § 142), Agencies, and Owners both inside and outside States containing a Major Disaster Area.

#### SECTION 5. DEFINITIONS

The following definitions apply for this revenue procedure.

.01 Agency. With respect to a Project, the Agency is the governmental housing credit agency that has jurisdiction over the Project.

.02 Displaced Individual. A Displaced Individual is an individual who is displaced from his or her principal residence as a result of a Major Disaster and whose principal residence was located in a Major Disaster Area designated as eligible for Individual Assistance by FEMA.

.03 Major Disaster. A Major Disaster is an event for which the President has declared a major disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq.

.04 Major Disaster Area. A Major Disaster Area is any city, county, or other local jurisdiction for which a Major Disaster has been declared by the President and which has been designated by FEMA as eligible for Individual Assistance, Public Assistance, or both.

.05 Market-Rate Unit. A Market-Rate Unit is a unit that is not a low-income unit under § 42(i)(3).

.06 Owner. An Owner is the owner of a Project.

.07 Project. A Project is a project that is subject to low-income requirements under § 42.

.08 Temporary Housing Period. A Temporary Housing Period is the period, if any, beginning on the first day of the incident period, as determined by FEMA, and ending on the date determined by the Agency under section 12.02 of this revenue procedure.

## SECTION 6. RELIEF FOR CARRYOVER ALLOCATIONS

.01 A carryover allocation is defined in § 1.42-6(a)(1) as an allocation that meets the requirements of § 42(h)(1)(E) (relating to carryover allocations for single buildings) or § 42(h)(1)(F) (relating to carryover allocations for multiple-building Projects).

.02 If an Owner has a carryover allocation for a building located in a Major Disaster Area and the incident period for the Major Disaster began prior to the deadline



in § 42(h)(1)(E), the Agency may grant the Owner an extension under section 7 of this revenue procedure. If the Agency grants such an extension, the Service will treat the Owner as having satisfied the 10-percent basis requirement of § 42(h)(1)(E)(ii) if the Owner incurs more than 10 percent of the Owner's reasonably expected basis in the building (land and depreciable basis) no later than the expiration of that extension. See § 1.42-6 for specific rules on carryover allocations.

.03 If an Owner has a carryover allocation for a building located in a Major Disaster Area and the Major Disaster occurs on or after the date of the carryover allocation, the Agency may grant the Owner an extension under section 7 of this revenue procedure. If the Agency grants such an extension, the Service will treat the Owner as having satisfied the placed in service requirement of § 42(h)(1)(E)(i) if the Owner places the building in service no later than the expiration of that extension. See § 1.42-6 for specific rules on carryover allocations.

.04 If either section 6.04(1) or section 6.04(2) of this revenue procedure applies, then the Service will treat the carryover allocation as a credit returned to the Agency on the day following the end of the extension period granted under the authority of section 6.02 of this revenue procedure, provided the Agency complies with the requirements of § 1.42-14(d)(3).

(1) Under the procedure described in section 7 of this revenue procedure, an Owner obtains the relief provided in section 6.02 of this revenue procedure but fails to satisfy the 10-percent basis requirement of § 42(h)(1)(E)(ii) before the expiration of the

extension period granted under the authority of section 6.02. See § 1.42-14 for specific rules on returned credits.

(2) Under the procedure described in section 7 of this revenue procedure, an Owner obtains the relief provided in section 6.03 of this revenue procedure but fails to satisfy the placed in service requirement of § 42(h)(1)(E)(i) before the expiration of the extension period granted under the authority of section 6.03.

#### SECTION 7. PROCEDURE TO OBTAIN CARRYOVER ALLOCATION RELIEF

.01 An Owner may obtain the carryover allocation relief described in section 6.02 or 6.03 of this revenue procedure only if the Owner receives approval for the relief from the Agency that issued the carryover allocation pursuant to the procedures in this section 7.

.02 The Agency may approve the carryover allocation relief provided in sections 6.02 and 6.03 of this revenue procedure only for Projects whose Owners cannot reasonably satisfy the deadlines of § 42(h)(1)(E) because of a Major Disaster. Depending on the extent of the damage in a Major Disaster Area, an Agency may make this determination on an individual Project basis or determine that all Owners or a particular group of Owners in the Major Disaster Area warrant the relief provided in sections 6.02 and 6.03 of this revenue procedure. An extension under section 6.02 must not extend beyond six months after the date the Owner would otherwise be required to meet the 10-percent requirement of § 42(h)(1)(E)(ii). An extension under section 6.03 must not extend beyond December 31 of the year following the end of the two-year period described in § 42(h)(1)(E)(i). See § 1.42-6 for specific rules on

carryover allocations. Based upon all facts and circumstances, an Agency has the discretion to provide shorter periods of relief than the maximum periods allowed by this section 7.02, or no relief at all.

.03 An Agency that chooses to approve the relief provided in sections 6.02 and 6.03 of this revenue procedure must do so before filing the Form 8610, Annual Low-Income Housing Credit Agencies Report, that covers the preceding calendar year. The Form 8610 is due by February 28 of the year following the year to which the Form 8610 applies.

.04 An Agency that approves the relief under sections 6.02 and 6.03 of this revenue procedure must report to the Service the Projects granted relief by attaching the documentation required in the instructions to Form 8610. The Agency should identify only those buildings, including buildings granted relief in January and February of the year in which the Agency files the Form 8610, that received the Agency's approval of the carryover allocation relief provided in sections 6.02 and 6.03 of this revenue procedure since the Agency last filed the Form 8610.

## SECTION 8. RECAPTURE RELIEF

.01 In general, under § 42(j)(1), if (1) a building is beyond the first year of the credit period, and (2) at the end of the taxable year, the building's qualified basis with respect to the taxpayer is less than the qualified basis with respect to the taxpayer at the end of the preceding taxable year, then the credits, if any, for the year of the reduction are determined using the reduced qualified basis, and the taxpayer's Federal

income tax liability for the year of the reduction is increased by the credit recapture amount prescribed in § 42(j)(2).

.02 If the building's qualified basis is reduced by reason of a casualty loss, then under § 42(j)(4)(E), a building is not subject to recapture to the extent the loss is restored by reconstruction or replacement within a reasonable restoration period. The Agency must determine what constitutes a reasonable restoration period in the case of a Major Disaster that causes a reduction in qualified basis that would result in recapture or loss of credit. The reasonable restoration period established by the Agency must not extend beyond the end of the 25<sup>th</sup> month following the close of the month of the Major Disaster declaration.

.03 To determine the credit amount allowable during the reasonable restoration period for a building described in section 8.02 of this revenue procedure, an Owner must use the building's qualified basis at the end of the taxable year immediately preceding the first day of the incident period for the Major Disaster.

.04 If the Owner fails to restore the building within the reasonable restoration period determined by the Agency, then section 8.01 of this revenue procedure applies to the Owner and section 8.03 of this revenue procedure does not apply. The credit amount allowable, if any, after the Major Disaster is determined using the building's qualified basis at the end of each year of the credit period.

.05 Section 1.42-5(c)(1) requires an Owner to report any reduction in qualified basis to the Agency. This requirement applies regardless of whether an Owner obtains the relief provided in section 8.02 of this revenue procedure.



.06 As part of its review procedure adopted under § 1.42-5(c)(2), an Agency must determine whether the Owner described in section 8.01 of this revenue procedure has restored the building's qualified basis by the end of the reasonable restoration period established by the Agency. The Agency must report on Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition, any failure to restore qualified basis within the reasonable restoration period.

#### SECTION 9. COMPLIANCE MONITORING RELIEF

.01 An Agency may extend the due date for its scheduled compliance reviews for up to one calendar year from the date of the building's restoration and placement again into service.

.02 The extension permitted under section 9.01 of this revenue procedure does not extend the compliance monitoring deadlines for Owners in Major Disaster Areas. If an Agency discovers that an Owner has failed to comply with the rules of § 42 because of a Major Disaster, the Agency must report the noncompliance on Form 8823 and describe how the Major Disaster contributed to the noncompliance.

#### SECTION 10. BUILDINGS IN THE FIRST YEAR OF THE CREDIT PERIOD

.01 For buildings during the first year of the credit period that are severely damaged or destroyed in a Major Disaster Area, or uninhabitable as a result of a Major Disaster, an Agency has the discretion to treat the allocation as a returned credit to the Agency in accordance with the requirements of § 1.42-14(d)(3), or may toll the beginning of the first year of the credit period under § 42(f)(1). The tolling period must not extend beyond the end of the 25<sup>th</sup> month following the close of the month of the

Major Disaster declaration. Owners may not claim any low-income housing credit during the restoration period of these first-year buildings.

.02 An Agency that provides the relief in section 10.01 of this revenue procedure must report to the Service those Projects granted relief by attaching the required documentation as provided in the instructions to Form 8610.

#### SECTION 11. AMOUNT OF CREDIT ALLOWABLE TO A RESTORED BUILDING

.01 No additional credit for restoration expenditures. If a Major Disaster causes a building to suffer a reduction in qualified basis as described in section 8.01 of this revenue procedure in a taxable year during the compliance period, then § 42 does not allow the Owner to receive any additional credit amounts for costs to restore the building's qualified basis.

.02 Additional credits allowed for rehabilitation expenditures. As a result of either an allocation by an Agency or financing by exempt facility bonds, an Owner may receive an additional amount of credits for rehabilitation expenditures (as described in § 42(e)(2)) if those expenditures are used for rehabilitation and not for restoring qualified basis. A taxpayer may treat as rehabilitation expenditures any expenditures that are described in § 42(e)(2) and that exceed the amount expended for restoration. The amount expended for restoration is generally determined under all of the relevant facts and circumstances. However, if a Major Disaster causes a reduction in qualified basis, the Owner may alternatively treat as restoration expenditures the amount of—

(1) The building's eligible basis immediately before the Major Disaster;  
multiplied by

(2) The excess, if any, of—

a. 1.0 over

b. The fraction whose numerator is the building's post-Major Disaster qualified basis (determined for this purpose immediately after the Major Disaster) and whose denominator is the building's pre-Major Disaster qualified basis (determined for this purpose immediately before the Major Disaster).

.03 Example.

(a) Facts. Immediately before the Major Disaster described below, a low-income building contained 60 Market-Rate Units and 40 low-income units. Thus, the unit fraction under § 42(c)(1)(C) was 40/100. The eligible basis of the building was \$10,000,000. Based on the unit fraction, the qualified basis was \$4,000,000, which is the unit fraction multiplied by the eligible basis. A Major Disaster rendered 10 of the low-income units and several of the Market-Rate Units uninhabitable and damaged some building common areas. As a result of this damage to the common areas and to the residential units, the building's eligible basis was reduced to \$8,500,000. Thus, immediately after the Major Disaster, the qualified basis is \$2,550,000, which is the unit fraction of 30/100 (the unit fraction immediately after the Major Disaster), multiplied by \$8,500,000 (the eligible basis at that time).

(b) Analysis. Under section 11.02(2) of this revenue procedure, the restoration amount is \$3,625,000, and the building owner may treat any amount expended in excess of the restoration amount as rehabilitation expenditures (assuming the requirements of § 42(e) are met). The restoration amount is derived as the amount of—

- a. \$10,000,000, which is the building's eligible basis immediately before the Major Disaster; multiplied by
  - b. 0.3625, which is the excess of—
    - i. 1.0 over
    - ii. 0.6375, which is the fraction whose numerator is \$2,550,000 (the qualified basis immediately after the Major Disaster) and whose denominator is \$4,000,000 (the qualified basis immediately before the Major Disaster).

## SECTION 12. EMERGENCY HOUSING RELIEF — REQUIREMENTS AND RESTRICTIONS

.01 Requirements for Relief. For an Owner to use the relief provided in section 13 of this revenue procedure, the conditions in this section 12 must be satisfied.

.02 Agency Approval.

(1) The Agency provides written approval to the Owner for use of the Project to house Displaced Individuals and specifies the date on which the Temporary Housing Period for the Project ends. The Temporary Housing Period cannot exceed 12 months from the end of the month in which the President declared the Major Disaster.

(2) For low-income buildings financed with exempt facility bonds under § 142, see section 5.02 of Rev. Proc. 2014-50, I.R.B. 2014-37.

.03 Protection of Existing Tenants. No existing tenant whose income is, or is treated as, at or below an applicable income limit under § 42(g)(2) may be evicted or otherwise have his or her occupancy terminated solely to provide emergency housing relief for a Displaced Individual.



.04 Recordkeeping Requirements. The Owner complies with the recordkeeping requirements in section 14 of this revenue procedure.

.05 Rent Restrictions. Gross rents for the low-income units that house Displaced Individuals do not exceed the maximum gross rent for those units that would apply under § 42(g)(2).

.06 Project Meets All Remaining Requirements. Except as expressly provided in this revenue procedure, a Project meets all other rules and requirements of § 42.

#### SECTION 13. EMERGENCY HOUSING RELIEF — IMPLEMENTATION

.01 Discretion to Apply Relief.

(1) This revenue procedure authorizes but does not require provision of emergency housing relief to Displaced Individuals during the Temporary Housing Period. If an Owner chooses not to provide emergency housing relief under sections 12, 13, and 14 of this revenue procedure, then all of the rules under § 42 apply.

(2) If an Owner chooses to provide emergency housing relief under sections 12, 13, and 14 of this revenue procedure then –

(A) The Owner may provide emergency housing relief for less than the full Temporary Housing Period;

(B) If a Displaced Individual has demonstrated qualification as low income and the Owner wishes to accept the individual as a tenant, the Owner may either accept the Displaced Individual as a low-income tenant applying all the rules under § 42 or provide emergency housing relief to the Displaced Individual under sections 12, 13, and 14 of this revenue procedure; and

(C) If a Displaced Individual has not demonstrated qualification as low income and the Owner wishes to accept the individual as a tenant, the Owner may either accept the Displaced Individual as a tenant that is not a low-income tenant or provide emergency housing relief to the Displaced Individual under sections 12, 13, and 14 of this revenue procedure.

.02 Satisfaction of the Non-Transient Use Requirement. The occupancy of a unit in a Project by a Displaced Individual during the Temporary Housing Period is treated as satisfying the non-transient use requirement under § 42(i)(3)(B)(i).

.03 Treatment of Displaced Individuals Under the Next-Available-Unit Rule. During the Temporary Housing Period, for purposes of determining compliance with the next-available-unit rule under § 42(g)(2)(D)(ii), an Owner disregards any unit then occupied by one or more Displaced Individuals and applies the rule based solely on occupancy by persons who are not Displaced Individuals.

.04 Treatment of Units in the First Year of the Credit Period. If a Displaced Individual begins occupancy of a unit at a time that is within both the Temporary Housing Period and the first year of the credit period under § 42(f)(1), then during the Temporary Housing Period, while occupied by the Displaced Individual, the unit is treated as a low-income unit for the following purposes:

- (1) Determining the Project's qualified basis under § 42(c)(1); and
- (2) Meeting the Project's 20-50 test under § 42(g)(1)(A), 40-60 test under § 42(g)(1)(B), or 25-60 test under §§ 42(g)(4) and 142(d)(6) for New York City, as

applicable. See section 13.06 of this revenue procedure for the treatment of a unit vacated by a Displaced Individual.

.05 Treatment of Units After the First Year of the Credit Period. If a Displaced Individual begins occupancy of a unit during the Temporary Housing Period but after the first year of the credit period under § 42(f)(1), then the unit retains the status it had immediately before that occupancy. That is –

(1) The actual income of the Displaced Individual occupying the unit is disregarded during the Temporary Housing Period for purposes of § 42;

(2) If a unit is a low-income unit, a Market-Rate Unit, or a unit never previously occupied, then the unit remains as such while occupied by a Displaced Individual during the Temporary Housing Period, regardless of the occupancy by, or income of, the Displaced Individual; and

(3) The income of the Displaced Individual occupying the unit does not affect the building's applicable fraction under § 42(c)(1)(B) for purposes of determining the building's qualified basis under § 42(c)(1), nor does it affect the satisfaction of the 20-50 test under § 42(g)(1)(A), 40-60 test under § 42(g)(1)(B), or 25-60 test under §§ 42(g)(4) and 142(d)(6) for New York City, as applicable.

.06 Treatment of a Unit Vacated by a Displaced Individual. If a Displaced Individual vacates a unit in a Project before the end of the Temporary Housing Period, that unit retains the status provided under sections 13.04 or 13.05 of this revenue procedure until it is occupied by the next tenant, even if the next tenant takes occupancy after the end of the Temporary Housing Period. If the next tenant is also a

Displaced Individual and begins occupancy during the Temporary Housing Period, the status of the unit is determined under section 13.04 or 13.05 of this revenue procedure. If the next tenant is not a Displaced Individual or begins occupancy after the end of the Temporary Housing Period, the status of the unit is determined under § 42.

.07 Income Qualifications when Temporary Housing Period Ends.

(1) If a Displaced Individual continues to occupy a unit in the Project at the end of the Temporary Housing Period, then except as provided in section 13.07(3) of this revenue procedure, the status of the unit occupied by the Displaced Individual and the income of that individual are re-evaluated as though the individual commenced occupancy of the unit on the day immediately following the end of the Temporary Housing Period. For example, a unit is a Market-Rate Unit beginning immediately after the end of the Temporary Housing Period if, immediately after the end of the Temporary Housing Period, the Displaced Individual's income exceeds the applicable income limit.

(2) If the Project fails to comply with the set-aside requirement of § 42(g)(1) solely because of continued occupancy of a unit after the Temporary Housing Period by a Displaced Individual, a 60-day period is allowed for correction.

(3) If the Displaced Individual was accepted as a low-income tenant applying all the rules under § 42 as permitted by section 13.01(2)(B) of this revenue procedure, then all the rules under § 42 apply to the Displaced Individual, including § 42(g)(2)(D)(ii).

.08 No Recapture. The emergency housing of Displaced Individuals in low-income units during the Temporary Housing Period (and, if applicable, the 60-day correction period under section 13.07 under this revenue procedure) does not cause the



building to suffer a reduction in qualified basis (which would cause the recapture of low-income housing credits).

#### SECTION 14. EMERGENCY HOUSING RELIEF — RECORDKEEPING

.01 Owners must maintain certain information concerning each Displaced Individual temporarily housed in the Project under sections 12 and 13 of this revenue procedure. For each Displaced Individual, the records must contain the following items in a statement signed by the Displaced Individual under penalties of perjury:

(1) The name of the Displaced Individual;

(2) The address of the principal residence at the time of the Major Disaster of the Displaced Individual;

(3) The Displaced Individual's social security number; and

(4) A statement that he or she was displaced from his or her principal residence as a result of a Major Disaster and that his or her principal residence was located in a city, county, or other local jurisdiction that is covered by the President's declaration of a Major Disaster and that is designated as eligible for Individual Assistance by FEMA because of the Major Disaster.

.02 The Owner must maintain a record both of the Agency's approval of the Project's use for Displaced Individuals and of the approved Temporary Housing Period. The Owner must report to the Agency at the end of the Temporary Housing Period a list of the names of the Displaced Individuals and the dates the Displaced Individuals began occupancy. The Owner must also provide any dates Displaced Individuals ceased

occupancy and, if applicable, the date each unit occupied by a Displaced Individual becomes occupied by a subsequent tenant.

.03 The Owner must maintain the records described in this section as part of the annual compliance monitoring process with the Agency imposed by § 42 and provide this information to the Service upon request.

#### SECTION 15. EFFECT ON OTHER DOCUMENTS

This revenue procedure modifies and supersedes Rev. Proc. 2007-54, 2007-2 C.B. 293.

#### SECTION 16. EFFECTIVE DATE

This revenue procedure is effective for Major Disasters declared on or after August 21, 2014.

#### SECTION 17. PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-2237.

A Federal Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collection of information in this revenue procedure is in sections 6, 7, 8, 9, 10, 12, 13, and 14. This information is required to enable the Service to verify whether the Owners and Displaced Individuals satisfy various requirements for the relief provided in this revenue procedure. The collection of information is required to obtain a

benefit. The likely respondents are individuals, businesses, and state and local governments.

The estimated total annual recordkeeping burden is 1,750 hours.

The estimated annual burden per recordkeeper is approximately 30 minutes. The estimated number of recordkeepers is 3,500.

Books or records relating to a collection of information must be retained as long as their contents may become material to the administration of the internal revenue law. Generally, tax returns and tax return information are confidential, as required by § 6103.

#### SECTION 18. DRAFTING INFORMATION

The principal author of this revenue procedure is David Selig of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue procedure contact Mr. Selig at (202) 317-4137 (not a toll free call).

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**BOARD ACTION REQUEST**  
**ASSET MANAGEMENT DIVISION**  
**DECEMBER 6, 2018**

Presentation, Discussion, and Possible Action regarding Post-Closing Amendments to HOME Direct Loan Terms for Majors Place (HOME # 1002124)

**RECOMMENDED ACTION**

**WHEREAS**, in 2013 Majors Place Apartments (the “Development”) was awarded a \$3,000,000 Direct Loan under the 2013-1 Multifamily Development Program NOFA, secured by a second lien on the property, at 0% interest with a 15-year term and 35-year amortization period to construct 176 new general multifamily units in Greenville in Hunt County;

**WHEREAS**, Tex. Gov’t Code §2306.145 and §2306.146 provide the Board with the specific duty and power to adopt procedures for approving loans and purchases of loans and interests in loans as well as to establish interest rates and amortization schedules for such loans;

**WHEREAS**, the Department last formally approved a financing structure that included (i) \$16,325,000 in priority permanent debt (though it subordinated to only a \$14,500,000 senior lien amount), (ii) interest rate at 5.00%, (iii) a 40-year amortization period (\$944,623 in annual debt service), and (iv) a 10-year loan term, loaned by FNMA or Freddie Mac;

**WHEREAS**, a representative for TX Majors Place Apartments, LP (the “Development Owner” or “Owner”) has now submitted a subordination request to resubordinate the HOME loan to an interim construction bridge loan from Greystone proposed at a maximum of \$18,000,000 at not less than 5.25% interest on an interest only period with a 24 month term to allow the current Owner to pay off the maturing construction loan from IBC and apply for permanent financing under a HUD 223(f) loan without contemplating a partial or full repayment of the Department’s Multifamily Direct Loan (“MFDL”) lien;

**WHEREAS**, the Owner is also in the process of selling the Development, which if the sale goes through the resubordination of the Department’s loan to the interim construction bridge loan from Greystone will not be necessary; however, the proposed buyer requested an assumption of the Department’s HOME loan and a resubordination to a new Fannie Mae loan amount of \$15,400,000 at a prospective interest rate of 5.10% and an interest only payment term of three years without contemplating a partial or full repayment of the MFDL lien;

**WHEREAS**, the Department’s rules regarding Post-Closing Amendments to Direct Loan Terms, under 10 TAC §13.13(b) require Board approval in the event that a resubordination of a Direct Loan is requested in cases where: 1) the refinance proposes payment of outstanding debt or profit directly to any of the Development Owner or Developer parties (including the Limited Partners), 2) a proposal for partial or full repayment of the MFDL

lien is not made with the request, and 3) the new superior lien is in an amount that is more than the original senior lien; and

**WHEREAS**, the requested changes do not negatively affect the Development or impact the viability of the transaction;

**NOW, therefore, it is hereby**

**RESOLVED**, that the requested and recommended changes are approved, and the Acting Director and his designees are each authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

### **BACKGROUND**

Majors Place Apartments is a 2013 HOME Development awarded \$3,000,000 in HOME funds amortizing over 35 years on a 15-year term for the new construction of 176 general multifamily units in Greenville in Hunt County. The Development is owned by TX Majors Place Apartments, LP, which is ultimately owned by Kent Conine. On August 14, 2018, the Department received notice from Michelle Snedden at Shackelford, Bowen, McKinley, & Norton, LLP, Owner's counsel, that the Owner was planning a refinance and would require a new subordination agreement for the existing HOME loan. An initial bridge loan application was submitted along with a draft subordination agreement showing a maximum loan amount of \$18,000,000 on an interest only, 24-month term at an interest rate of no less than 5.25%.

The sources and uses for the Development, provided by the Owner's Consultant, Bill Fisher, of Sonoma Housing Advisors, LLC, on September 18, 2018, show an updated sources and uses of funds of \$21,744,906, an increase of \$960,656 from the last approved pre-closing underwritten costs of \$20,784,250 on June 3, 2015, at which time a \$16,325,000 permanent loan from Fannie Mae or Freddie Mac was projected on a 40 year amortization and a 10 year term at a 5.00% interest rate. The capital structure then also included the TDHCA loan, \$150,000 of HOME match funds, \$700,000 of Limited Partner equity, and \$609,250 of deferred developer fees. According to the Consultant, the additional costs shown in the revised sources and uses were due to construction cost overruns. Based on a review of the latest amended Application Development Cost Schedule against the Consultant's provided sources and uses, it appears that the largest changes in costs were related to Financing (construction loan interest and financing costs) and secondarily to direct construction costs and other indirect construction costs.

Based on conversations with the Consultant, the Owner is attempting to take advantage of HUD's waiver of the three year rule for the Section 223(f) program, which allows affordable multifamily housing transactions that otherwise meet all requirements of the program to apply for permanent financing through the 223(f) program if the housing was originally completed or substantially rehabilitated less than three years prior to the date of application for firm commitment. The Consultant states that the request for the resubordination of the HOME loan to an interim construction bridge loan is intended to pay off the maturing construction loan in order to allow the Owner additional time to find permanent, fixed rate financing through the 223(f) program while the Owner's waiver request is processed. According to the Owner, IBC has been extending the construction loan in 60-day increments while waiting for the Development to close but will not extend the loan past the end of the 2018 year.

The Consultant states that the Owner has no intention of paying off or paying down the HOME loan as part of the refinancing. Neither the rules nor the loan documents prohibit an assumption of the HOME

loan. The Consultant also stated via email that only a minimum of \$16,000,000 of the Greystone loan will be utilized for the construction loan payoff, as the Owner is not requesting the \$2,000,000 cash collateral hold back at closing. The general partner will provide the \$250,000 needed for the title, survey, legal, fees, and due diligence studies required by Greystone for the loan closing. The Owner states that there is no proposed payment of outstanding debt or profit directly to any of the Development Owner or Developer parties (including the Limited Partners) through the refinance and the sources and uses submitted supports total construction costs of \$16,275,008. In the event that the Department will not subordinate its permanent HOME loan to the interim financing, the Consultant states that IBC will foreclose on its construction loan and subsequently extinguish the Department's HOME loan. Based on the Consultant's projected Greystone bridge loan amount of \$16,000,000 at a 5.25% interest rate on an interest only term of two years, the annual debt service would be \$840,000, which results in a Debt Coverage Ratio ("DCR") of 1.30, considering annualized expenses based on its last three months of stabilized operating data (the property completed lease up in June 2018, with stabilized expenses available July – September 2018). No terms are currently available for any prospective permanent debt through the 223(f) program, which will require an additional subordination review if the subordination of the HOME loan is again required.

At the time of HOME loan closing, the Department ultimately subordinated its HOME loan to an existing IBC first lien construction loan of \$14,500,000, though its re-underwriting prior to HOME closing supported a higher prospective permanent loan conversion amount of \$16,325,000. Based on the Post Closing Amendments to Direct Loan Terms rule in 10 TAC §13.13(b), the new proposed superior lien to which the HOME loan would be re-subordinated is in an amount that is more than the original senior lien (exceeding the original superior lien amount by a minimum of \$1,500,000) and thus requires Board approval. While the Owner contends that the rule should not apply to this transaction since the Development is a 2013 award, which was prior to the advent of the rule, staff has responded, with the Legal Division's affirmation, that the current rule in effect at the time of the request for a particular process is valid, as items like hearing requirements, fee costs, and rules related to the processing of requests will use the current rules in effect, unless the instrument, such as a LURA, specifically states otherwise.

In addition to the subordination request for the bridge loan, the Department also received a request for an Ownership Transfer on October 12, 2018. Based on conversations with the Consultant, the Development is pursuing the dual options of: 1) a full sale ownership transfer, or 2) the requested resubordination of the HOME loan with the interim construction bridge loan should the ownership transfer not successfully close. The Ownership Transfer is being reviewed as an administrative process and does not require Board approval; however, since the prospective buyer, Major Place, LP, with Wolfe GP Majors Place, LLC as General Partner, will require an assumption of the HOME loan and a subordination agreement as well should the ownership transfer be approved, staff is also including the terms of this later transaction for consideration under the same rule provisions.

Based on the Ownership Transfer request submitted, a new Fannie Mae loan amount of \$15,400,000 has been proposed within a full sale purchase price of \$21,700,000, the remaining capital of which will be extended by investor capital to complete the acquisition. As part of the ownership transfer package, current financial statements and a lender's pro forma were submitted for evaluation. With the prospective loan amount represented in the Ownership Transfer request, which will have a prospective interest rate of 5.10% and an interest only payment term of three years, and relying on the same financial statements from July 2018 through September 2018, the Development will remain feasible at a 1.33 DCR based on an interest only annual loan payment of \$785,400. The prospective buyer has no prior history with the Department or its affordable housing programs but is bringing in Allied Property Management, which has hired an

experienced representative who is familiar with HOME related affordable housing compliance in the TDHCA portfolio.

The Ownership Transfer requires, as part of its purchase and sales agreement, the assumption of the TDHCA HOME loan. In discussions with the prospective buyer, staff has verified that no partial or full repayment of the HOME loan is planned as part of the transaction. The sources provided by the seller show a total sources and uses amount of \$21,744,906 that includes the \$3,000,000 HOME loan. Staff has also discussed with the selling party that the sales price of \$21,700,000 includes payment of not only the outstanding construction loan but around \$700,000 for an additional parcel of land that is not encumbered by the Department's LURA. As proposed, most of the developer fee and limited partner equity will be repaid from the sale of the Development.

Staff has reasoned, in the case of the interim bridge loan, that while the resubordination of the HOME loan to a greater amount of senior debt imposes an additional risk on the Department and its Federal HOME funds, the risk in refusing resubordination of the debt appears, in this case, to outweigh the risk of adding the additional senior debt ahead of the HOME loan. Furthermore, the interest only loan payment is lower than the debt service in the previous underwriting analysis from the Department. In the case of the impending Ownership Transfer, while the amount of the new senior debt will be above the \$14,500,000 originally subordinated to at initial HOME closing, the amount is below the contemplated permanent loan conversion amount referenced in the latest approved underwriting report for the Development, and though funds will pass to the Developer and Limited Partner through the additional funds for the acquisition of the Development without full or partial repayment of the HOME loan, the Ownership Transfer and associated acquisition funds are not technically part of the subordination request, which only include the request to re-subordinate to the new senior loan debt of \$15,400,000.

Staff recommends, in the case the Development continues forward with the interim bridge loan, that the Board approve re-subordination of the HOME loan to allow the Development additional time to process its 223(f) waiver and application for conversion to permanent financing with the exception that any higher loan amount contemplated above the \$16,000,000 discussed with the Consultant and considered as part of this evaluation be brought back before the Board for re-consideration. In case the Development instead continues forward with the Ownership Transfer, staff recommends that the Board approve re-subordination of the HOME loan to the new financing in the amount of \$15,400,000 proposed with the transfer request with the exception that any higher loan amount contemplated as part of the subordination request be brought back before the Board for re-consideration.



## Laura DeBellas

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**From:** Michelle Snedden [MSnedden@shackelfordlaw.net]  
**Sent:** Tuesday, August 14, 2018 9:43 PM  
**To:** Laura DeBellas  
**Subject:** TX Majors Place Apartments - subordination of HOME  
**Attachments:** Subordination Agreement (recorded).pdf; FNMA subordination agreement DMEAST\_34982205(1).docx; fully executed bridge loan app.pdf

Hi Laura,

Majors Place is in the process of refinancing the above project. This project has existing HOME funds in place and I have attached the current subordination agreement that TDHCA signed with IBC, construction lender. Greystone also requires that the HOME loan be subordinated at closing of the refinance. Attached here please find:

- the current subordination agreement noted above
- FNMA subordination form for review
- the loan application for the refinance. Greystone expects to go to loan committee very soon and anticipates the deal to be approved

Please can you confirm if you need anything further to be able to process this request (and does it require board approval)? We do not yet have any loan documents but of course they will be based on FNMA forms and I can forward those to you once received, we just wanted to start the subordination request and document approval process ahead of time as closing will likely occur very quickly after loan committee is approval is obtained.

Thanks in advance, and don't hesitate to reach out with any questions.

Michelle

*Michelle Snedden*  
*Shackelford, Bowen, McKinley & Norton, LLP*  
*9201 N. Central Expressway, Fourth Floor, Dallas, Texas 75231*  
*Tel: 214-780-1413 (direct)*  
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SUBORDINATION AGREEMENT

135984 MCLB

THIS SUBORDINATION AGREEMENT dated as of August 14, 2015, as the same may be amended from time to time (this "Agreement"), is by and among (i) TX MAJORS PLACE APARTMENTS, LP, a Texas limited partnership (the "Borrower"), (ii) INTERNATIONAL BANK OF COMMERCE, a Texas state banking corporation (the "Senior Lender"), and (iii) the TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS, a public and official agency of the State of Texas (the "Subordinate Lender").

**RECITALS**

A. The Senior Lender has made a loan to Borrower in the original principal amount of \$14,500,000.00 dated August 14, 2015 (the "Senior Loan"), evidenced by that certain Real Estate Lien Note in the amount of the Senior Loan dated August 14, 2015 executed by Borrower and made payable to the order of Lender (the "Senior Note"). The Senior Note is secured by that certain Deed of Trust, Assignment of Rents, Security Agreement and Financing Statement dated August 14, 2015, to Fred W. Rusteberg, Trustee, for the benefit of Senior Lender recorded as Document No. 2015-10505 of the Real Property Records of Hunt County, Texas, (the "Senior Mortgage"), covering, among other lands, the real property more particularly described on Exhibit "A," attached hereto and incorporated herein for all purposes (the "Property").

B. The Subordinate Lender made a loan to Borrower in the principal amount of \$3,000,000.00 (the "Subordinate Loan") as evidenced by that certain Subordinate Promissory Note dated August 14, 2015 (the "Subordinate Note") executed by Borrower and made payable to the order of Subordinate Lender and secured by that certain Subordinate Deed of Trust dated August 14, 2015 to Timothy K. Irvine, Trustee, for the benefit of Subordinate Lender, and recorded as Document No. 2015-10507 of the Real Property Records of Hunt County, Texas (the "Subordinate Mortgage"), covering the Property.

C. As a condition to Subordinate Lender making the Subordinate Loan, Borrower agreed to comply with certain occupancy, rent and other restrictions with respect to the Property as set forth in that certain Land Use Restriction Agreement dated of even date with Subordinate Note, executed by and between Subordinate Lender and Borrower to be recorded in the Real Property Records of Hunt County, Texas (the "LURA").

D. The parties have agreed to enter into this Agreement to subordinate the Subordinate Loan to the Senior Loan.

**AGREEMENT**

NOW THEREFORE, the parties hereto, for \$10.00 in hand paid and other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, and in consideration of their mutual covenants and agreements hereinafter set forth and intending to be legally bound hereby, covenant and agree as follows:

1. Definitions.

"Senior Indebtedness" shall mean all existing and future indebtedness, liabilities and obligations of the Borrower under the Senior Loan Documents (defined below), including, without limitation, any obligation with respect to any interest due or to become due with respect to the foregoing that shall accrue subsequent to the filing of a petition or the commencing of a case or the occurrence of any other action to initiate any bankruptcy, insolvency, reorganization or similar proceeding or after declaration or determination of insolvency or bankruptcy.

"Senior Loan Documents" shall mean the Senior Note, the Senior Mortgage, and any and all other documents evidencing, securing or otherwise executed and delivered in connection with the Senior Loan.

"Subordinated Indebtedness" shall mean all existing and future indebtedness, liabilities and obligations of any kind of Borrower to the Subordinate Lender, under the Subordinate Loan Documents, any refinancing or replacements of any of the Subordinate Loan Documents, and including, without limitation, any obligation with respect to any interest due or to become due with respect to any of the foregoing that shall accrue subsequent to the filing of a petition or the commencing of a case or the occurrence of any other action to initiate any bankruptcy, insolvency, reorganization or similar proceeding or after declaration or determination of insolvency or bankruptcy.

"Subordinate Loan Documents" shall mean the Subordinate Note, the Subordinate Mortgage, and any other documents evidencing, securing or otherwise executed and delivered in connection with the Subordinate Loan.

2. Agreement to Subordinate. Senior Lender and Subordinate Lender agree that: (i) the indebtedness evidenced by the Subordinate Loan Documents is and shall be subordinated in right of payment, to the extent and in the manner provided in this Agreement, to the prior payment in full of the indebtedness evidenced by the Senior Loan Documents, and (ii) the Subordinate Mortgage and the other Subordinate Loan Documents are and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the Senior Indebtedness and the Senior Loan Documents and to all advances heretofore made or which may hereafter be made pursuant to the Senior Indebtedness and the Senior Loan Documents (including but not limited to, all sums advanced for the purposes of (1) protecting or further securing the lien of the Senior Indebtedness, curing defaults by Borrower under the Senior Loan Documents or for any other purpose permitted by the Senior Loan Documents, or (2) constructing, renovating, repairing, furnishing, fixturing or equipping the Property).

3. Payments Before Senior Indebtedness Default. Until Subordinate Lender receives a default notice of the Senior Loan Documents from Senior Lender, Subordinate Lender shall be entitled to retain for its own account all payments made under or pursuant to the Subordinate Loan Documents provided that such payments are otherwise permitted under the terms of this Agreement.

4. Payments After Senior Indebtedness Default. Borrower agrees that, after it receives notice (or otherwise acquires knowledge) of a default under the Senior Loan Documents, it will not make any payments under or pursuant to the Subordinate Loan Documents (including but not limited to principal, interest, additional interest, late payment charges, default interest, attorney's fees, or any other sums secured by the Subordinate Mortgage) without Senior Lender's prior written consent. Subordinate Lender agrees that, after it receives a default notice from Senior Lender with written instructions directing Subordinate Lender not to accept payments from Borrower or some other source on account of the Subordinate Loan, it will not accept any payments under or pursuant to the Subordinate Loan Documents (including but not limited to principal, interest, additional interest, late payment charges, default interest, attorney's fees, or any other sums secured by the Subordinate Mortgage) unless either (i) such payment is being made solely from excess cash flow or (ii) such payment is made with Senior Lender's prior written consent. If Subordinate Lender receives written notice from Senior Lender that the default under the Senior Loan Documents which gave rise to Subordinate Lender's obligation not to accept payments has been cured, waived, or otherwise suspended by Senior Lender, the restrictions on payment to Subordinate Lender in this Section 4 shall cease, and Senior Lender shall have no right to any subsequent payments made to Subordinate Lender by Borrower prior to Subordinate Lender's receipt of a new default notice from Senior Lender in accordance with the provisions of Section 14. In the event that any payment on account of any Subordinated Indebtedness shall be received by the Subordinate Lender in violation of the foregoing, such payment shall be held in trust for the benefit of the Senior Lender and, until the Senior Indebtedness shall have been finally paid in full, shall be paid to Senior Lender for application to the Senior Indebtedness in accordance with the provisions of the Senior Loan Documents.

5. No Exercise of Rights or Remedies. The Subordinate Lender agrees that unless and until such time as the Senior Indebtedness shall have been finally paid in full and the Borrower has complied in full with all of its obligations with respect to the Senior Indebtedness and all Senior Loan Documents, it shall not, without the prior written consent of the Senior Lender in each instance, take any action against Borrower which would place Borrower in receivership or insolvency, reorganization or bankruptcy proceedings, levy against or place a lien on any assets of Borrower or otherwise exercise any other rights or remedies under or in respect of any of the Subordinated Indebtedness (whether relating to a default and/or an event of default thereunder or otherwise) or amend or modify any instrument or agreement evidencing the Subordinate Indebtedness in any manner which would change or alter the excess cash flow provisions of such instrument or agreement.

6. Bankruptcy.

(a) Until final payment in full of the Senior Indebtedness, in the event of (i) any distribution, division or application, partial or complete, voluntary or involuntary, by operation of law or otherwise, of all or any substantial part of the property, assets or business of Borrower or the proceeds thereof, to any creditor or creditors of Borrower, or (ii) upon any liquidation, dissolution or other winding-up of Borrower, or by reason of any sale, receivership, insolvency, reorganization or bankruptcy proceedings, assignment for the benefit of creditors, arrangement or any proceeding by or against Borrower for any relief under any bankruptcy,



reorganization or insolvency law or laws, Federal or state, or any law, Federal or state, relating to the relief of debtors, readjustment of indebtedness, reorganization, composition, or extension (the matters in clauses (i) and (ii) are referred to herein collectively as a "Bankruptcy Proceeding"; then and in any such event:

(i) the holder(s) of the Senior Indebtedness shall first be entitled to receive final payment in full thereof in accordance with the terms of the Senior Loan Documents before the Subordinate Lender shall be entitled to receive or retain any payment (whether in cash, property, securities or otherwise) on account of the Subordinated Indebtedness;

(ii) until the Senior Indebtedness has been finally paid in full, any payment or distribution of assets of Borrower of any kind or character, whether in cash, property, securities or otherwise, to which the Subordinate Lender would be entitled but for the provisions hereof, shall be made by Borrower or by any receiver, trustee in bankruptcy, custodian, liquidating trustee, agent or other person making such payment or distribution, directly to the Senior Lender for application in accordance with the terms of the Senior Loan Documents, until the Senior Indebtedness shall have been paid in full, to the extent necessary to pay in full all amounts due and unpaid thereon after giving effect to any concurrent payment or distribution to or for the holder(s) of the Senior Indebtedness, to the extent allowed by law.

Subordinate Lender hereby assigns to Senior Lender all of Subordinate Lender's rights to all such payments to which Subordinate Lender would otherwise be entitled but not to exceed the full amount of the Senior Indebtedness, to the extent allowed by law.

(b) In the event that, notwithstanding the foregoing, any such payment or distribution of assets from a Bankruptcy Proceeding of Borrower shall be received by the Subordinate Lender on account of, or with respect to, the Subordinated Indebtedness before the Senior Indebtedness shall have been finally paid in full, such payment or distribution shall be held in trust for the benefit of Senior Lender and shall be paid over to the Senior Lender for application in accordance with the terms of the Senior Loan Documents, to the extent allowed by law.

(c) To the extent allowed by law, the Subordinate Lender agrees that it will not, without the prior written consent of the Senior Lender, file (or cause to be filed or consent to be filed) a Bankruptcy Proceeding against Borrower or the general partner of Borrower under any applicable law unless (i) the Senior Mortgage has been terminated, (ii) any relevant preference periods have expired, and (iii) all obligations of the Borrower to Senior Lender have been paid in full; provided, however, nothing in this Agreement shall preclude any of the parties to this Agreement from joining in any Bankruptcy Proceeding filed or commenced against Borrower by any Person which is not a party hereto.

7. Consent; Waiver. The Subordinate Lender hereby consents that, without the necessity of any reservation of rights against any of such persons, and without notice to or further assent by any of such persons (i) any demand for payment of the Senior Indebtedness

made by the holder(s) thereof may be rescinded in whole or in part by such holder(s), and the Senior Indebtedness, or the liability of Borrower or of any other party upon or for any part thereof, or any collateral security or guaranty therefor or right of offset with respect thereto, or any obligation or liability of Borrower under any of the Senior Loan Documents, may, from time to time, in whole or in part, be accelerated, compromised, waived, surrendered or released by any or all the holder(s) of the Senior Indebtedness, and (ii) any of the Senior Loan Documents, and any other document or instrument evidencing or governing the terms of any of the Senior Indebtedness and any collateral security documents or guaranties or other documents in connection with any thereof may be waived or terminated, in whole or in part or not at all, all as the holder or holders of any Senior Indebtedness may deem advisable from time to time, and any collateral security at any time held by the holder or holders of any Senior Indebtedness for the payment of any of the Senior Indebtedness may be sold, exchanged, waived, surrendered or released, in each case all without further assent by any Subordinate Lender which will remain bound under the provisions hereof, and all without impairing, abiding, releasing or affecting the subordination provided for herein, notwithstanding any such acceleration, compromise, termination, sale, exchange, waiver, surrender or release, except as may apply to such collateral security waived, surrendered or released. The Subordinate Lender waives any and all notice of the creation or accrual of any of the Senior Indebtedness and notice of or proof of reliance by the holder(s) of the Senior Indebtedness upon the provisions hereof, and the Senior Indebtedness, and any of such Senior Indebtedness, shall conclusively be deemed to have been created, contracted or incurred in reliance upon the provisions hereof, and all dealings between Borrower and any holder of the Senior Indebtedness shall be deemed to have been consummated in reliance upon the provisions hereof, all of which provisions are continuing provisions. The Subordinate Lender acknowledges and agrees that the holder(s) of the Senior Indebtedness have relied upon the subordination provided for herein in making funds under the Senior Loan Documents available to Borrower. The Subordinate Lender waives notice of or proof of reliance on the provisions hereof and protest and demand for payment.

8. Waiver of Rights of Subrogation. Until such time as the Senior Indebtedness shall have been finally paid in full, the Subordinate Lender hereby agrees not to acquire, directly or indirectly, by subrogation or otherwise, any lien, estate, right or other interest which is or may be prior in rights of the Senior Indebtedness. Furthermore, until such time as the Senior Indebtedness shall have been finally paid in full, the Subordinate Lender also agrees that if by reason of its payment of any monetary obligations of the Borrower including payments on any note or of real estate taxes, or by reason of its exercise of any other right or remedy under the subordinate loan documents governing the Subordinate Indebtedness, it acquires by right of subrogation or otherwise a lien on the Property which (but for this subsection) would be senior to or on parity with the lien of the Senior Mortgage, then, in that event, such lien shall be subject and subordinate to the lien of the Senior Mortgage.

9. Representations and Warranties of Subordinate Lender. Subordinate Lender represents and warrants as follows:

(a) Qualification. Subordinate Lender has the full legal right, power and authority to perform its obligations under this Agreement.

(b) Power and Authorization. The execution and delivery of this Agreement, and the performance by Subordinate Lender of his obligations under this Agreement, have been duly authorized by all necessary action and do not require any additional approvals or consents or other action by or any notice to or filing with any person, including, without limitation, any governmental entity.

(c) Valid and Binding Obligation. This Agreement, when executed and delivered by Subordinate Lender, will constitute the legal, valid and binding obligation of Subordinate Lender enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and general equitable principles.

10. Duration. This Agreement is of a continuing nature, and it shall continue in force so long as any portion of the Senior Indebtedness remains unpaid.

11. Expenses. Borrower agrees to reimburse Senior Lender for all costs and expenses, including reasonable attorneys' fees and expenses, incurred in connection with a breach by Borrower of any of its obligations and duties hereunder.

12. Successors and Assigns. This Agreement shall be binding upon Borrower and upon its successors and permitted assigns, and shall be binding upon and inure to the benefit of Senior Lender and be binding on the Subordinate Lender and its respective successors and assigns.

13. Governing Law. This Agreement shall in all respects be governed by, and construed and enforced in accordance with, the laws of Texas applicable to agreements made and to be entirely performed within such State.

14. Notice. Notice may be given to each party to this Agreement by personal delivery or by certified mail, return receipt requested, at its address specified below:

If to the Borrower:

Kent Conine

TX Majors Place Apartments GP, LLC

8765 Stockard Drive, Suite 704

Frisco, TX 75034

Phone No.: \_\_\_\_\_

Fax No.: \_\_\_\_\_

If to the Subordinate Lender:

Texas Department of Housing

and Community Affairs

221 East 11th Street, Austin, Texas 78701

P. O. Box 13941

Austin, Texas 78711

Attn: Asset Management Division

Phone No.: (512) 475-0577

Fax No.: (512) 475-4420

If to the Senior Lender: Sergio Gonzalez  
International Bank of Commerce  
1600 Ruben Torres Blvd.  
Brownsville, TX 78526  
Phone No.: (956) 547-1014  
Fax No.: (956) 547-1029

With a copy to: M. C. Cottingham Miles  
Martin & Drought, P.C.  
300 Convent St., Suite 2500  
San Antonio, TX 78205  
Phone No.: (210) 227-7591  
Fax No.: (210) 227-7924

15. Amendment and Waivers. Except as otherwise provided herein, this Agreement may be changed, modified or waived only by a writing signed by all of the parties hereto.

16. Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto on separate counterparts each of which, when so executed and delivered, shall be an original, and all such counterparts shall together constitute one and the same instrument, and facsimile and PDF signatures shall be just as binding as originals.

17. Supremacy of Provisions of this Agreement. The terms and provisions of this Agreement are supreme and paramount and by its execution and delivery of this Agreement the Subordinate Lender agrees to abide and be bound by the terms and provisions hereof notwithstanding any inconsistency or conflict with any terms or conditions relating to the Subordinated Indebtedness, to the extent allowed by law.

18. No Consent to Indebtedness. The provisions of this Agreement shall not be construed under any circumstances to be a consent of any kind on the part of the Senior Lender to Borrower's incurring any liabilities, obligations or indebtedness, except to the extent expressly provided in the Senior Loan Documents.

19. LURA. Senior Lender, as the holder of the Senior Mortgage covering, among other lands, the Property, consents to the LURA, and subordinates the Senior Mortgage INsofar AND ONLY INsofar as the Senior Mortgage covers the Property to the terms and conditions of the LURA so that a subsequent foreclosure of the Senior Mortgage lien will not extinguish the terms and conditions of LURA and its affect on the Property.

20. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter herein, and this Agreement supersedes and replaces any agreement or understanding that may have existed between the parties hereto prior to the date hereof in respect of such subject matter.



21. Severability. In the event that any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, the parties hereto agree that such holding shall not invalidate or render unenforceable any other provision hereof. The parties hereto further agree that the holding by any court of competent jurisdiction that any remedy pursued by any party hereto is unavailable or unenforceable shall not affect in any way the ability of such party to pursue any other remedy available to it hereunder.

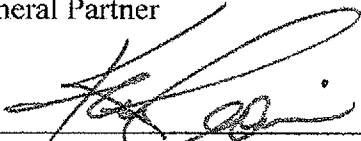
[Signatures and acknowledgments are on the following pages.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

BORROWER:

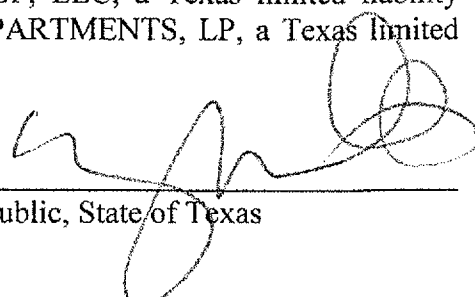
TX MAJORS PLACE APARTMENTS, LP,  
a Texas limited partnership

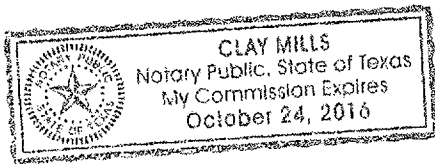
By: TX Majors Place Apartments GP, LLC  
a Texas limited liability company,  
its General Partner

By:   
Kent Conine, Manager

STATE OF TEXAS §  
COUNTY OF Dallas §

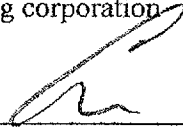
This instrument was acknowledged before me on the 14 day of August, 2015, by Kent Conine, Manager of TX Majors Place Apartments GP, LLC, a Texas limited liability company, the General Partner of TX MAJORS PLACE APARTMENTS, LP, a Texas limited partnership, on behalf of said limited partnership.

  
Notary Public, State of Texas



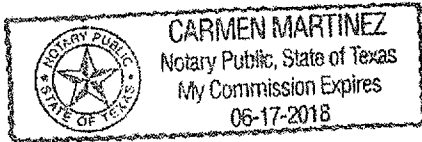
SENIOR LENDER:


INTERNATIONAL BANK OF COMMERCE,  
a Texas state banking corporation

By:   
Cesar Valdez, First Vice President

STATE OF TEXAS           §  
  §  
COUNTY OF CAMERON   §

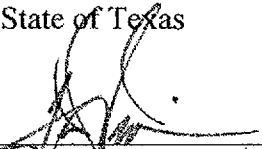
This instrument was acknowledged before me on the 13th day of August, 2015, by Cesar Valdez, First VP of INTERNATIONAL BANK OF COMMERCE, a Texas state banking corporation, on behalf of said corporation.



  
Notary Public, State of Texas

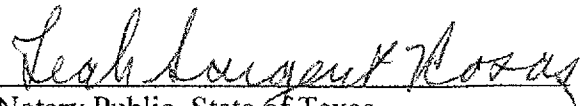
SUBORDINATE LENDER:

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

By:   
Printed Name: TIMOTHY K. IRVINE  
Title: Duly authorized officer or representative

STATE OF TEXAS                   §  
   §  
COUNTY OF TRAVIS           §

This instrument was acknowledged before me on the 12<sup>th</sup> day of August, 2015, by Timothy K. Irvine, the duly authorized officer or representative of TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS, a public and official agency of the State of Texas, on behalf of said agency.

  
Notary Public, State of Texas





**EXHIBIT 'A'**

BEING all that certain lot, tract or parcel of land situated in the City of Greenville, Hunt County, Texas, being part of the Joel Odell Survey, Abstract No. 811, being all the 12.104 acre tract of CONNIE'S CORNER ADDITION, an addition to the City of Greenville, according to the plat thereof recorded in/under Document No. 2015-4888 in Cabinet G on Slides 234-235 of the Plat Records of Hunt County, Texas, also being part of a 25.000 acres described in the deed from BEBS, L.P., to Greenville Land Investors, L.P., as recorded in Volume 1694 at Page 387, Hunt County Real Property Records, and being more particularly described as follows:

BEGINNING at a 1/2 inch iron rod set for a corner at the southeast corner of said 12.104 acre tract, said Point of Beginning being further marked by a 1/2 inch iron rod found at the southeast corner of subject 25.00 acre tract in the north Right-of-Way of Farm-to-Market Road No. 1570 (also known as Jack Finney Boulevard) bearing S 03°10'11" W at a distance of 718.59 feet;

THENCE N 86°53'10" W along the south line of said 12.104 acre tract, passing a 1/2 inch iron rod set at a distance of 414.32 feet, in all a total distance of 827.91 feet to a 1/2 inch iron rod set for a corner at the southwest corner of said 12.104 acre tract;

THENCE N 03°09'08" E along the west line of said 12.104 acre tract, a distance of 616.03 feet to a 1/2 inch iron rod found for a corner at the northwest corner of said 12.104 acre tract;

THENCE S 89°45'22" E along the north line of said 12.104 acre tract, a distance of 829.18 feet to a 1/2 inch iron rod found for a corner at the northeast corner of said 12.104 acre tract;

THENCE S 03°10'11" W along the east line of said 12.104 acre tract, a distance of 657.55 feet returning to the Point of Beginning and containing 12.104 acres of land.

**60' ROADWAY EASEMENT**

BEING all that certain lot, tract or parcel of land situated in the City of Greenville, Hunt County, Texas, being part of the Joel Odell Survey, Abstract No. 811, being part of the Reuben Barker Survey, Abstract No. 103, being part of the 12.104 acre tract of CONNIE'S CORNER ADDITION, an addition to the City of Greenville, according to the plat thereof recorded in/under Document No. 2015-4888 in Cabinet G on Slides 234-235 of the Plat Records of Hunt County, Texas, also being part of a 25.000 acres described in the deed from BEBS, L.P., to Greenville Land Investors, L.P., as recorded in Volume 1694 at Page 387, Hunt County Real Property Records, and being more particularly described as follows:

BEGINNING at a point in the north Right-of-Way of Farm-to-Market Road No. 1570 (also known as Jack Finney Boulevard), said Point of Beginning being further marked by a 1/2 inch iron rod found at the southeast corner of subject 25.00 acre tract bearing S 81°25'04" E at a distance of 386.21 feet;

THENCE N 81°25'04" W along the north Right-of-Way of Farm-to-Market Road No. 1570 and the south line subject 25.000 acres, a distance of 60.07 feet to a point;

THENCE N 05°48'34" E a distance of 79.17 feet to a point;

THENCE N 02°49'01" E a distance of 520.42 feet to a point, said point being in the beginning of a curve to the right having a central angle of 286°52'32", a radius of 50.36 feet with a chord bearing S 87°10'59" E and a chord distance of 60.00 feet,

THENCE in the southeasterly direction, along said curve to the right, an arc length of 252.16 feet to a point;

THENCE S 02°49'01" W a distance of 521.98 feet to a point

THENCE S 05°48'34" W a distance of 83.64 feet returning to the Point of Beginning and containing 1.004 acres of land.

**FILED AND RECORDED**

Instrument Number: 2015 -10597

Filing and Recording Date 08/24/2015 3:29PM Pages 13 Fee \$70.00

I hereby certify that this instrument was FILED on the date and time stamped hereon  
and RECORDED in the OPR RECORDS of Hunt County, Texas

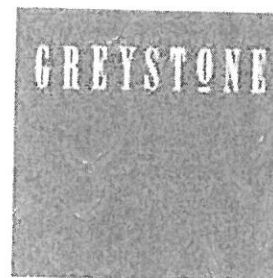


*Jennifer Lindenzweig*

Jennifer Lindenzweig, Hunt County Clerk  
Hunt County, Texas

ANY PROVISION CONTAINED IN ANY DOCUMENT WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE REAL  
PROPERTY DESCRIBED THEREIN BECAUSE OF RACE OR COLOR IS INVALID UNDER FEDERAL LAW AND IS  
UNENFORCEABLE.

LOAN APPLICATION



February 26, 2018

Mr. Bill Fisher  
Sonoma Housing Advisors, LLC  
16812 Dallas Parkway  
Dallas, TX 75248

RE: Major's Place Apartments  
2410 W. Jack Finney Boulevard  
Greenville, TX 75402  
("Property")

Dear Mr. Fisher:

The purpose of this letter is to express our interest in providing financing for the above-referenced property. The following is an outline of key terms and conditions.

<b>Lender:</b>	Greystone Servicing Corporation, Inc. or its designated affiliate
<b>Property &amp; Improvements:</b>	176 units
<b>Borrower:</b>	Borrower shall be a single purpose entity principally owned and/or controlled by the Key Principal/Guarantor. Borrower shall be a single purpose entity with no operations, assets, or activities other than the Property and no debts other than the loan and ordinary course trade payables.
<b>Key Principal:</b>	Melissa Fisher
<b>Guarantor:</b>	Melissa Fisher
<b>Maximum Loan Amount:</b>	\$18,000,000
<b>Cash Collateral Hold Back At Closing:</b>	\$2,000,000
<b>Minimum Net Funding to Borrower At Closing:</b>	\$16,000,000

## LOAN APPLICATION

**Recourse:** The Guarantor shall be liable for the customary carve-outs, including fraud, intentional misrepresentation, misapplication or misappropriation of rents, security deposits, insurance proceeds or condemnation awards, fees paid to principals or affiliates after default, gross negligence or criminal acts, breach of environmental or special purpose entity covenants, collection fees and expenses and breach of due-on-sale/encumbrance covenants and in the event of bankruptcy.

**Minimum Equity Investment At Closing:** \$4,000,000 (includes HOME loan funds)

**Maximum "As Is" Loan to Value:** 80.0%

**Maximum "As Stabilized" Loan to Value:** 75.0%

**Minimum DCR at Closing:** 1.15x based on Lender's underwritten Net Cash Flow (after Replacement Reserves) at the actual interest rate at closing.

**Interest Rate:** Floating at 375 basis points (bps) over 30-day Libor, adjusted monthly and computed on the basis of actual number of days elapsed in the related accrual period over a 360-day year. Additionally, there will be a 1.50% Libor floor, so that the actual interest rate shall not be less than 5.25%. If the loan does not close within 90 days of receipt of application, the rate will be increased by 0.25%.

**Interest Rate Management:** Borrower will purchase an interest rate cap (the "Interest Rate Cap") effective at closing with a notional amount not less than the maximum potential Loan Amount which will have the effect of capping the 30 day LIBOR at no greater than 2.50% for the Initial Term.

**Prepayment/Exit Fee:** The loan is closed to prepayment for the first twelve months of the loan term. The loan will then be open subject to a 1.0% Exit Fee payable to Greystone. If Greystone provides the permanent financing, the Exit Fee will be waived.

**Commitment Fee:** The Commitment Fee of 0.75% of the Maximum Loan Amount shall be fully payable at closing and earned by Lender at the time of Loan Approval. *WBCO & Funds.*

**Administration Fee:** \$15,000



## LOAN APPLICATION

<b>Loan Term:</b>	24 months with one, 12-month extension option subject to minimum DCR and LTV requirements and the payment of a 0.25% fee.
<b>Amortization Period:</b>	Interest Only.
<b>Third Party Report Deposit:</b>	Upon acceptance of this Loan Application, Applicant shall pay Lender a Third Party Report Deposit held in a non-interest bearing account, in the amount of <b>\$20,000</b> . This Deposit will be utilized to cover the cost of the MAI appraisal, engineering report, Phase I environmental report and Lender's out-of-pocket expenses in connection with the property inspection and other out-of-pocket processing costs incurred by Lender ("Lender Fees"). Any Third Party Report Deposit balance (net of expenses previously paid) will be credited to any Lender Fees at the time said fees are due and payable by Borrower to Lender. To the extent this is insufficient to cover the actual expenses; Applicant agrees to provide additional Third Party Report Deposit when requested by Lender.
<b>Legal Fees:</b>	Borrower shall reimburse Lender for reasonable legal costs incurred whether or not the loan closes. Borrower shall also retain, at its own expense, legal counsel capable of reviewing documents and issuing opinions to close this loan. Lender shall provide reasonable notice upon legal costs exceeding \$25,000.
<b>Other Expenses:</b>	The Borrower shall be responsible for all reasonable closing costs such as, but not limited to, title insurance premiums, survey, transfer and other taxes, and recordation fees, and shall reimburse Lender for costs actually incurred whether or not the loan closes.
<b>Assumption:</b>	The loan is not assumable.
<b>Security:</b>	First Mortgage, Deed of Trust or Deed to Secure Debt. First priority assignment of leases, rents and income, and management agreement and franchise agreements (said agreements to be fully subordinate to the loan) and first lien security interest in all personal property collateral related to the Property.
<b>Escrow Requirements:</b>	Monthly escrows required for real estate taxes, insurance and replacement reserves.
<b>Subordinate Debt:</b>	Prohibited, with exception of Lender approved HOME Loan.

## LOAN APPLICATION

### Insurance:

Commercial general liability insurance, all risk property insurance, twelve (12) month business interruption/rental loss insurance, workers' compensation insurance, and employee fidelity insurance from an insurance company with a minimum rating of "A" (Moody's or Standard & Poor's) or "A-X" (Best Guide). Earthquake, windstorm, flood and ordinance or law insurance is also required, where applicable.

### Special Conditions:

1. The Borrower/Key Principal/Guarantor will be subject to final review and approval by Lender.
2. The Loan will be subject to the Lender's final review and approval of the Management Agreement.
3. The Net Rental Income for the property must be no less than \$175,000 for the 30-day period immediately prior to scheduled closing of the bridge loan.
4. An insurance policy which meets Lender's guidelines will be required prior to closing.
5. The Loan will be subject to Lender's final review and approval of the Borrower's 2018 Operating Budget.
6. The Loan will be subject to Lender's final determination of the Borrower's ability to qualify for permanent financing prior to closing.
7. The Property will have an average occupancy rate of at least 90.0% at the closing of the Loan.

This is a Loan Application, not a Loan Commitment. Neither the issuance of this Loan Application nor acceptance by the Applicant shall constitute an offer of financing on our part. In addition, terms may fluctuate from this estimate due to underwriting due diligence, loan approval requirements and/or market interest rate changes.

if the proposal described in this Loan Application is acceptable to you, kindly sign below. Please forward the countersigned copy of this Loan Application, the Administration Fee of \$15,000 and the Third Party Report Deposit of \$20,000 to the undersigned. We must receive the Loan Application by March 5, 2018 or it is null and void and the loan will have to be re-priced and re-sized.

Very truly yours,



Stephen Germano  
Managing Director

LOAN APPLICATION

ACCEPTED THIS 20th DAY OF April, 2018

BY: [Signature]  
Signature of Applicant

TOTALIS PLURE APARTMENTS, LP.  
Name of Applicant (printed)

Authorized Signatory  
Title of Person Signing (printed)

## Majors Place Apartments

Jack Finney and Wesley Avenue, Greenville, TX  
2014 HOME Funds 80-20

### PROJECT SUMMARY

Acreage	12.00	Operating	541,220	3,075
Total Net Rentable Square Footage	170,520	Management Fee	85,187	484
Accessory Structure Sq. Ft.	3,600	Property Taxes	220,000	1,250
Low Inc. Rentable & Access. Sq. Ft.	174,120	Reserves	44,000	250
Patio, Balconies & Utility Sq. Ft.	17,052	TTL	890,407	5,059
Total Rentable Sq. Ft. & Patio etc.	191,172			
Commercial Spaces (Sq. Ft.)	-	0% Units at 30%	Area Median Income	
Total Overall Square Footage	191,172	20% Units at 50%	Area Median Income	
Number of Units	176	0% Units at 60%	Area Median Income	
Number of Low Income Units	36	80% Units at Market		
Number of Market Rate Units	140	23% Units 3 bedroom or larger		

### Sources of Funds

	Permanent Amount	% of Ttl Dev. Cost	Construction	% of Ttl Dev. Cost
<b>Debt</b>				
Tax-exempt Bonds	-	0.0%	-	0%
Taxable Loan	16,000,000	73.6%	14,500,000	67%
Other soft debt	-	0.0%	-	0%
LP Equity + Match	1,050,000	4.8%	1,050,000	5%
HOME, CDBG, TDHCA, NSP & Trust Funds	3,000,000	13.8%	3,000,000	14%
Weatherization	-	0.0%	-	0%
NOI During Construction	-	0.0%	-	0%
Seller financing	-	0.0%	-	0%
GIC Income	-	0.0%	-	0%
<b>Equity</b>				
Other Equity @ \$ -	-	0.0%	-	0%
Deferred Developer Fee 0%	1,108,650	5.1%	1,108,650	5%
Advances from Rise Construction	586,256	2.7%	1,617,756	7%
Cost not incurred construc. \$0.000	-	0.0%	468,500	2%
<b>Total Sources of Funds</b>	<b>21,744,906</b>	<b>100%</b>	<b>21,744,906</b>	<b>100%</b>

### Uses of Funds

	Total Costs	Per Unit	Per Sq. Ft.	% of Ttl Dev. Cost
Land & Buildings	1,137,500	6,463	6.67	5.23%
Construction	16,275,008	92,472	95.44	74.86%
Architecture & Engineering	352,400	2,002	2.07	1.62%
Permits & Fees	80,000	455	0.47	0.37%
Financing	786,000	4,466	4.61	3.61%
Construction Period Interest	1,587,000	9,017	9.31	7.30%
Bond Costs	-	-	0.00	0.00%
Tax Credit or HOME Costs	5,150	29	0.03	0.02%
Soft Costs	28,750	163	0.17	0.13%
Legal	55,448	315	0.33	0.25%
FF&E	114,000	648	0.67	0.52%
Pre Stabilization Costs	215,000	1,222	1.26	0.99%
Reserves	-	-	0.00	0.00%
Developer Fee	1,108,650	6,299	6.50	5.10%
<b>Total Uses of Funds</b>	<b>21,744,906</b>	<b>123,551</b>	<b>127.52</b>	<b>100.00%</b>



Majors Place Apartments  
 Jack Finney and Wesley Avenue, Greenville, TX  
 2014 HOME Funds 80-20  
 HOME, GSE or Floater

**Development Budget**

Category	Detail	Factor 1	Factor 2
Land	Acquisition	\$ 4.25	522,720
Land	Brokerage		
Land	Closing		
Land	Other		
Buildings	Acquisition		
Buildings	Other		
<b>Land &amp; Buildings</b>			
Construction - sitework (Division 2)	Site Work	\$ 10,000	176,000
Construction - offsite work	Off Site		
Construction - hard cost (Divisions 3-16)	New/Rehab buildings	\$ 65.00	170,520
Construction - hard cost (Divisions 3-16)	New Garage Units	\$ 60	2,000
Construction - hard cost (Divisions 3-16)	Club/other	\$ 116.50	3,600
Construction - general requirements (Division 1)	GR	6.00%	13,423,200
Construction - overhead (Division 17)	OH	2.00%	13,423,200
Construction - profit (Division 17)		6.00%	13,423,200
Construction - contingency (Division 17)		5.00%	13,423,200
Construction - Payment & Performance Bond			
Construction - Builders Risk insurance			
Construction - Other	ADA 2010 requirements--NEW		
<b>Construction</b>			
Architecture	Plans		
Architecture	MEP		
Architecture	Structural		
Architecture	Foundation		
Architecture	Reimbursables		
Architecture	Inspections	12	\$ 1,500.00
Architecture - Landscape	Landscape	\$ 25.00	176,000
Architecture - Landscape	Reimbursables		
Architecture - Interior design	interior design		
Architecture - Thematic	Thematic		
Engineering - Civil	Feasibility		
Engineering - Civil	plans		
Engineering - Civil	Reimbursables		
Survey	pre construction		
Survey	Stabs/as-builts		
Engineering	geotechnical		
Engineering	Environmental		
Engineering	material testing		
Engineering	LEEDS platinum		
Engineering	Misc		
<b>Architecture &amp; Engineering</b>			
Fees			
Fees	platting		
Fees	HOME Plug		
Fees	Misc		
Impact Fees	Water		
Impact Fees	Sewer		
Impact Fees	Parks		
Impact Fees	Roadway		
Permits	Building		
Permits	Sitework		
Permits	SWPPP		
Permits	Other		
<b>Permits &amp; Fees</b>			
Predevelopment loan	origination		
Predevelopment loan	interest		
Predevelopment loan	closing costs		
Predevelopment loan	legal		
Bridge loan (24 months to a 223 F)	origination	1.50%	16,000,000
Bridge loan	interest		
Construction period loan/letter of credit	origination	1.50%	14,500,000
Construction period loan/letter of credit	due diligence		
Construction period loan/letter of credit	Interest rate cap from JPM	0.00%	16,000,000
Construction period loan/letter of credit	legal		
Construction period loan/letter of credit	mortgage broker		
Construction period loan/letter of credit	Title & Recording		
Permanent Loan	Application fee		
Perm. FHLB 24 months forward (no funds delivered)	Origination	0.00%	15,000,000
Permanent Loan	JPM Hedge cost	1.00%	14,500,000
Permanent Loan	conversion		

Original Budget	Current Budget 9/18/2018
1,050,000	1,050,000
75,000	75,000
7,500	7,500
5,000	5,000
-	-
-	-
<b>\$ 1,137,500</b>	<b>1,137,500</b>
1,760,000	1,760,000
-	-
11,083,800	11,083,800
180,000	180,000
419,400	419,400
805,392	805,392
288,484	288,484
805,392	805,392
671,180	671,180
76,400	76,400
75,000	75,000
150,000	150,000
<b>\$ 16,275,008</b>	<b>16,275,008</b>
175,000	175,000
15,000	15,000
50,000	50,000
5,000	5,000
5,000	5,000
18,000	18,000
4,400	4,400
-	-
-	-
-	-
52,500	52,500
-	-
-	-
10,000	10,000
10,000	10,000
2,500	2,500
5,000	5,000
-	-
-	-
<b>\$ 352,400</b>	<b>352,400</b>
-	-
-	-
-	-
15,000	15,000
10,000	10,000
-	-
-	-
51,500	51,500
-	-
3,500	3,500
-	-
<b>\$ 80,000</b>	<b>80,000</b>
-	-
45,000	45,000
-	-
-	-
240,000	240,000
-	-
217,500	217,500
15,000	15,000
-	-
12,000	12,000
-	-
50,000	50,000
12,500	12,500
-	-
-	-
145,000	145,000
-	-

Majors Place Apartments  
 Jack Finney and Wesley Avenue, Greenville, TX  
 2014 HOME Funds 80-20  
 HOME, GSE or Floater

**Development Budget**

Category	Detail	Factor 1	Factor 2
Permanent Loan	due diligence		
Permanent Loan--Chavez	construction monitoring		
Permanent Loan	legal		
Permanent Loan	mortgage broker		
Permanent Loan	Title & Recording		
<b>Financing</b>			
<b>Construction Period Interest</b>			
Agency	Application fee	\$ 25.00	178
Agency	reservation	0.0%	250,000
Agency	Inspections		
Agency	carryover allocation fee		
Agency	monitoring		
Agency	Extension		
Agency	Other	TS+EDG	
<b>Tax Credit Costs</b>			
Accounting			
Appraisal			
Market Study			
Signage			
Relocation Expense			
Contingency		0.0%	\$ 4,607,998
Consultants	SHA		
<b>Soft Costs</b>			
Borrower Counsel			
Borrower Formation			
GP Special Counsel			
Cost of issuance or LP placement			
Other: Investor legal and due diligence			
Real Estate			
<b>Legal</b>			
Community room - furniture, decoration	Club Grand Salon		
Furniture - outdoor			
Computers - office			
Computers - computer center			
Furniture - office			
Furniture - computer centers			
Equipment - copier			
Equipment - phone & fax			
Equipment - exercise			
Equipment - maintenance			
Furniture & decorations - model			
Furniture - Learning Center			
Golf carts			
Van / Bus (Seniors only)			
<b>FF&amp;E</b>			
Insurance			
Lease-up			
Marketing			
Taxes			
<b>Pre Stabilization Costs</b>			
Operating		6	-
Replacement			
Other: Investor/Lender mandated reserves			200,000
<b>Reserves</b>			
Developer Fee	Acquisition	10.0%	-
Developer Fee	New Construction	10.0%	19,004,258
<b>Developer Fee</b>			
<b>Total Project Cost</b>			

Original Budget	Current Budget 9/18/2018
-	-
24,000	24,000
-	-
-	-
25,000	25,000
<b>\$ 786,000</b>	<b>786,000</b>
<b>\$ 1,587,000</b>	<b>1,587,000</b>
4,400	4,400
-	-
750	750
-	-
-	-
-	-
-	-
<b>\$ 5,150</b>	<b>5,150</b>
-	-
20,500	20,500
7,500	7,500
750	750
-	-
-	-
-	-
<b>\$ 28,750</b>	<b>28,750</b>
15,000	15,000
5,448	5,448
25,000	25,000
-	-
5,000	5,000
5,000	5,000
<b>\$ 55,448</b>	<b>55,448</b>
33,000	33,000
5,000	5,000
5,000	5,000
3,000	3,000
5,000	5,000
5,000	5,000
2,000	2,000
3,000	3,000
25,000	25,000
10,500	10,500
2,500	2,500
2,500	2,500
12,500	12,500
-	-
<b>\$ 114,000</b>	<b>114,000</b>
150,000	150,000
15,000	15,000
50,000	50,000
-	-
-	-
<b>\$ 215,000</b>	<b>215,000</b>
-	-
-	-
-	-
<b>\$ -</b>	<b>-</b>
-	-
1,103,650	1,108,650
<b>\$ 1,108,650</b>	<b>1,108,650</b>
<b>21,744,906</b>	<b>21,744,906</b>

*Letter of Explanation* | MAJORS PLACE, LP  
2121 W. Spring Creek Parkway, Suite 201  
Plano, Texas 75023  
214-227-0779  
kenny@wolfe-re.com

October 11, 2018

Mr. Rosalio Banuelos, Senior Asset Manager  
TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
221 East 11<sup>th</sup> Street  
Austin, Texas 78701-2410

Re: Property Transfer – Sale – Majors Place Apartments – CMTSID: 4976/HOME ID: 1002124

Dear Mr. Banuelos:

As required in Texas Government Code; Title 10, Chapter 2306.6713, I hereby inform the Department of the pending Sale of the referenced property located at 2410 W. Jack Finney Boulevard, in Greenville, Texas 75402. Closing is anticipated around December 1, 2018.

The current Owner is TX MAJORS PLACE APARTMENTS, LP. The Buyer consists of two newly formed Entities: WOLFE GP MAJORS PLACE, LLC (100% GP), and MAJORS PLACE, LP (100% Owner). Since they are both new, neither can provide a Financial Statement.

Finally, I hereby inform the Department that none of the Principals within the Buyer's Ownership structure are Non-Profits, a HUB, or, a Non-Profit Joint Venture.

Please do not hesitate to call or e-mail if you have any questions or comments.

Sincerely,



Kenneth Wolfe, General Partner

Cc:

Brett Zaitoon, Partner  
Teresa Wolfe, Partner





November 20, 2018

Kenneth Wolfe, Brett Zaitoon, Chard Irby, James Wolfe, & Yusuf Johnson  
c/o Doug Banerjee  
Greysteel  
10000 N. Central Expressway  
Suite 750  
Dallas, TX 75231

**Re: Majors Place – Fannie Mae Loan Application**

Dear Mr. Banerjee:

Barings Multifamily Capital LLC (“**Lender**”) appreciates the opportunity to issue you this application (the “**Application**”) for a commitment for a permanent loan (the “**Loan**”) to be secured by a first lien on the multifamily property known as Majors Place located at 2410 Jack Finney Blvd, Greenville, TX 75402 and consisting of 176 units (the “**Property**”) based on the following terms and conditions.

**BORROWER  
INFORMATION**

**Borrower:** Newly formed single purpose, bankruptcy remote entity.

**Single Asset Entity Requirement:** Borrower must be and must remain for the term of the Loan an entity that holds no assets other than the Property, incurs no debt other than the Loan (and customary trade debt) and engages in no business other than owning, holding, and operating the Property.

**Guarantor(s):** Collectively, Brett Zaitoon, Kenneth Wolfe, Chad Irby, James Wolfe, and Yusuf Johnson. (See “Recourse” and “Transfers & Assumptions” sections on page 3).

**Key Principal(s):** Collectively, Brett Zaitoon, Kenneth Wolfe, Chad Irby, James Wolfe, and Yusuf Johnson. (See “Transfers & Assumptions” section on page 3).

**FINANCIAL TERMS\***

**Loan Type:** Fannie Mae DUS® - MAH Special Public Purpose - Acquisition

**Loan Term:** 120 months

**Loan Amount:** \$15,400,000

**Index:** 10 Year Treasury

**Current All-in Rate:** 5.10%

**Amortization Period:** 360 months

**Loan Sizing Floor Rate:** 5.00%

**Interest-only Period:** 36 months

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\* The Financial Terms are estimates based upon the preliminary information that you have submitted to Lender.

Barings Multifamily Capital LLC  
5800 Tennyson Parkway, Suite 200 | Plano, TX 75024  
T 469.440.5600 | F 469.440.5601

**BARINGSMULTIFAMILY.COM**



<b>Interest Rates:</b>	All Spread and interest rate estimates are fixed payments, actual/360 amortizations, and subject to change until rate lock.
<b>Payments:</b>	Interest-only period will be followed by level monthly payments of principal and interest with a balloon payment at maturity.
<b>Prepayment:</b>	Borrower may prepay the Loan in full on any payment date provided Borrower pays any applicable prepayment premium. Prior to three years before maturity, prepayment will be subject to yield maintenance. During the next thirty-three (33) months, a 1% prepayment premium will apply. During the last three months, the Loan may be prepaid at par.
<b>Loan-to-Value (maximum):</b>	80%
<b>Debt Service Coverage Ratio (minimum):</b>	1.20%
<b>Replacement Reserve:</b>	Contribution amounts will depend upon the findings of Lender's due diligence.
<b>Repairs Escrow:</b>	Lender may require Borrower to undertake repairs or improvements to the Property (the " <b>Required Repairs</b> "). Lender will hold back from the loan proceeds the estimated cost of the Required Repairs plus a contingency amount.
<b>Real Estate Tax Escrow:</b>	Required.
<b>Insurance Escrow:</b>	Required.

**EXPENSES, DEPOSITS  
& FEES**

<b>Origination Fee:</b>	0.80% of the approved Loan Amount, earned upon execution of a commitment letter to make the Loan (the " <b>Commitment Letter</b> ") and payable upon closing of the Loan or termination or cancellation of the Commitment Letter.
<b>Expenses:</b>	Whether or not the Loan or any other loan closing ever occurs, Borrower and Key Principal(s) shall be unconditionally obligated to pay for any and all of Lender's reasonable out-of-pocket costs, expenses, fees and charges incurred in connection with the Loan, its processing and its closing, or in any way connected with this Application and conducting due diligence toward closing the Loan (collectively, " <b>Expenses</b> "), including, without limitation, Lender's processing fee of \$2,500, appraisal fees, survey costs, title insurance costs, insurance review expenses, architectural fees, engineering fees, inspection fees, consultant fees, underwriting and travel expenses, warehouse fees, mortgage or similar taxes, and all attorneys' fees and legal costs of Lender.
<b>Application Deposit:</b>	\$17,500 due upon receipt of this countersigned Application. Lender will use the Application Deposit for payment of Expenses.
<b>Estimated Lender Legal Fee:</b>	\$14,000. At closing, Borrower Principal(s) and Borrower are responsible for paying all of Lender's actual legal expenses.
<b>Rate Lock Deposit:</b>	2% of the approved Loan Amount, due prior to rate lock and refundable at closing; provided, however, that following rate lock, the Rate Lock Deposit shall be considered 100% earned by Lender and shall be non-refundable.

**Application of Pre-Closing Deposits:**

Any and all refundable deposits made with Lender pursuant to this Application shall be applied as follows: (i) first, for payment of the obligation to which such deposit relates (including, without limitation, the Application Deposit and Rate Lock Deposit); (ii) second, to any other obligations pursuant to this Application (including, without limitation, outstanding legal fees), any rate lock agreement or any otherwise related to the Mortgage Loan; and (iii) third, at closing of the Mortgage Loan or within 60 days after termination of this Application, as applicable, the balance remaining, if any, shall be refunded except as otherwise set forth herein. If, prior to closing, the amount of the obligation to which any deposit relates exceeds the amount of such deposit, an additional deposit will be required. If this Application is terminated at any point prior to the parties entering into a binding Commitment Letter, and the amount of Borrower's obligations pursuant to this Application exceeds the amount of the deposits made with Lender up to the point of termination, Borrower and Key Principal(s) shall be liable to Lender for such shortage and will pay the same within 30 days after demand.

**SPECIAL CONDITIONS**

- Waivers identified during full underwriting may require Fannie Mae approval.
- Cumulative Net Worth greater than or equal to the loan amount and post-closing liquid assets exceeding 12 months of debt service payments.
- Preliminary analysis assumes October and November collection are equal to or greater than September collections. This must be confirmed during full underwriting.

**SECURITY**

**Documentation:**

The Loan will be evidenced by then-current Fannie Mae program loan documents providing a first lien interest in the Property and associated personal property. Lender will provide copies of the form documents after execution of this Application. Lender reserves the right to reject requests to modify the form documents, and any such modifications must be approved by Lender and Fannie Mae. Borrower must be represented by an attorney willing to provide, without modification, Fannie Mae's form opinion of Borrower's counsel.

**Recourse:**

The Loan will be non-recourse; however, the loan documents will provide that, in the event of certain acts and omissions, the Loan will become recourse to Borrower or Borrower may be liable to the Lender for Lender's resulting losses. Borrower will be liable to Lender for losses resulting from environmental matters. The Guarantor(s) will guaranty Borrower's liabilities to Lender.

**ADMINISTRATIVE TERMS**

**Insurance:**

Borrower will be required to maintain property, liability and other insurance satisfying Fannie Mae requirements.

**Subordinate Financing:**

The Fannie Mae program currently permits Lender to make a supplemental loan, under certain conditions, at its discretion. Other subordinate liens will be prohibited.

**Transfers & Assumptions:**

The loan documents will provide that, subject to the approval of Lender, Borrower may sell the Property to a qualified purchaser who will assume the Loan. In addition, certain transfers of ownership interests (especially those of the Key Principal(s) or Guarantor(s)) will require the approval of Lender.

**Financial Reporting:** Borrower will be required to provide income statements and rent rolls quarterly and annually and a security deposit accounting annually. If Borrower/Guarantor is an entity, it will be required to provide a balance sheet, income statement, and cash flow statement annually. If Borrower/Guarantor is an individual or trust, it will be required to provide personal financial statements annually. Borrower and Guarantor(s) will be required to provide an annual certification of compliance with the loan agreement. The foregoing requirements are subject to change and each may be required to provide additional or different reports in the form and at such times as may be required by Lender or Fannie Mae.

**Automated Monthly Payments:** Borrower will be required to make monthly payments through automatic withdrawals on the first day of each month.

**PROCESSING  
MATTERS**

**Personal Underwriting:** Lender will assess the creditworthiness and experience of all persons or entities who directly or indirectly own 25% of the Borrower and all persons or entities that have control or are critical to the management of Borrower.

Federal law requires that Lender obtain, verify, and record information that identifies each person or entity who applies for a loan. Lender may require additional information to verify the identity of Borrower and Borrower's owners. Borrower and Key Principal(s) represent that none of Borrower's owners are listed on the U.S. Department of Treasury Office of Foreign Assets Control's list of persons blocked from transactions in the USA.

**Due Diligence Materials:** Lender will provide a list of documents and other information Lender will need to underwrite the Loan and Lender may make supplemental requests. Lender Multifamily Capital's timeliness in processing this Application will depend upon timely responses.

**Title & Survey:** Borrower, at its sole cost and expense, shall provide Lender with a mortgagee's policy of title insurance satisfying the Fannie Mae program requirements. A survey will be required if the title insurer cannot otherwise remove certain exceptions to the title insurance.

**Title & Escrow:** Borrower may select a company or companies to provide title and escrow services. The selected company will be required to comply with current Fannie Mae and Lender guidelines. Under certain circumstances, Lender reserves the right to select the title and escrow company(s). In any event, all costs and expenses related to title, survey and escrow shall be the sole responsibility of Borrower.

**Consultants & Access:** Lender will commission consultants to provide appraisal, engineering and environmental reports. Lender will forward copies of the reports after closing of the Loan or termination of this Application. In addition, upon request, Lender will provide a copy of any report that has been finalized and paid for by Borrower and/or Key Principal(s).

Key Principal(s) or Borrower must arrange access to the Property and its books and records for Lender's consultants and staff.

**MISCELLANEOUS**

**No Prior Agreement:** This Application supersedes any prior oral or written understandings or agreements between Borrower and Key Principal(s) and Lender with respect to the matters herein.

**Commercial Not** Key Principal(s) represent that the Loan proceeds will be used for business or investment purposes and not for personal or household purposes and that, except as otherwise disclosed, the property is not

- Consumer Loan:** occupied by Key Principal(s) or any direct relatives of Key Principal(s).
- Publicity:** Borrower and Key Principal(s) agree that, following closing, Lender shall have the right to publicize the financing of this project.
- Other DUS Applications:** Borrower and Key Principal(s) represent that in the past 90 days neither Key Principal(s) nor Borrower have been under application to any other DUS lender for a loan to be secured by the Property. Borrower and Key Principal(s) understand that Fannie Mae will not permit any other DUS lender to accept an application to finance the Property within 90 days after the termination of this Application.
- Amendment & Assignability:** This Application may not be amended except in writing and is not assignable.
- Termination:** Borrower and Lender each have the right to terminate this Application prior to issuance of the Commitment Letter. This Application will expire 60 days after the date first written above.
- Venue & Choice of Law:** This Application shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of Texas, without regard to conflicts of law principles. Each party agrees that any suit, action or proceeding brought by such party against the other in connection with or arising from this Application (“**Judicial Action**”) shall be brought against any of the parties only in any United States federal or state court located in Dallas County, Texas and each of the parties hereto hereby consents to the exclusive jurisdiction of such courts (and of the appropriate appellate courts) in any such Judicial Action and waives any objection to venue laid therein. Process in any such Judicial Action proceeding may be served on any party anywhere in the world, whether within or without the State of Texas.
- Indemnification:** By executing this Application, Borrower and Key Principal(s) agree to indemnify, defend and hold harmless Lender and Fannie Mae from, and to be responsible for, any loss, claim, damage or liability arising from any claim or litigation made or threatened by any claim or litigation made or threatened by any third party (including, without limitation, any seller, broker, finder, partner or other member in Borrower or in Guarantor(s), governmental entity or other third party, but excluding any brokers claiming by or through Lender or Fannie Mae) in connection with the proposed Loan, and any litigation related costs and attorneys’ fees (including without limitation the cost of post judgment remedies and appeals) incurred by Lender and/or Fannie Mae in connection with any of the foregoing claims.
- Representation & Warranty:** Borrower and Key Principal(s) represent and warrant that all documents, statements and other information provided in connection with this Application are and will be true, correct and complete, and that Borrower and Key Principal(s) will immediately provide any updated or supplemental information which would alter, modify or amend prior information, financial or otherwise, regarding the Property, Borrower, Guarantor(s) or Key Principal(s).
- Counterparts:** This Application may be executed in counterparts and exchanged via facsimile and/or electronic mail, each of which shall be deemed an original, and all of which taken together shall constitute one and the same instrument. The undersigned signatory for each party represents and warrants to the other parties that he/she is an authorized signatory of such party and has full and complete authority to execute this LOA on such party’s behalf.
- Application Not Binding:** This Application and its proposed terms are for discussion purposes only and do not imply any obligation on the part of Lender or Fannie Mae to make any loan. Any potential loan is conditioned on the completion of due diligence, asset underwriting, legal review and final loan documentation, all of which must be acceptable to Lender and Fannie Mae. No legally binding obligations to make any loan until will be created until Lender has reviewed and approved the proposed transaction and issued a written Commitment Letter to make such a loan. In this Application, references to the Commitment Letter,



interest rate lock and closing are hypothetical and do not presume an approval of the Loan.

**Enforceability:**

Notwithstanding that this Application is not a binding commitment to make a loan, in consideration of the time and expense devoted and to be devoted by Lender with respect to the Fannie Mae loan proposal, the following provisions shall be binding obligations of all parties to this Application whether or not a loan is consummated and shall survive any expiration or termination of this Application until such time as the parties enter into a Commitment Letter: (i) Expenses, (ii) Application Deposit, (iii) Application of Pre-Closing Deposits, and (iv) Miscellaneous.

**Fannie Mae  
Requirements:**

This Application is subject to applicable Fannie Mae requirements.

**APPROVAL & RATE  
LOCK**

**Approval:**

Approval of the Loan will be indicated only by the Commitment Letter, should Lender issue one. The terms set forth in the Commitment Letter may differ from those set forth here.

If Lender declines to make the loan or Lender proposes a substantially, adversely modified amount or terms that you refuse to accept, then you may, within 60 days, request a statement of specific reasons for the declination or modified proposal. You may request the statement of specific reasons from Lender's Legal Department in writing at Barings Multifamily Capital LLC, 5800 Tennyson Parkway, Suite 200, Plano, Texas 75024, Attention: Legal Department or via email at [multifamily\\_legal@barings.com](mailto:multifamily_legal@barings.com).

**Rate Lock:**

After pre-conditions to locking the interest rate have been satisfied (including payment in ready funds of the Rate Lock Deposit) and Borrower has accepted the Commitment Letter, Borrower may initiate locking the interest rate by faxing or emailing a rate lock authorization to Lender. Lender will undertake to lock the interest rate. If Lender successfully locks the rate, Lender will notify you of the locked rate (which will be the Interest Rate) and the date by which the Loan must close.

**LICENSING  
DISCLOSURES**

Arizona Commercial Mortgage Banker License CBK-0926535; California Finance Lender License 603 F812. California commercial real estate broker activities are conducted through Barings Multifamily Capital Corporation (California Bureau of Real Estate Broker License #01995692), which is a wholly owned subsidiary of Barings Multifamily Capital LLC.

Majors Place  
Fannie Mae Loan Application

If Borrower, Key Principal(s) and Guarantor(s) agree with the foregoing, please countersign and return this Application with the Application Deposit within 5 business days or this Application shall expire (see wire transfer instructions attached as Exhibit A).

We look forward to working with you,

BARINGS MULTIFAMILY CAPITAL LLC,  
a Michigan limited liability company

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

Name: Joanie Wilson

Title: Deputy Chief Underwriter

Majors Place  
Fannie Mae Loan Application

You \_\_\_ intend to / \_\_\_ do not intend to [CHECK ONE] seek or obtain preferred equity or a mezzanine loan in Borrower's capital structure. You understand that additional due diligence and underwriting are necessary to underwrite, approve and rate lock a mortgage loan with such a capital structure. You also understand that the approval of the mortgage loan may be delayed if you initially disclose that you do not intend to obtain preferred equity or a mezzanine loan but later notify Lender that you will seek preferred equity or a mezzanine loan.

ACKNOWLEDGED AND AGREED on the \_\_\_\_\_ day of October, 2018.

Key Principal/Guarantor: **Brett Zaitoon**

\_\_\_\_\_  
BRETT ZAITOON

Key Principal/Guarantor: **Kenneth Wolfe**

\_\_\_\_\_  
KENNETH WOLFE

Key Principal/Guarantor: **Chad Irby**

\_\_\_\_\_  
CHAD IRBY

Key Principal/Guarantor: **James Wolfe**

\_\_\_\_\_  
JAMES WOLFE

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**BOARD ACTION REQUEST**

**HOME AND HOMELESSNESS PROGRAMS DIVISION**

**DECEMBER 6, 2018**

Presentation, discussion, and possible action on an order adopting new 10 TAC Chapter 7, Subchapter D, Ending Homelessness Fund, and directing publication 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. Transp. Code §502.415(g), the Department shall adopt rules governing applications for grants from the Ending Homelessness Fund ("EH Fund") and the issuance of those grants;

**WHEREAS**, at the Board meeting of September 6, 2018, the Board approved the publication of a proposed new 10 TAC Chapter 7, Subchapter D, Ending Homelessness Fund, and the proposed rule was published for public comment in the *Texas Register* on September 21, 2018;

**WHEREAS**, public comment was accepted from September 21, 2018, through October 22, 2018, and public comment was received from one commenter; and

**WHEREAS**, staff has reviewed the public comment and prepared response, and no changes to the rule are recommended other than one grammatical correction;

**NOW, therefore, it is hereby**

**RESOLVED**, that the Acting 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 new 10 TAC Chapter 7, Subchapter D, Ending Homelessness Fund, 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**

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 newly established EH Fund. Funds will be sent by the 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 act further requires the Department to adopt rules governing applications for grants from the EH Fund, and the issuance of those grants and those rules are the subject of this Board Action Request.

The new rule establishes uses of the EH Fund to be any eligible activity under the ESG Program or HHSP if the EH Fund does not exceed \$500,000, or activities outlined in a Notice of Funding Availability for an independent program if the EH Fund exceeds \$500,000 at the end of a state fiscal year. The EH Fund Subrecipient Application and selection process are outlined, including requirements for a proposed budget, proposed performance statement, and activity descriptions. The funds will be made available utilizing an equal division among EH Fund Subrecipients of the amount of the EH Fund as of the end of the state fiscal year, unless the amount collected by the EH Fund exceeds \$500,000, at which time an Application and NOFA specifically for the EH Fund will be developed. Should this occur, the rule details the Application review process. The rule also establishes the Contract Term and limitations.

The proposed rule was published in the September 21, 2018, issue of the *Texas Register* (43 TxReg 6057) for public comment, and one commenter submitted two comments as shown in the preamble included in Attachment A. No changes are recommended in response to these comments and one grammatical change to the rule is recommended.

If adopted by the Board, the rule will be published in the *Texas Register* for adoption.

## **Attachment 1: Preamble for adopting new 10 TAC 10 TAC Chapter 7, Subchapter D, Ending Homelessness Fund**

The Texas Department of Housing and Community Affairs (the “Department”) adopts new 10 TAC Chapter 7, Subchapter D, Ending Homelessness Fund with changes to the proposed text as published in the September 21, 2018, issue of the *Texas Register* (43 TxReg 6057). The purpose of the new section is to provide compliance with Tex. Transportation Code §502.415(g) and outline the purpose and use of funds, subrecipient application and selection, availability of funds, application review process, and contract terms and limitations.

Tex. Gov’t Code §2001.0045(b) does not apply to the new rule for action pursuant to §2001.0045(c)(9), which exempts rule changes necessary to implement legislation. This new rule implements Tex. Transportation Code §502.415, which requires that the Department establish rules to govern the Ending Homelessness Fund (“EH Fund”).

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. David Cervantes, Acting Director, has determined that, for the first five years the new rule will be in effect:

1. The new rule provides for the implementation of a new program, the EH Fund, which is established in legislation at Tex. Transp. Code §502.415. To minimize the administrative burden on potential program Subrecipients, the new program will streamline the use of the EH Fund alongside two other existing homeless programs administered by the Department, the Homeless Housing and Services Program (“HHSP”) and the Emergency Solutions Grants Program (“ESG”), until the EH Fund exceeds \$500,000 in a state fiscal year.
2. The 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 receipt and review of EH Fund Applications, creation of Contracts, and review of reporting, 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 new rule does not require additional future legislative appropriations.
4. The new rule 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 rule is creating a new regulation, which is being created to fulfill requirements of Tex. Transp. Code §502.415(g), which requires that the Department adopt rules governing application for grants from the EH Fund and the issuance of those grants.
6. The new rule will not expand, limit, or repeal an existing regulation, since this is a new rule.
7. The new rule will not increase nor decrease the number of individuals subject to the rule’s applicability as described in item one above; and

8. The new rule will not negatively affect the state's economy, and may be considered to have a positive effect on the state's economy because the new rule works to provide activities to decrease the number of persons experiencing homelessness or at-risk of homelessness who may be possibly accessing other more-expensive public options, such as hospitals or jails. The Department is not able to quantify or determine the possible extent of the reduction at this time because, in addition to the difficulty in fully projecting the full value of these outcomes, the amount of the funding used for this program is dependent on voluntary donations which may vary over time.

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 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.

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. There are no small or micro-businesses subject to the rule because Tex. Transportation Code §502.415 limits the EH Fund to counties and municipalities. There are minimal rural communities subject to the new rule because only counties and municipalities that have or will have ESG and HHSP are eligible applicants that generally are not rural communities.

3. The Department has determined that based on the considerations in item two above, 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 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 new rule has no economic effect on local employment because this rule will channel funds, which may be limited, only to counties and municipalities who have ESG or HHSP funds; it is not anticipated that the amount of funds would be enough to support additional employment opportunities, but would add to the services provided. Alternatively, the rule would also not cause any negative impact on employment. 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 no impact is expected on a statewide basis, 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). David Cervantes, Acting Director, 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 an compliance with Tex. Transp. Code §502.415(g), and as EH funds are distributed, will result in decreased number of persons experiencing or at-risk of homelessness. There is no state cost to program participants who participate in the activities permitted under the EH Fund. There will not be any



economic cost to any individuals required to comply with the new section because the processes described by the rule apply to counties and municipalities.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Cervantes 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 not have any foreseeable implications related to costs or revenues of the state or local governments because the cost of administering the EH Fund is included in program eligible activities.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between September 21, 2018, and October 22, 2018. Comments regarding the proposed repeal were accepted in writing and by e-mail with comments received from: Danielle Shaw of the City of Denton as summarized below.

#### §7.63 Availability of Funds

COMMENT SUMMARY: Commenter requests explanation of why funding is limited to only Subrecipients of Emergency Solutions Grant (“ESG”) and Homeless Housing and Services Program (“HHSP”) funds, and states that this restriction does not allow the EH Fund to reach communities that do not currently receive ESG and HHSP funds. Commenter states that the funds could be utilized for activities other than those permitted under ESG and HHSP to create more diverse service offerings.

STAFF RESPONSE: Staff agrees that the EH fund could be utilized in areas that do not currently administer ESG or HHSP funds, and could be utilized to provide a broader range of services than those permitted by ESG and HHSP. However, the rule as written allows for this possibility, but sets a threshold funding amount in order to ensure that the impact of the fund is maintained and does not create excessive administrative burden for the administration of a relatively small amount of program funds. Staff set this threshold amount specifically so that availability of the EH Fund could be expanded to entities not currently receiving ESG or HHSP funds once the fund reached a threshold amount that was reasonable to establish a new program structure; the Department asked for feedback on this issue at several roundtables conducted prior to release of the staff draft of the rule and the rule reflects the viable threshold amount for which feedback was received. Staff does not recommend changes in response to this comment.

#### §7.65 Contract Term and Limitations

COMMENT SUMMARY: Commenter states that there is an apparent conflict between §7.63, Availability of Funds, and §7.65, Contract Terms and Limitations. Specifically, commenter states that §7.65(a) includes Application requirements for the EH fund when the Applicant is not a current recipient of ESG or HHSP funds.

STAFF RESPONSE: As noted above, the rule includes Application requirements for Applicants who do not currently receive ESG or HHSP funds to address the process that will occur when the amount available in the fund exceeds \$500,000 in accordance with §7.63(b)(2). Staff does not recommend changes in response to this comment.

The Board adopted the final order adopting the new rule on December 6, 2018.

STATUTORY AUTHORITY. The new sections are adopted pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules, and Tex. Transp. Code, §502.415(g) requiring the adoption of these rules. Except as described herein the proposed new sections affect no other code, article, or statute.

## **SUBCHAPTER D. ENDING HOMELESSNESS FUND**

### **§7.61. Purpose and Use of Funds.**

- (a) As authorized by Tex. Transp. Code §502.415, the Ending Homelessness Fund (“EH Fund”) provides grant funding only to counties and municipalities for the purpose of combating homelessness.
- (b) Permitted EH Fund eligible activities include any activity determined to be eligible under Subchapter B of this Chapter, Homeless Housing and Services Program (“HHSP”), or under Subchapter C of this Chapter, Emergency Solutions Grants (“ESG”), as applicable, and as otherwise described in this Subchapter and Subchapter A of this Chapter.
- (c) Capitalized terms used in this Subchapter shall follow the meanings defined in Subchapter A of this Chapter unless the context clearly indicates otherwise. Additionally any words and terms not defined in this section but defined or given specific meaning in 24 CFR Part 576, or used in that Part 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.
- (d) Funds awarded under the EH Fund are not subject to any Match requirements, but may be used as Match for other programs that do require Match.

### **§7.62. EH Fund Subrecipient Application and Selection.**

- (a) The Department will produce an Application which, if properly completed by an eligible Applicant and approved by the Department, may satisfy the Department’s requirements to receive an award of funds under the EH Fund. Applicants that have an existing ESG or HHSP Contract or are applying for ESG or HHSP funds may be eligible to submit an abbreviated EH Fund Application if such Application is made available by the Department.
- (b) Funds will be available to Applicants determined to be eligible for the EH Fund under §7.63(b)(1) of this Subchapter, or as specified in a NOFA as defined in and under §7.63(b)(2) of this Subchapter, as applicable.
- (c) Application for funds. All Applicants for an award from the EH Fund must submit items (1) through (5) of this subsection:
- (1) a complete Application including an Applicant certification of compliance with state rules, federal laws, rules and guidance governing the EH Fund as provided in the Application;
  - (2) all information required under 10 TAC Subchapter C to conduct a Previous Participation and Executive Award Review and Advisory Committee review;
  - (3) a proposed budget in the format required by the Department;
  - (4) proposed performance targets in the format required by the Department; and
  - (5) activity descriptions, including selection of administration under Subchapter B of this Chapter related to HHSP or Subchapter C of this Chapter related to ESG.

(d) For Applications submitted by existing ESG or HHSP Subrecipients or Applicants for ESG or HHSP, eligible activities are limited to those activities in ESG or HHSP, except that the EH Fund is not subject to limitations on the amount of funds that may be spent for any given activity type.

(e) The Department must receive all Applications within 30 calendar days of notification of eligibility to Applicants per §7.63(b)(1) of this Subchapter, or as specified in the NOFA, as applicable.

### **§7.63. Availability of Funds.**

(a) Funds available under the EH Fund will be made available at least once per state fiscal year to eligible Applicants dependent on the amount of funding made available.

(b) The balance of the EH Fund will determine the distribution method.

(1) For an annual balance that does not exceed \$500,000 as of the end of the state fiscal year, the total of available EH funds will be distributed equally, up to the amount requested, among the total number of entities satisfying all of the following requirements:

(A) are Subrecipients or awarded Applicants of ESG or HHSP;

(B) are counties or municipalities;

(C) have indicated that they wish to participate in the EH Fund; and

(D) have identified the minimum amount of funds they would accept and the maximum amount of funds they would be able to expend during the Contract Term.

(2) For an annual fund balance that exceeds \$500,000 as of the end of the state fiscal year, the total of available EH Funds may be made available through a NOFA, which may include being made available to counties and municipalities that are not existing ESG or HHSP Subrecipients or awarded Applicants. If the amount in the EH Fund is greater than \$500,000, an award made available through a NOFA shall not exceed \$250,000 per Applicant per state fiscal year, unless there are no other eligible Applicants.

### **§7.64. Application Review Process.**

(a) Review of Applications. When not using a NOFA, an Application received in response to solicitation by the Department will be assigned a "Received Date" and processed as noted below. An Application will be prioritized for review based on its "Received Date." All Applications received by the deadline described in §7.62(e) of this Subchapter will be reviewed by the Department for completeness and administrative deficiencies to prepare for Board action and potential funding.

(b) The administrative deficiency process allows staff to request that an Applicant provide clarification, correction, or non-material missing information to resolve inconsistencies in the original Application or to assist staff in evaluating the Application. Staff will request such information via a deficiency notice. Staff will send the deficiency notice via email. Responses to the Department's deficiency notice must be submitted electronically to the Department. A review of the Applicant's response may reveal that additional administrative deficiencies are exposed or that issues initially identified as an administrative deficiency are actually determined to be beyond the scope of

an administrative deficiency process, meaning that they are in fact matters of a material nature not susceptible to be resolved. For example, a response to an administrative deficiency that causes a new inconsistency which cannot be resolved without reversing the first deficiency response would be an example of an issue that is beyond the scope of an administrative deficiency. Department staff will make a good faith effort to provide an Applicant confirmation that an administrative deficiency response has been received and/or that such response is satisfactory. Communication from staff that the response was satisfactory does not establish any entitlement to points, eligibility status, or to any presumption of a final determination that the Applicant has fulfilled any other requirements.

(1) An Application with outstanding administrative deficiencies may be suspended from further review until all administrative deficiencies have been cured or addressed to the Department's satisfaction. The administrative deficiency process allows staff to request that an Applicant provide clarification, correction, or missing information to resolve inconsistencies in the original Application or to assist staff in evaluating the Application.

(2) Applications that have completed the review process may be presented to the Board for approval with priority over Applications that continue to have administrative deficiencies at the time Board materials are prepared, regardless of "Received Date."

(3) If all funds available under a solicitation from the Department are awarded, all remaining Applicants will be notified and the remaining Applications will not be processed.

(c) Responses to administrative deficiencies. The time period for responding to a deficiency notice commences on the first calendar day following the deficiency notice date. If an administrative deficiency is not resolved to the satisfaction of the Department by 5:00 p.m. Austin local time on the seventh calendar day following the date of the deficiency notice, the Application shall be terminated. Applicants that have been terminated may reapply unless the Application period has closed.

(d) An Application must be substantially complete when received by the Department. An Application may be terminated if the Application is so unclear or incomplete that a thorough review cannot reasonably be performed, as determined by the Department. Such Application will be terminated without being processed as an administrative deficiency. Specific reasons for a Department termination will be included in the notification sent to the Applicant but, because the termination may occur prior to completion of the full review, will not necessarily include a comprehensive list of all deficiencies in the Application. Termination of an Application may be subject to §1.7 of this Part, regarding appeals.

#### **§7.65. Contract Term and Limitations.**

(a) For EH Fund Applicants that do not have a current ESG or HHSP Contract, and have not been awarded ESG or HHSP funds, the Department requires evidence in the form of a certification or resolution adopted by the governing body of the Applicant specifying who is authorized to enter into a Contract on behalf of the Applicant. This certification or resolution is due to the Department no later than 90 calendar days after the award has been approved by the Board, must be received prior to execution of any Contract for EH funds, and must include:

(1) authorization to enter into a Contract for EH Fund;



(2) title of the person authorized to represent the organization and who also has signature authority to execute a Contract; and

(3) date that the certification or resolution was adopted by the governing body, which must be within 12 months of Application submission.

(b) For the EH Fund, Applicants that have a current Contract or have been awarded ESG or HHSP funds for a subsequent period, the Contract Term of the EH funds may not extend past the Contract Term of the existing ESG or HHSP Contract or the subsequent ESG or HHSP Contract Term. For EH Fund Applicants that do not have current or awarded ESG or HHSP funds, the Contract Term may not exceed 24 months.

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**BOARD ACTION REQUEST**

**811 PROGRAM**

**DECEMBER 6, 2018**

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

**RECOMMENDED ACTION**

**WHEREAS**, 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**, the Department has identified the need to revise 10 TAC §8.7, Program Regulations and Requirements, relating to the 811 Project Rental Assistance Program, to clarify the process the Department will utilize when providing notice to an Owner as to whether or not the Department will accept a unit that is becoming vacant so that it can provide a referral to that unit;

**WHEREAS**, the amendment will allow for greater assurance to Owners of eligible multifamily properties in what to expect as it relates to whether a unit will be filled by an eligible 811 Program tenant; and

**WHEREAS**, upon authorization of this item, the proposed rule action will be published in the *Texas Register* for public comment from December 21, 2018, through January 21, 2019;

**NOW, therefore, it is hereby**

**RESOLVED**, that the proposed amendment to 10 TAC §8.7, Program Regulations and Requirements, is approved for publication in the *Texas Register* for public comment; and

**FURTHER RESOLVED**, that the Acting 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**

Staff has identified a necessary revision within 10 TAC §8.7, Program Regulations and Requirements, within that will provide clarity to owners of eligible multifamily properties that are participating in the Section 811 Project Rental Assistance (“PRA”) Program.

The current rule reflects that owners, in accordance with 10 TAC §8.7(l)(4), must notify TDHCA of the vacancy of any unit, including those that have not previously been occupied by an 811 Program tenant, as soon as possible, not to exceed seven calendar days from when the Owner learns that an Assisted Unit will become available. The current rule provides no indication of how, or how promptly, the Department will respond to that notification.

In the interest of providing assurances to property owners, the Department is proposing in the rule amendment that in response to receiving such a notification of vacancy of any Unit, the Department will notify the property owner in writing within three business days of receiving the notification whether the Department will or will not “accept” the available unit to make a referral from the Section 811 PRA Program to fill the vacated unit. Units must be affirmatively released by the Department in writing before a Unit will be offered to a household that is not being referred through the Section 811 PRA Program.

The proposed rule only applies to notices made under 10 TAC §8.7(l)(4), relating to vacancies that become available, and does not apply to the notice required under 10 TAC §8.7(l)(3), relating to the vacancies that are available at the initial lease-up of a property.

The proposed rule reflects changes as blackline revisions to the current rule, which will be submitted to the *Texas Register* as a proposed amendment. Staff will, upon action by the Board, publish the proposed rule in the *Texas Register* for public comment from December 21, 2018, through January 21, 2019. Staff anticipates returning for final adoption of the rule no earlier than the February 21, 2019, Board meeting.

**Attachment 1: Preamble, including required analysis, for proposed amendment of 10 TAC §8.7  
Program Regulations and Requirements**

The Texas Department of Housing and Community Affairs (the “Department”) proposes the amendment of 10 TAC §8.7 Program Regulations and Requirements. The purpose of the proposed amendment is to provide greater clarity to property owners participating in the 811 Program Rental Assistance Program on the Department’s response process when notified of a vacant unit by the property.

Tex. Gov’t Code §2001.0045(b), does apply to the rule being adopted and no exceptions are applicable. However, the rule already exists and the only amendment being proposed to the rule provides greater specificity for how the Department will respond when a participating property owner notifies the Department of an available unit. There are no costs associated with this rule, 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. David Cervantes, Acting 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 a limited revision providing improved clarity in the administration of the Section 811 Project Rental Assistance Program (“Section 811 PRA”).
  2. The proposed amendment does not require a change in work that would require the creation of new employee positions, nor is the proposed amendment significant enough to reduce work load 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, except that it is being replaced by a new rule simultaneously to provide for revisions.
  6. The proposed action will amend an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, of the rules governing the administration of the Section 811 PRA Program.
  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.



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 Department ensuring that Owners of Eligible Multifamily Properties have assurance that they are able to maintain occupancy of their Developments while participating in the Section 811 PRA Program. Other than an Owner who may be considered to be a small or micro-business, which would not generally be the case, no small or micro-businesses are subject to the rule. However, if an Owner considers itself a small or micro-business, this rule provides greater assurance that their Development's occupancy will not be disrupted by their participation in the Section 811 PRA Program.

3. The Department has determined that because the rule applies only to Owners that have made a commitment to the Department under other Multifamily Programs, there will be no economic effect on small or micro-businesses or rural communities.

- c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed amendment does not contemplate 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 proposed amendment will be in effect there would be no economic effect on local employment because the rule relates only to how the Department will respond to existing requirements of Owners participating in the Section 811 PRA Program; 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 this rule provides assurance about an existing practice by the Department, 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. Cervantes 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 greater communication between the Department and Owners. 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. Cervantes 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.
- g. REQUEST FOR PUBLIC COMMENT. The public comment period will be held December 21, 2018, through January 21, 2019, to receive input on the proposed amended section. Written comments may be mailed to the Texas Department of Housing and Community Affairs, Spencer Duran, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by fax to (512) 475-3935; or email to [spencer.duran@tdhca.state.tx.us](mailto:spencer.duran@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 PM Austin local time January 21, 2019.

- h. STATUTORY AUTHORITY. The amendment is proposed pursuant to TEX GOV'T CODE, §2306.053, which authorizes the Department to adopt rules. Except as described herein the amendment affects no other code, article, or statute.

### §8.7 Program Regulations and Requirements

(a) Participation in the 811 PRA Program is encouraged and incentivized through the Department's Multifamily Rules. Once committed in the Multifamily Application, a Development must not accept a fund source that would prevent it from participating in the 811 PRA Program.

(b) An Existing Development that is already participating in the 811 PRA Program is eligible to have an additional commitment of 811 PRA Units as long as the integrated housing requirements as noted in §8.3(c) of this chapter 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 Enterprise Income Verification (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 §10.610 (as amended), 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 thirty (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 (7) 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 \(3\) 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 (3) 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 appropriate size 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 is a 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 twelve (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. Sec. 3701 to 3708), Copeland (Anti-Kickback) Act (40 U.S.C. Sec. 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 eleven (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, 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.

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**BOARD ACTION REQUEST**  
**EXECUTIVE DIVISION**  
**DECEMBER 6, 2018**

Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC Chapter 29, Texas Single Family Neighborhood Stabilization Program Rule, and an order adopting new 10 TAC Chapter 29, Texas Single Family Neighborhood Stabilization Program Rule, and directing publication 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 and based on the assessment of the rule determine if the rule should be readopted as is, readopted with amendments, or repealed;

**WHEREAS**, 10 TAC Chapter 29, Texas Single Family Neighborhood Stabilization Program (NSP) Rule, provides the procedures for implementation of the NSP, which was funded through the Housing and Economic Recovery Act of 2008 and the Dodd Frank Act of 2010;

**WHEREAS**, staff determined that there was a continuing need for this rule to exist, which is to continue to have rules in place governing the NSP, but that changes are required that involve the deletion of 10 TAC §29.3(c)(4) and 10 TAC §29.3(c)(5), relating to thresholds for Administrative draw requests, because these sections are no longer applicable to remaining open Contracts, the deletion of 10 TAC §29.4(b) as it is no longer applicable, and the deletion of 10 TAC §29.5, relating to Compliance and Monitoring, because that section which is applicable to multifamily activities is no longer needed as the multifamily NSP requirements are now addressed in 10 TAC Chapter 13, the Multifamily Direct Loan Rule; and

**WHEREAS**, such proposed rulemaking was published in the *Texas Register* for public comment to be received from September 21, 2018, through October 22, 2018, and no comment was received;

**NOW, therefore, it is hereby**

**RESOLVED**, that the repeal of 10 TAC Chapter 29, Texas Single Family NSP Rule, and new 10 TAC Chapter 29, Texas Single Family NSP Rule, are adopted; and

**FURTHER RESOLVED**, that the Acting 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 29, Texas Single Family NSP Rule, and new 10 TAC Chapter 29, Texas Single Family NSP Rule, in the form presented to this meeting, to be published in the *Texas Register* 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 and any requested changes to the preambles.

## **BACKGROUND**

*Authority:* Tex. Gov't Code §2306.053 authorizes the Department to adopt rules governing the administration of the Department and its programs. This may include procedural requirements that are needed to ensure that programs run efficiently. This rule was established in 2012 to govern the NSP, a program allocated to the Department under the Housing and Economic Recovery Act of 2008. No new funds have been issued to the Department and the original program continues to operate as activities are closed out and as land bank properties, which had an extended period for completion, are brought into a final eligible use.

*Department Policy:* While Tex. Gov't Code §2306.053 does not explicitly require that the Department have rules for the NSP, the statute allows for that ability and the rule provides greater transparency by having stipulations in rule that would otherwise only have been in contract.

*Consistency with Executive Direction and Proposed Changes:* Staff recommended to the Board in September 2018 that this rule be retained with changes that involve minor edits, as well as the removal of sections 10 TAC §29.3(c)(4) and 10 TAC §29.3(c)(5), relating to thresholds for Administrative draw requests, because these sections are no longer applicable to the remaining open Contracts; the deletion of 10 TAC §29.4(b) because it is no longer applicable; and the deletion of 10 TAC §29.5, relating to Compliance and Monitoring, because that section is applicable to multifamily activities and is already addressed in 10 TAC Chapter 13, the Multifamily Direct Loan Rule. This action allows the Department to continue to provide clear regulation relating to NSP activities still underway.

Upon Board approval on September 6, 2018, the proposed rule actions were published in the *Texas Register* and released for public comment from September 21, 2018, through October 22, 2018. No comment was received. Behind the preamble for the adopted action is the final rule in its clean new form, which is adopted with no changes from the version published in the *Texas Register*.

**Attachment 1: Preamble, including required analysis, for adopting the repeal of 10 TAC Chapter 29, Texas Single Family Neighborhood Stabilization Program Rule**

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC Chapter 29, Texas Single Family Neighborhood Stabilization Program ("NSP") 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.**

1. David Cervantes, Acting Director, has determined that, for the first five years the repeal will be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous re-adoption making changes to the NSP Rules.
2. The repeal does not require a change in work that will require the creation of new employee positions, nor will the repeal reduce work load 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 NSP 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. Cervantes 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. Cervantes 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.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between September 21, 2018, and October 22, 2018. Comments regarding the proposed repeal were accepted in writing and by email. No comments regarding the repeal were received.

The Board approved the final order adopting the repeal on December 6, 2018.

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 repealed sections affect no other code, article, or statute.

### **Chapter 29, Texas Single Family Neighborhood Stabilization Program Rule**

## **Attachment 2: Preamble, including required analysis, for adopting new 10 TAC Chapter 29, Texas Single Family Neighborhood Stabilization Program Rule**

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC Chapter 29, Texas Single Family Neighborhood Stabilization Program ("NSP") §§29.1-29.4, with changes to the proposed text as published in the September 21, 2018, issue of the *Texas Register* (43 TexReg 6167) and will be republished. The purpose of the proposed new sections are to make changes that involve minor edits, as well as the removal of sections §29.3(c)(4) and §29.3(c)(5), relating to thresholds for Administrative draw requests, because these sections are no longer applicable to remaining open Contracts; the deletion of §29.4(b) because it is no longer applicable; and the deletion of §29.5, relating to Compliance and Monitoring, because that section is applicable to multifamily activities and is already addressed in 10 TAC Chapter 13, the Multifamily Direct Loan Rule. This action allows the Department to continue to provide clear regulation relating the NSP activities still underway.

Tex. Gov't Code §2001.0045(b) does apply to the rule being adopted and no exceptions are applicable. However, the rule changes only involve the removal of several obsolete sections and minor edits. The rule provides for how a federal program, the NSP, is administered. There are no costs associated with this proposed rule, therefore no costs or impacts warrant 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.**

David Cervantes, Acting Director, has determined that, for the first five years the proposed new 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 which makes changes to the rules that govern the NSP.
2. The new rule does not require a change in work that would require the creation of new employee positions, nor will it reduce work load to a degree that eliminates any existing employee positions.
3. The new rule does not require additional future legislative appropriations.
4. The new rule 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 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 does not increase nor decrease the number of individuals to whom this rule applies; and
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.**



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 in place for administrators of the NSP. Other than in the case of a small or micro-business that participates in this program, no small or micro-businesses are subject to the rule. If a small or micro-business does participate in the program, the rule provides a clear set of regulations for doing so.

3. The Department has determined that because this rule relates only to a process for applicants of an existing program, and the rule changes primarily remove outdated sections and make minor edits, 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 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 new rule has no economic effect on local employment because this rule relates only to the existing processes used in administering the NSP; 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 the rule relates only to the continuation of the program regulations for the NSP 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. Cervantes 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 proposed new rule will be an updated clear rule and assurance of the program having transparent compliant regulations. There will be no economic cost to any individuals required to comply with the proposed new rule because the activity described by the rule has already been in existence.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Cervantes 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 not have any foreseeable implications related to costs or revenues of the state or local governments as this rule relates only to a process that already exists and is not recommended for change.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between September 21, 2018, and October 22, 2018. Comments regarding the proposed repeal and new rule were accepted in writing and by email. No comments regarding the repeal or new rule were received.

The Board approved the final order adopting the repeal on December 6, 2018.

STATUTORY AUTHORITY. The rule is adopted 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.

<rule>

#### §29.1. Purpose.

This chapter clarifies the administration of the Texas Single Family Neighborhood Stabilization Program ("Texas SFNSP"). Texas SFNSP funds are administered by the Department. The Texas SFNSP awards funding to Subgrantees to acquire foreclosed, abandoned, or vacant property in order to redevelop it and prevent it from becoming a source of blight which could contribute to declining property values.

#### §29.2. Definitions.

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. Lack of capitalization of a term or word in this chapter does not indicate that the term is undefined. Other definitions may be found in Tex. Gov't Code, Chapter 2306; Chapter 1 of this title (relating to Administration); and Chapter 20 of this title (relating to Single Family Programs Umbrella Rule).

- (1) Developer--A nonprofit entity that receives Texas SFNSP assistance for the purpose of:
  - (A) Acquiring homes and residential properties to rehabilitate for residential purposes; and
  - (B) Constructing new housing in connection with the redevelopment of demolished or vacant properties.
- (2) Expended--For the purposes of contract milestones and thresholds, "Expended" means that a complete draw request is submitted with adequate back-up documentation; it is not necessary for staff to have processed a draw to meet a benchmark. For all other purposes, "Expended" means that an eligible cost was incurred and staff has processed a draw to reimburse the expense with Texas SFNSP funds.
- (3) Land Bank--A governmental or nongovernmental nonprofit organization established, at least in part, to assemble, temporarily manage and dispose of vacant land for the purposes of stabilizing neighborhoods and encouraging re-use or redevelopment of urban property.
- (4) Obligated--When Texas SFNSP funding has been encumbered through contracts for goods, services or acquisition of property, or other forms of similar transactions requiring payment that have been determined by the Department to meet Texas SFNSP requirements.
- (5) Subgrantee--A Subrecipient or a Developer.
- (6) Subrecipient--Units of General Local Government and nonprofit organizations with whom the Department contracts and provides funding in order to undertake activities eligible for such assistance.
- (7) Texas SFNSP--Texas Single Family Neighborhood Stabilization Program.

#### §29.3. General Provisions.

- (a) All assisted properties must be located in eligible areas as defined by HUD and by the applicable NOFA.
- (b) The Contract term is based upon varying types of activities included in the Contract between the Department and the Department's Subgrantee. Exhibit C, Project Implementation Schedule, of the Contract, provides an outline of specific timelines, milestones and thresholds. Performance under the Contract will be evaluated according to the benchmarks described in each Contract.
- (c) Administrative Threshold. Administrative draw requests are funded from the administration or developer fee line item in Exhibit B, Budget, of the Contract. Reimbursement of eligible administrative expenses is regulated as described in paragraphs (1) - (5) of this subsection:
  - (1) Threshold 1. Cumulative administrative draw requests may allow up to 10 percent of the administration or developer fee line item to be drawn prior to the start of any project activity included in the performance statement of the Contract (provided that all pre-draw requirements, as described in the Contract, for administration have been met). This draw may be limited by NOFA, underwriting report, or by Contract.

Subsequent administrative expenditures will be reimbursed in the percentage amounts indicated, provided that all Contract benchmark requirements have been met, as identified in Exhibit C, Project Implementation Schedule, described in subsection (b) of this section;

(2) Threshold 2. Subsequent administrative draw requests are allowed in proportion to the direct project funds drawn on the Contract, up to 90 percent of the total administration or developer fee line item. The cumulative total percentage of administrative funds requested may not exceed the cumulative total percentage of project funds expended for hard and/or soft costs directly attributable to activities under the Contract;

(3) Threshold 3. The final 10 percent of the administration or developer fee line item is the administrative retainage. The final 10 percent may be drawn after the final loan closing or upon Contract close-out.

(d) Forbearances. Contract expenditure thresholds and milestones are included in Exhibit C, Project Implementation Schedule, of the Contract; violations of which will subject the Subgrantee to the requirements found in this chapter. At the Department's discretion, forbearances of thresholds and milestones may be granted upon request and documentation of extenuating circumstances.

(e) Waivers. Program administrative regulations set forth in any Texas SFNSP NOFA by the Department's Governing Board or terms in the Contract may be waived by the Department, acting by and through its Executive Director or his/her designee, up to the limits of Texas SFNSP regulations and guidance as previously established, periodically updated, or updated in the future by HUD. The Executive Director or his/her designee may waive the Texas SFNSP purchase discount to the limits of the purchase discount as allowed by the NSP Bridge Notice. The Texas NSP NOFA and the NSP *Federal Register* Notice (Docket No. FR-5255-N-01) published in the *Federal Register* (73 FR 58330), require a minimum discount of five percent for any individual property and 15 percent for a portfolio of properties to be acquired utilizing Texas SFNSP funds. (If only acquiring one property, the one property constitutes a portfolio.) The NSP Bridge Notice allows for up to a one percent discount for individual properties and portfolios.

#### §29.4. Reassignment of Funds.

Deobligated funds may either be reassigned utilizing the amendment process described 10 TAC §20.14 of this title (relating to Single Family Programs Umbrella Rule), or be subject to redistribution through a methodology to be approved by the Board.

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BOARD ACTION REQUEST

EXECUTIVE DIVISION

DECEMBER 6, 2018

Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC Chapter 1, Administration, Subchapter C, Previous Participation; and an order adopting with changes new 10 TAC Chapter 1, Administration, Subchapter C, Previous Participation and Executive Award Review and Advisory Committee, 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, 10 TAC Chapter 1, Subchapter C, Previous Participation, lays out the process used to review the past performance and participation of applicants prior to the Department making new awards, and also provides for a means of appealing recommendations made by the Executive Award Review and Advisory Committee ("EARAC");

WHEREAS, the Department has identified the need for revisions to 10 TAC Chapter 1, Subchapter C, Previous Participation to streamline the review in certain instances, provide a clear set of conditions that may be placed upon an award, and provide more Board involvement in determining if an award is warranted in cases of egregious non-compliance;

WHEREAS, at the Board meeting of October 11, 2018, the Board approved the draft of this rule for public comment, comment has been received, and the Department has taken into consideration the comment and provided a reasoned response in the rule now being presented for adoption; and

WHEREAS, after further consideration, the Department has determined that Figure 10 TAC §1.301(c)(9) will be withdrawn from the proposed rule;

NOW, therefore, it is hereby

RESOLVED, that the adopted repeal of 10 TAC Chapter 1, Subchapter C, Previous Participation, and adopted with changes new 10 TAC Chapter 1, Subchapter C, Previous Participation and Executive Award Review and Advisory Committee, are approved for adoption and publication in the Texas Register; and

FURTHER RESOLVED, that the Acting 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 adopted repeal of 10 TAC Chapter 1, Subchapter C, Previous Participation, and adopted new 10 TAC Chapter 1, Subchapter C, Previous Participation and Executive Award Review and Advisory Committee, in the form presented to this meeting, to be published in the Texas Register 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 and any requested revisions to the preambles.



## BACKGROUND

10 TAC Chapter 1, Subchapter C, Previous Participation, lays out the process used to review the past performance and participation (called "Previous Participation Review" or "PPR") of those entities who apply for program resources or certain Department approvals, prior to such decisions being made. This subchapter currently has 3 sections: §1.301 currently addresses the PPR process for applicants involved in multifamily applications and ownership transfers; §1.302 addresses the PPR process for applicants for all other programs except multifamily (meaning Single Family, Community Affairs, and Homelessness activities); and the last section, §1.304 addresses the Appeal process for an EARAC recommendation. There is currently no rule at §1.303.

While EARAC statutorily is only required to be utilized on awards for Housing Tax Credits ("HTC") and HOME Program activities, the Department has an obligation under 2 CFR Part 200 to also perform a similar type of review prior to awarding federal funds. In the past the EARAC process has satisfied that 2 CFR Part 200 requirement. The rule changes now formalize that EARAC is used for this purpose as well.

Staff believes that there is a need for fairly significant revisions to simplify the PPR rule and that there is a need to formalize the process and considerations of EARAC, which until now have not been formalized in rule. Applicants and staff have struggled to formulate appropriate conditions to be placed on awards. Further, the Department feels that conditions have greater enforceability when they exist in rule. Additionally, over time, the direction of EARAC and the Board for that matter, have revealed that certain issues will tend to be voted on in certain ways(8), and staff is striving to revise the rules so that they are reflective of those preferences at the outset. Therefore, the new proposed rule provides for a more objective, consistent process for PPR review, and the determinations made by EARAC.

The Board approved the proposed PPR and EARAC Rule at the Board meeting of October 11, 2018, to be published in the Texas Register for public comment. Staff has reviewed the one comment received and provided a reasoned response within the following preamble. The comment related to §1.301(c), Events of Noncompliance Not Considered, specifically items (8) and (9).

Staff also noticed in the process of further review, that additional corrections are needed, and continue to warrant revision, to Figure 10 TAC §1.301(c)(9). Staff is withdrawing the promulgation of the form from the rule, and removing reference in the rule to the form being promulgated by rule. Instead, the form will be updated and made available on the Department's website as an application form not promulgated by rule.

Authority: The authority for this rule is Tex. Gov't Code §§2306.057, 2306.1112 and 2306.6719. Tex. Gov't Code §2306.057 requires that prior to awarding funds or other assistance from the Department a review of the entity's compliance history must be performed by the Compliance Division. The Executive Award and Review Advisory Committee ("EARAC") is established by Tex. Gov't Code §2306.1112 to make recommendations to the Board regarding funding and allocation decisions related to Low Income Housing Tax Credits and federal housing funds provided to the state under the Cranston Gonzalez National Affordable Housing Act. Additionally, Tex. Gov't Code §2306.6719 addresses Housing Tax Credit monitoring of compliance and indicates that the Department may not consider issues of noncompliance that have been resolved within the

Corrective Action Period when making award decisions. This rule also ensures Department compliance with 2 CFR §200.331(b) and (c) which requires that the Department evaluate an applicant's risk of noncompliance and consider imposing conditions if appropriate prior to awarding federal funds for certain applicable federal programs, which may include multifamily activities.

Department Policy: While Tex. Gov't Code §§2306.057, and 2306.1112 jointly require that EARAC exist and that, combined in certain instances with UGMS and 2 CFR Part 200, require that the consideration of previous participation and performance occurs prior to award, these governing statutes and applicable rules and regulations do not specify how EARAC must be set up, or how previous participation should be assessed (for instance, it does not require category determinations used by the Department, nor does it require that conditions be outlined in rule). Therefore, these rules set Department policy not specifically contemplated in state statute for how EARAC will be handled, how PPR will be reviewed, and how recommendations from EARAC will be made.

Consistency with Executive Direction and Proposed Changes: Staff recommends that it is necessary to revise the rules in Subchapter C, but proposes doing so through the repeal and adoption of the Subchapter. This action allows the Department to evidence compliance with those statutes noted above. It should be emphasized that the rule revisions contemplated in the proposed rule are simplifying the review process for PPR, and bringing the policy of EARAC and PPR into alignment with the policy direction of the Board. The new rule provides for a more objective, transparent, consistent process for PPR review and the determinations made by EARAC.

Attachment 1: Preamble for adopting the repeal, including required analysis, of 10 TAC Chapter 1, Subchapter C, Previous Participation

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC Chapter 1, Administration, Subchapter C, Previous Participation. 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.

1. Mr. David Cervantes, Acting Director, has determined that, for the first five years the repeal will be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous adoption making changes to the existing procedure for the review of applicant previous participation and the recommendation of awards by the Executive Award and Review Advisory Committee ("EARAC").

2. The repeal does not require a change in work that will require the creation of new employee positions, nor will the repeal reduce work load 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 procedure the existing procedure for the review of applicant previous participation and the recommendation of awards by the Executive Award and Review Advisory Committee ("EARAC").

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. Cervantes 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 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. Cervantes 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 October 26, 2018, to November 16, 2018, to receive input on the repealed section. No public comment was received on the repeal.

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 repealed sections affect no other code, article, or statute.

Chapter 1, Subchapter C, Previous Participation

Attachment 2: Preamble, including required analysis, for adopting with changes new 10 TAC Chapter 1, Subchapter C, Previous Participation and Executive Award Review and Advisory Committee

The Texas Department of Housing and Community Affairs (the "Department") adopts with changes new 10 TAC Chapter 1, Administration, Subchapter C, Previous Participation and Executive Award Review and Advisory Committee. The purpose of the new section is to provide compliance with Tex. Gov't Code §§2306.057, 2306.1112 and 2306.6719, and 2 CFR 200.331(b) and (c) and to make the process contemplated in the rule more transparent and efficient.

Tex. Gov't Code §2001.0045(b) does not apply to the rule being adopted under item (9), relating to implementation of legislation. The rule ensures compliance with Tex. Gov't Code §§2306.057, 2306.1112 and 2306.6719. Tex. Gov't Code §2306.057 requires that prior to awarding funds or other assistance from the Department a review of the entity's compliance history must be performed by the Compliance Division. The Executive Award and Review Advisory Committee ("EARAC") is established by Tex. Gov't Code §2306.1112 to make recommendations to the Board regarding funding and allocation decisions related to Low Income Housing Tax Credits and federal housing funds provided to the state under the Cranston Gonzalez National Affordable Housing Act. Additionally, Tex. Gov't Code §2306.6719 addresses Housing Tax Credit monitoring of compliance and indicates that the Department may not consider issues of noncompliance that have been resolved within the Corrective Action Period when making award decisions. This rule also ensures Department compliance with 2 CFR §200.331(b) and (c) which require that the Department evaluate an applicant's risk of noncompliance and consider imposing conditions if appropriate prior to awarding federal funds for certain applicable federal programs, which may include multifamily activities. In spite of the exception noted above, it should be noted that no costs are associated with this action that would have warranted 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.

Mr. David Cervantes, Acting Director, has determined that, for the first five years the new 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 to the existing procedure for the review of an applicant's previous participation and the process used by EARAC.
2. The new rule does not require a change in work that would require the creation of new employee positions, nor will the repeal reduce work load to a degree that eliminates any existing employee positions.
3. The new rule does not require additional future legislative appropriations.
4. The new rule 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 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.
  7. The new rule does not increase nor decrease the number of individuals to whom this rule applies; and
  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.

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 how an applicant's previous contract performance is considered when applying for Department resources. Other than in the case of a small or micro-business that is a program participant in one of the Department's programs that also has applied for funds and is in need of a previous participation review, no small or micro-businesses are subject to the rule. If a small or micro-business is in need of such a review, the new rule provides for a more transparent process for doing so.

3. The Department has determined that because this rule relates only to a process for the review of the previous participation of program participants 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 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 this rule relates only to changes to the Department's previous participation and EARAC procedures, not locally based activities; 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 the rule merely provides for the previous participation review and procedures for EARAC 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. Cervantes 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 compliance with Tex. Gov't Code §§2306.057, 2306.1112 and 2306.6719, and 2 CFR Part 200. Further, the rule revisions are fairly significant in an effort to simplify the PPR rule and to formalize the process and considerations of EARAC, which until now have not been formalized in rule. Applicants and staff have struggled to formulate appropriate conditions to be placed on awards. The Department feels that conditions have greater enforceability when they exist in rule. Additionally, over time, the direction of EARAC and the Board for that matter, have revealed that certain issues will tend to be voted on in certain

ways, and staff is striving to revise the rules so that they are reflective of those preferences at the outset. Therefore, the new proposed rule provides for a more objective, transparent, consistent process for PPR review and the determinations made by EARAC.

There will not be any economic cost to any individuals required to comply with the new section because the rule describes primarily work performed by the Department, not by external parties, and the Department had already been performing the same, or similar types of work described by the rule.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Cervantes 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 not have any foreseeable implications related to costs or revenues of the state or local governments as this rule relates only to changes to a process that already exists.

PUBLIC COMMENT AND REASONED RESPONSE. The public comment period was held October 26, 2018, to November 16, 2018, to receive input on the proposed rule. Public comment and reasoned response are provided below. Public comment was received from one commenter, the Texas Affiliation of Affordable Housing Providers.

The Department also identified the need for additional corrections and revisions to Figure 10 TAC §1.301(c)(9), is withdrawing the promulgation of the form from the rule, and removing reference in the rule to the form being promulgated by rule. Instead, the form will be updated and made available on the Department's website as an application form not promulgated by rule.

1. §1.301(c)(8) – Items Not Considered, Events of noncompliance corrected within their Corrective Action Period (Commenter (1))

COMMENT SUMMARY: The commenter was appreciative that the recently proposed Compliance Rules (under separate rule action) allow a deficiency response period for corrective action. They asked that the Department allows this concept to apply retroactively, by applying to past events that were corrected within 10 days of the Department notifying the Owner that a response had been insufficient and further response was needed. The Department had previously indicated concern that this retroactive application of the rule would be administratively burdensome to the Department. To address that Department concern, the commenter suggests that the owner would have to provide evidence showing that the corrective action had occurred within the 10-day period, to alleviate Department staff having to perform such research.

STAFF RESPONSE: Staff agrees with Commenter 1 and suggests the following rule revision...

"(8) Events of Noncompliance corrected within their Corrective Action Period **or within 10 days of the day the Owner received notice that the Corrective Action was insufficient and needed further remedy, so long as evidence of such satisfaction within 10 days is provided by the Owner to the Department;**" ...

2. §1.301(c)(9) – Items Not Considered, Events outside of the control of the applicant (Commenter (1))

COMMENT SUMMARY: The commenter highly commends the Department for adding this clause and not considering property events that were outside the control of the applicant through disclosure on a form.

STAFF RESPONSE: Staff thanks the commenter. No changes are recommended in response to this comment.

### 3. §1.301(c)(10) – Technical Staff Correction

Staff realized that this section, intended to create an exception of applicability for both Category 2 and Category 3 determinations, actually only referred to Category 3 as drafted. The additional cite being added to the rule ensures that the process used for PPR is the same for Category 2 and 3, as intended. To not make this correction creates two different processes, which was not the intent.

The change recommended by staff is reflected below:

(10) Events of failure to respond within the corrective action period which have been fully corrected prior to January 1, 2019, will not be taken into consideration under (e)(2)(C) and (e)(3)(C). However, this shall not operate to alter or limit any responsibility of the Department to report such matters to the Internal Revenue Service as events of noncompliance not corrected within the corrective action period.

STATUTORY AUTHORITY. The new sections are adopted 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.

### §1.301. Previous Participation Reviews for Multifamily Awards and Ownership Transfers

(a) Purpose and Applicability. The purpose of this rule is to provide the procedures by which the Department complies with Tex. Gov't Code §§2306.057, 2306.6713, and 2306.6719 which require, among other things, that prior to awarding funds or other assistance through the Department's Multifamily Housing Programs or approving a Person to acquire an existing multifamily Development monitored by the Department a previous participation review will be performed by the Compliance Division. This rule also ensures Department compliance with 2 CFR §200.331(b) and (c), and Uniform Grant Management Standards ("UGMS"), where applicable, which requires that the Department evaluate an Applicant's risk of noncompliance and consider imposing conditions, if appropriate, prior to awarding funds for certain applicable programs, which may include multifamily activities.

(b) Definitions. The following definitions apply only as used in this section. Other capitalized terms used in this section shall have the meaning ascribed in the rules governing the program for which the Application has requested funds or is participating.

(1) Affiliate--Persons are Affiliates of each other or are "affiliated" if they are under common Control by each other or by one or more third parties. "Control" is as defined in 10 TAC Chapter 11. For Applications for Multifamily Direct Loans and 811 PRA, or for Ownership Transfers of Multifamily Properties containing Multifamily Direct Loans or 811 PRA, for purposes of assurance that the Affiliate is not on the Federal Suspended or Debarred Listing, Affiliate is also defined as required by 2 CFR Part 180.

(2) Combined Portfolio--All Developments within the Control of Persons affiliated with the Application as identified by the Previous Participation Review and as limited by subsection (c) of this section.

(3) Corrective Action Period--The timeframe during which an Owner may correct an Event of Noncompliance, as permitted in 10 TAC §10.602, including any permitted extension or deficiency period.

(4) Events of Noncompliance--Any event for which a multifamily rental development may be found to be in noncompliance for compliance monitoring purposes as further provided for in the table provided at 10 TAC §10.625 of this Title.

(5) Monitoring Event--Means an onsite or desk monitoring review, a Uniform Physical Condition Standards inspection, the submission of the Annual Owner's Compliance Report, Final Construction Inspection, a Written Policies and Procedures Review, or any other instance when the Department's Compliance Division provides written notice to an Owner or Contact Person requesting a response by a certain date. This would include but not be limited to responding to a tenant complaint.

(6) Person---"Person" is as defined in 10 TAC Chapter 11. For Applications for Multifamily Direct Loans and 811 PRA, or for Ownership Transfers of Multifamily Properties containing Multifamily Direct Loans or 811 PRA, for purposes of assurance that the Applicant or Affiliate is not on the Federal Suspended or Debarred Listing, Person is also defined as required by 2 CFR Part 180.

(7) Single Audit--As used in this rule, the term relates specifically to an audit required by 2 CFR §200.501 or UGMS Subpart E.

(c) Items Not Considered.

When conducting a previous participation review the following will not be taken into consideration:

(1) Events of Noncompliance, Findings, Concerns, and Deficiencies (under any Department program) that were corrected over three (3) years from the date the Event is closed unless required to be taken into consideration by federal or state law, by court order, or voluntary compliance agreement;

(2) Events of Noncompliance with an "out of compliance date" prior to the Applicant's or proposed incoming Owner's period of Control if the event(s) is currently corrected;

(3) Events of Noncompliance with an "out of compliance date" prior to the Applicant's or proposed incoming Owner's period of Control if the event(s) is currently uncorrected and the Applicant or proposed incoming Owner has had Control for less than one year and has had no legal ability to effectuate corrective action;

(4) The Event of Noncompliance "Failure to provide Fair Housing Disclosure notice";

(5) The Event of Noncompliance "Program Unit not leased to Low income Household" sometimes referred to as "Household Income above income limit upon initial Occupancy" for units at properties participating in U.S. Department of Housing and Urban Development programs (or used as HOME Match) or U.S. Department of Agriculture, if the household resided in the unit prior to an allocation of Department resources and Federal Regulations prevent the Owner from correcting the issue;

(6) The Event of Noncompliance "Casualty loss" if the restoration period has not expired;

(7) Events of Noncompliance that the Applicant or proposed incoming Owner believes can never be corrected and the Department agrees in writing that such item should not be considered;

(8) Events of Noncompliance corrected within their Corrective Action Period or within 10 days of the day the Owner received notice that the Corrective Action was insufficient and needed further remedy, so long as evidence of such satisfaction within 10 days is provided by the Owner to the Department; and

(9) Events of Noncompliance associated with a Development that has submitted documentation, using the appropriate Department-~~promulgated~~ form, ~~(Figure: 10 TAC §1.301(c)(9))~~ that the Applicant is not in Control of the Development with Events of Noncompliance for purposes of management and compliance. The term 'Combined Portfolio' used in this section does not include those properties with such documentation; and-

~~(Figure: 10 TAC §1.301(c)(9))~~

(10) Events of failure to respond within the corrective action period which have been fully corrected prior to January 1, 2019, will not be taken into consideration under (e)(2)(C) and (e)(3)(C). However, this shall not operate to alter or limit any responsibility of the Department to report such matters to the Internal Revenue Service as events of noncompliance not corrected within the corrective action period.

(d) Applicant Process. Persons affiliated with an Application or an ownership transfer request -must complete the Department's Uniform Previous Participation Review Form and respond timely to staff inquiries regarding apparent errors or omissions. A recommendation will not be made if an Applicant or proposed incoming Owner fails to provide the required ~~promulgated~~-forms or fails to provide timely responsive information when requested.

(e) Determination of Compliance Status. Through a review of the form, Department records, and the compliance history of the Affiliated multifamily Developments, staff will determine the applicable category for the Application or ownership transfer request using the criteria in paragraphs (1) through (3) of this subsection. The Application will be classified in the highest applicable category, based upon all Persons for whom previous participation review is conducted.

(1) Category 1. An Application will be considered a Category 1 if the Developments in the Combined Portfolio have no issues that are currently uncorrected, all Monitoring Events were



responded to during the Corrective Action Period, and the Application does not meet any of the criteria of Category 2 or 3.

(2) Category 2. An Application will be considered a Category 2 if any one or more of the following criteria are met:

(A) The number of uncorrected Events of Noncompliance plus the number of corrected Events of Noncompliance that were not corrected during the Corrective Action Period total at least three (3) but is less than 50% of the number of properties in the Combined Portfolio;

(B) There are uncorrected Events of Noncompliance but the number of Events of Noncompliance is 10% or less than the number of properties in the Combined Portfolio. If corrective action has been uploaded to the Department's Compliance Monitoring and Tracking System ("CMTS") or if the noncompliance is corrected and evidence of corrective action is submitted during the seven day period referenced in subsection (f) of this section it will be reviewed and the Category determination may change as appropriate;

(C) Within the three (3) years immediately preceding the date of Application, any Person subject to previous participation review failed to respond during the Corrective Action Period for three (3) or fewer Monitoring Events; or

(D) Within the three (3) years immediately preceding the date of Application, a Development in the Combined Portfolio has been the subject of a final order entered by the Board and the terms have not been violated.

(3) Category 3. An Application will be considered a Category 3 if any one or more of the following criteria are met:

(A) The number of uncorrected Events of Noncompliance plus the number of corrected Events of Noncompliance that were not corrected during the Corrective Action Period total at least 3 and equal or exceed 50% of the number of properties in the Combined Portfolio;

(B) The number of Events of Noncompliance that are currently uncorrected total 10% or more than the number of properties in the Combined Portfolio. If corrective action has been uploaded to CMTS or if the noncompliance is corrected and evidence of corrective action is submitted during the seven day period referenced in subsection (f) of this section it will be reviewed and the Category determination may change as appropriate;

(C) Within the three (3) years immediately preceding the date of Application, any Person subject to previous participation review failed to respond during the Corrective Action Period for more than three (3) Monitoring Events;

(D) A Development in the Combined Portfolio has been the subject of a final order entered by the Board and the terms have been violated;

(E) Any Person subject to previous participation review failed to meet the terms and conditions of a prior condition of approval imposed by the EARAC, the Governing Board, voluntary compliance agreement, or court order;

(F) Payment of principal or interest on a loan due to the Department is past due beyond any grace period provided for in the applicable documents for any property in the Combined Portfolio;

(G) The Department has requested and not been timely provided evidence that the owner has maintained required insurance on any collateral for any loan held by the Department related to a property in the Combined Portfolio;

(H) The Department has requested and not been timely provided evidence that property taxes have been paid or satisfactory evidence of a tax exemption on any collateral for any loan held by the Department related to a property in the Combined Portfolio; ~~or~~

(I) Fees or other amounts owed to the Department by any Person subject to previous participation review are thirty days or more past due;

(J) Despite past condition(s) agreed upon by any Person subject to previous participation review to improve their compliance operations, three (3) or more new Events of Noncompliance have since been identified by the Department, and have not been resolved during the corrective action period;

(K) Any Person subject to previous participation review has or had Control of a TDHCA funded Development that has gone through a foreclosure; or

(L) Any Person subject to previous participation review or the proposed incoming owner is currently debarred by the Department or currently on the federal debarred and suspended listing.

(f) Compliance Recommendation to EARAC. After determining the appropriate category as described in subsection (e) of this section, the Compliance Division will make a recommendation to EARAC in accordance with the following paragraphs, as applicable.

(1) Category 1. The compliance history of Category 1 applications will be deemed acceptable (for Compliance's purposes only) without further review or discussion.

(2) Category 2.

(A) The Applicant or proposed incoming Owner will be informed by the Compliance Division of its determination that an Application will be classified as a Category 2 and provided a seven (7) calendar day period to provide written comment, submit any remaining evidence of corrective action for uncorrected events, propose one or more of the conditions listed in §1.303 of this Subchapter, or propose other conditions for consideration before the Compliance Division makes its final submission to EARAC. As it relates to Monitoring Events that occurred prior to the initiation of the ten day period to provide additional corrective action provided for in §10.602(b) of this Title, an Applicant may provide evidence during this seven day period to describe any unique considerations that the Applicant thinks should be considered. If EARAC previously reviewed the previous participation for affiliated multifamily Developments, and no new events have occurred since the last previous participation review, the Applicant will not be required to provide comment on the prior events of noncompliance, but will be provided the opportunity to propose conditions or mitigations;

(B) Based on the compliance history and Applicant response, the Compliance Division will recommend to EARAC award, award with conditions, or denial. In making this decision, the Compliance Division may not consider the compliance history precluded by Tex. Gov't Code §2306.6719(e). If EARAC previously reviewed and approved or approved with conditions the previous participation for affiliated multifamily Developments, and no new events have occurred since the last previous participation review, the compliance history will be deemed acceptable and recommended as approved or approved with the same prior conditions, by EARAC, even if the prior approval or approval with conditions was a result of a successful dispute under §1.303(g) of this Subchapter;

(C) Any recommendation for an award with conditions will utilize the conditions identified in §1.303 of this Subchapter. Failure to correct noncompliance or meet conditions by the date established by the Board based on the recommendation of EARAC and/or meet terms and conditions related to a recommendation or award may be considered by the Board in its consideration of future actions for the Applicant or Application and may serve as grounds for the initiation of proceedings to take other disciplinary actions such as imposition of administrative penalties or debarment as further provided for in Chapter 2 of this Title.

(D) EARAC will provide notice to the Applicant of the final recommendation from the Compliance Division for awards with conditions or denials, and the Applicant may, if it desires, exercise its right to file a dispute under §1.303 of this Subchapter.

(3) Category 3.

(A) The Applicant or proposed incoming owner will be informed by the Compliance Division of the determination that an Application will be classified as a Category 3 and provided a seven (7) calendar day period to provide written comment, submit any remaining evidence of corrective action for uncorrected events, propose one or more of the conditions listed in §1.303 of this Subchapter, or propose other conditions for consideration before the Compliance Division makes its final submission to EARAC.

(B) After review of any corrective action submitted during the seven (7) calendar day period, if the Application is still considered a Category 3, the Compliance Division will recommend to EARAC denial of the award. In making this decision, the Compliance Division may not consider the compliance history precluded by Tex. Gov't Code §2306.6719(e). EARAC will provide notice to the Applicant of the final recommendation from the Compliance Division and the specific rule or statutory-based requirement will be identified, along with the Applicant's right to dispute the negative recommendation as described in §1.303 of this Subchapter.

(g) Other Possible Conditions to be Made to an Award by the Compliance Division.

(1) If the Applicant is required to have a Single Audit, the Compliance Division will obtain the required audit and may propose conditions or recommend denial based on the single audit findings or a relevant and germane issue identified in the Single Audit (e.g., Notes to the Financial Statements).

(2) If the Applicant is applying for a Direct Loan award and it or its Affiliate has monitoring from the U.S. Department of Housing and Urban Development, from the U.S. Department of Housing and Urban Development, Office of Inspector General, or another state agency in the past three years, the Compliance Division will obtain the required information and review the required information, and may propose conditions based on the disclosure or relevant and germane issue identified in the monitoring report.

(3) If the Applicant has a Finding or Deficiency associated with activities other than multifamily activities, the Compliance Division may propose conditions or recommend denial based on a Finding or Deficiency if it is relevant and germane to the award being considered.

(h) Eligibility for the Department's Multifamily Direct Loans and 811 PRA and Eligibility for Ownership Transfer for Developments containing the Department's Multifamily Direct Loans and 811 PRA.

The Department will not make an award or approve an Ownership Transfer to any entity who has an Affiliate, Board member, or a Person identified in the Application that is currently on the Federal Debarred and Suspended Listing. An Applicant for an Ownership Transfer will be notified of the debarred status of a Board Member and will be given an opportunity to remove and replace that Board member so that the transfer may proceed.

#### §1.302. Previous Participation Reviews for Department Program Awards Not Covered by §1.301 of This Subchapter

(a) Purpose and applicability. The purpose of this rule is to provide the procedures by which the Department complies with Tex. Gov't Code §2306.057 which requires that prior to awarding project funds a review of the applying entity's previous participation will be performed by the Compliance Division, and, as applicable, with 2 CFR §200.331(b) and (c), and UGMS which requires that the Department evaluate an Applicant's risk of noncompliance and consider imposing conditions if appropriate prior to awarding funds for certain applicable programs. This section applies to program

awards not covered by §1.301 of this Subchapter. With the exception of a household or project commitment contract, prior to awarding or allowing access to Department funds through a Contract or through a Reservation Agreement a previous participation review will be performed in conjunction with the presentation of award actions to the Department's Board.

(b) Capitalized terms used in this section herein have the meaning assigned in the specific Chapters and Rules of this Part that govern the program associated with the request, or assigned by federal or state laws. For this Section, the word Applicant means the entity that the Department's Board will consider for an award of funds or a Contract. As used in this section, the term Single Audit relates specifically to the audit required by 2 CFR §200.501 or UGMS Subpart E.

(c) Upon Department request, Applicant will be required to submit:

(1) A listing of the members of its board of directors, council, or other governing body as applicable or certification that the same relevant information has been submitted in accordance with §1.22 of this Subchapter regarding Providing Contact Information to the Department, and if applicable with §6.6 of this Part regarding Subrecipient Contact Information and Required Notifications;

(2) A list of any multifamily Developments owned or Controlled by the Applicant that are monitored by the Department;

(3) Identification of all Department programs that the Applicant has participated in within the last three years;

(4) An Audit Certification Form for the Applicant or entities identified by the Applicant's Single Audit, or a certification that the form has been submitted to the Department in accordance with §1.403 of this Chapter. If a Single Audit is required by UGMS Subpart E, a copy of the State Single Audit must be submitted to the Department;

(5) A copy of the most recent three years federal or state agency monitoring reports that resulted in a finding or disallowed costs (only if the Applicant is applying for a federal award);

(6) In addition to direct requests for information from the Applicant, information is considered to be requested for purposes of this section if the requirement to submit such information is made in a NOFA or Application for funding; and

(7) Applicants will be provided a reasonable period of time, but not less than seven calendar days, to provide the requested information.

(d) The Applicant's/Affiliate's financial obligations to the Department will be reviewed to determine if any of the following conditions exist:

(1) The Applicant or Affiliate entities identified by the Applicant's Single Audit owes an outstanding balance in accordance with §1.21 of this Chapter, and a repayment plan has not been executed between the Subrecipient and the Department or the repayment plan has been violated;

(2) The Department has requested and not been provided evidence that the Owner has maintained required insurance on any collateral for any loan held by the Department; or

(3) The Department has requested and not been provided evidence that property taxes have been paid or satisfactory evidence of a tax exemption on any collateral for any loan held by the Department.

(e) The Single Audit of an Applicant, or Affiliate entities identified by the Applicant's Single Audit, subject to a Single Audit, and not currently contracting for funds with the Department will be reviewed. In evaluating the Single Audit, the Department will consider both audit findings, and management responses in its review to identify concerns that may affect the organization's ability to

administer the award. The Department will notify the Applicant of any Deficiencies, findings or other issues identified through the review of the Single Audit that requires additional information, clarification, or documentation, and will provide a deadline to respond.

(f) The Compliance Division will make a recommendation of award, award with conditions, or denial based on:

- (1) The information provided by the Applicant,
- (2) Information contained in the most recent Single Audit,
- (3) Issues identified in subsection (d) of this section,
- (4) The Deficiencies, Findings and Concerns identified during any monitoring visits conducted within the last three years (whether or not the Findings were corrected during the Corrective Action Period), and
- (5) The Department's record of complaints concerning the Applicant.

(g) Compliance Recommendation to EARAC.

(1) If the Applicant has no history with Department programs, and Compliance staff has not identified any issues with the Single Audit or other required disclosures, the Application will be deemed acceptable without EARAC review or discussion.

(2) An Applicant with no history of monitoring Findings, Concerns, and/or Deficiencies or with a history of monitoring Findings, Concerns, and/or Deficiencies that have been awarded without conditions subsequent to those identified Findings, Concerns, and/or Deficiencies, will be deemed acceptable without EARAC review or discussion for Compliance purposes, if there are no new monitoring Findings, Concerns, or Deficiencies or complaint history, and if the Compliance Division determines that the most recent Single Audit or other required disclosures indicate that there is no significant risk to the Department funds being considered for award.

(3) The Compliance Division will notify the Applicant when an intended recommendation is an award with conditions or denial. Any recommendation for an award with conditions will utilize the conditions identified in §1.303 of this Subchapter. The Applicant will be provided a seven (7) calendar day period to provide written comment, submit any remaining evidence of corrective action for uncorrected events, propose one or more of the conditions listed in §1.303 of this Subchapter, or propose other conditions for consideration by the Board.

(4) After review of materials submitted by the Applicant during the seven (7) day period, the Compliance Division will make a final recommendation regarding the award. EARAC will provide notice to the Applicant of a final recommendation that is an award with conditions or denial. The Applicant may, if they desire, exercise their right to file a dispute under §1.303 of this Subchapter.

(h) Consistent with §1.403 of Subchapter D of this chapter, concerning Single Audit Requirements, the Department may not enter into a Contract or extend a Contract with any Applicant who is delinquent in the submission of their Single Audit unless an extension has been approved in writing by the cognizant federal agency except as required by law, and in the case of certain programs, funds may be reserved for the Applicant or the service area covered by the Applicant.

(i) Except as required by law, the Department will not enter into a Contract with any entity who has an, Affiliate, Board member, or person identified in the Application that is currently debarred by the Department or is currently on the Federal Suspended or Debarred Listing. Applicants will be notified of the debarred status of a Board Member and will be given an opportunity to remove and replace that Board Member so that funding may proceed. However, individual Board Member's



participation in other Department programs is not required to be disclosed, and will not be taken into consideration by EARAC.

(j) Except as required by law, the Department will not enter into a Contract with any Applicant who is currently debarred by the Department or is currently on the federal debarred and suspended listing.

(k) Previous Participation reviews will not be conducted for Contract extensions. However, if the Applicant is delinquent in submission of its Single Audit, the Contract will not be extended except as required by law, unless the submission is made, and the Single Audit has been reviewed and found acceptable by the Department.

(l) For CSBG funds required to be distributed to Eligible Entities by formula, the recommendation of the Compliance Division will only take into consideration subsections (i) and (j) of this section.

(m) Previous Participation reviews will not be conducted for Contract Amendments that staff is authorized to approve.

### §1.303. Executive Award and Review Advisory Committee ("EARAC")

(a) Authority and Purpose. The Executive Award and Review Advisory Committee ("EARAC") is established by Tex. Gov't Code §2306.1112 to make recommendations to the Board regarding funding and allocation decisions related to Low Income Housing Tax Credits and federal housing funds provided to the state under the Cranston Gonzalez National Affordable Housing Act. Per Tex. Gov't Code §2306.1112(c), EARAC is not subject to Tex. Gov't Code, Chapter 2110. The Department also utilizes EARAC as the body to consider funding and allocation recommendations to the Board related to other programs, and to consider an awardee under the requirements of 2 CFR §200.331(b) and (c), and UGMS, which requires that the Department evaluate an applicant's risk of noncompliance and consider imposing conditions if appropriate prior to awarding funds for certain applicable programs and as described in §1.403 of Subchapter D of this Chapter. It is also the purpose of this rule is to provide for the operation of the EARAC, to provide for considerations and processes of EARAC, and to address actions of the Board relating to EARAC recommendations.

(b) EARAC may meet to discuss matters within its statutory scope and as noted in subsection (a) of this section, including (without limitation) recommendations on awards, deficiencies in needed information to make a recommendation, proposed or recommended conditions on awards, and addressing inquiries by Applicants or responses to a negative recommendation.

(c) EARAC Recommendation Process.

(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.

(2) A positive recommendation by EARAC may have conditions placed on it. Conditions placed on an award by EARAC will be limited to those conditions noted in subsection (e) of this section, or as suggested by the Applicant and agreed upon by the Department.

(3) The Applicant will be notified of all such conditions proposed by EARAC. If the Applicant does not concur with the applicability of one or more of the conditions, it will be provided an

opportunity to dispute the conditions as described in subsection (g) of this section, regarding EARAC Disputes.

(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. When a negative recommendation is made, the Applicant will be notified and the specific rule or statutory-based requirement will be identified, along with notification of the Applicant's right to dispute the negative EARAC recommendation as described in subsection (g) of this section, regarding EARAC Disputes.

(d) Conditions to an award may be placed on a single property, a portfolio of properties, or a portion of a portfolio of properties if applicable (e.g., one region of a management company is having issues, while other areas are not). The conditions listed in subsection (e) of this section may be customized to provide specificity regarding affected properties, Persons or dates for meeting conditions.

(1) Applications made and reviewed under §1.301 of this Subchapter that are considered a Category 2 or Category 3 because of any of the following Events of Noncompliance may be awarded with the imposition of one or more of the conditions listed in subsection (e)(1) through (19) of this section:

- (A) Noncompliance related to Affirmative Marketing,
- (B) Development is not available to the general public because of leasing issues,
- (C) Project Failed to meet minimum set aside,
- (D) No evidence of or failure to certify to the material participation of a non-profit or HUB,
- (E) Development failed to meet additional state required rent and occupancy restrictions,
- (F) Noncompliance with social service requirements,
- (G) Development failed to provide housing to the elderly as promised at application,
- (H) Failure to provide special needs housing as required by LURA,
- (I) Changes in Eligible Basis or Applicable percentage,
- (J) Failure to submit all or parts of the Annual Owner's Compliance Report,
- (K) Failure to submit quarterly reports,
- (L) Noncompliance with utility allowance requirements,
- (M) Noncompliance with lease requirements,
- (N) Noncompliance with tenant selection requirements,
- (O) Program Unit not leased to Low-Income household,
- (P) Program unit occupied by nonqualified full-time students,
- (Q) Gross rent exceeds the highest rent allowed under the LURA or other deed restriction,
- (R) Failure to provide Tenant Income Certification and documentation,
- (S) Failure to collect required tenant data,
- (T) Development evicted or terminated the tenancy of a low-income tenant for other than good cause,

(U) Household income increased above 80 percent at recertification and Owner failed to properly calculate rent (HOME and MFDL only), and

(V) Noncompliance with 10 TAC Chapter 8.

(2) Applications made and reviewed under §1.301 of this Subchapter that are considered a Category 2 because of any of the following Events of Noncompliance may be awarded with the imposition of one or more of the conditions listed in subsection (e)(10) through (12) of this section:

(A) Violations of the Uniform Physical Condition Standards

(B) TDHCA has referred an unresolved Fair Housing Design and Construction issue to the Texas Workforce Commission Civil Rights Division

(C) Failure to provide amenity as required by LURA

(D) Unit not available for rent

(E) Failure to resolve final construction deficiencies within the Corrective Action Period

(F) Noncompliance with the accessibility requirements of §504 of the Rehabilitation Act of 1973 and 10 TAC Chapter 1, Subchapter B.

(3) For Applications with subrecipient monitoring Findings, Concerns, or Deficiencies or Single Audit information that indicates a risk to Department, funds may be awarded with the imposition of one or more of the conditions listed in subsection (e)(1), (3), (9), (13), (14), (15), (16), or (19) of this section.

(4) Applications made and reviewed under §1.301 of this Subchapter that are considered a Category 2 because of non-responsiveness may be awarded with the imposition of one or more of the conditions listed in subsection (e)(5), (6), or (7).

(e) Possible Conditions.

(1) Applicant/Owner is required to ensure that each Person subject to previous participation review for the Combined Portfolio will correct all applicable issues of non-compliance identified by the previous participation review on or before a specified date and provide the Department with evidence of such correction within thirty calendar days of that date.

(2) Owner is required to have qualified personnel or a qualified third party perform a onetime review of an agreed upon percentage of files and complete the recommended actions of the reviewer on or before a specified deadline for an agreed upon list of Developments. Evidence of reviews and corrections must be submitted to the Department upon request.

(3) The Applicant or the management company contracted by the Applicant is required to prepare or update its internal procedures to improve compliance outcomes and to provide copies of such new or updated procedures to the Department upon request or by a specified date.

(4) Owner agrees to hire a third party to perform reviews of an agreed upon percentage of their resident files on a quarterly basis, and complete the recommended actions of the reviewer for an agreed upon list of Developments. Evidence of reviews and corrections must be submitted to the Department upon request.

(5) Owner is required to designate a person or persons to receive Compliance correspondence and ensure that this person or persons will provide timely responses to the Department for and on behalf of the proposed Development and all other Development subject to TDHCA LURAs over which the Owner has the power to exercise Control.

(6) Owner agrees to replace the existing management company, consultant, or management personnel, with another of its choosing.

(7) Owner agrees to establish an email distribution group in CMTS, to be kept in place until no later than a given date, and include agreed upon employee positions and/or designated Applicant members.

(8) Owner is required to revise or develop policies regarding the way that it will handle situations where persons under its control engage in falsification of documents. This policy must be submitted to TDHCA on or before a specified date and revised as required by the Department.

(9) Owner or Subrecipient is required to ensure that agreed upon persons attend and/or review the trainings listed in (A), (B), (C) and/or (D) of this subsection (only for applications made and reviewed under §1.301 of this Subchapter) and/or (E) for applications made and reviewed under §1.302 of this Subchapter and provide TDHCA with certification of attendance or completion no later than a given date.

- (A) Housing Tax Credit Training sponsored by the Texas Apartment Association
  - (B) 1st Thursday Income Eligibility Training conducted by TDHCA staff;
  - (C) Review one or more of the TDHCA Compliance Training webinars:
    - (i) 2012 Income and Rent Limits Webinar Video;
    - (ii) How to properly use the Income and Rent Tool;
    - (iii) 2012 Supportive Services Webinar Video;
    - (iv) How to identify and properly implement Supportive Services;
    - (v) Income Eligibility Presentation Video;
    - (vi) 2013 Annual Owner's Compliance Report (AOCR) Webinar Video;
    - (vii) 2015 Tenant Selection Criteria Webinar Video;
    - (viii) 2015 Tenant Selection Criteria Presentation;
    - (ix) 2015 Tenant Selection Criteria- Q and A's;
    - (x) §10.610 – Tenant Selection Criteria;
    - (xi) 2015 Affirmative Marketing Requirements Webinar Video;
    - (xii) 2015 Affirmative Marketing Requirements Presentation;
    - (xiii) 2015 Affirmative Marketing Requirements- Q and A's;
    - (xiv) Fair Housing Webinars (including but not limited to the 2017 FH webinars);
  - (D) Training for Certified Occupancy Specialist or Blended Occupancy Specialist; or
  - (E) Any other training deemed applicable and appropriate by the Department, which may include but is not limited to weatherization related specific trainings such as OSHA, Lead Renovator, or Building Analyst training.
- (10) Owner is required to submit the written policies and procedures for all Developments subject to a TDHCA LURA for review and will correct them as directed by the Department.
- (11) Owner is required to have qualified personnel or a qualified third party perform Uniform Physical Condition Standards inspections of 5% of their units on a quarterly basis for a period of one year, and promptly repair any deficiencies. Evidence of inspections and corrections must be submitted to the Department upon request.
- (12) Within sixty days of the condition issuance date the Owner will contract for a third party Property Needs Assessment and will submit to the Department a plan for addressing noted issues along with a budget and timeframe for completion.
- (13) Owner agrees to have a third party accessibility review of the Development completed at a time to be determined by the Applicant but no later than prior to requesting a TDHCA final construction inspection. Evidence of review must be submitted to the Department upon request.
- (14) Applicant/Owner is required to ensure that each entity it controls and each individual with whom it is related by virtue of their being an officer, director, partner, manager, controlling owner, or other similar relationship, however designated, and each entity they control that is subject to any TDHCA contract will cause such entities to provide all such documentation relating to the Single Audit on or before a specified date.
- (15) Any of the conditions identified in 2 CFR §200.207 which may include but are not limited to requiring additional, more detailed financial reports; requiring additional project monitoring; or establishing additional prior approvals. If such conditions are utilized, the Department will adhere to the notification requirements noted in 2 CFR §200.207(b).
- (16) Applicant is required to have qualified personnel or a qualified third party perform an assessment of its operations and/or processes and complete the recommended actions of the reviewer on or before a specified deadline.
- (17) Applicant is required to have qualified personnel or a qualified third party performs DOE required Quality Control Inspections of 5% of its units on a quarterly basis for a period of one year,

and promptly repair any deficiencies. Evidence of inspections and corrections must be submitted upon request.

(18) Applicant is required to provide evidence that reserves for physical repairs are fully funded as required by §10.302(d)(2)(I) of this Title relating to Replacement Reserves.

(19) In the case of a Development being funded with direct loan funds, Applicant is required to provide evidence of invoices and a lien waiver from the contractor, subcontractor, materials supplier, equipment lessor or other party to the construction project stating they have received payment and waive any future lien rights to the property for the amount paid at the time of every draw request submitted.

(f) Failure to meet conditions

(1) The Executive Director may, for good cause and as limited by federal commitment, expenditure, or other deadlines, grant one extension to a deadline specified in a condition, with no fee required, for up to six months, if requested prior to the deadline. Any subsequent extension, or extensions requested after the deadline, must be approved by the Board.

(2) With the exception of awards considered for CSBG funds required to be distributed to Eligible Entities by formula, if any condition agreed upon by the Applicant and imposed by the Board is not met as determined by the evidence submitted (or lack thereof) when requested, the Applicant may be referred to the Enforcement Committee for assessment of an administrative penalty or recommended for debarment.

(g) Dispute of EARAC Recommendations.

(1) The purpose of EARAC is to make recommendations to the Board on certain awards and approvals. As such, the Appeal provisions in 10 TAC §1.7 relating to the appeals of a staff decision to the Executive Director, are not applicable.

(2) If an Applicant does not agree with any of the following items, an Applicant or potential Subrecipient of an award may file a dispute consistent with paragraph (3) of this subsection.

(A) their category as determined under §1.301(f) of this Subchapter;

(B) any conditions proposed by EARAC; or

(C) a negative recommendation by EARAC.

(3) Prior to the Board meeting at which the EARAC recommendation is scheduled to be made, an Applicant or potential Subrecipient may submit to the Department (to the attention of the Chair of EARAC), as provided herein, a letter (the "Dispute") setting forth:

(A) the condition or determination with which the Applicant or potential Subrecipient disagrees;

(B) the reason(s) why the Applicant/potential Subrecipient disagrees with EARAC's recommendation or conditions;

(C) If the dispute relates to conditions, any suggested alternate condition language;

(D) If the dispute relates to a negative recommendation, any suggested conditions that the Applicant believes would allow a positive recommendation to be made; and

(E) Any supporting documentation not already submitted to EARAC.

(4) An Applicant must file a written Dispute not later than the seventh calendar day after notice has been provided of EARAC's recommendation. The Dispute must include a hard copy and pdf version of all materials, if any, that the Applicant wishes to have provided to the EARAC and the Board in connection with its consideration of the matter, if heard by the Board. An Applicant should note if it is requesting to be present at EARAC meeting at which the dispute is considered.

(5) EARAC is not required to reconsider a Disputed matter prior to making its recommendation to the Board.



(6) EARAC will not recommend to an Applicant conditions other than those set forth in this Subchapter. However, if an Applicant proposes alternative conditions EARAC may provide the Board with a recommendation to accept, reject, or modify such proposed alternative conditions.

(7) A Dispute will be included on the Board agenda if received at least five Department business days prior to the required posting of that agenda. If the Applicant desires to submit additional materials for Board consideration, it may provide the secretary of EARAC with such materials, provided in pdf form, to be included in the presentation of the matter to the Board if those materials are provided not later than close of business of the fifth Department business day before the date on which notice of the relevant Board meeting materials must be posted, allowing staff sufficient time to review the Applicant's materials and prepare a presentation to the Board reflecting staff's assessment and recommendation. The agenda item will include the materials provided by the Applicant and may include a staff response to the dispute and/or materials. It is within the board chair's discretion whether or not to allow an applicant to supplement its response. An Applicant who wishes to provide supplemental materials at the time of the Board meeting must comply with the requirements of §1.10 of this chapter regarding Public Comment Procedures. There is no assurance the board chair will permit the submission, inclusion, or consideration of any such supplemental materials.

(8) The Board and EARAC will make reasonable efforts to accommodate properly and timely filed Disputes under this subsection, but there may be unanticipated circumstances in which the continuity of assistance or other exigent circumstances dictate proceeding with a decision notwithstanding the fact that an Applicant disagrees with an EARAC finding or recommendation. These situations, should they arise, will be addressed on an ad hoc basis.

(h) In the event that this Subchapter does not adequately address specific facts and circumstances which may arise, nothing herein shall serve to limit the ability of staff to bring to the Board as information or to seek guidance or interpretation through a properly posted item on any manner relating to the administration of the previous participation review process in general or as it may relate to any one or more specific applications, awards, or other matters.

(i) Board discretion. Subject to limitations in federal statute or regulation or in UGMS, the Board has the discretion to accept, reject, or modify any EARAC recommendations in response to a recommendation for an award or in response to a Dispute. The Board may impose other conditions not noted or contemplated in this rule as recommended by EARAC, or as requested by the Applicant; in such cases the conditions noted will have the force and effect of an order of the Board.

(j) In the event that the Board adopts a treatment of any matter subject to this Subchapter that varies from the prescribed manner in which the strict application of this Subchapter would have treated it, the Board's adopted outcome shall automatically and without need of any further request or action by Applicant or staff constitute a waiver to the extent required.

(k) Treatment of Previous Participation Reviews for Ownership Transfers.

By statute responsibility to approve or deny ownership transfers is vested in the Executive Director. He or she may consider whether the results of a previous participation review constitute "good cause" to withhold approval of the requested transfer. If the Executive Director determines that the results of the previous participation review constitute good cause to withhold approval, he or she shall so notify the parties requesting the transfer and give them an opportunity to propose conditions to address the Executive Director's concerns. Any agreed conditions are not limited to the conditions specified under subsection (e) of this section although any or all of them may be

utilized if appropriate. Any agreement to effectuate the addressing of such concerns shall take effect only upon acceptance by the Board. If no agreement can be reached and the Executive Director believes there is no good cause basis to grant the transfer approval, the matter may be appealed to the Board under §1.7 of this Title, relating to Appeals.

~~Figure: 10 TAC §1.301(c)(9)~~

~~TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS~~

~~ASSIGNMENT AND ACCEPTANCE FORM~~

~~Name of Development: \_\_\_\_\_~~

~~TDHCA No.: \_\_\_\_\_~~

~~Name of Development Owner: \_\_\_\_\_~~

~~Please find attached as Attachment A an organizational chart for the Development Owner. Multiple Persons are affiliated with the Development Owner. These Persons desire to identify for the Texas Department of Housing and Community Affairs (the "Department") which Persons Control the Development Owner for the purposes described herein.~~

~~In consideration of the premises herein expressed and for certain other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, \_\_\_\_\_ ("Control Party 1") and \_\_\_\_\_ ("Control Party 2"), each intending to be legally bound, do hereby agree as follows:~~

- ~~1) Capitalized terms used but not defined in this Assignment and Acceptance shall have the meanings given them in the rules of the Department.~~
- ~~2) Except as disclosed on the organizational chart at Attachment A hereto, which is incorporated herein by reference for all purposes, there is no other Person who exercises Control over the Development Owner.~~
- ~~3) Control Party 1 assigns to Control Party 2, and Control Party 2 accepts such assignment for Control Party 2 to exercise sole and unfettered authority and responsibility for ensuring that the Development Owner complies with each and all of the requirements for which the Department will monitor the Development ("Compliance Matters").~~
- ~~4) This Assignment and Acceptance will remain in full force and effect until such time, if any, as either Control Party 1 or Control Party 2 provides written notification to the Department and to each other that it is terminated or changed.~~
- ~~5) Until such time as this assignment and acceptance is terminated Control Party 1 waives and relinquishes all right to receive notice from the Department of any matter relating to the compliance by the LP with any of the assigned matters and further waives and relinquishes and any and all right to Control, direct, superintend, require review, or~~

~~provide consent for any Compliance Matters. This does not in any manner limit the requirements, if any, under the government documents of the Development Owner, that may be imposed on the Development Owners for any other matters not covered or subsumed hereby nor does it serve to restrict Control Party 2's ability to provide Control Party 1 information about Compliance Matters.~~

- ~~6) For so long as this Assignment and Acceptance remains in effect any Compliance Matters with respect to the Development will not be attributed to Control Party 1 in connection with any previous participation review that the Department may from time to time conduct with respect to or encompassing Control Party 1.~~
- ~~7) Control Party 1 and Control Party 2 acknowledge and agree that the existence of this Assignment and Acceptance has been disclosed to any investor in the Development Owner, and approved by such investor, if required.~~
- ~~8) Control Party 1 hereby represents and warrants to Control Party 2 and the Department that it is a duly organized and existing \_\_\_\_\_, formed under the laws of the state of \_\_\_\_\_, and is duly qualified to do business in all jurisdictions in which it is required to be so qualified. It is in good standing with the State of Texas.~~
- ~~9) Control Party 2 hereby represents and warrants to Control Party 1 and the Department that it is a duly organized and existing \_\_\_\_\_, formed under the laws of the state of \_\_\_\_\_, and is duly qualified to do business in all jurisdictions in which it is required to be so qualified. It is in good standing with the State of Texas.~~
- ~~10) Control Party 1 and Control Party 2 represent and warrant to each other and the Department that the execution, delivery, and performance of this Agreement has been duly authorized by all necessary corporate and other action on their behalf and all necessary consents, licenses, permits and others approvals necessary have been obtained or will, by the required times, have been obtained.~~
- ~~11) Control Party 1 and Control Party 2 represent and warrant to each other and the Department that the execution, delivery, and performance of this Assignment and Acceptance will not violate any of their constitutive documents or any statute, rule, regulation, agreement, order, ordinance, policy, or other requirement to which either of them is subject or create an event of default under any such requirement.~~
- ~~12) When executed, this Assignment and Acceptance will represent the legal, valid, and binding obligation of Control Party 1 and Control Party 2 as set forth herein, enforceable in accordance with its terms except as the same may be altered or affected by the application of the laws of bankruptcy and general principles of equity.~~
- ~~13) There are no agreements not reflected in this Assignment and Acceptance, written or unwritten, express or implied, in any way relating to the subject matter of this Assignment and Acceptance.~~

- ~~14) Each person who is executing this Assignment and Acceptance for and on behalf of a party hereto has been duly authorized, for and on behalf of such party, to execute this Assignment and Acceptance~~
- ~~15) This Agreement is subject to the laws of the State of Texas except as federal law may otherwise apply.~~
- ~~16) Venue for any legal proceedings to enforce or construe any aspect of this Agreement shall lie exclusively within Travis County, Texas.~~
- ~~17) This Assignment and Acceptance shall not become effective until and unless it is acknowledged by the Department.~~

Executed this \_\_\_\_ day of \_\_\_\_, 20\_\_.

\_\_\_\_\_ (Control Party 1)

By: \_\_\_\_\_  
\_\_\_\_\_ Its duly authorized officer or  
\_\_\_\_\_ representative

\_\_\_\_\_ (Control Party 2)

By: \_\_\_\_\_  
\_\_\_\_\_ Its duly authorized officer or  
\_\_\_\_\_ representative

~~Executed solely for purposes of acknowledgement in accordance with paragraph 16 hereof and not as a party~~

~~Texas Department of Housing and Community Affairs~~

By: \_\_\_\_\_  
\_\_\_\_\_ Its duly authorized officer or  
\_\_\_\_\_ representative

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**BOARD ACTION REQUEST**  
**HOUSING RESOURCE CENTER**  
**DECEMBER 6, 2018**

Presentation, discussion, and possible action on the draft 2019 State of Texas Low Income Housing Plan and Annual Report; proposed repeal of 10 TAC Chapter 1, Subchapter A, General Policies and Procedures, §1.23 concerning State of Texas Low Income Housing Plan and Annual Report; proposed new 10 TAC Chapter 1, Subchapter A, General Policies and Procedures, §1.23 concerning State of Texas Low Income Housing Plan and Annual Report; and directing their publication for public comment in the *Texas Register*

**RECOMMENDED ACTION**

**WHEREAS**, Tex. Gov't Code §2306.0721 requires that the Department produce a state low income housing plan, and Tex. Gov't Code §2306.0722 requires that the Department produce an annual low income housing report;

**WHEREAS**, Tex. Gov't Code §2306.0723 requires that the Department consider the annual low income housing report to be a rule;

**WHEREAS**, the draft 2019 State of Texas Low Income Housing Plan and Annual Report (SLIHP) has been developed as a proposed rule and must be published for public comment;

**WHEREAS**, 10 TAC §1.23, which adopts the SLIHP by reference, is required to be repealed and replaced to reflect the updated SLIHP; and

**WHEREAS**, upon authorization of this item, the proposed rule action will be published in the *Texas Register* for public comment from December 21, 2018, through January 21, 2019;

**NOW, therefore, it is hereby**

**RESOLVED**, that staff is hereby directed to cause the draft 2019 State of Texas Low Income Housing Plan and Annual Report, in the form presented to this meeting, together with such grammatical and non-substantive technical corrections as they may deem necessary or advisable, to be published online for public comment, a notice of which will be published in the *Texas Register*, and in connection therewith, to make such non-substantive grammatical and technical changes as they deem necessary or advisable; and

**FURTHER RESOLVED**, that the Acting 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 proposed new 10 TAC §1.23, State of Texas Low Income Housing Plan and Annual Report, in the form presented to this meeting to be published in the *Texas Register* for review and public comment, and in connection therewith, to make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing including any changes required to the preambles.

## **BACKGROUND**

### **Overview**

The Texas Department of Housing and Community Affairs (the Department) is required to prepare and submit to the Board not later than March 18 of each year an annual report of the Department's housing activities for the preceding year. This State of Texas Low Income Housing Plan and Annual Report (SLIHP) must be submitted annually to the Governor, Lieutenant Governor, Speaker of the House, and legislative oversight committee members not later than 30 days after the Board receives and approves the final SLIHP. The document offers a comprehensive reference on statewide housing needs, housing resources, and strategies for funding allocations. It reviews TDHCA's housing programs, current and future policies, resource allocation plans to meet state housing needs, and reports on performance during the preceding state fiscal year (September 1, 2017, through August 31, 2018).

### **Proposed Rule and Public Comment**

Tex. Gov't Code §2306.0723 requires that the Department consider the SLIHP to be a rule and in developing the SLIHP, the Department is required to follow rulemaking procedures required by Texas Government Code, Chapter 2001. Attachments A and B provided under this item propose the repeal and new replacement of 10 TAC §1.23, State of Texas Low Income Housing Plan and Annual Report, which adopts the SLIHP by reference, and directs their publication for public comment in the *Texas Register*. The proposed repeal and proposed new rule will be made available for 20 days of public comment from Friday, December 21, 2018, through Wednesday, January 9, 2019. (Please note that the Proposed Rulemaking actions and the Draft 2019 SLIHP have different start dates for accepting public comment due to the *Texas Register* posting schedule. Both comment periods end on the same day.)

### **Draft 2019 SLIHP and Public Comment**

The draft 2019 SLIHP will be made available for 31 days of public comment from Monday, December 10, 2018, through Wednesday, January 9, 2019, at 5:00 pm Austin local time. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Elizabeth Yevich, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by email to the following address: [info@tdhca.state.tx.us](mailto:info@tdhca.state.tx.us), or by fax to (512) 475-0070. A public hearing will be held at 2:00 p.m. Austin local time on Tuesday, December 18, 2018, at the Stephen F. Austin State Office Building, Room #172, 1700 N. Congress, Austin, Texas 78701.

The full text of the draft 2019 SLIHP may be viewed at the Department's website: <http://www.tdhca.state.tx.us/public-comment.htm>. The public may also receive a copy of the draft 2019 SLIHP by contacting the Department's Housing Resource Center at (512) 475-3976.

It is expected that the 2019 SLIHP and the final rule action will be presented to the Board for approval at the board meeting on Thursday, February 21, 2019. The approved 2019 SLIHP will then be distributed to the Governor, Lieutenant Governor, Speaker of the House, and legislative oversight committee members.

A summary of the major changes in the 2019 SLIHP as compared to the 2018 SLIHP are provided below.

## Summary of Major Changes from the 2018 SLIHP

- General updates
  - Added information on the new Ending Homelessness Fund and My Choice Texas Home Program.
- Introduction chapter:
  - Updates made to the administrative structure and program descriptions to align with recent Department reorganizations.
- Housing Analysis chapter:
  - Updated with most recent socio-economic data available.
  - Detail added to the sections on Data Sources and Limitations, Race and Ethnicity demographics, and Special Needs Populations.
- Annual Report chapter:
  - Updated to reflect FY 2018 program performance by households/individuals and income group.
- Action Plan chapter:
  - Updates for program descriptions including the addition of My Choice Texas Home and Texas Homebuyer U.
  - Updates to Fair Housing Activities and Policy Initiatives descriptions.
  - The Housing Continuum has been updated to include new programs and more detail on Disaster Recovery activities.
- Public Participation chapter
  - Added the Joint Housing Solutions Working Group to the Community Involvement section and updated descriptions for other workgroup activities.
- Colonia Action Plan chapter
  - Updated for the 2018-2019 biennium, including updates to 2018 performance data.

**Attachment A: Preamble, including required analysis, for proposed repeal of 10 TAC §1.23 State of Texas Low Income Housing Plan and Annual Report (SLIHP)**

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 1, Subchapter A, General Policies and Procedures, §1.23, State of Texas Low Income Housing Plan and Annual Report (SLIHP). The purpose of the proposed repeal is to eliminate an outdated rule while adopting a new updated rule under separate action, in order to adopt by reference the 2019 SLIHP.

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. David Cervantes, Acting 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 adoption by reference the 2019 SLIHP, as required by Tex. Gov't Code 2306.0723.
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 in order to adopt by reference the 2019 SLIHP.
7. The proposed repeal will not increase nor 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 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. Cervantes, 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 an updated more germane rule that will adopt by reference the 2019 SLIHP. 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. Cervantes 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 Friday, December 21, 2018, to Wednesday, January 9, 2019, to receive input on the proposed repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Elizabeth Yevich, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email [info@tdhca.state.tx.us](mailto:info@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, WEDNESDAY, JANUARY, 9, 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 section affects no other code, article, or statute.

### **10 TAC §1.23 State of Texas Low Income Housing Plan and Annual Report (SLIHP)**



**Attachment B: Preamble for proposed new 10 TAC §1.23 State of Texas Low Income Housing Plan and Annual Report (SLIHP)**

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 1, Subchapter A, General Policies and Procedures, §1.23 State of Texas Low Income Housing Plan and Annual Report (SLIHP). The purpose of the proposed new section is to provide compliance with Tex. Gov't Code §2306.0723 and to adopt by reference the 2019 SLIHP, which offers a comprehensive reference on statewide housing needs, housing resources, and strategies for funding allocations. The 2019 SLIHP reviews TDHCA's housing programs, current and future policies, resource allocation plans to meet state housing needs, and reports on performance during the preceding state fiscal year (September 1, 2017, through August 31, 2018).

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because it is exempt under item (c)(9) because it is necessary to implement legislation. Tex. Gov't Code §2306.0721 requires that the Department produce a state low income housing plan, and Tex. Gov't Code §2306.0722 requires that the Department produce an annual low income housing report. Tex. Gov't Code §2306.0723 requires that the Department consider the annual low income housing report to be a rule. This rule provides for adherence to that statutory requirement. Further 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. David Cervantes, Acting Director, has determined that, for the first five years the proposed new rule would be in effect:

1. The proposed new rule does not create or eliminate a government program, but relates to the adoption, by reference, of the 2019 SLIHP, as required by Tex. Gov't Code 2306.0723.
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 new rule changes do not require additional future legislative appropriations.
4. The proposed new 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 new rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.
6. The proposed new rule will not expand, limit, or repeal an existing regulation.
7. The proposed new rule will not increase nor decrease the number of individuals subject to the rule's applicability.
8. The proposed 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, 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, §2306.0723.

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. There are no small or micro-businesses subject to the proposed rule for which the economic impact of the rule is projected to be null. There are no rural communities subject to the proposed rule for which the economic impact of the rule is projected to be null.

3. The Department has determined that because the proposed rule will adopt by reference the 2019 SLIHP, 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 proposed rule will adopt by reference the 2019 SLIHP; 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 the proposed rule will adopt by reference the 2019 SLIHP 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. Cervantes 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 an updated and more germane rule that will adopt by reference the 2019 SLIHP, as required by Tex. Gov't Code §2306.0723. There will not be any economic cost to any individuals required to comply with the new section because the adoption by reference of prior year SLIHP documents has already been in place through the rule found at this section being repealed.

f. **FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4).** Mr. Cervantes 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 not have any foreseeable implications related to costs or revenues of the state or local governments because the new rule will adopt by reference the 2019 SLIHP.

**REQUEST FOR PUBLIC COMMENT.** The public comment period will be held Friday, December 21, 2018, to Wednesday, January 9, 2019, to receive input on the new proposed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Elizabeth Yevich, Rule Comments, P.O. Box 13941, Austin, Texas 77113-3941, by fax to (512) 475-0220, or email brooke.boston@tdhca.state.tx.us. **ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, WEDNESDAY, JANUARY 9, 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.

### **§1.23 State of Texas Low Income Housing Plan and Annual Report (SLIHP)**

The Texas Department of Housing and Community Affairs (TDHCA or the Department) adopts by reference the 2019 State of Texas Low Income Housing Plan and Annual Report (SLIHP). The full text of the 2019 SLIHP may be viewed at the Department's website: [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us). The public may also receive a copy of the 2019 SLIHP by contacting the Department's Housing Resource Center at (512) 475-3800.

2a

## TDHCA Outreach Activities, November - December 2018

*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
Roundtable	Multifamily Direct Loan 2019 NOFA Roundtable	November 8	Austin, TX	Multifamily Finance
Training	Housing Tax Credit Compliance Training	November 14	Amarillo, TX	Compliance

### Internet Postings of Note

*A list of new or noteworthy postings to the Department's website.*

#### Communications:

- Posted homepage article, "Not your first journey on the road to homeownership"

#### Compliance

- Posted updated Final Construction Inspection Request checklists (2014, 2015, 2016, 2017)

#### Fair Housing

- Replaced Fair Housing Training resources and trainers list

#### HOME and Homeless:

- Added 2018 Emergency Solutions Grants Program awardees list
- Updated Tenant Based Rental Assistance Setup Checklist
- Posted Application for HOME Single Family Program Reservation System Participation
- Added 2018 ESG Implementation webinar Questions and Answers for Contract Highlights and Definitions and Recordkeeping
- Updated Monthly Reporting Forms for HHSP Performance Worksheet, HHSP Expenditure Worksheet, 2019 HHSP Performance and Expenditure Worksheet Supplement

#### Homeownership

- Updated Texas Homeownership Program Handbook

#### Housing Resource Center

- Added 2018 One Year Action Plan

#### Multifamily:

- Created online forum for discussion purposes on 2019 Notice of Funding Availability (NOFA) Draft
- Replaced document for Amended Multifamily Direct Loan 2018-1 NOFA and revised amount available
- Posted updated link for 2018-1 Multifamily Direct Loan Application Log
- Added list of 2019 Declared Disaster Areas counties
- Added 2019 Neighborhood Risk Factors Report
- Archived 2017 Multifamily Bond application and submission information, QAPs
- Archived 2016, 2017 National Housing Trust Fund Allocation Plans
- Posted 2019 Request for Rural Designation
- Updated Multifamily Direct Loan Closing Due Diligence Checklist
- Updated Multifamily HOME Contract template, Multifamily TCAP Contract template
- Added Multifamily NSP Contract template, Multifamily NHTF Contract template



**Public Comment:**

- Open for Public Comment period Proposed Repeal and New of 10 TAC Chapter 1, Subchapter B, Accessibility and Reasonable Accommodations
- Open for Public Comment period Proposed Repeal and New of 10 TAC Section 5.801, Project Access Initiative
- Open for Public Comment period Proposed New 10 TAC, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, Section 1.410 Determination of Alien Status for Program Beneficiaries
- Open for Public Comment period Proposed New 10 TAC, Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, Section 1.411 Administration of Block Grants under Chapter 2105 of the Tex. Gov't Code

**Purchasing:**

- Posted Request for Proposal for Program Administrator for Single Family Residential Mortgage Loan and Mortgage Credit Certificate Programs
- Posted Request for Proposal for Immigration Status Verification Service
- Updated list of No-Bid contracts as required by state
- Posted Request for Qualifications for Attorney to Serve as an Independent Fact Finder

**Real Estate Analysis**

- Posted 2019 Market Analysis Summary Exhibit

**Section 811 PRA Program**

- Updated Property Options Form and Application Packet
- Added No Liens or Lockouts Addendum to the Participating Owners/Agents page
- Posted Initial List of Eligible Existing Developments for Participation

**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 Program	RFO	Request for Offer
HRA	Homeowner Rehabilitation Assistance Program	RFP	Request for Proposals
HRC	Housing Resource Center	RFQ	Request for Qualifications
		ROFR	Right of First Refusal
		SLIHP	State of Texas Low Income Housing Plan
		TA	Technical Assistance
		TBRA	Tenant Based Rental Assistance Program
		TICH	Texas Interagency Council for the Homeless

HTC	Housing Tax Credit	TSHEP	Texas Statewide Homebuyer Education Program
HTF	Housing Trust Fund		
HUD	U.S. Department of Housing and Urban Development	TXMCC	Texas Mortgage Credit Certificate
		VAWA	Violence Against Women Act
IFB	Invitation for Bid	WAP	Weatherization Assistance Program

2b



**EXHIBIT B**

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
 Calculation of Bonded Indebtedness as of August 31, 2018  
 Pursuant to Texas Government Code Section 2306.205**

	<b>Highest Bond Rating</b>	<b>Bonds Outstanding (Par)</b>	<b>Bonded Indebtedness Not Rated in the Highest Category</b>
Single-family	AA+	\$ 328,007,912	\$ 328,007,912
RMRB	Aaa	121,270,000	-
CHMRB	AA+	300,000	300,000
Multifamily	Various	885,782,270	614,057,381
		<u>\$ 1,335,360,182</u>	<u>\$ 942,365,293</u>

<b>Section 2306.205(a)</b>	
2% of bonded indebtedness	\$ 18,847,306
Unencumbered Fund Balance (UFB) per Calculation	\$ 148,348
Does UFB exceed 2% of bonded indebtedness?	No
If UFB exceeds 2% of bonded indebtedness: What amount exceeds 2% of bonded indebtedness?	\$ -
Half of UFB in excess of 2% of bonded indebtedness (Transfer to Housing Trust Fund)	\$ -

<b>Section 2306.205(c)</b>	
4% of bonded indebtedness	\$ 37,694,612
Unencumbered Fund Balance (UFB) per Calculation	\$ 148,348
Does UFB exceed 4% of bonded indebtedness?	No
If UFB exceeds 4% of bonded indebtedness: What amount exceeds 4% of bonded indebtedness?	\$ -
All of UFB in excess of 4% of bonded indebtedness (Transfer to Housing Trust Fund)	\$ -



**EXHIBIT C**

Single Family Indenture				Rating Agencies			
Series	CUSIP	Maturity Date	Interest Rate	8/31/2018	Moody's	Standard & Poor's	Fitch
				Ending Bonds Outstanding	rtg moody	rtg sp	rtg fitch
2004A JL	88275FNM7	9/1/2036	VAR	\$ 3,855,000	Aa2/VMIG1	AA+/A-1+	#N/A N/A
				\$ 3,855,001			
2004B	88275FNN5	9/1/2034	VAR	\$ 3,855,002	Aa1/VMIG1	AA+/A-1+	#N/A N/A
2004D	88275FNP0	3/1/2035	VAR	\$ 15,765,000	Aa1/VMIG1	AA+/A-1+	#N/A N/A
2005A	88275FNQ8	9/1/2036	VAR	\$ 22,060,000	Aa1/VMIG1	AA+/A-1+	#N/A N/A
2007A	88275FMF3	9/1/2038	VAR	\$ 24,750,000	Aa1/VMIG1	AA+/A-1+	#N/A N/A
2013A	88275FNT2	3/1/2036	2.800%	\$ 16,335,000	Aa1	AA+	#N/A N/A
2015A	88275FNU9	9/1/2039	3.200%	\$ 20,945,000	Aa1	AA+	#N/A N/A
2015B	88275FNV7	3/1/2046	3.125%	\$ 14,765,000	Aa1	AA+	#N/A N/A
2016A	88275FNW5	3/1/2046	3.000%	\$ 25,010,000	Aa1	AA+	#N/A N/A
2016B	88275FNX3	3/1/2039	3.180%	\$ 36,700,000	Aa1	AA+	#N/A N/A
2017A	88275FNY1	9/1/2047	2.835%	\$ 59,316,953	Aa1	AA+	#N/A N/A
2017B	88275FNZ8	9/1/2038	2.750%	\$ 23,670,049	Aa1	AA+	#N/A N/A
2017C	88275FPA1	9/1/2047	3.100%	\$ 41,800,910	Aa1	AA+	#N/A N/A

**Total Bonds Outstanding \$ 328,007,912**

**Bonds Rated in the Highest Category (Aaa OR AAA) \$ -**

**Bonds NOT Rated in the Highest Category (Aaa OR AAA) \$ 328,007,912**

RMRB Indenture				Rating Agencies			
				8/31/2018	Moody's	Standard & Poor's	Fitch
Series	CUSIP	Maturity Date	Interest Rate	Ending Bonds Outstanding	rtg moody	rtg sp	rtg fitch
2009A	882750KF8	1/1/2019	4.000%	\$ 125,000	Aaa	AA+	#N/A N/A
	882750KG6	7/1/2019	4.000%	\$ 125,000	Aaa	AA+	#N/A N/A
	882750KH4	7/1/2024	4.850%	\$ 1,425,000	Aaa	AA+	#N/A N/A
	882750JN3	7/1/2029	5.100%	\$ 4,410,000	Aaa	AA+	#N/A N/A
	882750JP8	7/1/2034	5.300%	\$ 4,050,000	Aaa	AA+	#N/A N/A
	882750KJ0	1/1/2039	5.375%	\$ -	Aaa	AA+	#N/A N/A
	882750KK7	7/1/2039	5.450%	\$ 7,160,000	Aaa	AA+	#N/A N/A
				<b>\$ 17,295,000</b>			
2009B	882750KY7	7/1/2019	4.800%	\$ 690,000	Aaa	AA+	#N/A N/A
	882750KX9	7/1/2022	5.250%	\$ 3,470,000	Aaa	AA+	#N/A N/A
				<b>\$ 4,160,000</b>			
2009C-1	882750NE8	7/1/2041	2.875%	\$ 31,665,000	Aaa	AA+	#N/A N/A
2011A	882750LQ3	1/1/2019	3.875%	\$ 645,000	Aaa	AA+	#N/A N/A
	882750LR1	7/1/2019	3.950%	\$ 640,000	Aaa	AA+	#N/A N/A
	882750LS9	1/1/2020	4.125%	\$ 635,000	Aaa	AA+	#N/A N/A
	882750LT7	7/1/2020	4.125%	\$ 655,000	Aaa	AA+	#N/A N/A
	882750LU4	1/1/2021	4.375%	\$ 660,000	Aaa	AA+	#N/A N/A
	882750LV2	7/1/2021	4.375%	\$ 665,000	Aaa	AA+	#N/A N/A
	882750LW0	1/1/2022	4.550%	\$ 680,000	Aaa	AA+	#N/A N/A
	882750LX8	7/1/2022	4.550%	\$ 690,000	Aaa	AA+	#N/A N/A
	882750LY6	7/1/2026	5.050%	\$ 6,235,000	Aaa	AA+	#N/A N/A
	882750LZ3	7/1/2029	5.000%	\$ 2,970,000	Aaa	AA+	#N/A N/A
				<b>\$ 14,475,000</b>			
2009C-2	882750NB4	7/1/2041	2.480%	\$ 25,370,000	Aaa	AA+	#N/A N/A
2011B	882750MQ2	1/1/2019	2.850%	\$ 795,000	Aaa	AA+	#N/A N/A
	882750MR0	7/1/2019	2.900%	\$ 810,000	Aaa	AA+	#N/A N/A
	882750MS8	1/1/2020	3.100%	\$ 820,000	Aaa	AA+	#N/A N/A
	882750MT6	7/1/2020	3.100%	\$ 825,000	Aaa	AA+	#N/A N/A
	882750MU3	1/1/2021	3.300%	\$ 835,000	Aaa	AA+	#N/A N/A
	882750MV1	7/1/2021	3.300%	\$ 855,000	Aaa	AA+	#N/A N/A
	882750MW9	1/1/2022	3.500%	\$ 880,000	Aaa	AA+	#N/A N/A
	882750MX7	7/1/2022	3.500%	\$ 890,000	Aaa	AA+	#N/A N/A
	882750MY5	1/1/2026	4.050%	\$ 8,025,000	Aaa	AA+	#N/A N/A
	882750MZ2	1/1/2030	4.450%	\$ 7,485,000	Aaa	AA+	#N/A N/A
882750NA6	1/1/2034	4.250%	\$ 6,085,000	Aaa	AA+	#N/A N/A	
				<b>\$ 28,305,000</b>			

**Total Bonds Outstanding \$ 121,270,000**

**Bonds Rated in the Highest Category (Aaa OR AAA) \$ 121,270,000**

**Bonds NOT Rated in the Highest Category (Aaa OR AAA) \$ -**

CHMRB				Rating Agencies			
				8/31/2018	Moody's	Standard & Poor's	Fitch
Series	CUSIP	Maturity	Coupon	Ending Bonds Outstanding	rtg moody	rtg sp	rtg fitch

1992 C-1 & 1992 C-2

(Linked)                      882749BM5    7/2/2024    6.9    \$    200,000    #N/A N/A                      AA+                      #N/A N/A

1992 C-1

(SAVRS)                      882749BP8    7/2/2024    2.742    \$    50,000    #N/A N/A                      AA+                      #N/A N/A

1992 C-2

(RIBS)                      882749BN3    7/2/2024    10.736    \$    50,000    #N/A N/A                      AA+                      #N/A N/A

**Total Bonds Outstanding \$ 300,000**

**Bonds Rated in the Highest Category (Aaa OR AAA)**

**Bonds NOT Rated in the Highest Category (Aaa OR AAA) \$ 300,000**

Multifamily

MF Bond Issue	CUSIP	MF Program#	Private or Public	Ending Bonds Outstanding	Rating Agencies		
					8/31/2018	Moody's	Standard & Poor's
					rtg moody	rtg sp	rtg fitch
1996 A MF Refunding (Brighton's Mark Development)	88275BBK3	0065	Private Place	\$ 8,075,000	#N/A N/A	NR	#N/A N/A
1998 A MF (Residence at the Oaks Project)	88275BDA3	0090	Private Place	\$ 3,118,000	#N/A N/A	NR	#N/A N/A
1998 B MF (Residence at the Oaks Project)	88275BDB1	0090	Private Place	\$ 1,665,000	#N/A N/A	NR	#N/A N/A
1998 C MF (Residence at the Oaks Project)	88275BDB1	0090	Private Place	\$ 55,000	#N/A N/A	NR	#N/A N/A
2000 MF (Timber Point Apartments)	88275BDS4	0095	Public Offer	\$ 5,870,000	Aaa/VMIG1	#N/A N/A	#N/A N/A
2000 A MF (Oaks at Hampton Apartments)	None	0096	Private Place	\$ -	Charter Mac Equity Issuer Trust		
2000 MF (Deerwood Pines Apartments)	88275BEQ7	0097	Public Offer	\$ -	#N/A N/A	AA-	#N/A N/A
2000 MF (Creek Point Apartments)	88275BER5	0098	Public Offer	\$ 4,960,000	Aaa/VMIG1	#N/A N/A	#N/A N/A
2000 A MF (Parks at Westmoreland Apartments)	None	0099	Private Place	\$ -	Charter Mac Equity Issuer Trust		
2000 A MF (Highland Meadow Village Apartments)	88275BEW4	0101	Private Place	\$ 6,656,000	#N/A N/A	#N/A N/A	#N/A N/A
2000 A MF (Collingham Park Apartments)	88275BEZ7	0103	Private Place	\$ 8,083,000	#N/A N/A	#N/A N/A	#N/A N/A
2000 B MF (Collingham Park Apartments)	88275BFA1	0103	Private Place	\$ 1,819,000	#N/A N/A	#N/A N/A	#N/A N/A
2001 MF (Bluffview Apartments)	88275BGJ1	0106	Private Place	\$ 9,508,019	#N/A N/A	#N/A N/A	#N/A N/A
2001 MF (Knollwood Apartments)	88275BGE2	0107	Private Place	\$ 12,218,248	#N/A N/A	#N/A N/A	#N/A N/A
2001 A MF (Skyway Villas Apartments)	88275BFN3	0108	Public Offer	\$ 4,660,000	WR	NR	WD
2001 B MF (Skyway Villas Apartments)	88275BFQ6	0108	Private Place	\$ 1,190,000	WR	#N/A N/A	#N/A N/A
2001 A-1 MF (Meridian Apartments)	88275ACG3	0111	Public Offer	\$ 7,257,000	#N/A N/A	#N/A N/A	#N/A N/A
2001 B MF (Meridian Apartments)	88275ACH1	0111	Private Place	\$ 391,000	#N/A N/A	#N/A N/A	#N/A N/A
2001 A-1 MF (Wildwood Apartments)	88275AC7	0112	Public Offer	\$ 5,891,000	#N/A N/A	#N/A N/A	#N/A N/A
2001 MF (Oak Hollow Apartments)	88275BGV4	0114	Private Place	\$ -	#N/A N/A	#N/A N/A	#N/A N/A
2001 A MF (Hillside Apartments)	88275BGX0	0115	Private Place	\$ 11,883,307	#N/A N/A	#N/A N/A	#N/A N/A
2002 MF (Park Meadows Apartments)	88275BGW2	0119	Private Place	\$ -	#N/A N/A	#N/A N/A	#N/A N/A
2002 MF (Clarkridge Villas Apartments)	None	0120	Private Place	\$ 12,496,187	Charter Mac Equity Issuer Trust		
2002 MF (Hickory Trace Apartments)	None	0121	Private Place	\$ -	Charter Mac Equity Issuer Trust		
2002 MF (Green Crest Apartments)	88275BHS0	0122	Public Offer	\$ 10,417,746	#N/A N/A	#N/A N/A	#N/A N/A
2002 A MF (Ironwood Crossing)	None	0123	Private Place	\$ 15,000,000	Charter Mac Equity Issuer Trust		
2002 B MF (Ironwood Crossing)	None	0123	Private Place	\$ 557,354	Charter Mac Equity Issuer Trust		
2003 A MF Refunding (Reading Road)	88275BJJ8	0125	Public Offer	\$ 8,050,000	#N/A N/A	AA+/A-1+	#N/A N/A
2003 B MF Refunding (Reading Road)	88275BJK5	0125	Private Place	\$ 1,580,000	#N/A N/A	#N/A N/A	#N/A N/A
2003 A MF (North Vista)	88275BHL5	0126	Public Offer	\$ -	WR	NR	WD
2003 A MF (North Vista)	88275BHM3	0126	Public Offer	\$ -	WR	NR	WD
2003 A MF (West Virginia Apartments)	88275BHT8	0127	Public Offer	\$ 5,850,000	WR	NR	WD
2003 A MF (West Virginia Apartments)	88275BHU5	0127	Public Offer	\$ 1,465,000	WR	NR	WD
2003 A MF (Primrose Houston School Apartments)	88275BJB5	0129	Private Place	\$ 15,000,000	#N/A N/A	#N/A N/A	#N/A N/A
2003 B MF (Primrose Houston School Apartments)	88275BJC3	0129	Private Place	\$ 208,743	#N/A N/A	#N/A N/A	#N/A N/A
2003 A MF (Timber Oaks Apartments)	None	0130	Private Place	\$ 10,900,000	Charter Mac Equity Issuer Trust		
2003 B MF (Timber Oaks Apartments)	None	0130	Private Place	\$ 1,244,763	Charter Mac Equity Issuer Trust		
2003 A MF (Ash Creek Apartments)	88275BJS8	0131	Private Place	\$ 14,923,968	#N/A N/A	#N/A N/A	#N/A N/A
2003 B MF (Ash Creek Apartments)	88275BJT6	0131	Private Place	\$ -	#N/A N/A	#N/A N/A	#N/A N/A
2003 A MF (Peninsula Apartments)	88275BJU3	0132	Public Offer	\$ 9,730,000	#N/A N/A	AA+	#N/A N/A
2003 A MF (Arlington Villas Apartments)	88275BJX7	0134	Public Offer	\$ 15,000,000	WR/WR	#N/A N/A	#N/A N/A
2003 B MF (Arlington Villas Apartments)	88275BJY5	0134	Public Offer	\$ 793,576	WR/WR	#N/A N/A	#N/A N/A
2003 A MF (Parkview Townhomes Apartments)	None	0135	Private Place	\$ 12,817,254	Charter Mac Equity Issuer Trust		
2003 MF (NHP Foundation - Asmara Project)	88275BHG6	0136	Public Offer	\$ -	#N/A N/A	AA+/A-1+	#N/A N/A
2004 A MF (Timber Ridge II Apartments)	88275BJZ2	0137	Private Place	\$ 6,122,772	#N/A N/A	#N/A N/A	#N/A N/A
2004 A MF (Providence at Veterans Memorial Townhomes)	None	0140	Private Place	\$ 6,508,431	Charter Mac Equity Issuer Trust		
2004 MF (Providence at Rush Creek II)	88275BKH0	0141	Private Place	\$ 8,052,042	#N/A N/A	NR	#N/A N/A
2004 MF (Humble Parkway Townhomes)	88275BKJ6	0142	Public Offer	\$ 10,070,000	#N/A N/A	#N/A N/A	#N/A N/A
2004 MF (Chisholm Trail Apartments)	88275BKR8	0143	Public Offer	\$ 9,800,000	Aaa/VMIG1	#N/A N/A	#N/A N/A
2004 MF (Evergreen at Plano Parkway)	88275BKX5	0144	Private Place	\$ 13,496,664	#N/A N/A	#N/A N/A	#N/A N/A
2004 MF (Montgomery Pines Apartments)	88275BKU1	0145	Public Offer	\$ 10,300,000	Aaa/VMIG1	#N/A N/A	#N/A N/A
2004 MF (Bristol Apartments)	88275BKT4	0146	Public Offer	\$ 11,000,000	Aaa/VMIG1	#N/A N/A	#N/A N/A
2004 MF (Pinnacle Apartments)	88275BKV9	0147	Public Offer	\$ 12,765,000	Aaa/VMIG1	#N/A N/A	#N/A N/A
2004 MF (Churchill at Pinnacle Park)	88275BKZ0	0150	Private Place	\$ 9,048,933	#N/A N/A	#N/A N/A	#N/A N/A
2005 MF (Port Royal Homes)	None	0155	Private Place	\$ 11,107,727	Charter Mac Equity Issuer Trust		
2005 MF (Mission Del Rio Homes)	88275BLK2	0156	Private Place	\$ 8,697,968	#N/A N/A	#N/A N/A	#N/A N/A
2005 MF (Atascocita Pines Apartments)	88275BLV8	0157	Public Offer	\$ 10,390,000	Aaa/VMIG1	#N/A N/A	#N/A N/A
2005 MF (Tower Ridge Apartments)	88275BLX4	0158	Public Offer	\$ 15,000,000	#N/A N/A	AA+/A-1+	#N/A N/A
2005 MF (St. Augustine Estate Apartments)	88275BME5	0162	Public Offer	\$ 5,580,000	Aaa/VMIG1	#N/A N/A	#N/A N/A
2005 MF (Providence Mockingbird Apartments)	None	0164	Private Place	\$ 10,459,038	Charter Mac Equity Issuer Trust		

MF Bond Issue	CUSIP	MF Program#	Private or Public	Ending Bonds Outstanding	Rating Agencies			
					8/31/2018	Moody's	Standard & Poor's	Fitch
					rtg moody	rtg sp	rtg fitch	
2005 MF (Plaza at Chase Oaks Apartments)	None	0165	Private Place	\$ 11,287,346	Washington Mutual Bank			
2005 MF (Coral Hills Apartments)	88275BMPO	0167	Public Offer	\$ 4,165,000	#N/A N/A	AA+	#N/A N/A	
2006 MF (Bella Vista Apartments)	88275BNB0	0169	Private Place	\$ 6,225,000	#N/A N/A	#N/A N/A	#N/A N/A	
2006 MF (Village Park Apartments)	88275BNC8	0170	Public Offer	\$ 8,960,000	#N/A N/A	AA+	#N/A N/A	
2006 MF (Oakmoor Apartments)	88275BNA2	0171	Private Place	\$ 13,328,497	#N/A N/A	#N/A N/A	#N/A N/A	
2006 MF (The Residences at Sunset Pointe)	88275AAA8	0172	Public Offer	\$ 15,000,000	#N/A N/A	AA+/A-1+	#N/A N/A	
2006 MF (Hillcrest Apartments)	88275AAE0	0173	Public Offer	\$ 9,570,000	#N/A N/A	NR	#N/A N/A	
2006 MF (Meadowlands Apartments)	88275AAH3	0180	Private Place	\$ 11,509,836	#N/A N/A	#N/A N/A	#N/A N/A	
2006 MF (East Tex Pines)	88275AAP5	0181	Private Place	\$ 12,615,000	#N/A N/A	#N/A N/A	#N/A N/A	
2006 MF (Aspen Park)	88275AAR1	0183	Public Place	\$ 8,715,000	#N/A N/A	AA+	#N/A N/A	
2006 MF (Idlewilde)	88275AAY6	0184	Public Offer	\$ 12,790,000	Aaa/VMIG1	#N/A N/A	#N/A N/A	
2007 MF (Lancaster)	88275ABA79	0185	Public Offer	\$ 12,780,000	Aaa/VMIG1	#N/A N/A	#N/A N/A	
2007 MF (Park Place at Loyola)	88275ABB5	0186	Private Place	\$ 13,516,531	#N/A N/A	#N/A N/A	#N/A N/A	
2007 MF (Terraces at Cibolo)	88275ABC3	0187	Public Place	\$ 4,700,000	#N/A N/A	A+/A-1	#N/A N/A	
2007 MF (Santora Villas)	88275ABD1	0188	Private Place	\$ 11,458,243	#N/A N/A	#N/A N/A	#N/A N/A	
2007 MF (Costa Rialto)	None	0191	Private Place	\$ 9,997,962	Centerline Equity Issuer Trust			
2007 MF (Windshire)	88275ABN9	0192	Public Offer	\$ 12,800,000	Aaa/VMIG1	#N/A N/A	#N/A N/A	
2007 MF (Residences @ Onion Creek)	88275ABX7	0193	Public Offer	\$ 15,000,000	#N/A N/A	AA+/A-1+	#N/A N/A	
2008 MF (West Oaks Apartments)	88275ABY5	0194	Public Offer	\$ 11,675,000	Aaa/VMIG1	#N/A N/A	#N/A N/A	
2008 MF (Costa Ibiza Apartments)	88275ACD0	0195	Public Offer	\$ 12,620,000	Aaa/VMIG1	#N/A N/A	#N/A N/A	
2008 MF (Addison Park Apartments)	88275ACE8	0196	Public Offer	\$ 12,195,000	#N/A N/A	AA+/A-1+	#N/A N/A	
2008 MF (Alta Cullen Refunding)	88275ACF5	0197	Public Offer	\$ 11,500,000	#N/A N/A	AA+/A-1+	#N/A N/A	
2009 MF (Costa Mariposa)	88275ACK4	0198	Public Offer	\$ 12,775,000	Aaa/VMIG1	#N/A N/A	#N/A N/A	
2009 MF (Woodmont)	88275ACL2	0199	Public Offer	\$ 13,950,000	WR/WR	#N/A N/A	#N/A N/A	
2014 MF (Decatur Angle)	88275ACN8	0201	Private Place	\$ 22,686,226	#N/A N/A	#N/A N/A	#N/A N/A	
2016 MF (Williamsburg Apts)	88275ACW8	0205	Public Offer	\$ 22,719,612	Aaa	#N/A N/A	#N/A N/A	
2016 MF (Skyline Place Apartments)	88275ADC1	0211	Public Offer	\$ 18,526,782	Aaa	#N/A N/A	#N/A N/A	
2017 MF (Casa Inc Apartments)	88275ADD9	0212	Public Offer	\$ 23,774,175	Aaa	#N/A N/A	#N/A N/A	
2017 MF (Casa Brendan Apartments)	88275ADF4	0213	Public Offer	\$ 4,952,953	Aaa	#N/A N/A	#N/A N/A	
2017 MF (Nuestro Hogar)	88275ADE7	0214	Public Offer	\$ 5,646,367	Aaa	#N/A N/A	#N/A N/A	
2017 MF (Emli Liberty Crossing)	88275ADG2	0215	Public Offer	\$ 17,600,000	#N/A N/A	AA+	#N/A N/A	
2018 MF (Vista on Gessner)	88275ADH0	0216	Public Offer	\$ 50,000,000	Aaa	#N/A N/A	#N/A N/A	
2018 MF (Springs Apartments)	88275ADJ6	0218	Public Offer	\$ 20,000,000	#N/A N/A	AA+	#N/A N/A	
2018 MF (Crosby Plaza Apartments)	88275ADK3	0219	Public Offer	\$ 7,000,000	#N/A N/A	AA+	#N/A N/A	
2018 MF (Oaks on Lamar)	88275ADN7		Public Offer	\$ 16,810,000	#N/A N/A	AA+	#N/A N/A	
2018 MF (Riverside Townhomes)	88275ADM9		Public Offer	\$ 19,200,000	#N/A N/A	AA+	#N/A N/A	

\$ 885,782,270

**Bonds Rated in the Highest Category (Aaa OR AAA) \$ 271,724,889**

**Bonds NOT Rated in the Highest Category (Aaa OR AAA) \$ 614,057,381**



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**BOARD REPORT ITEM**  
**FINANCIAL ADMINISTRATION DIVISION**  
**DECEMBER 6, 2018**

Report on the Department's Balance Sheet/Statement of Net Position for the period ended August 31, 2018

Below is an unaudited condensed Statement of Net Position along with a description of the major categories of this statement.

<b>Texas Department of Housing and Community Affairs</b>			
<b>Government Wide</b>			
<b>Condensed Statement of Net Position</b>			
<b>As of August 31, 2018</b>			
	<b>Governmental</b>	<b>Business-Type</b>	
	<b>Activities</b>	<b>Activities</b>	<b>Total</b>
<b>Assets</b>			
Current Assets:			
Cash & Cash Equivalents	\$ 43,577,030	\$ 193,103,811	\$ 236,680,841
Investments	-	231,129	231,129
Federal Receivable	15,142	-	15,142
Legislative Appropriations	4,133,839	-	4,133,839
Interest Receivable	118,848	9,268,208	9,387,056
Loan and Contracts	22,820,597	79,209,960	102,030,557
Other Current Assets	94,849	700,690	795,539
Non-current Assets:			
Investments	-	675,926,486	675,926,486
Loans and Contracts	442,410,929	1,009,586,546	1,451,997,475
Capital Assets	107,301	113,900	221,201
Other Non-Current Assets	-	42,960	42,960
<b>Total Assets</b>	<b>513,278,535</b>	<b>1,968,183,690</b>	<b>2,481,462,225</b>
<b>DEFERRED OUTFLOWS OF RESOURCES</b>	<b>6,226,231</b>	<b>12,053,472</b>	<b>18,279,703</b>
<b>Liabilities</b>			
Current			
Accounts/Payroll Payables	3,821,074	1,712,948	5,534,022
Interest Payable	-	11,872,732	11,872,732
Unearned Revenue	19,866,699	6,668,903	26,535,602
Bonds Payable	-	12,181,059	12,181,059
Notes and Loans Payable	-	214,705	214,705
Short-Term Debt	-	67,842,893	67,842,893
Net OPEB Liability	110,515	110,515	221,030
Other Current Liabilities	833,643	1,246,538	2,080,181
Non-current			
Net Pension Liability	28,910,839	30,784,686	59,695,525
Net OPEB Liability	21,669,626	21,669,626	43,339,252
Bonds Payable	-	1,324,365,960	1,324,365,960
Notes and Loans Payable	-	109,532,219	109,532,219
Derivative Hedging Instrument	-	5,097,825	5,097,825
Other Non-current Liabilities	428,844	129,169,369	129,598,213
<b>Total Liabilities</b>	<b>75,641,240</b>	<b>1,722,469,978</b>	<b>1,798,111,218</b>
<b>DEFERRED INFLOWS OF RESOURCES</b>	<b>6,014,794</b>	<b>5,592,732</b>	<b>11,607,526</b>
<b>Net Position</b>			
Invested in Capital Assets	107,301	113,900	221,201
Restricted	489,316,462	222,460,708	711,777,170
Unrestricted	(51,575,031)	29,599,844	(21,975,187)
<b>Total Net Position</b>	<b>\$ 437,848,732</b>	<b>\$ 252,174,452</b>	<b>\$ 690,023,184</b>

**Texas Department of Housing and Community Affairs**  
Major Categories of the Statement of Net Position

<b>Current Assets:</b>	<b>Governmental Activities</b>	<b>Business-Type Activities</b>
<b>Cash &amp; Cash Equivalents</b>	Cash primarily related to Tax Credit Assistance Program (“TCAP”), Neighborhood Stabilization Program (“NSP”) and Home Investment Partnership Program (“HOME”) loan repayments available for use in current and future Notices of Funding Availability (“NOFAs”).	Cash and cash equivalents in the form of overnight repurchase agreements (“Repos”) and money market funds primarily associated with Single Family, Multifamily and operating activities.
<b>Legislative Appropriations</b>	Balance of an agency’s unexpended legislative appropriations authority on the balance sheet and the total spending authority received on the operating statement associated with Homeless Housing and Services Program (“HHSP”), Texas Housing Trust Fund (“THTF”) and Earned Federal Funds.	
<b>Interest Receivable</b>		Interest receivable primarily related to investments and mortgage loans.
<b>Loans and Contracts</b>		Loans and contracts consisting of mortgage loans related to My First Texas Home Program. Loans are funded with advances from Federal Home Loan Bank per an advances and security agreement. Loans are typically settled within 30 days.

**Non-current Assets:**

<b>Investments</b>		Investments stated at fair value. Primarily in the form of Mortgage Backed Securities (“MBSs”) and Guaranteed Investment Contracts (“GICs”).
<b>Loans and Contracts</b>	Loans made from federal funds for the purpose of Single Family loans and Multifamily development loans from HOME, TCAP, National Housing Trust Fund (“NHTF”) and NSP activities.	Loans and contracts consisting of mortgage loans made from Single Family and Multifamily bond proceeds. In addition, loans and contracts consist of Single Family loans and Multifamily development loans from the Housing Trust Fund and other Housing Initiative Programs. Loans receivable are carried at the unpaid principal balance outstanding, net of the allowance for estimated losses.

<b>Deferred Outflows Of Resources</b>	The effect of changes in actuarial assumptions for pensions and Other Post Employment Benefits (“OPEB”) are reported as deferred outflows of resources.	The effect of changes in actuarial assumptions for pensions and OPEB are reported as deferred outflows of resources.  In addition, the Department contracted a service provider to measure its derivative effectiveness. Since the derivative instruments were deemed to be effective, the Department will be deferring the changes in fair value for these derivatives and reporting them as deferred outflow of resources.
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**Liabilities/Current**

<b>Accounts/Payroll Payables</b>	Represents the liability for the value of assets or services received at the balance sheet date for which payment is pending.	Represents the liability for the value of assets or services received at the balance sheet date for which payment is pending.
Interest Payable		Accrued interest due on bonds
<b>Unearned Revenue</b>		Fees such as compliance fees that are received in advance of work performed and are recognized over a period of time.
<b>Other Current Liabilities</b>		Primarily consist of funds due to Federal Home Loan Bank related to an advances and security agreement.

**Liabilities/Non-Current**

<b>Net Pension Liability</b>	The Department’s proportionate share of the pension liability according to the report issued by the Employees Retirement System of Texas, who is the administrator of the single employer defined benefit plan.	
<b>Net OPEB Liability</b>	The Department’s proportionate share of the OPEB liability according to the report issued by the Employees Retirement System of Texas, who is the administrator of the single employer defined benefit plan.	
<b>Bonds Payable</b>		Bonds payable reported at par less unamortized discount or plus unamortized premium.
<b>Notes and Loans Payable</b>		Notes to provide funding to nonprofit and for-profit developers of multifamily properties to construct or rehabilitate rental housing. These notes are limited obligations of the Department and are payable solely from the payments received from the assets and guarantors, which secure the notes.

<b>Derivative Hedging Instrument</b>		Interest rate swaps at fair value taking into account non-performance risk. At year end, the fair value of the Department's four swaps is considered to be negative indicating the Department would be obligated to pay the counterparty the fair value as of the termination date. The Department has the option to terminate prior to the maturity date.
<b>Other Non-current Liabilities</b>		Primarily accounts for funds due to Developers as a result of Multifamily bond proceeds. These proceeds are conduit debt issued on behalf of the Developer for the purpose of Multifamily developments and are held by the trustee.

<b>Deferred Inflows Of Resources</b>	The difference between expected and actual experience and the difference between projected and actual investment return related to pension and OPEB plan.
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**Net Position**

<b>Restricted</b>	Resources that have constraints placed on their use through external parties or by law through contractual provisions associated with HOME, TCAP and NSP.	Amounts restricted through bond covenants.
<b>Unrestricted</b>	Resources not considered restricted per accounting standards but spending authority remains under program related regulations, GAA, Government Code and Board Action. \$28.9M Pension Liability for Governmental Activities and \$30.8M for Business-Type Activities impact unrestricted Net Position. In addition, \$29.8M OPEB Liability for Governmental Activities and Business-Type Activities impact unrestricted Net Position.	



**.Texas Department of Housing and Community Affairs**  
**Financial Highlights**

Some of the primary categories affected were a result of the following financial transactions that transpired from June 1, 2018, through August 31, 2018.

<b>Assets</b>	<b>Governmental Activities</b>	<b>Business-Type Activities</b>
<b>Current/Non-current:</b>		
<b>Cash &amp; Cash Equivalents</b>	<ul style="list-style-type: none"> <li>• <b>Grants Funded - \$57.2M – (Decrease Cash)</b> <ul style="list-style-type: none"> <li>▪ Emergency Solutions Grants Program (“ESG”) - \$2.3M</li> <li>▪ Community Services Block Grant (“CSBG”) - \$9.1M</li> <li>▪ Low Income Home Energy Assistance Program (“LIHEAP”) - \$42.8M</li> <li>▪ Department of Energy-Weatherization Assistance Program (“DOE-WAP”) - \$1.3M</li> <li>▪ Section 8 - \$1.7M</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• <b>Fees Received - \$2.9M – (Increase Cash &amp; Cash Equivalents)</b> <ul style="list-style-type: none"> <li>▪ Multifamily Fees - \$298K</li> <li>▪ Tax Credit Fees - \$1.0M</li> <li>▪ Compliance Fees - \$1.5M</li> <li>▪ Asset Management Fees - \$104K</li> </ul> </li> </ul>
<b>Loans and Contracts</b>	<ul style="list-style-type: none"> <li>• <b>Mortgages Funded – \$4.3M – (Increase)</b> <ul style="list-style-type: none"> <li>▪ Home Investment Partnership Program (“HOME”) - \$2.9M</li> <li>▪ Tax Credit Assistance Program (“TCAP”) - \$1.4M</li> </ul> </li> <li>• <b>Mortgage Loan Repayments - \$3.1M – (Decrease)</b> <ul style="list-style-type: none"> <li>▪ HOME - \$1.8M</li> <li>▪ TCAP - \$854K</li> <li>▪ NSP - \$486K</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• <b>Mortgages Funded - \$239.3M – (Increase)</b> <ul style="list-style-type: none"> <li>▪ My First Texas Home-Taxable Mortgage Program (“TMP”)- \$229.5M</li> <li>▪ Down Payment Assistance - \$8.9M</li> <li>▪ Texas Housing Trust Fund (Bootstrap) - \$880K</li> </ul> </li> <li>• <b>Mortgage Loan Repayments - \$235.1M – (Decrease)</b> <ul style="list-style-type: none"> <li>▪ Down Payment Assistance - \$1.1M</li> <li>▪ My First Texas Home-TMP - \$221.0M</li> <li>▪ Multifamily Indentures - \$11.8M</li> <li>▪ Texas Housing Trust Fund - \$1.2M</li> </ul> </li> </ul>

**Governmental  
Activities**

**Business-Type  
Activities**

**Liabilities**

**Current/Non-current:**

<b>Bonds Payable/ Notes Payable</b>		<ul style="list-style-type: none"> <li>• <b><i>Multifamily Bonds Issued – \$43.0 – (Increase)</i></b> <ul style="list-style-type: none"> <li>▪ \$7.0M (2018 Crosby Plaza Apartments)</li> <li>▪ \$19.2M (2018 Riverside Townhomes)</li> <li>▪ \$16.8M (2018 Oaks on Lamar)</li> </ul> </li>   <li>• <b><i>Bonds Redeemed - \$15.6M – (Decrease)</i></b> <ul style="list-style-type: none"> <li>▪ Single Family Indenture - \$6.6M</li> <li>▪ Residential Mortgage Revenue Bonds Indenture - \$6.0M</li> <li>▪ Collateralized Home Mortgage Revenue \$300K</li> <li>▪ Multifamily Indentures - \$2.7M</li> </ul> </li> </ul>
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**BOARD REPORT ITEM**  
**BOND FINANCE DIVISION**  
**DECEMBER 6, 2018**

Report regarding a Request for Proposal for Financial Advisor issued by the Texas Department of Housing and Community Affairs

**BACKGROUND**

On September 19, 2018, the Texas Department of Housing and Community Affairs (the Department) issued a Request for Proposal for Financial Advisor. Three responses were received for consideration. A review team of Department staff evaluated the responses in accordance with the specified selection criteria and selected George K. Baum & Company to serve as the Department's Financial Advisor.

The term of the award will be two years; the Department can renew and extend the award for up to two additional one-year terms.

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**BOARD REPORT ITEM**  
**COMMUNITY AFFAIRS DIVISION**  
**DECEMBER 6, 2018**

Report on the allocation of Program Year 2019 Community Services Block Grant awards

**BACKGROUND**

The Department develops and submits a Community Services Block Grant (CSBG) Application and State Plan every two years on or before September 1 to the U.S. Department of Health and Human Services (USHHS). The last biannual CSBG State Plan was approved by the Board in June 2017 and subsequently approved by USHHS in January 2018. The Plan authorized the allocation of Program Year (PY) 2018 and PY 2019 funds to 40 Eligible Entities. This report item has been drafted to apprise the Board of the release of PY 2019 CSBG funds in the second year of the biennium.

Staff will distribute the available funds to CSBG Eligible Entities as quarterly releases from USHHS are received. Staff utilizes a multi-factor fund distribution formula detailed in 10 TAC §6.203, Formula for Distribution of CSBG Funds. The formula incorporates the U.S. Census Bureau Decennial 2010 Census and the most recent American Community Survey five-year estimate data related to persons in poverty; a 98% weighted factor for poverty population; and a 2% weighted factor for the inverse ratio of population density. With this action, staff will obligate 90% of the CSBG funds allotted to the Department for PY 2019 by USHHS through the formula. The program year for CSBG runs from January 1 through December 31.

The Previous Participation Rule (10 TAC, Chapter 1, Subchapter C, §1.302) requires a review of CSBG awards. Consistent with 10 TAC §1.302(l), “For non-discretionary CSBG, EARAC will only evaluate the considerations under subsections (i) and (j) of this section, but the Board Action on the award may contain the information gathered as part of the previous participation review.” The review has been performed by EARAC and the following Eligible Entities are being provided notice and process pursuant to USHHS Information Memorandum No. 116 (IM 116) as further described, below, which may lead to termination of CSBG eligible entity status if not remedied during the applicable timeframe. However, because of the protections for eligible entities provided under the CSBG Act, the issues noted below do not allow the Department to withhold a contract or delay funding. Contracts will still be issued.

<b>Agency</b>	<b>Compliance Issue and IM 116 Status</b>
Cameron and Willacy Counties Community Projects, Inc. (CWCCP)	CWCCP is delinquent in providing required single audits. At the November 2018 meeting, the Board authorized the Department to proceed with the IM 116 process. The Department has been in contact with the State Office of Administrative Hearings (SOAH) and a request for hearing will soon be submitted.
Galveston County Community Action Council, Inc. (GCCAC)	On October 5, 2018, the Department issued a Final Determination Letter to GCCAC and provided them until December 5, 2018, to implement a Quality Improvement Plan. If not resolved, staff will bring a recommendation to the Board in January to obtain authorization to proceed with the IM 116 process. Additionally, the Department is awaiting a satisfactory response to the uncorrected noncompliance related to Affirmative Marketing requirements at La Casita aka Windmill Village (ID 2678).

2f

**BOARD ACTION REPORT**  
**MULTIFAMILY FINANCE DIVISION**  
**DECEMBER 6, 2018**

**Report on the 2020 QAP Planning Process**

The 2020 QAP planning process will begin with a roundtable on December 5, 2018, at which staff will invite stakeholders to provide input regarding the topics to be considered at the roundtables scheduled for the coming year, as well as input on the schedule for those roundtables. The result of the December 5, 2018 roundtable will be presented to the Board at the February 2019 Board meeting in order to gather Board members' input regarding priorities for the 2020 QAP.

Public comment on the draft 2019 QAP included items that were not able to be addressed in the final revisions to the rule and several of those topics may warrant further discussion and research for the 2020 QAP. These issues include items listed below; however, this is not an exhaustive list.

- Suggestions for changes to Threshold and/or Scoring to address extended affordability and efforts to promote preservation
- Suggestions for changes to threshold and/or Scoring relating to Right of First Refusal
- 10 TAC §11.5(1) – Nonprofit Set-Aside
- 10 TAC §11.101(b)(3)(D) – Rehabilitation Costs  
The draft 2019 QAP introduced an option to meet a standard for rehabilitation rather than a minimum cost threshold. In response to public comment the draft language was removed, but there continues to be an interest in such a revision to provide a viable alternative to minimum spending levels. Such a standard would be useful for federally-funded rehabilitation developments.
- 10 TAC §11.101(b)(5) – Common Amenities  
This section had a good deal of re-organization for the 2019 QAP. Several of the comments described difficulties in reaching threshold requirements in urban Developments. Staff would like to discuss an alternative standard for Developments in urban settings that may not be able to provide amenities that generally require a larger site.
- 10 TAC §11.9(e)(2) – Cost of Development per Square Foot  
Staff plans to continue work with stakeholders to find reasonable adjustments and measures that meet statutory requirements.
- 10 TAC §11.101(b)(6)(B) – Development Construction Features  
Several comments were received regarding sustainable construction techniques, promoting a more “green” QAP and energy efficiency. Staff intends to conduct further research into cost-effective measures that may be included in the QAP, and will present them to stakeholders later in the year.

3

# ORAL PRESENTATION



4a

**BOARD ACTION REQUEST**  
**BOND FINANCE DIVISION**  
**DECEMBER 6, 2018**

Presentation, discussion, and possible action on Resolution No. 19-010 authorizing the sale of mortgage-backed securities and redemption of 2009 Series A Residential Mortgage Revenue Bonds and 2009 Series B Residential Mortgage Revenue Bonds

**RECOMMENDED ACTION**

Adopt attached Resolution.

**BACKGROUND**

The Department issued \$80,000,000 Residential Mortgage Revenue Bonds, Series A and \$22,605,000 Residential Mortgage Revenue Bonds, Series B (the Bonds) on August 18, 2009. As of November 30, 2018, there were \$16,885,000 of Series A Bonds outstanding at a weighted average interest rate of 5.25%, and \$4,160,000 of Series B Bonds outstanding at a weighted average interest rate of 5.18%. The Bonds may be redeemed by Optional Redemption at par, beginning January 1, 2019.

Staff, working with the Department's Financial Advisor, has determined that refunding or redeeming the Bonds will generate a present value benefit to the Residential Mortgage Revenue Bond indenture (the Indenture), and has analyzed both the issuance of refunding bonds and the sale of the underlying mortgage-backed securities (MBS) to fund the redemption of the Bonds. While these options result in a substantially similar present value benefit within a band of assumed prepayment speeds, staff is recommending the MBS sale, which increases the liquidity of the Indenture and locks-in the economic benefit at sale of the MBS, as opposed to a refunding bond issue for which the economic benefit will be subject, in part, to future prepayment speeds of the loan portfolio underlying the related MBS.

Staff is requesting authorization to liquidate some or all of the MBS pledged to the Bonds, including those included in the Universal Cap Escrow Fund and approximately \$222,000 of MBS that are participated with the Surplus Fund. As of November 30, 2018, the balance of MBS to be considered for liquidation was \$19,225,084.16, with a weighted average pass through rate of 5.63%. The determination of a partial or a complete liquidation of the MBS will depend, in large part, on market conditions at the time of the sale and the resulting MBS pricing. Staff expects to price and settle the MBS in January, and to redeem the Bonds on February 1, 2019.

Costs related to the MBS sale and redemption of the Bonds will not exceed \$100,000, and staff expects that the present value benefit to the Indenture, after payment of related costs, will be at least \$800,000. A net present value benefit to the Indenture will be achieved if the weighted average sales price of the MBS is at least 102.5%; if the MBS cannot be sold for at least 102.5%, the transaction will be cancelled or put on hold until that price can be achieved.

## RESOLUTION NO. 19-010

### RESOLUTION APPROVING THE SALE OF MORTGAGE CERTIFICATES RELATING TO SERIES 2009A AND SERIES 2009B RESIDENTIAL MORTGAGE REVENUE BONDS; 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 from time to time (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 and very low income (as defined in the Act) and families of moderate income (as described in the Act and determined by the Governing Board of the Department (the "Governing Board") from time to time) at prices they can afford; and

WHEREAS, the Act authorizes the Department: (a) to make, acquire and finance, and to enter into advance commitments to make, acquire and finance, mortgage loans and participating interests therein, secured by mortgages on residential housing in the State of Texas (the "State"); (b) to issue its bonds, for the purpose, among others, of obtaining funds to acquire or finance such mortgage loans, 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 single family mortgage loans or participating interests, and to mortgage, pledge or grant security interests in such mortgages or participating interests, 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, the Department has previously issued its Residential Mortgage Revenue Bonds, Series 2009A (the "Series 2009A Bonds") pursuant to the Residential Mortgage Revenue Bond Trust Indenture dated as of November 1, 1987 (as heretofore amended, collectively the "RMRB Indenture"), between the Department, as successor to the Texas Housing Agency, and The Bank of New York Mellon Trust Company, N.A., as successor trustee (the "Trustee"), and the Twenty-Eighth Supplemental Residential Mortgage Revenue Bond Trust Indenture dated as of August 1, 2009 (the "Twenty-Eighth Series Supplement") between the Department and the Trustee, and has used the proceeds made available from the issuance of the Series 2009A Bonds to purchase the 2009A Mortgage Certificates (as defined in the Twenty-Eighth Series Supplement); and

WHEREAS, the Department also previously issued its Residential Mortgage Revenue Refunding Bonds, Series 2009B (the "Series 2009B Bonds") pursuant to the RMRB Indenture and the Twenty-Ninth Supplemental Residential Mortgage Revenue Trust Indenture dated as of August 1, 2009, (the "Twenty-Ninth Series Supplement") between the Department and the Trustee. The Department used the proceeds of the Series 2009B Bonds for the purpose of refunding the Department's outstanding Residential Mortgage Revenue Bonds, Series 1999B (the "Series 1999B Bonds") and the Department's outstanding Residential Mortgage Revenue Refunding Bonds, Series 1999C (the "Series 1999C Bonds," and collectively with the Series 1999B Bonds, the "Refunded Bonds") and transferred mortgage certificates relating to the Refunded Bonds to the Series 2009B Bonds (the "1999 Transferred Mortgage Certificates"); and

WHEREAS, the RMRB Indenture, the Twenty-Eighth Series Supplement, and the Twenty-Ninth Series Supplement, are referred herein collectively, as the "Indenture" and the 2009A Mortgage Certificates and the 1999 Transferred Mortgage Certificates are referred to herein, collectively, as the 2009A/B

Mortgage Certificates; and

WHEREAS, the Department desires to sell all or a portion of the 2009A/B Mortgage Certificates and any related mortgage certificates held under the Indenture in order to effect the redemption of the outstanding Series 2009A Bonds and Series 2009B Bonds, respectively, pursuant to the Indenture; and

WHEREAS, the Governing Board of the Department desires to approve the sale of the 2009A/B Mortgage Certificates, the redemption of the Series 2009A Bonds and the Series 2009B Bonds, the payment of the redemption premiums, if any, the payment of any costs associated with the transaction and the execution and delivery of such documents and the taking of such other actions as may be necessary or convenient to carry out the provisions of this Resolution; and

WHEREAS, the Governing Board of the Department further desires to authorize George K. Baum & Company as the mortgage-backed security investment banker to assist the Department in the sale of the 2009A/B Mortgage Certificates; NOW, THEREFORE,

BE IT RESOLVED BY THE GOVERNING BOARD OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS THAT:

## ARTICLE 1

### SALE OF MORTGAGE CERTIFICATES

Section 1.1 Sale of 2009A/B Mortgage Certificates. The sale of the 2009A/B Mortgage Certificates and any related mortgage certificates held under the Indenture in an amount at least sufficient (i) to redeem the outstanding Series 2009A Bonds and the Series 2009B Bonds, (ii) to pay any costs of the transaction, and (iii) to achieve tax compliance or maintain the ratings for bonds issued under the Indenture at a purchase price of no less than 102.5% (representing the weighted average sales price of all mortgage certificates sold) of the outstanding principal balance thereof is hereby authorized, all under and in accordance with the Indenture and subject to compliance with the terms of the Indenture.

Section 1.2 Redemption of Series 2009A Bonds and the Series 2009B Bonds. The Authorized Representative of the Department is hereby authorized and directed: (i) to instruct the Trustee to redeem the outstanding Series 2009A Bonds and the Series 2009B Bonds in accordance with the Indenture and (ii) to take all other actions necessary to cause such redemption to occur including payment of any redemption premium, if any, for the Series 2009A Bonds and the Series 2009B Bonds.

Section 1.3 Execution and Delivery of Documents. The Authorized Representatives of the Department named in this Resolution are each hereby authorized to execute, attest, affix the Department's seal to and deliver such agreements, advance commitment agreements, 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 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 each hereby named as authorized representatives of the Department for purposes of executing, attesting, affixing the Department's seal to, and delivering the documents and instruments and taking the other actions referred to in this Article 1: the Chair or Vice Chair of the Governing 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 Texas Homeownership of the Department, and the Secretary or Assistant Secretary to the Governing Board. Such persons are referred to herein collectively

as the “Authorized Representatives.” Any one of the Authorized Representatives is authorized to act individually as set forth in this Resolution.

Section 1.5 Authorization to Pay Costs. The use of an amount not to exceed \$100,000 of the sales proceeds is authorized to be used to pay costs of the transaction.

Section 1.6 Approval of Investment Banker for Sale of Mortgage Certificates. George K. Baum & Company is hereby approved as the mortgage-backed securities investment banker to assist the Department in the sale of the 2009A/B Mortgage Certificates.

Section 1.7 Authorization to Invest Funds. The Authorized Representatives of the Department are hereby authorized to invest any remaining proceeds from the sale of the mortgage certificates in accordance with the Indenture.

## ARTICLE 2

### APPROVAL AND RATIFICATION OF CERTAIN ACTIONS

Section 2.1 Engagement of Other Professionals. The Executive Director, Acting Director of the Department, or the Director of Bond Finance and Chief Investment Officer of the Department are authorized to engage an accounting firm to perform such functions, audits, yield calculations and subsequent investigations as necessary or appropriate to comply with the Indenture and the requirements of Bond Counsel to the Department, provided such engagement is done in accordance with applicable State law.

Section 2.2 Ratifying Other Actions. All other actions taken or to be taken by the Authorized Representatives and the Department's staff in connection with the sale of the 2009A/B Mortgage Certificates are hereby ratified and confirmed.

## ARTICLE 3

### GENERAL PROVISIONS

Section 3.1 Notice of Meeting. This Resolution was considered and adopted at a meeting of the Governing Board that was noticed, convened, and conducted in full compliance with the Texas Open Meetings Act, Chapter 551 of the Texas Government Code, and with §2306.032 of the Texas Government Code, regarding meetings of the Governing Board.

Section 3.2 Effective Date. This Resolution shall be in full force and effect from and upon its adoption.

*[Execution Page Follows]*



PASSED AND APPROVED this 6th day of December, 2018.

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Chair, Governing Board

ATTEST:

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Secretary to the Governing Board

(SEAL)

4b

**BOARD ACTION REQUEST**  
**BOND FINANCE DIVISION**  
**DECEMBER 6, 2018**

Presentation, discussion, and possible action regarding the Issuance of Multifamily Tax-Exempt Bonds (M-TEMS) (Park Yellowstone) Series 2019 and Multifamily Housing Revenue Bonds (Park Yellowstone) Series 2019 Resolution No. 19-016 and a Determination Notice of Housing Tax Credits

**RECOMMENDED ACTION**

**WHEREAS**, the Board adopted the inducement resolution at the Board meeting of June 28, 2018;

**WHEREAS**, a Certificate of Reservation was issued on August 3, 2018, with a bond delivery deadline of December 31, 2018;

**WHEREAS**, the 4% Housing Tax Credit application, sponsored by Bozrah International Ministries, Inc. and Vesta Corporation was submitted on July 25, 2018;

**WHEREAS**, there are undesirable neighborhood characteristics associated with the proposed development site that were brought before the Board for consideration at the Board meeting of April 26, 2018, and the Board deemed the site eligible;

**WHEREAS**, a waiver was requested relating to visitability requirements pursuant to 10 TAC §10.101(b)(8) of the Uniform Multifamily Rules and was brought before the Board for consideration at the Board meeting of June 28, 2018, and the Board granted the waiver as described in that Board Action;

**WHEREAS**, in accordance with 10 TAC §1.301(d)(1), the compliance history is designated a Category 2, was approved after review and discussion by the Executive Award and Review Advisory Committee (“EARAC”); and

**WHEREAS**, EARAC recommends the issuance of Multifamily Tax-Exempt Bonds (M-TEMS) (Park Yellowstone) Series 2019 and Multifamily Housing Revenue Bonds (Park Yellowstone) Series 2019 and the issuance of a Determination Notice;

**NOW, therefore, it is hereby**

**RESOLVED**, the issuance of up to \$12,900,000 in Multifamily Tax-Exempt Bonds (M-TEMS) (Park Yellowstone) Series 2019 and the issuance of up to \$3,100,000 in Multifamily Housing Revenue Bonds (Park Yellowstone) Series 2019 Resolution No. 19-016 is hereby approved in the form presented to this meeting;

**FURTHER RESOLVED**, the issuance of a Determination Notice of \$879,975 in 4% Housing Tax Credits for Park Yellowstone, subject to underwriting conditions that may be

applicable as found in the Real Estate Analysis report posted to the Department's website, is hereby approved in the form presented to this meeting; and

**FURTHER RESOLVED**, that staff is authorized, empowered, and directed, for and on behalf of the Department to execute such documents, instruments and writings and perform such acts and deeds as may be necessary to effectuate the foregoing.

### **BACKGROUND**

*General Information:* The Bonds will be issued in accordance with Texas Government Code §1372 and under Texas Government Code §2306, the Department's Enabling Statute (the Statute), which authorizes the Department to issue revenue bonds for its public purposes, as defined therein. The Statute provides that the Department's revenue bonds are solely obligations of the Department, and do not create an obligation, debt or liability of the State of Texas or a pledge or loan of faith, credit or taxing power of the State of Texas.

Park Yellowstone is located at 3322 Yellowstone Boulevard in Houston, Harris County, and proposes the acquisition and rehabilitation of 210 units serving the general population. The property was originally constructed in 1996 through the 9% Competitive HTC program (#95120) and conforms to current zoning. The Certificate of Reservation from the Bond Review Board was issued under the Priority 3 designation, which does not have a prescribed restriction on the percentage of Area Median Family Income (AMFI) that must be served; however, all of the units will be rent and income and restricted at 60% of AMFI. Staff notes that the existing HTC LURA requires 147 units to be rent and income restricted at 60% AMFI and 63 units be rent and income restricted at 50% AMFI, until such time the existing Compliance and Extended Use Period expires.

*Organizational Structure and Previous Participation:* The Borrower is Yellowstone Boulevard, LLC and includes the entities and principals as illustrated in Exhibit A. The applicant's portfolio is considered a Category 2 and the previous participation review was deemed acceptable by EARAC, after review and discussion.

*Public Hearing/Public Comment:* A public hearing for the development was conducted by staff on September 13, 2018, and three persons attended. Colleen Yates, a member of the Development Team, spoke in favor of the rehabilitation at the hearing. The Department received a letter of support for the development from Super Neighborhood 68, a copy of which is included herein, along with a copy of the hearing transcript.

### **Summary of Financial Structure**

This transaction involves the issuance of multifamily tax-exempt bonds through the Fannie Mae MBS as Tax-Exempt Bond Collateral program. There will be two mortgage loans originated by the Department to the Borrower on the closing date and funded with the bond proceeds, in an amount not to exceed \$16,000,000. Below is a summary of the mortgage loans and the sources of the collateralization.

*Fannie Mae Immediate MBS:* The Immediate Mortgage Loan will be in the approximate amount of \$10,100,000. The tax-exempt bonds issued will be spent primarily on acquisition with the remaining to be spent on construction draws for project costs. The Immediate Mortgage Loan will be assigned to the Fannie Mae lender (KeyBank National Association), simultaneous with closing and the funds used by the lender by which to acquire the loan will be deposited into the collateral account to secure the bonds. Approximately 10-15 days from the closing date KeyBank will assign the loan to Fannie Mae and in exchange Fannie will deliver the Immediate MBS to the trustee. The trustee will use the funds (Immediate Mortgage Loan

proceeds from KeyBank) in the collateral account to purchase the Immediate MBS which will be used to secure the bonds from this point forward.

*Fannie Mae Forward MBS:* The Forward Mortgage Loan will be in the approximate amount of \$2,400,000. The tax-exempt bonds will be spent on construction draws for project costs once all of the immediate bond proceeds have been spent. An equity bridge loan from PNC, deposited with the trustee, will be used to collateralize the bonds. Once the conditions to conversion have been met and assuming the transaction underwrites to the full amount, KeyBank will assign the Forward Mortgage Loan to Fannie and in exchange Fannie will deliver the Forward MBS to the trustee. The trustee will use the funds (equity bridge loan from PNC) in the collateral account to purchase the Forward MBS which will be used, in conjunction with the previously issued Immediate MBS to secure the bonds from this point forward. Should the Forward MBS be issued in a lesser amount (or not issued at all), the funds in the collateral account will be used to redeem bonds. Payments on the bonds will be guaranteed by Fannie Mae. The final maturity date associated with the Immediate and Forward MBS will not exceed December 1, 2044 (currently projected to be February 25, 2036).

*Short-Term Bonds:* The Department will also issue an amount not to exceed \$3,100,000 (currently sized at \$2,880,000) in short-term, tax-exempt bonds on the closing date for purposes of meeting the federally required 50% test, which requires at least 50% of the project's aggregate basis (i.e. land plus depreciable assets) to be financed by tax-exempt bonds in order to be eligible for the 4% housing tax credit. The bond proceeds will be used for acquisition and the bonds will remain outstanding for the construction period and redeemed after 24 months. The short-term bonds will be cash collateralized with some of the proceeds of a City of Houston soft loan. The final maturity date associated with the short-term bonds will not exceed December 1, 2024.

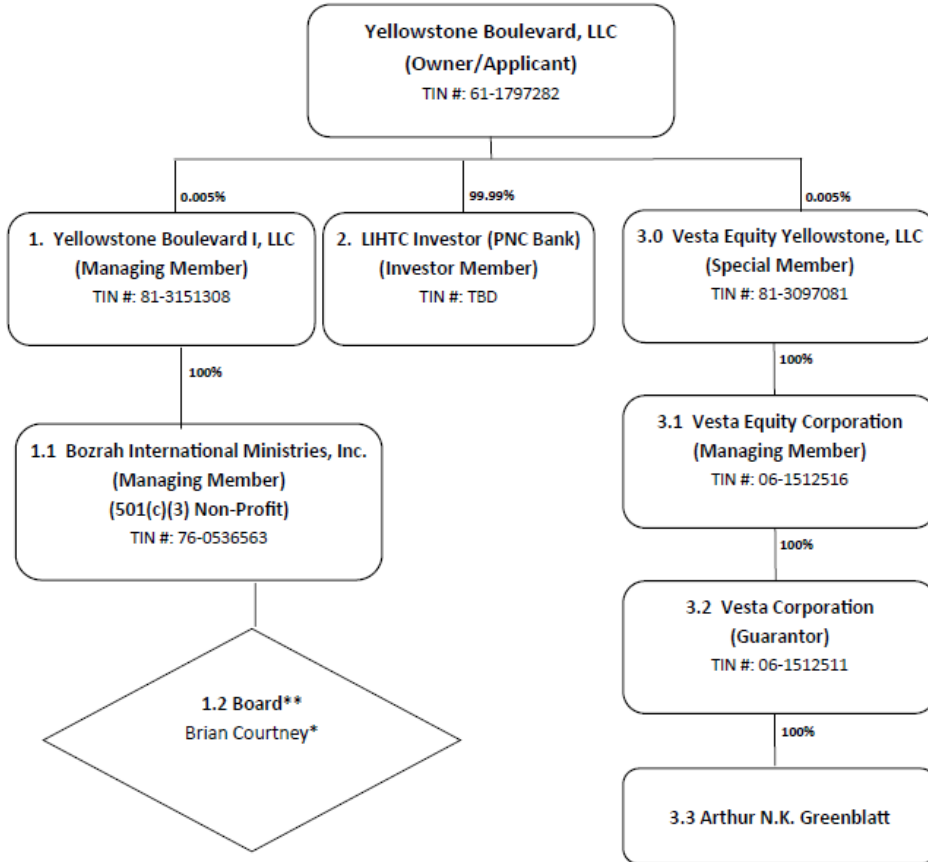
The bonds will have an interest rate that mirrors the pass-through rate on the MBS, currently estimated to be 4.66%, which does not include servicing or guarantee fees. The loan will have a term of 17 years and a 35-year amortization. The bonds are expected to be rated AA+ by Standard & Poor's.

A copy of the Exhibits recommend to be approved by the Board as referenced in Resolution No. 19-016 can be found online at TDHCA's Board Meeting Information Center website at <http://www.tdhca.state.tx.us/board/meetings.htm>.



EXHIBIT A

Park Yellowstone—Ownership Chart



March 21, 2018

Mayor Sylvester Turner  
City of Houston  
P.O. Box 1562  
Houston, Texas 77251

Houston City Council Members  
900 Bagby  
City Hall Annex  
First Floor,  
Houston, Texas 77002

RE: Park Yellowstone Townhomes ("Yellowstone"), 3322 Yellowstone Blvd.,  
Request for Support for a Resolution Of No Objection from the City of Houston

Dear Mayor Turner and City Council Members:

I am writing to express Super Neighborhood 68's support for Vesta Corporation's plans to revitalize Park Yellowstone, a 210-unit multifamily affordable housing community. Yellowstone is home to 416 residents, including 178 children and 25 seniors.

As you may know, a large amount of the housing stock in our neighborhood is tired and in need of updating. Yellowstone, which is 22 years old, falls into that category and the plans have already been made for a total revitalization. The plans touch many parts of the buildings and property including: foundations, site work, water drainage systems, roof repairs, and apartments for those with disabilities. Also included is the installation of a new state of the art security system, which will effectuate crime deterrence. This scope of work will serve the needs of the Yellowstone residents and provide an example for the neighborhood.

As a Concentrated Revitalization Area, both public and private investments have been made in Super Neighborhood 68 during the past few years. The improvements are impressive, and include: Park at Palm Center; Library at Griggs, Emancipation Park, OST Griggs Landscape Project, Phase II (ADA compliant), Neighborhood Park at Palm Center and Houston Texans YMCA, built in Palm Center. These benefit the local residents, community and the City of Houston.

The neighborhood of Park Yellowstone is gentrifying, and with this trend the area has welcomed new properties providing enhanced amenities as well as new services. Property values and incomes are on the rise, and all indicators suggest that they will continue to increase. Moreover we have recently witnessed a spate of non-local investors buying a large number of single family homes, eager to take advantage of the socioeconomic changes afoot in the area.

It is critical to take a close look at the existing affordable housing stock in the market and make concerted efforts to retain it. Ultimately, this will enable the neighborhood to remain a home for our low-income residents and be an example of a sought after mixed-income community.

Super Neighborhood 68 is the home for vibrant and diverse people, committed to growth and opportunity. I trust that the City of Houston understands and appreciates this commitment of our residents. It is my pleasure to support the Yellowstone redevelopment plans.

Sincerely,



Preston Roe, President  
Super Neighborhood 68

## RESOLUTION NO. 19-016

RESOLUTION AUTHORIZING AND APPROVING THE ISSUANCE, SALE AND DELIVERY OF TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS MULTIFAMILY TAX-EXEMPT BONDS (M-TEMS) (PARK YELLOWSTONE) SERIES 2019 (FN) AND MULTIFAMILY HOUSING REVENUE BONDS (PARK YELLOWSTONE) SERIES 2019; APPROVING THE FORM AND SUBSTANCE AND AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS AND INSTRUMENTS PERTAINING THERETO; AUTHORIZING AND RATIFYING OTHER ACTIONS AND DOCUMENTS; AND CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT

WHEREAS, the Texas Department of Housing and Community Affairs (the "Department") has been duly created and organized pursuant to and in accordance with the provisions of Chapter 2306, Texas Government Code, as amended (the "Act"), for the purpose, among others, of providing a means of financing the costs of residential ownership, development, construction and rehabilitation that will provide decent, safe, and affordable living environments for individuals and families of low, very low and extremely low income (as defined in the Act) and families of moderate income (as described in the Act and determined by the Governing Board of the Department (the "Board") from time to time); and

WHEREAS, the Act authorizes the Department: (a) to make mortgage loans to housing sponsors to provide financing for multifamily residential rental housing in the State of Texas (the "State") intended to be occupied by individuals and families of low, very low and extremely low income and families of moderate income, as determined by the Department; (b) to issue its revenue bonds, for the purpose, among others, of obtaining funds to make such loans and provide financing, to establish necessary reserve funds and to pay administrative and other costs incurred in connection with the issuance of such bonds; and (c) to pledge all or any part of the revenues, receipts or resources of the Department, including the revenues and receipts to be received by the Department from such multifamily residential rental development loans, and to mortgage, pledge or grant security interests in such loans or other property of the Department in order to secure the payment of the principal or redemption price of and interest on such bonds; and

WHEREAS, the Board has determined to authorize the issuance of its Texas Department of Housing and Community Affairs Multifamily Tax-Exempt Bonds (M-TEMS) (Park Yellowstone) Series 2019 (FN) (the "Long Term Bonds") pursuant to and in accordance with the terms of the Indenture of Trust (the "Long Term Indenture") between the Department and U.S. Bank, National Association, as trustee (the "Long Term Trustee"), for the purpose of obtaining funds to finance the Development (defined below), all under and in accordance with the Constitution and laws of the State; and

WHEREAS, the Board has determined to authorize the issuance of its Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (Park Yellowstone) Series 2019 (the "Short Term Bonds") and together with the Long Term Bonds, the "Bonds") pursuant to and in accordance with the terms of the Trust Indenture (the "Short Term Indenture" and together with the Long Term Indenture, the "Indenture") between the Department and U.S. Bank, National Association, as trustee (the "Short Term Trustee" and together with the Long Term Trustee, the "Trustee"), for the purpose of obtaining additional funds to finance the Development (defined below), all under and in accordance with the Constitution and laws of the State; and

WHEREAS, the Department desires to use the proceeds of the Bonds to fund one or more mortgage loans to Yellowstone Boulevard LLC, a Texas limited liability corporation (the "Borrower") in order to finance the cost of the acquisition, equipping and rehabilitation of a qualified residential rental development described in Exhibit A attached hereto (the "Development") located within the State and

required by the Act to be occupied by individuals and families of low and very low income and families of moderate income, as determined by the Department; and

WHEREAS, the Board, by resolution adopted on June 28, 2018, declared its intent to issue its revenue bonds to provide financing for the Development; and

WHEREAS, the Borrower has requested and received a reservation of private activity bond allocation from the State of Texas;

WHEREAS, with respect to the Long Term Bonds, it is anticipated that the Department, the Trustee, the Lender and the Borrower will execute and deliver a Financing Agreement (the "Financing Agreement") pursuant to which (i) the Department will agree to make one or more mortgage loans funded with the proceeds of the Long Term Bonds (the "Long Term Loan") to the Borrower to enable the Borrower to finance certain costs of the acquisition, equipping and rehabilitation of the Development and related costs, and (ii) the Borrower will execute and deliver to the Department one or more promissory notes (herein, the "Immediate Note" and the "Forward Note" and, collectively, the "Long Term Note") in an original aggregate principal amount equal to the original aggregate principal amount of the Long Term Bonds, and providing for payment of interest on such principal amount equal to the interest on the Long Term Bonds in accordance with the terms of a Multifamily Loan and Security Agreement (Non-Recourse) (the "Long Term Loan Agreement") by and between the Borrower and the Department and to pay other costs described in the Financing Agreement; and

WHEREAS, it is anticipated that the Immediate Note will be secured by a Multifamily Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing (the "Mortgage") from the Borrower for the benefit of the Department; and

WHEREAS, it is anticipated that the obligations of the Borrower under the Financing Agreement (other than for the repayment of principal and interest on the Immediate Note) will be secured by a subordinate Multifamily Deed of Trust, Security Agreement and Fixture Filing (the "Long Term Bond Mortgage") from the Borrower for the benefit of the Department and the Trustee; and

WHEREAS, with respect to the Short Term Bonds, it is anticipated that the Department, the Trustee and the Borrower will execute and deliver a Loan Agreement (the "Loan Agreement") pursuant to which (i) the Department will agree to make a mortgage loan funded with the proceeds of the Short Term Bonds (the "Short Term Loan" and together with the Long Term Loan, the "Bond Loans") to the Borrower to enable the Borrower to finance certain costs of the acquisition, equipping and rehabilitation of the Development and related costs, and (ii) the Borrower will execute and deliver to the Department a promissory note (the "Short Term Note" and together with the Long Term Note, the "Notes") in an original principal amount equal to the original aggregate principal amount of the Short Term Bonds, and providing for payment of interest on such principal amount equal to the interest on the Short Term Bonds and to pay other costs described in the Loan Agreement; and

WHEREAS, it is anticipated that the obligations of the Borrower under the Loan Agreement will be secured by a subordinate Multifamily Deed of Trust, Security Agreement and Fixture Filing (the "Short Term Bond Mortgage" and together with the Long Term Bond Mortgage, the "Bond Mortgages") from the Borrower for the benefit of the Department and the Trustee; and

WHEREAS, the Borrower will obtain a loan from KeyBank Real Estate Capital, as lender, (the "Lender"), and the Lender will deposit the proceeds of such loan with the Long Term Trustee, to be held by the Long Term Trustee as security for the Long Term Bonds in accordance with the Long Term Indenture; and

WHEREAS, the Borrower will obtain an equity bridge loan from PNC Real Estate, as bridge lender (the “Bridge Lender”), and the Bridge Lender will deposit the proceeds of such loan with the Long Term Trustee, to be held by the Long Term Trustee as security for the Long Term Bonds in accordance with the Long Term Indenture; and

WHEREAS, the Borrower will obtain a loan from the City of Houston, (the “City”), and the City will deposit a portion of the proceeds of such loan with the Short Term Trustee, to be held by the Short Term Trustee as security for the Short Term Bonds in accordance with the Short Term Indenture; and

WHEREAS, the Board has determined that the Department, the Trustee, the Lender, the City, Vesta Corporation, a Connecticut corporation, and the Borrower will enter into a Priority and Subordination Agreement (the “Subordination Agreement”), setting forth certain terms and procedures related to the disbursement to the Trustee of the loan from the Lender; and

WHEREAS, the Lender has agreed to permit the Bond Loans and to allow the lien of the Bond Mortgage in accordance with the terms of the Subordination Agreement with respect to the Bond Mortgage; and

WHEREAS, with respect to the Bonds, the Board has determined that the Department, the Trustee, and the Borrower will execute a Regulatory and Land Use Restriction Agreement (the “Regulatory Agreement”) with respect to the Development, which will be filed of record in the real property records of Harris County, Texas; and

WHEREAS, the Board has determined that the Department, the Trustee, and the Borrower will execute a Tax Exemption Certificate and Agreement with respect to the Long Term Bonds (the “Long Term Bond Tax Exemption Agreement”) to set forth various facts, certifications, covenants, representations, and warranties regarding the Long Term Bonds and the Development and to establish the expectations of the Department, the Trustee, and the Borrower as to future events regarding the Long Term Bonds, the Development, and the use and investment of proceeds of the Long Term Bonds; and

WHEREAS, the Board has determined that the Department, the Trustee, and the Borrower will execute a Tax Exemption Certificate and Agreement with respect to the Short Term Bonds (the “Short Term Bond Tax Exemption Agreement” and together with the Long Term Bond Tax Exemption Agreement, the “Tax Exemption Agreements”) to set forth various facts, certifications, covenants, representations, and warranties regarding the Short Term Bonds and the Development and to establish the expectations of the Department, the Trustee, and the Borrower as to future events regarding the Short Term Bonds, the Development, and the use and investment of proceeds of the Short Term Bonds; and

WHEREAS, the Board has been presented with a draft of, has considered and desires to ratify, approve, confirm and authorize the use and distribution in the public offering of the Long Term Bonds of an official statement (the “Long Term Bond Official Statement”) and to authorize the authorized representatives of the Department to deem the Long Term Bond Official Statement “final” for purposes of Rule 15c2-12 of the Securities and Exchange Commission and to approve the making of such changes in the Long Term Bond Official Statement as may be required to provide a final official statement for use in the public offering and sale of the Long Term Bonds; and

WHEREAS, the Board has been presented with a draft of, has considered and desires to ratify, approve, confirm and authorize the use and distribution in the public offering of the Bonds of an official statement (the “Short Term Bond Official Statement” and together with the Long Term Bond Official Statement, the “Official Statements”) and to authorize the authorized representatives of the Department to deem the Short Term Bond Official Statement “final” for purposes of Rule 15c2-12 of the Securities and Exchange Commission and to approve the making of such changes in the Short Term Bond Official



Statement as may be required to provide a final official statement for use in the public offering and sale of the Short Term Bonds; and

WHEREAS, the Board has further determined that the Department will enter into a Purchase Contract (the "Bond Purchase Agreement") with Stifel, Nicolaus & Company, Incorporated (the "Underwriter"), and the Borrower, setting forth certain terms and conditions upon which the Underwriter will purchase all of the Bonds from the Department and the Department will sell the Bonds to the Underwriter; and

WHEREAS, the Board has examined proposed forms of (a) the Indenture, the Financing Agreement, the Loan Agreement, the Regulatory Agreement, the Tax Exemption Agreements, the Subordination Agreement, the Official Statements and the Bond Purchase Agreement (collectively, the "Issuer Documents"), all of which are attached to and comprise a part of this Resolution and (b) the Bond Mortgages and the Notes; has found the form and substance of such documents to be satisfactory and proper and the recitals contained therein to be true, correct and complete; and has determined, subject to the conditions set forth in Article 1, to authorize the issuance of the Bonds, the execution and delivery of the Issuer Documents, the acceptance of the Bond Mortgage and the Notes and the taking of such other actions as may be necessary or convenient in connection therewith;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BOARD OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS:

## ARTICLE 1

### ISSUANCE OF BONDS; APPROVAL OF DOCUMENTS

Section 1.1 Issuance, Execution and Delivery of the Bonds. That the issuance of the Bonds is hereby authorized pursuant to the Act, including particularly Section 2306.353 thereof, and Chapter 1371, Texas Government Code, all under and in accordance with the conditions set forth herein and in the Indenture, and that, upon execution and delivery of the Indenture, the Authorized Representatives of the Department named in this Resolution are each hereby authorized to execute, attest and affix the Department's seal to the Bonds and to deliver the Bonds to the Attorney General of the State (the "Attorney General") for approval, the Comptroller of Public Accounts of the State for registration and the Trustee for authentication (to the extent required in the Indenture), and thereafter to deliver the Bonds to or upon the order of the initial purchaser thereof pursuant to the Bond Purchase Agreement.

Section 1.2 Interest Rate, Principal Amount, Maturity and Price of the Long Term Bonds. That the Chair or Vice Chair of the Board or the Executive Director or Acting Director of the Department are hereby authorized and empowered, in accordance with Chapter 1371, Texas Government Code, to fix and determine the interest rate, principal amount and maturity of, the redemption and tender provisions related to, and the price at which the Department will sell to the Underwriter or another party to the Bond Purchase Agreement, the Long Term Bonds, all of which determinations shall be conclusively evidenced by the execution and delivery by an Authorized Representative (as defined below) of the Department of the Long Term Indenture and the Bond Purchase Agreement; provided, however, that (i) the Long Term Bonds shall bear interest at the initial interest rate set forth in the Bond Purchase Agreement and thereafter shall bear interest at the rates determined from time to time by the Remarketing Agent (as such term is defined in the Long Term Indenture) in accordance with the provisions of the Long Term Indenture; provided that in no event shall the interest rate on the Long Term Bonds (including any default interest rate) exceed the maximum interest rate permitted by applicable law; and provided further that the initial interest rate on the Long Term Bonds shall not exceed 5.25%; (ii) the aggregate principal amount of the Long Term Bonds shall not exceed \$12,900,000; (iii) the final maturity of the Long Term Bonds shall occur not later than December

1, 2044; and (iv) the price at which the Long Term Bonds are sold to the initial purchaser thereof under the Bond Purchase Agreement shall not exceed 100% of the principal amount thereof.

Section 1.3 Interest Rate, Principal Amount, Maturity and Price of the Short Term Bonds. That the Chair or Vice Chair of the Board or the Executive Director or Acting Director of the Department are hereby authorized and empowered, in accordance with Chapter 1371, Texas Government Code, to fix and determine the interest rate, principal amount and maturity of, the redemption and tender provisions related to, and the price at which the Department will sell to the Underwriter or another party to the Bond Purchase Agreement, the Short Term Bonds, all of which determinations shall be conclusively evidenced by the execution and delivery by an Authorized Representative (as defined below) of the Department of the Short Term Indenture and the Bond Purchase Agreement; provided, however, that (i) the Short Term Bonds shall bear interest at the initial interest rate set forth in the Bond Purchase Agreement in accordance with the provisions of the Short Term Indenture; provided that in no event shall the interest rate on the Short Term Bonds (including any default interest rate) exceed the maximum interest rate permitted by applicable law; and provided further that the initial interest rate on the Short Term Bonds shall not exceed 3.00%; (ii) the aggregate principal amount of the Short Term Bonds shall not exceed \$3,100,000; (iii) the final maturity of the Short Term Bonds shall occur not later than December 1, 2024; and (iv) the price at which the Short Term Bonds are sold to the initial purchaser thereof under the Bond Purchase Agreement shall not exceed 100% of the principal amount thereof.

Section 1.4 Approval, Execution and Delivery of the Indenture. That the form and substance of the Indenture are hereby approved, and that the Authorized Representatives (as defined below) each are hereby authorized to execute the Indenture, and to deliver the Indenture to the Trustee.

Section 1.5 Approval, Execution and Delivery of the Financing Agreement and Long Term Loan Agreement. That the form and substance of the Financing Agreement and Long Term Loan Agreement are hereby approved, and that the Authorized Representatives each are hereby authorized to execute the Financing Agreement and Long Term Loan Agreement, and to deliver the Financing Agreement and Long Term Loan Agreement to the Borrower.

Section 1.6 Approval, Execution and Delivery of the Loan Agreement. That the form and substance of the Loan Agreement are hereby approved, and that the Authorized Representatives each are hereby authorized to execute the Loan Agreement, and to deliver the Loan Agreement to the Borrower

Section 1.7 Approval, Execution and Delivery of the Regulatory Agreement. That the form and substance of the Regulatory Agreement are hereby approved, and that the Authorized Representatives each are hereby authorized to execute, attest and affix the Department's seal to the Regulatory Agreement, and to deliver the Regulatory Agreement to the Borrower and the Trustee and to cause the Regulatory Agreement to be filed of record in the real property records of Harris County, Texas.

Section 1.8 Approval, Execution and Delivery of the Tax Exemption Agreements. That the form and substance of the Tax Exemption Agreements are hereby approved, and that the Authorized Representatives each are hereby authorized to execute the Tax Exemption Agreements, and to deliver the Tax Exemption Agreements to the Borrower and the Trustee.

Section 1.9 Approval, Execution and Delivery of the Bond Purchase Agreement. That the sale of the Bonds to the Underwriter and/or any other parties pursuant to the Bond Purchase Agreement is hereby approved, that the form and substance of the Bond Purchase Agreement are hereby approved, and that the Authorized Representatives each are hereby authorized to execute the Bond Purchase Agreement and to deliver the Bond Purchase Agreement to the Borrower, the Underwriter, and/or any other parties to the Bond Purchase Agreement, as appropriate.

Section 1.10 Approval, Execution and Delivery of the Subordination Agreement. That the form and substance of the Subordination Agreement are hereby approved, and that the Authorized Representatives each are hereby authorized to execute the Subordination Agreement, and to deliver the Subordination Agreement to the Lender, the City, the Sponsor, the Trustee and the Borrower.

Section 1.11 Acceptance of the Notes, the Mortgage and the Bond Mortgages. That the form and substance of the Notes, the Mortgage and the Bond Mortgages are hereby accepted by the Department and that the Authorized Representatives each are hereby authorized to endorse and deliver the Notes without recourse.

Section 1.12 Approval, Execution, Use and Distribution of the Official Statements. That the form and substance of the Official Statements and its use and distribution by the Underwriter in accordance with the terms, conditions and limitations contained therein are hereby approved, ratified, confirmed and authorized; that the Chair and Vice Chair of the Board and the Executive Director or Acting Director of the Department are hereby severally authorized to deem the Official Statements “final” for purposes of Rule 15c2-12 under the Securities and Exchange Act of 1934; that the Authorized Representatives named in this Resolution each are authorized hereby to make or approve such changes in the Official Statements as may be required to provide a final Official Statements for the Bonds; that the Authorized Representatives named in this Resolution each are authorized hereby to accept the Official Statements, as required; and that the use and distribution of the Official Statements by the Underwriter hereby is authorized and approved, subject to the terms, conditions and limitations contained therein, and further subject to such amendments or additions thereto as may be required by the Bond Purchase Agreement and as may be approved by the Executive Director or Acting Director of the Department and the Department’s counsel.

Section 1.13 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 1.14 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 1.15 Exhibits Incorporated Herein. That all of the terms and provisions of each of the documents listed below as an exhibit shall be and are hereby incorporated into and made a part of this Resolution for all purposes:

Exhibit B	-	Long Term Indenture
Exhibit C	-	Short Term Indenture
Exhibit D	-	Financing Agreement
Exhibit E	-	Long Term Loan Agreement
Exhibit F	-	Loan Agreement
Exhibit G	-	Regulatory Agreement
Exhibit H	-	Long Term Bond Tax Exemption Agreement
Exhibit I	-	Short Term Bond Tax Exemption Agreement
Exhibit J	-	Bond Purchase Agreement
Exhibit K	-	Long Term Note
Exhibit L	-	Short Term Note
Exhibit M	-	Mortgage
Exhibit N	-	Long Term Bond Mortgage
Exhibit O	-	Short Term Bond Mortgage
Exhibit P	-	Long Term Bond Official Statement
Exhibit Q	-	Short Term Bond Official Statement
Exhibit R	-	Subordination Agreement

Section 1.16 Authorized Representatives. That the following persons are each hereby named as authorized representatives of the Department for purposes of executing, attesting, affixing the Department's seal to, and delivering the documents and instruments and taking the other actions referred to in this Article 1: the Chair or Vice Chair of the Board, the Executive Director 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 Texas Homeownership of the Department, and the Secretary or any Assistant Secretary to the Board. Such persons are referred to herein collectively as the "Authorized Representatives." Any one of the Authorized Representatives is authorized to act individually as set forth in this Resolution.

## ARTICLE 2

### APPROVAL AND RATIFICATION OF CERTAIN ACTIONS

Section 2.1 Approval and Ratification of Application to Texas Bond Review Board. That the Board hereby ratifies and approves the submission of the application for approval of state bonds to the Texas Bond Review Board on behalf of the Department in connection with the issuance of each of the Bonds in accordance with Chapter 1231, Texas Government Code.

Section 2.2 Approval of Submission to the Attorney General. That the Board hereby authorizes, and approves the submission by the Department's Bond Counsel to the Attorney General, for his approval, of one or more transcripts of legal proceedings relating to the issuance, sale and delivery of the Bonds.

Section 2.3 Certification of the Minutes and Records. That the Secretary or Assistant Secretary to the Board hereby is authorized to certify and authenticate minutes and other records on behalf of the Department for the Bonds and all other Department activities.

Section 2.4 Approval of Requests for Rating from Rating Agency. That the action of the Executive Director or Acting Director of the Department or any successor and the Department's consultants in seeking a rating from S&P Global Ratings, and its successors and assigns, is approved, ratified and confirmed hereby.

Section 2.5 Authority to Invest Proceeds. That the Department is authorized to invest and reinvest the proceeds of the Bonds and the fees and revenues to be received in connection with the financing of the Development in accordance with the Indentures and the Tax Exemption Agreements and to enter into any agreements relating thereto only to the extent permitted by the Indentures and the Tax Exemption Agreements.

Section 2.6 Underwriter. That the underwriter with respect to the issuance of the Bonds will be Stifel, Nicolaus & Company, Incorporated, or any other party identified in the Bond Purchase Agreement.

Section 2.7 Engagement of Other Professionals. That the Executive Director or Acting Director of the Department or any successor is authorized to engage auditors to perform such functions, audits, yield calculations and subsequent investigations as necessary or appropriate to comply with the Bond Purchase Agreement and the requirements of Bond Counsel to the Department, provided such engagement is done in accordance with applicable law of the State.

Section 2.8 Ratifying Other Actions. That all other actions taken by the Executive Director or Acting Director of the Department and the Department staff in connection with the issuance of the Bonds and the financing of the Development are hereby ratified and confirmed.

### ARTICLE 3

#### CERTAIN FINDINGS AND DETERMINATIONS

Section 3.1 Findings of the Board. That in accordance with Section 2306.223 of the Act and after the Department's consideration of the information with respect to the Development and the information with respect to the proposed financing of the Development by the Department, including but not limited to the information submitted by the Borrower, independent studies commissioned by the Department, recommendations of the Department staff and such other information as it deems relevant, the Board hereby finds:

(a) Need for Housing Development.

(i) that the Development is necessary to provide needed decent, safe, and sanitary housing at rentals or prices that individuals or families of low and very low income or families of moderate income can afford,

(ii) that the financing of the Development is a public purpose and will provide a public benefit, and

(iii) that the Development will be undertaken within the authority granted by the Act to the housing finance division and the Borrower.

(b) Findings with Respect to the Borrower.

(i) that the Borrower, by operating the Development in accordance with the requirements of the Loan Agreement, the Financing Agreement, the Tax Exemption Agreements and the Regulatory Agreement, will supply well-planned and well-designed housing for individuals or families of low and very low income or families of moderate income,

(ii) that the Borrower is financially responsible, and



(iii) that the Borrower is not, and will not enter into a contract for the Development with, a housing developer that (A) is on the Department's debarred list, including any parts of that list that are derived from the debarred list of the United States Department of Housing and Urban Development; (B) breached a contract with a public agency; or (C) misrepresented to a subcontractor the extent to which the developer has benefited from contracts or financial assistance that has been awarded by a public agency, including the scope of the developer's participation in contracts with the agency and the amount of financial assistance awarded to the developer by the Department.

(c) Public Purpose and Benefits.

(i) that the Borrower has agreed to operate the Development in accordance with the Loan Agreement, the Financing Agreement, the Tax Exemption Agreements and the Regulatory Agreement, which require, among other things, that the Development be occupied by individuals and families of low and very low income and families of moderate income, and

(ii) that the issuance of the Bonds to finance the Development is undertaken within the authority conferred by the Act and will accomplish a valid public purpose and will provide a public benefit by assisting individuals and families of low and very low income and families of moderate income in the State to obtain decent, safe, and sanitary housing by financing the costs of the Development, thereby helping to maintain a fully adequate supply of sanitary and safe dwelling accommodations at rents that such individuals and families can afford.

Section 3.2 Determination of Eligible Tenants. That the Board has determined, to the extent permitted by law and after consideration of such evidence and factors as it deems relevant, the findings of the staff of the Department, the laws applicable to the Department and the provisions of the Act, that eligible tenants for the Development shall be (1) individuals and families of low and very low income, (2) persons with special needs, and (3) families of moderate income, with the income limits as set forth in the Tax Exemption Agreements and the Regulatory Agreement.

Section 3.3 Sufficiency of Bond Loan Interest Rate. That the Board hereby finds and determines that the interest rate on the Bond Loans established pursuant to the Loan Agreement and the Financing Agreement will produce the amounts required, together with other available funds, to pay for the Department's costs of operation with respect to the Bonds and the Development and enable the Department to meet its covenants with and responsibilities to the holders of the Bonds.

Section 3.4 No Gain Allowed. That, in accordance with Section 2306.498 of the Act, no member of the Board or employee of the Department may purchase any Bond in the secondary open market for municipal securities.

## ARTICLE 4

### GENERAL PROVISIONS

Section 4.1 Limited Obligations. That the Bonds and the interest thereon shall be special limited obligations of the Department payable solely from the trust estate created under the respective Indenture authorizing such Bonds, including the revenues and funds of the Department pledged under such Indenture to secure payment of the Bonds, and under no circumstances shall the Bonds be payable from any other revenues, funds, assets or income of the Department.

Section 4.2 Non-Governmental Obligations. That the Bonds shall not be and do not create or constitute in any way an obligation, a debt or a liability of the State or create or constitute a pledge, giving or lending of the faith or credit or taxing power of the State. Each Bond shall contain on its face a statement to

the effect that the State is not obligated to pay the principal thereof or interest thereon and that neither the faith or credit nor the taxing power of the State is pledged, given or loaned to such payment.

Section 4.3 Effective Date. That this Resolution shall be in full force and effect from and upon its adoption.

Section 4.4 Notice of Meeting. This Resolution was considered and adopted at a meeting of the Governing Board that was noticed, convened, and conducted in full compliance with the Texas Open Meetings Act, Chapter 551 of the Texas Government Code, and with §2306.032 of the Texas Government Code, regarding meetings of the Governing Board.

*[Execution page follows]*

PASSED AND APPROVED this 6th day of December, 2018.

[SEAL]

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Chair, Governing Board

ATTEST:

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Secretary to the Governing Board

**EXHIBIT A**

**Description of Development**

Borrower: Yellowstone Boulevard LLC, a Texas limited liability corporation

Development: The Development is a 210-unit affordable multifamily community to be known as Park Yellowstone and to be located at 3322 Yellowstone Boulevard, Houston, Texas 77021. It consists of thirty (30) residential apartment buildings with approximately 205,705 net rentable square feet. The unit mix will consist of:

48	one-bedroom/one-bath units
98	two-bedroom/two-bath unit
64	three-bedroom/two-bath units
<hr/>	
210	Total Units

Unit sizes will range from approximately 662 square feet to approximately 1,192 square feet.

# 18616 Park Yellowstone - Application Summary

REAL ESTATE ANALYSIS DIVISION  
November 28, 2018

PROPERTY IDENTIFICATION			RECOMMENDATION				KEY PRINCIPAL / SPONSOR		
Application #	18616		TDHCA Program		Request	Recommended		Bozrah International Ministries General Partner & Non-profit  Vesta Development Steven Rice	
Development	Park Yellowstone		LIHTC (4% Credit)	\$893,290	\$879,975	\$4,190/Unit	\$0.95		
City / County	Houston / Harris								
Region/Area	6 / Urban								
Population	General								
Set-Aside	General								
Activity	Acquisition/Rehab	1996-1997					Related Parties	Contractor - No	Seller - Yes

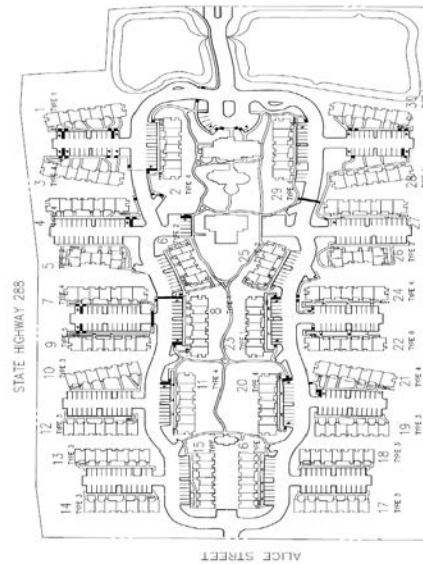
TYPICAL BUILDING ELEVATION/PHOTO



UNIT DISTRIBUTION			INCOME DISTRIBUTION		
# Beds	# Units	% Total	Income	# Units	% Total
Eff	-	0%	30%	-	0%
1	48	23%	40%	-	0%
2	98	47%	50%	-	0%
3	64	30%	60%	210	100%
4	-	0%	MR	-	0%
<b>TOTAL</b>	<b>210</b>	<b>100%</b>	<b>TOTAL</b>	<b>210</b>	<b>100%</b>

PRO FORMA FEASIBILITY INDICATORS			
Pro Forma Underwritten		TDHCA's Pro Forma	
Debt Coverage	✓ 1.20	Expense Ratio	✓ 56.1%
Breakeven Occ.	✓ 85.7%	Breakeven Rent	\$832
Average Rent	\$899	B/E Rent Margin	⚠ \$68
Property Taxes	\$862/unit	Exemption/PILOT	0%
Total Expense	\$5,724/unit	Controllable	\$3,475/unit

SITE PLAN



MARKET FEASIBILITY INDICATORS			
Gross Capture Rate (10% Maximum)	✓	2.6%	
Highest Unit Capture Rate	⚠ 18%	2 BR/60%	88
Dominant Unit Cap. Rate	⚠ 18%	2 BR/60%	88
Premiums (↑60% Rents)	N/A		N/A
Rent Assisted Units	210	100% Total Units	

DEVELOPMENT COST SUMMARY			
Costs Underwritten		TDHCA's Costs - Based on PCA	
Avg. Unit Size	980 SF	Density	9.9/acre
Acquisition	\$58K/unit		\$12,080K
Building Cost	\$37.25/SF	\$36K/unit	\$7,663K
Hard Cost		\$46K/unit	\$9,609K
Total Cost		\$142K/unit	\$29,813K
Developer Fee	\$2,289K	(42% Deferred)	Paid Year: 6
Contractor Fee	\$1,166K	30% Boost	Yes

REHABILITATION COSTS / UNIT			
Site Work	\$5K	11%	Finishes/Fixtures \$12K 25%
Building Shell	\$18K	38%	Amenities \$K 1%
HVAC	\$4K	8%	Total Exterior \$23K 57%
Appliances	\$2K	4%	Total Interior \$17K 43%



DEBT (Must Pay)					CASH FLOW DEBT / GRANT FUNDS					EQUITY / DEFERRED FEES		
Source	Term	Rate	Amount	DCR	Source	Term	Rate	Amount	DCR	Source	Amount	
KeyBank-Fannie Mae Forward M-TEMS	16/35	4.66%	\$12,500,000	1.28						LIHTC Equity	\$8,358,930	
					Vesta	0/0	3.02%	\$2,429,354	1.20	Vesta	\$964,557	
					Vesta CP NOI	0/0	0.00%	\$959,748	1.20			
TOTAL DEBT (Must Pay)			\$17,100,000		CASH FLOW DEBT / GRANTS			\$3,389,102		TOTAL EQUITY SOURCES		\$9,323,487
										TOTAL DEBT SOURCES		\$20,489,102
										TOTAL CAPITALIZATION		\$29,812,589

**CONDITIONS**

1 Receipt and acceptance before Determination Notice:

- Firm commitment for \$4.6M loan from City of Houston clearly stating all terms and conditions.

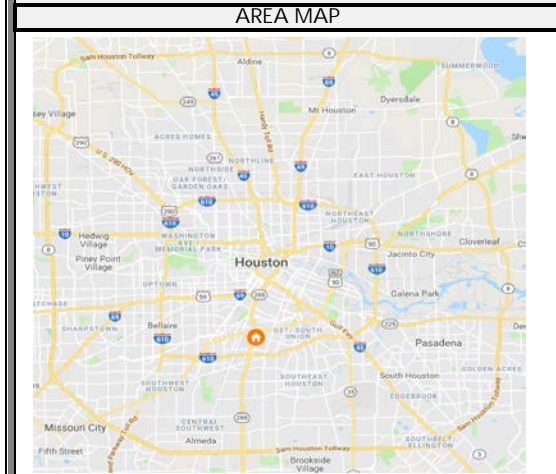
2 Receipt and acceptance by Cost Certification:

- An attorney or CPA opinion clearly establishing that the \$4.6M loan from the City of Houston can be considered a valid debt with reasonable expectation that it will be repaid in full. Opinion must include calculations and assumptions used.

Should any terms of the proposed capital structure change or if there are material changes to the overall development plan or costs, the analysis must be re-evaluated and adjustment to the credit allocation and/or terms of other TDHCA funds may be warranted.

BOND RESERVATION / ISSUER	
Issuer	TDHCA
Expiration Date	12/31/2018
Bond Amount	\$16,000,000
BRB Priority	Priority 3
Close Date	TBD
Bond Structure	Fannie Forward M-TEMS
% Financed with Tax-Exempt Bonds	64.3%

RISK PROFILE	
STRENGTHS/MITIGATING FACTORS	
o	On-site day care is attractive to families
o	Favorable Expense-to-Income Ratio
WEAKNESSES/RISKS	
o	Extended time to repay City of Houston loan



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

PUBLIC HEARING  
ON  
ISSUANCE OF TAX-EXEMPT MULTIFAMILY REVENUE BONDS  
RELATING TO  
PARK YELLOWSTONE

Conference  
Alice McKean Young Neighborhood Library  
5107 Griggs Road  
Houston, Texas

Thursday,  
September 13, 2018  
6:02 p.m.

BEFORE: ELIZABETH HENDERSON, Hearing Officer

ON THE RECORD REPORTING  
(512) 450-0342

I N D E X

<u>SPEAKER</u>	<u>PAGE</u>
Elizabeth Henderson	3
Colleen Yates	5

P R O C E E D I N G S

1  
2 MS. HENDERSON: Good afternoon. My name is  
3 Elizabeth Henderson. I would like to proceed with the  
4 public hearing.

5 Let the record show that it is 6:02 p.m.,  
6 Thursday, September 13, 2018, and we are at the Alice  
7 McKean Young Branch Public Library, located at 5107 Griggs  
8 Road, Houston, Texas 77021.

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

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

18 No decisions regarding the development will be  
19 made at this hearing. The Department's board is scheduled  
20 to meet to consider the transaction on October 11, 2018.  
21 In addition to providing your comments at this hearing,  
22 the public is also invited to provide comment directly to  
23 the board at any of their meetings.

24 The bonds for Park Yellowstone will be issued  
25 as tax-exempt multifamily revenue bonds in the aggregate

1 principal amount not to exceed \$16 million and taxable  
2 bonds, if necessary, in an amount to be determined and  
3 issued in one or more series by the Texas Department of  
4 Housing and Community Affairs, the Issuer.

5 The proceeds of the bonds will be loaned to  
6 Yellowstone Boulevard, LLC, or a related person or  
7 affiliate entity thereof, to finance the acquisition and  
8 rehabilitation of a multifamily housing development  
9 described as follows: a 210-unit multifamily residential  
10 rental development to be known as Park Yellowstone,  
11 currently known as Park Yellowstone Townhomes, on  
12 approximately 21.1552 acres of land located at 3322  
13 Yellowstone Boulevard, Houston, Harris County, Texas  
14 77021. The proposed multifamily rental housing community  
15 will be initially owned and operated by the borrower or a  
16 related person or affiliate thereof.

17 I would now like to open the floor for public  
18 comment. If you have signed up to speak, I will call out  
19 the number next to your name.

20 We don't have that, so we're not going to worry  
21 about that part. Speak into the microphone when you're  
22 ready to speak. Prior to that we're going to have the  
23 presentation by Colleen Yates, representing the developer  
24 entity, Vesta Corporation.

25 MS. YATES: Hot Metal Development, Inc.



1 MS. HENDERSON: Hot Metal Development, Inc.  
2 Okay. Proceed.

3 MS. YATES: Okay. This is Colleen Yates, and  
4 to add to what Elizabeth has just described, for the 210  
5 units we plan some extensive unit renovations for all 210  
6 units. We plan to follow TDHCA's uniform multifamily  
7 rules and with approved modifications, including the  
8 creation of different accessible units, HVI units, all  
9 these -- and all units will receive new kitchen  
10 configurations, bathrooms, appliances, lighting, and  
11 flooring on the main-level floor.

12 And two of the single-floor units will also  
13 receive, in addition one to make from one story -- excuse  
14 me -- one bedroom -- one will be made into a two-bedroom,  
15 and one will also be made into a three-bedroom, so as to  
16 make it fully accessible for families.

17 There will be structural repairs to 15 of the  
18 buildings that require new foundations -- new foundation  
19 underpinning. And there'll be stormwater control,  
20 retention system will be cleaned, and sediment will be  
21 removed from the retention ponds.

22 Exterior building and site work will include  
23 new roofs, entry doors, repairs to gutters and downspouts.  
24 Damage to trim and siding and masonry will be repaired.

25 There will be the removal or repair of concrete

1 sidewalks and construction of concrete ramps that are not  
2 in compliance with accessibility standards, but they will  
3 be. There's also going to be -- all common-use facilities  
4 and areas will be made accessible.

5 Plumbing and mechanical HVAC, all the exterior  
6 air conditioning condensing units that have not been  
7 recently replaced will be replaced. Damaged sewer lines  
8 will be repaired and/or replaced.

9 A new technology-enriched learning center will  
10 be built with computers, internet access, high-volume  
11 printer, appropriate furnishings. The learning center  
12 will entail the relocation of the maintenance storage area  
13 and refurbishment of the building previously used for  
14 laundry and storage. There will still be laundry  
15 facilities on the property.

16 We are planning to create an outdoor exercise  
17 area, primarily designed for use by adult and senior  
18 residents. It'll contain low-impact exercise equipment  
19 designed specifically for adults and elders, including  
20 those with limited mobility and/or wheelchairs.

21 Horseshoe pits, bike racks, and charcoal grills  
22 will also be installed for residents' use. The property's  
23 pool will be refurbished and reopened, and a covered patio  
24 will be installed in the pool area, to add shade and  
25 enhance the experience for the residents.

1 Security will be greatly improved. The plan  
2 entails the installation of a monitored HD security camera  
3 system. The property will benefit from two new gates at  
4 the main entrance, and the entry gate will be operated by  
5 a key fob or electronic access codes available only to  
6 tenants.

7 The back perimeter fence will be replaced with  
8 attention to areas where there have been intrusions.  
9 Additionally, lighting improvements will be made  
10 throughout the property.

11 Finally, we are excited -- the developer and  
12 team members are very excited to lead the revitalization  
13 of Park Yellowstone for the residents and restoring the  
14 property to make it a premier apartment complex and  
15 maintain the affordability for it for at least 30 years.

16 Thank you.

17 MS. HENDERSON: All right. Thank you.

18 And nobody else has any comments they want to  
19 make?

20 (No response.)

21 MS. HENDERSON: Last chance.

22 (No response.)

23 VOICE: None. Just waiting on the work.

24 MS. HENDERSON: Okay.

25 All right. Thank you for attending this

1 hearing. Your comments have been recorded. The meeting  
2 is now adjourned, and the time is now 6:10 p.m.

3 (Whereupon, at 6:10 p.m., the public hearing  
4 was concluded.)

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C E R T I F I C A T E

IN RE: Park Yellowstone

LOCATION: Houston, Texas

DATE: September 13, 2018

I do hereby certify that the foregoing pages, numbers 1 through 9, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Leslie Berridge before the Texas Department of Housing and Community Affairs.

DATE: September 20, 2018

/s/ Laurel H. Stoddard  
(Transcriber)

On the Record Reporting  
7703 N. Lamar Blvd, #515  
Austin, Texas 78752



5

**BOARD ACTION REQUEST**  
**ASSET MANAGEMENT DIVISION**  
**DECEMBER 6, 2018**

Presentation, discussion, and possible action on an order adopting the amendments to 10 TAC Chapter 10 Subchapter E, concerning Post Award and Asset Management Requirements, and directing its publication in the *Texas Register*

**RECOMMENDED ACTION**

**WHEREAS**, at its meeting of September 6, 2018, the Board approved for publication and public comment in the *Texas Register* the proposed amendments of 10 TAC Chapter 10 Subchapter E concerning the Post Award and Asset Management Requirements; and

**WHEREAS**, the proposed amendments were published in the September 21, 2018, issue of the *Texas Register* and staff has received comments from three commenters and incorporated further revisions in response to such comments into the final rule for adoption;

**NOW, therefore, it is hereby**

**RESOLVED**, that the final order adopting the amendment to 10 TAC Chapter 10 Subchapter E, together with the preambles presented to this meeting, is hereby ordered and approved for publication in the *Texas Register*; 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 amended 10 TAC Chapter 10, Subchapter E, §§10.400 – 10.408, Post Award and Asset Management Requirements, together with the preamble in the form presented to this meeting, to be published in the *Texas Register* for final adoption 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**

*Authority:* 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 rules (HOME, NSP, NHTF, Exchange, TCAP) and under Section 42 of the Internal Revenue Code.

*Department Policy:* While Tex. Gov't Code provides for direction and authority for certain specific activities for the Division, it does not provide the administrative specificity necessary to address all of the asset management activities that are necessary to ensure all state and federal program requirements are met. As such, these rules set Department policy to the extent necessary to provide for the administrative implementation of federal and state directives and requirements.

*Consistency with Executive Direction and Proposed Changes:* Staff recommends that these rules be retained and that this be accomplished through the adopted amendment of the existing rules. The amendments add direction for Owners wishing to amend applications under the average income election (revised election under §42(g) of the Code) prior to filing of IRS Forms 8609, remove or correct duplicative language and references, establish consistency with rules in 10 TAC Chapter 11 Subchapter D, further clarify language and requirements on which questions are often received, correct references to forms or attachments that have been updated, clarify and add to notification requirements that do not result in an amendment item, clarify the Department's interpretation of Right of First Refusal statutory requirements, and replace undefined terms with defined terms where appropriate.

Behind the preamble for the proposed amendment adoption action, a draft of the rule is shown in its clean new form. However, to assist reviewers with understanding what has changed from the version of the rule last posted in the *Texas Register*, a black-lined version is also provided, reflecting the changes proposed by the Department after consideration of public comment.

## **Attachment 1: Preamble, including required analysis, for adopting the amendment 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") adopts the amendment of 10 TAC Chapter 10, Subchapter E, §§10.400 – 10.408, Post Award and Asset Management Requirements to the proposed text as published in the September 21, 2018 issue of the *Texas Register* (43 TexReg 6061). The purpose of the amendment is to make corrections to gain consistency across other sections of rule, correct references, clarify existing language and processes, and adopt changes as required by the Federal Consolidated Appropriations Act of 2018, which amended Section 42(g)(1) of the Internal Revenue Code to create a permanent new minimum set-aside election known as “average income”.

Tex. Gov’t Code §2001.0045(b) does not apply to the amended rule because it was determined that no costs are associated with this action, and therefore, no costs warrant being offset. In general, most changes were corrective in nature, intended to gain consistency across other sections of rule, correct rule references, and clarify language or processes to more adequately communicate the language or process. The only substantial changes, located in §10.405(a)(4), §10.405(a)(7)(A)(i), and §10.405(b)(2)(B), related to Amendments and Extensions, were a result of the Federal Consolidated Appropriations Act of 2018, which amended Section 42(g)(1) of the Internal Revenue Code to create a permanent new minimum set-aside election known as “average income”. Thus, §10.405, Amendments and Extensions, was amended to comply with federal law and implement the new election in accordance with requirements already specified in Texas Government Code §2306.6712.

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.**

1. Mr. David Cervantes, Acting Director, has determined that, for the first five years the amended rule would be in effect, the amendment does not create or eliminate a government program, but relates to making changes to an existing activity, concerning the post award activities of Low Income Housing Tax Credit (“LIHTC”) Developments.
2. The amendment does not require a change in work that would require the creation of new employee positions, nor is the amendment significant enough to reduce work load to a degree that any existing employee positions are eliminated.
3. The amendment does not require additional future legislative appropriations.
4. The 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 amendment is not creating a new regulation other than adopting changes in §10.405(a)(4), §10.405(a)(7)(A)(i), and §10.405(b)(2)(B) as necessary to implement changes as required by the Federal Consolidated Appropriations Act of 2018.
6. The amendment will not repeal an existing regulation.
7. The amendment will not increase or decrease the number of individuals subject to the rule’s applicability.

8. The amendment 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 amended rule and determined that none of the adverse affect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. This amended 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 adoption of the amended rule will provide for a more clear, transparent process for doing so 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 amended 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 amended 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 adoption of the 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 amended rule as to its possible effects on local economies and has determined that, for the first five years the amended rule will be in effect, the amended rule has no economic effect on local employment because this rule only provides for administrative processes required of properties in the Department's portfolio. No program funds are channeled through this amended rule, so no activities under this rule would support additional local employment opportunities. Alternatively, the amended rule would also not cause any negative impact on employment. Therefore, no local employment impact statement is required to be prepared for the rule.

Texas Gov't Code §2001.002(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 amended rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). David Cervantes, Acting Director, has determined that, for each year of the first five years the amended rule is in effect, the public benefit anticipated as a result of the amended sections would be increased clarity and consistency across rule sections along with the revisions necessary as specified in §10.405 to allow the public to claim the average income set aside under Section 42(g)(1) of the



Internal Revenue Code as introduced into law by the Federal Consolidated Appropriations Act of 2018.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Cervantes also has determined that, for each year of the first five years the amended rule is in effect, enforcing or administering the amended rule does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Rule was published in the September 21, 2018, issue of the *Texas Register* establishing a comment period of September 28, 2018, through October 12, 2018, though the Department elongated the public comment period to September 21, 2018, through October 12, 2018 by notification of an email listserv and posting notification on its Asset Management and Public Comment Center website pages. Comments regarding the proposed amendment were accepted in writing and via e-mail and were received from: (1) Cynthia Bast on behalf of Locke Lord LLP, (2) Cliff McDaniel on behalf of ARA, and (3) Lauren Loney on behalf of the Texas Access to Justice Foundation at the University of Texas School of Law. Comments are listed in order of appearance within the rule and then by numerical reference of commenter. Comments were only received on §§10.406 – 10.408 relating to Ownership Transfers, Right of First Refusal, and Qualified Contract Requirements. Internal, technical corrections, with the intent of standardizing capitalizations of certain terms and numerical references and correcting citations and titles to other sections of rule, were also made as necessary; these comments are not listed individually as reasoned response since they are technical in nature but are shown in the attached black-lined rule copy showing the changes from last proposed rule as published in the *Texas Register* and preceding the final clean copy of the amended rule provided for adoption.

#### **§10.406 Ownership Transfer (§2306.6713)**

COMMENT SUMMARY: Commenter 3 stated that the Department could help preserve 834 Housing Tax Credit (“HTC”) properties in Texas that were allocated tax credits before 2002 by requiring a waiver of the right to request a Qualified Contract (“QC”) at any time an Ownership Transfer is requested. The Commenter suggested amending §10.406 to condition ownership transfers upon the fact that the new Owner and all future owners waive their right to request a QC for the property. No specific section was noted for placement of the amended language.

STAFF RESPONSE: While staff appreciates the Commenter’s concern for preservation of affordable housing properties, staff believes that: 1) making such a revision would require the Department to limit an Owner’s rights under §42(h)(6)(F) of the Internal Revenue Code; 2) the Asset Management Rules and Preamble were presented and published in the *Texas Register* stating that no new regulations were proposed other than those considered necessary to implement changes as required by the Federal Consolidated Appropriations Act of 2018, and as such, staff considers the comment to be beyond any logical outgrowth of the published rule for public comment and that the implications could be significant without having provided the public an opportunity to comment on the proposed change; and 3) the Asset Management Division receives its direction and authority from §2306.6713 of Tex. Gov’t Code, which states that “The director may not unreasonably withhold approval of the transfer,” and does not direct the Division to otherwise condition ownership transfers on the basis of waiving any right under other Federal, State, Department, or Division rule. As a result of these considerations, staff recommends no change based on the received comment.

### §10.407 Right of First Refusal

COMMENT SUMMARY: Under §10.407(a)(6)(C), Commenter 1 suggested removing subparagraph (C) since that item was not part of the list of things that “trigger” Right of First Refusal (“ROFR”) and that it should instead be included below items (A) and (B) as a clarification.

STAFF RESPONSE: Staff agrees with the Commenter but believes that the change will be rejected for publication in the *Texas Register* unless it is attached to an organizational numeration within the rule. As such, staff recommends adoption of the following revision:

“(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 and one in 1991, the 15<sup>th</sup> year would be 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.

COMMENT SUMMARY: Under §10.407(b), Commenter 1 suggested modifying the first sentence as reflected below due to the fact that the section is self-described as related to the offer price rather than the sale price and the fact that text regarding the sale price is addressed later:

**“(b) Right of First Refusal Offer Price.** There are two general expectations of the ROFR offer ~~or sale~~ price identified in the outstanding LURAs.”

STAFF RESPONSE: Staff agrees with the Commenter and recommends adoption of the suggested change.

COMMENT SUMMARY: Under §10.407(b)(2), Commenter 1 suggested moving the proposed second sentence to the last sentence of subsection (e) due to the fact that subsection (b)(2) discusses the offer price and subsection (e) discusses the acceptance of offers.

Commenter 2 disagreed with the proposed additions to the rule, stating that he believes the language in statute is clear that the seller has an option to sell the property by offering at the minimum price to the parties listed in each class in succession, and if the seller gets an offer at the minimum price or above that, the seller is obligated to seek to close the property with that party and that if multiple offers are received within a class, the seller can negotiate a higher price within that class. Commenter 2 states that if no offers are received in a particular class, the seller can then move on to the next class to seek a buyer but that it is clear that if the seller has offered the property at a price and that price is achieved, the negotiations are then completed, and there is no reason to move on to the next class. Commenter 2 states that the interpretation of statute which led to the rule change leads to more questions that must be answered, such as what the purpose of offering the property for sale to different classes would be if the seller is free to take any offer from any class of buyer at the end of 180 days, what seller would not take an offer until all offers were considered, what’s the purpose of calculating a minimum price if the seller can take any price, whether the Department could monitor whether a seller would come back to other priority buyers and give them a chance to match the price of another party’s offer and what happens if the terms of the sale change after it

goes to contract (does the seller have to again come back to other buyers to see which group can match the offer?). Commenter 2 also questioned the purpose of having multiple tiers of buyers if the seller is free to take any offer from any class of buyer at the end of 180 days and suggested that a shorter 60-day period for all offers would accomplish the same result. In the context of these questions, Commenter 2 reiterates that he believes the language and intent of statute is clear; ROFR is an event intended to give priority to a certain class of buyer before others could be allowed to bid on a property and that the ROFR price is calculated based on what statute dictates, not based on a price that the buyer generates. If the seller has achieved its offered price as set under statute and federal code, Commenter 2 believes the seller has accomplished the end of its negotiations.

Commenter 3 recommended removing the proposed amendment language, specifically, “but if the sequential negotiation created by statute yields a higher price, the higher price is permitted” and instead recommends that the Department amend the language to require an owner to accept an offer meeting the minimum purchase price. Commenter 3 states the ROFR process supports mission-driven nonprofits with a strong track record of providing high quality housing and services to residents without placing them in a bidding war with less qualified bidders. Commenter 3 states the proposed language would allow for the highest bid over the minimum purchase price and would have the effect of countering the purpose of the ROFR, which is to encourage HTC preservation. Commenter 3 urged the Department to ensure the ROFR price maximizes the opportunity for nonprofit affordable housing developers with strong track records and preservation proposals to purchase the properties.

STAFF RESPONSE: Tex. Gov’t Code §2306.6725(b)(1) states: “the Department shall provide appropriate incentives as determined through the qualified allocation plan to reward applicants who agree to...provide to a qualified entity, in a land use restriction agreement in accordance with §2306.6726, a right of first refusal to purchase the development at the minimum price provided in, and in accordance with the requirements of, §42(i)(7), Internal Revenue Code of 1986 (26 U.S.C. Section 42(i)(7)).”

Under IRC §42(i)(7), tenants (in cooperative form or otherwise), a resident management corporation of a building, a qualified nonprofit organization as defined in IRC §42(h)(5)(C), or government agency may hold a right to purchase the building after the close of the building’s 15-year compliance period for a price “which is not less than the minimum purchase price,” defined under IRC §42(i)(7)(B) as an amount equal to the sum of the principal amount of outstanding indebtedness secured by the building (other than indebtedness incurred within the 5-year period ending on the date of the sale to the tenants), and all federal, state, and local taxes attributable to the sale. Tex. Gov’t Code §2306.6726 states that an owner of a development subject to ROFR may “negotiate or enter into a purchase agreement” only with a qualified entity during the first 60-day period, during the last 60-day period may “negotiate or enter into a purchase agreement with any other qualified entity” and beginning on the 181<sup>st</sup> day after the Department posts notice, may sell to any purchaser a development to which the right of first refusal applies if a qualified entity does not offer to purchase the development for a price that the Department determines to be reasonable. Commenters 2 and 3 have stated the belief that the language provided above requires or should require an owner to sell the property based on a minimum offered price to a priority purchaser as identified in the LURA. However, staff contends that, based on the language above, and in the IRS guidance available, that while ROFR provisions operate as a required set of restrictions and priorities on negotiations, giving certain classes of buyers opportunities to engage in negotiations, there is no language that expressly requires the offering party’s bid to be accepted at the minimum purchase price. The language in

§2306.6725(b)(1) instead refers to a purchase at the minimum price *provided in and in accordance with the requirements of IRC §42(i)(7)*, which directs only that the price be that which is not *less* than the minimum purchase price. Additionally, the language of may “negotiate or enter into a purchase agreement” in Tex. Gov’t Code §2306.6726 otherwise implies that there is an option not to enter into a purchase agreement based on the offered price, and while the minimum price is defined under Code, acceptance of the minimum price offer is not clearly expressed in the Code itself, leading to some doubt of whether the Department can offer further qualification without misinterpreting or creating additional regulations which a strict reading of the state or federal code would not support. The seller will be responsible for notifying the Department if an agreement for the sale of the property is reached with a qualified entity, or if an agreement is not reached, the seller will be responsible for providing evidence of the negotiations with qualified entities.

In response to Commenter 3, who mentioned that TDHCA should ensure the ROFR price maximizes opportunities for nonprofit affordable housing developers with the strongest track records and preservation proposals, the Department welcomes additional comment on this topic at the beginning of the next rule cycle during the roundtable and planning process proposing how this can be accomplished by rule, but contends that it does not currently seem certain that setting a requirement that the minimum price must be accepted would also ensure strong track records on preservation proposals, nor assure the longevity and health of the Department’s aging portfolio. Staff also considers the comment to be outside of any logical outgrowth of the published rule for public comment, and the implications could be significant without having provided the public an opportunity to comment on the proposed change.

Staff does agree with Commenter 1 that the revised section of the rule would be better placed in §10.407(e) and recommends adoption of the following change:

(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.

COMMENT SUMMARY: Under §10.407(c), relating to Required Documentation, Commenter 1 suggested the following change due to the fact that the statement, “value of the Property” is imprecise and does not directly connect with the process, as what is being established is the ROFR offer price:

Upon establishing the ~~value of the Property~~ROFR offer price, the ROFR process is the same for all types of LURAs.

STAFF RESPONSE: Staff agrees with the Commenter and recommends adoption of the suggested change.

COMMENT SUMMARY: Under §10.407(c)(1), Commenter 1 suggested changing the reference from §10.901 to §11.901 to properly reflect the renumbering of the rules.

STAFF RESPONSE: Staff agrees with the Commenter and recommends adoption of the suggested change.

COMMENT SUMMARY: Under §10.407(c)(9), Commenter 3 expressed support to the proposed language requiring Development Owners to make critical repairs before the Department will consider a property eligible to proceed with a ROFR request.

STAFF RESPONSE: Staff recommends no change to the amended language.

COMMENT SUMMARY: Under §10.407(d), relating to Posting and offers, Commenter 3 recommended that the Department incorporate more robust notification and advertising processes for ROFR properties coming up for sale based on national best practices. Commenter 3 gives a specific example of Country Club Creek, an HTC property “lost” through the QC process and states that several qualified nonprofit buyers in Austin were taken by surprise when the development owner applied to exit the program through the QC process, not having been notified that the property was previously eligible for purchase via the ROFR process at a more affordable price. The Commenter states that the property will be leaving the program, resulting in the loss of 248 affordable units. The Commenter suggests the following changes:

- The Department should send notification of properties entering the ROFR process to the relevant municipality, local housing authority, and all tenants of the property via letter.
- For 180-day and 2-year ROFR notice periods:
  - The Department should send a second notification to the relevant municipality and local housing authority via letter 90 days prior to the expiration of the ROFR notice period; and
  - The Department should send a second notification to the general Qualified Buyers listserv 90 days prior to the end of the ROFR notice period.
- For 90-day ROFR notice periods:
  - The Department should send a second notification to the relevant municipality and local housing authority via letter 45 days prior to the expiration of the ROFR notice period; and
  - The Department should send a second notification to the general Qualified Buyer listserv 45 days prior to the end of the ROFR notice period.

STAFF RESPONSE: While there is currently no Tex. Gov’t Code requirement other than under §2306.6726, which requires the Department to: 1) provide to any qualified entity specifically identified as an owner’s intended recipient of the right of first refusal in the LURA, and 2) post the notice regarding the owner’s intent to sell the development on the Department’s website, the Department currently also attempts to reach interested parties through email listserv, which can be joined by any external party from the front page of the Department’s website. Staff thanks the Commenter for the consideration of additional steps that could be taken to inform local communities and qualified buyers of properties entering the ROFR process; however, staff needs additional time to appropriately assess the impact requiring these additional notifications could have on staffing, time, and costs in the associated Division(s) responsible for notifications and monitoring of ROFR, explore the public impact, and give the public an opportunity to comment on the proposed change to determine if this or other additional changes are necessary in order to



adequately address this issue. No change is recommended under the amended rule at this time, but staff welcomes additional comment on this topic at the beginning of the next rule cycle during the roundtable and planning process in order to evaluate and address this concern.

COMMENT SUMMARY: Under §10.407(e), relating to Acceptance of Offers, Commenter 1 reiterated the requested change noted above under 10.407(b)(2).

STAFF RESPONSE: Staff agrees and recommended adoption of the change under §10.407(b)(2).

COMMENT SUMMARY: Under §10.407(f), relating to Satisfaction of ROFR, Commenter 1 requested that subsection 3 become subsection 2 since it deals with satisfaction of the ROFR. Commenter 1 also suggests that subsection 2 be renumbered as subsection 3 because it deals with situations that do not satisfy the ROFR, which is the opposite scenario as covered in the other subsections.

STAFF RESPONSE: Staff agrees with Commenter 1 and recommends adoption of the suggested change to renumber subsection 3 as subsection 2. Staff, however, recommends that subsection 2 be moved into a new section under a new heading “**(g) Non-Satisfaction of ROFR**”. This change is fully shown for adoption and described in response to Commenter 1’s suggestions under §10.407(g)(3).

Under §10.407(f)(2)(A), staff also separately recommends the following change for adoption in order to align with the amended language in §10.407(e) and reflect current staff practice, which is to list the Property for sale on the Department’s website and inform buyers of the availability at an agreed upon ROFR offer price, which is by rule the Fair Market Value as described under §10.407(b)(1) or the Minimum Purchase Price as described under §10.407(b)(2); however, since staff may not be aware of or subject to the sequential negotiations and the offered price yielded by such negotiations, staff still intends to list the Property for sale at the agreed upon ROFR offer price by rule. Staff does, however, believe, as further demonstrated by Commenter 1’s discussion and comments under §10.407(h), that language elsewhere in the rule which requires satisfaction or non-satisfaction of ROFR based on a bona fide offer received *at* or above the posted ROFR offer price does need the following edit or clarification to avoid a potential contradiction with the amended language in §10.407(b)(2), and allow for satisfaction of ROFR where a higher price is negotiated through the sequential negotiation process (the same change for the same clarifying/correction purpose is recommended in all similar rule sections referencing the statement, ‘at or above the posted ROFR offer price’ or ‘at or above the ROFR offer price’ and is shown in the re-organized sections and black-lined copy of the rule to follow:

(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, for such negotiated price), and the Development Owner does not accept the offer;

COMMENT SUMMARY: Under §10.407(f)(2)(B), Commenter 1 suggests adding the following statement:

(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;

STAFF RESPONSE: Staff agrees with the Commenter that such clarification is warranted and recommends adoption of the suggested change.

COMMENT SUMMARY: Under §10.407(g), related to Activities Upon Satisfaction of ROFR, Commenter 1 recommends moving subsection 3 under a new section as described below as §10.407(h) and included corrected references in §10.407(g)(1) based on that suggested change.

STAFF RESPONSE: Staff agrees with the Commenter that change is warranted in the amended section but instead recommends re-naming the section from “Activities Upon Satisfaction of ROFR” to “Activities Following ROFR” to avoid the repetition inherent in creating a section related to ‘Activities if ROFR is Not Satisfied’. Staff believes that such re-naming of the section as recommended by staff would allow subsection 3 to remain in place and allow the section title to encompass the intent of subsection 3.

COMMENT SUMMARY: Under §10.407(h) and (i), related to Sale and Closing and Appeals, Commenter 1 suggested re-numbering (h) and (i) as (i) and (j) to make room for the new, proposed section under §10.407(h) also proposed by the Commenter.

STAFF RESPONSE: Staff agrees with the Commenter and recommends adoption of the suggested change following staff’s recommended changes to (g) and (h).

COMMENT SUMMARY: Under §10.407, Commenter 1 suggests adding a new subsection (h) entitled “Activities if ROFR is Not Satisfied.” that would show the following item moved from under §10.407(g)(3) along with the following new language:

(h) Activities if ROFR is Not Satisfied.

(1) 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 twenty-four (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 twenty-four (24) month period in accordance with subsection (a)(1).

(2) If the Department determines that the ROFR requirement has not been met during the ROFR posting period, pursuant to subsections (f)(3)(A)-(C), (E), or (F), and during the twenty-four (24) months after the Department’s written indication that the ROFR has not been satisfied, the Owner may not sell the Property to another Person, unless:

(A) such sale complies with subsection (a)(1); or

(B) the Owner gives any Person that made an offer during the ROFR posting period notice of its intent to sell the Property, a right of first refusal to match the terms upon which the Owner intends to sell the Property, and thirty (30) days to accept such opportunity to match the terms in writing, and none of such Persons that made an offer during the ROFR posting period agree to match the terms.

(3) If the Department determines that the ROFR requirement has not been met during the ROFR posting period, pursuant to subsection (f)(3)(D), the Owner may not sell the Property to any other Person, unless such sale complies with subsection (a)(1) or the Owner re-posts for the ROFR process in accordance with this section.

STAFF RESPONSE: While Staff agrees generally with the Commenter's suggestion for a new section to more clearly delineate scenarios in which the ROFR has not been satisfied and appreciates the Commenter's attempts (specifically in the suggestion related to proposed new §10.407(h)(2) above) to reconcile the Department's amended rule with the process the Commenter assumes would be necessary to ensure a final, negotiated price above the minimum purchase price could be posted on the Department's website and sent out via the Department's email listserv as specified in §10.407(d) (related to posting and offers) as a sort of additional right of *last* refusal, staff instead recommends adoption of the following changes, which staff believes provide the requested clarity and alignment with other sections of the amended rule without unnecessarily imposing additional right of last refusal restrictions on a seller's purchase and sale negotiations (the right of first refusal having already been met through having given certain classes of buyers initial opportunities to engage in price offer negotiations):

**(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 ~~negotiated price to be not less than the agreed upon ROFR offer~~ 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:

Staff recommends the following additional changes for adoption under §10.407(f) to ensure consistency with the amended section in §10.407(e):

**(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, 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) (3)~~ 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.

Staff recommends the following additional changes for adoption under new §10.407(g) (formerly §10.407(f)(2)) to ensure consistency with the amended rule section in §10.407(e) as earlier described in response to comments related to §10.407(f)(2)(A):

**(g) Non-Satisfaction of ROFR.**~~(2)~~

(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 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, 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), and the Development Owner fails to accept any of such offers.

Staff recommends the following additional changes for adoption under re-titled and numbered §10.407(h) (formerly §10.407(g)), “Activities Upon Satisfaction of ROFR” to ensure consistency with the amended section in §10.407(b)(2) as earlier described in response to comments related to §10.407(f)(2)(A) and to accept changes as recommended by Commenter 1 to §10.407(g)(3):

**(hg) Activities ~~Upon Satisfaction of~~Following ROFR.**



(1) If a Development Owner satisfies the ROFR requirement pursuant to subsection (f)(1) - ~~(23)~~ 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 twenty-four (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 twenty-four (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 twenty-four (24) month period in accordance with subsection (a)(1).

#### **(ih) 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.

#### **§10.408 Qualified Contract Requirements.**

COMMENT SUMMARY: As a general requirement under §10.408, relating to Qualified Contract (“QC”) Requirements, Commenter 3 made a general recommendation that TDHCA should proactively seek to deter HTC projects from exiting out of the HTC program through the QC process. The Commenter stated that TDHCA’s policies should make it clear that it does not approve of the development owner’s decision to request a QC and that TDHCA will perceive the decision negatively. The Commenter stated that the Michigan State Housing Development Authority recently updated QC guidelines to reflect a more proactive approach to discouraging exits through the qualified contract process and was requiring owners to meet with the Director of Asset Management to discuss such options and see if the property could be maintained as affordable. The

Commenter recommended amending (in general) §10.408 to include requirements that: 1) Owners meet with staff prior to requesting a QC in order to discuss options for the property, and 2) Owners provide (without exception) all documentation necessary to determine the statutory price. The Commenter stated that if development owners do not have the necessary documentation, they should not be allowed to proceed through the QC process.

STAFF RESPONSE: Staff recognizes that, because the HTC program is a relatively young program and the Department is just starting to see its properties age to become eligible to participate in the QC process, it is possible that more discussion and research concerning Qualified Contract processes are warranted to ensure further preservation of affordable housing across the state (over and above the Department's existing prioritization of At Risk Developments through the USDA and At Risk Set-Asides developed under Tex. Gov't Code and the Department's QAP). At the current time, however, staff does not believe it is within the Department's power (whether by 'disapproval' or by creation of additional barriers through rule or process) to restrict Development Owners across the board from exercising a right granted to them through program participation under IRC §42 and under Tex. Gov't Code §2306.185(c), relating to the requirement that the recipient maintain the affordability period for the greater of a 30-year period from the date the recipient takes possession or the remaining term of the existing federal government assistance. In response to the second portion of comment, relating to submission of documentation to determine statutory price, staff currently, under §10.408(f), relating to Appeal of Qualified Contract Price, reserves the right at any time to request additional information to document the QC Price calculation or other information submitted. While staff is not necessarily opposed to requesting additional documentation in support of the determination of the QC price as a required practice, the enactment of an additional regulation or rule is considered to be outside of any logical outgrowth of the published rule for public comment and staff considers that implications could be significant without having provided the public an opportunity to comment on the proposed change. In addition, without this additional opportunity to comment, staff reasons that its impact statement concerning the current amendment changes may need to be re-visited for potential internal and external cost and staffing implications. Staff recommends no change to the rule section.

COMMENT SUMMARY: Under §10.408(b), related to Eligibility, Commenter 3 stated concern regarding the "vagueness" of the proposed amendment language, specifically: "Unless specifically provided for otherwise in the representations made to secure the award..." and the impact it would have on the eligibility of post-2001 HTC properties to begin QC processes before year 30. The Commenter stated the policy should clearly address the eligibility of properties (regardless of tax allocation year) when the project applicant committed to a longer Extended Use period for extra points in the QAP. The Commenter offered support for TDHCA's "Notice of LURA QC Terms and 30 Year Affordability" notice from October 10, 2018, clarifying that HTC properties allocated tax credits on or after January 1, 2002, are ineligible to request a QC prior to the 30<sup>th</sup> anniversary of the property's placement in service. The Commenter suggested the following changes:

(b) Eligibility. ~~Unless specifically provided for otherwise in the representations made to secure the award,~~ 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 thirty (30) year anniversary of the date the property was placed in service (§2306.185). If the property's LURA or representations made in the Application indicate 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.

STAFF RESPONSE: Staff agrees with the Commenter's concerns regarding the amended language in the first sentence of the rule and recommends the language be revised. Staff also accepts, in part, the second recommendation relating to Eligibility.

The Internal Revenue Code (the "Code") supports the conclusion that the right of an owner to request the QC continues through the entirety of the contractually agreed upon extended use period. Under the Code (IRC §42(h)(6)(D)(ii)), the extended use period ends on the later of (I) the date specified in the LURA and (II) the 15<sup>th</sup> year after the end of the compliance period. While Internal Revenue Code §42(h)(6)(E)(i) provides that the extended use period may be terminated after the 15<sup>th</sup> year of the compliance period if an owner requests a qualified contract, it goes on to provide that such provision does not apply "to the extent more stringent requirements are provided in the agreement [*i.e.* the LURA] or in State law." Thus, for example, because 10 TAC §10.408(b) provides that owners "are not eligible to request a Qualified Contract *prior to* the thirty (30) year anniversary of the date the property was placed in service," an owner may not request a qualified contract until at least the 30<sup>th</sup> year. Accordingly, if an owner had agreed in a LURA to an extended use period that would not end until the 40<sup>th</sup> year, the provisions regarding exceptions to the extended use period (*i.e.* the qualified contract provisions) would also apply through the 40<sup>th</sup> year. The position appears to be supported by Texas state law, including Tex. Gov't Code §2306.185(c), which requires a minimum 30 year affordability.

It is noted that Tex. Gov't Code §2306.6720 indicates that the terms of a recorded LURA, as opposed to the application that preceded it, state the development owner's ongoing obligations. Accordingly, the commenter's suggestion has been modified to satisfy this statutory provision. Staff recommends adoption of the following change to the rule section in §10.408(b) as follows:

(b) Eligibility. ~~Unless specifically provided for otherwise in the LURA the representations made to secure the award,~~ 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 ~~thirty (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 proceeding 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 Board adopted the final order adopting the proposed amendment on December 6, 2018.

STATUTORY AUTHORITY. The amendment is adopted pursuant to TEX. GOV'T CODE, §2306.053, which authorizes the Department to adopt rules. Except as described herein the amended sections affect no other code, article or statute.

**10 TAC Chapter 10, Subchapter E, §§10.400 – 10.408, Post Award and Asset Management Requirements (Black Line Copy)**

**Subchapter E**

**Post Award and Asset Management Requirements**

**§10.400. Purpose.** The purpose of this subchapter is to establish the requirements governing the post award and asset management activities associated with awards of multifamily development 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.

**§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 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, 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, ~~chief~~ 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 this chapter (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 Subchapter D of this 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 ~~thirty~~ (30) calendar days from the effective date, unless the Development Owner indicates acceptance by executing the Commitment, pays the required fee specified in §110.901 of this ~~Chapter~~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 ~~thirty~~ (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 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 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 percent 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 percent of the amount of credits reflected in the Determination Notice may be approved administratively by the Executive Director and are subject to the Credit Increase Fee as described in Chapter 11, Subchapter E of this title.

**(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, 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 chapter (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 ("PILOT") agreement must provide evidence regarding the statutory basis for the PILOT and its terms.

**(e) Post Bond Closing Documentation Requirements.**

(1) 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 subparagraphs (A) - (E) of this paragraph.

(A) a training certificate 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 at least five ~~(5)~~ hours of Fair Housing training. The certificate must not be older than two years from the date of submission;

(B) 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 at least five ~~(5)~~ hours of Fair Housing training. The certificate must not be older than two years from the date of submission;

(C) evidence that the financing has closed, such as an executed settlement statement;

(D) a confirmation letter from the Compliance Division evidencing receipt of the Electronic Compliance Reporting Filing Agreement and the Owner's Designation of Administrator of Accounts forms pursuant to §10.607(a); and

(E) initial construction status report consisting of items (1) – (5) as outlined in §10.402(h) of this chapter (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 Percent 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.

(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 Percent 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 percent 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, §1.42-6. The Development Owner must submit, in the form prescribed by the Department, documentation evidencing paragraphs (1) - (8) of this subsection, along with all information outlined in the Post Award Activities Manual. Satisfaction of the 10 Percent Test will be contingent upon the submission of the items described in paragraphs (1) - (8) 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 and 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 Percent 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%~~Percent~~ 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 Percent Test must be addressed by written explanation or, as appropriate, in accordance with §10.405 of this subchapter;

(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 from a Department approved "property owner and manager Fair Housing trainer" showing that the Development Owner and on-site or regional property manager attended at least five ~~(5)~~ hours of Fair Housing training. For architects and engineers, a training certificate 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 at least five ~~(5)~~ 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 Percent Test Documentation;

(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 must be requested by the Applicant in accordance with §10.405 of this subchapter, 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 Reviews](#)); 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) 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. The initial report for all multifamily Developments shall consist of the items identified in paragraphs (1) – (5) of this subsection, unless stated otherwise. All subsequent reports shall contain items identified in subparagraphs (3) – (5) of this paragraph and must include any changes or amendments to items in subparagraphs (1) – (2) 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 Reviews);

(2) the executed construction contract for the General Contractor, prime subcontractor(s) and Affiliates or Related Party subcontractor(s) 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;

(3) 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

(4) 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;

(5) Minority Owned Business Report (HTC only) showing the attempt to ensure that at least 30 percent 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 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 copy of the 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 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 Subchapter D of this chapter (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) provided 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) - (xxxvi) 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 ~~thirty (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 Statement of Certification;

(ii) Owner Summary & Organization Charts for the Owner, Developer, and Guarantors;

(iii) Evidence of Qualified Nonprofit or CHDO Participation;

(iv) 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) Closing Statement;

(x) Title Policy;

(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;
- (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) Current Operating Statement in the form of a trailing twelve month statement;
- (xxvi) Current Rent Roll;
- (xxvii) Summary of Sources and Uses of Funds;
- (xxviii) Financing Narrative;
- (xxix) Final Limited Partnership Agreement with all amendments and exhibits;

(xxx) All Loan Agreements and Promissory Notes (except for Agreements and Notes issued directly by the Department);

(xxxi) Architect's Certification of Fair Housing 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);

(xxxiv) TDHCA Final Inspection Clearance Letter or evidence of submitted final inspection request to the Compliance Division;

(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 chapter (relating to Amendments and Extensions) and §10.406 of this chapter (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 Award Review and Advisory Committee;



(G) completed an updated underwriting evaluation in accordance with Subchapter D of this chapter based on the most current information at the time of the review.

#### **§10.403. Review of Annual HOME/NSP 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 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 are used as HOME match. Development Owners must submit documentation for the review of HOME/NSP/NHTF 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 regarding Rents and Limit Violations) and may be subject to penalties under §10.625<sup>4</sup> 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 units 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 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 units 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 PCA 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 percent 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; 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 Property Condition Assessment in conformance with Subchapter D of this chapter (relating to Underwriting and Loan Policy) or \$300 per Unit per year.

(4) For all Developments, a Property Condition Assessment ("PCA") 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 PCA, a PCA 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 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 PCA 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 Property Condition Assessment as required under this section or submit a copy of a PCA to the Department within 30 days of receipt; or

(F) Development Owner fails to make necessary repairs in accordance with the Third Party 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 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 developer 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 developer 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, 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, 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 ~~five~~5 percent;

(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 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);

(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 of this ~~title of this chapter~~ 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 (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.

(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 ~~forty five (45)~~ calendar days prior to the Board meeting in which the amendment is anticipated to be considered. Before the ~~fifteenth (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 units or bedroom mix of units;

(C) a substantive modification of the scope of tenant services;

(D) a reduction of ~~3~~ three percent or more in the square footage of the 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 five percent;

(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 Subchapter B of this chapter (relating to Site and Development Requirements and Restrictions) and Subchapter C of this 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 ~~twenty-four~~(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) [below 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 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 ~~forty-five~~ (45) calendar days prior to the Board meeting at which the amendment is anticipated to be considered. Before the ~~fifteenth~~ (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 §2306.6725 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 ~~fifteen~~ (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 name, address, 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 ~~(3)~~-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 Percent Test (including submission and expenditure deadlines), construction status

reports, or cost certification requirements will not be met. Extension requests submitted at least ~~thirty (30)~~ calendar days in advance of the applicable deadline will not be required to submit an extension fee as described in ~~§11.90140.901~~ of this chapter. Any extension request submitted fewer than ~~thirty (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 Designee, 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 Percent 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~~Competitive HTC Selection Criteria~~). 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 ~~forty five (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 §~~10~~.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~~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 §~~10~~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 §~~10~~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 §110.202 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 ~~(5)~~ 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 §110.901 of this chapter (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 ~~percent~~<sup>%</sup> 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 ~~(2)~~-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 Reviews).

(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 and one in 1991, the 15<sup>th</sup> year would be 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; ~~or~~

~~(C) 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 and one in 1991, the 15<sup>th</sup> year would be 2005.~~

(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 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 ~~or sale~~ 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 §110.304 of this chapter (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 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.~~

(A) the principal amount of outstanding indebtedness secured by the project (other than indebtedness incurred within the five ~~(5)~~ 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 ~~4~~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 ~~value of the Property~~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 §110.901 of this chapter (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) evidence and certification that the residents of the Development have been provided with a notice of intent;

(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 ~~(3)~~ months prior to the date of submission of the ROFR request, establishing a value for the Property in compliance with Subchapter D of this chapter (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 ~~thirty (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/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 ~~twelve~~ (12) consecutive months (financial statements should identify amounts held in reserves);

(11) the three ~~(3)~~ most recent consecutive audited annual operating statements, 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;

(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 ~~negotiated price to be not less than the agreed upon ROFR offer~~ 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 ~~(2)~~-year ROFR posting period, a Qualified Nonprofit Organization may submit an offer to purchase the Property as follows:

(A) during the first six ~~(6)~~ 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. ~~%~~percent owned by a CHDO, as approved by the Department, may submit an offer;

(B) during the next six ~~(6)~~ months of the ROFR posting period, only a Qualified Nonprofit Organization as described by Tex. Gov't Code §2306.6706, or that is 100 ~~%~~percent owned by Qualified Nonprofit Organization as described by Texas Government Code §2306.6706, or a tenant organization may submit an offer; and

(C) during the final ~~twelve (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 ~~sixty (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 ~~sixty (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 ~~sixty (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 ~~2~~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 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, 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;~~

~~(C) a bona fide offer from a Qualified Nonprofit Organization or Qualified Entity is received at or above the posted ROFR offer price, 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, 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, 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, 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, and the Development Owner fails to accept any of such offers.~~

(23) 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.**

(12) 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.

**(hg) Activities Following Upon Satisfaction of ROFR.**

(1) If a Development Owner satisfies the ROFR requirement pursuant to subsection (f)(1) - ~~(23)~~ 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 ~~twenty-four~~ (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 ~~twenty-four (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 ~~twenty-four (24)~~ month period in accordance with subsection (a)(1).

**(ih) 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.

**(ji) Appeals.** A Development Owner may appeal a staff decision in accordance with §~~10~~.902 of this chapter (relating to Fee Schedule, Appeals, and other Provisions ~~the Appeals Process~~ (§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 ~~(1)~~ year, the Extended Use Period will expire. This section provides the procedures for the submittal and review of a Qualified Contract Request.

**(b) Eligibility.** ~~Unless specifically provided for otherwise in the LURA in the representations made to secure the award,~~ 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 ~~thirty (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 proceeding 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 1990 and one began in 1991, the 15th year would be 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 1990 and a subsequent allocation and began the credit period in 1992, the 15th year would be 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 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 §119.901 of this chapter (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 the most recent Physical Needs Assessment/Property Condition Assessment, pursuant to Tex. Gov't Code §2306.186(e), conducted by a Third Party. 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 ~~(1)~~-Year Period ("1YP"). A review of the pre-request will be conducted by the Department within ~~ninety (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 anytime 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 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 Subchapter D of this chapter (relating to Underwriting and Loan Policy);

(G) a current Phase I Environmental Site Assessment (Phase II if necessary) with the effective date within six months of the date of the QC Request and consistent with 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 Subchapter D of this chapter 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 ~~twelve (12)~~ consecutive months;

(J) the three most recent consecutive annual operating statements;

(K) a detailed set of photographs of the 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 §~~110~~.901 of this chapter (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 six percent 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 ~~(4)~~ 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) distributions to the Development Owner of any and all cash flow, including incentive management fees 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;

(2) all equity contributions will be adjusted based upon the lesser of the consumer price index or ~~5~~-five percent 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

(3) 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. 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 §~~10~~.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 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~~six percent, 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. If the Development Owner decides to sell the development for the QC Price pursuant to a QC, 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 ~~(3)~~-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 ~~(3)~~-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 Extended Use Period Compliance Policy in Subchapter F of this Chapter (relating to Compliance Monitoring).

**10 TAC Chapter 10, Subchapter E, §§10.400 – 10.408, Post Award and Asset Management Requirements (Clean Copy)**

## **Subchapter E**

### **Post Award and Asset Management Requirements**

**§10.400. Purpose.** The purpose of this subchapter is to establish the requirements governing the post award and asset management activities associated with awards of multifamily development 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.

#### **§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 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, 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 this chapter (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 Subchapter D of this 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 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 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 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 percent 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 percent of the amount of credits reflected in the Determination Notice may be approved administratively by the Executive Director and are subject to the Credit Increase Fee as described in Chapter 11, Subchapter E of this title.

**(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, 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 chapter (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 ("PILOT") agreement must provide evidence regarding the statutory basis for the PILOT and its terms.

**(e) Post Bond Closing Documentation Requirements.**

(1) 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 subparagraphs (A) - (E) of this paragraph.

(A) a training certificate 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 at least five hours of Fair Housing training. The certificate must not be older than two years from the date of submission;

(B) 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 at least five hours of Fair Housing training. The certificate must not be older than two years from the date of submission;

(C) evidence that the financing has closed, such as an executed settlement statement;

(D) a confirmation letter from the Compliance Division evidencing receipt of the Electronic Compliance Reporting Filing Agreement and the Owner's Designation of Administrator of Accounts forms pursuant to §10.607(a); and

(E) initial construction status report consisting of items (1) – (5) as outlined in §10.402(h) of this chapter (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 Percent 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.

(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 Percent 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 percent 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, §1.42-6. The Development Owner must submit, in the form prescribed by the Department, documentation evidencing paragraphs (1) - (8) of this subsection, along with all information outlined in the Post Award Activities Manual. Satisfaction of the 10 Percent Test will be contingent upon the submission of the items described in paragraphs (1) - (8) 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 and 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 Percent 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 10Percent 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 Percent Test must be addressed by written explanation or, as appropriate, in accordance with §10.405 of this subchapter;
- (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 from a Department approved "property owner and manager Fair Housing trainer" showing that the Development Owner and on-site or regional property manager attended at least five hours of Fair Housing training. For architects and engineers, a training certificate 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 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 Percent Test Documentation;

(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 must be requested by the Applicant in accordance with §10.405 of this subchapter, 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) 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. The initial report for all multifamily Developments shall consist of the items identified in paragraphs (1) – (5) of this subsection, unless stated otherwise. All subsequent reports shall contain items identified in subparagraphs (3) – (5) of this paragraph and must include any changes or amendments to items in subparagraphs (1) – (2) 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) 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;

(3) 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

(4) 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;

(5) Minority Owned Business Report (HTC only) showing the attempt to ensure that at least 30 percent 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 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 copy of the 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 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 Subchapter D of this chapter (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) provided 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) - (xxxvi) 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 Statement of Certification;

(ii) Owner Summary & Organization Charts for the Owner, Developer, and Guarantors;

(iii) Evidence of Qualified Nonprofit or CHDO Participation;

(iv) 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) Closing Statement;

(x) Title Policy;

(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;
- (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) Current Operating Statement in the form of a trailing twelve month statement;
- (xxvi) Current Rent Roll;
- (xxvii) Summary of Sources and Uses of Funds;
- (xxviii) Financing Narrative;
- (xxix) Final Limited Partnership Agreement with all amendments and exhibits;

(xxx) All Loan Agreements and Promissory Notes (except for Agreements and Notes issued directly by the Department);

(xxxi) Architect's Certification of Fair Housing 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);

(xxxiv) TDHCA Final Inspection Clearance Letter or evidence of submitted final inspection request to the Compliance Division;

(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 chapter (relating to Amendments and Extensions) and §10.406 of this chapter (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 Award Review and Advisory Committee;

(G) completed an updated underwriting evaluation in accordance with Subchapter D of this chapter based on the most current information at the time of the review.

**§10.403. Review of Annual HOME/NSP 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 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 are used as HOME match. Development Owners must submit documentation for the review of HOME/NSP/NHTF 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 regarding 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 units 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 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 units 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 PCA 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 percent 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; 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 Property Condition Assessment in conformance with Subchapter D of this chapter (relating to Underwriting and Loan Policy) or \$300 per Unit per year.

(4) For all Developments, a Property Condition Assessment ("PCA") 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 PCA, a PCA 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 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 PCA 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 Property Condition Assessment as required under this section or submit a copy of a PCA to the Department within 30 days of receipt; or

(F) Development Owner fails to make necessary repairs in accordance with the Third Party 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 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 developer 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 developer 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, 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, 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 five percent;

(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 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);

(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 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 (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.

(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 units or bedroom mix of units;
- (C) a substantive modification of the scope of tenant services;
- (D) a reduction of three percent or more in the square footage of the 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 five percent;
- (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 Subchapter B of this chapter (relating to Site and Development Requirements and Restrictions) and Subchapter C of this 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 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 §2306.6725 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 name, address, 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 Percent 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. 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 Designee, 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 Percent 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 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).

#### **§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 percent 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 and one in 1991, the 15<sup>th</sup> year would be 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 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 (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 (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) evidence and certification that the residents of the Development have been provided with a notice of intent;

(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 Subchapter D of this chapter (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/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, 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;
- (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 percent 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 percent owned by Qualified Nonprofit Organization as described by Texas Government 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).

**(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 (relating to Fee Schedule, Appeals, 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 proceeding 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 1990 and one began in 1991, the 15th year would be 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 1990 and a subsequent allocation and began the credit period in 1992, the 15th year would be 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 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 (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 the most recent Physical Needs Assessment/Property Condition Assessment, pursuant to Tex. Gov't Code §2306.186(e), conducted by a Third Party. 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 anytime 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 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 Subchapter D of this chapter (relating to Underwriting and Loan Policy);

(G) a current Phase I Environmental Site Assessment (Phase II if necessary) with the effective date within six months of the date of the QC Request and consistent with 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 Subchapter D of this chapter 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;

(K) a detailed set of photographs of the 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 (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 six percent 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) distributions to the Development Owner of any and all cash flow, including incentive management fees 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;
- (2) all equity contributions will be adjusted based upon the lesser of the consumer price index or five percent 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
- (3) 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. 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 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 six percent, 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. If the Development Owner decides to sell the development for the QC Price pursuant to a QC, 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 Extended Use Period Compliance Policy in Subchapter F of this Chapter (relating to Compliance Monitoring).

6a

**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**DECEMBER 6, 2018**

Presentation, discussion, and possible action on a request for the extension of the placement in service deadline under 10 TAC §11.6(5) of the 2018 Qualified Allocation Plan related to Credits Returns Resulting from Force Majeure Events for No. 16185, Merritt Heritage

**RECOMMENDED ACTION**

**WHEREAS**, an award of Competitive (9%) Housing Tax Credits in the amount of \$1,194,724 to Merritt Heritage (the Development) was approved by the Board on July 28, 2016;

**WHEREAS**, staff executed a Carryover Allocation Agreement with the Development Owner on December 12, 2016, 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, 2018;

**WHEREAS**, on November 14, 2018, 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 Credit 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 Development Owner has presented evidence that relief under force majeure is appropriate;

**NOW, therefore, it is hereby**

**RESOLVED**, the request for treatment of Merritt Heritage under an application of the force majeure rule is approved; and

**FURTHER RESOLVED**, that except where prohibited by Federal or state law, the Applicant must continue to follow the 2016 Qualified Allocation Plan and Uniform Multifamily Rules, except that the 2018 Program Calendar reflected in 10 TAC §11.2 of the 2018 QAP will apply.

## BACKGROUND

An award of \$1,194,724 to Merritt Heritage (the Development) was approved by the Board on July 28, 2016. The Development proposed the New Construction of 244 Units for the Elderly population in Georgetown. Staff executed a Carryover Allocation Agreement with the Development Owner on December 12, 2016, that included a certification from the Development Owner that, in order to satisfy the requirements of Section 42 of the Internal Revenue Code, each building for which the allocation was made would be placed in service by December 31, 2018.

### **Force Majeure request**

On November 14, 2018, the Department received from the Development Owner a request to extend the placement in service deadline from December 31, 2018, to March 31, 2019, with the possibility of an extension, 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)

### **Flooding, Significant and Unusual Rainfall**

Per the Applicant:

"In May 2018, the contractor processed a change order to add 13 days to the construction contract, to accommodate for weather events between December 2017 and March 2018. A copy of that change order is attached as Exhibit A. The change order showed that the amount of rainfall exceeded the three-year average and could not have been expected. In October 2018, the contractor processed a change order to add 16 more days to the construction contract, to accommodate for weather events in July, September, and October 2018. A copy of that change order is attached as Exhibit B. Again, the change order showed that the amount of rainfall exceeded the three-year average and could not have been expected. Moreover, Governor Abbott issued a State Disaster Declaration for Williamson County on October 16, 2018, citing severe weather and flooding. The most recent rains have delayed critical exterior work, including striping the parking lot and finishing sidewalks and the swimming pool area."

Per the Applicant, the rain has caused problems with the sequence of completing the remaining construction, and the Applicant has imposed "mitigation strategies" such as employing four site superintendents to manage the different areas of construction, and hiring multiple contractors for the same trades to speed construction. In the request, the Development Owner provides copies of change orders and



approvals from the bonding agent, a copy of the Governor's disaster declaration including Williamson County, a letter from the investor limited partner supporting the request, a "manpower chart" indicating "substantially increased" manpower employed, and a waiting list of well over 300 households. They believe that the construction delays caused by significant weather events make it impossible for the Development to be placed in service by the original deadline.

If the Board grants the requested treatment under application of the force majeure rule, the Development Owner will return \$1,194,724 in 2016 credits. The credits will be immediately reissued to the Development Owner with a 2018 Carryover Allocation Agreement and a new date for the Development to be placed in service will be documented. Except as prohibited by Federal or state law, the Development will continue to be subject to the 2016 Qualified Allocation Plan and Uniform Multifamily Rules in place at the original award, except that 10 TAC §11.2 related to the Program Calendar for 2018 will apply.



600 Congress, Suite 2200  
Austin, TX 78701  
Telephone: 512-305-4700  
Fax: 512-305-4800  
www.lockelord.com

Cynthia L. Bast  
Direct Telephone: 512-305-4707  
Direct Fax: 512-391-4707  
cbast@lockelord.com

November 14, 2018

**Via Email**

Marni Holloway  
Texas Department of Housing and Community Affairs  
221 East 11th Street  
Austin, Texas 78701

Re: Merritt Heritage Apartments in Georgetown, Texas (the "**Development**")  
TDHCA No. 16185

Dear Marni:

Our firm represents DDC Merritt Heritage, Ltd. ("**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, 2018.

The Development is located in Williamson County, which has experienced extraordinary rainfall. In May 2018, the contractor processed a change order to add 13 days to the construction contract, to accommodate for weather events between December 2017 and March 2018. A copy of that change order is attached as Exhibit A. The change order showed that the amount of rainfall exceeded the three-year average and could not have been expected. In October 2018, the contractor processed a change order to add 16 more days to the construction contract, to accommodate for weather events in July, September, and October 2018. A copy of that change order is attached as Exhibit B. Again, the change order showed that the amount of rainfall exceeded the three-year average and could not have been expected. Moreover, Governor Abbott issued a State Disaster Declaration for Williamson County on October 16, 2018, citing severe weather and flooding. See Exhibit C. Despite the rain delays identified in the first change order, the Development was essentially running on schedule for completion by year-end until the rain events that were the subject of the second change order. The most recent rains have delayed critical exterior work, including striping the parking lot and finishing sidewalks and the swimming pool area. The problem is one of sequencing. For

instance, the pool cannot be dug until the stucco is installed on the clubhouse, and neither can happen in wet conditions. Sidewalks cannot be poured until the scaffolding for the stucco work is removed. All of this exterior work is delayed, not only on the rain day itself, but for several days thereafter while everything dries. Even interior painting is impacted by moisture in the air. Owner's investor limited partner has independently verified, through its due diligence and construction inspector, the effect of rain on the construction schedule for the Development. See Exhibit D.

In response to the weather delays, Owner and the contractor have imposed mitigation strategies. The job has employed 4 superintendents, to provide support and oversight for different areas of construction simultaneously. This facilitates the management of larger crews, which have been employed for faster construction. Multiple subcontractors for the same trade have been hired to work in multiple buildings or multiple floors of a building all at once. Owner's mitigation with increased manpower can be evidenced by the attached manpower chart, showing significantly more crews on site after the recent rains. See Exhibit E. Materials have been purchased in advance and stored on the site, to avoid any delivery delays and allow immediate installation. The construction team has been meeting with the City of Georgetown on a bi-weekly basis to ensure inspections are processed timely, with the Assistant City Manager participating regularly. A robust waiting list for the Development has been established; the list for the 30% and 50% units is already closed. Pre-leasing of the affordable units will begin from this waiting list on December 1; thirteen of the market rate units are already pre-leased. See the current interest and waiting list, attached as Exhibit F.

Because of these challenges, Owner submits this request 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 2018 Qualified Allocation Plan (the "**QAP**"). We believe Owner and the Development meet all of the requirements of Section 11.6(5), in that:

1. The delays in construction were a direct result of significant weather events referenced above.
2. The delays were not caused by willful negligence or acts of Owner, any Affiliate, or any other Related Party.
3. Owner and the contractor are experienced developers of these types of properties, and each took any steps available to them to mitigate the delays; however, the weather was not within their control.
4. Owner substantially fulfilled all of its obligations that were not impeded by the weather events; the Development was properly insured; and TDHCA was notified of the weather events.

November 14, 2018

Page 3

5. The weather events may prevent Owner from meeting the placement 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 viable.

With a new allocation in place, Owner would be willing to commit to place the Development into service by March 31, 2019, with the possibility for an extension to be provided at the Executive Director's discretion.

Please feel free to contact me with any questions. We sincerely appreciate your assistance with this matter.

Respectfully submitted,

A handwritten signature in blue ink that reads "Cynthia L. Bast". The signature is written in a cursive, flowing style.

Cynthia L. Bast

cc: Denison Development

**Exhibit A**

**First Change Order – Weather Delay**

# Request for Construction Changes on Project Mortgages

U.S. Department of Housing and Urban Development  
Office of Housing  
Federal Housing Commissioner

OMB Approval No. 2502-0011 (exp. 11/30/2016)

No changes in the drawings and specifications may be effected unless a completed request for construction changes has been filed and approved by HUD in accordance with the Construction Contract. **Read the instructions & Public Burden statement on the back of this form.**

Name and location of this project <b>Merritt Heritage, 4700 Williams Dr., Georgetown, TX 78633</b>	Request No. (HUD use only)	Project Number <b>115-35798</b>
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Name of Contractor <b>CHDC Brownstone GC Joint Vent</b>	Name of Mortgagor <b>DDC Merritt Heritage, LTD</b>	Name of Mortgagee <b>Daugherty Mortgage LLC</b>
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**To the Federal Housing Commissioner:** You are requested to consider the following proposed changes in the project. The changes are satisfactory to the parties hereto, as indicated by the signatures below.

Description of Changes	Mortgagor Estimated Effect on Cost + or -	HUD Estimated Effect on Cost + or -	V = Acceptable O = Unacceptable	
			Arch.	Val.
a. <b>Time Extension 001: Delays due to inclement weather</b>				
b. <b>13 Days</b>			V	
c.				
d.				
e.				
f.				
g.				
h.				
i.				
j.				
k.				
l.				
m.				

Amount on deposit with mortgagee to cover increased cost of changes pursuant to conditions of Request No. _____ \$	Total \$	Initial & Date	Initial & Date <b>AF 05/29/18</b>	Initial & Date
--	----------	----------------	--------------------------------------	----------------

I certify that I have no financial interest in this project beyond the fee for my professional services, and that I have no interest with the mortgagor, contractor, or any subcontractor or supplier. The changes set forth in this request conform to the intent of the contract documents and I recommend that the changes be approved.

Contractor (signature) 	Mortgagor (signature) 	Architect (signature) 	Mortgagee (signature) 
----------------------------	---------------------------	---------------------------	---------------------------

The following is required on requests involving cooperatives and non-profit mortgagors with respect to any increase or decrease in cost resulting from acceptable changes: (check appropriate box.)

- The abovesigned contractor agrees to assume any additional costs and agrees that he will not assert any claim against the Mortgagor in connection therewith.
- The abovesigned Mortgagor, acting pursuant to a resolution adopted at a meeting of its stockholders or members, and the abovesigned Contractor, agree to the above described construction changes and agree that the construction contract executed by them (date) \_\_\_\_\_ is amended by increasing the contract price of \$ \_\_\_\_\_ set forth in Article 3 thereof to \$ \_\_\_\_\_ all other provisions of the Construction Contract remain unchanged.
- The abovesigned Mortgagor and the above signed Contractor agree to the construction changes described above and agree that the construction contract executed by them (date) \_\_\_\_\_ is amended by decreasing the contract price of \$ \_\_\_\_\_ set forth in Article 3 thereof to \$ \_\_\_\_\_; all other provisions of the construction contract remain unchanged.

Federal Housing Commissioner Findings: 1. Mortgagor's Estimate			2. Net effect on Construction Costs			
a. Effect on cost of previously accepted changes	b. Effect on cost to date of all changes	c. Percent	a. Present changes	b. Previous changes	c. Total	d. Percent
\$	\$	%	\$	\$	\$	%
			<input type="checkbox"/> Increase <input type="checkbox"/> Decrease	<input type="checkbox"/> Increase <input type="checkbox"/> Decrease	<input type="checkbox"/> Increase <input type="checkbox"/> Decrease	

3. Changes \_\_\_\_\_ are acceptable and the drawings and specifications amended, provided:
- a. That a total sum of \$ \_\_\_\_\_ is on deposit with the mortgage to cover net increase in cost resulting from present and previous construction changes. This supersedes any previous requirements. The money will not be released without written consent of HUD prior to final completion and acceptance of the project construction. No further advances of the mortgage proceeds under the Building Loan Agreement will be approved unless the total sum is on deposit with you.
  - b. That in order to reflect the net decrease in cost or reduction in mortgage based on net income or number of family units, resulting from acceptable present and previous construction changes, the amount of \$ \_\_\_\_\_ shall be deducted from the amount entered on the line entitled "Sum of Cost Breakdown Items Plus Inventories of Materials", form HUD-92448. This amount may be modified by later changes.
  - c. Consent of surety to these changes is obtained in writing and a signed copy sent to this office prior to effecting the change.
  - d. There is compliance with the conditions stated on the back of this form.

4. <input type="checkbox"/> Changes _____ are <b>not</b> acceptable. See "Reasons for Unacceptability" on the back of this form.	Mortgage Credit Initial & Date
--	--------------------------------

HUD analysis and findings reviewed and approved: Director, Housing Development Division (signature)	Date	Federal Housing Commissioner Signature of authorized agent
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**Public Reporting Burden** for this collection is estimated to average 2 hours per response, including the time for reviewing, searching existing data sources, gathering and maintaining the data needed, and compiling and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Reports Management Officer, Paperwork Reduction Project (2502-0011), U.S. Department of Housing and Urban Development, 451 7<sup>th</sup> Street SW, Washington, DC 20410-3600.

The Department of Housing and Urban Development (HUD) is authorized to collect this information by provisions set forth in Section 5 of the United States Housing Act of 1937, as amended. It is provided by contractors, mortgagors and mortgagees to obtain the FHA Commissioner's approval of changes in contract drawings and specifications, and this information is used to ensure that viable projects are developed. This information is used by HUD to ensure that viable projects are being developed. Furnishing of this information is mandatory, and failure to provide it may result in your not receiving your benefits.

**Privacy Act Notice.** The United States Department of Housing and Urban Development, Federal Housing Administration, is authorized to solicit the information requested in this form by virtue of Title 12, United States Code, Section 1701 et seq., and regulations promulgated thereunder at Title 12, Code of Federal Regulations. While no assurances of confidentiality is pledged to respondents, HUD generally discloses this data only in response to a Freedom of Information request. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number.

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### Instructions

Send the original and six copies to HUD through the mortgagee.

Under "Description of Changes" describe each proposed change and enter the amount by which the construction cost will be increased or decreased as the net result of each proposed change. Attach documentation including (1) reason for each change, (2) general scope, (3) full detailed description of work to be omitted and/or added and the cost for each trade affected, and (4) reference any attachments showing proposed revisions.

Estimate the cost of each change on the basis of the current cost of items omitted, substituted or added. Estimates include job overhead and builder's fee, or job overhead and general overhead, as applied in the HUD estimate of the project. No allowance for "Builder's and Sponsor's Profit and Risk" is included. No architect's or engineer's fee is included.

This form is not used for off-site changes. Such changes must be submitted in writing, using this form as a guide.

To be acceptable to HUD a proposed change must be due to necessity, or be an appropriate betterment, or qualify as an equivalent. In accepting any changes, it is assumed that they will be executed. If an accepted change is not executed, it must be nullified by substituting a Request for Construction Changes amending the drawings and specifications so as to restore the drawings and specifications to prior status or to a status acceptable to HUD.

Send requests for a time extension on a separate form.

### Conditions of Acceptance or Reasons for Unacceptability

When the HUD estimated cost of all accepted changes results in a net decrease in the total construction cost, the insurable mortgage will be similarly decreased; but if the net effect is an increase, the additional costs will be defrayed by the mortgagor. The acceptance of any change or changes involving a net increase does not increase the mortgage amount.



May 29, 2018

Mr. Colby Denison  
DDC Merritt Heritage, Ltd.  
1515 West 35<sup>th</sup> St, Unit C  
Austin, TX 78703

Dear Mr. Denison:

This letter is in regard to your project, Merritt Heritage, FHA #115-35798, and the first proposed change order (PCO #1.) The proposed change is a time extension request due to inclement weather during the months of December 2017 through March 2018. I believe the time extension is justified based on the following findings:

- Construction activities during the timeframe of December 2017 through March 2018 included earth work, site utilities, under-slab plumbing, concrete formwork and placement, trenching for dry utilities, steel erection, and framing. All are critical path and would be adversely affected by inclement weather.
- The contractor has submitted documentation establishing historical averages for rainfall for the previous three years, schedule delay notifications for (16) actual days impacted by rainfall or freezing temperatures for December 2017 through March 2018, and corresponding weather data for the delayed days. A month-by-month comparison of historical averages for rainfall versus actual missed days results in an excess of (9) days beyond what could have reasonably been anticipated for this timeframe.
- Because the construction contract is based on total calendar days rather than actual work days, the contractor is requesting an extension of (13) calendar days in order to accommodate weekends.
- Surety has consented to the requested time extension.

Thank you for your consideration of this change order. Please let me know if you would like further information.

Sincerely,

A handwritten signature in blue ink, appearing to be "A. Freiburger", written in a cursive style.

Andrea Freiburger, AIA  
President, Spring Architects, Inc.  
[andrea@springarchitects.com](mailto:andrea@springarchitects.com)



6517 Mapleridge  
Houston, TX 77081  
T. 713.432.7727  
F. 713.432.0120

May 29, 2018

HUD,

Due to inclement weather during critical path phases of construction we are requesting an additional thirteen (13) calendar days.

Nine (9) days accounted for actual working days and four (4) non-working days, extending the calendar day contract by a total of thirteen (13) days.

Thank you in advance for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "L. Counce", is written over a light blue horizontal line.

Larry Counce II  
Senior Project Manager

# CONSENT OF SURETY COMPANY

Project: Merritt Heritage  
4700 Williams Drive  
Georgetown, TX 78633

BOND NO. 106660895

To: DDC Merritt Heritage, Ltd., Owner  
Dougherty Mortgage LLC and/or  
U.S. Department of Housing and  
Urban Development, Lender

HUD Project No.: 115-35798

Contract For: General Construction

Contract Date: October 2, 2017

Contractor: CHDC Brownstone GC Joint Venture  
6517 Maple Ridge  
Houston, TX 77081

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In accordance with the provisions of the Contract between the Owner and the Contractor as indicated above, the **Travelers Casualty and Surety Company of America, SURETY**,  
on bond of

**CHDC Brownstone GC Joint Venture, CONTRACTOR**,

hereby agrees to the following time extension to the construction time of the contract as follows:

**An additional thirteen (13) days is added, extending the job from December 31, 2018 to January 13, 2019.**

The Surety agrees that such change in the contract price does not relieve the Surety of any of its obligations to

**DDC Merritt Heritage, Ltd, Owner  
Dougherty Mortgage LLC, and/or  
U.S. Department of Housing and Urban Development, Lender**

As set forth in the said Surety's bonds.

IN WITNESS THEREOF, the Surety has set its hand and seal this 29<sup>th</sup> day of May, 2018.

Travelers Casualty and Surety Company of America  
Surety

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

Richard Covington, Attorney-in-Fact  
\_\_\_\_\_

Witness:

  
\_\_\_\_\_  
Mary Pena





POWER OF ATTORNEY

Travelers Casualty and Surety Company of America
Travelers Casualty and Surety Company
St. Paul Fire and Marine Insurance Company

Attorney-In-Fact No. 231530

KNOW ALL MEN BY THESE PRESENTS: That Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company are corporations duly organized under the laws of the State of Connecticut (herein collectively called the lawful Attorney-in-Fact to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 3rd day of February, 2017.

Travelers Casualty and Surety Company of America
Travelers Casualty and Surety Company
St. Paul Fire and Marine Insurance Company



State of Connecticut
City of Hartford ss.

By: [Signature]
Robert L. Raney, Senior Vice President

On this the 3rd day of February, 2017, before me personally appeared Robert L. Raney, who acknowledged himself to be the Senior Vice President of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.
My Commission expires the 30th day of June, 2021



[Signature]
Marie C. Tetreault, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, which resolutions are now in full force and effect, reading as follows:

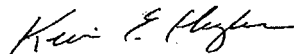
**RESOLVED**, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

**FURTHER RESOLVED**, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

**FURTHER RESOLVED**, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

**FURTHER RESOLVED**, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, **Kevin E. Hughes**, the undersigned, Assistant Secretary of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which will remain in full force and effect through December 31, 2018.



Kevin E. Hughes, Assistant Secretary

Dated this 29th day of May, 2018.



**To verify the authenticity of this Power of Attorney, call 1-800-421-3880 to contact us. Please refer to the Attorney-In-Fact number, the above-named individual and the details of the bond to which the power is attached.**



SCHEDULE DELAY NOTIFICATION

Rain Delay No.

1

DATE: 12/6/2017
NO.# 1
OWNER: DDC
OWNER REP: Colby Denison
PROJECT: Merritt Heritage
LOCATION: 4700 Williams
DELAY DAYS: 1

TOTAL THIS MONTH: \_\_\_\_\_

REASON: (WEATHER)
A. SOIL CONDITIONS LIMITING EARTHWORK OR UTILITY PRODUCTION TO <60%.
X B. RAIN 2 HOURS OR MORE.
C. OTHER

SCHEDULE AFFECTED:

BUILDING #
BUILDING #
BUILDING #
BUILDING #
BUILDING #
BUILDING #

COMMENTS:

1" total rain fall

SUBMITTED BY: Lee Chase

DATE: 3/7/2018

SCHEDULE DELAY NOTIFICATION

Rain Delay No.

DATE: 12/7/2017  
NO.# 2  
OWNER: DDC  
OWNER REP: Colby Denison  
PROJECT: Merritt Heritage  
LOCATION: 4700 Williams  
DELAY DAYS: 1

TOTAL THIS MONTH: 2

REASON: (WEATHER)  
X A. SOIL CONDITIONS LIMITING EARTHWORK OR UTILITY PRODUCTION TO <60%.  
B. RAIN 2 HOURS OR MORE.  
C. OTHER

SCHEDULE AFFECTED:

BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_

COMMENTS:

SUBMITTED BY: Lee Chase

DATE: 3/7/2018

**SCHEDULE DELAY NOTIFICATION**

Rain Delay No.

DATE: 12/19/2017  
NO.# 3  
OWNER: DDC  
OWNER REP: Colby Denison  
PROJECT: Merritt Heritage  
LOCATION: 4700 Williams  
DELAY DAYS: 1

TOTAL THIS MONTH: \_\_\_\_\_

REASON:

(WEATHER)

X

- A. SOIL CONDITIONS LIMITING EARTHWORK OR UTILITY PRODUCTION TO <60%.
- B. RAIN 2 HOURS OR MORE.
- C. OTHER

SCHEDULE AFFECTED:

BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_

COMMENTS:

SUBMITTED BY: Lee Chase

DATE: 3/7/2018

SCHEDULE DELAY NOTIFICATION

Rain Delay No.

4

DATE: 12/22/2018  
NO.# 4  
OWNER: DDC  
OWNER REP: Colby Denison  
PROJECT: Merritt Heritage  
LOCATION: 4700 Williams  
DELAY DAYS: 1

TOTAL THIS MONTH: \_\_\_\_\_

REASON:

(WEATHER)

X

- A. SOIL CONDITIONS LIMITING EARTHWORK OR UTILITY PRODUCTION TO <60%.
- B. RAIN 2 HOURS OR MORE.
- C. OTHER

SCHEDULE AFFECTED:

BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_

COMMENTS:

.5" total rain fall

SUBMITTED BY: Lee Chase

DATE: 3/7/2018

SCHEDULE DELAY NOTIFICATION

Rain Delay No.

DATE: 12/26/2017  
NO.# 5  
OWNER: DDC  
OWNER REP: Colby Denison  
PROJECT: Merritt Heritage  
LOCATION: 4700 Williams  
DELAY DAYS: 1

TOTAL THIS MONTH: 6

REASON:

(WEATHER)

X

- A. SOIL CONDITIONS LIMITING EARTHWORK OR UTILITY PRODUCTION TO <60%.
- B. RAIN 2 HOURS OR MORE.
- C. OTHER

SCHEDULE AFFECTED:

BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_

COMMENTS:

SUBMITTED BY: Lee Chase

DATE: 3/7/2018

**SCHEDULE DELAY NOTIFICATION**

Rain Delay No.

DATE: 1/16/2018  
NO.# 6  
OWNER: DDC  
OWNER REP: Colby Denison  
PROJECT: Merritt Heritage  
LOCATION: 4700 Williams  
DELAY DAYS: 1

TOTAL THIS MONTH: \_\_\_\_\_

REASON: (WEATHER)  
A. SOIL CONDITIONS LIMITING EARTHWORK OR UTILITY PRODUCTION TO <60%.  
B. RAIN 2 HOURS OR MORE.  
C. OTHER

X

SCHEDULE AFFECTED:

BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_

COMMENTS:

SUBMITTED BY: Lee Chase

DATE: 3/7/2018



SCHEDULE DELAY NOTIFICATION

Rain Delay No.

DATE: 1/17/2018  
NO.# 7  
OWNER: DDC  
OWNER REP: Colby Denison  
PROJECT: Merritt Heritage  
LOCATION: 4700 Williams  
DELAY DAYS: 1

TOTAL THIS MONTH: 2

REASON: (WEATHER)  
A. SOIL CONDITIONS LIMITING EARTHWORK OR UTILITY PRODUCTION TO <60%.  
B. RAIN 2 HOURS OR MORE.  
C. OTHER  
X

SCHEDULE AFFECTED:

BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_

COMMENTS:

SUBMITTED BY: Lee Chase

DATE: 3/7/2018

SCHEDULE DELAY NOTIFICATION

Rain Delay No.

8

DATE: 2/19/2018  
NO.# 8  
OWNER: DDC  
OWNER REP: Colby Denison  
PROJECT: Merritt Heritage  
LOCATION: 4700 Williams  
DELAY DAYS: 1

TOTAL THIS MONTH: 1

REASON: (WEATHER)  
X A. SOIL CONDITIONS LIMITING EARTHWORK OR UTILITY PRODUCTION TO <60%.  
B. RAIN 2 HOURS OR MORE.  
C. OTHER

SCHEDULE AFFECTED:

BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_

COMMENTS:

.25" afternoon

SUBMITTED BY: Lee Chase

DATE: 3/7/2018

SCHEDULE DELAY NOTIFICATION

Rain Delay No. 9

DATE: 2/20/2018  
NO.# 9  
OWNER: DDC  
OWNER REP: Colby Denison  
PROJECT: Merritt Heritage  
LOCATION: 4700 Williams  
DELAY DAYS: 1

TOTAL THIS MONTH: \_\_\_\_\_ 2

REASON: (WEATHER)  
A. SOIL CONDITIONS LIMITING EARTHWORK OR UTILITY PRODUCTION TO <60%.  
X B. RAIN 2 HOURS OR MORE.  
C. OTHER

SCHEDULE AFFECTED:

BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_

COMMENTS:

.5" total rain fall today

SUBMITTED BY: Lee Chase

DATE: 3/7/2018

SCHEDULE DELAY NOTIFICATION

Rain Delay No.

10

DATE: 2/21/2018  
NO.# 10  
OWNER: DDC  
OWNER REP: Colby Denison  
PROJECT: Merritt Heritage  
LOCATION: 4700 Williams  
DELAY DAYS: 1

TOTAL THIS MONTH: 3

REASON: (WEATHER)  
X A. SOIL CONDITIONS LIMITING EARTHWORK OR UTILITY PRODUCTION TO <60%.  
B. RAIN 2 HOURS OR MORE.  
C. OTHER

SCHEDULE AFFECTED:

BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_

COMMENTS:

.5" total rain fall

SUBMITTED BY: Lee Chase

DATE: 3/7/2018

SCHEDULE DELAY NOTIFICATION

Rain Delay No.

11

DATE: 2/22/2018  
NO.# 11  
OWNER: DDC  
OWNER REP: Colby Denison  
PROJECT: Merritt Heritage  
LOCATION: 4700 Williams  
DELAY DAYS: 1

TOTAL THIS MONTH: 4

REASON: (WEATHER)  
X A. SOIL CONDITIONS LIMITING EARTHWORK OR UTILITY PRODUCTION TO <60%.  
B. RAIN 2 HOURS OR MORE.  
C. OTHER

SCHEDULE AFFECTED:

BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_

COMMENTS:

.25"

SUBMITTED BY: Lee Chase

DATE: 3/7/2018

SCHEDULE DELAY NOTIFICATION

Rain Delay No.

12

DATE: 2/23/2018  
NO.# 12  
OWNER: DDC  
OWNER REP: Colby Denison  
PROJECT: Merritt Heritage  
LOCATION: 4700 Williams  
DELAY DAYS: 1

TOTAL THIS MONTH: 5

REASON: (WEATHER)  
X A. SOIL CONDITIONS LIMITING EARTHWORK OR UTILITY PRODUCTION TO <60%.  
B. RAIN 2 HOURS OR MORE.  
C. OTHER

SCHEDULE AFFECTED:

BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_

COMMENTS:

.5"

SUBMITTED BY: Lee Chase

DATE: 3/7/2018



SCHEDULE DELAY NOTIFICATION

Rain Delay No.

13

DATE: 2/26/2018  
NO.# 13  
OWNER: DDC  
OWNER REP: Colby Denison  
PROJECT: Merritt Heritage  
LOCATION: 4700 Williams  
DELAY DAYS: 1

TOTAL THIS MONTH: 5

REASON:  
X

(WEATHER)  
A. SOIL CONDITIONS LIMITING EARTHWORK OR UTILITY PRODUCTION TO <60%.  
B. RAIN 2 HOURS OR MORE.  
C. OTHER

SCHEDULE AFFECTED:

BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_

COMMENTS:

Correct site conditions from rain earlier this week

SUBMITTED BY: Lee Chase

DATE: 3/7/2018

**SCHEDULE DELAY NOTIFICATION**

Rain Delay No.

14

DATE: 2/27/2018  
NO.# 14  
OWNER: DDC  
OWNER REP: Colby Denison  
PROJECT: Merritt Heritage  
LOCATION: 4700 Williams  
DELAY DAYS: 1

TOTAL THIS MONTH: 6

REASON: (WEATHER)  
A. SOIL CONDITIONS LIMITING EARTHWORK OR UTILITY PRODUCTION TO <60%.  
X B. RAIN 2 HOURS OR MORE.  
C. OTHER

SCHEDULE AFFECTED:

BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_

COMMENTS:

.25"

SUBMITTED BY: Lee Chase

DATE: 3/7/2018

**SCHEDULE DELAY NOTIFICATION**

Rain Delay No.

**15**

DATE: 3/28/18  
NO.# 15  
OWNER: DDC  
OWNER REP: Colby Denison  
PROJECT: Merritt Heritage  
LOCATION: 4700 Williams Dr  
DELAY DAYS: 1.00

TOTAL THIS MONTH: 2

REASON:

(WEATHER)

X

- A. SOIL CONDITIONS LIMITING EARTHWORK OR UTILITY PRODUCTION TO <60%.
- B. RAIN 2 HOURS OR MORE.
- C. OTHER

SCHEDULE AFFECTED:

BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_

COMMENTS:

2.25"

SUBMITTED BY: Lee Chase

DATE: 3/29/2018

SCHEDULE DELAY NOTIFICATION

Rain Delay No.

16

DATE: 3/29/18  
NO.# 16  
OWNER: DDC  
OWNER REP: Colby Denison  
PROJECT: Merritt Heritage  
LOCATION: 4700 Williams Dr  
DELAY DAYS: 1.00

TOTAL THIS MONTH: 2

REASON: (WEATHER)  
X A. SOIL CONDITIONS LIMITING EARTHWORK OR UTILITY PRODUCTION TO <60%.  
B. RAIN 2 HOURS OR MORE.  
C. OTHER

SCHEDULE AFFECTED:

BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_

COMMENTS:

Correct site conditions from previous days 2.25" of rain fall.

SUBMITTED BY: Lee Chase

DATE: 3/29/2018

December 2017

December Precip Stats: Actual Month Total: 3.11 in | Average Month Total: 6.89 in

About Calendar

Print Calendar

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					1 Scattered Clouds Actual: 73°   48° 0.00 in Average: 62°   43° 0.12 in	2 Clear Actual: 77°   48° 0.00 in Average: 61°   42° 0.12 in
3 Mostly Cloudy Actual: 73°   60° 0.00 in Average: 61°   42° 0.12 in	4 Partly Cloudy Actual: 82°   66° 0.03 in Average: 60°   41° 0.12 in	5 Overcast Actual: 71°   39° 0.27 in Average: 60°   41° 0.12 in	6 Rain Actual: 41°   39° 0.78 in Average: 59°   40° 0.12 in	7 Snow Actual: 46°   30° MM in Average: 59°   39° 0.12 in	8 Clear Actual: 50°   28° 0.00 in Average: 59°   38° 0.11 in	9 Clear Actual: 64°   30° 0.00 in Average: 59°   38° 0.11 in
10 Clear Actual: 68°   32° 0.00 in Average: 59°   37° 0.11 in	11 Clear Actual: 72°   39° 0.00 in Average: 59°   37° 0.11 in	12 Clear Actual: 61°   36° 0.00 in Average: 59°   37° 0.11 in	13 Clear Actual: 62°   32° 0.00 in Average: 59°   36° 0.10 in	14 Clear Actual: 63°   43° 0.00 in Average: 59°   36° 0.10 in	15 Clear Actual: 59°   37° 0.00 in Average: 58°   36° 0.10 in	16 Rain Actual: 50°   36° 1.41 in Average: 58°   36° 0.10 in
17 Fog Actual: 59°   42° 0.00 in Average: 57°   35° 0.10 in	18 Fog Actual: 55°   48° 0.02 in Average: 57°   35° 0.11 in	19 Tstorm Actual: 69°   55° 0.42 in Average: 56°   35° 0.11 in	20 Clear Actual: 73°   48° 0.00 in Average: 56°   34° 0.94 in	21 Scattered Clouds Actual: 78°   42° 0.00 in Average: 56°   34° 0.11 in	22 Rain Actual: 71°   39° 0.16 in Average: 56°   34° 0.12 in	23 Clear Actual: 54°   35° 0.00 in Average: 56°   34° 0.12 in
24 Scattered Clouds Actual: 55°   34° 0.00 in Average: 56°   34° 0.12 in	25 Partly Cloudy Actual: 52°   27° 0.00 in Average: 56°   34° 0.13 in	26 Rain Actual: 48°   39° 0.01 in Average: 57°   35° 2.55 in	27 Overcast Actual: 39°   36° 0.00 in Average: 57°   35° 0.13 in	28 Overcast Actual: 46°   35° 0.00 in Average: 57°   35° 0.14 in	29 Overcast Actual: 48°   39° 0.00 in Average: 57°   35° 0.14 in	30 Overcast Actual: 57°   39° 0.00 in Average: 57°   35° 0.14 in
31 Snow Actual: 39°   24° MM in Average: 57°   36° 0.14 in						

# Weather History for KGTU - January, 2018

January 2018

January Precip Stats: Actual Month Total: 0.25 in | Average Month Total: 3.97 in

About Calendar

Print Calendar

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	<b>1</b> Partly Cloudy Actual: 34°   21° 0.00 in Average: 58°   37° 0.14 in	<b>2</b> Snow Actual: 30°   21° 0.00 in Average: 58°   37° 0.14 in	<b>3</b> Clear Actual: 54°   16° 0.00 in Average: 59°   37° 0.14 in	<b>4</b> Clear Actual: 53°   24° 0.00 in Average: 59°   37° 0.14 in	<b>5</b> Scattered Clouds Actual: 60°   35° 0.00 in Average: 59°   37° 0.14 in	<b>6</b> Fog Actual: 63°   30° 0.00 in Average: 59°   38° 0.13 in
<b>7</b> Partly Cloudy Actual: 66°   53° 0.00 in Average: 59°   38° 0.13 in	<b>8</b> Clear Actual: 66°   39° 0.00 in Average: 59°   38° 0.12 in	<b>9</b> Rain Actual: 68°   33° 0.00 in Average: 59°   38° 0.12 in	<b>10</b> Partly Cloudy Actual: 68°   46° 0.00 in Average: 59°   38° 0.11 in	<b>11</b> Partly Cloudy Actual: 70°   41° 0.00 in Average: 59°   38° 0.11 in	<b>12</b> Clear Actual: 53°   28° 0.00 in Average: 59°   38° 0.10 in	<b>13</b> Clear Actual: 52°   28° 0.00 in Average: 59°   38° 0.10 in
<b>14</b> Clear Actual: 57°   25° 0.00 in Average: 59°   38° 0.09 in	<b>15</b> Rain Actual: 66°   34° 0.11 in Average: 59°   38° 0.08 in	<b>16</b> Snow Actual: 32°   21° 0.00 in Average: 59°   38° 1.33 in	<b>17</b> Clear Actual: 36°   12° 0.00 in Average: 59°   38° 0.07 in	<b>18</b> Partly Cloudy Actual: 43°   19° 0.00 in Average: 59°   38° 0.07 in	<b>19</b> Fog Actual: 52°   37° 0.00 in Average: 59°   38° 0.06 in	<b>20</b> Partly Cloudy Actual: 69°   51° 0.00 in Average: 59°   38° 0.06 in
<b>21</b> Tstorm Actual: 70°   57° 0.05 in Average: 59°   38° 0.06 in	<b>22</b> Clear Actual: 62°   37° 0.00 in Average: 59°   38° 0.06 in	<b>23</b> Clear Actual: 66°   30° 0.00 in Average: 58°   38° 0.05 in	<b>24</b> Clear Actual: 62°   30° 0.00 in Average: 58°   39° 0.05 in	<b>25</b> Partly Cloudy Actual: 63°   27° 0.00 in Average: 58°   39° 0.05 in	<b>26</b> Overcast Actual: 64°   48° 0.00 in Average: 58°   39° 0.05 in	<b>27</b> Overcast Actual: 64°   55° 0.06 in Average: 58°   39° 0.05 in
<b>28</b> Scattered Clouds Actual: 69°   46° 0.00 in Average: 58°   39° 0.05 in	<b>29</b> Clear Actual: 63°   37° 0.02 in Average: 58°   39° 0.05 in	<b>30</b> Clear Actual: 64°   27° 0.00 in Average: 58°   39° 0.06 in	<b>31</b> Partly Cloudy Actual: 70°   48° 0.00 in Average: 58°   39° 0.06 in			



# Weather History for KGTU - February, 2018

February 2018

February Precip Stats: Actual Month Total, 2.65 in | Average Month Total, 6.21 in

About Calendar

Print Calendar

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
				1 Clear	2 Partly Cloudy	3 Rain
				Actual: 71°   51° Average: 58°   39°	Actual: 57°   41° Average: 58°   39°	Actual: 55°   45° Average: 58°   39°
4 Fog	5 Partly Cloudy	6 Rain	7 Partly Cloudy	8 Partly Cloudy	9 Mostly Cloudy	10 Mostly Cloudy
Actual: 69°   41° Average: 58°   39°	Actual: 52°   37° Average: 58°   39°	Actual: 51°   35° Average: 58°   40°	Actual: 46°   34° Average: 59°   40°	Actual: 57°   28° Average: 59°   40°	Actual: 64°   50° Average: 59°   40°	Actual: 61°   35° Average: 60°   40°
11 Tstorm	12 Partly Cloudy	13 Rain	14 Fog	15 Mostly Cloudy	16 Partly Cloudy	17 Fog
Actual: 42°   28° Average: 60°   40°	Actual: 42°   28° Average: 61°   40°	Actual: 46°   37° Average: 61°   41°	Actual: 71°   44° Average: 61°   41°	Actual: 75°   62° Average: 62°   41°	Actual: 70°   55° Average: 62°   41°	Actual: 61°   46° Average: 62°   41°
18 Fog	19 Mostly Cloudy	20 Tstorm	21 Tstorm	22 Tstorm	23 Tstorm	24 Tstorm
Actual: 73°   46° Average: 62°   41°	Actual: 79°   68° Average: 62°   41°	Actual: 72°   60° Average: 62°   41°	Actual: 57°   36° Average: 61°   41°	Actual: 42°   35° Average: 61°   41°	Actual: 59°   41° Average: 61°   41°	Actual: 75°   59° Average: 61°   41°
25 Tstorm	26 Rain	27 Fog	28 Mostly Cloudy			
Actual: 64°   48° Average: 61°   41°	Actual: 64°   46° Average: 61°   41°	Actual: 77°   55° Average: 61°   41°	Actual: 78°   68° Average: 61°   41°			

# Weather History for KGTU - March, 2018

March 2018

March Precip Stats: Actual Month Total: 2.85 in | Average Month Total: 7.82 in

[About Calendar](#)

[Print Calendar](#)

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
				1 Partly Cloudy	2 Scattered Clouds	3 Partly Cloudy
				Actual: 71°   50° 0.04 in	Actual: 72°   46° 0.00 in	Actual: 69°   51° 0.05 in
				Average: 62°   41° 0.15 in	Average: 62°   41° 0.16 in	Average: 62°   41° 0.17 in
4 Rain	5 Partly Cloudy	6 Clear	7 Clear	8 Clear	9 Partly Cloudy	10 Partly Cloudy
Actual: 77°   60° 0.07 in	Actual: 81°   57° 0.00 in	Actual: 70°   44° 0.00 in	Actual: 64°   39° 0.00 in	Actual: 68°   43° 0.00 in	Actual: 72°   53° 0.00 in	Actual: 89°   64° 0.00 in
Average: 63°   41° 0.16 in	Average: 63°   42° 0.16 in	Average: 63°   42° 0.16 in	Average: 63°   43° 0.16 in	Average: 63°   43° 0.16 in	Average: 64°   44° 0.15 in	Average: 64°   44° 0.15 in
11 Partly Cloudy	12 Clear	13 Scattered Clouds	14 Clear	15 Partly Cloudy	16 Partly Cloudy	17 Tstorm
Actual: 69°   52° 0.00 in	Actual: 64°   42° 0.00 in	Actual: 69°   37° 0.00 in	Actual: 69°   37° 0.00 in	Actual: 73°   48° 0.00 in	Actual: 87°   62° 0.00 in	Actual: 82°   64° 0.25 in
Average: 64°   45° 0.15 in	Average: 64°   45° 0.15 in	Average: 65°   45° 0.15 in	Average: 65°   45° 0.14 in	Average: 65°   45° 0.14 in	Average: 65°   45° 0.14 in	Average: 66°   45° 1.52 in
18 Tstorm	19 Scattered Clouds	20 Clear	21 Clear	22 Scattered Clouds	23 Partly Cloudy	24 Partly Cloudy
Actual: 84°   64° 0.20 in	Actual: 78°   53° 0.00 in	Actual: 70°   46° 0.00 in	Actual: 75°   41° 0.00 in	Actual: 79°   48° 0.00 in	Actual: 79°   60° 0.00 in	Actual: 84°   66° 0.00 in
Average: 66°   46° 0.13 in	Average: 66°   46° 0.13 in	Average: 66°   46° 0.13 in	Average: 67°   47° 0.13 in	Average: 67°   47° 0.12 in	Average: 67°   48° 0.12 in	Average: 68°   48° 0.12 in
25 Mostly Cloudy	26 Partly Cloudy	27 Mostly Cloudy	28 Tstorm	29 Fog	30 Clear	31 Scattered Clouds
Actual: 77°   68° 0.00 in	Actual: 84°   69° 0.00 in	Actual: 79°   62° 0.01 in	Actual: 70°   57° 2.24 in	Actual: 82°   52° 0.00 in	Actual: 72°   52° 0.00 in	Actual: 81°   57° 0.00 in
Average: 68°   48° 0.12 in	Average: 69°   49° 1.64 in	Average: 69°   49° 0.69 in	Average: 70°   50° 0.12 in	Average: 70°   50° 0.12 in	Average: 71°   51° 0.13 in	Average: 71°   51° 0.15 in

	Count of Rain Days >.01"	Count of Rain Days >.5"
2015	86	22
2016	74	28
2017	60	20
Averages	73.33333333	23.33333333

Count of Rain Days >.5"												
	January	February	March	April	May	June	July	August	September	October	November	December
2015	3	0	2	0	6	4	0	0	0	4	2	1
2016	0	1	4	3	5	2	1	5	2	0	2	3
2017	2	2	2	2	2	1	0	4	0	2	0	3
Averages	1.67	1.00	2.67	1.67	4.33	2.33	0.33	3.00	0.67	2.00	1.33	2.33
											Total	23.33

National Centers for Environmental Information , [www.ncdc.noaa.gov/cdo-web/orders?email=nicolas@thebrownstonegroup.net&id=1310142](http://www.ncdc.noaa.gov/cdo-web/orders?email=nicolas@thebrownstonegroup.net&id=1310142).

**Exhibit B**

**Second Change Order – Weather Delay**

# Request for Construction Changes on Project Mortgages

U.S. Department of Housing and Urban Development  
Office of Housing  
Federal Housing Commissioner

OMB Approval No. 2502-0011 (exp. 11/30/2016)

No changes in the drawings and specifications may be effected unless a completed request for construction changes has been filed and approved by HUD in accordance with the Construction Contract. **Read the instructions & Public Burden statement on the back of this form.**

Name and location of this project  
**Merritt Heritage, 4700 Williams Dr., Georgetown, TX 78633**

Request No.(HUD use only) Project Number  
**115-35798**

Name of Contractor  
**CHDC Brownstone GC Joint Vent**

Name of Mortgagor  
**DDC Merritt Heritage, LTD**

Name of Mortgagee  
**Daugherty Mortgage LLC**

**To the Federal Housing Commissioner:** You are requested to consider the following proposed changes in the project. The changes are satisfactory to the parties hereto, as indicated by the signatures below.

Description of Changes	Mortgagor Estimated Effect on Cost + or -	HUD Estimated Effect on Cost + or -	V = Acceptable O = Unacceptable	
			Arch.	Val.
a. <b>Time Extension 003: Delays due to unseasonable weather</b>				
b. <b>16 Days</b>			V	
c.				
d.				
e.				
f.				
g.				
h.				
i.				
j.				
k.				
l.				
m.				

Amount on deposit with mortgagees to cover increased cost of changes pursuant to conditions of Request No. \$	Total \$	Initial & Date	Initial&Date	Initial&Date
			AF	10/31/18

I certify that I have no financial interest in this project beyond the fee for my professional services, and that I have no interest with the mortgagor, contractor, or any subcontractor or supplier. The changes set forth in this request conform to the intent of the contract documents and I recommend that the changes be approved.

Contractor (signature)  Mortgagor (signature)  Mortgagee (signature) 

The following is required on requests involving cooperatives and non-profit mortgagors with respect to any increase or decrease in cost resulting from acceptable changes: (check appropriate box.)

- The abovesigned contractor agrees to assume any additional costs and agrees that he will not assert any claim against the Mortgagor in connection therewith.
- The abovesigned Mortgagor, acting pursuant to a resolution adopted at a meeting of its stockholders or members, and the abovesigned Contractor, agree to the above described construction changes and agree that the construction contract executed by them (date) \_\_\_\_\_ is amended by increasing the contract price of \$ \_\_\_\_\_ set forth in Article 3 thereof to \$ \_\_\_\_\_ all other provisions of the Construction Contract remain unchanged.
- The abovesigned Mortgagor and the above signed Contractor agree to the construction changes described above and agree that the construction contract executed by them (date) \_\_\_\_\_ is amended by decreasing the contract price of \$ \_\_\_\_\_ set forth in Article 3 thereof to \$ \_\_\_\_\_; all other provisions of the construction contract remain unchanged.

Federal Housing Commissioner Findings: 1. Mortgagor's Estimate			2. Net effect on Construction Costs			
a. Effect on cost of previously accepted changes \$	b. Effect on cost to date of all changes \$	c. Percent %	a. Present changes \$	b. Previous changes \$	c. Total \$	d. Percent %
			<input type="checkbox"/> Increase <input type="checkbox"/> Decrease	<input type="checkbox"/> Increase <input type="checkbox"/> Decrease	<input type="checkbox"/> Increase <input type="checkbox"/> Decrease	

3. Changes \_\_\_\_\_ are acceptable and the drawings and specifications amended, provided:
- a. That a total sum of \$ \_\_\_\_\_ is on deposit with the mortgage to cover net increase in cost resulting from present and previous construction changes. This supersedes any previous requirements. The money will not be released without written consent of HUD prior to final completion and acceptance of the project construction. No further advances of the mortgage proceeds under the Building Loan Agreement will be approved unless the total sum is on deposit with you.
  - b. That in order to reflect the net decrease in cost or reduction in mortgage based on net income or number of family units, resulting from acceptable present and previous construction changes, the amount of \$ \_\_\_\_\_ shall be deducted from the amount entered on the line entitled "Sum of Cost Breakdown Items Plus Inventories of Materials", form HUD-92448. This amount may be modified by later changes.
  - c. Consent of surety to these changes is obtained in writing and a signed copy sent to this office prior to effecting the change.
  - d. There is compliance with the conditions stated on the back of this form.

4.  Changes \_\_\_\_\_ are not acceptable. See "Reasons for Unacceptability" on the back of this form. Mortgage Credit Initial & Date

HUD analysis and findings reviewed and approved: Director, Housing Development Division (signature) Date Federal Housing Commissioner Signature of authorized agent

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**Public Reporting Burden** for this collection is estimated to average 2 hours per response, including the time for reviewing, searching existing data sources, gathering and maintaining the data needed, and compiling and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Reports Management Officer, Paperwork Reduction Project (2502-0011), U.S. Department of Housing and Urban Development, 451 7<sup>th</sup> Street SW, Washington, DC 20410-3600.

The Department of Housing and Urban Development (HUD) is authorized to collect this information by provisions set forth in Section 5 of the United States Housing Act of 1937, as amended. It is provided by contractors, mortgagors and mortgagees to obtain the FHA Commissioner's approval of changes in contract drawings and specifications, and this information is used to ensure that viable projects are developed. This information is used by HUD to ensure that viable projects are being developed. Furnishing of this information is mandatory, and failure to provide it may result in your not receiving your benefits.

**Privacy Act Notice.** The United States Department of Housing and Urban Development, Federal Housing Administration, is authorized to solicit the information requested in this form by virtue of Title 12, United States Code, Section 1701 et seq., and regulations promulgated thereunder at Title 12, Code of Federal Regulations. While no assurances of confidentiality is pledged to respondents, HUD generally discloses this data only in response to a Freedom of Information request. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number.

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### Instructions

Send the original and six copies to HUD through the mortgagee.

Under "Description of Changes" describe each proposed change and enter the amount by which the construction cost will be increased or decreased as the net result of each proposed change. Attach documentation including (1) reason for each change, (2) general scope, (3) full detailed description of work to be omitted and/or added and the cost for each trade affected, and (4) reference any attachments showing proposed revisions.

Estimate the cost of each change on the basis of the current cost of items omitted, substituted or added. Estimates include job overhead and builder's fee, or job overhead and general overhead, as applied in the HUD estimate of the project. No allowance for "Builder's and Sponsor's Profit and Risk" is included. No architect's or engineer's fee is included.

This form is not used for off-site changes. Such changes must be submitted in writing, using this form as a guide.

To be acceptable to HUD a proposed change must be due to necessity, or be an appropriate betterment, or qualify as an equivalent. In accepting any changes, it is assumed that they will be executed. If an accepted change is not executed, it must be nullified by substituting a Request for Construction Changes amending the drawings and specifications so as to restore the drawings and specifications to prior status or to a status acceptable to HUD.

Send requests for a time extension on a separate form.

### Conditions of Acceptance or Reasons for Unacceptability

When the HUD estimated cost of all accepted changes results in a net decrease in the total construction cost, the insurable mortgage will be similarly decreased; but if the net effect is an increase, the additional costs will be defrayed by the mortgagor. The acceptance of any change or changes involving a net increase does not increase the mortgage amount.





October 31, 2018

Mr. Colby Denison  
DDC Merritt Heritage, Ltd.  
P.O. Box 302707  
Austin, TX 78703

Dear Mr. Denison:

This letter is in regard to your project, Merritt Heritage, FHA #115-35798, and the third proposed change order (PCO #3.) The proposed change is a time extension request due to inclement weather during the months of July 2018, September 2018, and October 2018. I believe the time extension is justified based on the following findings:

- Construction activities during the timeframe of July 2018, September 2018, and October 2018 included framing, roofing, and exterior finishes such as stucco, masonry, and painting. All are critical path and would be adversely affected by inclement weather.
- The contractor has submitted documentation establishing historical averages for rainfall for the previous three years, schedule delay notifications for (16) actual days impacted by rainfall for May 2018 through October 2018, of which (15) occurred during the months of July, September, and October, and corresponding weather data for the delayed days. A month-by-month comparison of historical averages for rainfall versus actual missed days results in an excess of (12) days beyond what could have reasonably been anticipated for the months of July, September, and October 2018.
- Because the construction contract is based on total calendar days rather than actual work days, the contractor is requesting an extension of (16) calendar days in order to accommodate weekends.
- Surety has consented to the requested time extension.

Thank you for your consideration of this change order. Please let me know if you would like further information.

Sincerely,

A handwritten signature in blue ink, appearing to read "A. Freiburger", with a stylized flourish at the end.

Andrea Freiburger, AIA  
President, Spring Architects, Inc.  
[andrea@springarchitects.com](mailto:andrea@springarchitects.com)

# CONSENT OF SURETY COMPANY

Project: Merritt Heritage  
4700 Williams Drive  
Georgetown, TX 78633

BOND NO. 106660895

To: DDC Merritt Heritage, Ltd., Owner  
Dougherty Mortgage LLC and/or  
U.S. Department of Housing and  
Urban Development, Lender

HUD Project No.: 115-35798

Contract For: General Construction

Contract Date: October 2, 2017

Contractor: CHDC Brownstone GC Joint Venture  
6517 Maple Ridge  
Houston, TX 77081

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In accordance with the provisions of the Contract between the Owner and the Contractor as indicated above, the **Travelers Casualty and Surety Company of America, SURETY**, on bond of

**CHDC Brownstone GC Joint Venture, CONTRACTOR**,

hereby agrees to the following time extension to the construction time of the contract as follows:

**An additional sixteen (16) days is added, extending the job from January 13, 2019 to January 29, 2019.**

The Surety agrees that such change in the contract price does not relieve the Surety of any of its obligations to

**DDC Merritt Heritage, Ltd, Owner  
Dougherty Mortgage LLC, and/or  
U.S. Department of Housing and Urban Development, Lender**

As set forth in the said Surety's bonds.

IN WITNESS THEREOF, the Surety has set its hand and seal this 5<sup>th</sup> day of November, 2018.

Travelers Casualty and Surety Company of America  
Surety

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

Richard Covington, Attorney-in-Fact  
\_\_\_\_\_

Witness:

  
\_\_\_\_\_  
Myisha Jefferson





**Travelers Casualty and Surety Company of America  
Travelers Casualty and Surety Company  
St. Paul Fire and Marine Insurance Company**

**POWER OF ATTORNEY**

**KNOW ALL MEN BY THESE PRESENTS:** That Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company are corporations duly organized under the laws of the State of Connecticut (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint **Marc W. Boots, Vickie Lacy, Susan Golla, Maria D. Zuniga, Richard Covington, Joseph R. Aulbert, Ashley Koletar, and Ryan J. Varela, of Houston, Texas,** their true and lawful Attorney-in-Fact to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

**IN WITNESS WHEREOF,** the Companies have caused this instrument to be signed, and their corporate seals to be hereto affixed, this 3rd day of February, 2017.



State of Connecticut

City of Hartford ss.

By:   
Robert L. Raney, Senior Vice President

On this the **3rd** day of **February, 2017**, before me personally appeared **Robert L. Raney**, who acknowledged himself to be the Senior Vice President of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

**In Witness Whereof,** I hereunto set my hand and official seal.

My Commission expires the **30th** day of **June, 2021**



Marie C. Tetreault, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, which resolutions are now in full force and effect, reading as follows:

**RESOLVED,** that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

**FURTHER RESOLVED,** that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

**FURTHER RESOLVED,** that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

**FURTHER RESOLVED,** that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, **Kevin E. Hughes**, the undersigned, Assistant Secretary of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which remains in full force and effect.

Dated this 5th day of November, 2018



Kevin E. Hughes, Assistant Secretary

**To verify the authenticity of this Power of Attorney, please call us at 1-800-421-3880.  
Please refer to the above-named Attorney-in-Fact and the details of the bond to which the power is attached.**



6517 Mapleridge  
Houston, TX 77081  
T. 713.432.7727  
F. 713.432.0120

October 30, 2018

HUD,

Due to unseasonable weather during the months of July, September, and October of 2018, we are requesting an additional sixteen (16) calendar days.

Twelve (12) days accounted for actual working days and four (4) non-working days, extending the calendar day contract by a total of sixteen (16) days.

Historical Rainfall for Georgetown Texas is three (3) days for July, September, and October which we have accounted for above. This average has been deducted from the total rainfall events of fifteen (15) during these months for this project.

Thank you in advance for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "L. Counce II".

Larry Counce II  
Senior Project Manager

SCHEDULE DELAY NOTIFICATION

Rain Delay No.

17

DATE: 5/4/18  
NO.# 17  
OWNER: DDC  
OWNER REP: Colby Denison  
PROJECT: Merritt Heritage  
LOCATION: 4700 Williams Dr  
DELAY DAYS: 1.00

TOTAL THIS MONTH: 1

REASON: (WEATHER)  
X A. SOIL CONDITIONS LIMITING EARTHWORK OR UTILITY PRODUCTION TO <60%.  
B. RAIN 2 HOURS OR MORE.  
C. OTHER

SCHEDULE AFFECTED:

BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_

COMMENTS:

1.25"

SUBMITTED BY: Lee Chase

DATE: 5/4/2018

### SCHEDULE DELAY NOTIFICATION

Rain Delay No.

18

DATE: 7/9/18  
NO.# 18  
OWNER: DDC  
OWNER REP: Colby Denison  
PROJECT: Merritt Heritage  
LOCATION: 4700 Williams Dr  
DELAY DAYS: 1.00

TOTAL THIS MONTH: 1

REASON:

(WEATHER)

X

- A. SOIL CONDITIONS LIMITING EARTHWORK OR UTILITY PRODUCTION TO <60%.
- B. RAIN 2 HOURS OR MORE.
- C. OTHER

SCHEDULE AFFECTED:

BUILDING # 5 roofing  
BUILDING # 8 framing  
BUILDING # 3, 6, 10 roof trusses  
BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_

COMMENTS:

.5"

SUBMITTED BY: Lee Chase

DATE: 7/9/2018



SCHEDULE DELAY NOTIFICATION

Rain Delay No.

19

DATE: 9/6/18
NO.# 19
OWNER: DDC
OWNER REP: Colby Denison
PROJECT: Merritt Heritage
LOCATION: 4700 Williams Dr
DELAY DAYS: 1.00

TOTAL THIS MONTH: 1

REASON: (WEATHER)
A. SOIL CONDITIONS LIMITING EARTHWORK OR UTILITY PRODUCTION TO <60%.
X B. RAIN 2 HOURS OR MORE.
C. OTHER

SCHEDULE AFFECTED:

BUILDING # 5 stucco
BUILDING # 3 stucco
BUILDING # 3 stone
BUILDING #
BUILDING #
BUILDING #

1.17"

SUBMITTED BY: Lee Chase

DATE: 9/6/2018

SCHEDULE DELAY NOTIFICATION

Rain Delay No.

20

DATE: 9/14/18  
NO.# 20  
OWNER: DDC  
OWNER REP: Colby Denison  
PROJECT: Merritt Heritage  
LOCATION: 4700 Williams Dr  
DELAY DAYS: 1.00

TOTAL THIS MONTH: 2

REASON:

(WEATHER)

X

- A. SOIL CONDITIONS LIMITING EARTHWORK OR UTILITY PRODUCTION TO <60%.
- B. RAIN 2 HOURS OR MORE.
- C. OTHER

SCHEDULE AFFECTED:

BUILDING # 5 stucco  
BUILDING # 3 stucco  
BUILDING # 3 stone  
BUILDING #  
BUILDING #  
BUILDING #

0.58"

SUBMITTED BY: Lee Chase

DATE: 9/14/2018

SCHEDULE DELAY NOTIFICATION

Rain Delay No.

21

DATE: 9/20/18  
 NO.# 21  
 OWNER: DDC  
 OWNER REP: Colby Denison  
 PROJECT: Merritt Heritage  
 LOCATION: 4700 Williams Dr  
 DELAY DAYS: 1.00

TOTAL THIS MONTH: 3

REASON: (WEATHER)  
 A. SOIL CONDITIONS LIMITING EARTHWORK OR UTILITY PRODUCTION TO <60%.  
 X B. RAIN 2 HOURS OR MORE.  
 C. OTHER

SCHEDULE AFFECTED:

BUILDING # 5 stucco  
 BUILDING # 3 stucco  
 BUILDING # 3 stone  
 BUILDING #  
 BUILDING #  
 BUILDING #

COMMENTS:

0.32"

SUBMITTED BY: Lee Chase

DATE: 9/21/2018

SCHEDULE DELAY NOTIFICATION

Rain Delay No.

22

DATE: 9/21/18  
NO.# 20  
OWNER: DDC  
OWNER REP: Colby Denison  
PROJECT: Merritt Heritage  
LOCATION: 4700 Williams Dr  
DELAY DAYS: 1.00

TOTAL THIS MONTH: 4

REASON: (WEATHER)  
X A. SOIL CONDITIONS LIMITING EARTHWORK OR UTILITY PRODUCTION TO <60%.  
B. RAIN 2 HOURS OR MORE.  
C. OTHER

SCHEDULE AFFECTED:

BUILDING # 5 stucco  
BUILDING # 3 stucco  
BUILDING # 3 stone  
BUILDING #  
BUILDING #  
BUILDING #

0.5'

SUBMITTED BY: Lee Chase

DATE: 9/22/2018

SCHEDULE DELAY NOTIFICATION

Rain Delay No.

23

DATE: 10/1/18
NO.# 23
OWNER: DDC
OWNER REP: Colby Denison
PROJECT: Merritt Heritage
LOCATION: 4700 Williams Dr
DELAY DAYS: 1.00

TOTAL THIS MONTH: 1

REASON: (WEATHER)
A. SOIL CONDITIONS LIMITING EARTHWORK OR UTILITY PRODUCTION TO <60%.
X B. RAIN 2 HOURS OR MORE.
C. OTHER

SCHEDULE AFFECTED:

BUILDING # 5 stucco
BUILDING # 3 stucco
BUILDING # 3 stone
BUILDING #
BUILDING #
BUILDING #

.25"

SUBMITTED BY: Lee Chase

DATE: 10/1/2018

SCHEDULE DELAY NOTIFICATION

Rain Delay No.

24

DATE: 10/8/18
NO.# 24
OWNER: DDC
OWNER REP: Colby Denison
PROJECT: Merritt Heritage
LOCATION: 4700 Williams Dr
DELAY DAYS: 1.00

TOTAL THIS MONTH: 2

REASON: (WEATHER)
A. SOIL CONDITIONS LIMITING EARTHWORK OR UTILITY PRODUCTION TO <60%.
X B. RAIN 2 HOURS OR MORE.
C. OTHER

SCHEDULE AFFECTED:

BUILDING # 3 stucco
BUILDING # 2 stucco
BUILDING # stone at various locations
BUILDING # bldg 4 exterior painting
BUILDING #
BUILDING #

1.00"

SUBMITTED BY: Lee Chase

DATE: 10/8/2018



SCHEDULE DELAY NOTIFICATION

Rain Delay No.

25

DATE: 10/9/18  
 NO.# 25  
 OWNER: DDC  
 OWNER REP: Colby Denison  
 PROJECT: Merritt Heritage  
 LOCATION: 4700 Williams Dr  
 DELAY DAYS: 1.00

TOTAL THIS MONTH: 3

REASON: (WEATHER)  
 X A. SOIL CONDITIONS LIMITING EARTHWORK OR UTILITY PRODUCTION TO <60%.  
 B. RAIN 2 HOURS OR MORE.  
 C. OTHER

SCHEDULE AFFECTED:

BUILDING # 3 stucco  
 BUILDING # 2 stucco  
 BUILDING # stone at various locations  
 BUILDING # bldg 4 exterior painting  
 BUILDING #  
 BUILDING #

.75"

SUBMITTED BY: Lee Chase

DATE: 10/9/2018

SCHEDULE DELAY NOTIFICATION

Rain Delay No.

26

DATE: 10/15/18  
 NO.# 26  
 OWNER: DDC  
 OWNER REP: Colby Denison  
 PROJECT: Merritt Heritage  
 LOCATION: 4700 Williams Dr  
 DELAY DAYS: 1.00

TOTAL THIS MONTH: 4

REASON: (WEATHER)  
 X A. SOIL CONDITIONS LIMITING EARTHWORK OR UTILITY PRODUCTION TO <60%.  
 B. RAIN 2 HOURS OR MORE.  
 C. OTHER

SCHEDULE AFFECTED:

BUILDING # 3 stucco  
 BUILDING # 2 stucco  
 BUILDING # stone at various locations  
 BUILDING # bldg 4 exterior painting  
 BUILDING #  
 BUILDING #

1.6"

SUBMITTED BY: Lee Chase

DATE: 10/15/2018

SCHEDULE DELAY NOTIFICATION

Rain Delay No.

27

DATE: 10/16/18  
NO.# 27  
OWNER: DDC  
OWNER REP: Colby Denison  
PROJECT: Merritt Heritage  
LOCATION: 4700 Williams Dr  
DELAY DAYS: 1.00

TOTAL THIS MONTH: 5

REASON: (WEATHER)  
X A. SOIL CONDITIONS LIMITING EARTHWORK OR UTILITY PRODUCTION TO <60%.  
B. RAIN 2 HOURS OR MORE.  
C. OTHER

SCHEDULE AFFECTED:

BUILDING # 3 stucco  
BUILDING # 2 stucco  
BUILDING # stone at various locations  
BUILDING # bldg 4 exterior painting  
BUILDING #  
BUILDING #

2.25"

SUBMITTED BY: Lee Chase

DATE: 10/16/2018

SCHEDULE DELAY NOTIFICATION

Rain Delay No.

28

DATE: 10/17/18  
NO.# 28  
OWNER: DDC  
OWNER REP: Colby Denison  
PROJECT: Merritt Heritage  
LOCATION: 4700 Williams Dr  
DELAY DAYS: 1.00

TOTAL THIS MONTH: 6

REASON: (WEATHER)  
X A. SOIL CONDITIONS LIMITING EARTHWORK OR UTILITY PRODUCTION TO <60%.  
B. RAIN 2 HOURS OR MORE.  
C. OTHER

SCHEDULE AFFECTED:

BUILDING # 3 stucco  
BUILDING # 2 stucco  
BUILDING # stone at various locations  
BUILDING # bldg 4 exterior painting  
BUILDING #  
BUILDING #

0.25

SUBMITTED BY: Lee Chase

DATE: 10/17/2018

SCHEDULE DELAY NOTIFICATION

Rain Delay No.

29

DATE: 10/18/18  
NO.# 29  
OWNER: DDC  
OWNER REP: Colby Denison  
PROJECT: Merritt Heritage  
LOCATION: 4700 Williams Dr  
DELAY DAYS: 1.00

TOTAL THIS MONTH: 7

REASON: (WEATHER)  
X A. SOIL CONDITIONS LIMITING EARTHWORK OR UTILITY PRODUCTION TO <60%.  
B. RAIN 2 HOURS OR MORE.  
C. OTHER

SCHEDULE AFFECTED:

BUILDING # 3 stucco  
BUILDING # 2 stucco  
BUILDING # stone at various locations  
BUILDING # bldg 4 exterior painting  
BUILDING #  
BUILDING #

0.25

SUBMITTED BY: Lee Chase

DATE: 10/18/2018

SCHEDULE DELAY NOTIFICATION

Rain Delay No.

30

DATE: 10/19/18  
NO.# 30  
OWNER: DDC  
OWNER REP: Colby Denison  
PROJECT: Merritt Heritage  
LOCATION: 4700 Williams Dr  
DELAY DAYS: 1.00

TOTAL THIS MONTH: 8

REASON: (WEATHER)  
X A. SOIL CONDITIONS LIMITING EARTHWORK OR UTILITY PRODUCTION TO <60%.  
B. RAIN 2 HOURS OR MORE.  
C. OTHER

SCHEDULE AFFECTED:

BUILDING # 3 stucco  
BUILDING # 2 stucco  
BUILDING # stone at various locations  
BUILDING # bldg 4 exterior painting  
BUILDING #  
BUILDING #

8"

SUBMITTED BY: Lee Chase

DATE: 10/19/2018



**SCHEDULE DELAY NOTIFICATION**

**Rain Delay No.**

**31**

DATE: 10/24/18  
NO.# 31  
OWNER: DDC  
OWNER REP: Colby Denison  
PROJECT: Merritt Heritage  
LOCATION: 4700 Williams Dr  
DELAY DAYS: 1.00

TOTAL THIS MONTH: 9

REASON: (WEATHER)  
X A. SOIL CONDITIONS LIMITING EARTHWORK OR UTILITY PRODUCTION TO <60%.  
B. RAIN 2 HOURS OR MORE.  
C. OTHER

**SCHEDULE AFFECTED:**

BUILDING # 3 stucco  
BUILDING # stone various locations  
BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_  
BUILDING # \_\_\_\_\_

.82"

SUBMITTED BY: Lee Chase

DATE: 10/24/2018

SCHEDULE DELAY NOTIFICATION

Rain Delay No.

32

DATE: 10/24/18
NO.# 32
OWNER: DDC
OWNER REP: Colby Denison
PROJECT: Merritt Heritage
LOCATION: 4700 Williams Dr
DELAY DAYS: 1.00

TOTAL THIS MONTH: 11

REASON: (WEATHER)
A. SOIL CONDITIONS LIMITING EARTHWORK OR UTILITY PRODUCTION TO <60%.
X B. RAIN 2 HOURS OR MORE.
C. OTHER

SCHEDULE AFFECTED:

BUILDING # 3 stucco
BUILDING # 2 stucco
BUILDING # stone at various locations
BUILDING # bldg 4 exterior painting
BUILDING #
BUILDING #

.8\*

SUBMITTED BY: Lee Chase

DATE: 10/24/2018

Elev: 737' 30.63" N, 97.63" W

# Georgetown Municipal, TX

81° GEORGETOWN MUNICIPAL STATION | CHANGE

TODAY

HOURLY

10-DAY

CALENDAR

HISTORY

WUNDERMAP

July

2018

View

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
1  Mostly Sunny Actual: 100°   77° 0 in	2  Clear Actual: 99°   73° 0 in	3  Clear Actual: 100°   75° 0 in	4  Thunderstorms Actual: 97°   71° 0.37 in	5  Partly Sunny Actual: 93°   69° 0 in	6  Thunderstorms Actual: 97°   75° 0.11 in	7  Thunderstorms Actual: 98°   73° 0.16 in
8  Thunderstorms Actual: 90°   71° 0.01 in	9  Thunderstorms Actual: 86°   73° 0.15 in	10  Hazy Actual: 93°   39° 0 in	11  Partly Sunny Actual: 96°   75° 0 in	12  Partly Cloudy Actual: 96°   75° 0 in	13  Mostly Sunny Actual: 96°   77° 0 in	14  Clear Actual: 97°   77° 0 in
15  Partly Cloudy Actual: 97°   78° 0 in	16  Mostly Sunny Actual: 99°   75° 0 in	17  Clear Actual: 100°   75° 0 in	18  Clear Actual: 102°   77° 0 in	19  Clear Actual: 102°   78° 0 in	20  Clear Actual: 102°   77° 0 in	21  Clear Actual: 102°   75° 0 in
22  Clear Actual: 105°   75° 0 in	23  Clear Actual: 109°   80° 0 in	24  Rain Actual: 102°   84° 0 in	25  Mostly Sunny Actual: 100°   75° 0 in	26  Clear Actual: 100°   75° 0 in	27  Clear Actual: 102°   75° 0 in	28  Clear Actual: 99°   75° 0 in
29  Clear Actual: 100°   78° 0 in	30  Clear Actual: 100°   78° 0 in	31  Mostly Sunny Actual: 100°   79° 0 in	1  Clear Actual: 98°   69° 0 in	2  Clear Actual: 99°   66° 0 in	3  Clear Actual: 98°   71° 0 in	4  Clear Actual: 98°   71° 0 in

<https://www.wunderground.com/calendar/us/tx/georgetown/KGTU/date/2018-7>

Elev: 737ft, 30.93°N, 97.63°W

# Georgetown Municipal, TX

81° GEORGETOWN MUNICIPAL STATION | CHANGE

TODAY HOURLY 10-DAY CALENDAR HISTORY WUNDERMAP

September

2018

View

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
26 Mostly Sunny Actual: 98°   78° 0 in	27 Mostly Sunny Actual: 98°   78° 0 in	28 Mostly Sunny Actual: 98°   78° 0 in	29 Mostly Sunny Actual: 99°   77° 0 in	30 Partly Cloudy Actual: 97°   75° 0 in	31 Mostly Sunny Actual: 98°   77° 0 in	1 Mostly Sunny Actual: 98°   73° 0 in
2 Thunderstorms Actual: 97°   77° 0 in	3 Thunderstorms Actual: 93°   75° 0.74 in	4 Rain Actual: 91°   75° 0.02 in	5 Thunderstorms Actual: 93°   75° 0.48 in	6 Thunderstorms Actual: 93°   73° 1.17 in	7 Thunderstorms Actual: 90°   73° 0 in	8 Thunderstorms Actual: 86°   71° 0.86 in
9 Rain Actual: 73°   71° 1.23 in	10 Rain Actual: 75°   69° 0 in	11 Rain Actual: 82°   71° 0.17 in	12 Partly Sunny Actual: 87°   73° 0 in	13 Partly Sunny Actual: 90°   72° 0 in	14 Rain Actual: 86°   71° 0.58 in	15 Thunderstorms Actual: 88°   73° 0.55 in
16 Rain Actual: 89°   73° 0 in	17 Mostly Sunny Actual: 91°   70° 0 in	18 Clear Actual: 93°   73° 0 in	19 Clear Actual: 91°   71° 0 in	20 Thunderstorms Actual: 86°   73° 0.32 in	21 Thunderstorms Actual: 88°   73° 0.55 in	22 Thunderstorms Actual: 75°   66° 1.66 in
23 Rain Actual: 75°   66° 0 in	24 Mostly Cloudy Actual: 82°   69° 0 in	25 Partly Cloudy Actual: 93°   73° 0 in	26 Partly Cloudy Actual: 84°   66° 0 in	27 Partly Cloudy Actual: 79°   59° 0 in	28 Partly Sunny Actual: 82°   60° 0 in	29 Thunderstorms Actual: 79°   69° 0.71 in
30 Hazy Actual: 84°   69° 0 in	1 Thunderstorms Actual: 84°   68° 0.23 in	2 Hazy Actual: 87°   71° 0 in	3 Partly Cloudy Actual: 90°   73° 0 in	4 Mostly Sunny Actual: 89°   73° 0 in	5 Partly Cloudy Actual: 89°   73° 0 in	6 Partly Cloudy Actual: 89°   73° 0 in

<https://www.wunderground.com/calendar/us/tx/georgetown/KGTU/date/2018-9>

Elev: 737ft, 30.63°N, 97.69°W

# Georgetown Municipal, TX

81° GEORGETOWN MUNICIPAL STATION | CHANGE ▾

TODAY    HOURLY    10-DAY    **CALENDAR**    HISTORY    WUNDERMAP

October ▾

2018 ▾

View

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
30 Hazy Actual: 84°   69° 0 in	1 Thunderstorms Actual: 84°   69° 0.23 in	2 Hazy Actual: 87°   71° 0 in	3 Partly Cloudy Actual: 90°   73° 0 in	4 Mostly Sunny Actual: 89°   73° 0 in	5 Partly Cloudy Actual: 89°   73° 0 in	6 Thunderstorms Actual: 88°   75° 0.01 in
7 Thunderstorms Actual: 88°   73° 0.09 in	8 Thunderstorms Actual: 82°   71° 0.53 in	9 Thunderstorms Actual: 80°   66° 0.24 in	10 Hazy Actual: 77°   62° 0.01 in	11 Partly Cloudy Actual: 75°   57° 0 in	12 Partly Cloudy Actual: 84°   61° 0 in	13 Partly Sunny Actual: 90°   68° 0.13 in
14 Partly Sunny Actual: 89°   66° 0.03 in	15 Rain Actual: 59°   42° 1.58 in	16 Rain Actual: 48°   46° 2.12 in	17 Rain Actual: 57°   48° 0.05 in	18 Rain Actual: 60°   51° 0.01 in	19 Rain Actual: 62°   57° 0.8 in	20 Partly Sunny Actual: 66°   60° 0 in
21 Clear Actual: 71°   53° 0 in	22 Rain Actual: 64°   54° 0.02 in	23 Rain Actual: 68°   54° 0.02 in	24 Rain Actual: 60°   55° 0.82 in	25 Rain Actual: 68°   55° 0.01 in	26 Clear Actual: 77°   50° 0 in	27 Clear Actual: 84°   55° 0 in
28 Clear Actual: 84°   55° 0 in	29 Mostly Sunny Actual: 82°   57° 0 in	30 Partly Sunny Forecast: 82°   69° 0.01 in	31 Strong Storms Forecast: 75°   50° 0.91 in	1 Sunny Forecast: 65°   45° 0 in	2 Sunny Forecast: 72°   50° 0 in	3 Sunny Forecast: 74°   50° 0.05 in

<https://www.wunderground.com/calendar/us/tx/georgetown/KGTU/date/2018-10>

Count of Rain Days > .5"													
	January	February	March	April	May	June	July	August	September	October	November	December	Total
2015	3	0	2	0	6	4	0	0	0	4	2	1	22
2016	0	1	4	3	5	2	1	5	2	0	2	3	28
2017	2	2	2	2	2	1	0	4	0	2	0	3	20
Averages	2	1	3	2	4	2	0	3	1	2	1	2	23

National Centers for Environmental Information, [www.ncdc.noaa.gov/cdo-web/orders?email=nico1as@thebrownstonegroup.net&id=1310142](http://www.ncdc.noaa.gov/cdo-web/orders?email=nico1as@thebrownstonegroup.net&id=1310142).

Count of Rain Days > .5"											
Time Change Order 2				Time Change Order 3							
	January	February	March	April	May	June	July	August	September	October	Total
Actual	0	6	1	0	1	0	1	0	4	10	
Average	2	1	3	2	4	2	0	3	1	2	
Variance							1		3	8	12



**Exhibit C**

**Governor's Disaster Declaration**

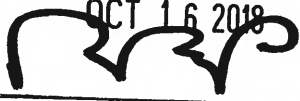


GOVERNOR GREG ABBOTT

October 16, 2018

FILED IN THE OFFICE OF THE  
SECRETARY OF STATE  
4:55 pm 'CLOCK

The Honorable Rolando B. Pablos  
Secretary of State  
State Capitol Room 1E.8  
Austin, Texas 78701

OCT 16 2018  
  
Secretary of State

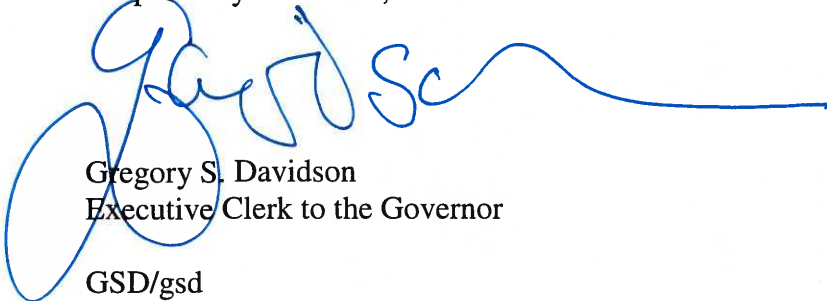
Dear Mr. Secretary:

Pursuant to his powers as Governor of the State of Texas, Greg Abbott has issued the following:

A proclamation certifying that the severe weather and prolonged flooding event that began on October 7, 2018, has caused widespread and severe property damage, and threatens loss of life, Bastrop, Burnet, Colorado, Fayette, Hood, Jim Wells, Kerr, Kimble, La Salle, Live Oak, Llano, Mason, McMullen, Nueces, Real, San Patricio, Travis, and Williamson 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

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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 prolonged flooding event that began on October 7, 2018, has caused widespread and severe property damage, and threatens loss of life, Bastrop, Burnet, Colorado, Fayette, Hood, Jim Wells, Kerr, Kimble, La Salle, Live Oak, Llano, Mason, McMullen, Nueces, Real, San Patricio, Travis, and Williamson 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 16th day of October, 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  
4:55pm O'CLOCK

OCT 16 2018

**Exhibit D**

**Investor Limited Partner's Letter**



RBC Capital Markets®

RBC Capital Markets, LLC  
Tax Credit Equity Group  
600 Superior Ave, Suite 2300  
Cleveland, OH 44114  
Telephone: (216) 875-2626

November 14, 2018

Marni Holloway  
Director of Multifamily Finance  
Texas Department of Housing and Community Affairs  
221 East 11th Street  
Austin, Texas 78701

**Re: Merritt Heritage Apartments in Georgetown, Texas, TDHCA No. 16185**

Dear Ms. Holloway:

RBC Capital Markets, Tax Credit Equity Group, is the limited partner and tax credit syndicator for Merritt Heritage Apartments. We have been closely following construction progress at Merritt Heritage and agree that events outside of the Owners and General Contractors control have resulted in construction delays that may prevent the project from meeting the place-in-service deadline of December 31, 2018.

I personally visited the site on August 28, 2018. At the time of my visit the project was well staffed and organized. Additionally, I have a qualified 3<sup>rd</sup> party consulting firm inspect and report on construction progress on a monthly basis. Their reporting supports the fact that unusual rain events are the primary cause for construction delays.

RBC fully supports the extension request and urges TDHCA to grant the reallocation of the Tax Credits extending the required place-in-service date to March 31, 2019.

Please feel free to contact me with any questions. I can be reached at (614) 933-5207 or (614) 406-2842.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Phil J. Pavlovicz'.

Phil J. Pavlovicz  
Vice President  
Development Risk Manager  
RBC Capital Markets – TCEG

**Exhibit E**  
**Manpower Chart**





**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**DECEMBER 6, 2018**

Presentation, discussion, and possible action on a request for the extension of the placement in service deadline under 10 TAC §11.6(5) of the 2018 Qualified Allocation Plan (“QAP”) related to Credits Returns Resulting from Force Majeure Events for No. 16210, Merritt Monument

**RECOMMENDED ACTION**

**WHEREAS**, an award of Competitive (9%) Housing Tax Credits in the amount of \$853,071 to Merritt Monument (the Development) was approved by the Board on July 28, 2016;

**WHEREAS**, staff executed a Carryover Allocation Agreement with the Development Owner on December 30, 2016, 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, 2018;

**WHEREAS**, on November 15, 2018, 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 Credit 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 Development Owner has presented evidence that relief under force majeure is appropriate;

**NOW, therefore, it is hereby**

**RESOLVED**, the request for treatment of Merritt Monument under an application of the force majeure rule is approved; and

**FURTHER RESOLVED**, that except where prohibited by Federal or state law, the Applicant must continue to follow the 2016 Qualified Allocation Plan and Uniform Multifamily Rules, except that the 2018 Program Calendar reflected in 10 TAC §11.2 of the 2018 QAP will apply.

## **BACKGROUND**

An award of \$853,071 to Merritt Monument (the “Development”) was approved by the Board on July 28, 2016. The Development proposed the New Construction of 104 Units for the General population in Midland. Staff executed a Carryover Allocation Agreement with the Development Owner on December 30, 2016, 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, 2018.

### **Force Majeure request**

On November 15, 2018, the Department received from the Development Owner a request to extend the placement in service deadline from December 31, 2018, to March 31, 2019, with the possibility of an extension, 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)

### **Changes in Law, Rules, or Regulations**

Per the Applicant:

“In late October, Owner received a change order request from its contractor to extend the completion deadline by 42 days, in part because City inspectors were often 3 to 5 days late in completing their inspections, throughout the construction process. In addition, the City appointed a new Fire Marshal during the course of construction. In October 2018, the new Fire Marshal decided that the fire suppression plan for the Development, which was approved by his predecessor, was inadequate. The new Fire Marshal's mandate is that Owner install 3 fire hydrants, a new waterline to serve them, and a standpipe system.”

### **Labor Shortages**

Per the Applicant:

“The Development is located in the Permian Basin, which has experienced astounding growth due to the oil boom. Recent projections indicate the area could be the third or fourth largest producer of oil in the world, and will experience "stunning" growth through 2023. See Exhibit A. One side effect of that growth is that the City of Midland is struggling to keep up, in terms of having sufficient staff to handle the abundant construction activity... In

addition, trying to address the delays in scheduling inspections by City staff, the contractor has substantially increased the manpower employed, as evidenced by the chart attached as Exhibit B. This is particularly difficult because there are virtually no construction workers available in Midland; they must all be recruited from out of town. Further, these additional workers cannot be productive when the site is waiting for a City construction inspector who is multiple days late.”

In the request, the Development Owner provides articles attesting to the growth in Midland, a “manpower chart” indicating “substantially increased” manpower employed, a letter from the investor limited partner supporting the request, and a waiting list of nearly 200 households. They believe that the change in the city fire marshal along with the time required for city inspections make it impossible for the Development to be placed in service by original deadline.

The Department received a letter from Midland City Council member J. Ross Lacy in support of the request.

If the Board grants the requested treatment under application of the force majeure rule, the Development Owner will return \$853,071 in 2016 credits. The credits will be immediately reissued to the Development Owner with a 2018 Carryover Allocation Agreement and a new date for the Development to be placed in service will be documented. Except as prohibited by Federal or state law, the Development will continue to be subject to the 2016 Qualified Allocation Plan and Uniform Multifamily Rules in place at the original award, except that 10 TAC §11.2 related to the Program Calendar for 2018 will apply.



J. Ross Lacy – Councilman District 4

November 15, 2018

Texas Department of Housing & Community Affairs  
221 East 11<sup>th</sup> Street  
Austin, TX 78701  
RE: TDHCA #16210: Merritt Monument

Dear Tim Irvine,

I write you today to urge your consideration of the request by Merritt Communities for an extension of their tax credit deadline. I'm sure you've heard through local and national news that while the oilfield industry is booming in Midland, the resulting shortages in housing has become a crisis. As a result, starting wages for oilfield jobs are \$60,000 making it extremely difficult for us at the City of Midland to compete for staffing to keep up with the growth of our community. As we try to attract and maintain talented employees, they find it exceedingly difficult to find affordable housing. Average rents in the market have reached \$2,000 per month. We are short over 200 teachers for our schools.

As a result of this situation, our inspection department is short staffed. I know that the Merritt team has been working extremely hard to finish by December 31, 2018, and there have been many times inspectors haven't been able to make it through their inspection rounds and arrive on-site for upwards of 3-4 days. Given that many times re-inspections are necessary as with any construction project, this situation becomes doubly problematic on the schedule.

Additionally, we have had a change at the Fire Marshal position, and the new Fire Marshal has taken a different viewpoint on the fire suppression system design. Consistent with his authority at that position and in the name of public safety, Merritt Monument will be installing additional fire hydrants and a standpipe system to make it easier and safer for our fire fighters to combat a fire to the buildings.

We have been in unanimous support of this project, and we can't afford to lose this much needed housing for our community. Thank you in advance for approving the tax credit deadline extension.

Sincerely,

  
J. Ross Lacy  
Councilman



600 Congress, Suite 2200  
Austin, TX 78701  
Telephone: 512-305-4700  
Fax: 512-305-4800  
www.lockelord.com

Cynthia L. Bast  
Direct Telephone: 512-305-4707  
Direct Fax: 512-391-4707  
cbast@lockelord.com

November 15, 2018

**Via Email**

Marni Holloway  
Texas Department of Housing and Community Affairs  
221 East 11th Street  
Austin, Texas 78701

Re: Merritt Monument Apartments in Midland, Texas (the "**Development**")  
TDHCA No. 16210

Dear Marni:

Our firm represents DDC Merritt Monument, Ltd. ("**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, 2018.

The Development is located in the Permian Basin, which has experienced astounding growth due to the oil boom. Recent projections indicate the area could be the third or fourth largest producer of oil in the world, and will experience "stunning" growth through 2023. See [Exhibit A](#). One side effect of that growth is that the City of Midland is struggling to keep up, in terms of having sufficient staff to handle the abundant construction activity. It is against this backdrop that Owner's request is submitted.

In late October, Owner received a change order request from its contractor to extend the completion deadline by 42 days, in part because City inspectors were often 3 to 5 days late in completing their inspections, throughout the construction process. In addition, the City appointed a new Fire Marshal during the course of construction. In October 2018, the new Fire Marshal decided that the fire suppression plan for the Development, which was approved by his predecessor, was inadequate. The new Fire Marshal's mandate is that Owner install 3 fire hydrants, a new waterline to serve them, and a standpipe system.

This last-minute decision by the Fire Marshal could not have been anticipated by Owner or contractor. Owner has tried in vain to get the Fire Marshal to recognize the flaw in his



interpretation of the code, and there is no right to appeal to another authority. In addition, trying to address the delays in scheduling inspections by City staff, the contractor has substantially increased the manpower employed, as evidenced by the chart attached as Exhibit B. This is particularly difficult because there are virtually no construction workers available in Midland; they must all be recruited from out of town. Further, these additional workers cannot be productive when the site is waiting for a City construction inspector who is multiple days late. In addition, the contractor has acquired materials in advance and is storing them on the site, so they can be immediately installed and delays associated with delivery can be avoided. Owner's investor limited partner, through its own due diligence and construction inspector, has verified the causes of delays, as evidenced by the letter attached as Exhibit C. The Development has been well-received by the community and has a substantial waiting list, as evidenced on Exhibit D.

Until the Fire Marshal's determination, Owner was confident that it would have a TCO for each building by December 31, 2018, despite the prior delays imposed by City staff. Owner continues to work to achieve that goal. However, a TCO cannot be received unless the Fire Marshal concurs. Thus, Owner is forced to request this relief on the chance that the TCOs will not be available.

Because of these challenges, Owner submits this request 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 2018 Qualified Allocation Plan (the "QAP"). We believe Owner and the Development meet all of the requirements of Section 11.6(5), in that:

1. The delays in construction were a direct result of labor shortages on the part of the City and changes in regulations regarding the Fire Marshal's mandate, referenced above.
2. The delays were not caused by willful negligence or acts of Owner, any Affiliate, or any other Related Party.
3. Owner and the contractor are experienced developers of these types of properties, and each took any steps available to them to mitigate the delays; however, actions of City staff are not within their control.
4. Owner substantially fulfilled all of its obligations that were not impeded by the weather events; the Development was properly insured; and TDHCA was notified of the situation
5. The delays imposed by the City have prevented Owner from meeting the placement in service requirements of the original allocation.

November 15, 2018

Page 3

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 viable.

With a new allocation in place, Owner would be willing to commit to place the Development into service by March 31, 2019, with the possibility for an extension to be provided at the Executive Director's discretion.

Please feel free to contact me with any questions. We sincerely appreciate your assistance with this matter.

Respectfully submitted,



Cynthia L. Bast

cc: Denison Development

- Exhibit A - Articles on Midland's Growing Pains
- Exhibit B - Manpower Chart
- Exhibit C - Investor Limited Partner's Letter
- Exhibit D - Waiting List

**Exhibit A**

**Articles Regarding Midland Growth**

## Oil Boom Fuels Fastest-Growing Metro Area, Midland, Texas -- But at a Price

Midland, Texas, ranks at or near the top of the list in every measure of recent economic and population growth. See how your area compares.

by [Mike Maciag](#) | September 12, 2013



At more than 50 stories tall (many of which aren't displayed in this rendering), the proposed Energy Tower at City Center extends more than twice the height of any other building in the city, housing luxury hotel rooms, condos and office space. *Renderings Courtesy of Colliers International*

Back in 2008, Midland, Texas, Mayor Wes Perry knew his town was about to take off.

The city of nearly 150,000 in west Texas sits atop the Permian Basin, one of North America's largest oil reserves. For decades, much of the oil remained untouched, contained in rock formations buried deep beneath the surface. But then Perry, an oilman himself, says he starting hearing how experiments using hydraulic fracturing had proved promising.

"When people figured out how to [produce oil] through fracking, that was the game changer," he said.

Since then, Midland has transformed itself into the nation's fastest booming metro area, ranking at or near the top of the list of every major measure of recent economic and population growth. The latest [census estimates](#) reported Midland's population swelled 4.6 percent in only a year, topping all other metro areas. Its economy similarly expanded payrolls by 6.2 percent over the past 12 months, the [second largest gain](#) nationwide.

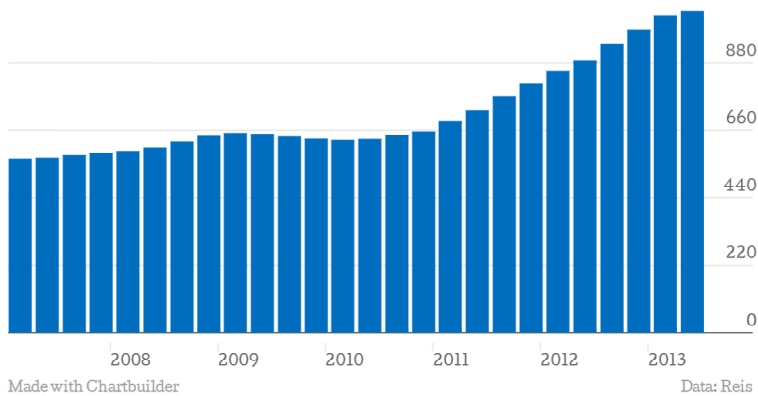
While Midland is thriving, the influx of companies and new workers haven't come without growing pains.

All around the city, consequences of the boom are apparent. Major roadways spanning the region's flat plains are more congested. Asking prices for rentals have doubled. Longer lines greet customers at restaurants and other local businesses.

Midland's longtime residents have met the growth with mixed feelings.

"Some are experiencing the financial successes," Perry said. "Plenty of other people are really not interested in change and growth."

What's likely the top public concern is the skyrocketing cost of housing. Average monthly asking rent prices climbed from less than \$600 before the boom hit in 2007 to \$1,110 last quarter, according to real estate research firm [Reis, Inc.](#) Soaring home values have also pushed would-be homeowners out of the market.



Public employees are not immune from feeling the pinch, either.

Finding affording housing is particularly problematic for school teachers, many of whom are new to the area. The Midland Independent School District, which employs about 1,600 teachers, created 135 new teaching positions this school year to accommodate higher enrollment.

Ed Zachary, the district's executive director for human resources, said new teachers just starting out can't afford both costly rents and paying off their college loans, while some more experienced teachers struggle to hold onto their apartments as housing costs continue to rise.

A local foundation has stepped up, contributing up to \$500 per month in rental costs for qualifying teachers. About 133 teachers were participating as of last week.

The district is also exploring the possibility of leasing prefabricated homes from a company to rent to employees at a reduced rate, Zachary said. Midland Memorial Hospital has even converted a number of unused rooms in its west campus into short-term affordable housing units for teachers and hospital staff.

Out around the oil fields, many workers reside in "man camps." Chain motels also popped up throughout outlying areas of the county, proving additional temporary housing.

One developer is pushing a project that would drastically alter Midland's skyline. At more than 50 stories tall, the proposed Energy Tower at City Center extends more than twice the height of any other building in the city, housing luxury hotel rooms, condos and office space.

Another common complaint residents gripe about is the traffic, as many aren't accustomed to sitting through two cycles of traffic lights. The city, in response, widened roadways and synchronized more traffic signals, Perry said.

The oil boom has also created a barrier to government employment: companies are poaching their workers. The school district's Zachary said some teachers and administrators leave for more lucrative careers in the oil fields. Perry said the city has found it difficult compete with private companies for truck drivers and mechanics, so they've offered signing bonuses and additional training.

A similar story has played out in Odessa, a slightly smaller city about 20 miles down the interstate.

There, the city's utilities department has only filled 14 of 43 budgeted positions as qualified workers pursue fatter paychecks in the energy sector.

"We just can't retain and recruit employees to compete with private industry salary," said Andrea Goodson, the city's public information officer.

From 2009 to 2011 (the most recent data available), Midland's personal income per capita jumped a staggering 25 percent – more than any other metro area, according to the U.S. Bureau of Economic Analysis. It increased [12 percent between 2010 and 2011](#), second only to Odessa.

Midland's strategy to adapt to economic and population growth, Perry said, has centered on long-term investments in capital projects. Rather than resurfacing streets, for example, the city is completely rebuilding more of them.

At the same time, now might not be the best time to break ground on every project. Perry pointed out that demand for concrete in Midland has pushed up prices to among the nation's highest, forcing the city to put some construction plans on hold.

Although the city enjoys healthy tax revenues for the time being, Perry wants to avoid borrowing money.

"We know this is a cycle," he said. "If we just went full bore and got everything done, that could come back to bite us when things slow down."

The region has experienced its share of oil booms and busts in the past. The biggest shock occurred in the mid-1980s, when several of the large energy companies moved away and left their equipment out to rust.

Today, more than 400 drill rigs dot the Permian Basin.

"I see it staying pretty high for quite some time, unless an economic event occurs and the prices come down," he said.

Production only recently plateaued locally, Smith said, primarily because of a limited supply of skilled workers and capital investment required for new drilling operations.

As a longtime resident and president of an oil and gas firm, Perry remembers the oil bust of the 1980s quite well. He knows his city's current boom won't last forever, either.

"We know it was there one day and can be gone again, so we better be careful," he said.

### Fastest-Growing Metro Areas

The following table shows the Census Bureau's metro area estimates for population change between July 2011 to July 2012, the most recent data available:

Search:

Geographic area	% Growth Rank	1yr percent	Raw change	2011	2012
Midland, TX	1	4.6	6,709	144,953	151,662
Clarksville, TN-KY	2	3.7	9,717	264,625	274,342
Crestview-Fort Walton Beach-Destin, FL	3	3.6	8,644	239,021	247,665
The Villages, FL	4	3.4	3,383	98,237	101,620
Odessa, TX	5	3.4	4,737	139,588	144,325
Jacksonville, NC	6	3.3	5,833	177,430	183,263
Austin-Round Rock, TX	7	3.0	53,595	1,780,708	1,834,303
Casper, WY	8	3.0	2,265	76,356	78,621
Columbus, GA-AL	9	2.9	8,666	301,865	310,531
Manhattan, KS	10	2.8	2,660	95,150	97,810
Auburn-Opelika, AL	11	2.6	3,677	143,580	147,257
Bismarck, ND	12	2.4	2,776	117,284	120,060
St. George, UT	13	2.3	3,298	141,511	144,809
Charleston-North Charleston, SC	14	2.3	15,755	681,684	697,439
Orlando-Kissimmee-Sanford, FL	15	2.2	48,670	2,175,004	2,223,674

### Economic Data

#### [View year-over-year job growth for metro areas](#)

The following metro areas experienced the largest increase in personal income per capita from 2010 and 2011, according to the Bureau of Economic Analysis:

- Odessa, TX: 12.4%
- Midland, TX: 11.9%
- Hanford-Corcoran, CA: 9.3%
- Clarksville, TN-KY: 8.9%
- Elizabethtown, KY: 8.8%
- Peoria, IL: 8.5%
- Waterloo-Cedar Falls, IA: 8.1%
- San Jose-Sunnyvale-Santa Clara, CA: 7.6%
- Williamsport, PA: 7.5%
- Farmington, NM: 7.4%

[Mike Maciag](#) | Data Editor | [mmaciag@governing.com](mailto:mmaciag@governing.com) | [@mikemaciag](#)



mrt★ <https://www.mrt.com/business/oil/article/Permian-expected-to-experience-stunning-growth-12995558.php>

## Permian expected to experience 'stunning' growth

Region expected to outproduce all OPEC countries but Saudi Arabia by 2023

By [Mella McEwen](#), MRT.com/Midland Reporter-Telegram Updated 9:53 am CDT, Friday, June 15, 2018



Charles Robertson, a floor hand with Trinidad Drilling, jokes with a coworker while moving casing on a rack near Trinidad Drilling Rig 433 on Wednesday, Nov. 2, 2016, in Midland County. James Durbin/Reporter-Telegram

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Already growing at unprecedented levels, Permian Basin energy output is forecast to experience "stunning" growth through 2023, a new report finds.

Permian Basin oil production will rise by nearly 3 million barrels a day by 2023, exceeding most recent estimates and comprising more than 60 percent of the globe's net oil production growth, according to a report from IHS Markit.

The Permian's expected total oil production of 5.4 million barrels will not only exceed Kuwait's current production but will be more than the total production of any OPEC member other than Saudi Arabia, IHS said. According to the report, that growth will be driven by nearly 41,000 new wells and \$308 billion in upstream spending.

### **OIL REPORT: Analyst: Water issues could extinguish Permian's surging output**

"There are a number of things going on, a lot of moving parts," Raoul LeBlanc, executive director and head of the IHS Markit Performance Evaluator, a propriety database, said in a phone interview from his Houston office.

The industry will have "growing pains, which are all solvable, and they will solve them. This is a can-do industry," he said.

In helping put together the report, LeBlanc said, he saw three things that will determine just how big Permian Basin production will be in the next five years.

First is the amount of capital that will be made available. That expected \$308 billion is up sharply from the \$150 billion spent between 2012 and 2017.

"How far will the rocket go and how much rocket fuel will you give it?" he said.

Second, is how much towns like Midland "will expand to accommodate this growth? How much will they trust the growth and be willing to invest in that expansion?" he said.

### **OIL REPORT: Mexico offers significant opportunities for Permian energy**

The Permian Basin is expected to grow into the third or fourth largest producer in the world, said LeBlanc, and "that will entail a lot of side effects the region will have to deal with. (But) there will also be a lot of jobs, a lot of resources, a lot of prosperity if it's handled correctly."

Finally, it's the production itself, he said.

"We saw shale production rise dramatically in 2014, 2015 and 2016, then they sort of hit a wall in 2017," he said.

That means the shales are maturing and operators are now finding out how many wells can be drilled, how to complete them and what areas are not productive, LeBlanc said. It's a maturing process that's happening faster than anticipated, he said.

"Producers are discovering what the limits are. And then we'll get to the point where they'll pour money in and crank up activity. That will make the difference between the Permian Basin being a huge growth area for 10 years or a huge growth area for 25 years."

For all the talk about the Permian Basin's growth, LeBlanc said the region actually was late to the shale game. Production was actually still in decline or flat from 2000 to 2012. Even when oil prices hit \$140 in 2008, he said production was little changed from previous years.

Until around 2012, he explained, producers' skill sets had revolved around waterfloods and carbon dioxide floods. "They were slow to realize their acreage had upside potential. They had their ways of doing things and it took a while to realize the potential."

Also, the Permian Basin is dominated by companies that have held their acreage for a long time, he said.

"In shales, when you're finding that success recipe, you stump your toe a lot. Companies said they'd let the other guys figure it out 'and when they're done making their mistakes, I'll apply what they learned,'" LeBlanc said.

That's why the large companies weren't on the forefront of the Permian Basin shale plays, he said.

"Occidental Petroleum, Exxon, Chevron, Apache are now turning it on. They said 'Thank you for proving my acreage. Now I'll go get the production,'" he said.

LeBlanc said the Permian Basin's growth will be "the full deal" of not only crude oil but natural gas and natural gas liquids. Those resources should be destined for export, he said.

"Every new drop of oil produced will be exported," he said. "We need to make a home in the world growth demand center, which is Asia. We need to make inroads in China and maybe India."

Natural gas can find a market in Mexico, which already buys U.S. natural gas and is looking to buy more, and the rising amounts of Permian Basin natural gas associated with crude production can be liquefied at Gulf Coast facilities and shipped overseas, he said.

"Those barrels will find a home. The question is, at what price?" LeBlanc said.

**Summary of key outlook projections:**

Permian oil production 5.4 million barrels a day in 2023 (116 percent increase from 2017)

Permian gas production 15 bcf/d in 2023 (114 percent increase from 2017)

Permian NGL production 1.7 million barrels a day in 2023 (105 percent increase from 2017)

\$308 billion in upstream spending / nearly 41,000 wells (2018-2023) in the Permian

Total U.S crude exports increase from 1.1 million barrels a day to 4 million barrels a day (2017-2023)

**Key outlook assumptions:**

WTI crude oil prices, on average, of \$60/bbl or higher

Upstream cost inflation of roughly 33 percent by 2023 relative to 2017 levels

Net upstream cash flow 2018–23: +\$47.5 billion

A 2.5 million barrel a day expansion of crude oil pipeline capacity

An 8 Bcf/d expansion of natural gas pipeline capacity

Additional gas processing capacity of 7 Bcf/d by 2023 to handle liquids-rich gas production

Decelerating production growth in the early 2020s due to high capital investment requirements and an assumption of little productivity improvement

Source: IHS Markit

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**H E A R S T**

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mrt★ <https://www.mrt.com/business/article/Report-Midland-is-second-fastest-growing-city-in-13278924.php>

# Report: Midland is second fastest-growing city in United States

Tall City is top-ranked among mid-size cities

Staff, Midland Reporter-Telegram Updated 10:44 am CDT, Thursday, October 4, 2018



IMAGE 1 OF 62

## Midland, Texas

Overall Rank: 2

Sociodemographics Rank: 11

Jobs and Economy Rank: 7

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Midland is the second fastest growing city in the United States, according to a report released this week by [WalletHub](#).

Midland is one of four Texas cities to crack the top 10 and trails only Fort Myers, Florida, on the overall list. Midland finished as the No. 1 midsize city with the highest growth.



**(See where each Texas city ranked among other fast-growing places nationwide in the photos above.)**

Joining Fort Myers and Midland are Pearland, Bend, Oregon, and McKinney. College Station finished sixth on the 2018 list.

**RELATED: [Area's economic growth rewrites its own rules](#)**

Other Texas cities to crack the top 20 were Frisco (16<sup>th</sup>), Round Rock (17<sup>th</sup>) and Austin (18<sup>th</sup>).

Rankings of West Texas cities included: Odessa (46<sup>th</sup>), Lubbock (262<sup>nd</sup>), Amarillo (394<sup>th</sup>), San Angelo (395<sup>th</sup>) and Abilene (419<sup>th</sup>).

To determine where the fastest local economic growth has occurred in the U.S., WalletHub compared 515 cities of varying population sizes based on 15 key measures of both growth and decline over a period of seven years. Its data set ranges from population growth to unemployment rate decrease to growth in regional GDP per capita.

Up to 50 points were available for "sociodemographics" (population growth, working-age population growth and college educated population growth) and up to 50 points were available for "jobs and the economy" (which included job growth, growth of regional GDP per capita, unemployment rate decrease, median house price growth and eight other factors).

**RELATED: [Odessa, Midland among nation's highest in GDP growth](#)**

Fort Myers finished with a score of 76.57. Midland scored 73.55 points. Scores for the other cities in the top five were Pearland, 72.68; Bend, 72.45; and McKinney; 71.4.

Midland finished 11th among all cities in sociodemographics. Pearland was No. 1, and four other Texas cities had higher scores than Midland in this category. In jobs and the economy, Midland finished seventh overall and was the top-rated Texas city. Greeley, Colorado, finished No. 1 among all cities.

Rankings from WalletHub's 2018 report of the fastest-growing cities in the United States.

Overall: 1. Fort Myers, Florida., 76.57; Midland, 73.55; Pearland, 72.68; Bend, Oregon, 72.45; McKinney, 71.4

Mid-sized cities: Midland, Pearland, McKinney, College Station, 71.17; Lehigh Acres, Florida, 71.0

Large cities: Austin, 65.83; Miami, 65.75; Seattle, 63.47; Charlotte, 61.81; Denver 61.65

Small cities: Fort Myers, Bend, Mount Pleasant, South Carolina, 70.87; Milpitas, California, 70.29; Pleasanton, California, 69.39.

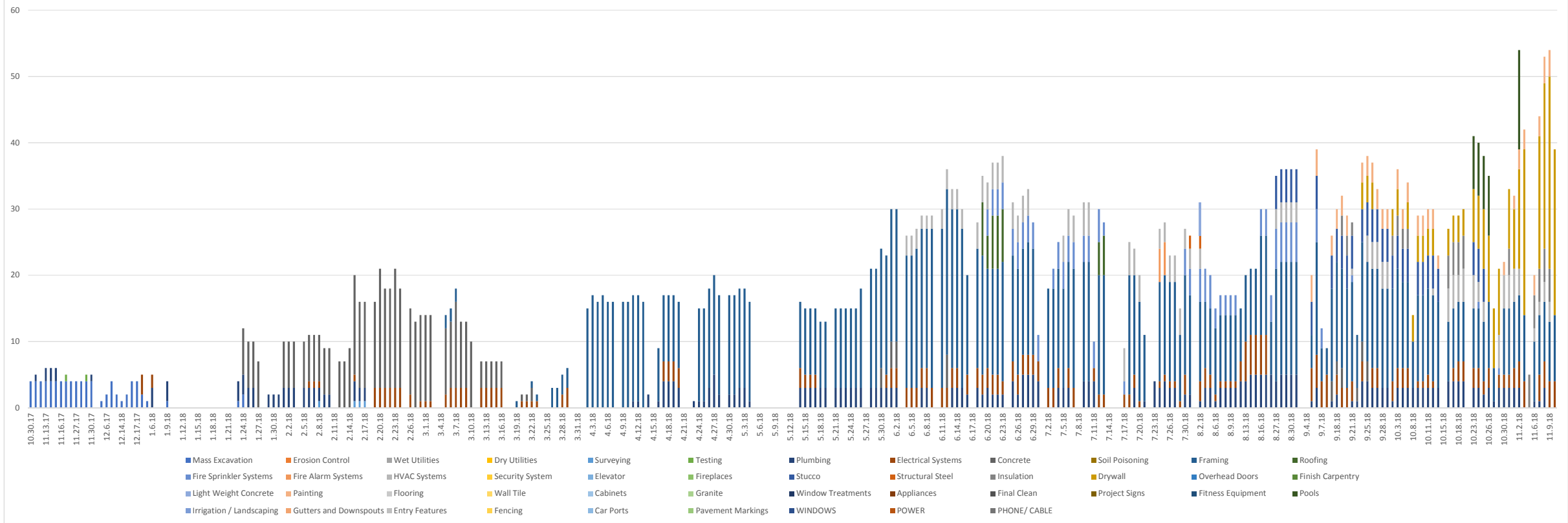
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**HEARST**

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**Exhibit B**  
**Manpower Chart**

### Merritt Monument - Manpower



**Exhibit C**

**Investor Limited Partner's Letter**



November 14, 2018

Marni Holloway  
Director of Multifamily Finance  
Texas Department of Housing and Community Affairs  
221 East 11th Street  
Austin, Texas 78701

**Re: Merritt Monument Apartments in Midland, Texas, TDHCA No. 16210**

Dear Ms. Holloway:

RBC Capital Markets, Tax Credit Equity Group, is the limited partner and tax credit syndicator for Merritt Monument Apartments, Midland, TX. We have been closely following construction progress at Merritt Monument and agree that events outside of the Owners and General Contractors control have resulted in construction delays that may prevent the project from meeting the place-in-service deadline of December 31, 2018.

I personally visited the site on August 29, 2018. At the time of my visit the project was well staffed and organized. Additionally, I have a qualified 3<sup>rd</sup> party consulting firm inspect and report on construction progress on a monthly basis. Their reporting supports the fact that slow inspection response from local building officials are the primary cause for construction delays. It has also been brought our attention that the scope of work for fire suppression has been expanded over and above the previously approved design by a recently installed fire official.

RBC fully supports the extension request and urges TDHCA to grant the reallocation of the Tax Credits extending the required place-in-service date to March 31, 2019.

Please feel free to contact me with any questions. I can be reached at (614) 933-5207 or (614) 406-2842.

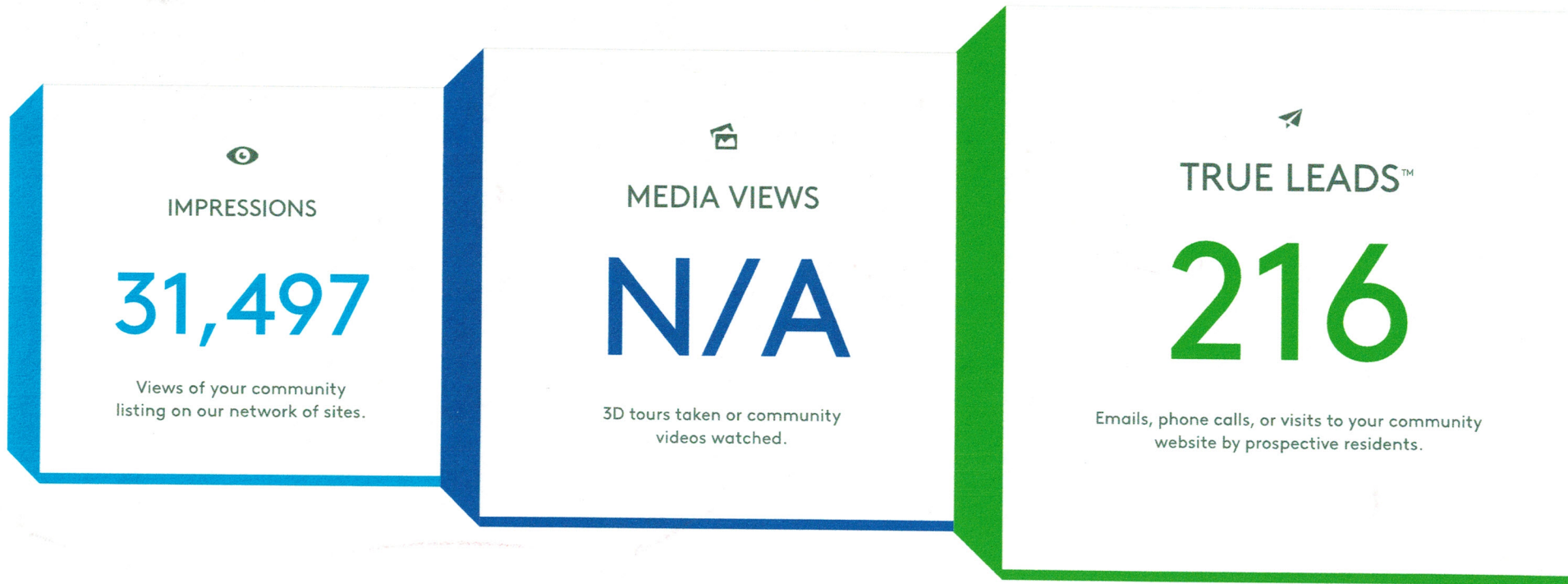
Sincerely,

A handwritten signature in blue ink, appearing to read 'Phil J. Pavlovicz', with a stylized flourish at the end.

Phil J. Pavlovicz  
Vice President  
Development Risk Manager  
RBC Capital Markets – TCEG



## October 2018: Performance Report



# Merritt Monument

Midland, TX 79703



EMAIL LEADS

76



PHONE LEADS

140



WEBSITE LINKS

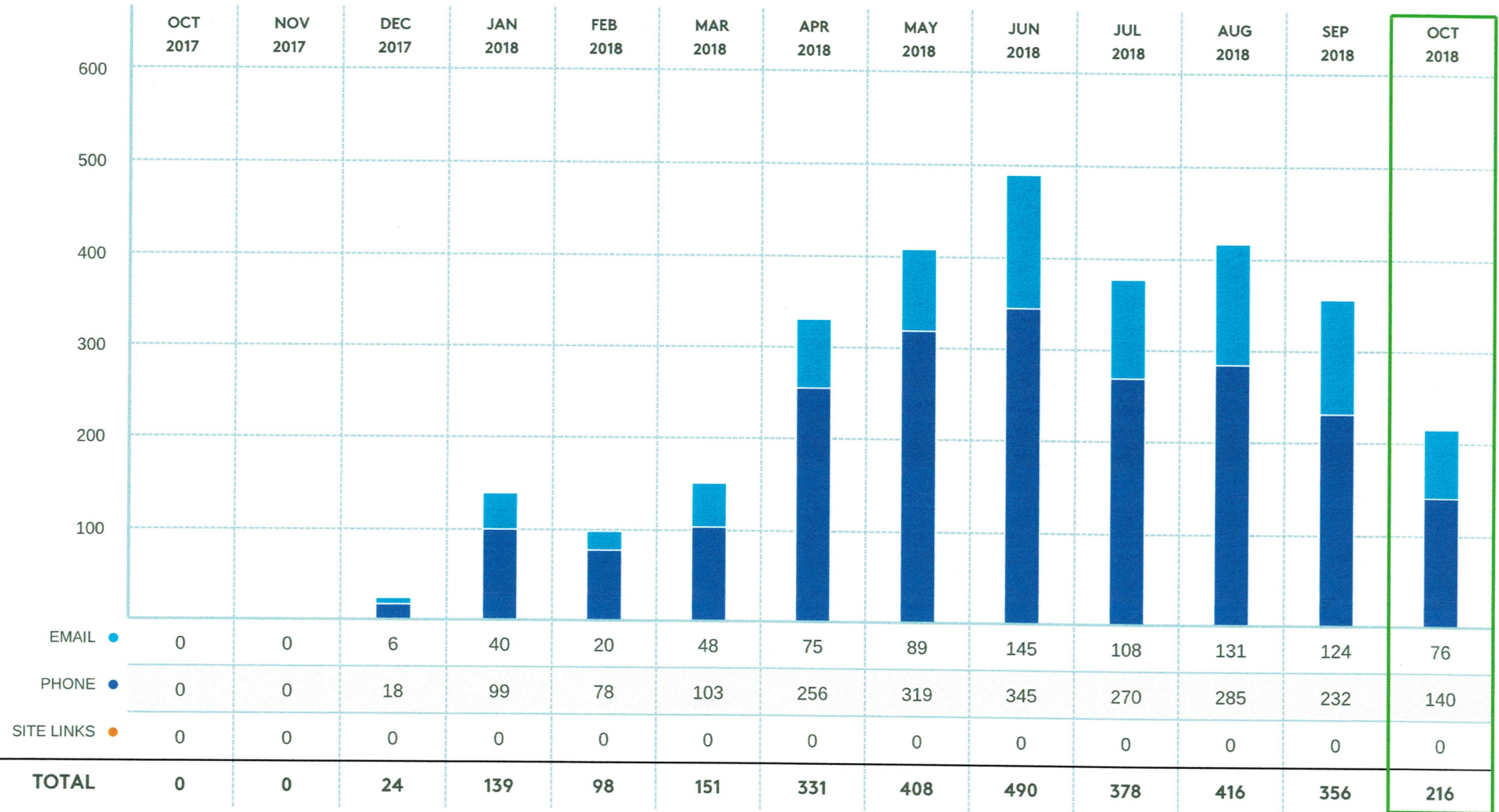
0



TOTAL TRUE LEADS

216

## True Leads™



## Merritt Monument

Midland, TX 79703

# Media Views

3D

3D TOURS

N/A



HD VIDEO

N/A



TOTAL VIEWS

N/A



## MEDIA VIEWS

This community doesn't have any 3D Tours or HD Videos in place. Please contact your sales representative to learn more.



# Merritt Monument

Midland, TX 79703



SEARCH RESULTS

21,559



DETAILS PAGE

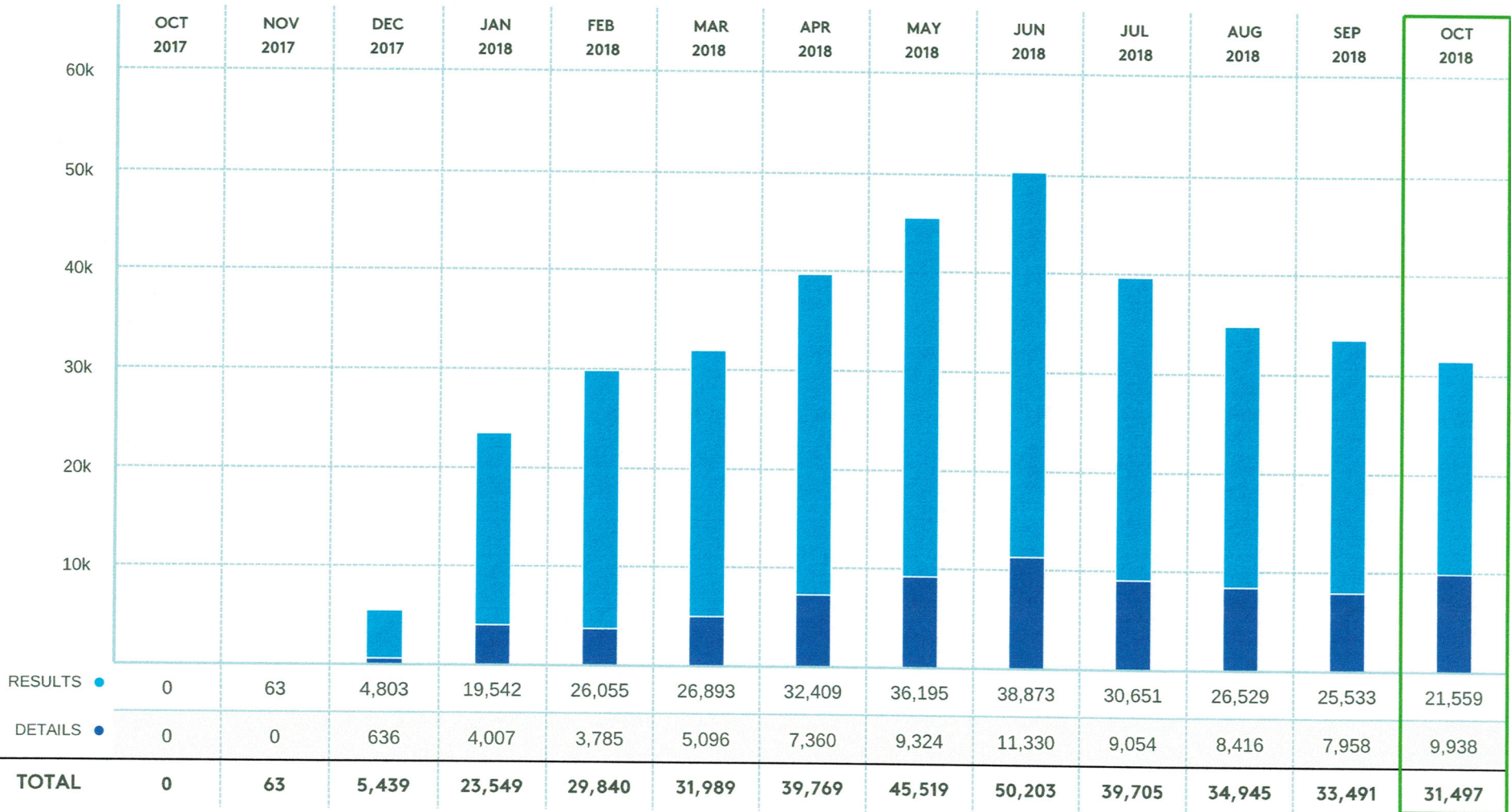
9,938



TOTAL IMPRESSIONS

31,497

## Impressions





J. Ross Lacy – Councilman District 4

November 15, 2018

Texas Department of Housing & Community Affairs  
221 East 11<sup>th</sup> Street  
Austin, TX 78701  
RE: TDHCA #16210: Merritt Monument

Dear Tim Irvine,

I write you today to urge your consideration of the request by Merritt Communities for an extension of their tax credit deadline. I'm sure you've heard through local and national news that while the oilfield industry is booming in Midland, the resulting shortages in housing has become a crisis. As a result, starting wages for oilfield jobs are \$60,000 making it extremely difficult for us at the City of Midland to compete for staffing to keep up with the growth of our community. As we try to attract and maintain talented employees, they find it exceedingly difficult to find affordable housing. Average rents in the market have reached \$2,000 per month. We are short over 200 teachers for our schools.

As a result of this situation, our inspection department is short staffed. I know that the Merritt team has been working extremely hard to finish by December 31, 2018, and there have been many times inspectors haven't been able to make it through their inspection rounds and arrive on-site for upwards of 3-4 days. Given that many times re-inspections are necessary as with any construction project, this situation becomes doubly problematic on the schedule.

Additionally, we have had a change at the Fire Marshal position, and the new Fire Marshal has taken a different viewpoint on the fire suppression system design. Consistent with his authority at that position and in the name of public safety, Merritt Monument will be installing additional fire hydrants and a standpipe system to make it easier and safer for our fire fighters to combat a fire to the buildings.

We have been in unanimous support of this project, and we can't afford to lose this much needed housing for our community. Thank you in advance for approving the tax credit deadline extension.

Sincerely,



J. Ross Lacy  
Councilman

6b



**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**DECEMBER 6, 2018**

Presentation, discussion, and possible action on penalties for failure to meet deadlines under 10 TAC 11.9(c)(8) Readiness to Proceed for 18013 Dayton Retirement Center

**RECOMMENDED ACTION**

**WHEREAS**, an award of Competitive (9%) Housing Tax Credits in the amount of \$279,322 to Dayton Retirement Center (the Development) was approved by the Board on July 28, 2018;

**WHEREAS**, the Applicant was awarded points under 10 TAC §11.9(c)(8) of the 2018 Qualified Allocation Plan (QAP), related to readiness to proceed in disaster impacted counties, which requires that the Development close all financing and fully execute a construction contract on or before the last business day of October 2018;

**WHEREAS**, per 10 TAC §11.9(c)(8), failure to close all financing and provide evidence of an executed construction contract by the October deadline will result in penalty under 10 TAC §11.9(f), which authorizes the Board to find that an Applicant or Affiliate should be ineligible to compete in the 2019 Application Round or that it should be assigned a penalty deduction, to be determined solely by the Board; and

**WHEREAS**, the Development failed to close all financing and provide a fully executed construction contract by the last business day of October 2018;

**NOW, therefore, it is hereby**

**RESOLVED**, in accordance with 10 TAC §11.9(c)(8), the Applicant is subject to penalty under 10 TAC §11.9(f), as determined solely by the Board; and

**FURTHER RESOLVED**, that that the Acting Director and his designees be and each of them are hereby authorized, empowered, and directed, for and on behalf of the Department, to impose a penalty on the Applicant as determined at this meeting.

**BACKGROUND**

An award of \$279,322 to the Development was approved by the Board on July 28, 2018. The Development proposed the Acquisition and Rehabilitation of 48 Units for the Elderly population in Dayton. The Application was awarded points under 10 TAC §11.9(c)(8) related to readiness to proceed in disaster impacted counties, which states:

Application for a proposed development, located in a county declared by the Federal Emergency Management Agency to be eligible for individual assistance within the year proceeding the Full Application Delivery Date, that provides evidence they will close all financing and fully execute the construction contract on or before the last business day of October. Evidence may include, but is not limited to, loan or equity commitments with

evidence of completed due diligence, permit-ready architectural plans, and construction contracts or permits. Applications must include evidence that appropriate zoning will be in place at award. The Board cannot and will not waive the deadline and will not consider waiver under its general rule regarding waivers. Failure to close all financing and provide evidence of an executed construction contract by the October deadline will result in penalty under 10 TAC §11.9(f), as determined solely by the Board.

The Department directed Applicants to provide by November 9, 2018, evidence that all financing was closed and that a construction contract had been fully executed on or before the last business day of October. On November 9, 2018, the Applicant for Dayton Retirement Center confirmed that all financing was not closed by the October deadline. Also, the Applicant did not provide evidence that a construction contract had been fully executed.

Pursuant to 10 TAC §11.9(c)(8), the Applicant is subject to penalty under 10 TAC §11.9(f), as determined solely by the Board. Per 10 TAC §11.9(f) related to Factors Affecting Eligibility in the 2019 Application Round:

Staff may recommend to the Board and the Board may find that an Applicant or Affiliate should be ineligible to compete in the 2019 Application Round or that it should be assigned a penalty deduction of one (1) point for each submitted Application (Tex. Gov't Code 2306.6710(b)(2)) because it made a deduction of up to five (5) points for any of the items listed in paragraphs (1) – (5) of this subsection, unless the person approving the extension (the Board or Executive Director, as applicable) makes an affirmative finding setting forth 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. Any such matter to be presented for final determination of deduction by the Board must include notice from the Department to the affected party not less than fourteen (14) days prior to the scheduled Board meeting. The Executive Director may, but is not required, to issue a formal notice after disclosure if it is determined that the matter does not warrant point deductions. (§2306.6710(b)(2))

(1) If the Applicant or Affiliate failed to meet the original Carryover submission or 10 percent Test deadline(s) or has requested an extension of the Carryover submission deadline, the 10 percent Test deadline (relating to either submission or expenditure).

(2) If the Applicant or Affiliate failed to meet the commitment or expenditure requirements of a HOME or National Housing Trust Fund award from the Department.

(3) If the Developer or Principal of the Applicant violates the Adherence to Obligations.

(4) Any deductions assessed by the Board for paragraph (1) or (2) of this subsection based on a Housing Tax Credit Commitment from the preceding Application Round will be attributable to the Applicant or Affiliate of an Application submitted in the current Application Round.

**(5) If the Applicant or Affiliate fails to meet the deadline to both close financing and provide evidence of an executed construction contract under 10 TAC §11.9(c)(8) related to construction in specific disaster counties.** (emphasis provided)

On November 12, 2018, staff notified the Applicant that the matter would be presented for final determination of future ineligibility or point deductions by the Board at this meeting. The Applicant provided a letter to the Board, which is attached.

COMMUNITY RETIREMENT CENTRE, INC.

November 28, 2018

Board of Directors  
Texas Department of Housing and Community Affairs  
221 E 11<sup>th</sup> Street  
Austin, TX

RE: Dayton Retirement Center  
TDHCA No. 18013  
Dayton, Tx 77535

Dear Board Members,

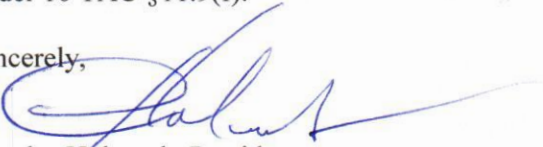
We are very disappointed that we were not able to close the rehabilitation of the Dayton Retirement Center by October 31, 2018, as promised for Readiness to Proceed points (5). Providing justification and/or excuses does not change the fact that we failed to meet our goal. We do, however, wish to inform the Board of the following:

1. Because we were in both the USDA Set aside and the At-Risk Set-aside, the loss of 5 points will not affect our eligibility for award - nor did claiming those points mean that we knocked another competitor out of the award, because everyone who filed a full application in these two Set-asides received an award.
2. We are dealing with the USDA as an existing and continuing lender, and deals with that agency are almost always more complicated and take more time to close.
3. We anticipate closing not later than December 31, 2018 so we are not just delaying construction.

Because this a rehabilitation project, (we were 98% occupied at application submission), and the closing is now scheduled for on or before December 31, 2018, we anticipate that construction completion will be by not later than December 31, 2019 – which is only two months later than originally planned.

We pray for your understanding and will humbly agree to whatever appropriate penalty you may access under 10 TAC §11.9(f).

Sincerely,



Charles Holcomb, President  
Community Retirement Centre, Inc./ Sole Member  
DRC Partners, LLC/ GP  
CRCI of Dayton, LLC

**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**DECEMBER 6, 2018**

Presentation, discussion, and possible action on penalties for failure to meet deadlines under 10 TAC 11.9(c)(8) Readiness to Proceed for 18243 2222 Cleburne

**RECOMMENDED ACTION**

**WHEREAS**, an award of Competitive (9%) Housing Tax Credits in the amount of \$1,500,000 to 2222 Cleburne (the Development) was approved by the Board on July 28, 2018;

**WHEREAS**, the Applicant was awarded points under 10 TAC §11.9(c)(8) of the 2018 Qualified Allocation Plan (QAP), related to readiness to proceed in disaster impacted counties, which requires that the Development close all financing and fully execute a construction contract on or before the last business day of October 2018;

**WHEREAS**, per 10 TAC §11.9(c)(8), failure to close all financing and provide evidence of an executed construction contract by the October deadline will result in penalty under 10 TAC §11.9(f), which authorizes the Board to find that an Applicant or Affiliate should be ineligible to compete in the 2019 Application Round or that it should be assigned a penalty deduction, to be determined solely by the Board; and

**WHEREAS**, 18243 2222 Cleburne failed to close all financing and provide a fully executed construction contract by the last business day of October 2018.

**NOW, therefore, it is hereby**

**RESOLVED**, in accordance with 10 TAC §11.9(c)(8), the Applicant is subject to penalty under 10 TAC §11.9(f), as determined solely by the Board; and

**FURTHER RESOLVED**, that that the Acting Director and his designees be and each of them are hereby authorized, empowered, and directed, for and on behalf of the Department, to impose a penalty on the Applicant as determined at this meeting.

**BACKGROUND**

An award of \$1,500,000 to 2222 Cleburne (the Development) was approved by the Board on July 28, 2018. The Development proposed the New Construction of 112 Units for the Elderly population in Houston. The Application was awarded points under 10 TAC §11.9(c)(8) related to readiness to proceed in disaster impacted counties, which states:

Application for a proposed development, located in a county declared by the Federal Emergency Management Agency to be eligible for individual assistance within the year proceeding the Full Application Delivery Date, that provides evidence they will close all financing and fully execute the construction contract on or before the last business day of October. Evidence may include, but is not limited to, loan or equity commitments with

evidence of completed due diligence, permit-ready architectural plans, and construction contracts or permits. Applications must include evidence that appropriate zoning will be in place at award. The Board cannot and will not waive the deadline and will not consider waiver under its general rule regarding waivers. Failure to close all financing and provide evidence of an executed construction contract by the October deadline will result in penalty under 10 TAC §11.9(f), as determined solely by the Board.

The Department directed Applicants to provide by November 9, 2018, evidence that all financing was closed and that a construction contract had been fully executed on or before the last business day of October. On November 9, 2018, the Applicant for 2222 Cleburne confirmed that all financing was not closed by the October deadline. Also, the Applicant did not provide evidence that a construction contract had been fully executed.

Pursuant to 10 TAC §11.9(c)(8), the Applicant is subject to penalty under 10 TAC §11.9(f), as determined solely by the Board. Per 10 TAC §11.9(f) related to Factors Affecting Eligibility in the 2019 Application Round:

Staff may recommend to the Board and the Board may find that an Applicant or Affiliate should be ineligible to compete in the 2019 Application Round or that it should be assigned a penalty deduction of one (1) point for each submitted Application (Tex. Gov't Code 2306.6710(b)(2)) because it made a deduction of up to five (5) points for any of the items listed in paragraphs (1) – (5) of this subsection, unless the person approving the extension (the Board or Executive Director, as applicable) makes an affirmative finding setting forth 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. Any such matter to be presented for final determination of deduction by the Board must include notice from the Department to the affected party not less than fourteen (14) days prior to the scheduled Board meeting. The Executive Director may, but is not required, to issue a formal notice after disclosure if it is determined that the matter does not warrant point deductions. (§2306.6710(b)(2))

(1) If the Applicant or Affiliate failed to meet the original Carryover submission or 10 percent Test deadline(s) or has requested an extension of the Carryover submission deadline, the 10 percent Test deadline (relating to either submission or expenditure).

(2) If the Applicant or Affiliate failed to meet the commitment or expenditure requirements of a HOME or National Housing Trust Fund award from the Department.

(3) If the Developer or Principal of the Applicant violates the Adherence to Obligations.

(4) Any deductions assessed by the Board for paragraph (1) or (2) of this subsection based on a Housing Tax Credit Commitment from the preceding Application Round will be attributable to the Applicant or Affiliate of an Application submitted in the current Application Round.

**(5) If the Applicant or Affiliate fails to meet the deadline to both close financing and provide evidence of an executed construction contract under 10 TAC §11.9(c)(8) related to construction in specific disaster counties.** (emphasis provided)

On November 12, 2018, staff notified the Applicant that the matter would be presented for final determination of future ineligibility or point deductions by the Board at this meeting.

6c



**TO BE POSTED  
NOT LATER THAN  
THE THIRD DAY  
BEFORE THE  
DATE OF THE  
MEETING**

6d

**TO BE POSTED  
NOT LATER THAN  
THE THIRD DAY  
BEFORE THE  
DATE OF THE  
MEETING**

6e

**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**DECEMBER 6, 2018**

Presentation, discussion and possible action regarding an Award of Direct Loan funds from the 2018-1 Multifamily Direct Loan Notice of Funding Availability

**RECOMMENDED ACTION**

**WHEREAS**, the Board previously authorized release of the 2018-1 Multifamily Direct Loan Notice of Funding Availability (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, increasing the amount available to \$62,304,276;

**WHEREAS**, Application #18019, which requested \$3,090,000 in Direct Loan funds for Highlander Senior Village, is a Priority 3 application under the 2018-1 NOFA that has received complete reviews for compliance with program and underwriting requirements and was previously awarded 9% housing tax credits (9% HTC) on July 26, 2018;

**WHEREAS**, in accordance with 10 TAC §1.301(d)(1), the compliance history is designated as a Small Portfolio Category 4 and deemed acceptable without conditions by the Executive Award and Review Advisory Committee (EARAC) after review and discussion;

**WHEREAS**, 10 TAC §13.5(d)(2) requires Applications for Developments previously awarded Department funds under any program to be found eligible by the Board;

**WHEREAS**, this Application was found eligible by the Board on July 26, 2018, and has provided evidence of adverse factors beyond the applicant's control that could materially impair their ability to provide affordable housing as a criteria for the Board to consider in affirming their eligibility;

**WHEREAS**, staff recommends the Board continue to find this Application eligible due to increased project costs as a result of the development site's location near a floodplain, and within the Edwards Aquifer recharge zone; and

**WHEREAS**, this Application has layered Direct Loan rent restrictions on 20 of the 9% HTC units as a result of this addition of Direct Loan funds;

**NOW, therefore, it is hereby**

**RESOLVED**, that an award of \$3,090,000 in HOME funds from the 2018-1 NOFA for Highlander Senior Village is hereby approved in the form presented at this meeting; and

**FURTHER RESOLVED**, that the Board’s approval is conditioned upon satisfaction of all conditions of underwriting, and completion of any other reviews required to assure compliance with the applicable HOME rules and requirements.

**BACKGROUND**

On December 14, 2017, the Board approved issuance of a NOFA for up to \$28,862,745, which has subsequently been 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,
- \$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.

Highlander Senior Village was awarded an allocation of 9% HTC on July 26, 2018, which proposed new construction of 66 one and two-bedroom units for an Elderly Limitation population in Bulverde. The Applicant’s expectation of increased interest rates, as well as actual increased project costs as a result of the development site’s location near a floodplain and within the Edwards Aquifer recharge zone, were provided as justification for requesting Direct Loan funds after the allocation of 9% HTC in accordance with 10 TAC §13.5(d)(2). Also, this request for additional Direct Loan funds, which would be funded with HOME, will help the Department in expeditiously committing its HOME funds.

Staff is recommending the Board’s approval of Highlander Senior Village’ application (18019) for HOME funds totaling \$3,090,000 as a loan at 4.0% interest rate with a 40-year amortization and 25-year term under the General Set-Aside. The majority of the \$3,090,000 HOME loan is replacing a portion of the originally anticipated \$5.5 million loan from Sterling Bank. The Sterling Bank loan has been reduced to \$3.095 million; when combined with the HOME loan there will now be \$6.185 million in permanent debt. Furthermore, the interest rate on permanent debt has decreased from 4.85% (interest rate on the Sterling Bank loan) to approximately 4.43% (effective interest rate on the Sterling Bank loan and HOME loan). As a result of the increased total loan proceeds, deferred developer fee has decreased from \$565,564 to approximately \$252,000. As a result of the lower interest rate on permanent debt and the decreased deferred fee amount, deferred fee is now expected to be repaid in year 4 instead of year 8. While deferred fee has decreased and will be repaid more quickly, the total developer fee has not changed from the time of the 9% HTC award.

	Permanent Debt total	Sterling Bank loan	Permanent Debt Interest	Deferred Developer Fee	Developer Fee paid in year
9% Application	\$5.5 million	\$5.5 million	4.85%	\$565,564	8
Current Request	\$6.185 million	\$3.095 million	4.43%	\$252,000	4



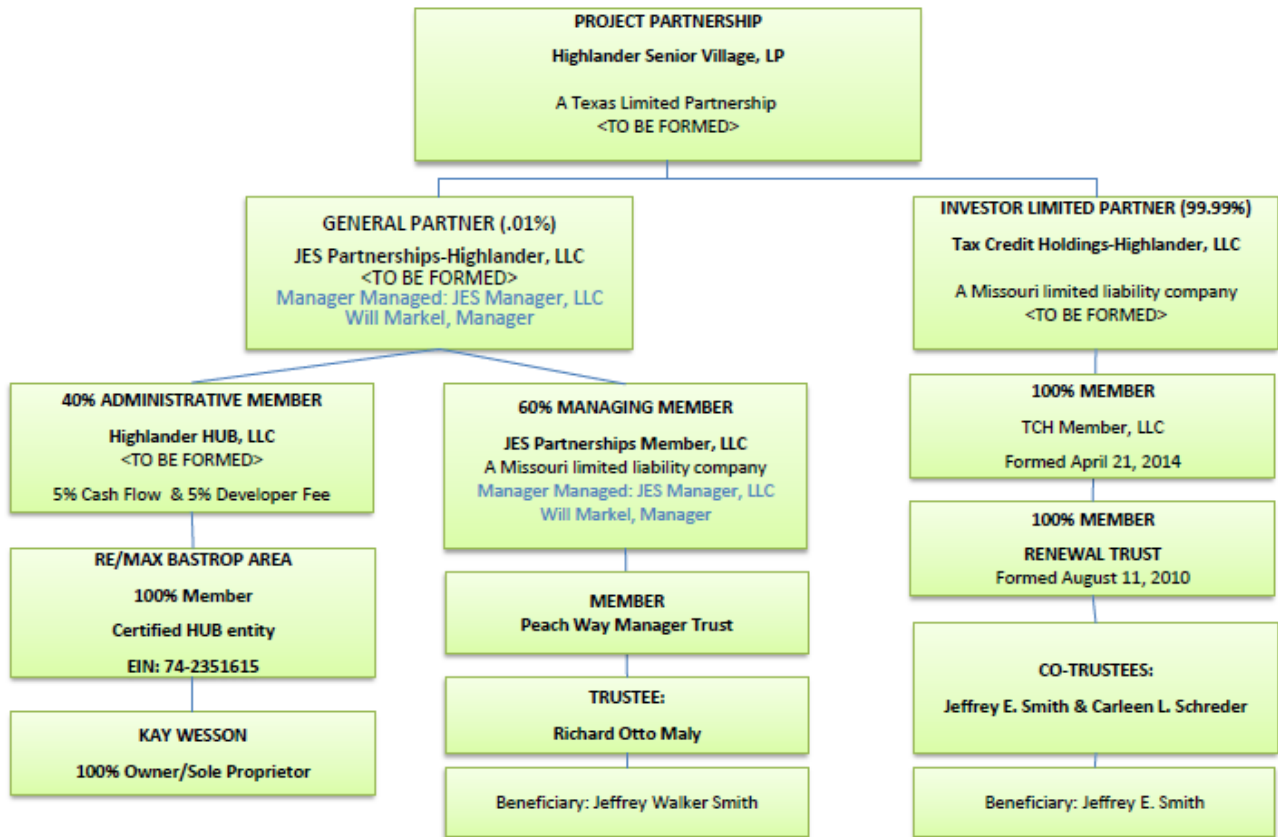
The HOME loan will be subordinate to the Sterling Bank USDA Section 538 loan and will maintain second lien position during the permanent period as a result. The recommended application and award amounts are outlined in the attached award recommendations log behind this Board item.

This application has been underwritten and determined to meet the Real Estate Analysis rules and requirements and has received a previous participation review.

Should the recommended award be approved, \$45,975,028 will remain available under the NOFA, of which 14 applications requesting \$25,650,000 are still under review. Subsequent award recommendations for applications undergoing staff reviews may appear on future Board agendas.

*Organizational Structure and Previous Participation:* The borrower is Highlander Senior Village, LP and includes entities and principals as indicated in the organization chart below. At the time of the Previous Participation Review, the applicant was a Small Portfolio Category 4. EARAC recommends approval without conditions because the conditions that were previously placed on the applicant at the time of the 9% HTC award have already been met.

*Public Comment:* There have been no letters of support or opposition received by the Department in connection with this current application.





**JES Dev Co, Inc.**  
**P.O. Box 7688**

**Columbia, Missouri 65203**

**Phone – (573) 443-2021 / (573) 874-7116 – Fax**

October 29, 2018

Andrew Sinnott  
Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup> Street  
Austin, Texas 78701

RE: MFDL Application  
TDHCA #18019 – Highlander Senior Village

Dear Andrew:

Due to federal interest rate increases in 2018 and planned rate increases in 2019, we believe there is significant risk that increasing rates will impact the feasibility of Highlander Senior Village. The US Federal Funds Rate has already increased by 75 basis points in 2018 and is planned to increase by another 75 basis points in 2019. We have seen the 2018 federal rate increases impact projected loan rates by as much as 50 basis points.

Additionally, due to the site's location in the Edwards Aquifer recharge zone we are experiencing increased project costs. Costs associated with floodplain mitigation and an Edwards Aquifer Protection Plan have increased our construction contingency, civil engineering, and environmental assessment costs.

It is for these reasons that we have elected to request MFDL funds from the Department and why we believe Highlander Senior Village should be found eligible for MFDL funds.

Sincerely,

A handwritten signature in black ink that reads "John Guttman". The signature is written in a cursive, flowing style.

John Guttman  
Development Manager  
JES Dev Co, Inc.



Addendum to Underwriting Report

TDHCA Application #: 18019 Program(s): 9% HTC

Highland Senior Village

Address/Location: west of Johnson Way, north of FM1863

City: Bulverde County: Comal Zip: 78163

APPLICATION HISTORY	
Report Date	PURPOSE
11/20/18	MDL Loan Memo
09/18/18	Commitment Notice
07/12/18	New Application - Initial Underwriting

ALLOCATION

TDHCA Program	Previous Allocation				RECOMMENDATION				
	Amount	Rate	Amort	Term	Amount	Rate	Amort	Term	Lien
MF Direct Loan Const. to Perm. (Repayable)					\$3,090,000	4.00%	40	25	2
LIHTC (0% Credit)	\$500,000				\$500,000				

\* Multifamily Direct Loan Terms:

\* Pursuant to 10 TAC §13.8(a), the term of a Multifamily Direct Loan should match the term of any superior loan (within 6 months).

\* Lien position after conversion to permanent. The Department's lien position during construction may vary.

CONDITIONS STATUS

- 1 Receipt and acceptance before Direct Loan Closing
  - a: Substantially final construction contract with Schedule of Values.
  - b: Updated term sheets with substantially final terms from all lenders
  - c: Substantially final draft of limited partnership agreement.
  - d: Senior loan documents (and/or partnership documents) must contain a provision(s) that any stabilization resizing on the senior debt includes the debt service on the TDHCA MDL at a 1.15 DCR.
  - e: Documentation identifying any required matching funds, and confirming that the source is eligible to be counted as matching funds under HUD and TDHCA requirements.
- 2 Receipt and acceptance by Commitment:

: Certification that if the site is in the 100-year floodplain when it places in service, the finished ground floor elevation of the buildings will be at least one foot above the floodplain and that all drives, parking and amenities will be no more than 6 inches below the floodplain; and that the Owner will provide flood insurance coverage for the buildings and for the residents' personal property until such time that the site is officially designated to be no longer in the floodplain.

Status: Condition Cleared - Applicant sent a letter certifying that to the above referenced condition.

3 Receipt and acceptance by Cost Certification:

a: Architect or engineer certification (including a Letter of Map Amendment "LOMA" or Letter of Map Revision "LOMR-F") indicating that the development is not within the 100 year floodplain; or that the finished ground floor elevation for each building is at least one foot above the floodplain and that all drives, parking and amenities are not more than 6 inches below the floodplain.

Status: Pending.

b: For any buildings remaining in the floodplain, documentation that flood insurance is in place both for the buildings and for the residents' personal property at the property owner's expense; and certification from the owner that flood insurance for the buildings and for the residents' personal property will remain in force until such time that the buildings are officially designated as no longer in a floodplain.

Status: Pending.

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
50% of AMI	50% of AMI	5
60% of AMI	60% of AMI	23

TDHCA SET-ASIDES for DIRECT LOAN LURA		
Income Limit	Rent Limit	Number of Units
50% of AMFI	Low HOME	11
60% of AMFI	High HOME	9

ANALYSIS

Applicant is requesting a \$3,090,000 Multifamily Direct Loan (MDL). The request comes in response to increased development costs and some interest savings with a lower interest.

The MDL LURA will restrict 20 units at 50% and 60% levels.

Operating Pro Forma

2018 rents were utilized in this analysis and increased income by \$14.7K (2% increase). Applicant's proforma remained the same except for the payroll figure, which decreased by \$15.6K which the Applicant stated that they are going to a part time maintenance individual at the site.

Underwriter's pro forma expenses remain the same except for the management fee which adjusts based on NOI.

Applicant's expenses are not within 5% of Underwriter's expenses, therefore Underwriter's pro forma is used for analysis.

Development Cost

Applicant's increased contingency to 7% from the original 5% (\$107K increase). There were also increases in soft costs (\$67K), financing (\$88K), and reserves (\$99K).

Applicant's developer fee remained the same.

Total Development Costs increased by \$376K.

Sources of Funds

Applicant originally submitted the Application with a senior debt of \$5.6M at 4.85% interest rate at 40 years amort and 25 year term. Applicant submitted an application for MDL funds for \$3,090,000 at 4% rate, 30 year amort, and 25 year term, while decreasing the senior debt to \$3,095,000 with original rate and term.

Underwriter's analysis with the Applicant's requested rates and terms arrived at a 1.13 DCR. Through negotiations with the MDL program area and the Applicant, the Applicant requested the TDHCA MDL loan to be extended to 40 years to match the senior debt.

The recommended MDL loan terms are \$3,090,000 at 4%, 40/25. This generates a 1.16 DCR with \$252k deferred fee paying off in year 4 with a 15 year residual cash flow of \$1.16M.

Conclusion

The TDHCA recommended MDL loan terms are determined by the MDL program area within the parameters of the NOFA, not Section 10.302(d)(4)(D)(i) of the REA rules.

The tax credit request and recommendation of \$500k annual credits remains the same as original underwriting.

Underwriter:	<u>Duc Nguyen</u>
Manager of Real Estate Analysis:	<u>Thomas Cavanagh</u>
Director of Real Estate Analysis:	<u>Brent Stewart</u>





**2018-1 Multifamily Direct Loan Program - Application Log - November 29, 2018**

Per 2018-1 Multifamily Direct Loan Notice of Funding Availability published in the *Texas Register* on 12/29/2017, 1st Amendment to NOFA published in the *Texas Register* on 4/6/2018, 2nd Amendment to NOFA published in the *Texas Register* on 7/27/18, and 3rd Amendment to NOFA

The following data was compiled using information submitted by each applicant. While this data has been reviewed or verified by the Department, errors may still be present. Those reviewing the log are advised to use caution in reaching any definitive conclusions based on this information alone. Where Applications are layered with 9% or 4% Tax credits, the Applications are also subject to evaluation under the Department criteria for those fund sources. Applicants are encouraged to review 10 TAC §§11.1(b) and 10.2(a) concerning Due Diligence and Applicant Responsibility, along with 10 TAC Subchapter C related to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules for Applications. This log will be updated periodically as staff completes application reviews and as more applications are received. The Multifamily Direct Loan Program - Application Log is presented for informational use only, and does not represent a conclusion or judgment by TDHCA, its staff or Board. Applicants that identify an error in the log should contact Andrew Simmott at andrew.simmott@tdhca.state.tx.us as soon as possible. Identification of an error early does not guarantee that the error can be addressed administratively.

*Applications sorted by date received within each set-aside.*

													TCAP RF	\$3,300,000
													NHIF	\$19,024,041
													Total Set Aside Funding Level:	<b>\$22,324,041</b>
TDHCA Application #	Property Name	Property City	Property County	Region	Housing Activity <sup>1</sup>	Multifamily Direct Loan Request/ Award	Target Population	Total Units	MF Direct Loan Units	Layering <sup>2</sup>	Date Received <sup>3</sup>	Comments		
18502	Arlinda Gardens Supportive Housing	Bryan	Brazos	8	NC	\$ -	Supportive Housing	29	13		3/1/2018	Application withdrawn 8/7/18		
18099	Waters Park Studios	Austin	Travis	7	NC	\$ 1,000,000	Supportive Housing	132	10	9%	4/2/2018	Recommended for award at 7/26/18 Board meeting		
18099	Waters Park Studios	Austin	Travis	7	NC	\$ 1,000,000	Supportive Housing	132	8	9%	7/27/2018	Recommended for award at 10/11/18 Board meeting		
18504	Brooks Haven Supportive Housing	Rockdale	Milam	8	NC	\$ 2,000,000		30	9		8/31/2018			
18502	Arlinda Gardens Supportive Housing	Bryan	Brazos	8	NC	\$ 2,000,000	Supportive Housing	29	13		9/12/2018			
18503	Eastern Oaks Apartments	Austin	Travis	7	R	\$ 2,000,000	General	30	18		9/19/2018			
18448	RBJ Phase I	Austin	Travis	7	NC	\$ 2,000,000	Elderly Limitation	279	15	4%	10/29/2018			
18137	New Hope Housing Dale Carnegie	Houston	Harris	6	NC	\$ 1,386,000	Elderly Limitation	170	11	9%	11/26/2018	Previously awarded 9% HTC on 7/26/18		
<b>Total Amount Requested Under SH/SR Set Aside</b>						<b>\$ 11,386,000</b>	<b>Total Units</b>	<b>802</b>	<b>84</b>					
<b>Total Amount Awarded Under SH/SR Set Aside</b>						<b>\$ 2,000,000</b>	<b>Total Units</b>	<b>30</b>	<b>10</b>					
<b>Total Amount Remaining Under SH/SR Set Aside</b>						<b>\$ 20,324,041</b>								

													Total Set Aside Funding Level:	<b>\$8,215,058</b>
TDHCA#	Property Name	Property City	Property County	Region	Housing Activity <sup>1</sup>	Multifamily Direct Loan Request/ Award	Target Population	Total Units	MF Direct Loan Units	Layering <sup>2</sup>	Date Received <sup>3</sup>	Comments		
18322	Las Casitas de Azucar	Santa Rosa	Cameron	11	NC	\$ 1,600,000	General	50	14	9%	4/2/2018	Recommended for award at 7/26/18 Board meeting		
18391	Merritt Manor	Manor	Travis	7	NC	\$ 2,000,000	Elderly Limitation	146	30	9%	4/2/2018			
<b>Total Amount Requested Under CHDO Set Aside</b>						<b>\$ 3,600,000</b>	<b>Total Units</b>	<b>196</b>	<b>44</b>					
<b>Total Amount Awarded Under CHDO Set Aside</b>						<b>\$ 1,600,000</b>	<b>Total Units</b>	<b>50</b>	<b>14</b>					
<b>Total Amount Remaining Under CHDO Set Aside</b>						<b>\$ 6,615,058</b>								

HOME (limited availability statewide)	\$17,318,946
NSPI PI (available statewide)	\$5,000,000
TCAP RF (available statewide)	\$9,446,231
<b>NSPI PI and TCAP RF Total</b>	<b>\$14,446,231</b>

													Total Set Aside Funding Level:	<b>\$31,765,177</b>
TDHCA#	Property Name	Property City	Property County	Region	Housing Activity <sup>1</sup>	Multifamily Direct Loan Request/ Award	Target Population	Total Units	MF Direct Loan Units	Layering <sup>2</sup>	Date Received <sup>3</sup>	Comments		
18500	Rio Lofts	San Antonio	Bexar	9	NC	\$ -	General	81	36	9%	1/11/2018	Application withdrawn 4/11/18		
18501	Secretariat Apartments	Arlington	Tarrant	3	NC	\$ -	Elderly Limitation	74	29	9%	1/11/2018	Application withdrawn 4/30/18		
18412	Lord Road Apartments	San Antonio	Bexar	9	NC	\$ -	General	324	50	4%	1/18/2018	\$2,975,000 Direct Loan award returned after 4/26/18 Board approval		
18417	Sphinx at Throckmorton Villas	McKinney	Collin	3	NC	\$ -	General	220	18	4%	2/15/2018	Application suspended 10/9/18		
18000	Evergreen at Garland Senior Community	Garland	Dallas	3	NC	\$ 1,500,000	Elderly Limitation	105	25	9%	4/2/2018			
18002	Evergreen at Basswood Senior Community	Garland	Dallas	3	NC	\$ 2,000,000	Elderly Limitation	116	34	9%	4/2/2018			
18036	Clyde Ranch	Clyde	Callahan	2	NC	\$ 660,000	General	40	11	9%	4/2/2018	Recommended for award at 7/26/18 Board meeting		
18040	Farmhouse Row	Slaton	Lubbock	1	NC	\$ 660,000	General	48	11	9%	4/2/2018	Recommended for award at 7/26/18 Board meeting		
18052	Nacogdoches Lofts	San Antonio	Bexar	9	NC	\$ 2,025,000	Elderly Limitation	102	35	9%	4/2/2018			
18053	Alazan Lofts	San Antonio	Bexar	9	NC	\$ -	General	88	24	9%	4/2/2018	Application terminated		
18054	Piedmont Lofts	San Antonio	Bexar	9	NC	\$ 2,350,000	General	55	41	9%	4/2/2018	Requested CHDO set-aside, which is unavailable for this application		
18369	The Residences at Canyon Lake	Canyon Lake	Comal	9	NC	\$ 1,060,000	Elderly Limitation	35	11	9%	4/2/2018	Recommended for award at 7/26/18 Board meeting		

18421	Travis Flats	Austin	Travis	7	NC	\$ -	General	146	50	4%	4/4/2018	Application withdrawn 7/26/18
18259	Cannon Courts	Bangs	Brown	2	NC	\$ 1,659,248	General	36	11	9%	8/30/2018	Recommended for award at 11/8/18 Board meeting
18407	Sphinx at Sierra Vista Senior Villas	Fort Worth	Tarrant	3	NC	\$ 3,600,000	General	272	27	4%	8/31/2018	Recommended for award at 11/8/18 Board meeting
18223	Harvest Park Apartments	Pampa	Gray	1	NC	\$ 1,000,000	General	60	10	9%	9/13/2018	Recommended for award at 11/8/18 Board meeting
18274	Hill Court Villas	Granbury	Hood	3	NC	\$ 1,000,000	Elderly Limitation	48	10	9%	9/13/2018	Recommended for award at 11/8/18 Board meeting
18454	Grim Hotel Apartments	Texarkana	Bowie	4	ADR	\$ 4,000,000	General	93	19	4%	9/21/2018	
18019	Highlander Senior Village	Comal	Bulverde	9	NC	\$ 3,090,000	Elderly Limitation	66	20	9%	9/25/2018	To be recommended for award at 12/6 Board meeting
18036	Clyde Ranch	Clyde	Callahan	2	NC	\$ -	General	40	25	9%	10/1/2018	Application withdrawn 10/12/18
18040	Farmhouse Row	Slaton	Lubbock	1	NC	\$ -	General	48	37	9%	10/1/2018	Application withdrawn 10/12/18
18505	Mistletoe Station	Fort Worth	Tarrant	3	NC	\$ 1,500,000	General	110	8	9%	10/25/2018	Previously awarded 9% HTC on 7/27/17
18507	Legend Oaks	Llano	Llano	7		\$ 444,000	Elderly Limitation	48			10/30/2018	
18506	Golden Trails	West	McLennan	8	NC	\$ 445,000	Elderly Limitation	45	6	9%	11/19/2018	Previously awarded 9% HTC and HOME funds on 7/27/17
<b>Total Amount Requested Under General Set Aside: Development Sites in non-PJs</b>						\$ 14,018,248	<b>Total Units</b>	426	121			
<b>Total Amount Requested Under General Set Aside: Development Sites in PJs</b>						\$ 12,975,000	<b>Total Units</b>	650	162			
<b>Total Amount Requested Under General Set Aside: TOTAL</b>						\$ 26,993,248	<b>Total Units</b>	1,076	283			
<b>Total Amount Awarded Under General Set Aside (HOME)</b>						\$ 6,039,248	<b>Total Units</b>	123	33			
<b>Total Amount Awarded Under General Set Aside (TCAP RF)</b>						\$ -	<b>Total Units</b>					
<b>Total Amount Awarded Under General Set Aside (NSP1 PI)</b>						\$ 3,600,000	<b>Total Units</b>					
<b>Total Amount Remaining Under General Set Aside (HOME)</b>						\$ 11,279,698						
<b>Total Amount Remaining Under General Set Aside (TCAP RF)</b>						\$ 9,446,231						
<b>Total Amount Remaining Under General Set Aside (NSP1 PI)</b>						\$ 1,400,000						

1 = Housing Activity: New Construction=NC, Rehabilitation=R, ADR = Adaptive Reuse

2= Layering of Other Department Funds: 9%=9% Competitive Tax Credits, 4%=4% Tax Credit Program

3 = Date Received: The date that the application, all required 3rd Party Reports, Application Fees (if applicable), and Certificate of Reservation (if applicable) were received.