BOARD BOOK OF SEPTEMBER 5, 2019



J. B. Goodwin, Chair Leslie Bingham Escareño, Vice-Chair Paul Braden, Member Asusena Reséndiz, Member Sharon Thomason, Member Leo Vasquez, III, Member

Texas Department of Housing and Community Affairs PROGRAMMATIC IMPACT IN FISCAL YEAR 2018

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

Multifamily New Construction & Rehabilitation: Provides mechanisms to attract investment capital and to make available significant financing for the construction and rehabilitation of affordable rental housing through the Housing Tax Credit, Multifamily Bond, and Multifamily Direct Loan programs. Total Households Served: 14,832 Total Funding: \$1,460,067,840	 Single Family Homebuyer Assistance, New Construction, Rehabilitation, Bootstrap, and Contract for Deed: Assists with the purchase, construction, repair, or rehabilitation of affordable single family housing by providing grants and loans through the HOME Single Family Development, HOME Homeowner Rehabilitation Assistance, HOME Homebuyer Assistance, Amy Young Barrier Removal, and Texas Bootstrap programs. Stabilizes homeownership in colonias through the HOME Contract for Deed program. Total Households Served: 257 Total Funding: \$15,545,196
Single Family Homeownership Program: Provides down payment and closing cost assistance, mortgage loans, and mortgage credit certificates to eligible households through the My First Texas Home and Mortgage Credit Certificates programs. Total Households Served: 8,018 Total Funding: \$1,279,041,464	Rental Assistance:Provides rental, security, and utility deposit assistance through HOME Tenant Based Rental Assistance, and rental assistance payments through HUD Section 8 Housing Choice Vouchers and Section 811 Project Based Rental Assistance.Total Households Served: 1,729 Total Funding: \$10,145,027
Weatherization Assistance Program: Provides funding to help low-income households control energy costs through the installation of energy efficient materials and through energy conservation education. Total Households Served: 2,667 Total Funding: \$21,395,454	Homelessness: Funds local programs and services for individuals and families at risk of homelessness or experiencing homelessness. Primary programs are the Homeless Housing and Services program and the Emergency Solutions Grants program. Total Individuals Served: 48,886 Total Funding: \$12,811,075
Comprehensive Energy Assistance Program: Provides energy utility bill assistance to households with an income at or below 150% federal poverty guidelines. Total Households Served: 151,141 Total Funding: \$108,351,163	Community Services Block Grant: Provides administrative support for essential services for low- income individuals through Community Action Agencies. Total Individuals Served: 385,869 Total Funding: \$37,322,167

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

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



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS GOVERNING BOARD MEETING

A G E N D A 8:00 AM SEPTEMBER 5, 2019

John H. Reagan Building JHR 140, 105 W 15th Street Austin, Texas 78701

CALL TO ORDER ROLL CALL CERTIFICATION OF QUORUM

J.B. Goodwin, Chair

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

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

Resolution recognizing October as *National Energy Awareness Month* Resolution recognizing October as *Hispanic Heritage Month*

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 April 25, 2019, and May 23, 2019	J. Beau Eccles General Counsel	
	FINANCIAL ADMINISTRATION		
b)	Presentation, discussion, and possible action to adopt a resolution regarding designating signature authority and superseding previous resolutions in this regard	Ernie Palacios Director of Financial Administration	
	LEGAL		
c)	Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning Candle Chase Apartments (HTC 70064 / CMTS 903)	Jeffrey T. Pender Deputy General Counsel	
d)	Presentation, discussion, and possible action regarding the adoption of an Agreed		
	Final Order concerning Retirement Acres (HTC 70104 / CMTS 925)		
	ASSET MANAGEMENT		
e)	Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Application	Rosalio Banuelos Director of Asset Management	

18376 Lakeview Pointe Apartments Garland

- f) Presentation, discussion, and possible action regarding a Placed in Service deadline extension for a development located in a Major Disaster Area
 16258 Provision at West Bellfort Houston
 RULES
- g) Presentation, discussion, and possible action on an order adopting new 10 TAC Chapter 23 Subchapter H, Homebuyer Assistance with New Construction or Rehabilitation, and directing publication for adoption in the *Texas Register* HOME AND HOMELESSNESS PROGRAMS
- h) Presentation, discussion, and possible action directing closing of the Program Year 2017-2018 Emergency Solutions Grants Program Notice of Funding Availability
- i) Presentation, discussion, and possible action to authorize the issuance of the 2019 HOME Investment Partnerships Program Homebuyer Assistance with New Construction Reservation System Notice of Funding Availability and publication in the *Texas Register*
- j) Presentation, discussion, and possible action to authorize the issuance of the 2019 HOME Investment Partnerships Program Single Family Persons with Disabilities Set-Aside Reservation System Notice of Funding Availability and publication of the NOFA in the *Texas Register*
- k) Presentation, discussion, and possible action to authorize the issuance of the 2019 HOME Investment Partnerships Program Single Family Contract for Deed Reservation System Notice of Funding Availability and publication of the NOFA in the *Texas Register*

BOND FINANCE

- Presentation, discussion, and possible action on the Single Family Mortgage Loan and Mortgage Credit Certificate Programs Participating Lender List
- m) Presentation, discussion, and possible action on Inducement Resolution No. 20-001, Scott Street Lofts, for Multifamily Housing Revenue Bonds Regarding Authorization for Filing an Application for Private Activity Bond Authority and a Determination of Eligibility relating to 10 TAC §11.101(a)(3) regarding Neighborhood Risk Factors MULTIFAMILY FINANCE
- n) Presentation, discussion, and possible action on a Determination Notice for Housing Tax Credits

19412	Majestic Ranch Apartments	San Antonio
19417	Green Oaks Apartments	Houston
19419	Palladium Redbird	Dallas
19434	Limestone Ridge Senior Apartments	Austin ETJ
19430	Kyle Dacy Apartments	Kyle ETJ
19431	Scharbauer Flats	Midland

CONSENT AGENDA REPORT ITEMS

ITEM 2: THE BOARD ACCEPTS THE FOLLOWING REPORTS:

- a) TDHCA Outreach and Activities Report (July-September)
- b) Quarterly Report on Texas Homeownership Division Activity

Abigail Versyp Director of HOME and Homelessness Programs

Abigail Versyp Director of HOME and Homelessness Programs

> Cathy Gutierrez Director of Texas Homeownership Teresa Morales Director of Multifamily Bonds

Marni Holloway Director of Multifamily Finance

Michael Lyttle Director of External Affairs Cathy Gutierrez Director of Texas Homeownership

ACTION ITEMS

CIN		
	ITEM 3: INTERNAL AUDIT	
	Report on the meeting of the Internal Audit and Finance Committee	Sharon Thomason Chair of Committee
	ITEM 4: FAIR HOUSING	
	Presentation, discussion, and possible action to approve the Analysis of Impediments to Fair Housing Choice	Cate Tracz Manager of Fair Housing
	ITEM 5: OCI, HTF, NSP DIVISION	
	Presentation, discussion, and possible action authorizing the Department to implement limited and specific forgiveness provisions associated with Land Bank activities within the Neighborhood Stabilization Program	Raul Gonzales Director of OCI, HTF, NSP Division
	ITEM 6: HOME AND HOMELESSNESS PROGRAMS	Abigail Versyp Director of
a)	Presentation, discussion, and possible action on an appeal under 10 Texas Administrative Code §1.7, Staff Appeals, in regards to 2019 Emergency Solutions Grants Application for Randy Sams' Outreach Shelter, Inc.	HOME and Homelessness Programs
b)	Presentation, discussion, and possible action on Program Year 2019 Emergency	
	Solutions Grants Program Awards	
	ITEM 7: ASSET MANAGEMENT	
	Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Land Use Restriction Agreement	Rosalio Banuelos Director of Asset Management
	96038 2100 Memorial Houston	
	ITEM 8: RULES	
a)	Presentation, discussion, and possible action on an order proposing the repeal of 10 TAC, Subchapter A, Administration, §1.7, Appeals Process; an order proposing new 10 TAC, Subchapter A, Administration, §1.7, Appeals Process; and directing that they be published for public comment in the <i>Texas Register</i>	Brooke Boston Director of Programs

- b) Presentation, discussion, and possible action on an order proposing the repeal of 10 TAC, §1.10, Public Comment Procedures; and an order proposing new 10 TAC §1.10, Public Comment Procedures; and directing their publication for public comment in the Texas Register
- c) Presentation, discussion, and possible action on an order proposing the repeal of 10 TAC Chapter 6 Community Affairs Programs; an order proposing new 10 TAC Chapter 6 Community Affairs Programs; and directing that they be published for public comment in the Texas Register
- 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
- e) Presentation, discussion, and possible action on an order proposing the repeal of 10 TAC Chapter 25, Colonia Self-Help Center Program Rule, and an order proposing new 10 TAC Chapter 25, Colonia Self-Help Center Program Rule, and directing their publication for public comment in the Texas Register

Michael DeYoung Director of **Community Affairs**

Teresa Morales Director of **Multifamily Bonds**

Raul Gonzales Director of OCI, HTF and NSP Programs

ITEM 9: MULTIFAMILY FINANCE

- a) Presentation, discussion, and possible action on the Fourth Amendment to the 2019-1 Multifamily Direct Loan Annual Notice of Funding Availability
- b) Presentation, discussion, and possible action regarding amendments and modifications to the Construction Loan Agreements and Promissory Notes for ADC West Ridge, LP
- c) Presentation, discussion, and possible action regarding changes to the capital structure for Avanti at Sienna Palms Legacy (HTC #18188/ TCAP RF Contract 13150019504)
- d) Presentation, discussion, and possible action regarding a request for waiver of rules for:

19126	3104 Division Lofts	Arlington
19244	Mariposa at Harris Road	Arlington
19319	Bardin Apartments	Arlington

ITEM 10: RULES COMMITTEE

Report on the meeting of the Rules Committee

ITEM 11: MULTIFAMILY FINANCE

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

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

EXECUTIVE SESSION

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

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

Andrew Sinnott MF Loan Programs Administrator

Marni Holloway Director of Multifamily Finance

Leo Vasquez Chair of Committee

Marni Holloway Director of Multifamily Finance

> J.B. Goodwin Chair

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 <u>www.tdhca.state.tx.us</u> or contact Michael Lyttle, 512-475-4542, TDHCA, 221 East 11th Street, Austin, Texas 78701, and request the information. If you would like to follow actions taken by the Governing Board during this meeting, please follow TDHCA account (@tdhca) on Twitter.

Individuals who require auxiliary aids, services or sign language interpreters for this meeting should contact 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, the U.S. Department of Energy has designated October as National Energy Awareness Month;

WHEREAS, the Weatherization Assistance Program, the nation's largest residential energyefficiency program, was established by the U.S. Department of Energy in 1976 to make homes more energy-efficient, safer, and healthier for those with low and moderate incomes;

WHEREAS, the Texas Department of Housing and Community Affairs administers a Weatherization Assistance Program, funded with both U.S. Department of Energy funds and Low Income Home Energy Assistance Program funds, which is operated by a network of community organizations, nonprofits and local governments;

WHEREAS, the Texas Weatherization Assistance Program has injected millions of dollars into communities to improve thousands of homes, thereby helping Texans, including many of whom are elderly, disabled, or families with young children, conserve energy and reduce utility costs;

WHEREAS, the Program conducts computerized energy audits and uses advanced diagnostic technology, investing as much as \$7,541 in a home and providing an array of improvements that include weather stripping of doors and windows; patching cracks and holes; insulating walls, floors, and attics; replacing doors, windows, refrigerators, and water heaters; and repairing heating and cooling systems; and

WHEREAS, weatherization efforts contribute to the state's economic, social, and environmental progress by creating jobs; prompting the purchase of goods and services; improving housing; stabilizing neighborhoods; reducing emissions; and decreasing the risk of fires;

NOW, therefore, it is hereby

RESOLVED, that the Governing Board of the Texas Department of Housing and Community Affairs does hereby celebrate October 2019, as Energy Awareness Month in Texas.

Signed this fifth day of September 2019.



Texas Department of Housing and Community Affairs

WHEREAS, September 15, 2019, through October 15, 2019, is Hispanic Heritage Month, and has a nationally designated theme of "Hispanic Americans: A History of Serving Our Nation," to reflect on Hispanic Americans' service and contributions to the history of our Nation;

WHEREAS, September 15th was chosen as the starting point for the celebration because it is the anniversary of independence of five Latin American countries: Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua. All declared independence in 1821. In addition, Mexico, Chile, and Belize celebrate their independence days on September 16th, September 18th, and September 21st, respectively;

WHEREAS, the Texas Department of Housing and Community Affairs (the Department) recognizes the significance of Hispanic Heritage Month as an important time to remind us of the many contributions and service to Texas and the United States by Americans whose ancestors came from Spain, Mexico, the Caribbean, Central America, and South America;

WHEREAS, the Department recognizes the deep historical importance of generations of Hispanic Americans to the American story and how Hispanic American history, cultures and traditions shape our character, define our beauty, strengthen our patriotism, and enhance our future; and

WHEREAS, the Department recognizes that the contributions and achievements of the diverse cultures within the Hispanic community positively influence, enrich and strengthen our nation as one diverse community of Americans;

NOW, THEREFORE, it is hereby

RESOLVED, that the Texas Department of Housing and Community Affairs —

- (1) recognizes the significance of Hispanic Heritage Month as an important time to acknowledge, appreciate, and celebrate the history of Hispanic Americans, and encourages the continued celebration of this month to provide an opportunity for all Texans to learn more about Hispanic American history, culture, and tradition, and their contributions to the history of our Lone Star State and our Nation; and
- (2) recognizes that in the pursuit of the goal and responsibility of providing equal housing opportunities for all, the Governing Board of the Texas Department of Housing and Community Affairs does hereby celebrate September 15, 2019, through October 15, 2019, as Hispanic Heritage Month in Texas and encourages all Texas individuals and organizations, public and private, to join and work together in amplifying our voice to continue to observe Hispanic Americans' history, cultures, and traditions and the importance of equal housing treatment and opportunity for all.

Signed this _____ day of September 2019.

J. B. Goodwin, Chair Leslie Bingham Escareño, Vice Chair Leo Vasquez , Member Paul A. Braden, Member Asusena Reséndiz, Member Bobby Wilkinson, Executive

Director

CONSENT AGENDA

1a

BOARD ACTION REQUEST BOARD SECRETARY

SEPTEMBER 5, 2019

Presentation, discussion, and possible action on Board meeting minutes summaries for April 25, 2019, and May 23, 2019

RECOMMENDED ACTION

Approve the Board meeting minutes summaries for April 25, 2019, and May 23, 2019

RESOLVED, that the Board meeting minutes summaries for April 25, 2019, and May 23, 2019, are hereby approved as presented.

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

On Thursday, the twenty-fifth day of April 2019, at 8:00 a.m., the regular meeting of the Governing Board (Board) of the Texas Department of Housing and Community Affairs (TDHCA or the Department) was held in the Ric Williamson Hearing Room, Dewitt C. Greer State Highway Building, 125 E. 11th Street, 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 approved resolutions celebrating April 2019 as National Mobility Awareness Month, and May 2019 as Community Action Month in Texas.

2) The Board unanimously approved the Consent Agenda with the following items moved to the Action Item Agenda: 1(c) – Presentation, discussion, and possible action on awards for 2019 Community Services Block Grant discretionary funds for education and employment services to Native American and Migrant Seasonal Farmworker populations; 1(i) – Presentation, Discussion, and Possible Action regarding an Update to the State of Texas 2008 Action Plan Substantial Amendment for the Neighborhood Stabilization Program; and 2(f) – Report on deadlines after force majeure actions. Chairman Goodwin announced that these items would be considered at the end of the Action Items agenda.

3) Action Item 3 – Presentation, discussion, and possible action regarding the Issuance of Multifamily Housing Revenue Bonds Series 2019 Resolution No. 19-032 and a Determination Notice for Housing Tax Credits for Lago de Plata (#19600) in Corsicana – was presented by Teresa Morales, TDHCA Manager of Multifamily Bonds. The Board unanimously approved staff recommendation to adopt the resolution and issue the determination notice.

4) Action Item 4 – Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Application 18269 2400 Bryan Street, Dallas – was

presented by Rosalio Banuelos, TDHCA Director of Asset Management. The Board unanimously approved staff recommendation to approve the amendment request.

5) Action Item 5(a) – Presentation, discussion, and possible action regarding termination of Program Year 2019 Low Income Home Energy Assistance Program Comprehensive Energy Assistance Program award to Galveston County Community Action Council, Inc.; the commencement of the 30-day notification period required by Tex. Gov't Code §2105.203 and §2105.301; and the authorization of staff to identify a permanent provider, through release and subsequent award of a Request for Application or through a direct designation, to permanently administer the Comprehensive Energy Assistance Program in Brazoria, Fort Bend, Galveston, and Wharton counties (the areas served by Galveston County Community Action Council, Inc.) – was presented by Earnest Hunt, TDHCA Director of Subrecipient Monitoring, with additional information from David Cervantes, TDHCA Acting Director, Brooke Boston, TDHCA Director of Programs, Michael DeYoung, TDHCA Director of Community Affairs, and Mr. Eccles.

Following public comment (listed below), the Board unanimously approved staff recommendation to terminate the award, begin the 30-day notification period, and authorize staff to identify a permanent provider. It should also be noted that staff identified the phrase "or through a direction designation" in the agenda item as needing to be removed.

- Joe Compian, Galveston County Community Action Council, testified in opposition to staff recommendation
- Robert Quintero, Galveston County Community Action Council, testified in opposition to staff recommendation
- Sivam Mahasivam, Galveston County Community Action Council, provided additional information on the item
- Robin Ellis Henry, Galveston County Community Action Council, testified in opposition to staff recommendation

6) Action Item 5(b) – Presentation, discussion, and possible action on initiation of proceedings to remove the eligible entity status of Galveston County Community Action Council, Inc. and terminate the 2019 Community Services Block Grant contract and future funding – was presented by Mr. Hunt. Following public comment (listed below), the Board unanimously approved staff recommendation to initiate proceedings detailed in the agenda item.

- Joe Compian, Galveston County Community Action Council, testified in opposition to staff recommendation
- Robert Quintero, Galveston County Community Action Council, testified in opposition to staff recommendation

7) Action Item 6(a) – Presentation, discussion, and possible action on the Program Year 2019 Department of Energy Weatherization Assistance Program State Plan and Awards – was

presented by Mr. DeYoung. The Board unanimously approved staff recommendation to submit the plan with included awards.

8) Action Item 6(b) – Presentation, discussion, and possible action on release of the draft Federal Fiscal Years 2020-2021 Community Services Block Grant State Plan for public comment – was presented by Mr. DeYoung. The Board unanimously approved staff recommendation to release the draft plan for public comment.

9) Action Item 6(c) – Presentation, discussion, and possible action on release of the draft Federal Fiscal Year 2019 Low Income Home Energy Assistance Program State Plan for public comment – was presented by Mr. DeYoung. The Board unanimously approved staff recommendation to release the draft plan for public comment.

10) Action Item 7(a) – Presentation, discussion, and possible action regarding Awards of Direct Loan funds from the 2018-1 Multifamily Direct Loan Notice of Funding Availability, 18506 Golden Trails, West – was pulled from the agenda.

11) Action Item 7(b) – Presentation, discussion, and possible action regarding refinancing for Legend Oaks (HTC #00155/ State HTF #85100) with TCAP Repayment Funds reserved for workouts – was presented by Andrew Sinnott, TDHCA Multifamily Loans Program Administrator. The Board unanimously approved staff recommendation for the refinancing of the transaction.

12) Action Item 7(c) – Presentation, discussion, and possible action on the First Amendment to the 2019-1 Multifamily Direct Loan Notice of Funding Availability – was presented by Mr. Sinnott. The Board unanimously approved staff recommendation to amend the Notice of Funding Availability.

13) Action Item 7(d) – Presentation, discussion, and possible action on timely filed appeals under the Department's Multifamily Program Rules, 19223 Bamboo Estates Apartments, Progreso – was presented by Marni Holloway, TDHCA Director of Multifamily Finance. Following public comment (listed below), the Board denied staff recommendation to deny the appeal, and granted the appeal by a 4-1 vote (Ms. Thomason opposed).

- Sunny Phillip, South Texas Collaborative for Housing Development, testified in opposition to staff recommendation
- Jose Gonzalez, associated with the applicant, testified in opposition to staff recommendation
- Antoinette Jackson, attorney representing the applicant, testified in opposition to staff recommendation

14) Action Item 7(e) – Presentation, discussion, and possible action on a waiver relating to 10 TAC §11.2, related to Program Calendar for Housing Tax Credits for #19098 Pinewood Crossing Apartments – was pulled from the agenda.

15) Action Item 7(f) – Presentation, discussion, and possible action on a Determination Notice for Housing Tax Credits with another Issuer, 19404 Legacy Ranch at Dessau East, Austin – was pulled from the agenda.

16) Action Item 8 – Presentation, discussion, and possible action on an order proposing the repeal of 10 TAC §1.24, Protected Health Information; and an order proposing new 10 TAC §1.24, Information Security and Privacy Requirements; and directing their publication for public comment in the Texas Register – was presented by Ms. Boston. The Board unanimously approved staff recommendation to repeal the old rule and publish the new rule.

17) Action Item 1(c) – Presentation, discussion, and possible action on awards for 2019 Community Services Block Grant discretionary funds for education and employment services to Native American and Migrant Seasonal Farmworker populations – was presented by Mr. DeYoung. The Board unanimously approved staff recommendation to make the awards.

18) Action Item 1(i) – Presentation, Discussion, and Possible Action regarding an Update to the State of Texas 2008 Action Plan Substantial Amendment for the Neighborhood Stabilization Program – was presented by Ms. Holloway. The Board unanimously approved staff recommendation on the proposed update to the amendment.

19) Action Item 2(f) – Report on deadlines after force majeure actions – was presented by Ms. Holloway. The Board unanimously approved the report.

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 10:48 a.m. The next meeting was set for Thursday, May 23, 2019.

Secretary

Approved:

Chair

Texas Department of Housing and Community Affairs Governing Board Board Meeting Minutes Summary May 23, 2019

On Thursday, the twenty-third day of May 2019, at 8:00 a.m., the regular meeting of the Governing Board (Board) of the Texas Department of Housing and Community Affairs (TDHCA or the Department) was held in the Ric Williamson Hearing Room, Dewitt C. Greer State Highway Building, 125 E. 11th Street, Austin, Texas.

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

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

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

1) The Board unanimously approved resolutions celebrating June 2019 as Homeownership Month in Texas.

2) The Board unanimously approved the Consent Agenda with Item 1(k) – Presentation, discussion and possible action on an extension for AHA! at Briarcliff, Application #17511 – pulled from the agenda; and Item 1(f) – Presentation, discussion, and possible action on the reprogramming of Program Year 2018 Community Services Block Grant Administrative and Discretionary funds – technically corrected by staff.

The following items were taken up out of order per the discretion of Chairman Goodwin: 3) Marni Holloway, TDHCA Director of Multifamily Finance, presented sub item 19133 Alazan Lofts, San Antonio, under Action Item 7(g) – Presentation, discussion and possible action on staff recommendations regarding Application disclosure under 10 TAC §11.101(a)(3) related to Neighborhood Risk for 19013 Our Lady of Charity Apartments, San Antonio; 19050 Wayman Manor, Temple; 19125 Alice Lofts, Alice; 19133 Alazan Lofts, San Antonio; 19227 Reserve at Risinger, Fort Worth; and 19299 2222 Pierce, Houston. Mr. Eccles provided additional information.

Following public comment (listed below), the Board denied staff recommendation to find the site ineligible due to poverty concerns and, as a result, found the 19133 site eligible.

- Debra Guerrero, NRP Group and Co-developer, testified in opposition to staff recommendation
- Yaneth Flores, Esperanza Peace and Justice Center, testified in support of staff recommendation
- David Nisivoccia, San Antonio Housing Authority and Co-developer, testified in opposition to staff recommendation
- Amelia Valdez, Historic West Side Residents Association, testified in support of staff recommendation
- Dr. Christine Drennon, Trinity University, testified in opposition to staff recommendation
- Janna Garcia, Alazan Resident Council, testified in opposition to staff recommendation
- Victoria Gonzales, City of San Antonio, read a statement in opposition to staff recommendation from San Antonio Mayor Ron Nirenberg
- Shirley Gonzales, San Antonio City Councilwoman, testified in opposition to staff recommendation
- Jason Arechiga, NRP Group and Co-developer, testified in opposition to staff recommendation
- Josefa Zatarain-Flournoy, Aging and Disability Resource Center, testified in opposition to staff recommendation
- Tomas Larralde, chief of staff for The Honorable Jose Menendez, Texas State Senator, testified in opposition to staff recommendation
- Michael Lyttle, TDHCA Director of External Affairs, read a letter into the record from The Honorable Diego Bernal, Texas State Representative, in opposition to staff recommendation

4) Action Item 7(d) – Presentation, discussion, and possible action on a Determination Notice for Housing Tax Credits with another Issuer, an Award of Direct Loan Funds, and a waiver of 10 TAC §10.613(i) for 19409 Grim Hotel, Texarkana – was presented by Ms. Holloway. The Board unanimously approved staff recommendation to grant the waiver, award the Direct Loan Funds, and issue the 4% housing tax credits.

The Board returned to the order of the posted agenda

5) Action Item 3 – Presentation, discussion, and possible action on the draft 2020 Regional Allocation Formula Methodology – was presented by Elizabeth Yevich, TDHCA Director of the Housing Resource Center. The Board unanimously approved staff recommendation to publish the draft methodology.

The following items were taken up out of order per the discretion of Chairman Goodwin: 6) Action Item 6 – Presentation, discussion, and possible action regarding the Issuance of Multifamily Housing Revenue Bonds Series 2019 Resolution No. 19-034 and a Determination Notice of Housing Tax Credits for Northgate Village (#19603) in Dallas – was presented by Teresa Morales, TDHCA Manager of Multifamily Bonds. The Board unanimously approved staff recommendation to issue the bonds and award the 4% housing tax credits. 7) Action Item 7(e) – Presentation, discussion, and possible action regarding the Issuance of Multifamily Housing Revenue Bonds Series 2019 Resolution No. 19-035, a Determination Notice of Housing Tax Credits, and on an Award of Direct Loan Funds for McMullen Square Apartments (#19601) in San Antonio – was presented by Ms. Morales. The Board unanimously approved staff recommendation to issue the bonds and award the 4% housing tax credits.

8) Ms. Holloway presented sub item 19013 Our Lady of Charity Apartments, San Antonio, under Action Item 7(g) – Presentation, discussion and possible action on staff recommendations regarding Application disclosure under 10 TAC §11.101(a)(3) related to Neighborhood Risk for 19013 Our Lady of Charity Apartments, San Antonio; 19050 Wayman Manor, Temple; 19125 Alice Lofts, Alice; 19133 Alazan Lofts, San Antonio; 19227 Reserve at Risinger, Fort Worth; and 19299 2222 Pierce, Houston. Following public comment (listed below), the Board unanimously approved staff recommendation to find the 19013 site eligible per the neighborhood risk, blight, and schools standards. The Board also determined that the site be found eligible per the poverty standard.

- Mr. Lyttle read a letter into the record from The Honorable Barbara Gervin-Hawkins, Texas State Representative, asking TDHCA to find the site eligible
- Ryan Wilson, Franklin Companies and Co-developer, testified in support of TDHCA finding the site eligible
- Tim Alcott, San Antonio Housing Authority and Co-developer, testified in support of TDHCA finding the site eligible
- Dr. Drennon, Trinity University, provided information on the item
- Art Hall, San Antonio City Councilman, testified in support of TDHCA finding the site eligible
- Josefa Zatarain-Flournoy, Aging and Disability Resource Center, testified in support of TDHCA finding the site eligible

The Board returned to the order of the posted agenda

9) Action Item 4 – Presentation, discussion, and possible action on the Maverick County Colonia Self-Help Center Program Contract in accordance with Tex. Gov't Code Chapter 2105 and 10 TAC, Chapter 1, Subchapter D, §1.411(f)(1)(F) – was presented by Raul Gonzales, TDHCA Director of OCI/HTF/NSP. Following public comment (listed below), the Board unanimously approved staff recommendation to seek a contract provider.

- Mr. Lyttle read a letter into the record from Mr. Placido Madera, City of Eagle Pass, which provided information on the item
- David Saucedo, Maverick County Judge, provided information on the item

10) Action Item 5 – Presentation, discussion, and possible action on the proposed new 10 TAC Chapter 23 Subchapter H, Homebuyer Assistance with New Construction (HANC) or Rehabilitation, and directing its publication for public comment in the Texas Register – was

presented by Abigail Versyp, TDHCA Director of HOME and Homelessness Programs. The Board unanimously approved staff recommendation to publish the draft rules.

11) Action Item 7(a) – Presentation, discussion, and possible action regarding changes to the capital structure for Highlander Senior Village (HTC #18019/HOME Contract #1002875) – was presented by Andrew Sinnott, TDHCA Multifamily Loans Program Administrator. The Board unanimously approved staff recommendation to make the changes to the financing structure.

12) Action Item 7(b) – Presentation, discussion and possible action regarding an Award of Direct Loan funds from the 2018-1 Multifamily Direct Loan Notice of Funding Availability for 18506 Golden Trails, West; 18137 New Hope Housing Dale Carnegie, Houston; and 18369 The Residence at Canyon Lake Canyon Lake – was presented by Mr. Sinnott. The Board unanimously approved staff recommendation to make the Direct Loan awards to sub items 18506 and 18369.

Sub item 18137 was pulled from the agenda.

13) Action Item 7(c) – Presentation, discussion and possible action regarding an Award of Direct Loan funds from the 2019-1 Multifamily Direct Loan Notice of Funding Availability for 19504 Avanti at Sienna Palms Legacy, Weslaco – was presented by Mr. Sinnott. The Board unanimously approved staff recommendation to make the Direct Loan award.

14) Action Item 7(f) – Presentation, discussion, and possible action on staff recommendations regarding Application disclosure under 10 TAC §11.101(a)(2) related to Undesirable Site Features for 19180 St. Elmo Commons, Austin; 19185 Edgewood Villas, Killeen; and 19225 Rosewood Senior Villas, Tyler – was presented by Ms. Holloway with additional information from Mr. Eccles. Following public comment (listed below), the Board unanimously approved staff recommendation to find 19225 as an eligible site.

Sub items 19180 and 19185 were pulled from the agenda.

- Julie Gonzales, BETCO Consulting, testified in opposition to staff recommendation
- Zach Krochtengel, representative for 19225, provided information on the item
- Kelly Garrett, representative of a competing application to 19225, provided information on the item
- Kent Hance, representative of 19225, testified in support of staff recommendation

15) Ms. Holloway, with additional information from Mr. Eccles, presented sub items 19125, 19227, and 19229 under Action Item 7(g) – Presentation, discussion and possible action on staff recommendations regarding Application disclosure under 10 TAC §11.101(a)(3) related to Neighborhood Risk for 19013 Our Lady of Charity Apartments, San Antonio; 19050 Wayman Manor, Temple; 19125 Alice Lofts, Alice; 19133 Alazan Lofts, San Antonio; 19227 Reserve at Risinger, Fort Worth; and 19299 2222 Pierce, Houston.

Sub item 19050 was pulled from the agenda.

Following public comment (listed below), the Board approved staff recommendation by a 4-2 vote (Reséndiz and Vasquez in opposition) to find 19125 ineligible due to the schools standard. Sub item 19227 was tabled to be considered at the meeting of June 27, 2019. Sub item 19299 was found eligible.

- Sallie Burchett, Structure Development and representing 19125, provided information on the item
- Neal Rackleff, Locke Lord attorney and representing 19125, testified in opposition to staff recommendation
- Erica Vasquez, Alice Independent School District, read a letter into the record from Carl Scarbrough, Alice ISD Superintendent, providing information on the item
- Mr. Scarbrough, Alice ISD, provided additional information on the item
- Isabell Atkinson, Structure Development and representing 19125, provided information on the item
- Tamea Dula, Coats Rose attorney and representing 19227, testified in support of 19227 being considered eligible
- Darren Smith, representing 19227, provided information on the item
- Sarah Anderson, Anderson Consulting, provided information on the 19227 item
- Chris Akbari, ITEX Development and representing 19299, provided information on the item
- Audrey Martin, Purple Martin Real Estate and representing 19299, provided information on the item
- Eric Flores, Houston Police Department, provided information on the 19299 item

16) Action Item 7(h) – Presentation, discussion and possible action on timely filed appeals for 19368 Sweetwater Springs, Sweetwater; 19229 Hacienda Santa Barbara, Socorro; and 19189 Lakewood Crossing, Granbury – was presented by Ms. Holloway with additional information from Mr. Eccles.

Sub items 19368 and 19229 were pulled from the agenda.

Following public comment (listed below), the Board approved with one abstention (Vasquez) staff recommendation to deny the appeal from 19189.

- Mr. Rackleff, Locke Lord attorney and representing 19189, testified in opposition to staff recommendation
- Michael Fogel, Four Corners Development and representing a competing application, testified in support of staff recommendation
- Chris Coffman, City of Granbury, provided information on the item
- Mr. Krochtengel, representing a competing application, testified in support of staff recommendation

- Nin Hullet, Granbury Mayor, testified in opposition to staff recommendation
- James McDonald, JMZ Albatros and representing 19189, testified in opposition to staff recommendation
- Sandy Watson, JMZ Albatros, read a letter into the record from The Honorable Mike Lang, Texas State Representative, in opposition to staff recommendation

17) Action Item 7(i) – Report on Requests for Administrative Deficiency for 19013 Our Lady of Charity Apartments, San Antonio; 19063 Residences at Lake Waco, Waco; 19079 Provision at Patriot Parkway, Venus; 19100 Carver Ridge Apartments, Midland; 19189 Lakewood Crossing, Granbury; 19225 Rosewood Senior Villas, Tyler; 19244 Mariposa Apartment Homes at Harris Road, Arlington; 19250 Cypress Creek Apartment Homes at Waxahachie, Waxahachie; 19266 County Line Lofts, Venus; 19277 Cielo Place, Fort Worth; 19301 Prince Hall, Port Arthur; 19307 Briarwest Apartments, Houston; 19315 Hammack Creek Apartments, Kennedale; 19319 Bardin Apartments, Arlington; and 19365 Heritage Estates at Huntsville, Huntsville – was presented by Sharon Gamble, TDHCA Administrator of the Competitive Housing Tax Credit Program, with additional information from Mr. Eccles.

Sub item 19189 was pulled from the agenda.

The Board heard and approved the report, directing staff to revisit the 19315 item.

- Ryan Wilson, Franklin Development and representing 19013, provided information on the item
- Casey Bump, Bonner Carrington, asked the Board to direct staff to revisit the 19244 item
- Mr. Bump also asked the Board to direct staff to revisit the 19250 item
- Nathan Kelly, Blazer Residential, asked the Board to direct staff to revisit the 19307 item
- Kim Schwimmer, applicant with competing applications to 19315, asked the Board to direct staff to revisit the 19315 item
- Kim Schwimmer, applicant with competing applications to 19319, asked the Board to direct staff to revisit the 19319 item.

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 12:56 p.m. The next meeting was set for Thursday, June 27, 2019.

Secretary

Approved:

Chair

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BOARD ACTION REQUEST

FINANCIAL ADMINISTRATION DIVISION

SEPTEMBER 5, 2019

Presentation, discussion, and possible action to adopt a resolution regarding designating signature authority and superseding previous resolutions in this regard

RECOMMENDED ACTION

WHEREAS, the Texas Department of Housing and Community Affairs (the Department), a public and official governmental agency of the State of Texas, was created and organized pursuant to and in accordance with the provisions of Tex. Gov't Code, Chapter 2306 (the Code), as amended;

WHEREAS, the Code authorizes the Department, among other things: (a) to make and acquire and finance, and to enter into advance commitments to make and acquire and finance, mortgage loans and finance, participating interests therein, secured by mortgages on residential housing in the State of Texas (the State); (b) to issue its bonds, for the purpose of, among other things, 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 of participating interests, and to mortgage, pledge or grant security interests in such mortgages of 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;

WHEREAS, on May 23, 2019, the Governing Board adopted a resolution designating signature authority to reflect the structure of the Department; and

WHEREAS, organizational and working title changes have occurred such that the Governing Board has now determined that its resolution adopted May 23, 2019, designating signature authority, should be superseded by a new resolution designating signature authority in order to conform to the Department's current organizational structure, working titles, and operations;

NOW, THEREFORE, it is hereby

RESOLVED that the Governing Board makes changes to its resolution adopted May 23, 2019, as shown below.

SECTION 1 – Supersession of the Prior Signature Authority. The Governing Board hereby supersedes its prior resolution, adopted May 23, 2019, designating signature authority by adopting this new resolution.

SECTION 2 – Designation of Signature Authority for Bond and Indenture-Related Transactions. The Governing Board hereby authorized and designates the Board Secretary, the Assistant Board Secretary, the Executive Director, the Director of Administration, the Director of Financial Administration, the Director of Bond Finance and Chief Investment Officer, Director of Multifamily Bonds, the Director of Texas Homeownership, and each of them as signatories for single family and multifamily bond and indenture-related transactions as well as transactions under the Department's "to be announced" or TBA program including, but not limited to letters of instruction, officer's certificates, bond transactional documents and all other documents and certificates executed in connection with such transactions. In addition, the Governing Board authorizes and designates the Manager of Single Family Finance and Senior Bond Financial Analysts within the Bond Finance division as signatories for day-to-day operations activities related to advances taken through the Federal Home Loan Bank of Dallas (FHLB) for the purchase of loan participations from the Idaho Housing and Finance Association (IHFA), the Department's Master Servicer, including directing the wiring of such advances from FHLB to IHFA.

SECTION 3 – Designation of Signatory Authority for Real Estate Transactions. The Governing Board hereby authorizes and designates the following persons holding the positions described and each of them to execute and deliver, as specified, earnest money contracts, deeds or conveyances of title, leases of real property, settlement statements on purchase or sale of real property, deposits and disbursements on agency bank accounts, real estate transactional documents and all other documents executed in connection with real estate or real estaterelated transactions. Every reference to a signatory office or title herein includes any person serving in an acting or interim capacity:

- (a) Executive Director, Director of Programs, Director of Program Controls and Oversight, Director of Administration, Board Secretary, and Assistant Board Secretary: All real estate or real estate related transactions;
- (b) Director of Financial Administration: All real estate or real estate-related transactions administered by the Financial Administration Division;
- (c) Director of Multifamily Finance: All real estate or real estate-related transactions administered by the Multifamily Finance Division;
- (d) Director of Multifamily Asset Management: All real estate or real estate-related transactions administered by the Multifamily Asset Management Division;
- (e) Director of Bond Finance and Chief Investment Officer: All real estate or real estaterelated transactions administered by the Bond Finance and Texas Homeownership Divisions;

- (f) Director of Multifamily Bonds: All real estate or real estate-related transactions administered by the Multifamily Bonds, Bond Finance and Texas Homeownership Divisions;
- (g) Director of Texas Homeownership: All real estate or real estate-related transactions administered by the Texas Home Ownership Division;
- (h) Director of the HOME and Homelessness Programs, and Director of HOME and Homelessness and Special Initiatives: All real estate or real estate-related transactions administered under the HOME and Homelessness Programs;
- (i) Director of Neighborhood Specialization Program (NSP), Housing Trust Fund (HTF) and Office of Colonia Initiatives (OCI): All real estate or real estate-related transactions administered under the NSP, HTF and OCI Divisions; and
- (j) Signatory authority on deposits and disbursements on agency bank accounts is limited to those persons designated on the applicable signature cards, as specified by the Executive Director; provided however, that no person may be so designated other than the Executive Director, Director of Administration, or a Director.

SECTION 4 – Designation of Signatory Authority for Fund Transfers. The Governing Board hereby authorizes and designates the following persons and each of them to execute and deliver any necessary fund transfer documents, including letters of instruction, in the manner prescribed below.

Fund transfers require dual signatures, consisting of one signatory from each of the following two groups:

- (a) Director of Administration, or Director of Financial Administration; and
- (b) Executive Director, Director of Program Controls and Oversight, or Director of Programs.

SECTION 5 – Execution of Documents. The Governing Board hereby authorized the Executive Director, or in his absence the Director of Administration, the Director of Programs, or the Director of Program Controls and Oversight, to execute, on behalf of the Department, any and all documents, instruments reasonably deemed necessary to effectuate this resolution.

SECTION 6 – **Effective Date.** This Resolution shall be in full force and effect from and upon its adoption until and unless it is revoked or superseded.

BACKGROUND

This Resolution updates and designates signature authority to reflect the current organizational structure of the Department and the current working titles for the positions designated.

Incumbency Certificate

I, James "Beau" Eccles, the duly appointed and serving Secretary of the Texas Department of Housing and Community Affairs (the Department), do hereby certify that Robert Wilkinson is the duly appointed Executive Director of the Department, appointed by its governing board and approved by the Governor effective August 15, 2019, and set forth below opposite his name is his true and correct signature:

Robert Wilkinson	
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Executed and seal of the Department affixed this _____ day of _____, 2019 at Austin, Texas.

James "Beau" Eccles

(S E A L)

Certificate

I, Robert Wilkinson, the duly appointed Executive Director of the Texas Department of Housing and Community Affairs (the Department), do hereby certify that set forth below is a true and correct listing setting forth specific positions within the Department, the name of the person currently designated by me to hold each such position, and, opposite their name, their true and correct signature. Each person listed currently holds the position indicated:

Board Secretary James "Beau" Eccles Assistant Board Secretary Michael Lyttle **Director of Administration** David Cervantes **Director of Financial Administration** Ernesto Palacios, III Director of Bond Finance/Chief Investment Officer Monica Galuski **Director of Multifamily Bonds** Teresa W. Morales **Director of Multifamily Finance** Margaret L. Holloway **Director of Texas Homeownership** Cathy Gutierrez **Director of Programs** Brooke Boston Director of HOME and Homelessness and Special Initiatives Tom Gouris **Director of Multifamily Asset Management** Rosalio Banuelos **Director of HOME and Homelessness Programs** Abigail Versyp **Director of Program Controls and Oversight** Homero V. Cabello, Jr. Director of NSP, HTF and OCI Raul Gonzales Executed this _____ day of ______, 2019 at Austin, Texas.

> Robert Wilkinson, Executive Director Texas Department of Housing and Community Affairs

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BOARD ACTION REQUEST

LEGAL DIVISION

SEPTEMBER 5, 2019

Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning Candle Chase Apartments (HTC 70064 / CMTS 903)

RECOMMENDED ACTION

WHEREAS, Candle Chase Apartments, owned by G2 Alta Mesa, LLC (Owner), has uncorrected compliance findings relating to the applicable land use restriction agreement and the associated statutory and rule requirements;

WHEREAS, on July 30, 2019, Owner's representatives participated in an informal conference with the Enforcement Committee and agreed, subject to Board approval, to enter into an Agreed Final Order assessing an administrative penalty of \$2,000, to be forgiven if acceptable corrective documentation is submitted as specified in the Agreed Final Order on or before October 7, 2019;

WHEREAS, compliance findings include Uniform Physical Condition Standards (UPCS) violations identified during a 2019 inspection, and four units with Household Income Above Limit Upon Initial Occupancy unresolved violations; and

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

NOW, therefore, it is hereby

RESOLVED, that an Agreed Final Order assessing an administrative penalty of \$2,000, subject to forgiveness as outlined above, for noncompliance at Candle Chase Apartments, 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

G2 Alta Mesa, LLC (Owner) is the owner of Candle Chase Apartments (Property), a low-income apartment complex composed of 116 units, located in Tarrant County. Records of the Texas Secretary of State list the following members and/or officers: Gerard Stephen Donahue and George Patrick Smits. CMTS lists Jennifer Rosario as the primary contact for the Owner. The property is self-managed.

The Property is subject to a Land Use Restriction Agreement (LURA) signed by a prior owner in 1990 in consideration for a housing tax credit allocation in the amount of \$75,949 to acquire, rehabilitate and operate the Property. The Owner acquired the property in 2014 and the LURA remains in effect per Section 2 of the LURA, which stipulates that its restrictions run with the land.

Owner was previously referred for an administrative penalty in 2014 for failure to submit the 2013 Annual Owner's Compliance Report, however, the data required for that report predated their ownership and was not considered by the Enforcement Committee as a result. They were then referred for an administrative penalty in 2019 for failure to resolve findings from a November 2017 file monitoring review, and a March 2019 UPCS inspection. The UPCS violations have now been fully resolved, but file monitoring violations for four households that were above the income limit upon initial occupancy are not currently correctable, with two vacant units that are reportedly ready for occupancy, and two households that are scheduled to move out at the end of August.

Owner participated in an informal conference with the Enforcement Committee on July 30, 2019, and agreed to sign an Agreed Final Order with the following terms:

- 1. A \$2,000 administrative penalty, subject to full forgiveness as indicated below;
- 2. Owner must address the file monitoring violations as indicated in the Agreed Final Order, and submit full documentation to TDHCA on or before October 7, 2019;
- 3. If Owner complies with all requirements and addresses all violations as required, the full administrative penalty in the amount of \$2,000 will be forgiven; and
- 4. 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, fully forgivable administrative penalty in the amount of \$2,000 is recommended. This will be a reportable item of consideration under previous participation for any new award to the principals of the Owner.

ENFORCEMENT ACTION AGAINST G2 ALTA MESA, LLC WITH RESPECT TO CANDLE CHASE APARTMENTS (HTC FILE # 70064 / CMTS # 903) BEFORE THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

AGREED FINAL ORDER

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General Remarks and official action taken:

On this 5th day of September 2019, the Governing Board (Board) of the Texas Department of Housing and Community Affairs (TDHCA or Department) considered the matter of whether enforcement action should be taken against **G2 ALTA MESA, LLC,** a a Texas limited liability company (Respondent).

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

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

<u>WAIVER</u>

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

FINDINGS OF FACT (FOF)

Jurisdiction:

1. During 1990, Wedgewood Apartments, Ltd. (Prior Owner) was awarded an allocation of Low Income Housing Tax Credits by the Board, in an annual amount of \$75,949 to

acquire, rehabilitate, and operate Candle Chase Apartments (Property) (HTC file No. 70064 / CMTS No. 903 / LDLD No. 495).

- 2. Prior Owner signed a land use restriction agreement (LURA) regarding the Property. The LURA was effective December 12, 1990, and filed of record at Document Number D190204866 of the Official Public Records of Real Property of Tarrant County, Texas (Records). In accordance with Section 2 of the LURA, the LURA is a restrictive covenant/deed restriction encumbering the Property and binding on all successors and assigns for the full term of the LURA.
- 3. Respondent is subject to the regulatory authority of TDHCA.

<u>Compliance Violations¹:</u>

- 4. A Uniform Physical Condition Standards (UPCS) inspection was conducted on March 25, 2019. Inspection reports showed numerous serious property condition violations, a violation of 10 TAC §10.621 (Property Condition Standards). Notifications of noncompliance were sent and a July 14, 2019, corrective action deadline was set. No corrective action was received until after the property was referred for an administrative penalty on July 18, 2019, with corrective action later received between July 18, 2019 and August 7, 2019, after intervention by the Enforcement Committee
- 5. An on-site monitoring review was conducted on November 9, 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 February 13, 2018, corrective action deadline was set, however, the following violations were not resolved before the corrective action deadline and were referred for an administrative penalty on March 20, 2019:
 - a. Respondent failed to provide documentation that household incomes were within prescribed limits upon initial occupancy for units 107, 149, 152, and 253, a violation of 10 TAC §10.611 (Determination, Documentation and Certification of Annual Income) and Section 4 of the LURA, which require screening of tenants to ensure qualification for the program.
- 6. The following violations remain outstanding at the time of this order:
 - a. Household income above limit upon initial occupancy violations for units 107, 149, 152, and 253.

¹ 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.

CONCLUSIONS OF LAW

- 1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503, and 10 TAC Chapter 2.
- 2. Respondent is a "housing sponsor" as that term is defined in Tex. Gov't Code §2306.004(14).
- 3. Pursuant to IRC §42(m)(1)(B)(iii), housing credit agencies are required to monitor for noncompliance with all provisions of the IRC and to notify the Internal Revenue Service of such noncompliance.
- 4. Respondent violated 10 TAC §10.611 and Section 4 of the LURA in 2017, by failing to provide documentation that household income was within prescribed limits upon initial occupancy for units: 107, 149, 152, and 253;
- Respondent violated 10 TAC §10.621 in 2019 by failing to comply with HUD's Uniform Physical Condition Standards when major violations were discovered and not timely corrected.²
- 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 \$2,000 is an appropriate penalty in accordance with 10 TAC Chapter 2.

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

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

IT IS HEREBY ORDERED that Respondent is assessed an administrative penalty in the amount of \$2,000, subject to deferral as further ordered below.

IT IS FURTHER ORDERED that Respondent shall fully correct the file monitoring violations as indicated in the exhibits and submit full documentation of the corrections to TDHCA on or before October 7, 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 assessed administrative penalty and the full amount of the \$2,000 administrative penalty will be deferred and forgiven.

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

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

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

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Approved by the Governing Board of TDHCA on <u>September 5</u>, 2019.

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

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

THE STATE OF TEXAS § § COUNTY OF TRAVIS §

Before me, the undersigned notary public, on this <u>5th</u> day of <u>September</u>, 2019, personally appeared <u>J.B. Goodwin</u>, 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 <u>5th</u> day of <u>September</u>, 2019, personally appeared <u>James "Beau" Eccles</u>, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

Notary Public, State of Texas

STATE OF TEXAS § SCOUNTY OF §

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

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

RESPONDENT:

G2 ALTA MESA, LLC, a Texas limited liability company

Ву: _____

Name: _____

Title: _____

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

Signature of Notary Public

Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF

My Commission Expires:_____

Exhibit 1

File Monitoring Violation Resources and Instructions

Resources:

- Refer to the following link for all references to the rules at 10 TAC §10 that are referenced below: <u>http://texreg.sos.state.tx.us/public/readtac\$ext.ViewTAC?tac_view=5&ti=10&pt=1&ch=10&sch=F&r <u>l=Y</u>

 </u>
- Refer to the following link for copies of forms that are referenced below: <u>http://www.tdhca.state.tx.us/pmcomp/forms.htm</u>
- Technical support and training presentations are available at the following links: Income and Rent Limits: <u>http://www.tdhca.state.tx.us/pmcomp/irl/index.htm</u> 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 <u>http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf</u>.
- 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. Instead, a transfer from another unit will simply cause the finding to transfer to that unit.

Instructions:

6. **Household income above limit upon initial occupancy for units 107, 149, 152, and 253:** Follow the instructions in the table below with respect to each unit, and submit documentation as indicated.

Circumstance with respect to units listed above	Instruction				
I. If the noncompliant household's circumstances have changed since move-in and they now qualify for	A new certification may be performed using current circumstances and current income and asset information. Collect and submit the following:				
occupancy	A. New application using current circumstances;				
	 B. New verifications of each source of income and assets (must include first hand documentation, such as pay stubs and bank statements if for the existing household), 				
	C. New Income Certification;				
	D. Lease and lease addendum; and				
	E. Tenant Rights and Resources Guide Acknowledgment.				
	Remember that items A-C above must be dated within 120 days of one another.				
	If the unit is vacant or the tenant does not qualify, follow alternate instructions on the following page.				

II. If unit is occupied by a new qualified household	Submit the full tenant file*.
III. 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 10/7/2019 is acceptable for this circumstance provided that Requirement A above is fulfilled.
IV. 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;
	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 10/7/2019 is acceptable for this circumstance provided that Requirement A above is fulfilled by that deadline.
V. If unit has been vacant <i>more than</i> 30 days	A. Unit must be made ready for occupancy and a letter certifying that it is ready for occupancy must be submitted to TDHCA, along with photos of the unit.
	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 10/7/2019 is acceptable for this circumstance provided that Requirement A above is fulfilled by that deadline.
VI. If unit has been vacant <i>less than</i> 30 days	A. If unit is ready for occupancy, a letter certifying that it is ready for occupancy must be submitted to TDHCA, along with photos of the unit.
	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).
	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 10/7/2019 is acceptable for this circumstance provided that Requirements A and B above are fulfilled by that deadline.

*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.

** 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(g)

Exhibit 2

Tenant File Guidelines

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

Important Note The application, verifications of income and assets, and Tenant Income Certification (1 – 5 below) must be signed within 120 days of one another. If one component is outside of that time frame, you must recertify.

- 1. <u>Intake Application</u>: 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 <u>must</u> 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. TDHCA also has an application form that you can use; using our form is not required for the application, but it does screen for all requirements.
- 2. <u>Release and Consent</u>: Have tenant sign TDHCA's Release and Consent form so that verifications may be collected by the property.
- 3. <u>Verify Income</u>: 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 (HTC only): If you use this form, you do not need to further verify income or assets, but you do need to collect all other components of the tenant file. 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 consistently collect a specified number of consecutive check stubs as defined in your management plan;
 - c. **Employment Verification Form**: Part 1 must be completed by you and signed by the tenant. Part 2 must be completed by the employer. To prevent fraud, you must submit the form directly to the employer and must not allow the tenant to handle it. You should ensure that the person completing the employer portion has authority to do so and has access to all applicable information in order to verify the employment income. If

you receive the verification via mail, retain the envelope. If you receive it via fax, ensure that the fax stamp is on it;

- d. 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;
- e. **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. These are appropriate if there is an unusual circumstance relating to the tenant file;
- f. **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. <u>Verify Assets:</u> Regardless of their balances, applicants must report all assets owned, including assets such as checking or savings accounts. The accounts are typically disclosed on the application form, but you must review all documentation from the tenant to ensure proper documentation of the household's income and assets. For instance, review the credit report (if you pull one), application, pay stubs, and other documents to ensure that all information is consistent. Examples of ways to find assets that are frequently overlooked: Review pay stubs for assets such as checking and retirement accounts that the household may have forgotten to include in the application. These accounts must also be verified. Format of verifications:
 - a. Under \$5000 Asset Certification Form (HTC only): If the total cash value of the assets owned by members of the household is less than \$5,000, as reported on the Intake Application, the TDHCA Under \$5,000 Asset Certification form may be used to verify assets. If applicable, follow the instructions to complete one form per household that includes everyone's assets, even minors, and have all adults sign and date using the date that the form is actually completed.
 - b. **First hand verifications** such as bank statements to verify a checking account. Ensure that you use a consistent number of consecutive statements, as identified in your management plan.
 - 3rd c. partv verifications using the TDHCA Asset Verification form. As with the "Employment Verification Form" discussed above, Part 1 must be completed by you and signed by the tenant. Part 2 must be completed by the financial institution. To prevent fraud, you must submit the form directly to the employer and must not allow the tenant to handle it. You should ensure that the person completing the financial institution's portion has authority to do so and has access to all applicable information in order to verify the asset(s). If you receive the verification via mail, retain the envelope. If you receive it via fax, ensure that the fax stamp is on it.

- 5. <u>Tenant Income Certification Form</u>: 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 <u>http://www.tdhca.state.tx.us/pmcomp/irl/index.htm</u>. Be sure to include any income derived from assets. The form must include all household members, and be signed by each adult household member.
- 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(e) prohibits HTC developments from locking out or threatening to lock out any development resident, or seizing or threatening to seize personal property of a resident, except by judicial process, for purposes of performing necessary repairs or construction work, or in case of emergency. The prohibitions must be included in the lease or lease addendum. Additionally, certain programs must include a Lead Warning Statement and the TDHCA VAWA lease addendum, per 10 TAC 10.613(f) and (h). TAA has an affordable lease addendum that has incorporated this required language. If you are not a TAA member, you can draft a lease addendum using the requirements outlined above. For Section 811 units, you must use the HUD Model Lease, HUD form 92236-PRA.
- 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. <u>Tenant Rights and Resources Guide</u>: 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 and its acknowledgment form, copies of which are available online at: <u>http://www.tdhca.state.tx.us/pmcomp/forms.htm</u>

In accordance with 10 TAC §10.613(I), you must customize the guide for your property and post a laminated copy in a common area of the leasing office. Development must also provide a copy of the guide to each household during the application process and upon any subsequent changes to the items described at paragraph b) below. The guide includes:

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

Additionally, a representative of the household must receive a copy of the 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.

Exhibit 3:

Texas Administrative Code

TITLE 10COMMUNITY DEVELOPMENTPART 1TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRSCHAPTER 10UNIFORM MULTIFAMILY RULESSUBCHAPTER EPOST AWARD AND ASSET MANAGEMENT REQUIREMENTSRULE §10.406Ownership 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

(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.

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

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

Applications).

1d

BOARD ACTION REQUEST

LEGAL DIVISION

SEPTEMBER 5, 2019

Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning Retirement Acres (HTC 70104 / CMTS 925)

RECOMMENDED ACTION

WHEREAS, Retirement Acres, owned by Retirement Acres, Ltd. (Owner), has uncorrected compliance findings relating to the applicable land use restriction agreement and the associated statutory and rule requirements;

WHEREAS, unresolved file monitoring compliance findings that are part of this Board Action Request include noncompliance with tenant selection criteria requirements relating to nonrenewal notices, and failure to provide pre-onsite documentation including Affirmative Marketing Plan and written policies and procedures;

WHEREAS, on January 29, 2019, Owner's representatives participated in an informal conference with the Enforcement Committee and agreed, subject to Board approval, to enter into an Agreed Final Order assessing an administrative penalty of \$1,000, to be fully forgiven if violations are resolved as specified in the Agreed Final Order on or before November 4, 2019; and

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

NOW, therefore, it is hereby

RESOLVED, that an Agreed Final Order assessing an administrative penalty of \$1,000, subject to forgiveness as outlined above, for noncompliance at Retirement Acres, 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

Retirement Acres, Ltd. (Owner) is the owner of Retirement Acres (Property), a low income apartment complex composed of 32 units, located in Marlin, Falls County. Records of the Texas Secretary of State list Cullen J. Rogers as the general partner. Cullen Rogers died in 2011 and his son, John Rogers, administers his estate; corporate documents for the owning entity have never been updated. CMTS lists Janice Hughes Rogers and John Davison Rogers as the primary contacts for Owner. The Limited Partnership Agreement from 1991 lists Elena D Glockzin as the replacement general partner in the event that the sole limited partner, Cullen Rogers, withdrew from the partnership. John Davison Rogers indicates that Ms. Glockzin is technically the new replacement general partner but has never taken over control. The property is self-managed.

The Property is subject to a Land Use Restriction Agreement (LURA) signed in 1991 in consideration for a housing tax credit allocation in the amount of \$36,726 to build and operate the Property. Owner was previously referred for an administrative penalty for reporting violations, file monitoring violations, and Uniform Physical Condition Standards (UPCS) violations, but those referrals were closed informally when full corrections were received. Owner was referred again in 2018 for UPCS findings, but all issues were corrected with the exception of those relating to deteriorated parking lots and driveways throughout the development. A multi-phase plan for resolution was accepted by the Enforcement Committee after a teleconference with John Rogers. That plan is ongoing and the Enforcement Committee has not included it in the current recommendation for an Agreed Final Order relating to file monitoring findings that were subsequently referred. At under \$1,000 total, the maximum potential administrative penalty for the referred UPCS finding is very low, while quotes to repair the driveways show a repair cost of over \$100,000. The original owner is deceased and the administrator of his estate, his son, has limited financial means to operate this property and make necessary repairs to the driveways, which he says were not built appropriately for the soil conditions. He is repairing the parking lot in phases until the condition is improved enough that he would be able to sell the property to a buyer that has more capital for further improvements. If it is not resolved, this finding may ultimately result in an Agreed Final Order, but in this very limited instance, the Enforcement Committee believes it will get better results working informally with the administrator of the estate rather than including this item in an Agreed Final Order.

An additional administrative penalty referral was received while the above UPCS plan was in place, this time relating to file monitoring findings identified during an onsite review conducted on February 22, 2018. Those findings include noncompliance with tenant selection criteria relating to nonrenewal notices, and failure to submit pre-onsite documentation including an affirmative marketing plan and written policies and procedures. The administrator for the estate participated in a second informal conference with the Enforcement Committee on January 29, 2019. The Enforcement Committee voted to recommend an Agreed Final Order with the following terms, relating to the file monitoring referral only:

1. A \$1,000 administrative penalty, subject to partial forgiveness as indicated below;

- 2. 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 November 4, 2019;
- 3. If Owner complies with all requirements and addresses all violations as required, the full administrative penalty in the amount of \$1,000 will be forgiven; and
- 4. If Owner violates any provision of the Agreed Final Order, the full administrative penalty will immediately come due and payable.

The Enforcement Committee believes that this Agreed Final Order is necessary for the file monitoring referral, and that it represents adequate financial incentive for the administrator of the estate to fully comply with the file requirements. The Agreed Final Order intentionally excludes the 2018 UPCS findings outlined above, which the administrator will continue to address under a corrective plan with the Enforcement Committee. A subsequent UPCS inspection was performed on August 8, 2019, and will be referred for an administrative penalty if findings are not timely resolved.

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

ENFORCEMENT ACTION AGAINST	§	BEFORE THE
RETIREMENT ACRES, LTD. WITH RESPECT	§ §	TEXAS DEPARTMENT OF
TO RETIREMENT ACRES	§	HOUSING AND COMMUNITY
(HTF FILE # 70104 / CMTS # 925)	§ § §	AFFAIRS

AGREED FINAL ORDER

General Remarks and official action taken:

On this 5th day of September 2019, the Governing Board (Board) of the Texas Department of Housing and Community Affairs (TDHCA or Department) considered the matter of whether enforcement action should be taken against **RETIREMENT ACRES**, LTD., a Texas limited partnership (Respondent).

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

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

<u>WAIVER</u>

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, Respondent was awarded an allocation of Low Income Housing Tax Credits by the Board, in an annual amount of \$36,726 to build and operate Retirement Acres (Property) (HTC file No. 70104 / CMTS No. 925 / LDLD No. 196).

- 2. Respondent signed a land use restriction agreement (LURA) regarding the Property. The LURA was effective November 13, 1991, and filed of record under Number 2035 on November 14, 1991 in the Official Public Records of Real Property of Falls County, Texas (Records).
- 3. Respondent is subject to the regulatory authority of TDHCA.

*Compliance Violations*¹*:*

- 4. An on-site monitoring review was conducted on February 22, 2018, to determine whether Respondent was in compliance with LURA requirements to lease units to low income households and maintain records demonstrating eligibility. The monitoring review found violations of the LURA and TDHCA rules. Notifications of noncompliance were sent and an August 7, 2018, corrective action deadline was set, however, the following violations were not resolved before the corrective action deadline:
 - a. 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. Missing documentation included an Affirmative Marketing Plan and written policies and procedures. An Affirmative Marketing Plan is further required by 10 TAC §10.617, 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. Written Policies and Procedures are further required by 10 TAC §10.610, which requires all developments to establish written tenant selection criteria that meet minimum TDHCA requirements. These findings remain outstanding.
 - b. Respondent issued lease nonrenewal notices to the households in units 28 and 47 that did not meet minimum language requirements of the rule relating to tenant selection requirements at 10 TAC §10.610. These findings remain outstanding.
- 5. The following violations remain outstanding at the time of this order:
 - a. Pre-onsite documentation finding described in FOF #4a; and
 - b. Tenant selection requirements finding described in FOF #4b.

¹ 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.

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 §10.607 and §10.618 in 2018, by not submitting pre-onsite documentation including an Affirmative Marketing Plan and written policies and procedures in preparation for the monitoring review.
- 5. Respondent violated 10 TAC §10.610 in 2018, by issuing nonrenewal notices that did not include required information relating to tenant selection requirements.
- 6. Because Respondent is a housing sponsor with respect to the Property, and has violated TDHCA rules, the Board has personal and subject matter jurisdiction over Respondent pursuant to Tex. Gov't Code §2306.041 and §2306.267.
- 7. Because Respondent is a housing sponsor, TDHCA may order Respondent to perform or refrain from performing certain acts in order to comply with the law, TDHCA rules, or the terms of a contract or agreement to which Respondent and TDHCA are parties, pursuant to Tex. Gov't Code §2306.267.
- 8. Because Respondent has violated rules promulgated pursuant to Tex. Gov't Code §2306.053 and has violated agreements with the Agency to which Respondent is a party, the Agency may impose an administrative penalty pursuant to Tex. Gov't Code §2306.041.
- 9. An administrative penalty of \$1,000 is an appropriate penalty in accordance 10 TAC Chapter 2.

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

IT IS HEREBY ORDERED that Respondent is assessed an administrative penalty in the amount of \$1,000, subject to deferral as further ordered below.

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

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

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

IT IS FURTHER ORDERED that Respondent shall follow the requirements of 10 TAC §10.406, a copy of which is included at Exhibit 2, and obtain approval from the Department prior to consummating a sale of the property, if contemplated.

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

[Remainder of page intentionally blank]

Approved by the Governing Board of TDHCA on <u>September 5</u>, 2019.

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

By:

Name: James "Beau" Eccles Title: <u>Secretary of the Board of TDHCA</u>

THE STATE OF TEXAS § § COUNTY OF TRAVIS §

Before me, the undersigned notary public, on this 5th day of September, 2019, personally appeared J.B. Goodwin, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

Notary Public, State of Texas

THE STATE OF TEXAS § § COUNTY OF TRAVIS §

Before me, the undersigned notary public, on this 5th day of September, 2019, personally appeared James "Beau" Eccles, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

Notary Public, State of Texas

STATE OF TEXAS § SCOUNTY OF §

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

- 1. "My name is <u>Elaina D. Glockzin</u>, I am of sound mind, capable of making this statement, and personally acquainted with the facts herein stated.
- 2. Cullen Rogers, the sole general partner for Respondent, is deceased, and pursuant to Section 7.5 of the Partnership Agreement dated October 1, 1991, I am the successor general partner. As such, I am an authorized representative of Respondent, owner of the Property, which is subject to a Land Use Restriction Agreement monitored by the TDHCA in the State of Texas, and I am duly authorized by Respondent to execute this document.
- 3. Respondent knowingly and voluntarily enters into this Agreed Final Order, and agrees with and consents to the issuance and service of the foregoing Agreed Order by the Governing Board of the Texas Department of Housing and Community Affairs."

RESPONDENT:

RETIREMENT ACRES, LTD., Texas limited partnership

By: ______ Name: Elaina D. Glockzin

Title: <u>General Partner</u>

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

Signature of Notary Public

Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF

My Commission Expires:_____

STATE OF TEXAS § S COUNTY OF §

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

- 1. "My name is <u>Johnny Davison Rogers</u>, I am of sound mind, capable of making this statement, and personally acquainted with the facts herein stated.
- 2. Cullen Rogers, the general partner for Respondent, is deceased and I am the administrator of his estate. As such, I am an authorized representative of Respondent, owner of the Property, which is subject to a Land Use Restriction Agreement monitored by the TDHCA in the State of Texas, and I am duly authorized by Respondent to execute this document.
- 3. Respondent knowingly and voluntarily enters into this Agreed Final Order, and agrees with and consents to the issuance and service of the foregoing Agreed Order by the Governing Board of the Texas Department of Housing and Community Affairs."

RESPONDENT:

RETIREMENT ACRES, LTD., Texas limited partnership

By: _____ Name: Johnny Davison Rogers

Title: Executor of the Estate of Cullen Rogers

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

Signature of Notary Public

Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF

My Commission Expires:_____

Exhibit 1

File Monitoring Violation Resources and Instructions

Resources:

- Refer to the following link for all references to the rules at 10 TAC §10 that are referenced below: <u>http://texreg.sos.state.tx.us/public/readtac\$ext.ViewTAC?tac_view=5&ti=10&pt=1&ch=10&sch=F&r <u>l=Y</u>

 </u>
- Refer to the following link for copies of forms that are referenced below: http://www.tdhca.state.tx.us/pmcomp/forms.htm
- Technical support and training presentations are available at the following links: Tenant Selection Criteria Webinar: <u>http://www.tdhca.state.tx.us/pmcomp/presentations.htm</u> FAQ's: <u>http://www.tdhca.state.tx.us/pmcomp/compFags.htm</u>
- 4. All corrections must be submitted via CMTS: See link for steps to upload documents <u>http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf</u>.
- 5. Important notes
 - i. Do not backdate any documents listed below.

Instructions:

6. Tenant Selection requirements violation relating to nonrenewal notices:

<u>How to prepare compliant lease nonrenewal notices</u>: Update your Non-renewal and/or Termination Notice forms as required by 10 TAC §10.610, which states that your notices must include:

- The TDHCA form based on HUD form 5380 "Notice of Occupancy Rights under the Violence Against Women Act" (see "Forms" link above)
- The HUD form 5382 "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation." (see "Forms" link above)
- A specific and lawful reason for the termination or non-renewal;
- Instructions for how a person with a disability may request a reasonable accommodation in relation to such notice; and
- Information on the appeals process, if one is used by the property.

<u>What to submit</u>: Once the updated notice form(s) are ready, submit your revised template(s) for review, along with the signed Owner Certification enclosed at Attachment 2 via CMTS.

7. **Pre-onsite documentation**: Missing components include the written policies and procedures and affirmative marketing plan. Separate instructions are outlined for each below.

8. Written policies and procedures, including tenant selection criteria -

<u>How to prepare compliant criteria</u>: First watch the webinar presentation available at: <u>http://www.tdhca.state.tx.us/pmcomp/presentations.htm</u>. Then prepare updated written policies and procedures addressing all requirements at <u>10 TAC §10.610</u>. 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

<u>What to submit</u>: Once your written policies and procedures are complete, the owner must review the criteria to verify that they are complete, then sign and upload a copy to CMTS.

9. Affirmative marketing plan –

<u>Technical Support</u>: First read the rule at 10 TAC §10.617 to gain a general understanding regarding affirmative marketing.

Steps to complete affirmative marketing plan:

- a. Get a copy of the plan form from http://www.tdhca.state.tx.us/pmcomp/forms.htm. You can use any version of HUD Form 935.2A. Beginning in 2019, if you have a plan that has been approved by HUD or USDA, TDHCA will also accept that plan, provided that copies of outreach marketing materials are included that comply with section "f" below.
- b. Identify the appropriate housing market area in which outreach efforts will be made. A housing market area is the area from which you may reasonably expect to draw a substantial number of your tenants. As an example, the city in which your development is located may be an appropriate housing market area.
- c. Determine the groups that are least likely to apply and mark them in your plan.

To determine the groups, you must perform and document a reasonable analysis by which those groups were identified, and you must always include persons with disabilities. Some LURAs may also require marketing to veterans. This analysis must be included with the plan. If you use the current version of the HUD 935.2A, you will do this analysis by using Worksheet 1 to analyze your data versus the data for the census tract, housing market area, and (optional) expanded housing market area. See https://factfinder.census.gov for demographic data. When selecting groups, keep in mind that you typically would not market to groups that represent less than 1% of the population because they are not present in the marketing area.

- d. Identify and mark in your plan specific organizations, media, and community contacts in the housing market to send marketing outreach materials. The organizations must specifically reach those groups that you have designated as least likely to apply. 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 <u>http://www.txsilc.org/page_CILs.html</u>
 - B. Aging and Disability Resource Center ("ADRC") intake and referral for persons with physical, intellectual, or developmental disabilities - all counties are covered: <u>https://www.dads.state.tx.us/contact/search.cfm</u>
 - C. Local Intellectual and Developmental Disability Authority (LIDDA) serves persons with intellectual, or developmental disabilities all counties are covered: <u>https://www.dads.state.tx.us/contact/search.cfm</u>

- D. Local Mental Health Authority (LMHA) serves persons with Mental Illness and Substance Use disorders - all counties are covered: <u>https://www.dshs.texas.gov/mhservices-search/</u>
- 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, grocery stores in census tracts with a high concentration of the racial group.
- iii. 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
- iv. Community centers, places of worship, libraries, grocery stores in census tracts with a high concentration of the racial group.
- v. 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.
- vi. Least likely to apply population Hispanic:
 - A. Local Hispanic Chamber of Commerce
 - B. Local Young Hispanic Professional Association
 - C. The Hispanic Alliance
 - D. Mexican American Cultural Center
 - E. Local Spanish language publications
 - F. Community centers, places of worship, libraries, grocery stores in census tracts with a high concentration of the racial group.
- vii. Least likely to apply population Not Hispanic:
 - A. When this group is identified, no additional marketing is required, but the Development must refrain from targeting affirmative marketing efforts to Hispanic related groups.
- e. Comply with all requirements of 10 TAC §10.617, which we recommend using as a checklist;
- f. Send marketing outreach materials to the identified organizations, ensuring that said marketing materials comply with all requirements of 10 TAC §10.617. Ensure that the addresses and send dates are included so that TDHCA can verify that you have performed the required marketing. Remember that 10 TAC §10.617(c)(2) requires marketing materials

to include the Fair Housing Logo and the contact information for the individual who can assist 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. 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. Personas con discapacidad que necesitan solicitar un acomodacion razonable para completer el proceso de aplicacion deben comunicarse con el Administrador del apartment al XXX-XXXX."

- g. 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
- h. Maintain all documentation in your files for future review. You must update the plan every 5 years.

<u>What to submit</u>: When your Affirmative Marketing plan *and* outreach materials are complete, the owner or a supervisor must review them, then you will upload the Plan, documentation regarding how you determined the groups that are least likely to apply, and evidence of outreach marketing efforts to CMTS.

Exhibit 2

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

Development Name: Retirement Acres CMTS ID: 925

The above referenced Development was monitored on February 22, 2018 to determine if the Development is in compliance with the requirements of the Housing Tax Credit program. The review resulted in a finding of noncompliance under Title 10, Chapter 10, Subchapter F related to Compliance Monitoring, §10.610, Written Policies and Procedures. Please see attached Findings Report for details as to the specific policy/procedure affected and the reason for which the noncompliance was cited. Update the policy/procedure as detailed on the Findings Report with a revised effective date.

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

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

Signature of Authorized Owner Representative

Date

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

TDHCA December 2016

Exhibit 3

Texas Administrative Code

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

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

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

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

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

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

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

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

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

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

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

(d) Transfer Actions Warranting Debarment. If the Department determines that the transfer, involuntary removal, or replacement was due to a default by the General Partner under the Limited Partnership

Agreement, or other detrimental action that put the Development at risk of failure or the Department at risk for financial exposure as a result of non-compliance, staff may make a recommendation to the Board for the debarment of the entity and/or its Principals and Affiliates pursuant to the Department's debarment rule. In addition, a record of transfer involving Principals in new proposed awards will be reported and may be taken into consideration by the Executive Award and Review Committee, in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee), prior to recommending any new financing or allocation of credits.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) Agreements among parties associated with the transfer;

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

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

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

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

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

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

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

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

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

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

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

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BOARD ACTION REQUEST

ASSET MANAGEMENT DIVISION

SEPTEMBER 5, 2019

Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Application for Lakeview Pointe Apartments (HTC #18376)

RECOMMENDED ACTION

WHEREAS, Lakeview Pointe Apartments (the Development) received an award of 9% Housing Tax Credits (HTCs) in 2018 for the new construction of 144 units of multifamily housing in Garland, Dallas County;

WHEREAS, GL Lakeview Pointe Housing, LP (the Development Owner or Owner) requests approval for a significant modification of the site plan and corresponding modification of the architectural design, a reduction in the total number of units without a reduction in the total number of Low-Income Units (from 144 to 132, decreasing the market rate units by 12), a modification of the residential density of 21% (due to a change from 5.85 acres to 4.42 acres), changes to the bedroom mix (an increase in the total number of one-bedroom units, and a decrease in the total number of two-bedroom and three-bedroom units), a reduction of 12.58% in net rentable area (NRA) and a 15.10% reduction in common area, along with a non-material change in parking, and changes in Development costs and financing;

WHEREAS, Board approval is required for a significant modification of the site plan, a modification of the number of units or bedroom mix of units, a significant modification of the architectural design of the Development, a modification of the residential density of at least five percent, a reduction of three percent or more in the square footage of the units or common areas, and changes to the income and rent restrictions, as directed in Tex. Gov't Code §2306.6712 and 10 TAC §10.405(a)(4)(A), (B), (D), (E), and (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 amendments for Lakeview Pointe Apartments are approved as presented at this meeting, and the Executive Director and his designees are each authorized, directed, and empowered to take all necessary action to effectuate the foregoing.

BACKGROUND

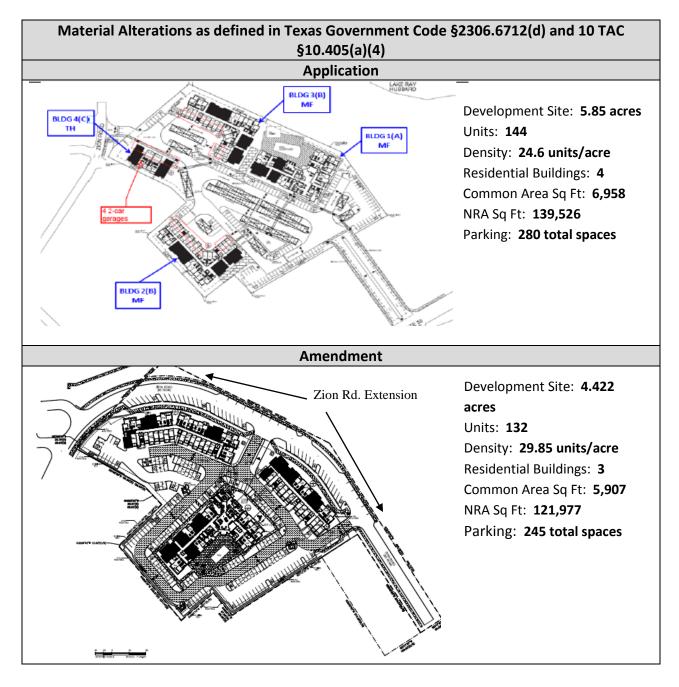
Lakeview Pointe Apartments was originally approved in the 2018 9% competitive HTC round as a new construction, 144-unit, general multifamily development consisting of a total of four buildings - three four-story, elevator served buildings (one of which would contain the leasing/amenity space) and one two-story building with four townhome units located in the City of Garland that would contain 90 affordable units and 54 market rate units. At the time of Application, a deceleration lane was expected to be constructed for access off of the I-30 service road, which lies to the right side of the site, and the property was also expected to have access from Zion Road.

On May 29, 2019, Alyssa Carpenter, consulting for the Development Owner, GL Lakeview Pointe Housing, LP (Deepak P. Sulakhe), submitted a material amendment request identifying changes in the total Development site acreage, total number of units, bedroom mix of units, building and unit plans, leasing/clubhouse plan, site plan and architectural design, and parking. According to the request, the proposed changes are all necessary as a result of City of Garland requirements that arose out of the municipal approval and permitting process following TDHCA Application. According to the engineering letter submitted by Ronald Salamie, Project Manager of Cole & Associates, Inc., though the City's feedback from pre-development meetings had already been incorporated into the initial layout that was submitted with the TDHCA Application in January of 2018, subsequent development meetings considering the deceleration lane and access on the right side of the site led to the formation of a conceptual plan prepared by TXDOT that incorporated an extension from Zion Road at its current location through the Frontage Road of I-30. According to the Applicant, the City determined a preference for the TXDOT plan because it would provide for better and safer access to the site and therefore made the street extension a requirement for final development approval. The Applicant states that in order to meet the unforeseen and unpreventable change in requirements by the City, the Owner was forced to reduce the final size of the Development site from its original acreage of 5.85 at Application to 4.422, with 1.426 acres to be dedicated to the City for Zion Road and 0.002 acre due to a re-survey of the site, which will necessitate the additional changes to the Development further described below:

Modifications in Residential Density, Significant Modifications of the Site Plan, Significant Modifications of Architectural Design, Changes in Unit and Building Plans, & Reductions in Common Area

In addition to the change in acreage, the change in the Development site also caused a reconfiguration of the site buildings and a compression of units, which increased the residential density by 21.27%. Buildings moved from the upper build line closer to the center of the site following the more rounded shape of the included road extension. Instead of placing carports

and parking at the center of the site, the new plan moved a residential building to the center to be surrounded by a paved fire lane and surrounding carports and surface parking. In addition, one of the residential buildings, originally proposed as a two-story townhome building with four units and four two-car garages has been deleted, and the site plan and architectural design have been modified to show three total buildings - one three-story building with 43 units and two four-story buildings with 39 and 50 units, respectively, with revised unit plans. A 15.10% reduction in Common Area, from 6,958 at Application (based on 6,038 square feet on a first floor with 920 square feet of storage and mechanical on a second floor) to 5,907 square feet at the time of amendment is also being proposed due to a condensing of the leasing clubhouse space now placed at the center of the Development site.



Modifications to the Number of Units and Bedroom Mix of Units & Changes in Parking

The Applicant states that because the site plan was reconfigured and compressed (which also limited the amount of parking the Development could provide), the total unit count was also reduced from 144 units to 132, removing 12 market units from the overall total. Because of the decrease in total units, the bedroom mix of the units and the Net Rentable Area (NRA) changed. One additional one-bedroom unit will be built (changing the total number of one-bedroom units from 43 to 44), two less two-bedroom units will be built (changing the total number of two-bedroom units from 66 to 64), and eleven less three-bedroom units will be built (changing the total number of three bedroom units from 35 to 24). NRA changed from 139,526 square feet to 121,977 square feet (a 12.58% reduction). However, there will be no change to the affordability mix and original income/rent limit targets for the low income units, as market units are the only units that were eliminated. The Development originally had proposed nine units at 30% AMI, 36 units at 50% AMI, and 45 units at 60% AMI and this mix remains. According to the Applicant, the unit mix reduction largely focused on the three-bedroom units in order to reduce the overall parking requirements based on the reduction in the size of the site. The revised unit mix continues to meet the accessibility distribution requirements.

Jnit Mix at Application					l	Unit Mix at Amendment						
# Beds	# Units	% Total	Income	# Units	% Total		# Beds	# Units	% Total	Income	# Units	% Total
Eff	-	0.0%	30%	9	6.3%		Eff	-	0.0%	30%	9	6.8%
1	43	29.9%	40%	-	0.0%		1	44	33.3%	40%	-	0.0%
2	66	45.8%	50%	36	25.0%		2	64	48.5%	50%	36	27.3%
3	35	24.3%	60%	45	31.3%		3	24	18.2%	60%	45	34.1%
4	-	0.0%	MR	54	37.5%		4	-	0.0%	MR	42	31.8%
TOTAL	144	100.0%	TOTAL	144	100.0%	_	TOTAL	132	100.0%	TOTAL	132	100.0%

Parking has been re-proposed as well. At Application, local code required 267 total parking spaces, and the Applicant intended to provide 280 total spaces (136 open surface spaces, 114 carport spaces, and 17 garages free of charge, with 13 additional planned garages proposed to be rented for a fee, eight of which would have been comprised of the four two-car garages attached to the four planned townhomes units). At the time of amendment, only 242 of the original 267 spaces are required based on City of Garland parking requirements (1.5 spaces for each one-bedroom unit and two parking spaces for each two-bedroom and for each three-bedroom unit) given the Applicant's reduction of overall three-bedroom units, and a portion of the spaces that will be counted towards the total required number of parking spaces will be along the public Zion Road extension and not expressly reserved for tenant use. The Applicant plans to offer all parking spaces to the residents free of charge (111 surface spaces, 105 carports, 27 garages, and 2 tandem surface spaces). The new architectural plans were rereviewed for accessible space requirements and were found to be sufficient.

Changes in Development Costs & Financing

Revised financial exhibits were submitted along with the other changes at the time of the amendment request, including an updated Rent Schedule, Annual Operating Expenses schedule, Development Cost Schedule (including new site work cost and offsite cost estimates), Summary of Sources and Uses, 15-Year Operating Pro Forma, new term sheets and a revised equity letter. The Real Estate Analysis (REA) Division re-evaluated the transaction pursuant to Tex. Gov't Code §2306.6712(b) and has concluded that the Development remains feasible. The REA Addendum is attached. In summary, total Development Costs decreased 3.36% from \$27,163,340 to \$26,248,685, with the largest reductions in costs occurring in site acquisition cost (from \$2,919,489 to \$2,050,000, the Managing Member of the General Partner of the Development Owner controlled the larger parcel that included the Development Site and the area of the Zion Rd extension to the frontage road and is transferring the new proposed site with the Zion Rd extension to the Development Owner at the reduced price based on the increased construction costs and costs to build the road extension), soft costs (which decreased from \$2,193,819 to \$1,743,522), and site work costs (decreased from \$1,736,200 to \$1,368,280). The Development Cost Schedule also shows a large increase in off-site costs due to the new proposed work (increasing from \$49,300 to \$772,808). Though the Development proposed the reduction of one building as a result of the site changes, it is important to note the original building cost budget increased from \$77,237 per unit and \$79.71 per square foot to \$85,026 per unit and \$92.20 per square foot. The Contractor attributes increased costs to changes in building design and finishes to accommodate requests from the City of Garland, under budgeting of certain building components by the original cost estimator, general cost increases, and tariffs on materials sourced from China.

Updated exhibits submitted with the amendment request show that a Capital One conventional loan has replaced the originally proposed 40 year FHA insured loan from Dougherty Mortgage, and the proposed permanent debt has decreased from \$12,212,000 to \$11,300,00 at a proposed rate of 4.5% amortizing over a period of 35 years on a 15-year term. Boston Capital has replaced PNC Real Estate as the equity provider with a proposed higher equity amount of \$14,548,545 at an increased credit price of \$0.96, a significant change from the originally proposed \$13,648,635 at a credit price of \$0.91 at Application.

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 ultimate selection of the application in the competitive round.

Staff recommends approval of the requested material amendments to the Application.

COEPARITA	CULHOUSING 4ND COMMUNITY						Real E	Estate Ana	alysis Di August 9				
			Adden	dum to L	Inderwrit	ing Report							
TDHCA Application #: 18376 Program(s): 9% HTC													
			Lake	view Po	inte Apa	artments							
	Address/Location: N side of IH 30, E of Bass Pro Dr												
City: Garland County: Dallas Zip: 75043													
ſ					APPLIC		DRY						
	Report Date					PURPOSE							
ľ	08/09/19	Amendr	nent										
	07/06/18	Original L	Jnderwrit	ting									
				ALLO	CATION								
	Г	Pre	evious A	llocation			RECOM	MENDATIC	DN				
	TDHCA Program	Amount	Rate	Amort	Term	Amount	Rate	Amort	Term	Lien			
Ī	LIHTC (9% Credit)	\$1,500,000		Į	1	\$1,500,000		ļļ					
_													
			(CONDITI	ons sta	TUS							
	 Receipt and acceptance by Commitment: Receipt of MAP Invitation Letter for FHA 221(d)(4) loan, or letter from Lender indicating the date that the HUD concept meeting was held, and confirmation that based on that meeting the Lender intends to proceed with submitting the application to HUD. 												
	Status: Applicant satisfied.	provided	MAP Inv	vitation Le	etter from	i concept n	neeting	held 9/7/ ⁻	18. Cor	ndition			
	2 Receipt and accept	otance by C	Cost Cert	ification:									

- a: Architect certification that all noise assessment recommendations were implemented and the Development is compliant with HUD noise guidelines.
- b: Architect certification that buildings were tested for the presence of radon and any recommended mitigation measures were implemented.

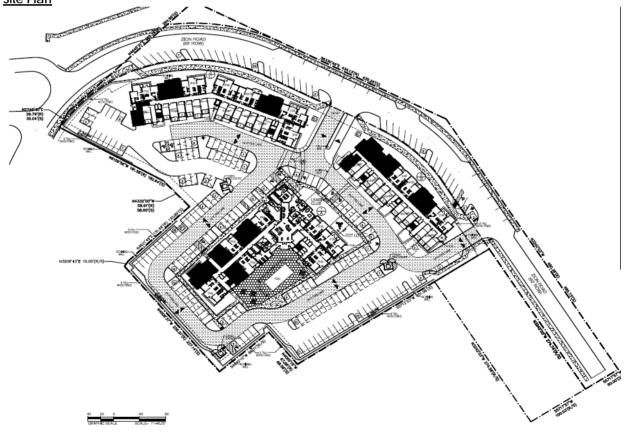
Should any terms of the proposed capital structure change or if there are material changes to the overall development plan or costs, the analysis must be re-evaluated and adjustment to the credit allocation and/or terms of other TDHCA funds may be warranted.

TDHCA SET-ASIDES for HTC LURA											
Income Limit	Rent Limit	Number of Units									
30% of AMI	30% of AMI	9									
50% of AMI	50% of AMI	36									
60% of AMI	60% of AMI	45									

ANALYSIS

Applicant has requested an amendment as the result of a street extension required by the City of Garland and the Texas Department of Transportation. At Application, the site was 5.85 acres with an entrance off the IH 30 Frontage Road. Due to the proposed road extension, Zion Road will be extended from North of the Development Site, along the lake, to the IH30 Frontage Road. The Development Site will now be accessed from the new Zion Road extension. Per the letter from the Engineer, Zion Road will be dedicated to the City as a public road after construction. During construction, the Development Site including Zion Road will be 5.838 acres. After Zion Road is dedicated to the City, the final Development Site acreage will be 4.422 acres

Site Plan



The site plan has been reconfigured and compressed to allow for the extension of Zion Road, requiring a reduction in the number of buildings and units.

The Leasing/Clubhouse at Application was 6,038 square feet on the first floor with 920 square feet of storage and mechanical on the second floor. The new Leasing/Clubhouse has 5,907 square feet on the first floor and none on the second floor.

Parking at Application totaled 280 spaces: 136 surface spaces, 114 carports, and 30 garages. The reduced number of units proposed in this amendment now requires only 242 spaces according to City of Garland parking requirements. The new plans provide 245 spaces: 111 surface spaces, 105 carports, 27 garages, and 2 tandem surface spaces (in front of garages). All parking spaces will be free to tenants.

The site plan indicates 43 parking spaces on Zion Road. Per discussions with the City and stated in the letter from the engineer, the parking spaces on Zion will be attributed to the Development to meet parking requirements after the road dedication.

<u>Unit Mix</u>

The Total Unit count has been reduced from 144 units (90 Low Income units and 54 Market Rate) to 132 units. The new plans omit 12 market rate units but maintains the 90 tax credit units proposed at application. The unit mix reduction primarily focuses on 3-bedroom units in order to reduce parking requirements because of the reduced size of the site.

		Numb	<u>per of Units</u>
<u>Unit T</u>	<u>ype</u>	<u>Original</u>	Amendment
HTC 30%	1/1	2	2
HTC 50%	1/1	12	11
HTC 60%	1/1	9	14
Market	1/1	20	17
HTC 30%	2/2	5	5
HTC 50%	2/2	16	17
HTC 60%	2/2	11	17
Market	2/2	34	25
HTC 30%	3/2	2	8
HTC 50%	3/2	8	14
HTC 60%	3/2	25	0
Market	3/2	0	2
		144	132

Operating Pro Forma

Despite the reduced unit count, Effective Gross Income increased \$43K (3%) due to the higher 2019 HTC Program Rents.

Estimated Operating Expenses are adjusted to reflect the reduced unit count, resulting in a \$42K decrease (6%).

Net Operating Income increased \$84K (11%).

Development Cost

The acquisition price was reduced from \$2.6M to \$2.0M due to the additional requirement for the purchaser to construct the Zion Road extension.

The development budget now includes \$702K in off-site cost for the construction of the Zion Road extension. The Applicant states that there will be no cost sharing/reimbursement between the Owner and any other parties for the road extension.

The original building cost budget was \$77,237 per unit and \$79.71 per sf. The current budget has increased to \$85,026 per unit (10.08% increase) and \$92.20 per sf (15.66% increase).

The revised budget is confirmed by the General Contractor. The Contractor attributes the increased costs to changes in building design and finishes to accommodate requests from the City of Garland; underbudgeting of some building components by the original cost estimator; general cost increases of roughly 5% per year; and tariffs on some building materials sourced from China.

Sources of Funds

The original application included a \$12.2M FHA 221(d)(4) loan from Dougherty Mortgage at 4.35% for 40 years. TDHCA underwrote at 4.50% due to rising interest rates, and the Underwriter assumed a \$775K reduction in the principal amount to maintain the minimum 1.15 debt coverage.

The current permanent debt is an \$11.3M conventional loan from Capital One at 4.50% amortized over 35 years. Debt coverage is 1.29 times.

Credit price increased from \$0.91 to \$0.96, providing \$900K of additional equity.

The current analysis continues to support the \$1,500,000 credit allocation.

Underwriter:	Duc Nguyen
Manager of Real Estate Analysis:	Thomas Cavanagh
Director of Real Estate Analysis:	Brent Stewart

UNIT MIX/RENT SCHEDULE

Lakeview Pointe Apartments, Garland, 9% HTC #18376
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LOCATION DATA								
CITY:	Garland							
COUNTY:	Dallas							
Area Median Income	\$83,100							
PROGRAM REGION:	3							

	UNIT DISTRIBUTION													
# Beds	# Units	% Total	Assisted	MDL	Income	# Units	% Total							
Eff	-	0.0%	0	0	30%	9	6.8%							
1	44	33.3%	0	0	40%	-	0.0%							
2	64	48.5%	0	0	50%	36	27.3%							
3	24	18.2%	0	0	60%	45	34.1%							
4	-	0.0%	0	0	MR	42	31.8%							
TOTAL	132	100.0%	-	-	TOTAL	132	100.0%							

Pro Forma ASSUMPTIONS									
Revenue Growth	2.00%								
Expense Growth	3.00%								
Basis Adjust	130%								
Applicable Fraction	68.18%								
APP % Acquisition	3.39%								
APP % Construction	9.00%								
Average Unit Size	924 sf								

	UNIT MIX / MONTHLY RENT SCHEDULE																						
HTC UNIT MIX APPLICABLE PROC							OGRAM	l	APPLI PRO FOR	PR	TDHC/ D FORMA	-	5	MARKET RENTS									
Туре	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		Underwritten		Underwritten		Mrkt Analyst
TC 30%	\$467	2	1	1	699	\$467	\$41	\$426	\$0	\$0.61	\$426	\$852	\$852	\$426	\$0.61	\$0	\$1,113	\$1.59	\$1,113				
TC 50%	\$779	10	1	1	708	\$779	\$41	\$738	\$0	\$1.04	\$738	\$7,380	\$7,380	\$738	\$1.04	\$0	\$1,113	\$1.57	\$1,113				
TC 50%	\$779	1	1	1	707	\$779	\$41	\$738	\$0	\$1.04	\$738	\$738	\$738	\$738	\$1.04	\$0	\$1,113	\$1.57	\$1,113				
TC 60%	\$935	14	1	1	708	\$935	\$41	\$894	\$0	\$1.26	\$894	\$12,516	\$12,516	\$894	\$1.26	\$0	\$1,113	\$1.57	\$1,113				
MR		13	1	1	708	\$0	\$41		NA	\$1.45	\$1,029	\$13,377	\$13,377	\$1,029	\$1.45	NA	\$1,029	\$1.45	\$1,113				
MR		4	1	1	758	\$0	\$41		NA	\$1.36	\$1,029	\$4,116	\$4,116	\$1,029	\$1.36	NA	\$1,029	\$1.36	\$1,113				
TC 30%	\$561	5	2	2	962	\$561	\$49	\$512	\$0	\$0.53	\$512	\$2,560	\$2,560	\$512	\$0.53	\$0	\$1,391	\$1.45	\$1,391				
TC 50%	\$935	13	2	2	962	\$935	\$49	\$886	\$0	\$0.92	\$886	\$11,518	\$11,518	\$886	\$0.92	\$0	\$1,391	\$1.45	\$1,391				
TC 50%	\$935	4	2	2	1,001	\$935	\$49	\$886	\$0	\$0.89	\$886	\$3,544	\$3,544	\$886	\$0.89	\$0	\$1,391	\$1.39	\$1,391				
TC 60%	\$1,122	17	2	2	987	\$1,122	\$49	\$1,073	\$0	\$1.09	\$1,073	\$18,241	\$18,241	\$1,073	\$1.09	\$0	\$1,391	\$1.41	\$1,391				
MR		9	2	2	1,001	\$0	\$49		NA	\$1.23	\$1,234	\$11,106	\$11,106	\$1,234	\$1.23	NA	\$1,234	\$1.23	\$1,391				
MR		3	2	2	1,069	\$0	\$49		NA	\$1.15	\$1,234	\$3,702	\$3,702	\$1,234	\$1.15	NA	\$1,234	\$1.15	\$1,391				
MR		8	2	2	1,001	\$0	\$49		NA	\$1.23	\$1,234	\$9,872	\$9,872	\$1,234	\$1.23	NA	\$1,234	\$1.23	\$1,391				
MR		2	2	2	1,035	\$0	\$49		NA	\$1.19	\$1,234	\$2,468	\$2,468	\$1,234	\$1.19	NA	\$1,234	\$1.19	\$1,391				
MR		3	2	2	1,001	\$0	\$49		NA	\$1.23	\$1,234	\$3,702	\$3,702	\$1,234	\$1.23	NA	\$1,234	\$1.23	\$1,391				
TC 30%	\$648	2	3	2	1,130	\$648	\$62	\$586	\$0	\$0.52	\$586	\$1,172	\$1,172	\$586	\$0.52	\$0	\$1,725	\$1.53	\$1,725				
TC 50%	\$1,080	6	3	2	1,130	\$1,080	\$62	\$1,018	\$0	\$0.90	\$1,018	\$6,108	\$6,108	\$1,018	\$0.90	\$0	\$1,725	\$1.53	\$1,725				
TC 50%	\$1,080	2	3	2	1,138	\$1,080	\$62	\$1,018	\$0	\$0.89	\$1,018	\$2,036	\$2,036	\$1,018	\$0.89	\$0	\$1,725	\$1.52	\$1,725				
TC 60%	\$1,296	14	3	2	1,138	\$1,296	\$62	\$1,234	\$0	\$1.08	\$1,234	\$17,276	\$17,276	\$1,234	\$1.08	\$0	\$1,725	\$1.52	\$1,725				
TOTALS/A	VERAGES:	132			121,977				\$0	\$1.08	\$1,002	\$132,284	\$132,284	\$1,002	\$1.08	\$0	\$1,319	\$1.43	\$1,359				

ANNUAL POTENTIAL GROSS RENT:

\$1,587,408 \$1,587,408

STABILIZED PRO FORMA

Lakeview Pointe Apartments, Garland, 9% HTC #18376

	STABILIZED FIRST YEAR PRO FORMA															
		COMPA	RABLES			AP	PLICANT		PRIOR REPORT TDHCA						VAR	IANCE
	Databa	ase	5 Dallas County Comps		% EGI	Per SF	Per Unit	Amount	Applicant	TDHCA	Amount	Per Unit	Per SF	% EGI	%	\$
POTENTIAL GROSS RENT						\$1.08	\$1,002	\$1,587,408	\$1,538,148	\$1,538,088	\$1,587,408	\$1,002	\$1.08		0.0%	\$0
laundry, vending							\$0.00	\$0	0					-		
appl fees, late fees forfeit deposits							\$0.00	\$0	0							
cable, garages, pet income							\$20.00	\$31,680	34,560				_			
Total Secondary Income							\$20.00			34,560	\$31,680	\$20.00			0.0%	\$0
POTENTIAL GROSS INCOME								\$1,619,088	\$1,572,708	\$1,572,648	\$1,619,088		_		0.0%	\$0
Vacancy & Collection Loss							7.5% PGI	(121,432)	(117,953)	(117,949)	(121,432)	7.5% PGI			0.0%	-
Rental Concessions								-	0	0	-				0.0%	-
EFFECTIVE GROSS INCOME								\$1,497,656	\$1,454,755	\$1,454,699	\$1,497,656				0.0%	\$0
		r				r	1						-	-		
General & Administrative	\$57,544	\$436/Unit	\$51,357	\$389	3.36%	\$0.41	\$382	\$50,392	\$49,027	\$56,026	\$51,357	\$389	\$0.42	3.43%	-1.9%	(965)
Management	\$53,638	4.3% EGI	\$55,794	\$423	4.00%	\$0.49	\$454	\$59,905	\$58,190	\$58,188	\$59,906	\$454	\$0.49	4.00%	0.0%	(1)
Payroll & Payroll Tax	\$163,661	\$1,240/Unit	\$152,929	\$1,159	11.76%	\$1.44	\$1,334	\$176,111	\$210,992	\$176,111	\$176,111	\$1,334	\$1.44	11.76%	0.0%	-
Repairs & Maintenance	\$92,101	\$698/Unit	\$74,572	\$565	4.62%	\$0.57	\$524	\$69,156	\$64,628	\$86,400	\$79,200	\$600	\$0.65	5.29%	-12.7%	(10,044)
Electric/Gas	\$32,688	\$248/Unit	\$23,914	\$181	1.54%	\$0.19	\$175	\$23,100	\$21,600	\$26,088	\$23,914	\$181	\$0.20	1.60%	-3.4%	(814)
Water, Sewer, & Trash	\$95,819	\$726/Unit	\$74,584	\$565	5.24%	\$0.64	\$595	\$78,500	\$81,000	\$81,365	\$74,584	\$565	\$0.61	4.98%	5.3%	3,916
Property Insurance	\$36,716	\$0.30 /sf	\$38,051	\$288	2.20%	\$0.27	\$250	\$33,000	\$36,000	\$36,000	\$33,000	\$250	\$0.27	2.20%	0.0%	-
Property Tax (@ 100%) 2.8213	\$105,239	\$797/Unit	\$103,302	\$783	9.13%	\$1.12	\$1,036	\$136,695	\$144,000	\$117,760	\$107,947	\$818	\$0.88	7.21%	26.6%	28,748
Reserve for Replacements	\$49,579	\$376/Unit	\$56,913	\$431	2.20%	\$0.27	\$250	\$33,000	\$36,000	\$36,000	\$33,000	\$250	\$0.27	2.20%	0.0%	-
TDHCA LIHTC/HOME Compliance Fees			-	\$0	0.24%	\$0.03	\$27	\$3,600	\$3,600	\$3,600	\$3,600	\$27	\$0.03	0.24%	0.0%	-
Security			-	\$0	0.33%	\$0.04	\$38	\$5,000	\$5,000	\$5,000	\$5,000	\$38	\$0.04	0.33%	0.0%	-
TOTAL EXPENSES					44.63%	\$5.48	\$5,064	\$ 668,459	\$710,037	\$682,538	\$647,619	\$4,906	\$5.31	43.24%	3.2%	\$ 20,840
NET OPERATING INCOME ("NOI")					55.37%	\$6.80	\$6,282	\$829,197	\$744,718	\$772,162	\$850,037	\$6,440	\$6.97	56.76%	-2.5%	\$ (20,840)

CONTROLLABLE EXPENSES	\$3,010/Unit	\$3,069/Unit

CAPITALIZATION / TOTAL DEVELOPMENT BUDGET / ITEMIZED BASIS

Lakeview Pointe Apartments, Garland, 9% HTC #18376

	[DEBT / GRANT SOURCES														
		APPLICANT'S PROPOSED DEBT/GRANT STRUCTURE					AS UNDERWRITTEN DEBT/GRANT STRUCTURE										
		Cumula	tive DCR						Previo	us UW					Cur	mulative	
DEBT (Must Pay)	Fee	UW	Арр	Pmt	Rate	Amort	Term	Principal	Applicant	TDHCA	Principal	Term	Amort	Rate	Pmt	DCR	LTC
Capital One		1.32	1.29	641,736	4.35%	35	15	\$11,300,000	\$12,212,000	\$12,212,000	\$11,300,000	15	35	4.50%	\$641,736	1.29	43.1%
Adjustment to Debt Per §10.302(c)(2)										(\$775,000)		15	35	4.50%		1.29	0.0%
\$641,736 TOTAL DEBT / GRANT SOURCES \$11,300,000 \$11,300,000 T				TOTAL D	EBT SERVICE	\$641,736	1.29	43.1%									
NET CASH FLOW		\$208,301	\$187,461								APPLICANT	NET OPERA	TING INCOME	\$829,197	\$187,461	NET CASH	I FLOW

		EQUITY SOURCES												
	APPLICANT	APPLICANT'S PROPOSED EQUITY STRUCTURE						AS UNDERWRITTEN EQUITY STRUCTURE						
				Credit		Previo	us UW		Credit			Annual Credits		
EQUITY / DEFERRED FEES	DESCRIPTION	% Cost	Annual Credit	Price	Amount	Applicant	TDHCA	Amount	Price	Annual Credit	% Cost	per Unit	Allocatio	on Method
Boston Financial	LIHTC Equity	55.5%	\$1,500,000	0.97	\$14,548,545	\$13,648,635	\$13,648,635	\$14,548,545	\$0.9699	\$1,500,000	55.5%	\$11,364	Applicar	nt Request
0	Deferred Developer Fees	1.5%	5 (15% D	eferred)	\$400,140	\$1,302,705	\$2,077,705	\$362,619	(13% E	Deferred)	1.4%	Total Develo	er Fee:	\$2,754,971
Additional (Excess) Funds Req'd		0.0%	5					\$0			0.0%			
TOTAL EQUITY SOURCES		57.0%	6		\$14,948,685			\$14,911,164			56.9%			
TOTAL CAPITALIZATION			\$26,248,685			\$26,211,164			15-Yr	Cash Flow after De	ferred Fee:	\$3,556,530		

						DEVELOP	IENT COS	T / ITEMIZE	D BASIS					
		APPLICAN	NT COST / BA	SIS ITEMS					TDHCA	COST / BASI	S ITEMS		COST V	ARIANCE
	Eligible	e Basis				Previou	is UW				Eligible	e Basis		
	Acquisition	New Const. Rehab		Total Costs		Applicant	TDHCA		Total Costs		New Const. Rehab	Acquisition	%	\$
Land Acquisition				\$15,152 / Unit	\$2,000,000	\$2,639,535	\$2,639,535	\$2,000,000	\$15,152 / Unit				0.0%	\$0
Building Acquisition	\$0			\$ / Unit	\$0	\$0	\$0	\$0	\$ / Unit			\$0	0.0%	\$0
Closing costs & acq. legal fees					\$50,000	\$279,954	\$279,954	\$50,000						\$0
Off-Sites				\$5,319 / Unit	\$702,114	\$49,300	\$49,300	\$702,114	\$5,319 / Unit				0.0%	\$0
Site Work		\$1,368,280		\$10,366 / Unit	\$1,368,280	\$1,736,200	\$1,736,200	\$1,368,280	\$10,366 / Unit		\$1,368,280		0.0%	\$0
Site Amenities		\$372,819		\$2,824 / Unit	\$372,819	\$423,800	\$423,800	\$372,819	\$2,824 / Unit		\$372,819		0.0%	\$0
Building Cost		\$11,128,731	\$92.01 /sf	\$85,026/Unit	\$11,223,497	\$11,122,187	\$10,773,470	\$11,223,497	\$85,026/Unit	\$92.01 /sf	\$11,097,521		0.0%	\$0
Contingency		\$842,290	6.54%	6.16%	\$842,290	\$933,204	\$908,794	\$842,290	6.16%	6.56%	\$842,290	[0.0%	\$0
Contractor Fees		\$2,068,781	15.09%	14.26%	\$2,068,781	\$1,997,057	\$1,944,819	\$2,031,260	14.00%	14.00%	\$1,915,327		1.8%	\$37,521
Soft Costs	0	\$1,938,154		\$15,132 / Unit	\$1,997,384	\$2,193,819	\$2,193,819	\$1,997,384	\$15,132 / Unit		\$1,938,154	\$0	0.0%	\$0
Financing	0	\$802,882		\$15,522 / Unit	\$2,048,911	\$1,892,917	\$1,892,917	\$2,048,911	\$15,522 / Unit		\$802,882	\$0	0.0%	\$0
Developer Fee	\$0	\$2,754,971	14.87%	14.26%	\$2,754,971	\$2,944,032	\$2,882,374	\$2,754,971	14.37%	15.00%	\$2,750,591	\$0	0.0%	\$0
Reserves				\$6,209 / Unit	\$819,638	\$951,335	\$665,033	\$644,678	\$4,884 / Unit				27.1%	\$174,960
TOTAL HOUSING DEVELOPMENT COST (UNADJUSTED BASIS)	\$0	\$21,276,908		\$198,854 / Unit	\$26,248,685	\$27,163,340	\$26,390,015	\$26,036,204	\$197,244 / Unit		\$21,087,864	\$0	0.8%	\$212,481
Acquisition Cost	\$0				\$0									
Contingency		\$0]		\$0									
Contractor's Fee		(\$149,084)			(\$37,521)									
Financing Cost		\$0												
Developer Fee	\$0	\$0			\$0									
Reserves					\$0									
ADJUSTED BASIS / COST	\$0	\$21,127,824		\$198,569/unit	\$26,211,164			\$26,036,204	\$197,244/unit		\$21,087,864	\$0	0.7%	\$174,960
TOTAL HOUSING DEVELOPMENT COSTS (Applicant's Uses are within 5% of TDHCA Estimate):						\$26,21	1.164				-			

CAPITALIZATION / DEVELOPMENT COST BUDGET / ITEMIZED BASIS ITEMS Lakeview Pointe Apartments, Garland, 9% HTC #18376

		CREDIT CALCULATION ON QUALIFIED BASIS							
	A	pplicant	TD	HCA					
	Acquisition	Construction Rehabilitation	Acquisition	Construction Rehabilitation					
ADJUSTED BASIS	\$0	\$21,127,824	\$0	\$21,087,864					
Deduction of Federal Grants	\$0	\$0	\$0	\$0					
TOTAL ELIGIBLE BASIS	\$0	\$21,127,824	\$0	\$21,087,864					
High Cost Area Adjustment		130%		130%					
TOTAL ADJUSTED BASIS	\$0	\$27,466,171	\$0	\$27,414,224					
Applicable Fraction	68.18%	68.18%	68.18%	68.18%					
TOTAL QUALIFIED BASIS	\$0	\$18,726,935	\$0	\$18,691,516					
Applicable Percentage	3.39%	9.00%	3.39%	9.00%					
ANNUAL CREDIT ON BASIS	\$0	\$1,685,424	\$0	\$1,682,236					
CREDITS ON QUALIFIED BASIS	\$1	1,685,424	\$1,682,236						

	ANNUAL CR	EDIT CALCULATION	FINAL ANNUAL LIHTC ALLOCATION					
	BASED ON	BASED ON APPLICANT BASIS		\$0.9699	Variance to Request			
Method	Annual Credits	Proceeds	Credit Allocation		Credits	Proceeds		
Eligible Basis	\$1,685,424	\$16,346,979						
Needed to Fill Gap	\$1,537,387	\$14,911,164						
Applicant Request	\$1,500,000	\$14,548,545	\$1,500	,000	\$0	\$0		

BUI	LDING COS	FESTIMATI	E	
CATEGORY	FACTOR	UNITS/SF	PER SF	
Base Cost: Comb	ination	121,977 SF	\$69.56	8,485,127
Adjustments				
Exterior Wall Finish	2.25%		1.57	\$191,303
Elderly	0.00%		0.00	0
9-Ft. Ceilings	3.28%		2.28	278,467
Roof Adjustment(s)			0.00	0
Subfloor			(0.30)	(36,487
Floor Cover			2.56	312,261
Breezeways	\$28.70	29,676	6.98	851,583
Balconies	\$28.70	12,861	3.03	369,119
Plumbing Fixtures	\$1,020	264	2.21	269,280
Rough-ins	\$500	264	1.08	132,000
Built-In Appliances	\$1,730	132	1.87	228,360
Exterior Stairs	\$2,280	0	0.00	0
Heating/Cooling			2.21	269,569
Storage Space	\$28.70	2,248	0.53	64,509
Carports	\$12.25	17,010	1.71	208,373
Garages	\$28.25	8,775	2.03	247,894
Comm &/or Aux Bldgs	\$87.24	4,680	3.35	408,302
Elevators	\$106,800	3	2.63	320,400
Other: TH Elevator	\$81,000	1	0.66	81,000
Fire Sprinklers	\$2.59	158,581	3.37	410,725
SUBTOTAL			107.33	13,091,784
Current Cost Multiplier	0.99		(1.07)	(130,918
Local Multiplier	0.87		(13.95)	(1,701,932
TOTAL BUILDING COSTS			92.30	\$11,258,934
Plans, specs, survey, bldg permits	3.30%		(3.05)	(\$371,545)
Contractor's OH & Profit	11.50%		(10.61)	(1,294,777
NET BUILDING COSTS		\$72,671/unit	\$78.64/sf	\$9,592,612

Long-Term Pro Forma

Lakeview Pointe Apartments, Garland, 9% HTC #18376

	Growth											
	Rate	Year 1	Year 2	Year 3	Year 4	Year 5	Year 10	Year 15	Year 20	Year 25	Year 30	Year 35
EFFECTIVE GROSS INCOME	2.00%	\$1,497,656	\$1,527,610	\$1,558,162	\$1,589,325	\$1,621,111	\$1,789,838	\$1,976,126	\$2,181,803	\$2,408,886	\$2,659,605	\$2,936,419
TOTAL EXPENSES	3.00%	\$668,459	\$687,914	\$707,940	\$728,555	\$749,776	\$865,617	\$999,536	\$1,154,373	\$1,333,418	\$1,540,479	\$1,784,640
NET OPERATING INCOME ("N	OI")	\$829,197	\$839,696	\$850,222	\$860,770	\$871,335	\$924,221	\$976,590	\$1,027,429	\$1,075,468	\$1,119,126	\$1,151,779
EXPENSE/INCOME RATIO		44.6%	45.0%	45.4%	45.8%	46.3%	48.4%	50.6%	52.9%	55.4%	57.9%	60.8%
MUST -PAY DEBT SERVICE												
TOTAL DEBT SERVICE		\$641,736	\$641,736	\$641,736	\$641,736	\$641,736	\$641,736	\$641,736	\$641,736	\$641,736	\$641,736	\$641,736
DEBT COVERAGE RATIO		1.29	1.31	1.32	1.34	1.36	1.44	1.52	1.60	1.68	1.74	1.79
ANNUAL CASH FLOW		\$187,461	\$197,960	\$208,485	\$219,034	\$229,599	\$282,485	\$334,854	\$385,693	\$433,732	\$477,390	\$510,042
Deferred Developer Fee Balance	9	\$175,158	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
CUMULATIVE NET CASH FLO	N	\$0	\$22,802	\$231,287	\$450,321	\$679,921	\$1,986,607	\$3,556,530	\$5,384,162	\$7,458,155	\$9,759,900	\$12,250,401



Asset Management Division

Amendment Request Form

Completed forms and supporting materials can be emailed to asset.management@tdhca.state.tx.us

TYPE OF AMENDMENT REQUESTED Date Submitted: 5/29/19 Amendment Requested: Application Amendment, Has the change been implemented? No Award Stage: Carryover (Prior to Construction/10% Test) **NOTE:** Material Application or LURA Amendment requests must be received 45 days before the Board Meeting. Contact your Asset Manager if you are unsure what type of Amendment to request: https://www.tdhca.state.tx.us/assetmanagement/contacts.htm **DEVELOPMENT INFORMATION** Dev. Name: Lakeview Pointe Apartments File No. / CMTS No.: 18376 / CONTACT INFORMATION Request Submitted By: Alyssa Carpenter Phone #/Email: (512) 789-1295 /ajcarpen@gmail.com SECTION 1: COVER LETTER A cover letter **MUST** be submitted with your request. Review your cover letter to ensure it includes: \square The change(s) requested \square The reason the change is necessary \square The good cause for the change

An explanation of whether the amendment was reasonably foreseeable or preventable at the time of Application

SECTION 2: REQUIRED DOCUMENTATION

Entering an Amendment conveys to the Department that representations in the Application have changed. You *MUST* provide information about any and all changes made from the time of Application (or as last approved by the Department) in your request, including any items that will be impacted by the requested change. Failure to represent or properly document all changes may result in delays, denials, or a request for re-submission. The following is attached:

- Revised Development Financing Exhibits if sources, terms, conditions, or amounts of financing will be impacted or changed by your amendment request, revised Application exhibits and term sheets (or executed Loan documents and LPA, if the loan has closed) must be submitted
- Signed Statement of No Financial Impact if no sources, terms, conditions, or amount of financing will be impacted or changed by your amendment request, the Owner must sign and submit a statement to this effect
- Revised Application Exhibits/Documents Reflecting or Supporting All Requested Changes revised site plans, surveys, Building and Unit Configuration exhibit, etc.
- Material Amendment fee of \$2,500 for first amendments, \$3,000 for second amendments, \$3,500 for third or more. (Applicable to Non-Material Amendments only if changes have been implemented prior to Amendment approval) – N/A for Developments only funded by a Direct Loan program (HOME, NSP, HTF)

SECTION 3A: MATERIAL APPLICATION AMENDMENT ITEMS

Check all items that have been modified from the original application (see Subchapter E, §10.405(a)(3)):

- Site plan Scope of tenant services
- \boxtimes Number of units* \boxtimes Reduction of 3%+ in unit sq ft
- \boxtimes Bedroom mix \boxtimes Reduction of 3%+ common area
- \square Architectural design \square Residential density (5%+ change)

If "Number of units" is selected above and the total LI units or LI units at any rent or income level will be reduced, also:

Written confirmation from the lender and syndicator that the development is infeasible without the adjustment in units

Evidence supporting the need for the adjustment in units

NOTE: *The approved amendment may carry a penalty in accordance with §10.405(a)(6)(b).

SECTION 3B: MATERIAL LURA AMENDMENT ITEMS

Check all items that require a material LURA amendment (see Subchapter E, §10.405(b)(2)):

Reductions in the number of LI units Change in Target Population

Changes to income or rent restrictions Removal of Non-profit Other

Change in ROFR period or other ROFR provisions

The following additional items are attached for consideration or will be forthcoming:

Draft Notice of Public Hearing*

NOTE: *Draft Notices of Public Hearing must be provided with the Amendment materials 45 days prior to the Board meeting. *The Public Hearing must be held at least 15 business days prior to the Board meeting and evidence in the form of attendance sheets and a summary of comments made must be submitted to TDHCA within 3 days of the hearing.

SECTION 4A: NON-MATERIAL APPLICATION AMENDMENT SUMMARY

Identify all non-material changes that have been or will be made (Contact your Asset Manager if you are unsure of whether your request is non-material):

Short Summary Regarding Application Changes

Amendment is requesting a change in Developer(s) or Guarantor(s) and Previous Participation forms are attached.

SECTION 4B: NON-MATERIAL LURA AMENDMENT SUMMARY

Identify non-material amendments requested to the LURA:

Short Summary Regarding LURA Changes

SECTION 4C: NOTIFICATION ITEM SUMMARY

Identify any notification items from the time of application:

Short Summary Regarding LURA Changes

Exclusion of reqs in Subchapters B & C

Other

May 29, 2019

Laura DeBellas TDHCA 221 East 11th Street Austin, Texas 78701-2410

Re: 18376 Lakeview Pointe Apartments – Request to Amend Application

Dear Ms. DeBellas:

This is a request to amend TDHCA Application 18376 Lakeview Pointe Apartments in Garland. These changes are the result of a street extension required by the City of Garland and the Texas Department of Transportation. These changes could not be foreseen at the time of Application because we were not informed of the Zion Rd extension conceptual plan. The reason and good cause for this change is to satisfy City of Garland requirements and keep affordable units in Garland.

The Development Owner has made changes to the development and project plans in order to comply with requirements from the City of Garland that arose during the municipal approvals and permitting process. After TDHCA application and during development meetings, a conceptual plan to extend Zion Road to the IH-30 Frontage Road was discovered, which the City of Garland then required. Please see the attached letter from the Engineer regarding the process and required change. This road extension will reduce the final size of the Development Site and cause a reduction in the overall size and number of units in the development.

Below is a summary of the changes:

Total Acreage

At Application, the site was 5.85 acres with an entrance off the IH 30 Frontage Road. As described above, Zion Road will be extended from North of the Development Site, along the lake, to the IH 30 Frontage Road. The Development Site will now be accessed from the new Zion Road extension. Per the letter from the Engineer, Zion Road will be dedicated to the City as a public road after construction. During construction, the Development Site including Zion Road will be 5.838 acres. After Zion Road is dedicated to the City, the final Development Site acreage will be 4.422 acres (1.426 acres is for Zion Road). Please see the attached survey and also working plat that has additional information. The survey shows 5.459 acres in black font, but the final MF portion is in lighter grey font called "Proposed Lot 2, Block 1 Lakeview Pointe at 4.422 acres. The attached architectural plan site plan shows Zion Road as a separate area with a rounded total of 4.42 acres for the Development Site.

At Application, the Managing Member of the General Partner of the Development Owner controlled the larger parcel that included the Development Site including the area of the Zion Rd extension to the Frontage Rd proposed in this amendment. The ESA submitted with the Application also include the larger parcel including the Zion Rd extension. The Managing Member still controls the larger parcel and will transfer the new proposed site with the Zion Rd extension to the Development Owner.

Site Plan

The site plan has been reconfigured and compressed to allow for the extension of Zion Road, which results in a need to reduce buildings and units from what was proposed at application.

Unit Mix

The Total Unit count has been reduced from 144 units to 132 units to allow for Zion Road. The original Application had 90 Low Income units and 54 Market Rate units. The new plans omit 12 market rate units but maintains the 90 tax credit units proposed at Application.

At Application, there were originally 43 1/1 units, 66 2/2 units, and 35 3/2 units. This amendment proposes 44 1/1 units, 64 2/2 units, and 24 3/2 units. The unit mix reduction primarily focuses on 3-bedroom units in order to reduce parking requirements because of the reduced size of the site.

Because of the decrease in total units, the units mix of the units has changed.

Original Appli	cation	<u>After Amendment</u>					
HTC 30% 1/1	2 Units	HTC 30% 1/1	2 Units				
HTC 50% 1/1	12 Units	HTC 50% 1/1	11 Units				
HTC 60% 1/1	9 Units	HTC 60% 1/1	14 Units				
Mark Rate 1/1	20 Units	Mark Rate 1/1	17 Units				
HTC 30% 2/2	5 Units	HTC 30% 2/2	5 Units				
HTC 50% 2/2	16 Units	HTC 50% 2/2	17 Units				
HTC 60% 2/2	11 Units	HTC 60% 2/2	17 Units				
Mark Rate 2/2	34 Units	Mark Rate 2/2	25 Units				
HTC 30% 3/2	2 Units	HTC 30% 3/2	2 Units				
HTC 50% 3/2	8 Units	HTC 50% 3/2	8 Units				
HTC 60% 3/2	25 Units	HTC 60% 3/2	14 Units				
Mark Rate 3/2	0 Units	Mark Rate 3/2	0 Units				

Affordability Mix

There is no change to the affordability mix and income targets proposed at Application for LI units. The total is still 9 units at 30%, 36 units at 50%, and 45 units at 60%.

Building Plans

There are now 3 residential buildings instead of 4 residential building types proposed at Application. Building footprints have been reduced and floor plans have been reconfigured to fit onto the smaller site. The townhome building has been eliminated.

Unit Plans

The unit plans and square footages of the units have changed to fit into the reconfigured buildings. Unit square footage requirements are still being met.

Leasing/Clubhouse Plan

The Leasing/Clubhouse at Application was 6,038 square feet on the first floor with 920 square feet of storage and mechanical on the second floor. The new Leasing/Clubhouse has 5,907 square feet on the first floor and none on the second floor.

Parking

Parking at Application totaled 280 spaces: 136 surface spaces, 114 carports, and 30 garages. The reduced number of units proposed in this amendment now requires only 242 spaces according to City of Garland parking requirements. The new plans provide 245 spaces: 111 surface spaces, 105 carports, 27 garages, and 2 tandem surface spaces (in front of garages). All parking spaces will be free to tenants. As shown on the site plan, there are parking spaces off Zion Road. Per discussions with the City and stated in the letter from the engineer, the parking spaces on Zion will be attributed to the Development to meet parking requirements after the road dedication.

Please see the revised architectural plans (uploaded as a separate document), Application forms, and financing documents as a result of these changes. Thank you for your attention to this matter and please contact me with any questions.

Sincerely,

Alyssa Carpenter



 ST. LOUIS
 ST. CHARLES

 Power House at Union Station
 1520 S. Fifth Street

 401 S. 18th Street, Suite 200
 St. Charles, MO 63103

 514.984.9887 tel
 636,978,7508 tel

 ST. CHARLES
 DALLAS

 1520 S. Fifth Street
 6175 Main Street

 Suite 307
 Suite 367

 St. Charles, M0 63303
 Frisco, TX 75034

 63.6978.7508 tel
 972.624.6000 tel

PHOENIX 2701 E. Camelback Road Suite 175 Phoenix, AZ 85016 602.795.4111 tel

May 3, 2019

Mr. Deepak P. Sulakhe OM Housing 5033 Brookview Drive Dallas, Texas 75220

RE: Lakeview Pointe – Zion Rd explanation

Dear Deepak,

You may recall that we presented the initial design for Lakeview Pointe to the City of Garland (the "City") at a Pre-Development meeting, with all City departments present, in January 2018. At that meeting, the City provided some feedback on that initial layout, which we incorporated into the design and were the same drawings that were used for the TDHCA application that was submitted in January 2018.

In subsequent development meetings with the City and upon discovery of a conceptual plan prepared by TXDOT, it was determined that the City would prefer to extend Zion Road from its current location through to the Frontage Road of I-30. The City suggested this design because it provided better access to this site from a layout and safety standpoint, provided better circulation with the City's street network, and allowed the development to have an urban feel. Therefore, the design was modified to accommodate the City's request of extending Zion Road and the current design is a result of the Zion Road extension and the City's preference.

This was not something what was known in January 2018 at the time of the TDHCA application. We have continued to have development meetings with the City through April 2019 to create the final development plan. The design includes that, after construction, Zion Rd will be dedicated back to the City to become a public ROW. Parking spaces located on Zion Rd as shown on the site plan will still be attributed to the Lakeview Pointe development as part of the parking requirement under the City's zoning ordinance.

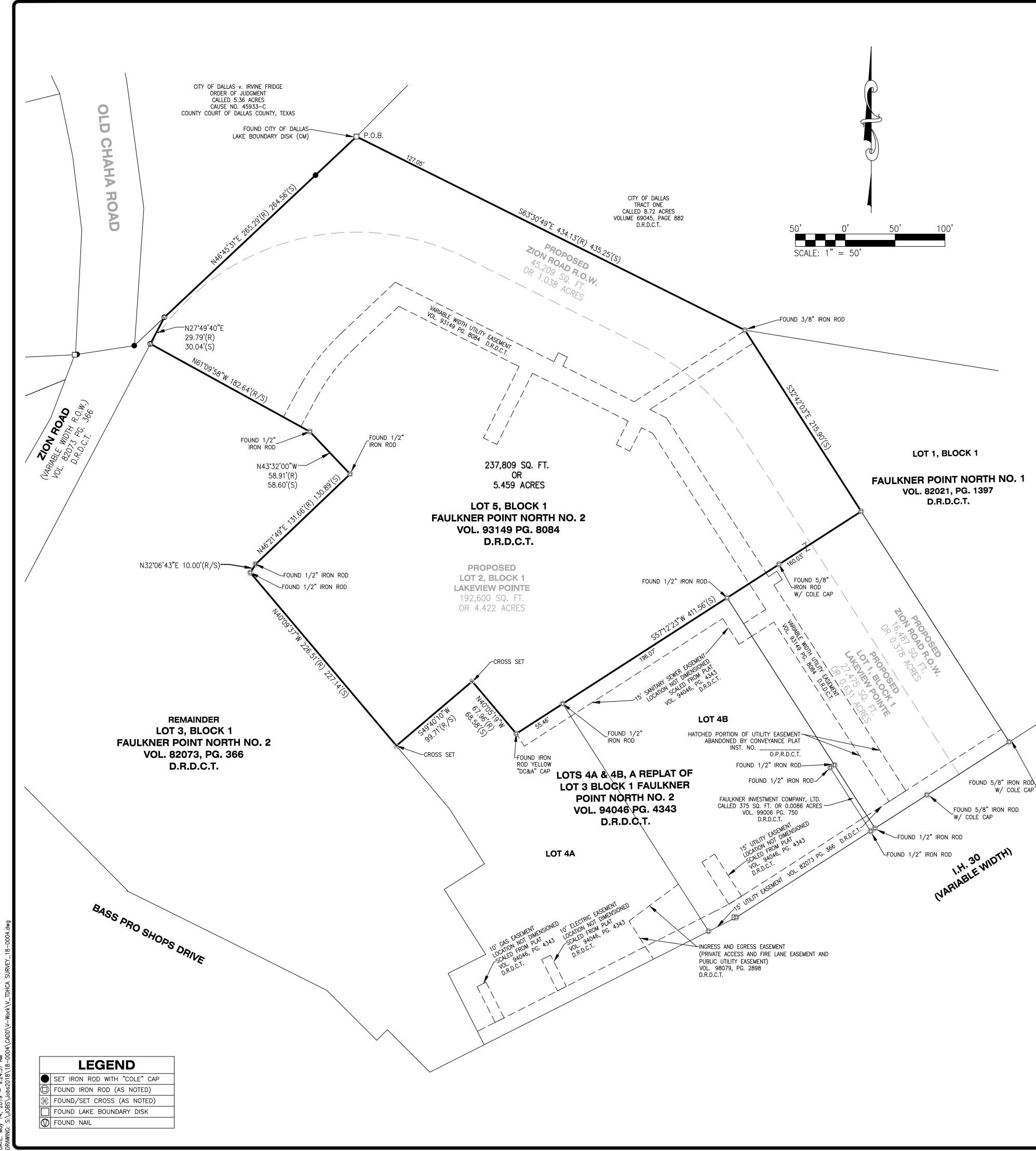
I hope this clarifies the reasons for the site plan revision and extension of Zion Rd. Please contact me if you have any questions.

Sincerely,

Ronald Salamie, PE Project Manager

CIVIL ENGINEERING / SURVEYING / PLANNING / LANDSCAPE ARCHITECTURE

Cole & Associates, Inc. is a Missouri Corporation d.b.a. Cole Design Group, Inc. in Arizona and Texas, herein referred to as "Cole" Texas Board of Professional Land Surveying Corporate Registration #10193871 Texas Board of Professional Engineers Registration #F-10253



TITLE COMMITMENT ISSUED BY: STEWART TITLE GUARANTY COMPANY COMMITMENT NUMBER: TX6010-17000159-CE EFFECTIVE DATE: MARCH 12, 2019 at 12:00 AM ISSUED DATE: MARCH 19, 2019 at 12:00 AM SCHEDULE B, EXCEPTIONS FROM COVERAGE ITEMS 1 THRU 9: STANDARD AND SPECIAL EXCEPTIONS NOT OF A SURVEY NATURE MATTERS OR DELETE THIS EXCEPTION.):

- 93149, PAGE 8084, MAP RECORDS, DALLAS COUNTY, TEXAS.
- DEED RECORDS, DALLAS COUNTY, TEXAS.
- MAY 4. 1963, RECORDED IN VOLUME 83089, PAGE 2987, DEED RECORDS, DALLAS COUNTY, TEXAS.
- PROPERTY TO AND FROM SUCH HIGHWAY AND SERVICE ROAD.

e. – h. INTENTIONALLY DELETED.

STATE OF TEXAS **COUNTY OF DALLAS**

BEGINNING AT A CITY OF DALLAS LAKE BOUNDARY DISK FOUND IN THE SOUTHEAST LINE OF A CALLED 5.36 ACRE TRACT OF LAND DESCRIBED IN THE ORDER OF JUDGMENT IN CITY OF DALLAS V. IRVINE A. FRIDGE, ET UX, CAUSE NO. 45933-C OF THE COUNTY COURT OF DALLAS COUNTY AT LAW NO. 3, DALLAS COUNTY, TEXAS, FOR THE WEST CORNER OF A CALLED 8.72 ACRE TRACT ONE DESCRIBED IN THE DEED TO THE CITY OF DALLAS RECORDED IN VOLUME 69045, PAGE 882 D.R.D.C.T., THE NORTH CORNER OF SAID LOT 5 AND THE NORTH CORNER HEREOF;

THENCE WITH THE SOUTHWEST LINE OF SAID 8.72 ACRE TRACT AND THE NORTHERLY NORTHEAST LINE OF SAID LOT 5, SOUTH 63 DEGREES 30 MINUTES 49 SECONDS EAST, A DISTANCE OF 435.25 FEET TO A 3/8-INCH IRON ROD FOUND FOR THE NORTHWEST CORNER OF LOT 1, BLOCK 1 OF FAULKNER POINT NORTH NO. 1, AN ADDITION TO THE CITY OF GARLAND AS SHOWN ON THE PLAT RECORDED IN VOLUME 82021, PAGE 1397 D.R.D.C.T., A SOUTHWEST CORNER OF SAID 8.72 ACRE TRACT, THE NORTHEAST CORNER OF SAID LOT 5 AND THE NORTHEAST CORNER HEREOF;

THENCE WITH THE COMMON SOUTHWEST LINE OF SAID LOT 1 OF FAULKNER POINT NORTH NO. 1 AND THE SOUTHERLY NORTHEAST LINE OF SAID LOT 5, SOUTH 32 DEGREES 42 MINUTES 03 SECONDS EAST, A DISTANCE OF 215.90 FEET TO A 5/8 INCH IRON ROD WITH CAP MARKED "COLE #10193871" FOUND, FOR THE EAST CORNER HEREOF; SAID 5/8 INCH IRON ROD WITH CAP MARKED "COLE #10193871" FOUND BEARS NORTH 32 DEGREES 42 MINUTES 03 SECONDS WEST, A DISTANCE OF 274.83 FEET FROM A 5/8INCH IRON ROD WITH COLE CAP FOUND IN THE NORTHWEST MARGIN OF I.H. 30, FOR THE SOUTHWEST CORNER OF SAID LOT 1 OF FAULKNER POINT NORTH NO. 1, FOR THE EAST CORNEROF SAID LOT 5, AND REFERENCE HEREOF;

THENCE ACROSS SAID LOT 5, SOUTH 57 DEGREES 12 MINUTES 23 SECONDS WEST, AT A DISTANCE OF 160.03 FEET PASSING A ½ INCH IRON ROD FOUND FOR THE NORTH CORNER OF LOT 4B OF LOTS 4A & 4B, A REPLAT OF LOT 3 BLOCK 1 FAULKNER POINT NORTH NO. 2 AN ADDITION TO THE CITY OF GARLAND AS SHOWN ON THE PLAT RECORDED IN VOLUME 94046, PAGE 4343 D.R.D.C.T., AND AN INTERIOR CORNER OF SAID LOT 5, CONTINUING WITH THE NORTHWEST LINE OF SAID LOT 4B AND A SOUTHEAST LINE OF SAID LOT 5, AT A DISTANCE OF 356.10 FEET PASSING A ½ INCH IRON ROD FOUND FOR THE NORTHWEST CORNER OF LOT 4A OF LOTS 4A & 4B, A REPLAT OF LOT 3 BLOCK 1 FAULKNER POINT NORTH NO. 2 AN ADDITION TO THE CITY OF GARLAND AS SHOWN ON THE PLAT RECORDED IN VOLUME 94046. PAGE 4343 D.R.D.C.T. AND AN INTERIOR CORNER SAID LOT 5, CONTINUING WITH THE EASTERLY NORTHEAST LINE OF SAID LOT 4A AND A SOUTHEAST LINE OF SAID LOT 5, A TOTAL DISTANCE OF 411.56 FEET TO AN IRON ROD WITH A YELLOW CAP MARKED "DC&A" FOUND FOR AN INTERIOR CORNER OF SAID LOT 4A, A SOUTH CORNER OF SAID LOT 5 AND A SOUTH CORER HEREOF;

THENCE WITH THE WESTERLY NORTHEAST CORNER OF SAID LOT 4A AND A SOUTHWEST LINE OF SAID LOT 5, NORTH 40 DEGREES 05 MINUTES 19 SECONDS WEST, A DISTANCE OF 68.58 FEET TO A CROSS IN CONCRETE SET FOR THE WESTERLY NORTH CORNER OF SAID LOT 4A AND AN INTERIOR CORNER HEREOF;

THENCE WITH THE WESTERLY NORTHWEST LINE OF SAID LOT 4A AND THE WESTERLY SOUTHEAST LINE OF SAID LOT 5, SOUTH 49 DEGREES 40 MINUTES 10 SECONDS WEST, A DISTANCE OF 99.71 FEET TO A CROSS IN CONCRETE SET FOR THE WESTERLY SOUTH CORNER HEREOF;

THENCE WITH THE SOUTHWESTERLY LINES OF SAID LOT 5 AS FOLLOWS: NORTH 40 DEGREES 09 MINUTES 37 SECONDS WEST, A DISTANCE OF 227.14 FEET TO A 1/2-INCH IRON ROD FOUND, NORTH 32 DEGREES 06 MINUTES 43 SECONDS EAST, A DISTANCE OF 10.00 FEET TO A 1/2-INCH IRON ROD FOUND, NORTH 46 DEGREES 21 MINUTES 49 SECONDS EAST, A DISTANCE OF 130.89 FEET TO A 1/2-INCH IRON ROD FOUND, NORTH 43 DEGREES 32 MINUTES 00 SECONDS WEST, A DISTANCE OF 58.60 FEET TO A 1/2-INCH IRON ROD FOUND, AND NORTH 61 DEGREES 09 MINUTES 58 SECONDS WEST, A DISTANCE OF 182.64 FEET TO A MAG NAIL FOUND IN THE SOUTHEAST MARGIN OF ZION ROAD AND THE NORTHWEST LINE OF LOT 3, BLOCK 1, FAULKNER POINT NORTH NO. 2, AN ADDITION TO THE CITY OF GARLAND AS SHOWN ON THE PLAT RECORDED IN VOLUME 82073, PAGE 366 D.R.D.C.T. FOR THE NORTHERLY WEST CORNER OF SAID LOT 5 AND THE NORTHERLY WEST CORNER HEREOF;

THENCE WITH THE SOUTHEAST MARGIN OF SAID ZION ROAD AND A NORTHWEST LINE OF SAID LOT 5, NORTH 27 DEGREES 49 MINUTES 40 SECONDS EAST, A DISTANCE OF 30.04 FEET TO A MAG NAIL FOUND IN THE SOUTHWEST LINE OF SAID 5.36 ACRE TRACT, FOR AN ANGLE POINT IN SAID LOT 5 AND AN ANGLE POINT HEREOF;

THENCE WITH THE SOUTHEAST LINE OF SAID 5.36 ACRE TRACT AND THE NORTHERLY NORTHWEST LINE OF SAID LOT 5, NORTH 46 DEGREES 45 MINUTES 31 SECONDS EAST, A DISTANCE OF 264.56 FEET TO THE POINT OF BEGINNING AND CONTAINING 237,809 SQUARE FEET OR 5.459 ACRES OF LAND.

SURVEYOR'S CERTIFICATION:

I, BRADY ALAN BECKER, A REGISTERED PROFESSIONAL LAND SURVEYOR, HEREBY CERTIFY THAT THIS PLAT IS AN ACCURATE REPRESENTATION OF AN ON THE GROUND SURVEY COMPLETED UNDER MY SUPERVISION IN APRIL 2019. frade the Sch BRADY ALAN BECKER

REGISTERED PROFESSIONAL LAND SURVEYOR NUMBER 6529 DATE OF SIGNATURE: 5/14/2019

- GPS 065 N=6998832.14404 E=2564459.27724 Z=487.49903
- 3. TOTAL AREA OF BOUNDARY = 237,809 SQUARE FEET OR 5.459 ACRES
- FOR DALLAS COUNTY, TEXAS, EFFECTIVE ON 07/07/2014.

TITLE COMMITMENT:



10. THE FOLLOWING MATTERS AND ALL TERMS OF THE DOCUMENTS CREATING OR OFFERING EVIDENCE OF THE MATTERS (WE MUST INSERT

a. EASEMENT(S) AND/OR BUILDING IINE(S) AFFECTING THE SUBJECT PROPERTY AS SHOWN ON MAP OR PLAT RECORDED IN VOLUME b. LIMITATION ON ACCESS ACCORDING TO RIGHT OF WAY DEED DATED AUGUST 29, 1957, RECORDED IN VOLUME 4781, PAGE 529,

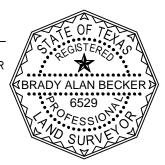
C. TERMS. PROVISIONS, EASEMENTS AND CONDITIONS CONTAINED IN RECIPROCAL GRANT OF EASEMENTS, EXECUTED BY F.F.M. INVESTMENTS, LNC., A TEXAS CORPORATION AND COLY LNV., LNC.. A TEXAS CORPORATION, ET AL, DATED APRIL 15, 1983, FILED

d. SUBJECT PROPERTY HAS FRONTAGE OR ABUTS I.H. 30 WHICH IS A CONTROLLED ACCESS HIGHWAY. THE COMPANY DOES NOT INSURE AGAINST THE EXERCISE OF POWER BY COMPETENT GOVERNMENTAL AUTHORITY TO LIMIT, CONTROL OR DENY ACCESS, INGRESS OR EGRESS TO THE ABOVE-DESCRIBED PROPERTY FROM I.H. 30 OR SERVICE ROAD WHICH THE SUBJECT PROPERTY ABUTS, NOR DOES IT INSURE THAT THE INSURED HAS OR SHALL CONTINUE TO HAVE ACCESS, INGRESS AND EGRESS FROM SUCH

i. - k. MATTERS NOT OF A SURVEY NATURE.

LAND DESCRIPTION:

A TRACT OF LAND LOCATED IN THE CHARLES NEELEY SURVEY, ABSTRACT NO. 1087, CITY OF GARLAND, DALLAS COUNTY, TEXAS, PART OF THE CALLED 6.4576 ACRE TRACT OF LAND DESCRIBED IN THE WARRANTY DEED WITH VENDOR'S LIEN FROM ANDREW ROSEMORE ET AL. TO JAMES M. ROSENBERG RECORDED IN VOLUME 93234, PAGE 5503 OF THE DEED RECORDS OF DALLAS COUNTY, TEXAS (D.R.D.C.T.), PART OF LOT 5, BLOCK 1, FAULKNER POINT NORTH NO. 2, AN ADDITION TO THE CITY OF GARLAND AS SHOWN ON THE PLAT RECORDED IN VOLUME 93149, PAGE 9064 D.R.D.C.T., BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:



GENERAL NOTES:

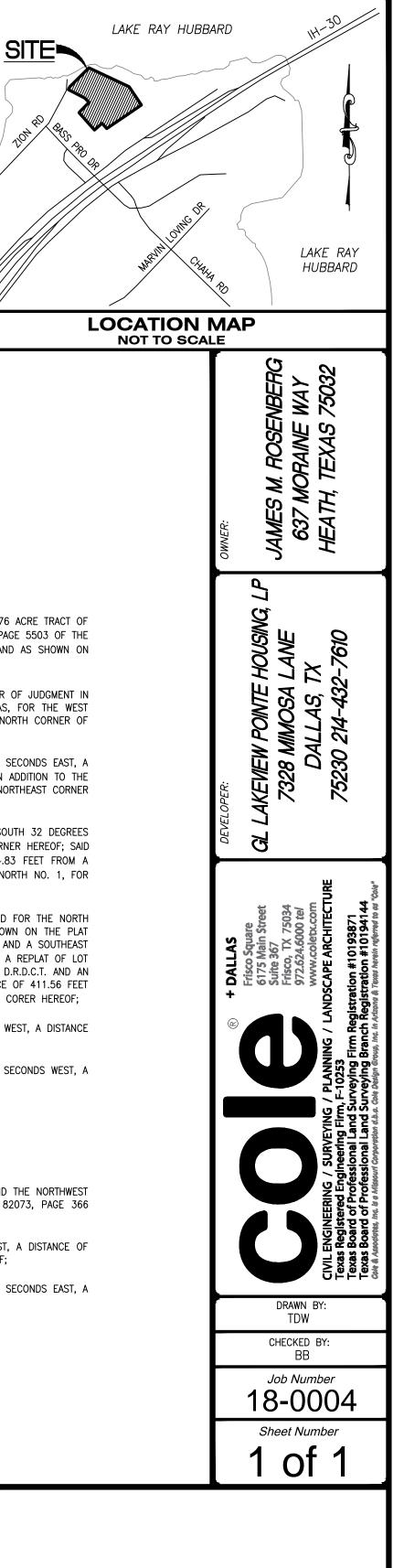
1. ALL BEARINGS & DISTANCES ARE RECORDED (R) AND SURVEYED (S), UNLESS OTHERWISE NOTED.

2. COORDINATES AND BEARINGS ARE REFERENCED TO THE TEXAS STATE PLANE COORDINATES SYSTEM, NAD 1983, (TEXAS NORTH CENTRAL ZONE). THE COORDINATES WERE DETERMINED USING A TRIMBLE R10 GNSS RECEIVER, TRIMBLE TSC3 CONTROLLER, TRIMBLE ACCESS AND ASSOCIATED SOFTWARE, AND THE RTKNET 2011 REAL TIME NETWORK OF GNSS CONTINUOUSLY OPERATING REFERENCE STATIONS (CORS) OBSERVED ON NOVEMBER 9, 2018, USING CITY OF GARLAND GEODETIC CONTROL MONUMENT 65;

4. CORNER OF RECORD: FOUND LAKE BOUNDARY DISK FOR THE NORTH CORNER OF LOT 5, BLOCK 1 OF FAULKNER POINT NORTH NO. 2, A REPLAT OF PART OF LOT 3, BLOCK 1 OF FAULKNER POINT NORTH 2, AN ADDITION TO THE CITY OF GARLAND, DALLAS COUNTY, TEXAS, AS SHOWN ON THE PLAT RECORDED IN VOLUME 93149, PAGE 8084, OF THE DEED RECORDS OF DALLAS COUNTY,

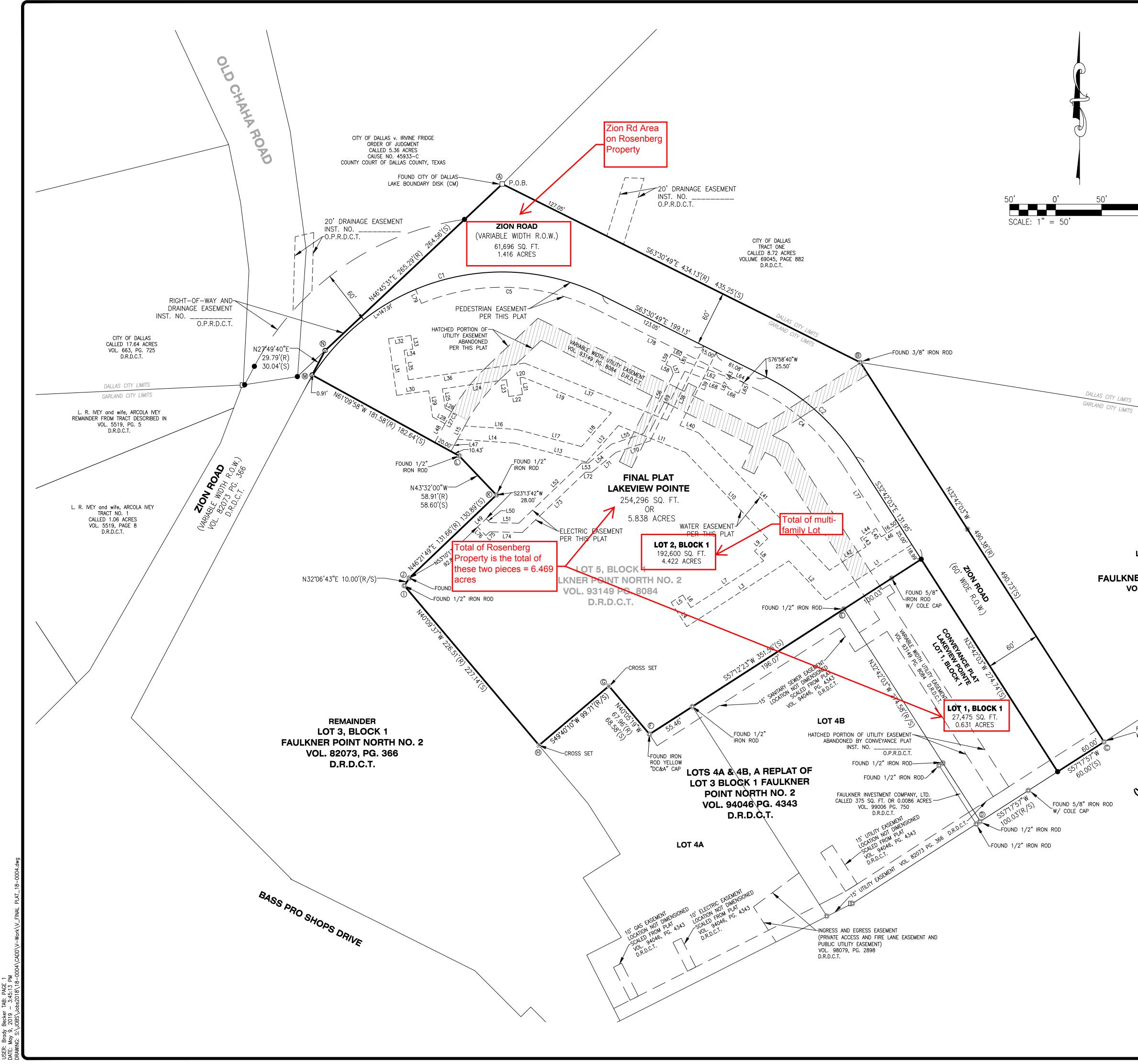
5. AS DETERMINED THROUGH GRAPHIC PLOTTING ONLY. SUBJECT TRACT FALLS IN ZONE "X": AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN PER THE FEDERAL EMERGENCY MANAGEMENT AGENCY FLOOD INSURANCE RATE MAP NUMBER 48113C0385L,

6. NOTICE: SELLING A PORTION OF THIS ADDITION BY METES AND BOUNDS IS A VIOLATION OF THE CITY OF GARLAND DEVELOPMENT CODE AND STATE LAW AND IS SUBJECT TO WITHHOLDING OF UTILITIES AND BUILDING PERMITS.



BOUNDARY SURVEY **5.459 ACRES BEING PART OF LOT 5, BLOCK 1**

FAULKNER POINT NORTH NO. 2 CHARLES NEELEY SURVEY, ABSTRACT NO. 1087 CITY OF GARLAND, DALLAS COUNTY, TEXAS



LEGEND

SET IRON ROD WITH "COLE" CAP
 FOUND IRON ROD (AS NOTED)
 FOUND/SET CROSS (AS NOTED)
 FOUND LAKE BOUNDARY DISK
 FOUND NAIL

	<u>SITE</u>	LAKE RAY HUBBARD H-30
CAP) D) 	10 ¹¹ ²⁰ ²⁰ ²⁰ ²⁰ ²⁰ ²⁰ ²⁰ ²⁰	MARTIN CHARTER AY HUBBARD
L		NOT TO SCALE
ATE PLANE COORDI XAS NORTH CENTR		ER: JAMES M. ROSENBERG 637 MORAINE WAY 637 MORAINE WAY 54TH, TEXAS 75032-8907 PHONE#
NORTHING	EASTING	MES 11 H, 11
7,004,287.08	2,568,950.33	LAME 635 EATH,
7,004,092.96	2,569,339.90	HEA C
7,003,680.01	2,569,605.02	
7,003,593.55	2,569,470.35	с ШО
7,003,824.61	2,569,322.01	022AC
7,003,688.37	2,569,110.57	112 1010 1010
7,003,740.84	2,569,066.40	
7,003,676.31	2,568,990.39	ASA ASA
7,003,849.90	2,568,843.90	214 214 214
7,003,858.38	2,568,849.21	DAL DAL 2
7,003,948.70	2,568,943.94	DEV
7,003,991.18	2,568,903.58	
7,004,079.27	2,568,743.58	4 TURE
7,004,105.83	2,568,757.60	And Made Herris Registred Engineering Firm, F-10253 Texas Board of Professional Land Surveying Firm Registration #1019387 Texas Board of Professional Land Surveying Branch Registration #10193414- Oke & Austonering Firm, P-10253 Texas Board of Professional Land Surveying Branch Registration #10193414- Oke & Austonering Firm, P-10253
		TDW CHECKED BY:
		BB
		Job Number 18-0004
		Sheet Number

WORKING FINAL PLAT **LAKEVIEW POINTE** LOT 2, BLOCK 1

of 2

A REPLAT OF LOT 5, BLOCK 1, FAULKNER POINT NORTH NO. 2 CHARLES NEELEY SURVEY, ABSTRACT NO. 1087 CITY OF GARLAND, DALLAS COUNTY, TEXAS CITY CASE NO.

SPACE RESERVED FOR COUNTY RECORDING LABEL

Y LIMITS TY LIMITS

100

LOT I, BLOCK I

AULKNER POINT NORTH NO. 1
August 2019
August

STATE PLANE COO NAD 83 TEXAS NORTH CEN PT IDENTIFIER NORTHING A 7,004,287.08

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OWNER'S CERTIFICATE:

COUNTY OF DALLAS

WHEREAS JAMES M. ROSENBERG, IS THE OWNER OF A TRACT OF LAND LOCATED IN THE CHARLES NEELEY SURVEY, ABSTRACT NO. 1087, CITY OF GARLAND, DALLAS COUNTY, TEXAS, PART OF THE CALLED 6.4576 ACRE TRACT OF LAND DESCRIBED IN THE WARRANTY DEED WITH VENDOR'S LIEN FROM ANDREW ROSEMORE ET AL. TO JAMES M. ROSENBERG RECORDED IN VOLUME 93234, PAGE 5503 OF THE DEED RECORDS OF DALLAS COUNTY, TEXAS (D.R.D.C.T.), PART OF LOT 5, BLOCK 1, FAULKNER POINT NORTH NO. 2, AN ADDITION TO THE CITY OF GARLAND AS SHOWN ON THE PLAT RECORDED IN VOLUME 93149, PAGE 9064 D.R.D.C.T., BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A CITY OF DALLAS LAKE BOUNDARY DISK FOUND IN THE SOUTHEAST LINE OF A CALLED 5.36 ACRE TRACT OF LAND DESCRIBED IN THE ORDER OF JUDGMENT IN CITY OF DALLAS V. IRVINE A. FRIDGE, ET UX, CAUSE NO. 45933-C OF THE COUNTY COURT OF DALLAS COUNTY AT LAW NO. 3. DALLAS COUNTY. TEXAS, FOR THE WEST CORNER OF A CALLED 8.72 ACRE TRACT ONE DESCRIBED IN THE DEED TO THE CITY OF DALLAS RECORDED IN VOLUME 69045, PAGE 882 D.R.D.C.T., THE NORTH CORNER OF SAID LOT 5 AND THE NORTH CORNER HEREOF;

THENCE WITH THE SOUTHWEST LINE OF SAID 8.72 ACRE TRACT AND THE NORTHERLY NORTHEAST LINE OF SAID LOT 5, SOUTH 63 DEGREES 30 MINUTES 49 SECONDS EAST, A DISTANCE OF 435.25 FEET TO A 3/8-INCH IRON ROD FOUND FOR THE NORTHWEST CORNER OF LOT 1. BLOCK 1 OF FAULKNER POINT NORTH NO. 1, AN ADDITION TO THE CITY OF GARLAND AS SHOWN ON THE PLAT RECORDED IN VOLUME 82021, PAGE 1397 D.R.D.C.T., A SOUTHWEST CORNER OF SAID 8.72 ACRE TRACT, THE NORTHEAST CORNER OF SAID LOT 5 AND THE NORTHEAST CORNER HEREOF;

THENCE WITH THE COMMON SOUTHWEST LINE OF SAID LOT 1 OF FAULKNER POINT NORTH NO. 1 AND THE SOUTHERLY NORTHEAST LINE OF SAID LOT 5, SOUTH 32 DEGREES 42 MINUTES 03 SECONDS EAST, A DISTANCE OF 490.73 FEET TO A 5/8-INCH IRON ROD WITH CAP MARKED "COLE" FOUND IN THE NORTHWEST MARGIN OF I.H. 30, FOR THE SOUTH CORNER OF SAID LOT 1 OF FAULKNER POINT NORTH NO. 1, THE EAST CORNER OF SAID LOT 5 AND THE EAST CORNER HEREOF;

THENCE WITH THE NORTHWEST MARGIN OF SAID I.H. 30 AND THE EASTERLY SOUTHEAST LINE OF SAID LOT 5. SOUTH 57 DEGREES 17 MINUTES 57 SECONDS WEST, A DISTANCE OF 60.00 FEET TO A 5/8-INCH IRON ROD WITH CAP MARKED "COLE DESIGN GROUP" SET 60 FEFT OFFSET FROM THE SAID COMMON LINE OF LOT 1 OF FAULKNER POINT NORTH NO. 1 AND LOT 5. FOR FAST CORNER OF LOT 1. BLOCK 1 OF THE CONVEYANCE PLAT OF LAKEVIEW POINTE THIS DAY SURVEYED, AND THE EASTERLY SOUTH CORNER HEREOF;

THENCE ACROSS SAID LOT 5, 60 FEET OFFSET FROM AND PARALLEL TO SAID COMMON LINE OF LOT 1 OF FAULKNER POINT NORTH NO. 1 AND LOT 5, WITH THE NORTHEAST LINE OF SAID LOT 1 THIS DAY SURVEYED, NORTH 32 DEGREES 42 MINUTES 03 SECONDS WEST, A DISTANCE OF 274.74 FEET TO A 5/8-INCH IRON ROD WITH CAP MARKED "COLE DESIGN GROUP" SET FOR THE NORTH CORNER OF SAID LOT 1 THIS DAY SURVEYED AND AN INTERIOR CORNER HEREOF:

THENCE CONTINUING ACROSS SAID LOT 5, WITH THE NORTHWEST LINE OF SAID LOT 1 THIS DAY SURVEYED, SOUTH 57 DEGREES 12 MINUTES 23 SECONDS WEST, AT A DISTANCE OF 100.03 FEET PASSING A 1/2-INCH IRON ROD FOUND FOR THE NORTH CORNER OF LOT 4B OF LOTS 4A & 4B, A REPLAT OF LOT 3 BLOCK 1 FAULKNER POINT NORTH NO. 2, AN ADDITION TO THE CITY OF GARLAND AS SHOWN ON THE PLAT RECORDED IN VOLUME 94046, PAGE 4343 D.R.D.C.T., THE WEST CORNER OF SAID LOT 1 THIS DAY SURVEYED, AND AN INTERIOR CORNER OF SAID LOT 5, CONTINUING WITH THE NORTHWEST LINE OF SAID LOT 4B AND A SOUTHEAST LINE OF SAID LOT 5 AT A DISTANCE OF 296.10 FEET PASSING A 1/2-INCH IRON ROD FOUND FOR THE EASTERLY NORTH CORNER OF LOT 4A OF SAID LOTS 4A & 4B, A REPLAT OF LOT 3 BLOCK 1 FAULKNER POINT NORTH NO. 2 ADDITION, THE WEST CORNER OF SAID LOT 4B, CONTINUING WITH THE EASTERLY NORTHWEST LINE OF SAID LOT 4A A TOTAL DISTANCE OF 351.56 FEET TO A IRON ROD WITH YELLOW CAP MARKED "DC&A" FOUND FOR AN INTERIOR CORNER OF SAID LOT 4A, A SOUTH CORNER OF SAID LOT 5 AND A SOUTH CORNER HEREOF;

THENCE WITH THE WESTERLY NORTHEAST CORNER OF SAID LOT 4A AND A SOUTHWEST LINE OF SAID LOT 5. NORTH 40 DEGREES 05 MINUTES 19 SECONDS WEST, A DISTANCE OF 68.58 FEET TO A CROSS IN CONCRETE SET FOR THE WESTERLY NORTH CORNER OF SAID LOT 4A AND AN INTERIOR CORNER HEREOF;

THENCE WITH THE WESTERLY NORTHWEST LINE OF SAID LOT 4A AND THE WESTERLY SOUTHEAST LINE OF SAID LOT 5, SOUTH 49 DEGREES 40 MINUTES 10 SECONDS WEST, A DISTANCE OF 99.71 FEET TO A CROSS IN CONCRETE SET FOR THE WESTERLY SOUTH CORNER HEREOF;

THENCE WITH THE SOUTHWESTERLY LINES OF SAID LOT 5 AS FOLLOWS:

NORTH 40 DEGREES 09 MINUTES 37 SECONDS WEST, A DISTANCE OF 227.14 FEET TO A 1/2-INCH IRON ROD FOUND. NORTH 32 DEGREES 06 MINUTES 43 SECONDS EAST, A DISTANCE OF 10.00 FEET TO A 1/2-INCH IRON ROD FOUND,

NORTH 46 DEGREES 21 MINUTES 49 SECONDS EAST, A DISTANCE OF 130.89 FEET TO A 1/2-INCH IRON ROD FOUND,

NORTH 43 DEGREES 32 MINUTES 00 SECONDS WEST. A DISTANCE OF 58.60 FEET TO A 1/2-INCH IRON ROD FOUND. AND

NORTH 61 DEGREES 09 MINUTES 58 SECONDS WEST, A DISTANCE OF 182.64 FEET TO A MAG NAIL FOUND IN THE SOUTHEAST MARGIN OF ZION ROAD AND THE NORTHWEST LINE OF LOT 3, BLOCK 1, FAULKNER POINT NORTH NO. 2, AN ADDITION TO THE CITY OF GARLAND AS SHOWN ON THE PLAT RECORDED IN VOLUME 82073, PAGE 366 D.R.D.C.T. FOR THE NORTHERLY WEST CORNER OF SAID LOT 5 AND THE NORTHERLY WEST CORNER HEREOF;

THENCE WITH THE SOUTHEAST MARGIN OF SAID ZION ROAD AND A NORTHWEST LINE OF SAID LOT 5. NORTH 27 DEGREES 49 MINUTES 40 SECONDS EAST, A DISTANCE OF 30.04 FEET TO A MAG NAIL FOUND IN THE SOUTHWEST LINE OF SAID 5.36 ACRE TRACT, FOR AN ANGLE POINT IN SAID LOT 5 AND AN ANGLE POINT HEREOF:

THENCE WITH THE SOUTHEAST LINE OF SAID 5.36 ACRE TRACT AND THE NORTHERLY NORTHWEST LINE OF SAID LOT 5, NORTH 46 DEGREES 45 MINUTES 31 SECONDS EAST, A DISTANCE OF 264.56 FEET TO THE POINT OF BEGINNING AND CONTAINING 254.296 SQUARE FEET OR 5.838 ACRES OF LAND.

OWNER'S DEDICATION:

NOW THEREFORE, KNOW ALL BY THESE PRESENTS:

THAT JAMES M. ROSENBERG, THE OWNER OF THE PROPERTY DESCRIBED IN THIS PLAT DOES HEREBY ADOPT THIS PLAT, DESIGNATING THE PROPERTY AS LAKEVIEW POINTE, AN ADDITION TO THE CITY OF GARLAND, DALLAS COUNTY, TEXAS AND DOES HEREBY DEDICATE, IN FEE SIMPLE AND TO THE PUBLIC USE FOREVER, THE STREETS AND ALLEYS SHOWN THEREON AND DOES FURTHER DEDICATE TO THE PUBLIC USE FOREVER THE EASEMENTS SHOWN THEREON FOR THE PURPOSES INDICATED. ALL EASEMENTS DEDICATED BY THIS PLAT SHALL BE OPEN TO, WITHOUT LIMITATION, ALL PUBLIC AND PRIVATE UTILITIES USING OR DESIRING TO USE THE SAME FOR THE PURPOSES DEDICATED. NO BUILDING, FENCE, TREE, SHRUB, OR OTHER STRUCTURE, IMPROVEMENT OR GROWTH SHALL BE CONSTRUCTED, RECONSTRUCTED OR PLACED UPON, OVER OR ACROSS ANY EASEMENT DEDICATED BY THIS PLAT. ANY PUBLIC OR PRIVATE UTILITY SHALL HAVE: (1) THE RIGHT TO REMOVE AND KEEP REMOVED ALL OR ANY PART OF ANY BUILDING, FENCE, TREE, SHRUB, OR OTHER STRUCTURE, IMPROVEMENT OR GROWTH WHICH IN ANY WAY MAY ENDANGER OR INTERFERE WITH THE CONSTRUCTION, RECONSTRUCTION, MAINTENANCE, OPERATION OR EFFICIENCY OF SUCH UTILITY: AND (2) THE RIGHT OF INGRESS AND EGRESS TO OR FROM AND UPON SUCH EASEMENTS FOR THE PURPOSE OF CONSTRUCTING, RECONSTRUCTING, INSPECTING, PATROLLING, MAINTAINING AND ADDING TO, ENLARGING, OR REMOVING ALL OR PARTS OF ITS OPERATION WITHOUT THE NECESSITY AT ANY TIME OF PROCURING THE PERMISSION OF ANYONE. THE MAINTENANCE OF PAVING ON UTILITY EASEMENTS AND FIRE LANES IS THE RESPONSIBILITY OF THE PROPERTY OWNER.

ALL UTILITY EASEMENTS DEDICATED BY THIS PLAT SHALL ALSO INCLUDE AN ADDITIONAL AREA OF WORKING SPACE FOR CONSTRUCTION, RECONSTRUCTION, ADDITIONS, ENLARGEMENTS, AND MAINTENANCE INCLUDING SUCH ADDITIONAL AREA NECESSARY FOR INSTALLATION AND MAINTENANCE OF MANHOLES, CLEANOUTS, FIRE HYDRANTS, WATER SERVICES AND WASTEWATER SERVICES FROM THE MAIN TO THE CURB OR PAVEMENT LINE.

THIS PLAT APPROVED SUBJECT TO ALL APPLICABLE ORDINANCES, RULES, REGULATIONS, AND RESOLUTIONS OF THE CITY OF GARLAND, TEXAS.

WITNESS, MY HAND AT GARLAND, TEXAS, THIS THE _____ DAY OF _____, 2019.

JAMES M. ROSENBERG

STATE OF TEXAS

COUNTY OF DALLAS

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED JAMES M. ROSENBERG, 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 AND UNDER THE AUTHORITY THEREIN EXPRESSED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS _____ DAY OF _____, 2019.

NOTARY PUBLIC FOR AND IN THE STATE OF TEXAS MY COMMISSION EXPIRES: _____

SURVEYOR'S AFFIRMATION:

I, BRADY ALAN BECKER, A REGISTERED PROFESSIONAL LAND SURVEYOR, LICENSED BY THE STATE OF TEXAS, AFFIRM THAT THIS PLAT WAS PREPARED UNDER MY DIRECT SUPERVISION, FROM RECORDED DOCUMENTATION, EVIDENCE COLLECTED ON THE GROUND DURING FIELD OPERATIONS AND OTHER RELIABLE DOCUMENTATION; AND THAT THIS PLAT SUBSTANTIALLY COMPLIES WITH THE RULES AND REGULATIONS OF THE TEXAS BOARD OF PROFESSIONAL LAND SURVEYING, TEXAS LOCAL GOVERNMENT CODE, CHAPTER 212, AND THE SUBDIVISION RULES AND REGULATIONS OF THE CITY OF GARLAND, TEXAS. I FURTHER AFFIRM THAT MONUMENTATION SHOWN HEREON WAS EITHER FOUND OR PLACED AND IS IN SUBSTANTIAL COMPLIANCE WITH THE CITY OF GARLAND DEVELOPMENT CODE; AND THAT THE DIGITAL DRAWING FILE ACCOMPANYING THIS PLAT IS A PRECISE REPRESENTATION OF THIS SIGNED FINAL PLAT.

DATED THIS THE_____ DAY OF _____, 2019. RELEASED FOR REVIEW, 5/09/19. PRELIMINARY. THIS DOCUMENT SHALL NOT BE RECORDED FOR ANY PURPOSE AND SHALL NOT BE USED OR VIEWED OR RELIED UPON AS A FINAL SURVEY DOCUMENT

22 TEX. ADMIN. CODE § 663.18(D) BRADY ALAN BECKER

TEXAS REGISTERED PROFESSIONAL LAND SURVEYOR NO. 6529

STATE OF TEXAS

COUNTY OF DALLAS

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED BRADY ALAN BECKER, 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 AND UNDER THE AUTHORITY THEREIN EXPRESSED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS _____ DAY OF _____, 2019.

NOTARY PUBLIC FOR AND IN THE STATE OF TEXAS

MY COMMISSION EXPIRES: _____

APPROVED AND ACCEPTED FOR THE CITY OF GARLAND THIS _____ DAY OF _____, 2019 BY THE CITY PLAN COMMISSION OF THE CITY OF GARLAND, TEXAS.

CHAIRMAN OF THE CITY PLAN COMMISSION

CITY SECRETARY

THE APPROVAL OF THIS PLAT IS CONTINGENT UPON THE PLAT BEING FILED WITH THE COUNTY CLERK OF DALLAS COUNTY WITHIN 180 DAYS FROM THE ABOVE DATE.

Parcel Line Table							
Line #	Direction	Length					
L1	S57°12'44"W	111.17'					
L2	N43°33'39"W	58.53'					
L3	S57°12'27"W	132.05'					
L4	N32°47'33"W	31.37'					
L5	N57°13'29"E	15.00'					
L6	S32°47'33"E	16.36'					
L7	N57°12'27"E	94.19'					
L8	N43°33'39"W	14.41'					
L9	N46°26'21"E	19.66'					
L10	N43 ° 33'39"W	129.51'					
L11	N68°08'48"W	78.63'					
L12	S41 ° 16'59"W	53.06'					
L13	N75 ° 08'42"W	80.57'					
L14	N86°08'41"W	62.47'					
L15	N28°37'01"E	16.52'					
L16	S86°08'41"E	57.00'					
L17	S75°08'42"E	72.72'					
L18	N41°16'59"E	49.08'					
L19	N68°08'48"W	103.62'					
L20	S81*51'12"W	3.20'					
L21	S8°08'48"E	18.50'					
L22	S81*51'12"W	15.00'					
L23	N8°08'48"W	18.50'					
L24	S81°51'12"W	70.29'					
L25	S8°08'48"E	21.26'					
L26	S61°22'59"E	7.94'					
L27	S28°37'01"W	11.97'					
L28	N61°22'59"W	15.43'					
L29	N8°08'48"W	28.77 '					
L30	S81°51'12"W	35.32'					

Par	cel Line To	able
_ine #	Direction	Length
L31	N8°08'59"W	62.37 '
L32	N81°51'41"E	24.50'
L33	S8°08'19"E	15.00'
L34	S81°51'41"W	9.50'
L35	S8°08'59"E	32.37'
L36	N81°51'12"E	127.83'
L37	S68°08'48"E	166.93'
L38	N26°29'04"E	90.08'
L39	S26°29'04"W	88.86'
L40	S68°08'48"E	22.11'
L41	S43°33'39"E	206.21'
L42	N57°12'44"E	47.16'
L43	N32°47'16"W	11.00'
L44	N57°12'44"E	20.00'
L45	S32°47'16"E	11.00'
L46	N57°12'44"E	23.35'
L47	N28°37'01"E	14.90'
L48	N28°37'01"E	23.21'
L49	N46°21'49"E	13.00'
L50	S43°38'11"E	5.93'
L51	S88°38'11"E	31.21'
L52	N46°21'49"E	95.14'
L53	S88°38'11"E	6.96'
L54	N50°42'34"E	32.40'
L55	N71°29'04"E	36.86'
L56	N26°29'04"E	72.26'
L57	N18°30'56"W	7.88'
L58	N63°30'56"W	5.93'
L59	N26°29'04"E	13.00'
L60	S63°30'56"E	10.50'

Par	cel Line To	ble
Line #	Direction	Length
L61	S26°29'04"W	1.47'
L62	S70°06'44"E	61.31'
L63	N26°29'04"E	1.76'
L64	S63°30'56"E	13.00'
L65	S26°29'04"W	13.00'
L66	N63°30'56"W	13.00'
L67	N26°29'04"E	1.18'
L68	N70°06'44"W	50.24'
L69	S26°29'04"W	84.71'
L70	S71°29'04"W	39.17'
L71	S50°42'34"W	34.27'
L72	N88°38'11"W	6.52'
L73	S46°21'49"W	95.14 '
L74	N88°38'11"W	35.36'
L75	S46°21'49"W	5.93'
L76	N43°38'11"W	13.00'
L77	N32°42'03"W	87.98'
L78	N63°30'49"W	199.13'
L79	N22°39'12"W	16.50'

- 1. ALL BEARINGS & DISTANCES ARE RECORDED (R) AND SURVEYED (S), UNLESS OTHERWISE NOTED.
- ON NOVEMBER 9, 2018, USING CITY OF GARLAND GEODETIC CONTROL MONUMENT 65; GPS 065 N=6998832.14404 E=2564459.27724
- 3. TOTAL AREA OF BOUNDARY = 254,296 SQUARE FEET OR 5.838 ACRES

Z=487.49903

- IN VOLUME 93149, PAGE 8084, OF THE DEED RECORDS OF DALLAS COUNTY, TEXAS,

- DEDICATE RIGHT-OF-WAY FOR ZION ROAD, AND ADD ADDITIONAL UTILITY EASEMENTS.
- THE PROVISIONS OF THE TRAFFIC MANAGEMENT STANDARDS OF THE CITY OF GARLAND, TEXAS.
- THE LOT LINE.

	Curve Table								
Curve #	Length	Radius	Delta	Chord Direction	Chord Length				
C1	358.04	245.00	83 ° 43'50"	N74°37'17"E	327.02'				
C2	131.76	245.00	30°48'46"	S48°06'26"E	130.18'				
C3	3.03	210.00	0*49'40"	S29°01'51"W	3.03'				
C4	122.88	228.50	30°48'46"	N48°06'26"W	121.41'				
C5	195.97	228.50	49°08'23"	N88°05'00"W	190.02'				

GENERAL NOTES:

2. COORDINATES AND BEARINGS ARE REFERENCED TO THE TEXAS STATE PLANE COORDINATES SYSTEM, NAD 1983, (TEXAS NORTH CENTRAL ZONE). THE COORDINATES WERE DETERMINED USING A TRIMBLE R10 GNSS RECEIVER, TRIMBLE TSC3 CONTROLLER, TRIMBLE ACCESS AND ASSOCIATED SOFTWARE, AND THE RTKNET 2011 REAL TIME NETWORK OF GNSS CONTINUOUSLY OPERATING REFERENCE STATIONS (CORS) OBSERVED

4. CORNER OF RECORD: FOUND LAKE BOUNDARY DISK FOR THE NORTH CORNER OF LOT 5, BLOCK 1 OF FAULKNER POINT NORTH NO. 2, A REPLAT OF PART OF LOT 3, BLOCK 1 OF FAULKNER POINT NORTH 2, AN ADDITION TO THE CITY OF GARLAND, DALLAS COUNTY, TEXAS, AS SHOWN ON THE PLAT RECORDED

5. SELLING A PORTION OF THIS ADDITION BY METES AND BOUNDS IS A VIOLATION OF THE CITY OF GARLAND DEVELOPMENT CODE AND IS SUBJECT TO WITHHOLDING OF UTILITIES AND BUILDING PERMITS.

6. AS DETERMINED THROUGH GRAPHIC PLOTTING ONLY, SUBJECT TRACT FALLS IN ZONE "X": AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN PER THE FEDERAL EMERGENCY MANAGEMENT AGENCY FLOOD INSURANCE RATE MAP NUMBER 48113C0385L, FOR DALLAS COUNTY, TEXAS, EFFECTIVE ON 07/07/2014.

7. THE PURPOSE OF THIS REPLAT IS TO CREATE TWO ADDITIONAL LOTS FOR DEVELOPMENT OF APARTMENTS,

8. PROPERTY OWNERS OF CORNER LOTS SHALL MAINTAIN SIGHT VISIBILITY TRIANGLES IN ACCORDANCE WITH

9. EACH LOT CORNER TO BE MONUMENTED BY A 5/8" IRON ROD WITH CAP MARKED "COLE DESIGN GROUP #10193871" UNLESS OTHERWISE NOTED. WHERE A RETAINING WALL OR FENCING ARE LOCATED AT A CORNER, OR A CORNER IS OTHERWISE UNABLE TO BE MONUMENTED, A CAPPED 5/8" IRON ROD WITH CAP MARKED "COLE DESIGN GROUP #10193871" MAY BE SET FIVE FEET (5') FROM THE CORNER ALONG

	4RD 11-30
	LAKE RAY HUBBARD
LOCATION NOT TO SCAL	E
	onner: JAMES M. ROSENBERG 637 MORAINE WAY HEATH, TEXAS 75032-8907 PHONE#
	DEVELOPER: OM HOUSING, LLC 7328 MIMOSA LANE 7328 MIMOSA LANE 7328 MIMOSA LANE 7328 MIMOSA LANE 7328 MIMOSA LANE 214-432-7610
	 ALLAS
	DRAWN BY: TDW
	CHECKED BY: BB Job Number
	18-0004

WORKING FINAL PLAT LAKEVIEW POINTE

Sheet Number

2 of 2

LOT 2, BLOCK 1 A REPLAT OF LOT 5. BLOCK 1 OF FAULKNER POINT NORTH NO. 2 CHARLES NEELEY SURVEY, ABSTRACT NO. 1087 CITY OF GARLAND. DALLAS COUNTY, TEXAS CITY CASE NO.

_ _ _ _ _ _ _ _ _ _ _ _ _

SPACE RESERVED FOR COUNTY RECORDING LABEL

				SPECIFI	CATION	IS AND	BUILD	ING/U	ΝΙΤ ΤΥΙ	PE CON	FIGUR	ATION				
conform to	the build	ing labe	l or name o	lest to largest based on "# of Bed n the building floor plan. The tot	al number o	of units per	unit type a	nd totals f	or "Total # o							
additional b Specificatio				ey are available by un-hiding col that apply)	umns Q thro	ough AA, ai	nd rows 51	through 79).							
Building Cor	nfigurati	on		Single Family Constru	uction		SRO			Transition	ial (per §42	(i)(3)(B))			Duplex	
(Check all th	at apply	():		Scattered Site			Fourplex		x	> 4 Units I	Per Buildin	5			Townhome	
Developme	nt will h	ave:		x Fire Sprinklers		x	Elevators		3	# of Eleva	tors		2500	2500 Wt. Capacity		
				Free Paid	-				Free	Paid						
Number of with Archite				104	-		rport Space	s				I Garage Sp	baces			
with Archite		1 4 10 11 16 3	<i>.</i>	27		Garage Spa	ices arage Spac	65	114		Uncovere	ed Spaces				
Floor Comp	osition /		aht.	100 % Carpet/Vinyl/Resil			uruge spue	9'	Coiling Llo	iaht						
rioor comp	USILION		gnt:	100 % Carpet/Vinyl/Resil % Ceramic Tile	ient Floorin	Б		9	Ceiling He	or(s) Ceiling	g Height (To	wnhome (Only)			
				% Other	Describe:											
					1		1		1		1	1	T		Total # of	
				Building Label Number of Stories	Α	В	С								Residential Buildings	
	Unit 1 # of		Sq. Ft. Per	Number of Buildings	1	1	1								3	
Unit Label	Bed- rooms	# Of Baths	Unit					Nu	mber of Un	its Per Buil	ding				Total # of Units	Total Sq Ft for Unit Type
A1(a) A1(a)ADA	1	1	708 699		14 1	17 1	6 0								37	26,196 1,398
A2(a)	1	1	758		4	0	0								4	3,032
A3(a) B1(a)	1 2	1 2	707 1,001		2	0	0								1	707 5,005
B1(b)	2 2	2 2	1,001 987		4	3 3	12 6								19 13	19,019 12,831
B1(c) B1(d)	2	2	970		0	0	0								-	-
B1(e) B1(f)	2	2	970 1,069		0	0	0								- 3	- 3,207
B1(g) B1(h)	2 2	2 2	1,035 962		2	03	0 13								2 18	2,070 17,316
B1(a)ADA C1(a)	2	2	987 1,130		1	1	2								4	3,948 5,650
C1(b)	3	2	1,138		4	6	6								16	18,208
C1© C1(a)ADA	3 3	2	1,130 1,130		2 0	0	0								2	2,260 1,130
															-	-
															-	-
															-	-
															-	-
															-	
															-	-
															-	-
															-	-
															-	-
															-	-
															-	-
				Totals	43	39	50	-	-	-	-	-	-	-	- 132	- 121,977
									Net	t Rentable S	Square Foo	tage from	Rent Scher	dule		121,977
	Supp	ortive	Housing /	Applicants Only							1				I	
l		I													I	
			Enter the	total development common a Ensure that this nur												
		ĺ	The additi	ional square footage allowed	for Suppor	tive Housi	ng per 11.	9(e)(2) is:								6,600
			The lesser	of these two numbers added	l to NRA:										I	

121,977

The lesser of these two numbers added to NRA: Use this number to figure points under 11.9(e)(2)

If a revised form is submitted, date of submission:

AKEVIEW POINTE APARTMENTS

IN GARLAND, TEXAS

Lakeview .	Pointe Ap	<u>partme</u>	nts	#18101	
			CREATED	08.07.19	
TYPE	AREA	NO.	%	TOTAL AREA	
<u>A1(a)</u>	708	36	27.27%	25,488	33
A1 ADA	699	2	1.52%	1,398	
A1 A/V	708	1	0.76%	708	
<u>A2(a)</u>	758	4	3.03%	3,032	
<u>A3(a)</u>	707	1	0.76%	707	
<u>B1(a)</u>	1,001	5	3.79%	5,005	48
B1(b)	1,001	19	14.39%	19,019	
<u>B1(c)</u>	987	13	9.85%	12,831	
B1(f)	1,069	3	2.27%	3,207	
B1(g)	1,035	2	1.52%	2,070	
<u>B1(h)</u>	962	17	12.88%	16,354	
B1 ADA	987	4	3.03%	3,948	
B1 A/V	962	1	0.76%	962	
<u>C1(a)</u>	1,130	4	3.03%	4,520	18
<u>C1(b)</u>	1,138	16	12.12%	18,208	
<u>C1(c)</u>	1,130	2	1.52%	2,260	
C1(d)	1,231	0	0.00%	0	
C1(e)	1,193	0	0.00%	0	
C1 ADA	1,130	1	0.76%	1,130	
C1 A/V	1,130	1	0.76%	1,130	
TOTAL		132	100.00%	121,977	

8.33%			
3.48%			
3.18%			

AVERAGE UNIT SIZE : 923.64

	-	
TYPE	COUNT	UNIT TYPES
Α	1	13-A1(a);1-A1 A/V;4-A2(a);1-A3(a);2-B1(a);4-B1(b);4-B1(c);2-B1(g);2-B1(h);1-B1 ADA;1-C1(a);
В		17-A1(a);3-B1(b);3-B1(c);3-B1(f);3-B1(h);1-B1 ADA;1-C1(a);6-C1(b);1-C1 ADA;
С	1	6-A1(a);3-B1(a);12-B1(b);6-B1(c);12-B1(h);2-B1 ADA;1-B1 A/V;2-C1(a);6-C1(b);
TOTAL	3	

242 SPACES

245 SPACES

MISCELLANEOUS: AVERAGE UNIT SIZE: LAND AREA: DENSITY: PARKING: REQUIRED

PROVIDED

4.421 ACRES

923.64 S.F. 29.86 UNITS/ACRE

> 1.5P/ 1 br + 2P/ 2br + 2P/ 3br 1.86 P/UNIT 1.40 P/BED

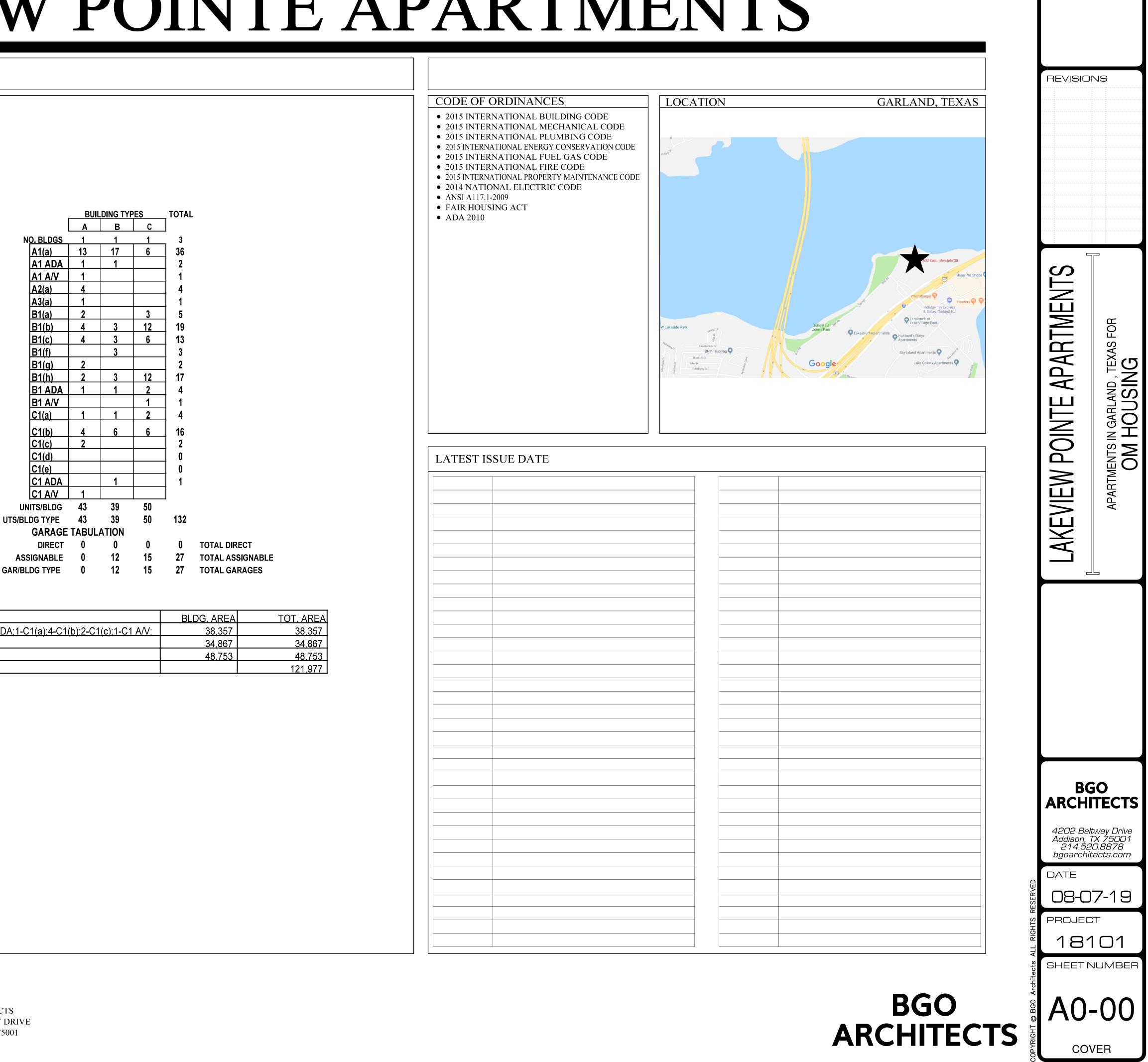
ASSIGN.	27 SPACES
SURFACE	112 SPACES
CARPORTS	104 SPACES
TANDEM	2 SPACES

PROJECT CONTACT INFORMATION:

OWNER/DEVELOPER: GL LAKEVIEW POINTE HOUSING, LP C/O OM HOUSING,LLC 5033 BROOKVIEW DRIVE DALLAS, TX 75220 V-214-432-7610 F-214-594-9753

ARCHITECT: **BGO ARCHITECTS** 4202 BELTWAY DRIVE ADDISON, TX 75001 V-214-520-8878

C1(b) <u>C1(c)</u> <u>C1(d)</u> C1(e) C1 ADA C1 A/V JNITS/BLDG



ARCHITECTURE

DATE 04-22-19 04-12-19	AO-O1 AO-O8 AO-O8 AO-O9 AD-O9 AD-O9 AD-O9 AD-O1A	DESCRIPTION COVER SHEET INDEX ADA SUMMARY ADA UNIT PLAN A1 ADA UNIT PLAN A2 UNIT PLAN B1 ADA UNIT PLAN B1 ADA UNIT PLAN B1 ADA UNIT PLAN C1 UNIT PLAN GARAGE PLANS CARPORTS CARPORTS CARPORTS TRASH ENCLOSURE BUILDING A - 1ST FLOOR PLAN BUILDING A - 2ND FLOOR PLAN
04-22-19 04-12-19	A0-00 A0-01 A0-08 A0-08 A0-09 A1-01 A2-10 A2-10 A2-11 A2-12 A2-13 A2-13 A2-14 A2-15 A2-16 A2-17 A2-16 A2-17 A2-20 A2-30 A3-01 A3-03	COVER SHEET INDEX ADA SUMMARY ADA SUMMARY ADA SUMMARY ADA SUMMARY SITE PLAN A1 UNIT PLAN A1 UNIT PLAN A1 UNIT PLAN A2 UNIT PLAN B1 ADA UNIT PLAN B1 UNIT PLAN B1 ADA UNIT PLAN C1 UNIT PLAN C1 ADA UNIT PLAN C1 AD
04-12-19 04-12-19	AO-O1 AO-O8 AO-O8 AO-O9 AD-O9 AD-O9 AD-O9 AD-O1A	INDEX ADA SUMMARY ADA SUMMARY ADA SUMMARY SITE PLAN A1 UNIT PLAN A1 UNIT PLAN A1 ADA UNIT PLAN A2 UNIT PLAN B1 UNIT PLAN B1 ADA UNIT PLAN B1 ADA UNIT PLAN C1 UNIT PLAN C1 ADA UNIT
04-12-19 04-12-19	AO-07 AO-08 AO-09 A1-01 A2-10 A2-10 A2-11 A2-12 A2-13 A2-13 A2-13 A2-13 A2-14 A2-15 A2-17 A2-30 A3-01 A3-03	ADA SUMMARY ADA SUMMARY ADA SUMMARY ADA SUMMARY SITE PLAN A1 UNIT PLAN A1 UNIT PLAN A1 ADA UNIT PLAN A2 UNIT PLAN B1 UNIT PLAN B1 ADA UNIT PLAN B1 ADA UNIT PLAN C1 UNIT PLAN C1 ADA UNIT PLAN C1 AD
04-12-19 04-12-19	AO-O8 AO-O9 AD-O9 AD-O1 AD-O1 AD-10 AD-10 AD-12 AD-13 AD-13 AD-13 AD-13 AD-13 AD-13 AD-10 AD-13 AD-11 AD-12 AD-12 AD-11 AD-12	ADA SUMMARY ADA SUMMARY SITE PLAN A1 UNIT PLAN A1 ADA UNIT PLAN A2 UNIT PLAN A3 UNIT PLAN B1 UNIT PLAN B1 ADA UNIT PLAN C1 UNIT PLAN C1 ADA UNIT P
04-12-19 04-12-19	A0-09 A1-01 A2-10 A2-11 A2-12 A2-13 A2-14 A2-15 A2-16 A2-16 A2-17 A2-30 A2-30 A2-30 A2-30 A2-40 A2-40 A2-41 A2-50 A2-40 A2-41 A3-02 A3-01 A3-02 A3-03 A3-03 A3-03	ADA SUMMARY SITE PLAN A1 UNIT PLAN A1 ADA UNIT PLAN A2 UNIT PLAN A3 UNIT PLAN B1 UNIT PLAN B1 ADA UNIT PLAN C1 UNIT PLAN C1 ADA UNIT PLAN GARAGE PLANS LEASING/CLUB - ENLARGED PLAN CARPORTS CARPORTS CARPORTS BUILDING A - 1 ST FLOOR PLAN
04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19	A1-01 A2-10 A2-11 A2-12 A2-13 A2-13 A2-14 A2-15 A2-16 A2-17 A2-20 A2-30 A3-01 A3-02 A3-03	SITE PLAN A1 UNIT PLAN A1 ADA UNIT PLAN A2 UNIT PLAN A3 UNIT PLAN B1 UNIT PLAN B1 ADA UNIT PLAN C1 UNIT PLAN C1 ADA UNIT PLAN C1 ADA UNIT PLAN GARAGE PLANS LEASING/CLUB - ENLARGED PLAN CARPORTS CARPORTS TRASH ENCLOSURE BUILDING A - 1 ST FLOOR PLAN
04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19	A2-10 A2-11 A2-12 A2-13 A2-13 A2-14 A2-15 A2-16 A2-17 A2-20 A2-20 A2-30 A2-30 A2-30 A2-40 A2-40 A2-41 A2-50 A2-40 A2-41 A2-50 A2-11 A3-02 A3-03 A3-03	A1 UNIT PLAN A1 ADA UNIT PLAN A2 UNIT PLAN B1 UNIT PLAN B1 UNIT PLAN B1 ADA UNIT PLAN C1 UNIT PLAN C1 ADA UNIT PLAN GARAGE PLANS LEASING/CLUB - ENLARGED PLAN CARPORTS CARPORTS CARPORTS BUILDING A - 1 ST FLOOR PLAN
04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19	A2-10 A2-11 A2-12 A2-13 A2-13 A2-14 A2-15 A2-16 A2-17 A2-20 A2-20 A2-30 A2-30 A2-30 A2-40 A2-40 A2-41 A2-50 A2-40 A2-41 A2-50 A2-11 A3-02 A3-03 A3-03	A1 UNIT PLAN A1 ADA UNIT PLAN A2 UNIT PLAN B1 UNIT PLAN B1 UNIT PLAN B1 ADA UNIT PLAN C1 UNIT PLAN C1 ADA UNIT PLAN GARAGE PLANS LEASING/CLUB - ENLARGED PLAN CARPORTS CARPORTS CARPORTS BUILDING A - 1 ST FLOOR PLAN
04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19	A2-11 A2-12 A2-13 A2-14 A2-15 A2-16 A2-17 A2-20 A2-20 A2-30 A2-30 A2-40 A2-40 A2-41 A2-50 A2-41 A2-50 A3-01 A3-02 A3-03 A3-03	A1 ADA UNIT PLAN A2 UNIT PLAN B1 UNIT PLAN B1 ADA UNIT PLAN C1 UNIT PLAN C1 ADA UNIT PLAN C1 ADA UNIT PLAN GARAGE PLANS LEASING/CLUB - ENLARGED PLAN CARPORTS CARPORTS CARPORTS TRASH ENCLOSURE BUILDING A - 1 ST FLOOR PLAN
04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19	A2-11 A2-12 A2-13 A2-14 A2-15 A2-16 A2-17 A2-20 A2-20 A2-30 A2-30 A2-40 A2-40 A2-41 A2-50 A2-41 A2-50 A3-01 A3-02 A3-03 A3-03	A1 ADA UNIT PLAN A2 UNIT PLAN B1 UNIT PLAN B1 ADA UNIT PLAN C1 UNIT PLAN C1 ADA UNIT PLAN C1 ADA UNIT PLAN GARAGE PLANS LEASING/CLUB - ENLARGED PLAN CARPORTS CARPORTS CARPORTS TRASH ENCLOSURE BUILDING A - 1 ST FLOOR PLAN
04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19	A2-12 A2-13 A2-14 A2-15 A2-16 A2-17 A2-20 A2-20 A2-30 A2-40 A2-40 A2-41 A2-41 A2-50 A2-41 A2-50 A2-41 A2-50 A2-11 A3-02 A3-03	A2 UNIT PLAN A3 UNIT PLAN B1 UNIT PLAN C1 UNIT PLAN C1 UNIT PLAN C1 ADA UNIT PLAN GARAGE PLANS LEASING/CLUB - ENLARGED PLAN CARPORTS CARPORTS TRASH ENCLOSURE BUILDING A - 1 ST FLOOR PLAN
04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19	A2-13 A2-14 A2-15 A2-16 A2-17 A2-20 A2-20 A2-30 A2-30 A2-40 A2-40 A2-41 A2-50 A2-41 A2-50 A2-11 A3-02 A3-03 A3-01 A3-03	A3 UNIT PLAN B1 UNIT PLAN C1 UNIT PLAN C1 UNIT PLAN C1 ADA UNIT PLAN GARAGE PLANS LEASING/CLUB - ENLARGED PLAN CARPORTS CARPORTS TRASH ENCLOSURE BUILDING A - 1 ST FLOOR PLAN
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04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19	A2-20 A2-30 A2-40 A2-41 A2-50 A3-01 A3-02 A3-03 A3-11 A3-12	GARAGE PLANS LEASING/CLUB - ENLARGED PLAN CARPORTS CARPORTS TRASH ENCLOSURE BUILDING A - 1 ST FLOOR PLAN
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04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19	A2-41 A2-50 A3-01 A3-02 A3-03 A3-11 A3-12	CARPORTS TRASH ENCLOSURE BUILDING A - 1 ST FLOOR PLAN
04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19	A3-02 A3-02 A3-03 A3-11 A3-12	BUILDING A - 1 ST FLOOR PLAN
04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19	A3-02 A3-03 A3-11 A3-12	
04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19	A3-02 A3-03 A3-11 A3-12	
04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19	A3-03 A3-11 A3-12	BUILDING A - 2ND FLUUR PLAN
04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19	A3-11 A3-12	
04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19	A3-12	BUILDING A - 3RD FLOOR PLAN
04-12-19 04-12-19 04-12-19 04-12-19 04-12-19 04-12-19	A3-12	
04-12-19 04-12-19 04-12-19 04-12-19 04-12-19		BUILDING B - 1 ST FLOOR PLAN
04-12-19 04-12-19 04-12-19 04-12-19		BUILDING B - 2ND FLOOR PLAN
04-12-19 04-12-19 04-12-19	1	BUILDING B-3RD FLOOR PLAN
04-12-19 04-12-19	A3-14	BUILDING B - 4TH FLOOR PLAN
04-12-19 04-12-19		
04-12-19	A3-21	BUILDING C - 1 ST FLOOR PLAN
	A3-22	BUILDING C - 2ND FLOOR PLAN
04-12-19	A3-23	BUILDING C - 3RD FLOOR PLAN
	A3-24	BUILDING C - 4TH FLOOR PLAN
04-12-19	A4-00	BUILDING A - ELEVATIONS
04-12-19	A4-01	BUILDING A - ELEVATIONS
04-12-19	A4-02	BUILDING A - ELEVATIONS
04-12-19	A4-10	BUILDING B-ELEVATIONS
04-12-19	A4-11	BUILDING B-ELEVATIONS
04-12-19	A4-20	BUILDING C - ELEVATIONS
04-12-19		BUILDING C - ELEVATIONS
	<i>,</i> , , <u> </u>	
04-12-19		INTERIOR WALL SECTIONS
04-12-19		
04-12-13	AU-13	INTERIOR WALL SECTIONS
04-12-19	^7-∩1	DETAILS - WALL KEYS
04-12-19	A7-U2	DETAILS - FLOOR/CEILING & ROOF/CEILING KEYS
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LAKEVIEW POINTE APARTMENTS	APARTMENTS IN GARLAND , TEXAS FOR OM HOUSING
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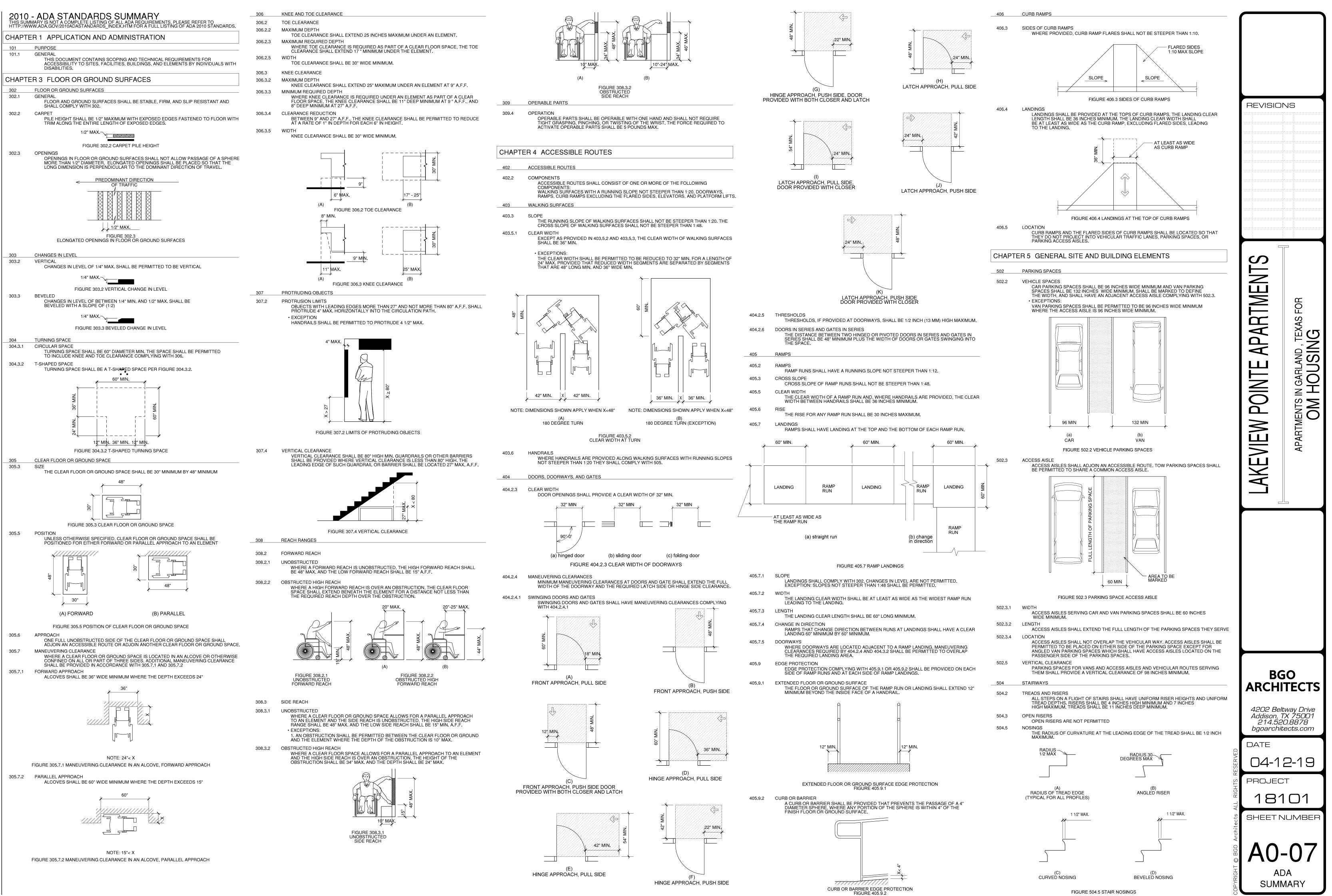
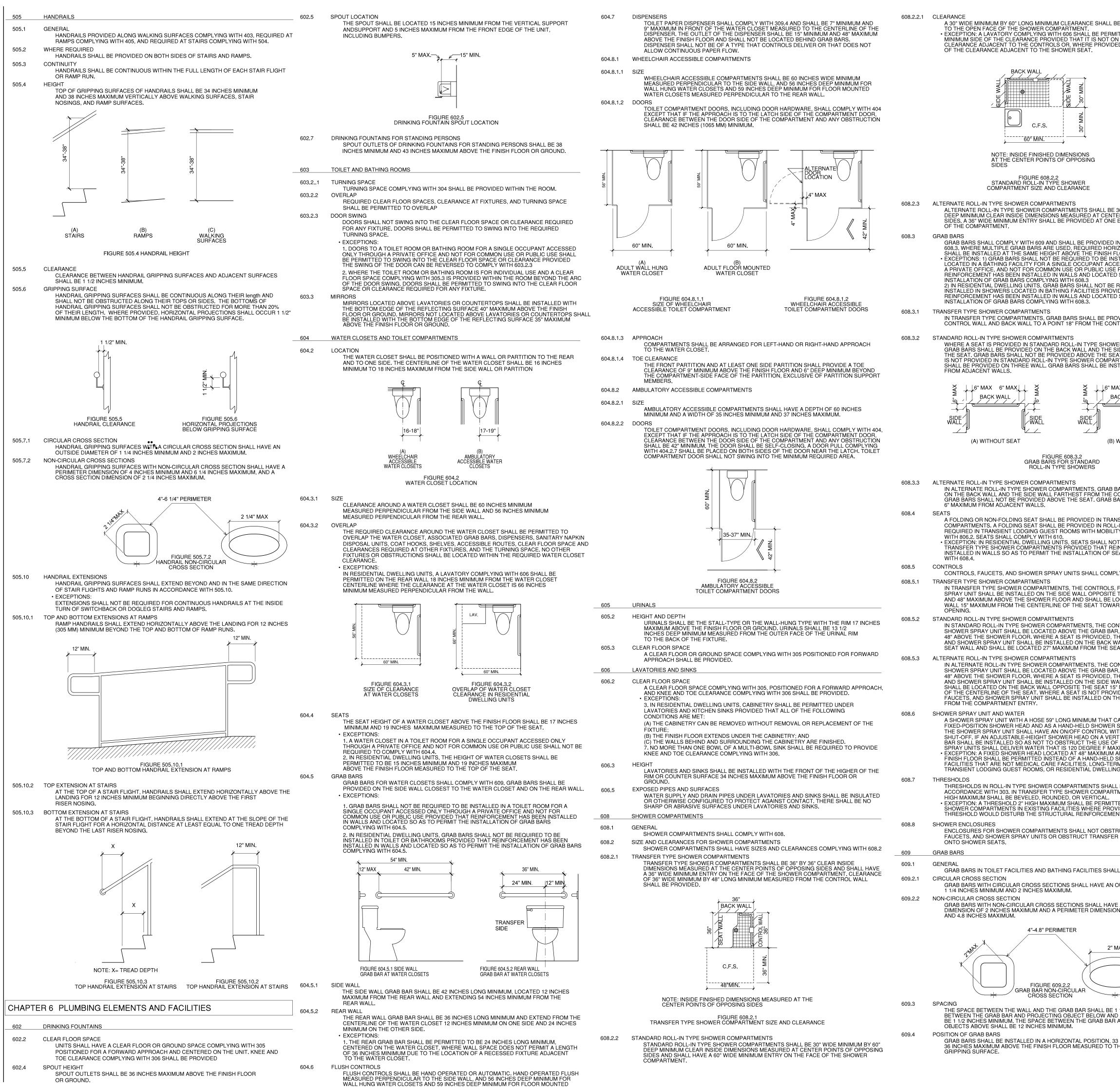


FIGURE 504.5 STAIR NOSINGS



			ſ	
E PROVIDED ADJACENT	609.5	SURFACE HAZARDS GRAB BARS AND ANY WALL OR OTHER SURFACES ADJACENT TO GRAB BARS SHALL BE FREE OF SHARP OR ABRASIVE ELEMENTS AND SHALL HAVE ROUNDED EDGES.		
ITTED ON ONE 30" WIDE N THE SIDE OF THE ED, NO ON THE SIDE	609.6	FITTINGS GRAB BARS SHALL NOT ROTATE WITHIN THEIR FITTINGS.		
	609.7	INSTALLATION GRAB BARS SHALL BE INSTALLED IN ANY MANNER THAT PROVIDES A GRIPPING SURFACE AT THE SPECIFIED LOCATIONS AND THAT DOES NOT OBSTRUCT THE REQUIRED CLEAR FLOOR SPACE.		
	609.8	STRUCTURAL STRENGTH ALLOWABLE STRESSES SHALL NOT BE EXCEEDED FOR MATERIALS USED WHEN A VERTICAL OR HORIZONTAL FORCE OF 250 POUNDS IS APPLIED AT ANY POINT ON THE GRAB BAR, FASTENER, MOUNTING DEVICE, OR SUPPORTING STRUCTURE.		
	610	SEATS		
	610.3	SHOWER COMPARTMENT SEATS WHERE A SEAT IS PROVIDED IN A STANDARD ROLL-IN SHOWER COMPARTMENT, IT SHALL BE A FOLDING TYPE, SHALL BE INSTALLED ON THE SIDE WALL ADJACENT TO THE CONTROLS,	REVISION	NS
		AND SHALL EXTEND FROM THE BACK WALL TO A POINT WITHIN 3" OF THE COMPARTMENT ENTRY. WHERE A SEAT IS PROVIDED IN AN ALTERNATE ROLL-IN TYPE SHOWER COMPARTMENT, IT SHALL BE A FOLDING TYPE, SHALL BE INSTALLED ON THE FRONT WALL		
		OPPOSITE THE BACK WALL, AND SHALL EXTEND FROM THE ADJACENT SIDE WALL TO A POINT WITHIN 3" OF THE COMPARTMENT ENTRY. IN TRANSFER-TYPE SHOWERS, THE SEAT SHALL EXTEND FROM THE BACK WALL TO A POINT WITHIN 3" OF THE COMPARTMENT ENTRY.		
	010.0.1	THE TOP OF THE SEAT SHALL BE 17" MINIMUM AND 19" MAXIMUM ABOVE THE BATHROOM FINISH FLOOR. SEATS SHALL COMPLY WITH 610.3.1 OR 610.3.2.		
	610.3.1	RECTANGULAR SEATS THE REAR EDGE OF A RECTANGULAR SEAT SHALL BE 2 1/2" MAXIMUM AND THE FRONT EDGE 15" MINIMUM AND 16" MAXIMUM FROM THE SEAT WALL. THE SIDE EDGE OF THE SEAT		
36" WIDE AND 60"	610.3.2	SHALL BE 1 1/2" MAXIMUM FROM THE ADJACENT WALL. L-SHAPED SEATS THE REAR EDGE OF AN L-SHAPED SEAT SHALL BE 2 1/2" MAXIMUM AND THE FRONT EDGE		
ER POINTS OF OPPOSING END OF THE LONG SIDE		15" MINIMUM AND 16? MAXIMUM FROM THE SEAT WALL BE 21/2 MAXIMUM AND THE FRONT EDGE 15" MINIMUM AND 16? MAXIMUM FROM THE SEAT WALL. THE REAR EDGE OF THE "L" PORTION OF THE SEAT SHALL BE 1 1/2" MAXIMUM FROM THE WALL AND THE FRONT EDGE SHALL BE 14" MINIMUM AND 15" MAXIMUM FROM THE WALL. THE END OF THE "L" SHALL BE 22" MINIMUM AND 23" MAXIMUM FROM THE MAIN SEAT WALL.		
N ACCORDANCE WITH				
LOOR. ITALLED IN A SHOWER ESSED ONLY THROUGH PROVIDED THAT				
SO AS TO PERMIT THE		SEAT SEAT		
DED THAT SO AS TO PERMIT THE				
VIDED ACROSS THE			လ	
TROL WALL		(A) SIZE (B) DISTANCE FROM WALL		
ER COMPARTMENTS, IDE WALL OPPOSITE		FIGURE 610.3.2 L-SHAPED SHOWER SEAT	APARTMENT	
AT. WHERE A SEAT RTMENTS, GRAB BARS RTALLED 6" MAXIMUM	610.4	STRUCTURAL STRENGTH ALLOWABLE STRESSES SHALL NOT BE EXCEEDED FROM MATERIALS USED WHEN A VERTICAL OR HORIZONTAL FORCE OF 250 POLINIDS IS ADDI JED AT ANY POINT	\geq	FOR
AX	612	VERTICAL OR HORIZONTAL FORCE OF 250 POUNDS IS APPLIED AT ANY POINT ON THE SEAT, FASTENER, MOUNTING DEVICE, OR SUPPORTING STRUCTURE. SAUNAS AND STEAM ROOMS		
	612.1.2	BENCH	A	G
SIDE		WHERE SEATING IS PROVIDED IN SAUNAS AND STEAM ROOMS, AT LEAST ONE BENCH SHALL COMPLY WITH 903. DOORS SHALL NOT SWING INTO THE CLEAR FLOOR SPACE REQUIRED BY 903.2. • EXCEPTION: A READILY REMOVABLE BENCH SHALL BE PERMITTED TO OBSTRUCT THE		_ _Z
	612.3	TURNING SPACE REQUIRED BY 612.3 AND THE CLEAR FLOOR OR GROUND SPACE REQUIRED BY 903.2.		<u>S</u>
WITH SEAT	612.3	A TURNING SPACE COMPLYING WITH 304 SHALL BE PROVIDED WITHIN SAUNAS AND STEAM ROOMS.		GARLAND IOUSI
	CHAPT	ER 7 COMMUNICATION ELEMENTS AND FEATURES	POINTE	
ARS SHALL BE PROVIDED OMPARTMENT ENTRY.	703	SIGNS		APARTMENTS OM
ARS SHALL BE INSTALLED	703.1	GENERAL SIGNS SHALL COMPLY WITH 703. WHERE BOTH VISUAL AND TACTILE CHARACTERS ARE	\geq	
SFER TYPE SHOWER -IN TYPE SHOWERS		REQUIRED, EITHER ONE SIGN WITH BOTH VISUAL AND TACTILE CHARACTERS, OR TWO SEPARATE SIGNS, ONE WITH VISUAL, AND ONE WITH TACTILE CHARACTERS, SHALL BE PROVIDED.		ART
TY FEATURES COMPLYING	703.2	RAISED CHARACTERS RAISED CHARACTERS SHALL COMPLY WITH 703.2 AND SHALL BE DUPLICATED IN	\geq	AP
NFORCEMENT HAS BEEN EATS COMPLYING	703.2.1	BRAILLE COMPLYING WITH 703.3. RAISED CHARACTERS SHALL BE INSTALLED IN ACCORDANCE WITH 703.4. DEPTH	ΊΨ	
_Y WITH 309.4.	703.2.2	RAISED CHARACTERS SHALL BE 1/32" MINIMUM ABOVE THEIR BACKGROUND. CASE	AKEVIEW	
FAUCETS, AND SHOWER THE SEAT 38" MINIMUM	703.2.3	CHARACTERS SHALL BE UPPERCASE STYLE CHARACTERS SHALL NOT BE ITALIC, OBLIQUE, SCRIPT, HIGHLY DECORATIVE, OR OF		
DCATED ON THE CONTROL RD THE SHOWER	703.2.4	OTHER UNUSUAL FORMS. CHARACTER PROPORTIONS		
NTROLS, FAUCETS, AND R, BUT NO HIGHER THAN		CHARACTERS SHALL BE SELECTED FROM FONTS WHERE THE WIDTH OF THE UPPERCASE LETTER "O" IS 55% MINIMUM AND 110% MAXIMUM OF THE HEIGHT OF THE UPPERCASE LETTER "I".		
HE CONTROLS, FAUCETS, /ALL ADJACENT TO THE AT WALL.	703.2.5	CHARACTER HEIGHT CHARACTER HEIGHT MEASURED VERTICALLY FROM THE BASELINE OF THE CHARACTER		
NTROLS, FAUCETS, AND		SHALL BE 5/8" MINIMUM AND 2" MAXIMUM BASED ON THE HEIGHT OF THE UPPERCASE LETTER "I". • EXCEPTION: WHERE SEPARATE RAISED AND VISUAL CHARACTERS WITH THE SAME		
R, BUT NO HIGHER THAN HE CONTROLS, FAUCETS, ALL BEHIND THE SEAT OR	700.0.0	INFORMATION ARE PROVIDED, RAISED CHARACTER HEIGHT SHALL BE PERMITTED TO BE 1/2" MINIMUM.		
MAXIMUM, LEFT OR RIGHT, IDED, THE CONTROLS, HE SIDE WALL FARTHEST	703.2.6	STROKE THICKNESS STROKE THICKNESS OF THE UPPERCASE LETTER "I" SHALL BE 15% MAXIMUM OF THE HEIGHT OF THE CHARACTER.		
AN BE USED BOTH AS A	703.2.7	CHARACTER SPACING CHARACTER SPACING SHALL BE MEASURED BETWEEN THE TWO CLOSEST POINTS OF AD IACENT RAISED CHARACTERS WITHIN A MESSAGE EXCLUDING WORD SPACES		
AN BE USED BOTH AS A SHALL BE PROVIDED. TH A NON-POSITIVE TICAL BAR IS USED. THE		ADJACENT RAISED CHARACTERS WITHIN A MESSAGE, EXCLUDING WORD SPACES. WHERE CHARACTERS HAVE RECTANGULAR CROSS SECTIONS, SPACING BETWEEN INDIVIDUAL RAISED CHARACTERS SHALL BE 1/8" MINIMUM AND 4 TIMES THE RAISED		
TICAL BAR IS USED, THE GRAB BARS. SHOWER KIMUM. ABOVE THE SHOWER		CHARACTER STROKE WIDTH MAXIMUM. WHERE CHARACTERS HAVE OTHER CROSS SECTIONS, SPACING BETWEEN INDIVIDUAL RAISED CHARACTERS SHALL BE 1/16" MINIMUM AND 4 TIMES THE RAISED CHARACTER STROKE WIDTH MAXIMUM AT THE BASE		
BPRAY UNIT IN M CARE FACILITIES, G UNITS.		OF THE CROSS SECTIONS, AND 1/8" MINIMUM AND 4 TIMES THE RAISED CHARACTER STROKE WIDTH MAXIMUM AT THE TOP OF THE CROSS SECTIONS. CHARACTERS SHALL		
. BE 1/2" HIGH MAXIMUM IN	703.2.8	BE SEPARATED FROM RAISED BORDERS AND DECORATIVE ELEMENTS 3/8" MINIMUM. LINE SPACING SPACING BETWEEN THE BASELINES OF SEPARATE LINES OF RAISED CHARACTERS		
MENTS, THRESHOLDS 1/2" ED IN TRANSFER TYPE		WITHIN A MESSAGE SHALL BE 135% MINIMUM AND 170% MAXIMUM OF THE RAISED CHARACTER HEIGHT.	ſ	
ISION OF A 1/2" HIGH NT OF THE FLOOR SLAB	703.3	BRAILLE BRAILLE SHALL BE CONTRACTED (GRADE 2) AND SHALL COMPLY WITH 703.3 AND 703.4.	BG	
RUCT CONTROLS, FROM WHEELCHAIRS	703.3.1	DIMENSIONS AND CAPITALIZATION BRAILLE DOTS SHALL HAVE A DOMED OR ROUNDED SHAPE AND SHALL COMPLY WITH TABLE 703.3.1. THE INDICATION OF AN UPPERCASE LETTER OR LETTERS SHALL ONLY	ARCHI	TECTS
	700 0 -	BE USED BEFORE THE FIRST WORD OF SENTENCES, PROPER NOUNS AND NAMES, INDIVIDUAL LETTERS OF THE ALPHABET, INITIALS, AND ACRONYMS.	4202 Belt	wav Drive
L COMPLY WITH 609.	703.3.2	POSITION BRAILLE SHALL BE POSITIONED BELOW THE CORRESPONDING TEXT. IF TEXT IS MULTI-LINED, BRAILLE SHALL BE PLACED BELOW THE ENTIRE TEXT. BRAILLE SHALL BE	Addison, T 214.520	X 75001
DUTSIDE DIAMETER OF		SEPARATED 3/8" MINIMUM FROM ANY OTHER TACTILE CHARACTERS AND 3/8" MINIMUM FROM RAISED BORDERS AND DECORATIVE ELEMENTS.	bgoarchit	
	703.4 703.4.1	INSTALLATION HEIGHT AND LOCATION SIGNS WITH TACTILE CHARACTERS SHALL COMPLY WITH 703.4. HEIGHT ABOVE FINISH FLOOR OR GROUND	DATE	
N OF 4 INCHES MINIMUM		TACTILE CHARACTERS ON SIGNS SHALL BE LOCATED 48" MINIMUM ABOVE THE FINISH FLOOR OR GROUND SURFACE, MEASURED FROM THE BASELINE OF THE LOWEST TACTILE CHARACTER AND 60" MAXIMUM ABOVE THE FINISH FLOOR OR GROUND	04-1	2-19
		SURFACE, MEASURED FROM THE BASELINE OF THE HIGHEST TACTILE CHARACTER. $^{ t L}$		
			181	<u>U1</u>
				IUMBER
1/2 INCHES. THE SPACE		Image: State of the state o	SHEET N	
AT THE ENDS SHALL AND PROJECTING				0
B INCHES MINIMUM AND HE TOP OF THE		ABOVE FINISH FLOOR OR GROUND SIGNS AT DOORS		00
			SUM	VIAKY

703.4.2	LOCATION WHERE A TACTILE SIGN IS PROVED AT A DOOR, THE SIGN SHALL BE LOCATED ALONGSIDE THE DOOR AT THE LATCH SIDE. WHERE A TACTILE SIGN IS PROVIDED AT DOUBLE DOORS WITH ONE ACTIVE LEAF, THE SIGN SHALL BE LOCATED ON THE INACTIVE LEAF. WHERE A TACTILE SIGN IS PROVIDED AT DOUBLE DOORS WITH TWO ACTIVE LEAFS, THE SIGN SHALL BE LOCATED TO THE RIGHT OF THE RIGHT HAND DOOR. WHERE THERE IS NO WALL SPACE AT THE LATCH SIDE OF A SINGLE DOOR OR AT THE RIGHT SIDE OF DOUBLE DOORS, SIGNS SHALL BE LOCATED ON THE NEAREST ADJACENT WALL. SIGNS CONTAINING TACTILE CHARACTERS SHALL BE LOCATED SO THAT A CLEAR FLOOR SPACE OF 18" MINIMUM BY 18" MINIMUM, CENTERED ON THE TACTILE CHARACTERS, IS PROVIDED BEYOND THE ARC OF ANY DOOR SWING BETWEEN THE CLOSED POSITION AND 45 DEGREE OPEN POSITION EXCEPTION: SIGNS WITH TACTILE CHARACTERS SHALL BE PERMITTED ON THE PUSH SIDE OF DOORS WITH CLOSERS AND WITHOUT HOLD-OPEN DEVICES.	CH/ 802 802
703.5 703.5.1	VISUAL CHARACTERS FINISH AND CONTRAST CHARACTERS AND THEIR BACKGROUND SHALL HAVE A NON-GLARE FINISH. CHARACTERS SHALL CONTRAST WITH THEIR BACKGROUND WITH EITHER LIGHT CHARACTERS ON A DARK BACKGROUND OR DARK CHARACTERS ON A LIGHT	<u>803</u> 803
703.5.2	BACKGROUND. CASE CHARACTERS SHALL BE UPPERCASE OR LOWERCASE OR A COMBINATION OF BOTH.	803
703.5.3 703.5.4	STYLE CHARACTERS SHALL BE CONVENTIONAL IN FORM. CHARACTERS SHALL NOT BE ITALIC, OBLIQUE, SCRIPT, HIGHLY DECORATIVE, OR OF OTHER UNUSUAL FORMS. CHARACTER PROPORTIONS CHARACTERS SHALL BE SELECTED FROM FONTS WHERE THE WIDTH OF THE	803
703.5.5	UPPERCASE LETTER "O" IS 55% MINIMUM AND 110% MAXIMUM OF THE HEIGHT OF THE UPPERCASE LETTER "I". CHARACTER HEIGHT MINIMUM CHARACTER HEIGHT SHALL COMPLY WITH TABLE 703.5.5. VIEWING DISTANCE SHALL BE MEASURED AS THE HORIZONTAL DISTANCE BETWEEN THE CHARACTER AND	803
700 E 6	AN OBSTRUCTION PREVENTING FURTHER APPROACH TOWARDS THE SIGN. CHARACTER HEIGHT SHALL BE BASED ON THE UPPERCASE LETTER "I"	804
703.5.6 703.5.7	HEIGHT FROM FINISH FLOOR OR GROUND VISUAL CHARACTER SHALL BE 40" MINIMUM ABOVE THE FINISH FLOOR OR GROUND STROKE THICKNESS	804
703.5.8	STROKE THICKNESS OF THE UPPERCASE LETTER "I" SHALL BE 10% MINIMUM AND 30% MAXIMUM OF THE HEIGHT OF THE CHARACTER. CHARACTER SPACING CHARACTER SPACING SHALL BE MEASURED BETWEEN THE TWO CLOSET POINTS OF ADJACENT CHARACTERS, EXCLUDING WORD SPACES. SPACING BETWEEN INDIVIDUAL	804
703.5.9	CHARACTERS SHALL BE 10% MINIMUM AND 35% MAXIMUM OF CHARACTER HEIGHT. LINE SPACING SPACING BETWEEN THE BASELINES OF SEPARATE LINES OF CHARACTERS WITHIN A MESSAGE SHALL BE 135% MINIMUM AND 170% MAXIMUM OF THE CHARACTER HEIGHT.	804
703.6 703.6.1	PICTOGRAMS PICTOGRAM FIELD PICTOGRAMS SHALL HAVE A FIELD HEIGHT OF 6" MINIMUM. CHARACTERS AND BRAILLE SHALL NOT BE LOCATED IN THE PICTOGRAM FIELD.	804
	BARN	804
		804
	• *	804
	FIGURE 703.6.1 PICTOGRAM FIELD	804
702 6 0		804
703.6.2 703.6.3	FINISH AND CONTRAST PICTOGRAMS AND THEIR FIELD HALL HAVE A NON-GLARE FINISH. PICTOGRAMS SHALL CONTRAST WITH THEIR FIELD WITH EITHER A LIGHT PICTOGRAM ON A DARK FIELD OR A DARK PICTOGRAM ON A LIGHT FIELD TEXT DESCRIPTORS	804
	PICTOGRAMS SHALL HAVE TEXT DESCRIPTORS LOCATED DIRECTLY BELOW THE PICTOGRAM FIELD.	804
703.7 703.7.1	SYMBOLS OF ACCESSIBILITY FINISH AND CONTRAST SYMBOLS OF ACCESSIBILITY AND THEIR BACKGROUND SHALL HAVE A NON-GLARE FINISH. SYMBOLS OF ACCESSIBILITY SHALL CONTRAST WITH THEIR BACKGROUND WITH EITHER A LIGHT SYMBOL ON A DARK BACKGROUND OR A DARK SYMBOL ON A LIGHT BACKGROUND.	804
703.7.2	SYMBOLS	804
		804
		804
	FIGURE 703.7.2.1 INTERNATIONAL SYMBOL OF ACCESSIBILITY	804 804
		804
		811
		811 811
	FIGURE 703.7.2.2	811
	INTERNATIONAL SYMBOL OF TTY	811
		<u>100</u>
	FIGURE 703.7.2.2 INTERNATIONAL SYMBOL OF HEARING LOSS	
705	DETECTABLE WARNINGS	
705.1 705.1.1	GENERAL DETECTABLE WARNINGS SHALL CONSIST OF A SURFACE OF TRUNCATED DOMES AND SHALL COMPLY WITH 705. DOME SIZE	
705.1.2	TRUNCATED DOMES IN A DETECTABLE WARNING SURFACE SHALL HAVE A BASE DIAMETER OF 0.9" MINIMUM AND 1.4" MAXIMUM, A TOP DIAMETER OF 50% OF THE BASE DIAMETER MINIMUM TO 65% OF THE BASE DIAMETER MAXIMUM, AND A HEIGHT OF 0.2". DOME SPACING TRUNCATED DOMES IN A DETECTABLE WARNING SURFACE SHALL HAVE A CENTER-TO-	
705.1.3	CENTER SPACING OF 1.6" MINIMUM AND 2.4" MAXIMUM, AND A BASE-TO-BASE SPACING OF 0.65" MINIMUM, MEASURED BETWEEN THE MOST ADJACENT DOMES ON A SQUARE GRID. CONTRAST DETECTABLE WARNING SURFACES SHALL CONTRAST VISUALLY WITH ADJACENT	
705.2	WALKING SURFACES EITHER LIGHT-ON-DARK, OR DARK-ON-LIGHT. PLATFORM EDGES DETECTABLE WARNING SURFACES AT PLATFORM BOARDING EDGES SHALL BE 24" WIDE AND SHALL EXTEND THE FULL LENGTH OF THE PUBLIC USE AREAS OF THE PLATFORM	

APTER 8 SPECIAL ROOMS, SPACES AND ELEMENTS

<u></u>	
02	WHEELCHAIR SPACES, COMPANION SEATS, AND DESIGNATED AISLE SEATS
02.1.2	WIDTH A SINGLE WHEELCHAIR SPACE SHALL BE 36 INCHES WIDE MINIMUM. WHERE TWO ADJACENT WHEELCHAIR SPACES ARE PROVIDED, EACH WHEELCHAIR SPACE SHALL BE 33 INCHES WIDE MINIMUM.
02.1.3	DEPTH WHERE A WHEELCHAIR SPACE CAN BE ENTERED FROM THE FRONT OR REAR, THE WHEELCHAIR SPACE SHALL BE 48 INCHES DEEP MINIMUM. WHERE A WHEELCHAIR SPACE CAN BE ENTERED ONLY FROM THE SIDE, THE WHEELCHAIR SPACE SHALL BE 60 INCHES DEEP MINIMUM.
03	DRESSING, FITTING, AND LOCKER ROOMS
03.2	TURNING SPACE
03.3	TURNING SPACE COMPLYING WITH 304 SHALL BE PROVIDED WITHIN THE ROOM. DOOR SWING DOORS SHALL NOT SWING INTO THE ROOM UNLESS A CLEAR FLOOR OR GROUND SPACE
03.4	COMPLYING WITH 305.3 IS PROVIDED BEYOND THE ARC OF THE DOOR SWING. BENCHES A BENCH COMPLYING WITH 903 SHALL BE PROVIDED WITHIN THE ROOM.
03.5	COAT HOOKS AND SHELVES COAT HOODS PROVIDED WITHIN THE ROOM SHALL BE LOCATED WITHIN ONE OF THE REACH RANGES SPECIFIED IN 308. SHELVES SHALL BE 40" MINIMUM AND 48" MAXIMUM ABOVE THE FINISH FLOOR OR GROUND.
04	KITCHENS AND KITCHENETTES
04.2.1	PASS THROUGH KITCHEN IN PASS THROUGH KITCHENS WHERE COUNTERS, APPLIANCES OR CABINETS ARE ON TWO OPPOSING SIDES, OR WHERE COUNTERS, APPLIANCES OR CABINETS ARE OPPOSITE A PARALLEL WALL, CLEARANCE BETWEEN ALL OPPOSING BASE CABINETS, COUNTER TOPS, APPLIANCES, OR WALLS WITHIN KITCHEN WORK AREAS SHALL BE 40 INCHES MINIMUM.
04.2.2	U-SHAPED IN U-SHAPED KITCHENS ENCLOSED ON THREE CONTIGUOUS SIDES, CLEARANCE BETWEEN ALL OPPOSING BASE CABINETS, COUNTER TOPS, APPLIANCES, OR WALLS WITHIN KITCHEN WORK AREAS SHALL BE 60 INCHES (1525 MM) MINIMUM.
04.3	KITCHEN WORK SURFACE IN RESIDENTIAL DWELLING UNITS REQUIRED TO COMPLY WITH 809, AT LEAST ONE 30" WIDE MINIMUM SECTION OF COUNTER SHALL PROVIDE A KITCHEN WORK SURFACE
04.3.1	THAT COMPLIES WITH 804.3. CLEAR FLOOR OR GROUND SPACE A CLEAR FLOOR SPACE COMPLYING WITH 305 POSITIONED FOR A FORWARD APPROACH SHALL BE PROVIDED. THE CLEAR FLOOR OR GROUND SPACE SHALL BE CENTERED ON THE KITCHEN WORK SURFACE AND SHALL PROVIDE KNEE AND TOE CLEARANCE COMPLYING WITH 306.
	 EXCEPTIONS: CABINETRY SHALL BE PERMITTED UNDER THE KITCHEN WORK SURFACE PROVIDED THAT ALL OF THE FOLLOWING CONDITIONS ARE MET: (A) THE CABINETRY CAN BE REMOVED WITHOUT REMOVAL OR REPLACEMENT OF THE KITCHEN WORK SURFACE; (B) THE FINISH FLOOR EXTENDS UNDER THE CABINETRY; AND (C) THE WALLS BEHIND AND SURROUNDING THE CABINETRY ARE FINISHED.
04.3.2	HEIGHT HE KITCHEN WORK SURFACE SHALL BE 34 INCHES MAXIMUM ABOVE THE FINISH FLOOR OR GROUND. • EXCEPTIONS: A COUNTER THAT IS ADJUSTABLE TO PROVIDE A KITCHEN WORK SURFACE AT VARIABLE HEIGHTS, 29 INCHES MINIMUM AND
04.3.3	36 INCHES MAXIMUM SHALL BE PERMITTED. EXPOSED SURFACES THERE SHALL BE NO SHARP OR ABRASIVE SURFACES UNDER THE WORK SURFACE COUNTERS.
04.4	SINKS SINKS SHALL COMPLY WITH 606. STORAGE
04.5 04.6	AT LEAST 50% OF SHELF SPACE IN STORAGE FACILITIES SHALL COMPLY WITH 811. APPLIANCES WHERE PROVIDED, KITCHEN APPLIANCES SHALL COMPLY WITH 804.6.
04.6.1	CLEAR FLOOR OR GROUND SPACE A CLEAR FLOOR OR GROUND SPACE COMPLYING WITH 305 SHALL BE PROVIDED AT EACH KITCHEN APPLIANCE. CLEAR FLOOR OR GROUND SPACES SHALL BE PERMITTED TO OVERLAP.
04.6.2	 OPERABLE PARTS ALL APPLIANCE CONTROLS SHALL COMPLY WITH 309. EXCEPTIONS: 1) APPLIANCE DOORS AND DOOR LATCHING DEVICES SHALL NOT BE REQUIRED TO COMPLY WITH 309.4. 2) BOTTOM-HINGED APPLIANCE DOORS, WHEN IN THE OPEN POSITION, SHALL NOT BE REQUIRED TO COMPLY WITH 309.3.
04.6.3	DISHWASHER CLEAR FLOOR OR GROUND SPACE SHALL BE POSITIONED ADJACENT TO THE DISHWASHER DOOR. THE DISHWASHER DOOR, IN THE OPEN POSITION, SHALL NOT OBSTRUCT THE CLEAR FLOOR OR GROUND SPACE FOR THE DISHWASHER OR SINK
04.6.4	RANGE OR COOKTOP WHERE A FORWARD APPROACH IS PROVIDED, THE CLEAR FLOOR OR GROUND SPACE SHALL PROVIDE KNEE AND TOE CLEARANCE COMPLYING WITH 306. WHERE KNEE AND TOE SPACE IS PROVIDED, THE UNDERSIDE OF THE RANGE OR COOKTOP SHALL BE INSULATED OR OTHERWISE CONFIGURED TO PREVENT BURNS, ABRASIONS, OR ELECTRICAL SHOCK. THE LOCATION OF CONTROLS SHALL NOT REQUIRE REACHING ACROSS BURNERS.
04.6.5	OVEN OVENS SHALL COMPLY WITH 804.6.5
04.6.5.1	SIDE-HINGED DOOR OVENS SIDE-HINGED DOOR OVENS SHALL HAVE THE WORK SURFACE REQUIRED BY 804.3 POSITIONED ADJACENT TO THE LATCH SIDE OF THE OVEN DOOR.
04.6.5.2	BOTTOM-HINGED DOOR OVENS BOTTOM-HINGED DOOR OVENS SHALL HAVE THE WORK SURFACE REQUIRED BY 804.3 POSITIONED ADJACENT TO ONE SIDE OF THE DOOR.
04.6.5.3	CONTROLS OVENS SHALL HAVE CONTROLS ON FRONT PANELS.
04.6.6	REFRIGERATOR OR FREEZER COMBINATION REFRIGERATORS AND FREEZERS SHALL HAVE AT LEAST 50 PERCENT OF THE FREEZER SPACE 54 INCHES MAXIMUM ABOVE THE FINISH FLOOR OR GROUND.
11	STORAGE
11.1	GENERAL
11.2	STORAGE SHALL COMPLY WITH 811. CLEAR FLOOR OR GROUND SPACE A CLEAR FLOOR OR GROUND SPACE COMPLYING WITH 305 SHALL BE PROVIDED.
11.3	HEIGHT STORAGE ELEMENTS SHALL COMPLY WITH AT LEAST ONE OF THE REACH RANGES
11.4	SPECIFIED IN 308. OPERABLE PARTS OPERABLE PARTS SHALL COMPLY WITH 309.
004	EXERCISE MACHINES AND EQUIPMENT
004.1	CLEAR FLOOR SPACE EXERCISE MACHINES AND EQUIPMENT SHALL HAVE A CLEAR FLOOR SPACE COPMLYING WITH 305 POSITIONED FOR TRANSFER OR FOR USE BY AN INDIVIDUAL SEATED IN A WHEELCHAIR. CLEAR FLOOR OR GROUND SPACES REQUIRED AT EXERCISE MACHINES AND EQUIPMENT SHALL BE PERMITTED TO OVERLAP.
	ADVISORY ONCE CLEAR FLOOR OR GROUND SPACE IS PERMITTED TO BE SHARED BETWEEN TWO PIECES OF EXERCISE EQUIPMENT.

SEATS

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RONT OR REAR, THE ERE A WHEELCHAIR SPACE ACE SHALL BE 60 INCHES

LOOR OR GROUND SPACE DOOR SWING.

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OR OR GROUND SPACE 306. WHERE KNEE AND TOE KTOP SHALL BE INSULATED S, OR ELECTRICAL SHOCK. ACROSS BURNERS.

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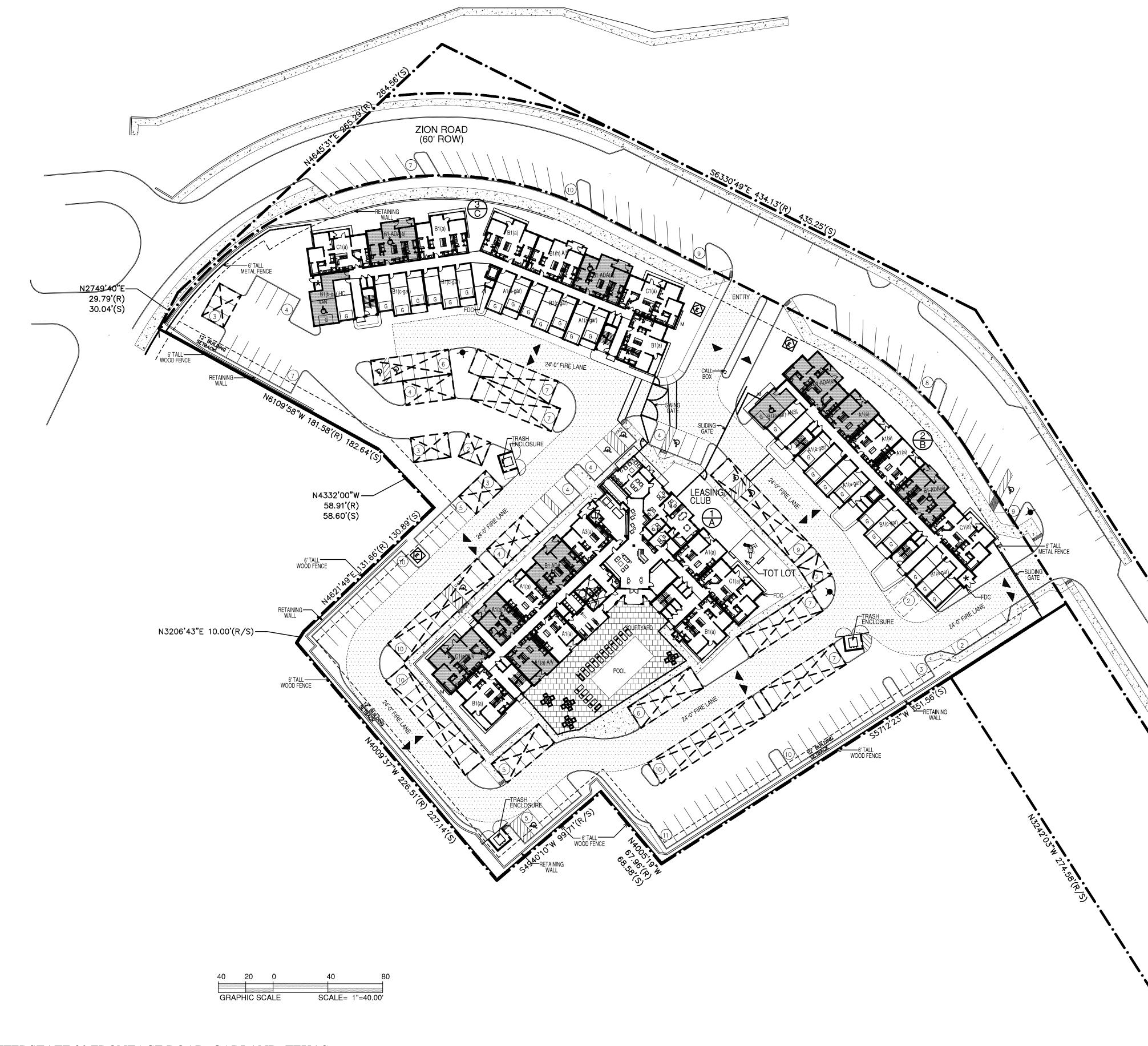
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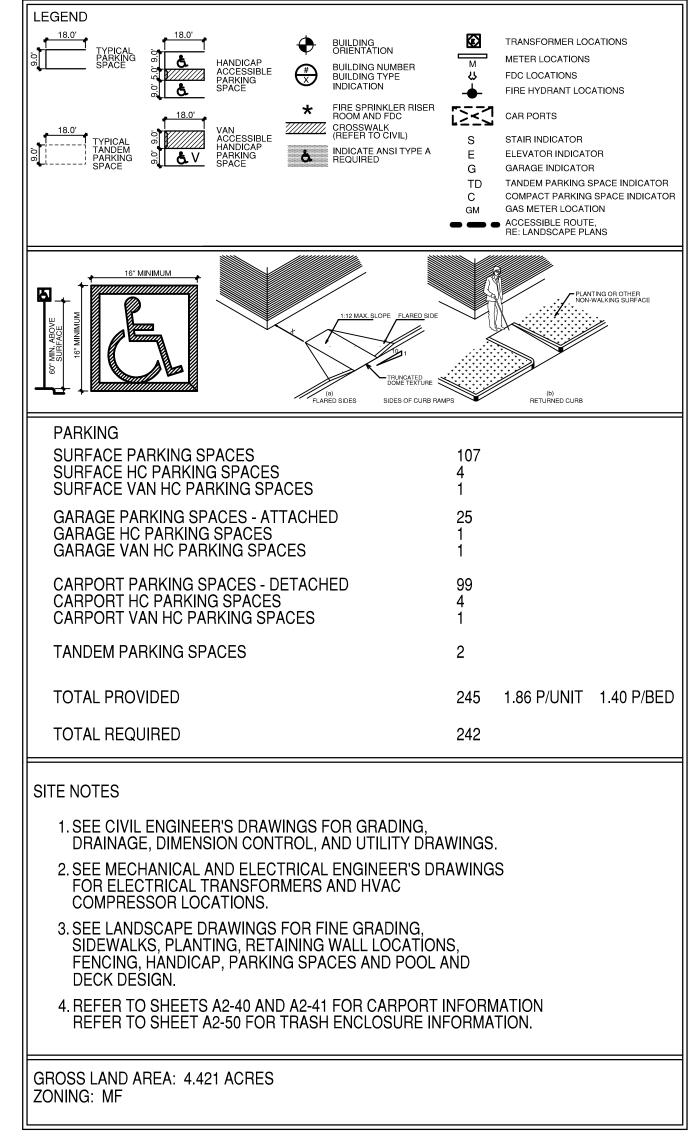
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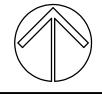
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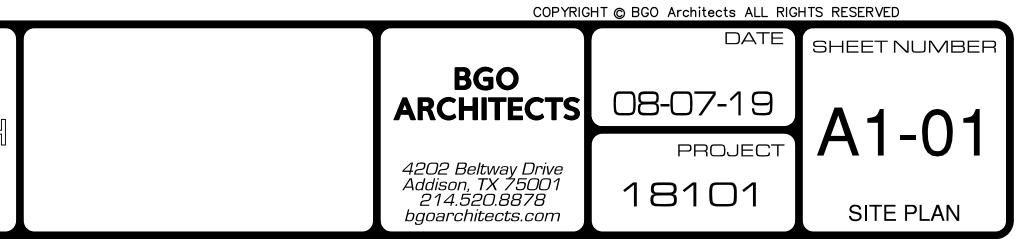
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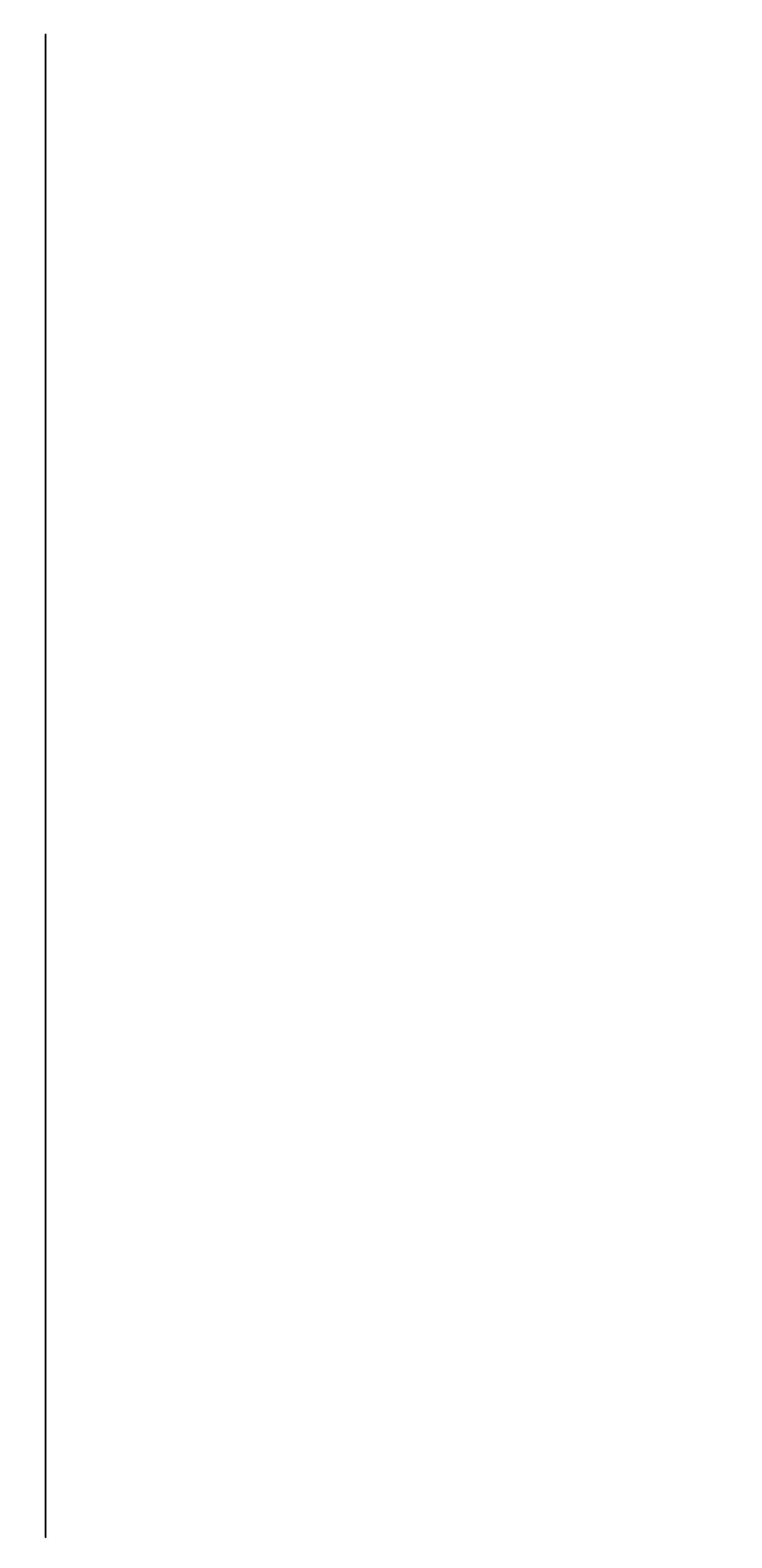
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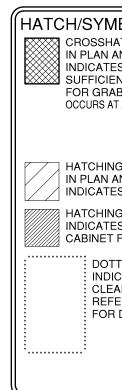


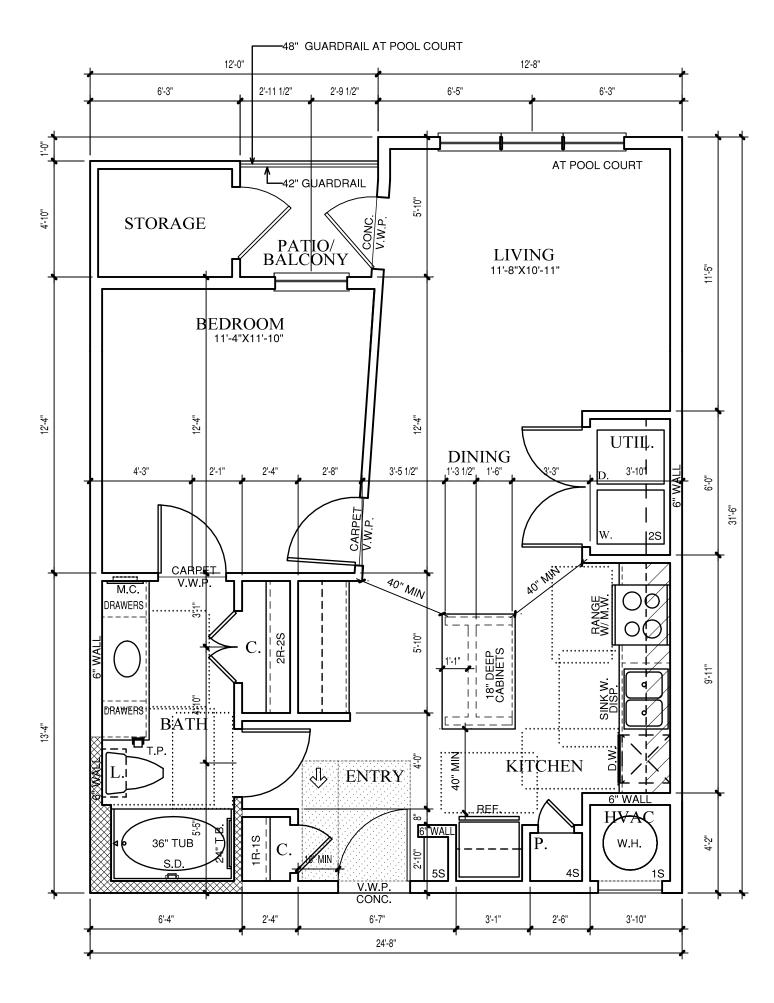
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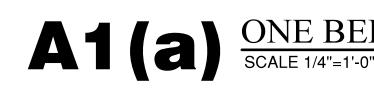










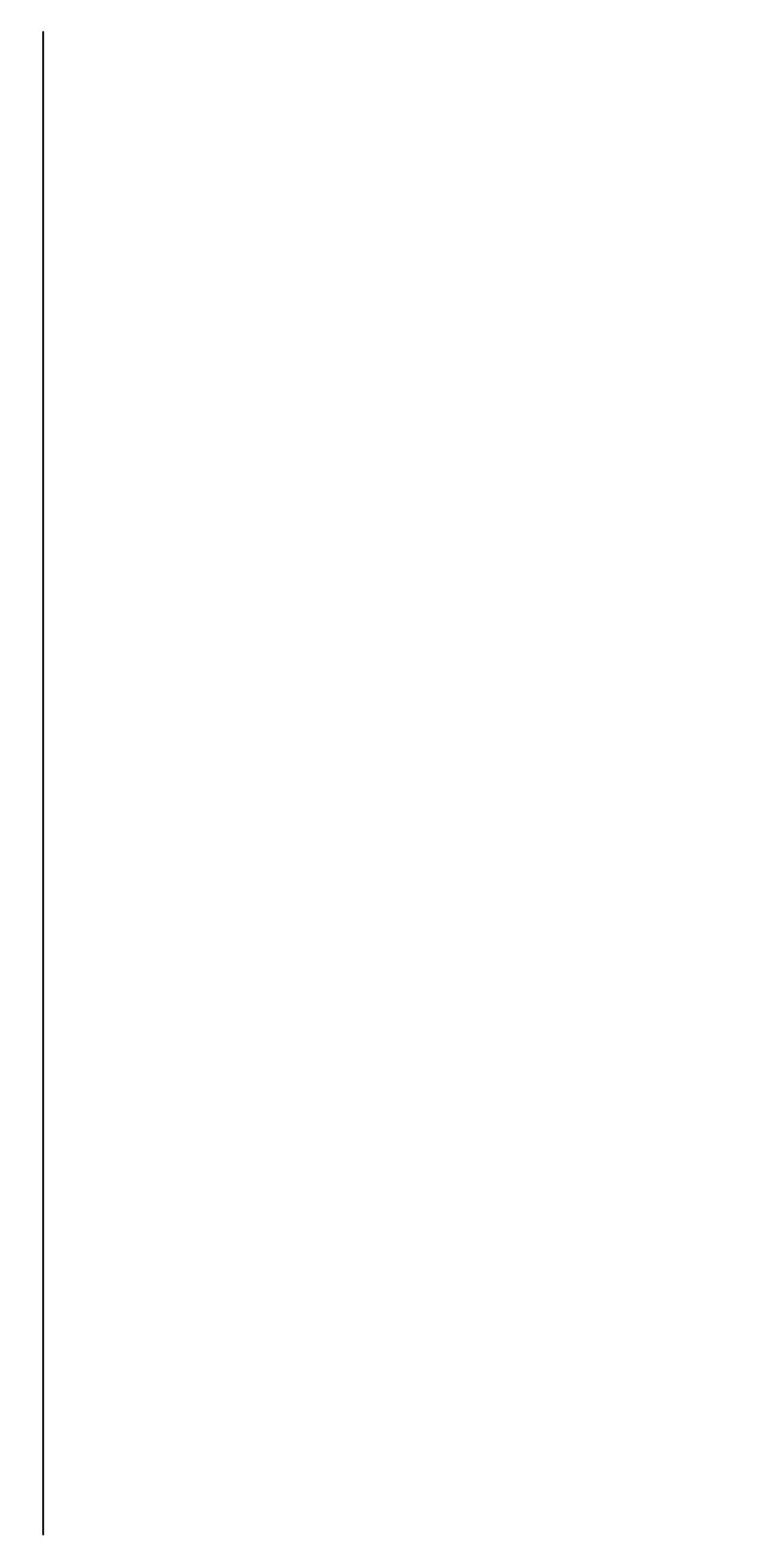


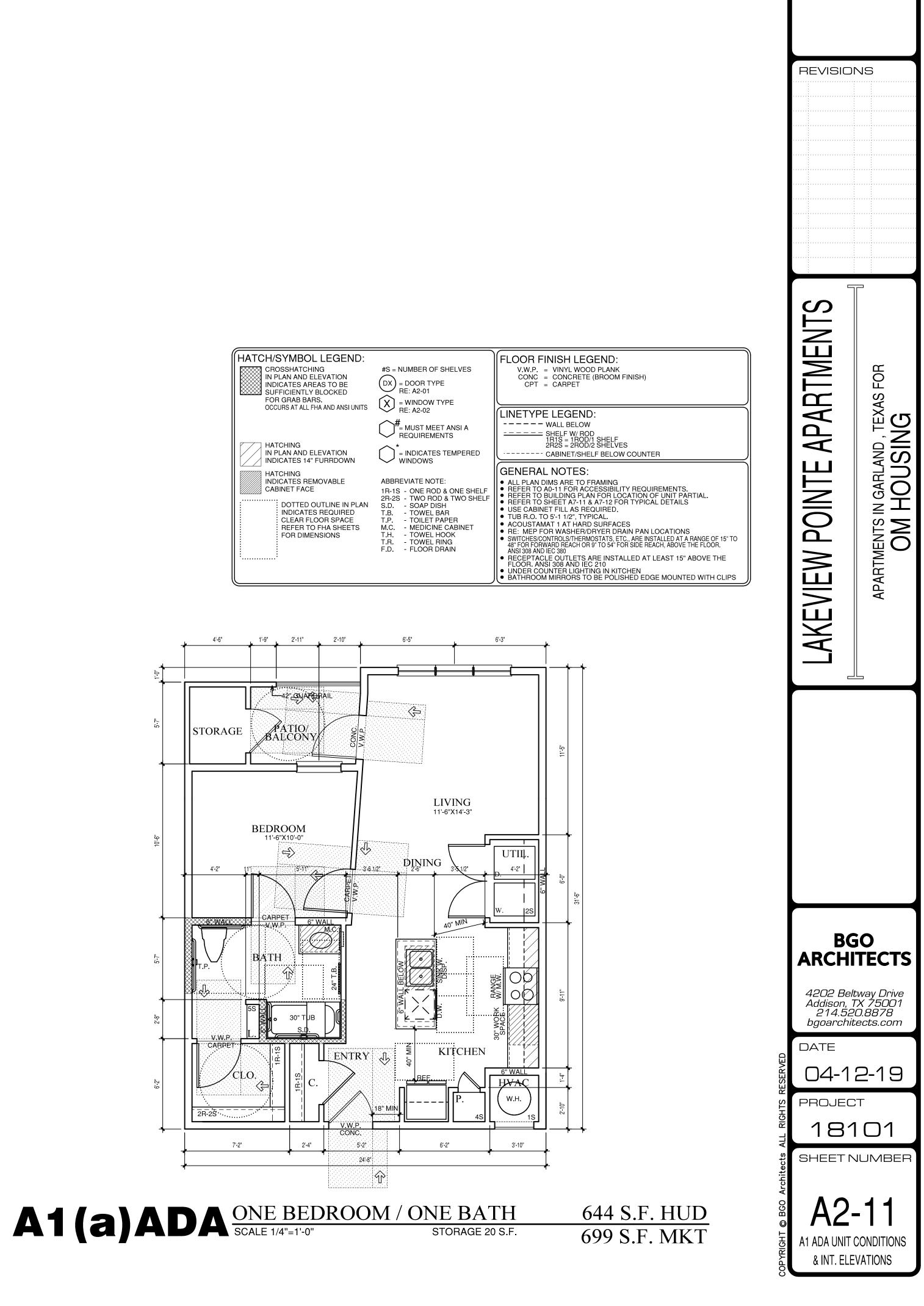
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HING IN AND ELEVATION ATES 14" FURRDOWN	<pre>#= MUST MEET ANSI A REQUIREMENTS *= INDICATES TEMPERED WINDOWS</pre>	LINETYPE LEGEND: 	
HING ATES REMOVABLE IET FACE DOTTED OUTLINE IN PLAN NDICATES REQUIRED CLEAR FLOOR SPACE REFER TO FHA SHEETS OR DIMENSIONS	ABBREVIATE NOTE: 1R-1S - ONE ROD & ONE SHELF 2R-2S - TWO ROD & TWO SHELF S.D SOAP DISH T.B TOWEL BAR T.P TOILET PAPER M.C MEDICINE CABINET T.H TOWEL HOOK T.B TOWEL RING	GENERAL NOTES: • ALL PLAN DIMS ARE TO FRAMING • REFER TO A0-11 FOR ACCESSIBILITY REQUIREMENTS. • REFER TO BUILDING PLAN FOR LOCATION OF UNIT PARTIAL. • REFER TO SHEET A7-11 & A7-12 FOR TYPICAL DETAILS • USE CABINET FILL AS REQUIRED. • TUB R.O. TO 5'-1 1/2", TYPICAL. • ACOUSTAMAT 1 AT HARD SURFACES • RE: MEP FOR WASHER/DRYER DRAIN PAN LOCATIONS • SWITCHES/CONTROLS/THERMOSTATS, ETC., ARE INSTALLED AT A RANGE OF 15" TO	RE
	F.D FLOOR DRAIN	 48" FOR FORWARD REACH OR 9" TO 54" FOR SIDE REACH, ABOVE THE FLOOR. ANSI 308 AND IEC 380 RECEPTACLE OUTLETS ARE INSTALLED AT LEAST 15" ABOVE THE FLOOR. ANSI 308 AND IEC 210 UNDER COUNTER LIGHTING IN KITCHEN BATHROOM MIRRORS TO BE POLISHED EDGE MOUNTED WITH CLIPS 	

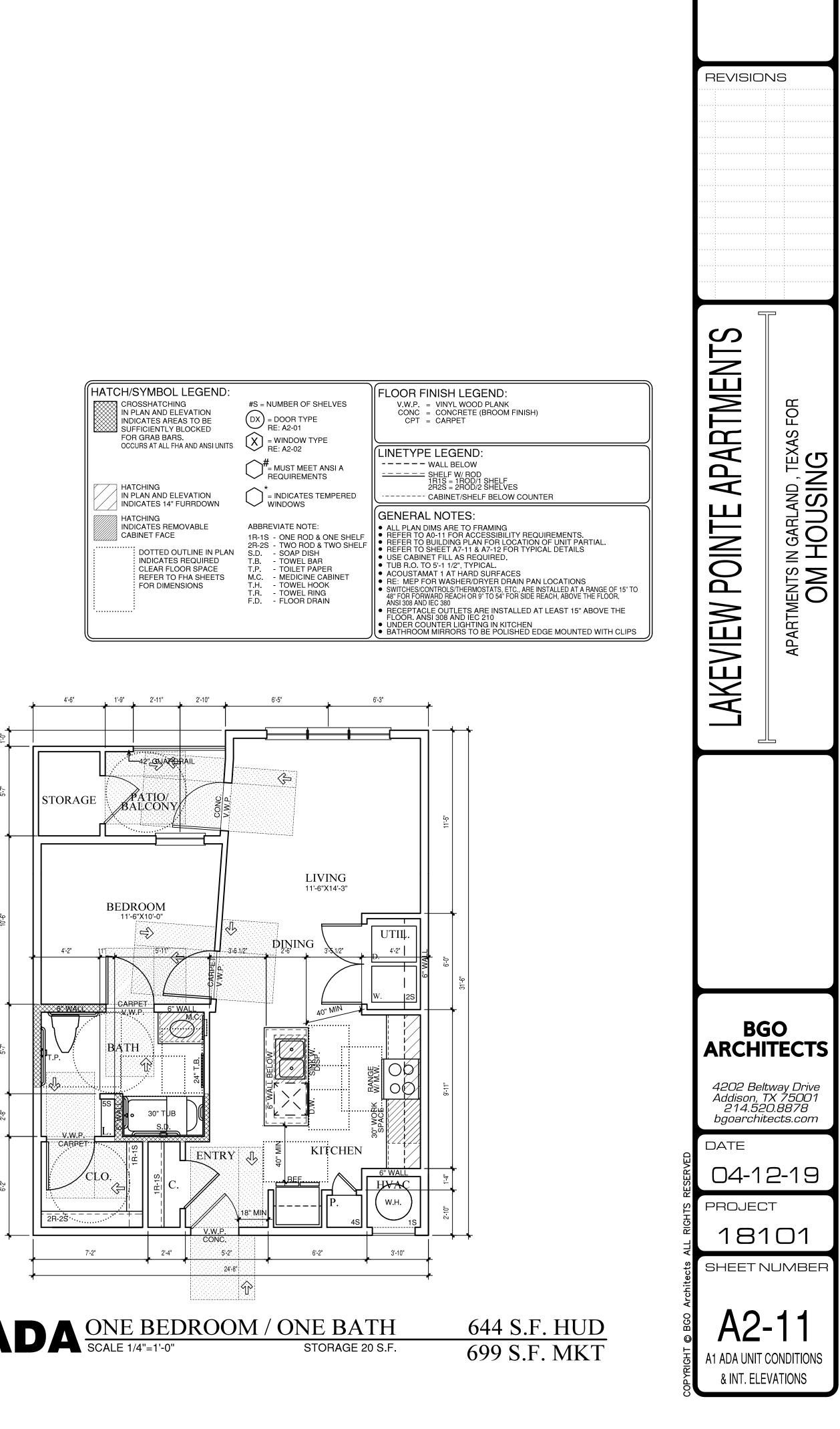
EDROOM /	ONE BATH
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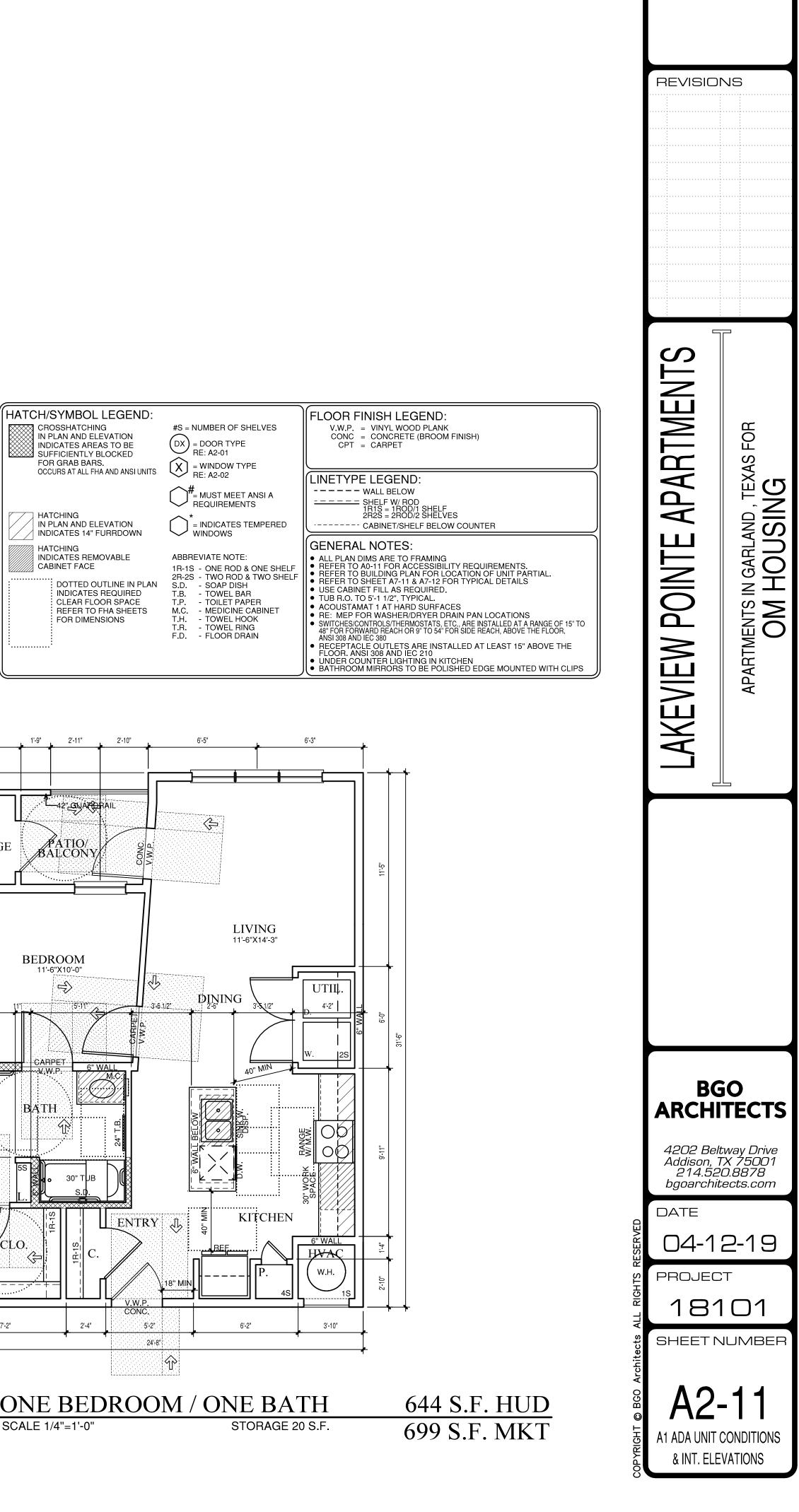
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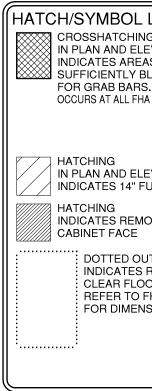
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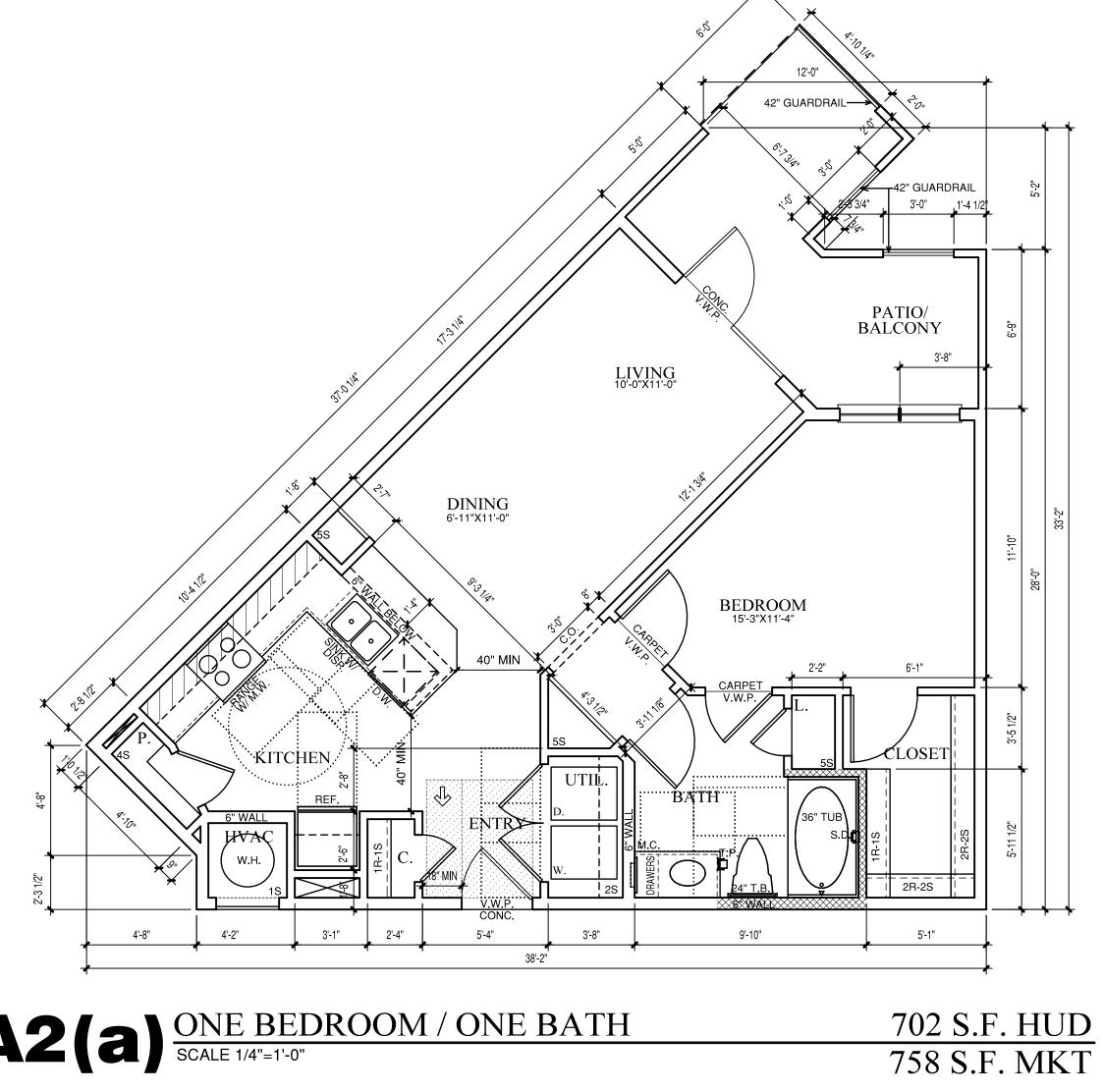


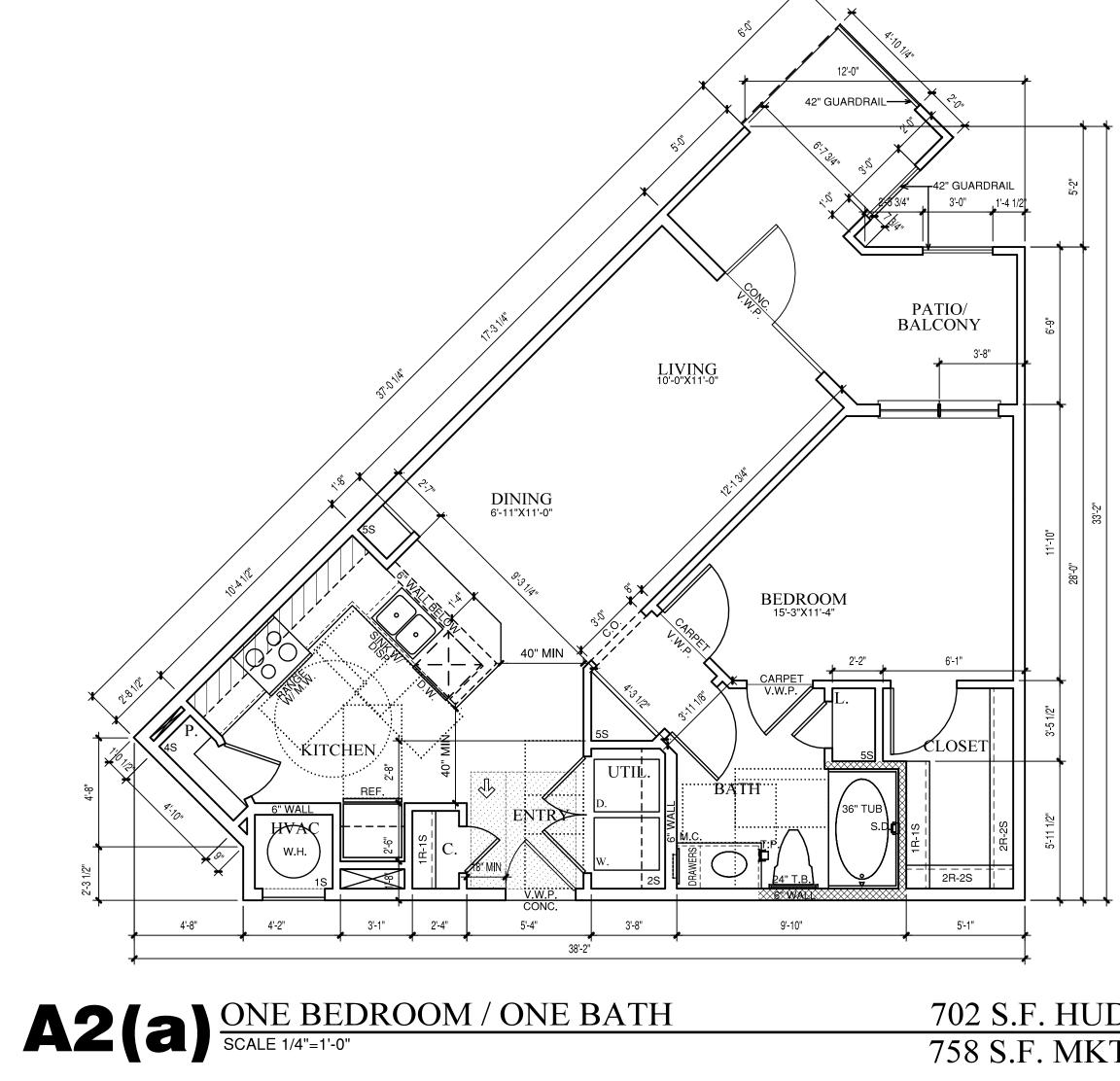




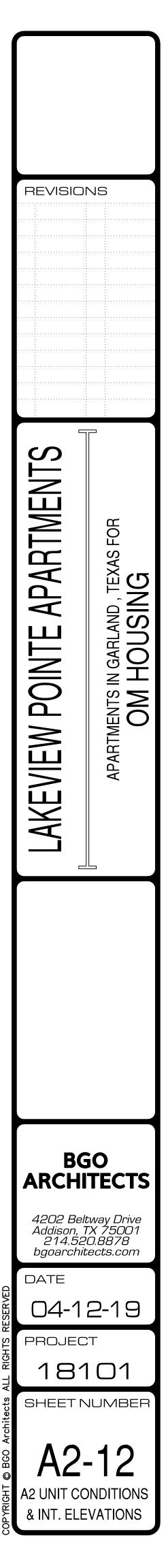


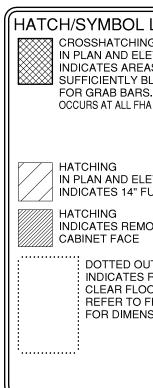


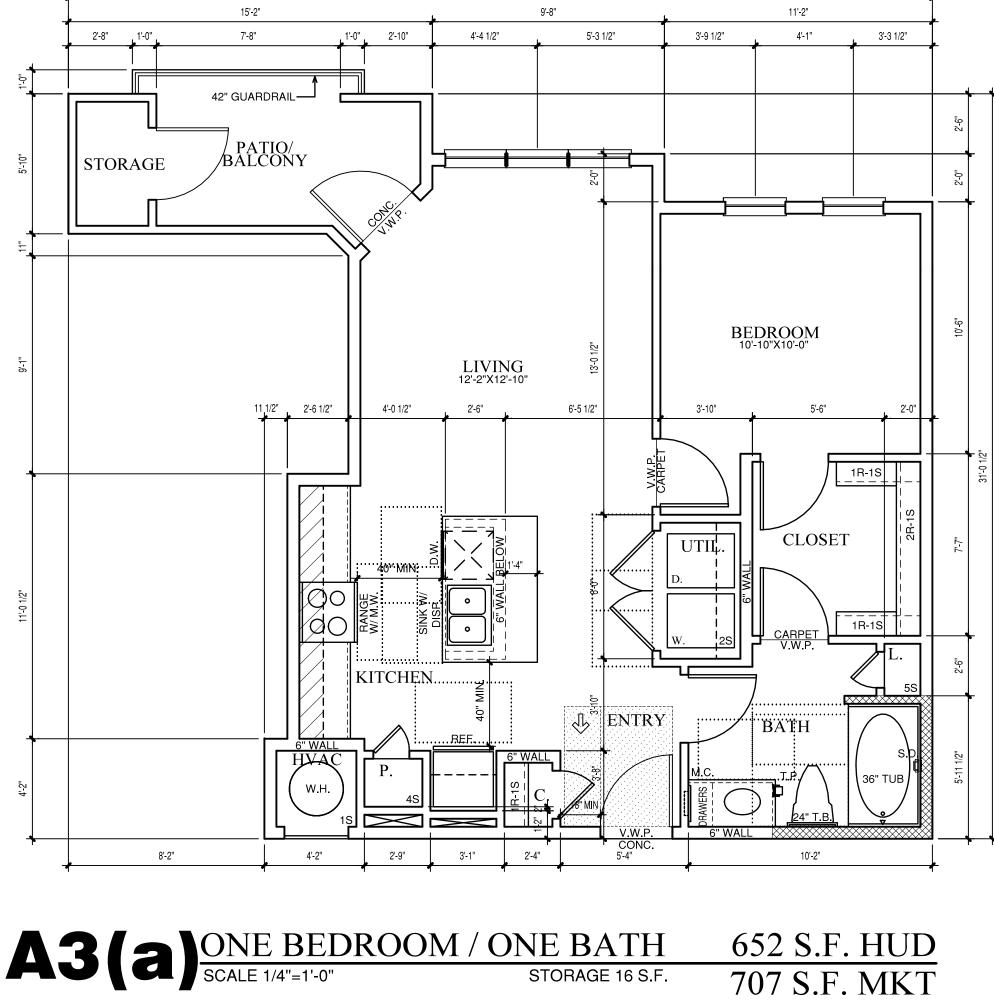




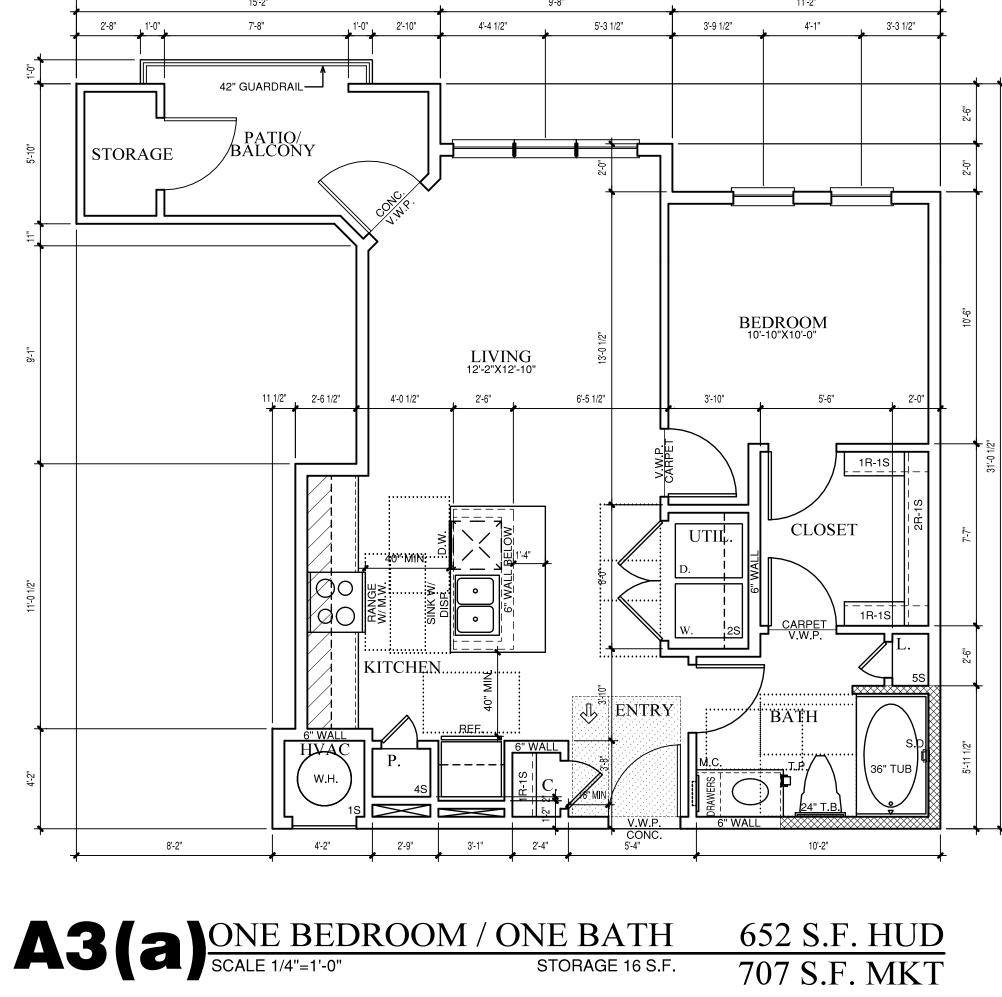
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FURRDOWN		GENERAL NOTES:
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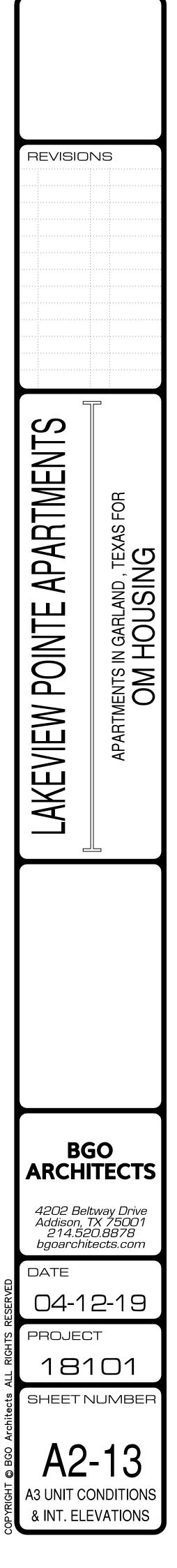


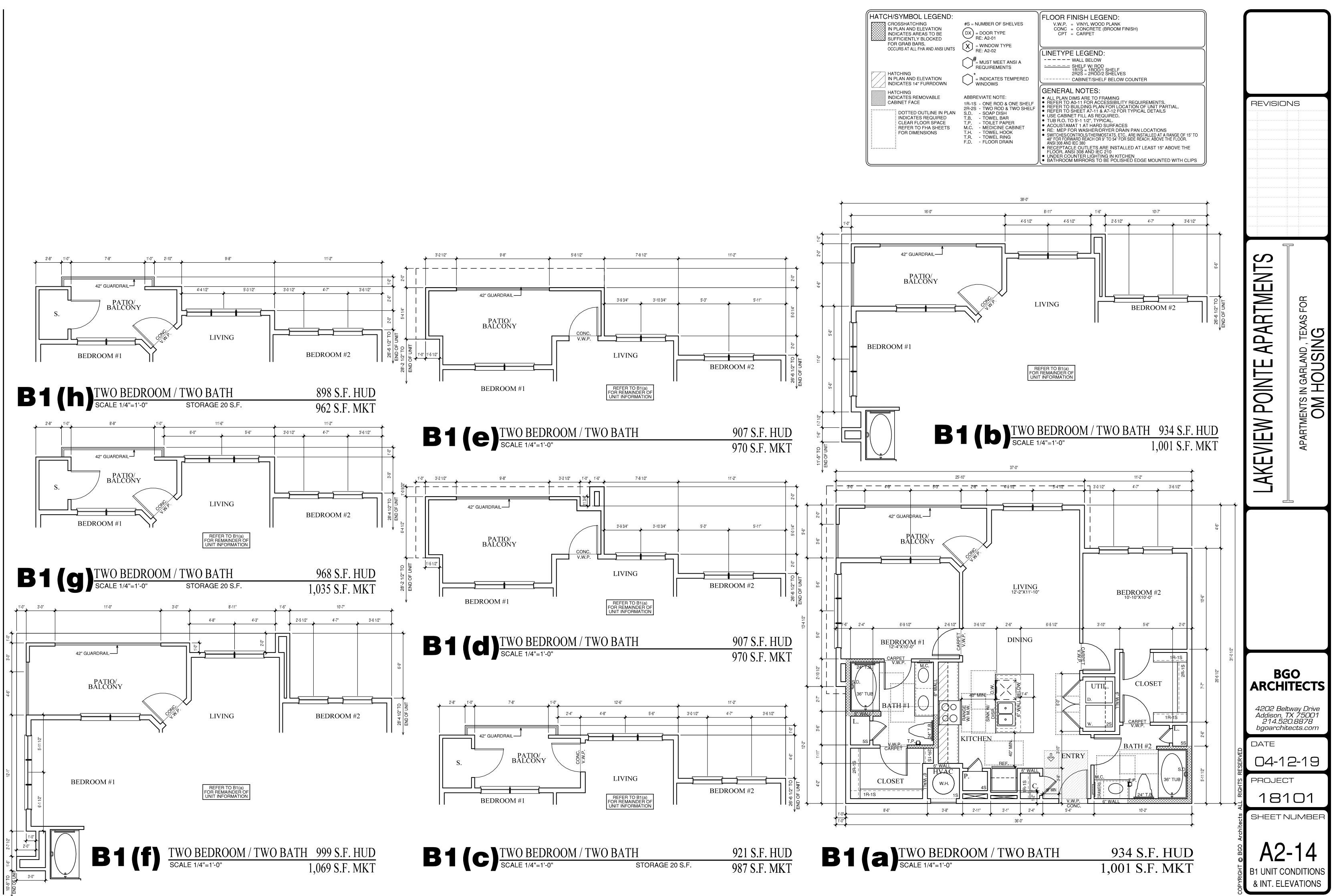


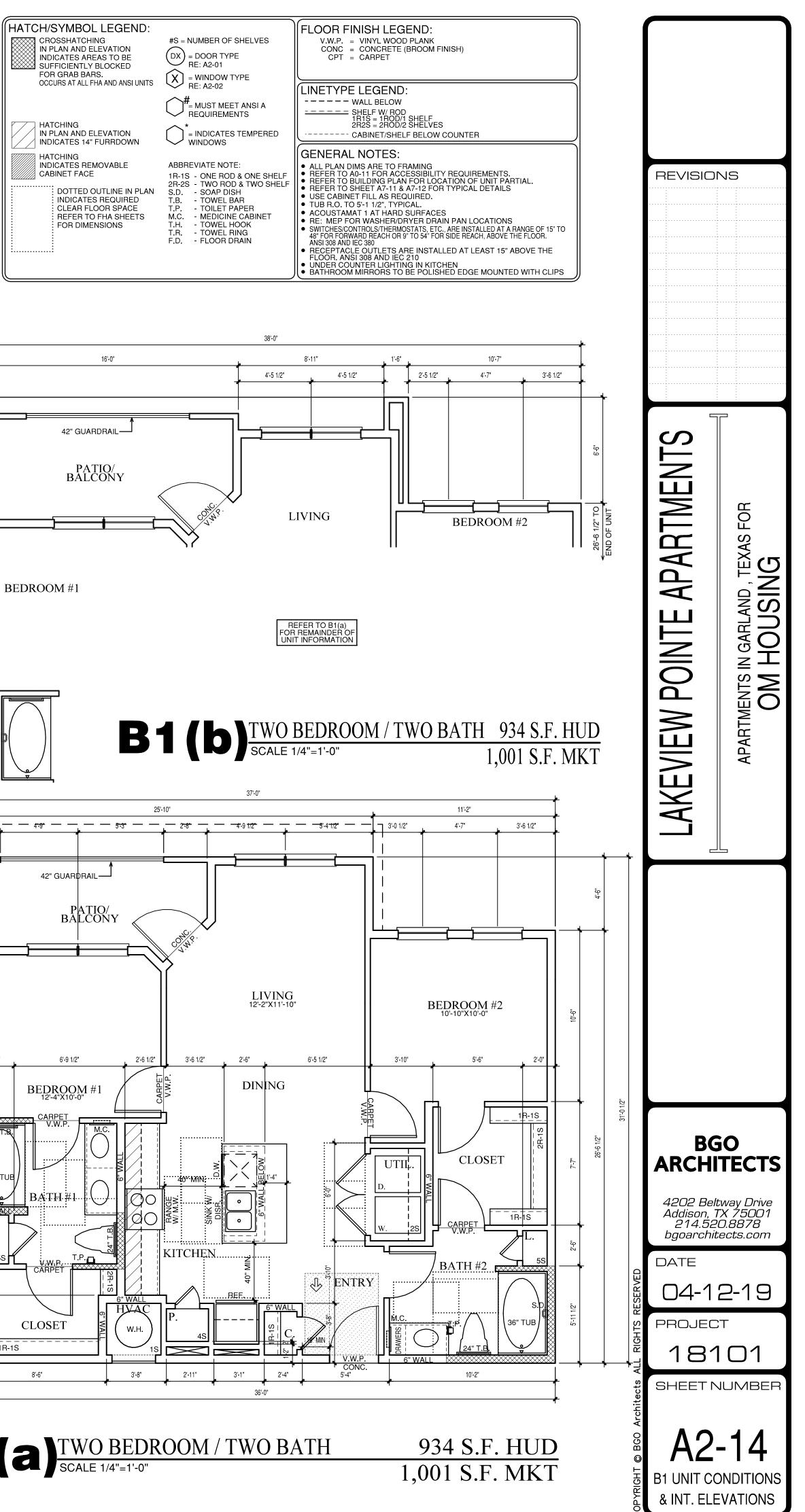
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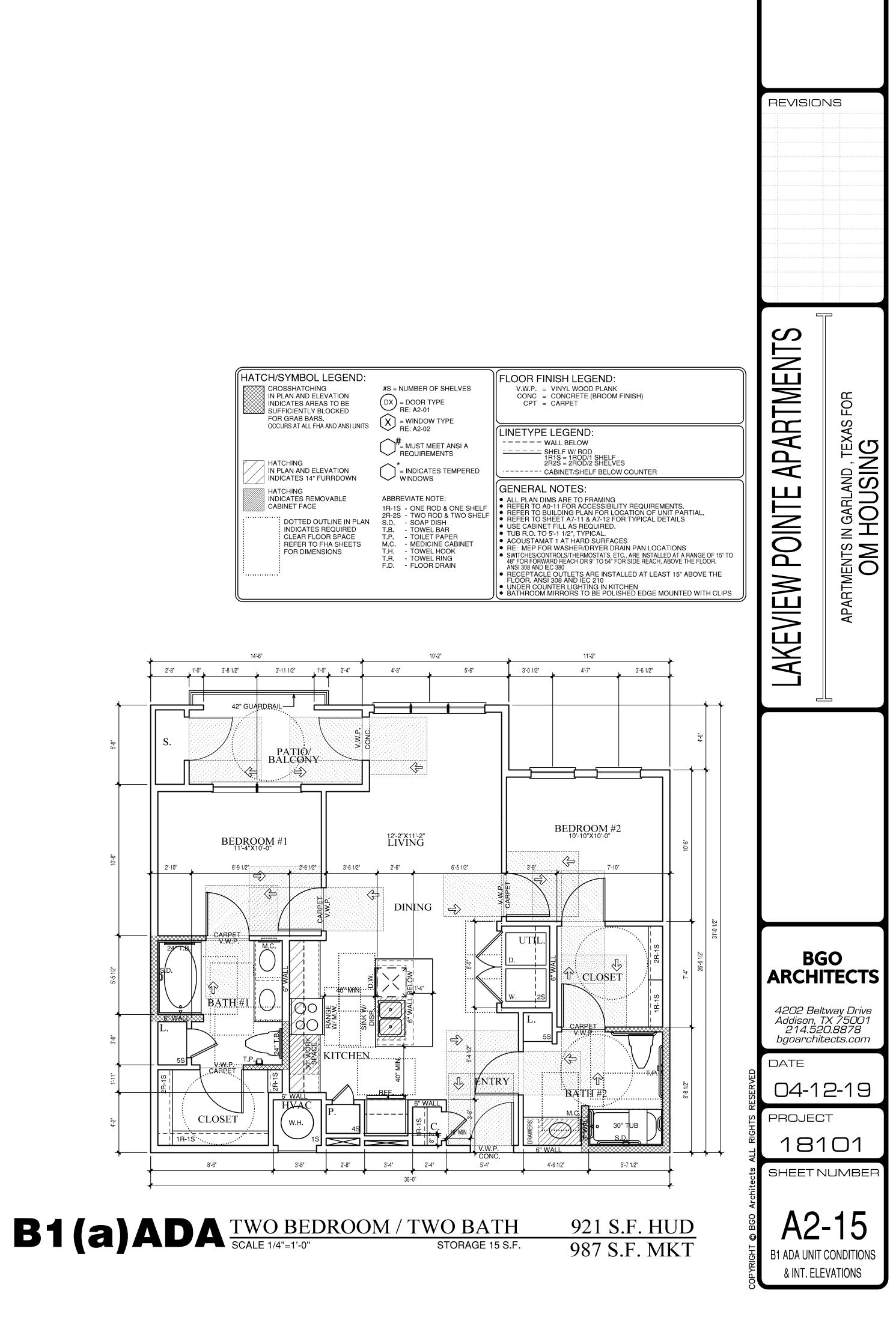


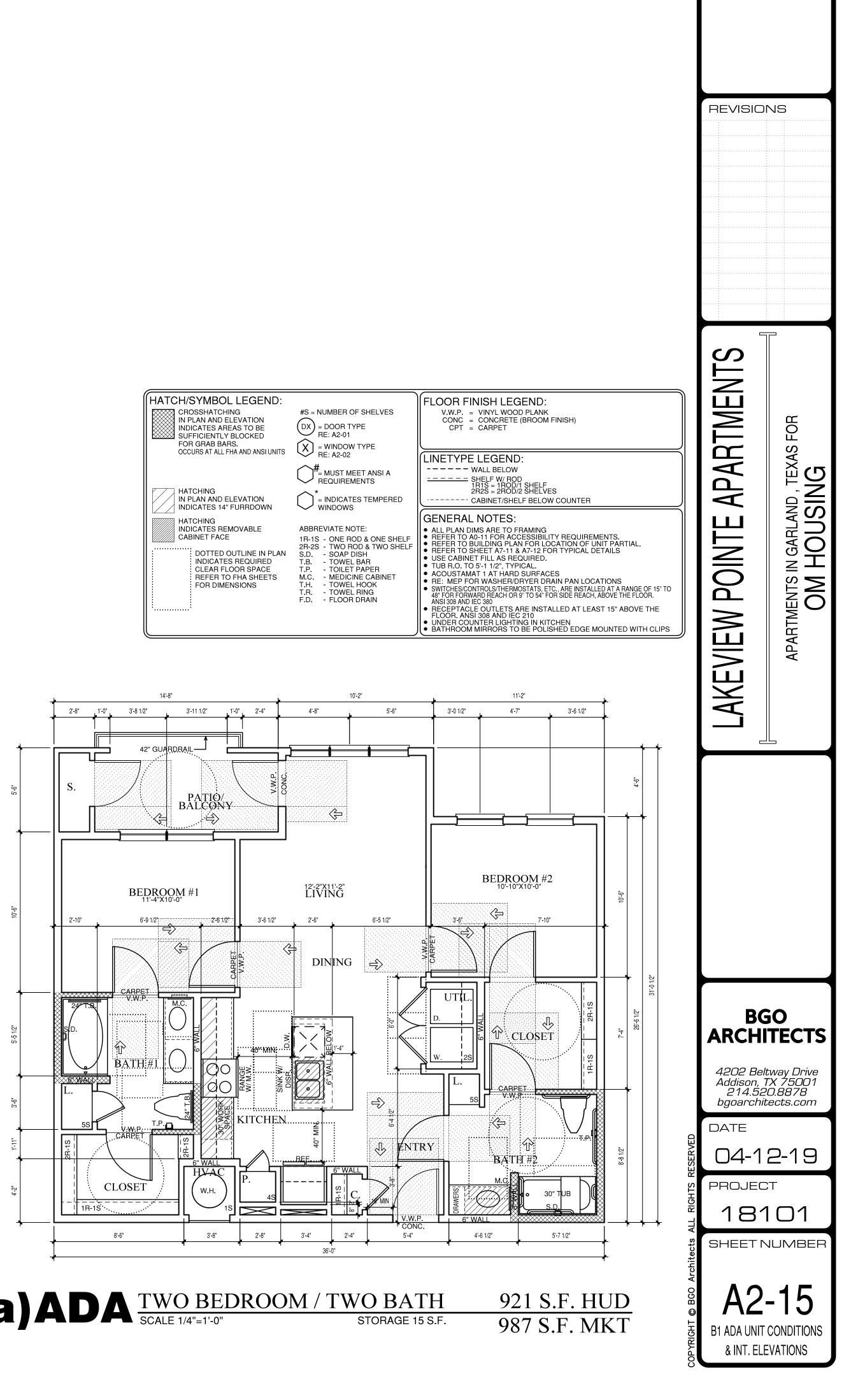
DL LEGEND: HING ELEVATION REAS TO BE LY BLOCKED ARS.	#S = NUMBER OF SHELVES DX = DOOR TYPE RE: A2-01 X = WINDOW TYPE	FLOOR FINISH LEGEND: V.W.P. = VINYL WOOD PLANK CONC = CONCRETE (BROOM FINISH) CPT = CARPET
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EMOVABLE DE OUTLINE IN PLAN ES REQUIRED FLOOR SPACE TO FHA SHEETS MENSIONS	ABBREVIATE NOTE: 1R-1S - ONE ROD & ONE SHELF 2R-2S - TWO ROD & TWO SHELF S.D SOAP DISH T.B TOWEL BAR T.P TOILET PAPER M.C MEDICINE CABINET T.H TOWEL HOOK T.R TOWEL RING F.D FLOOR DRAIN	GENERAL NOTES: • ALL PLAN DIMS ARE TO FRAMING • REFER TO A0-11 FOR ACCESSIBILITY REQUIREMENTS. • REFER TO BUILDING PLAN FOR LOCATION OF UNIT PARTIAL. • REFER TO SHEET A7-11 & A7-12 FOR TYPICAL DETAILS • USE CABINET FILL AS REQUIRED. • TUB R.O. TO 5'-1 1/2", TYPICAL. • ACOUSTAMAT 1 AT HARD SURFACES • RE: MEP FOR WASHER/DRYER DRAIN PAN LOCATIONS • SWITCHES/CONTROLS/THERMOSTATS, ETC., ARE INSTALLED AT A RANGE OF 15" TO 48" FOR FORWARD REACH OR 9" TO 54" FOR SIDE REACH, ABOVE THE FLOOR. ANSI 308 AND IEC 380 • RECEPTACLE OUTLETS ARE INSTALLED AT LEAST 15" ABOVE THE FLOOR. ANSI 308 AND IEC 210 • UNDER COUNTER LIGHTING IN KITCHEN • BATHROOM MIRRORS TO BE POLISHED EDGE MOUNTED WITH CLIPS

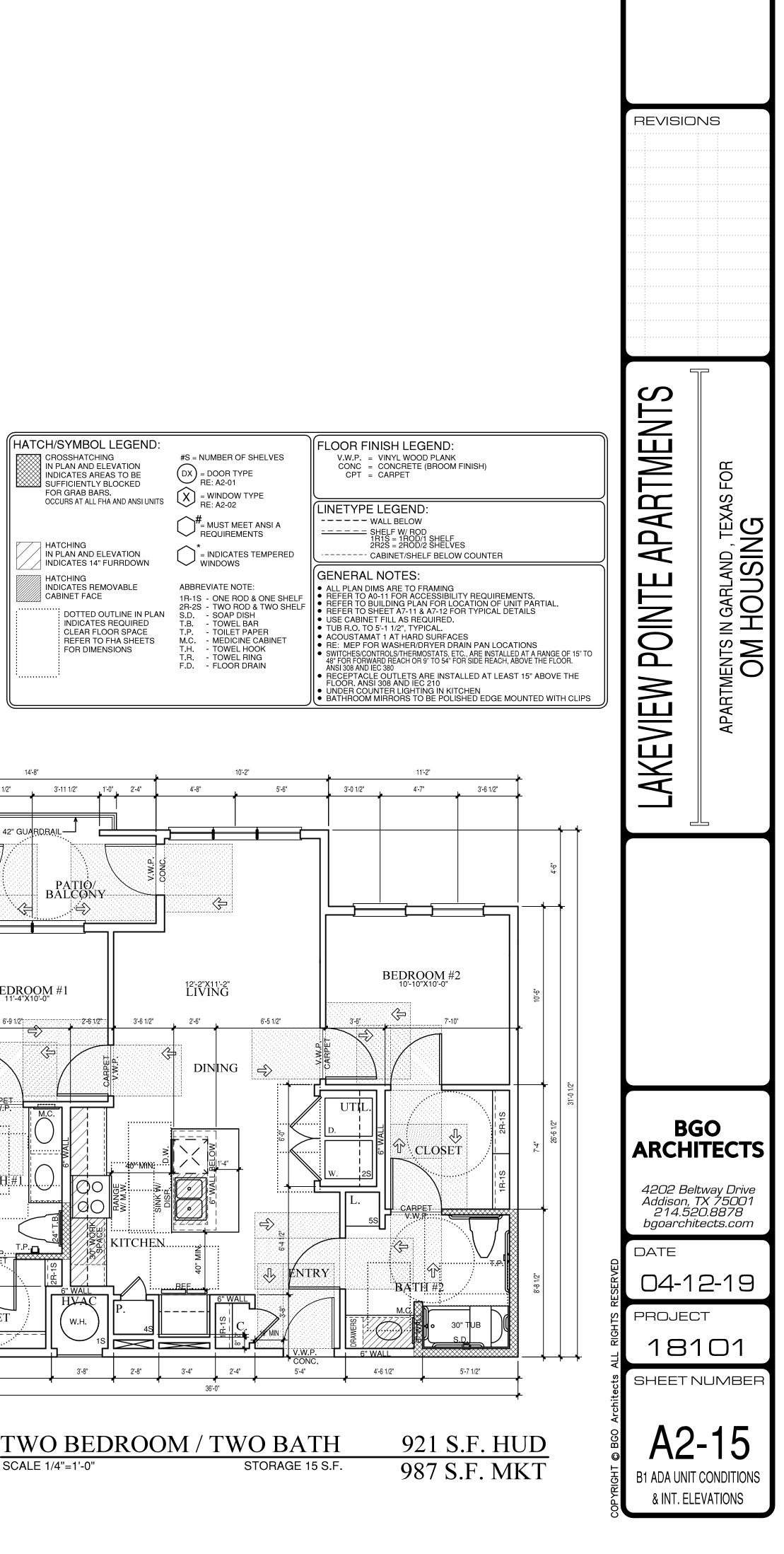


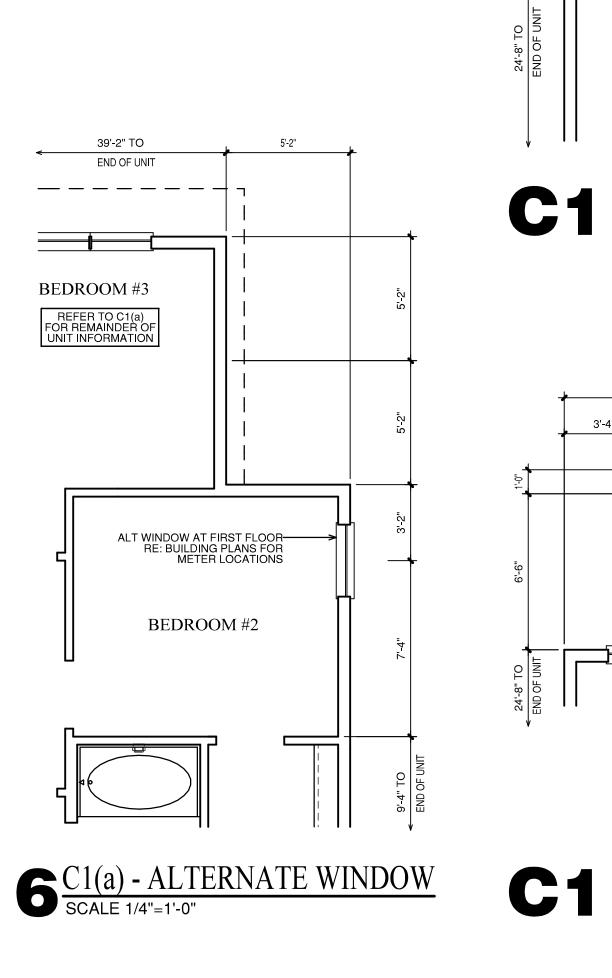


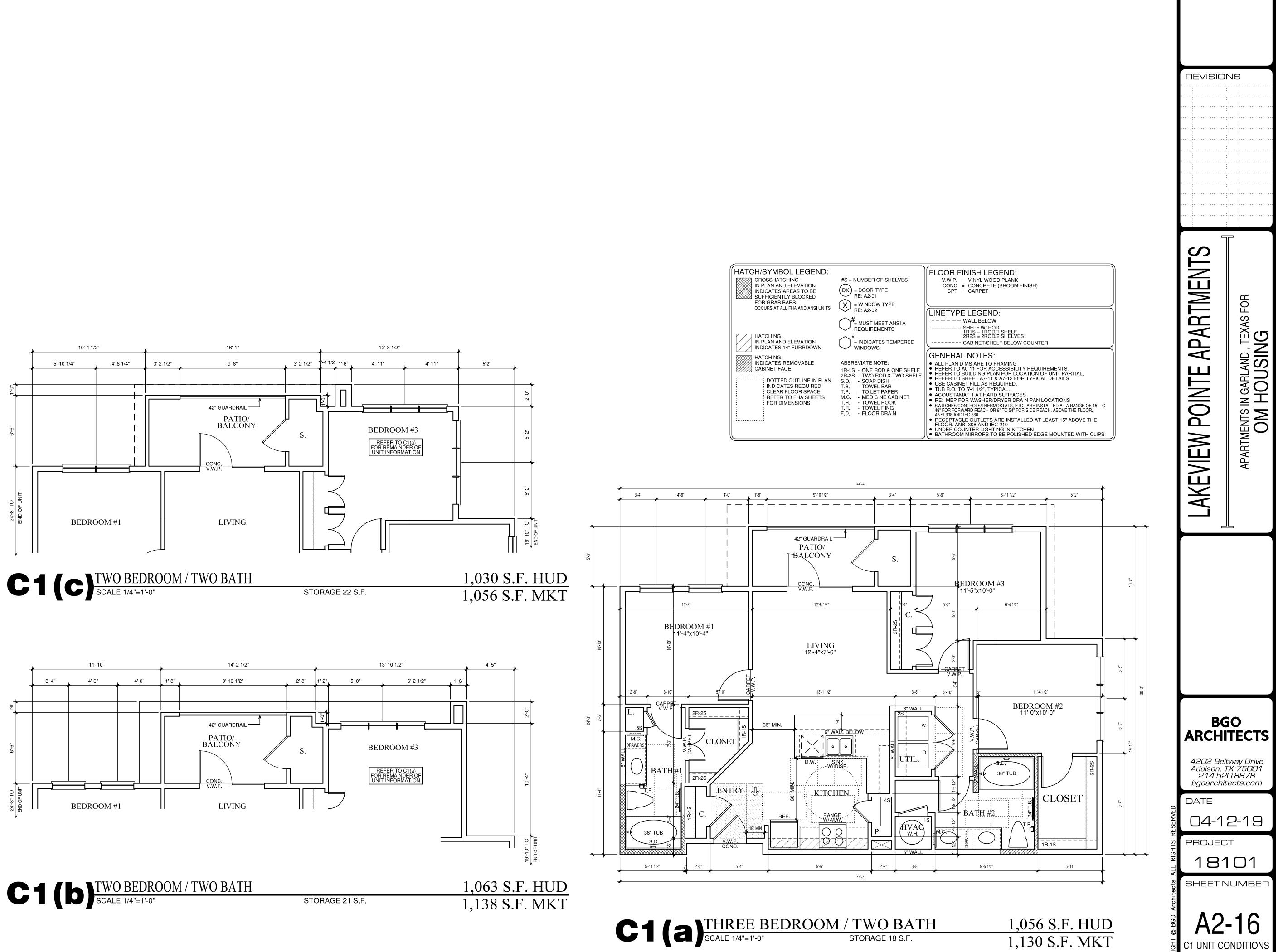








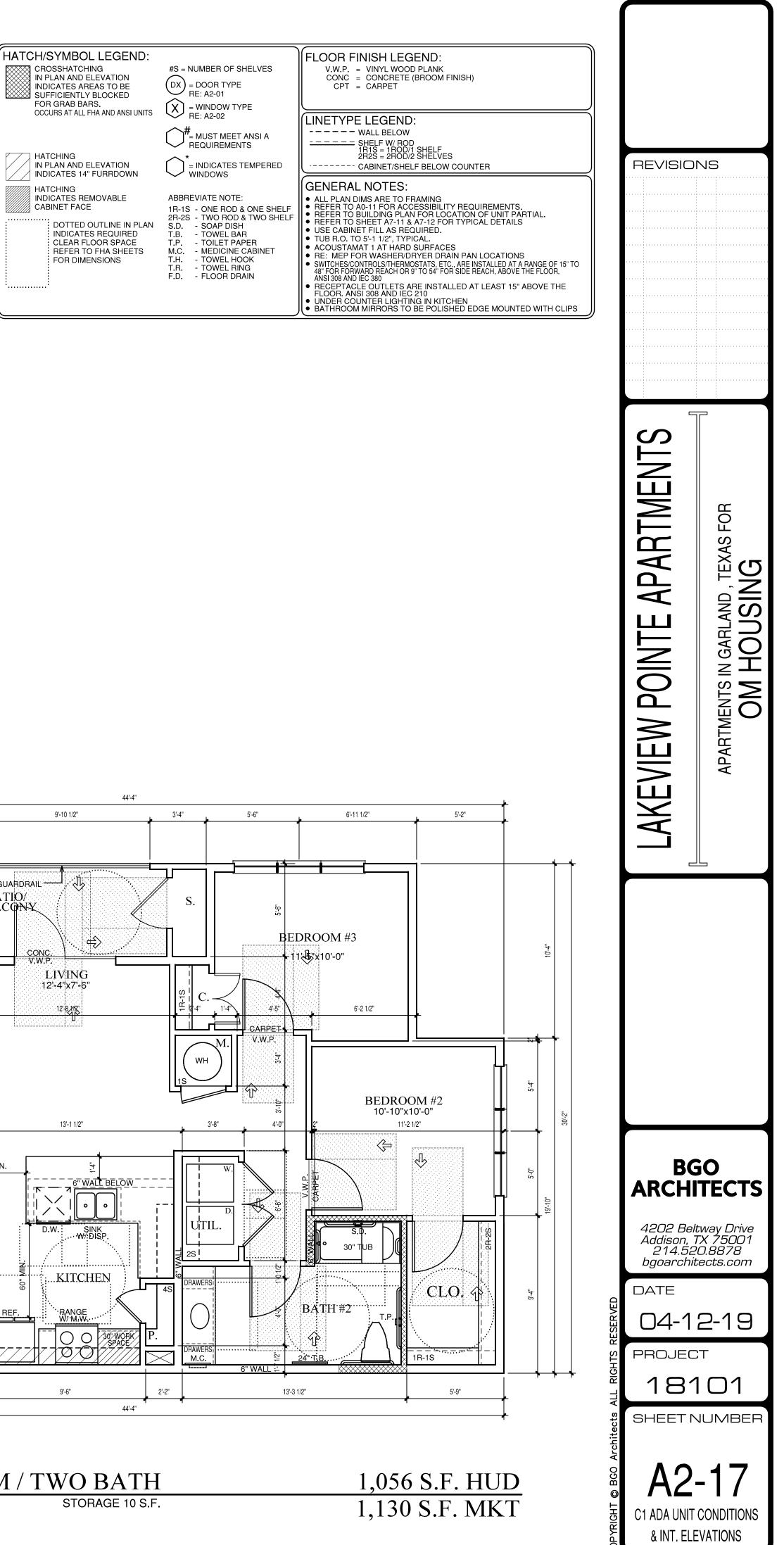


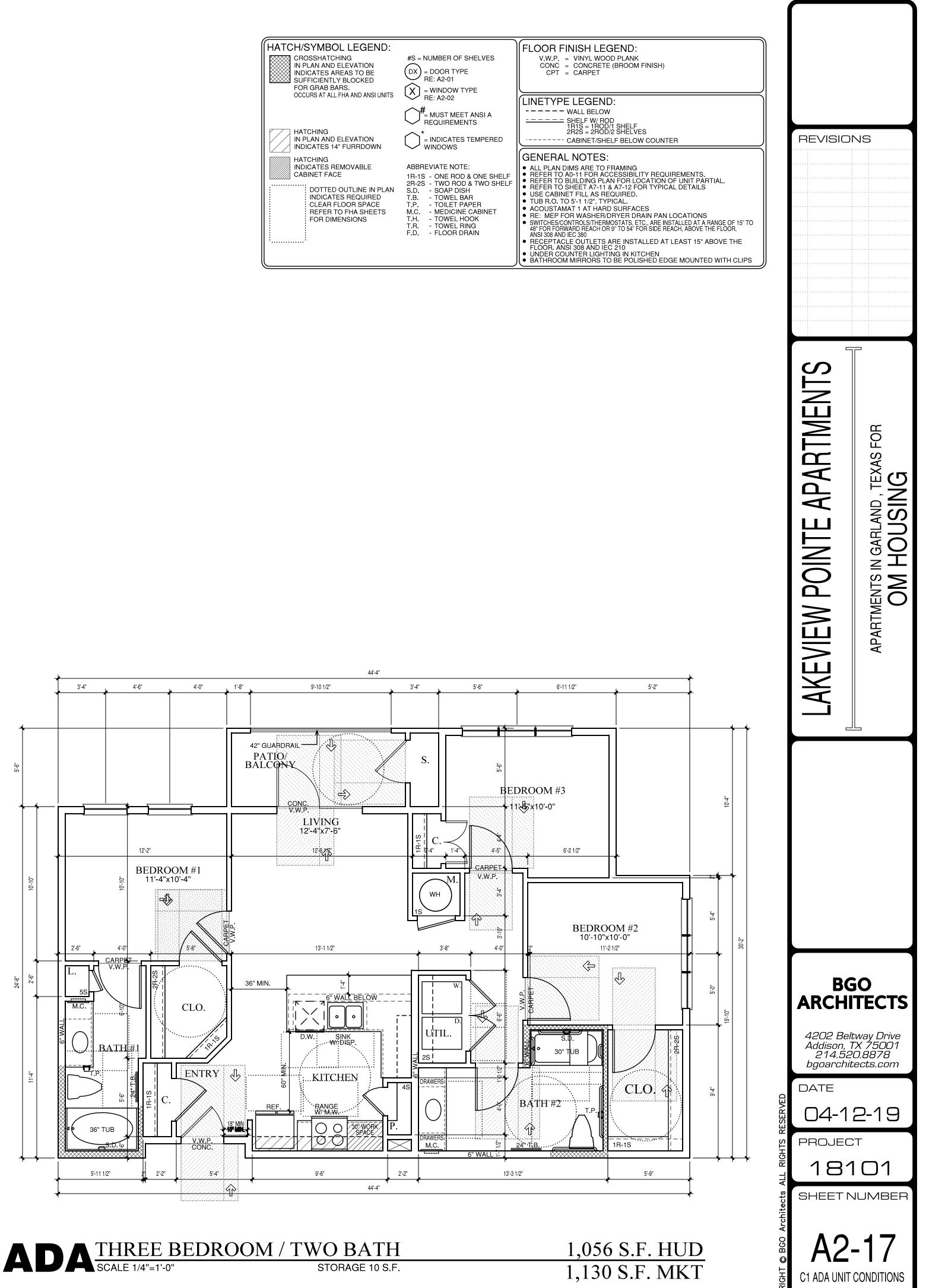


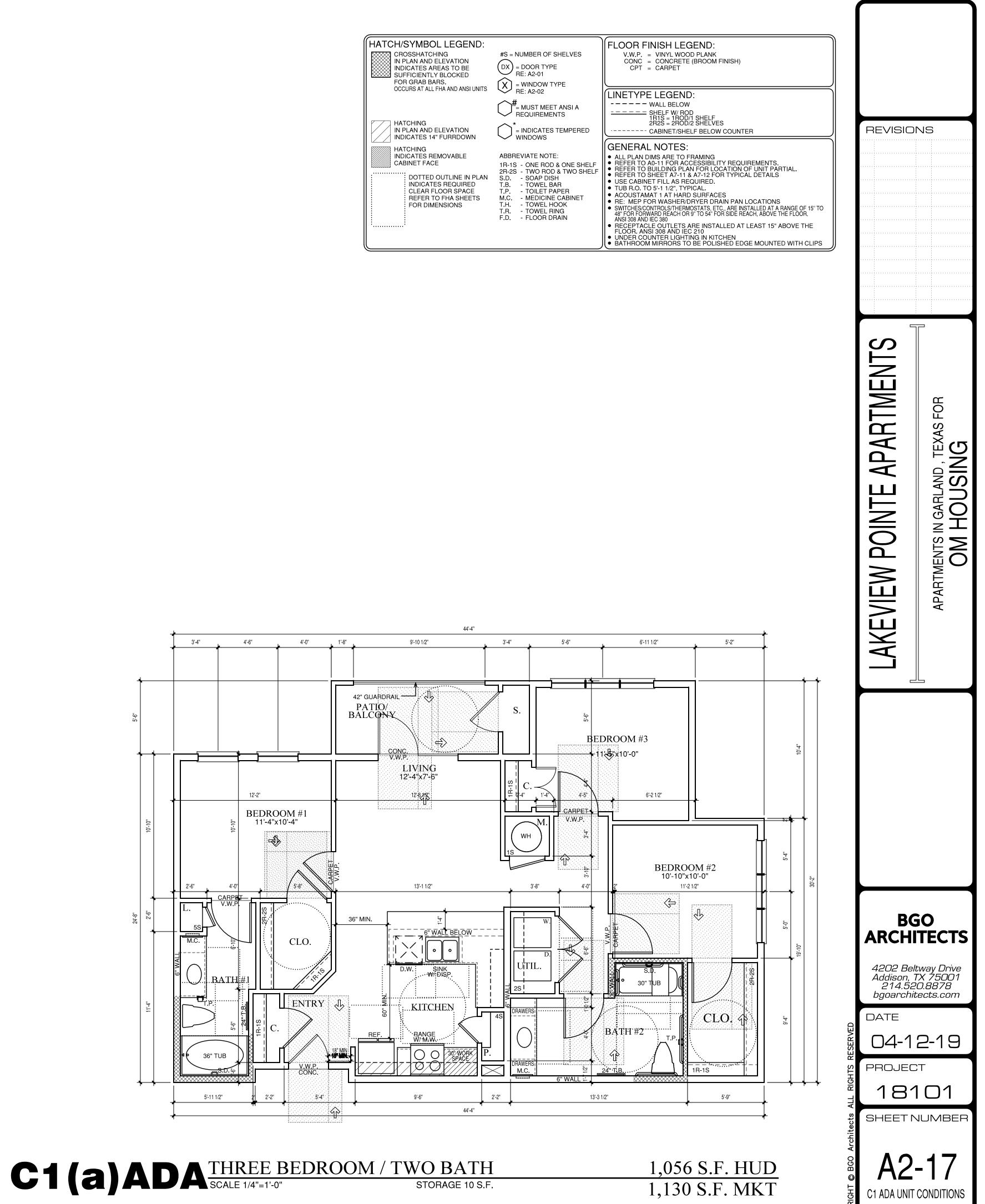
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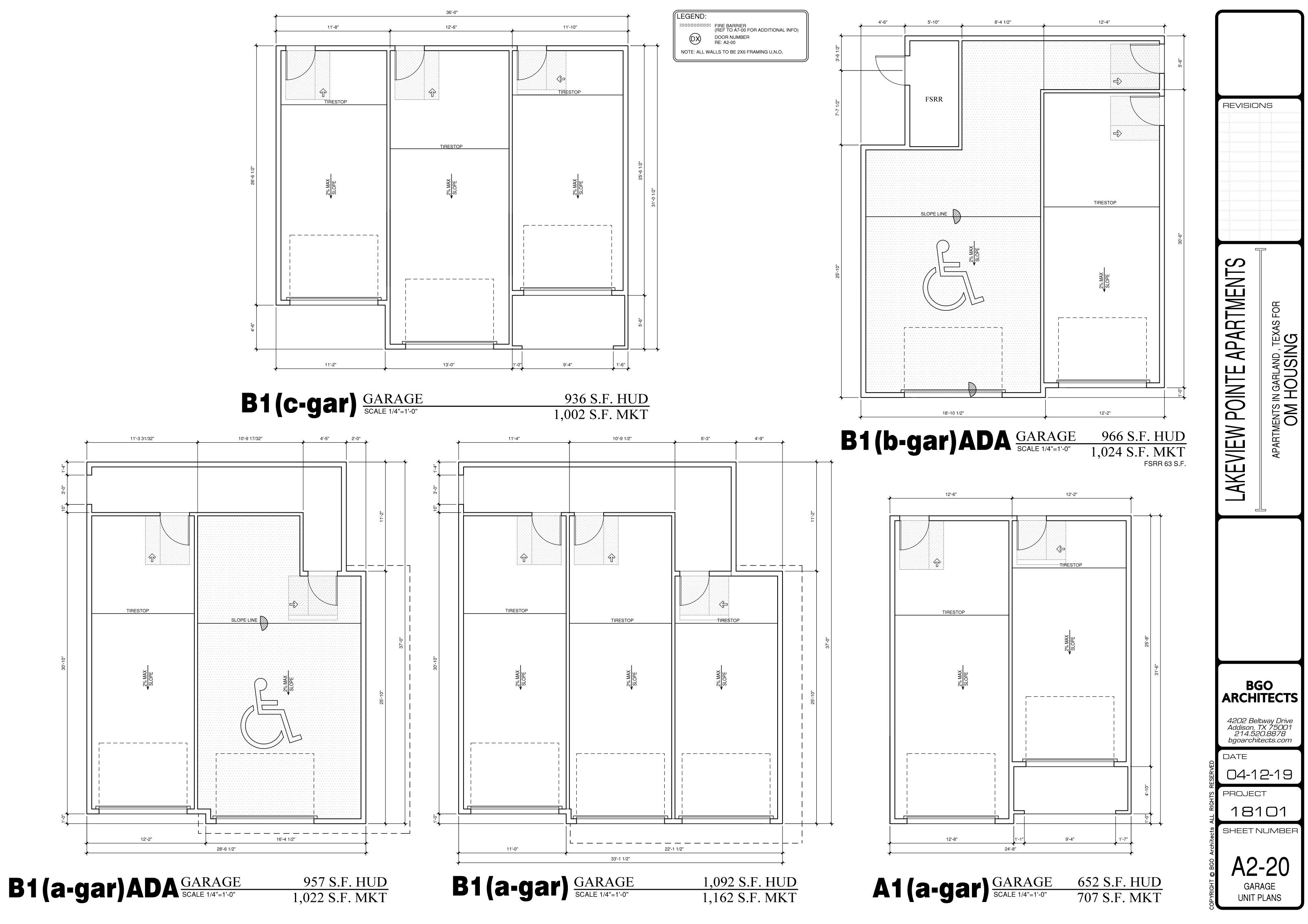


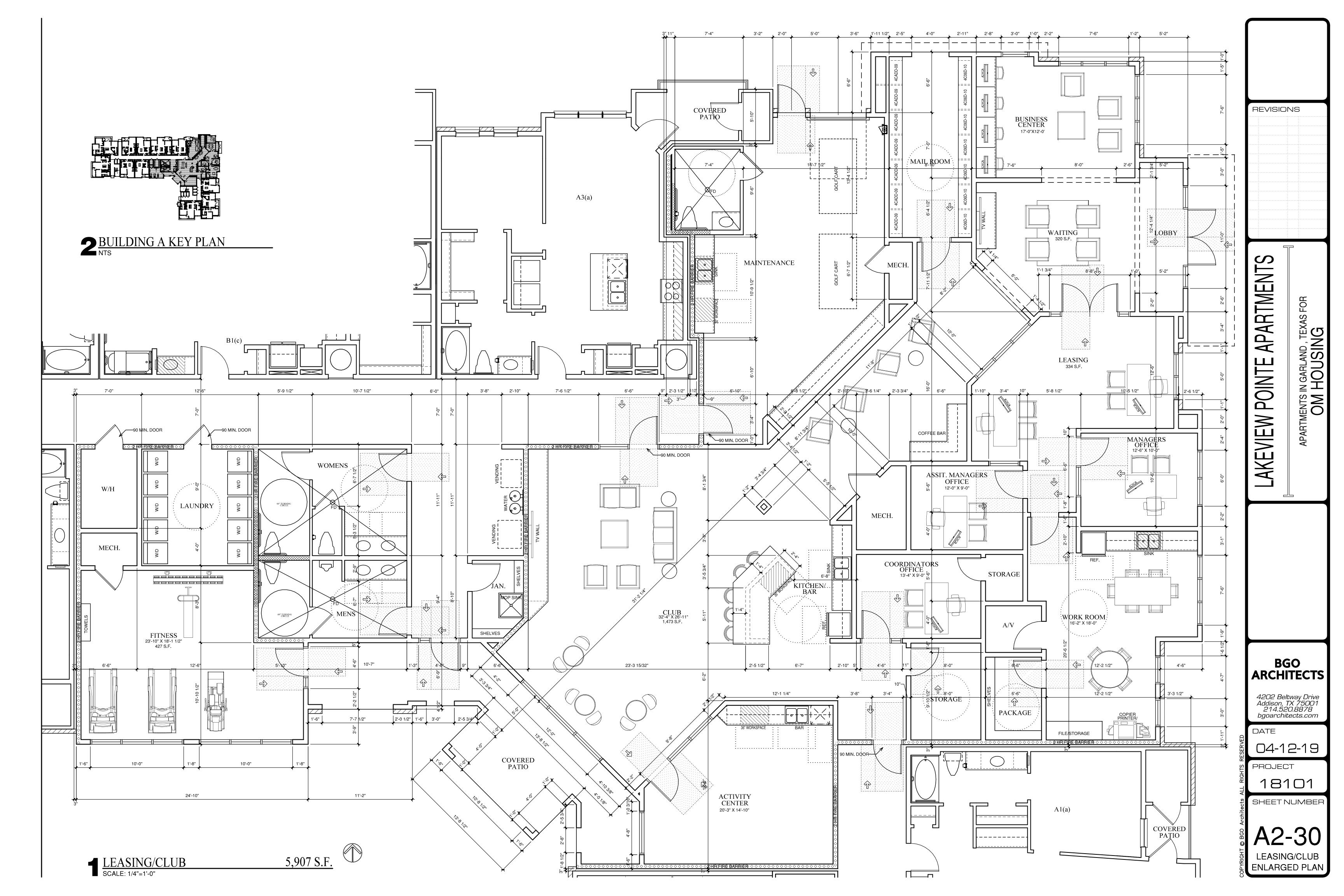


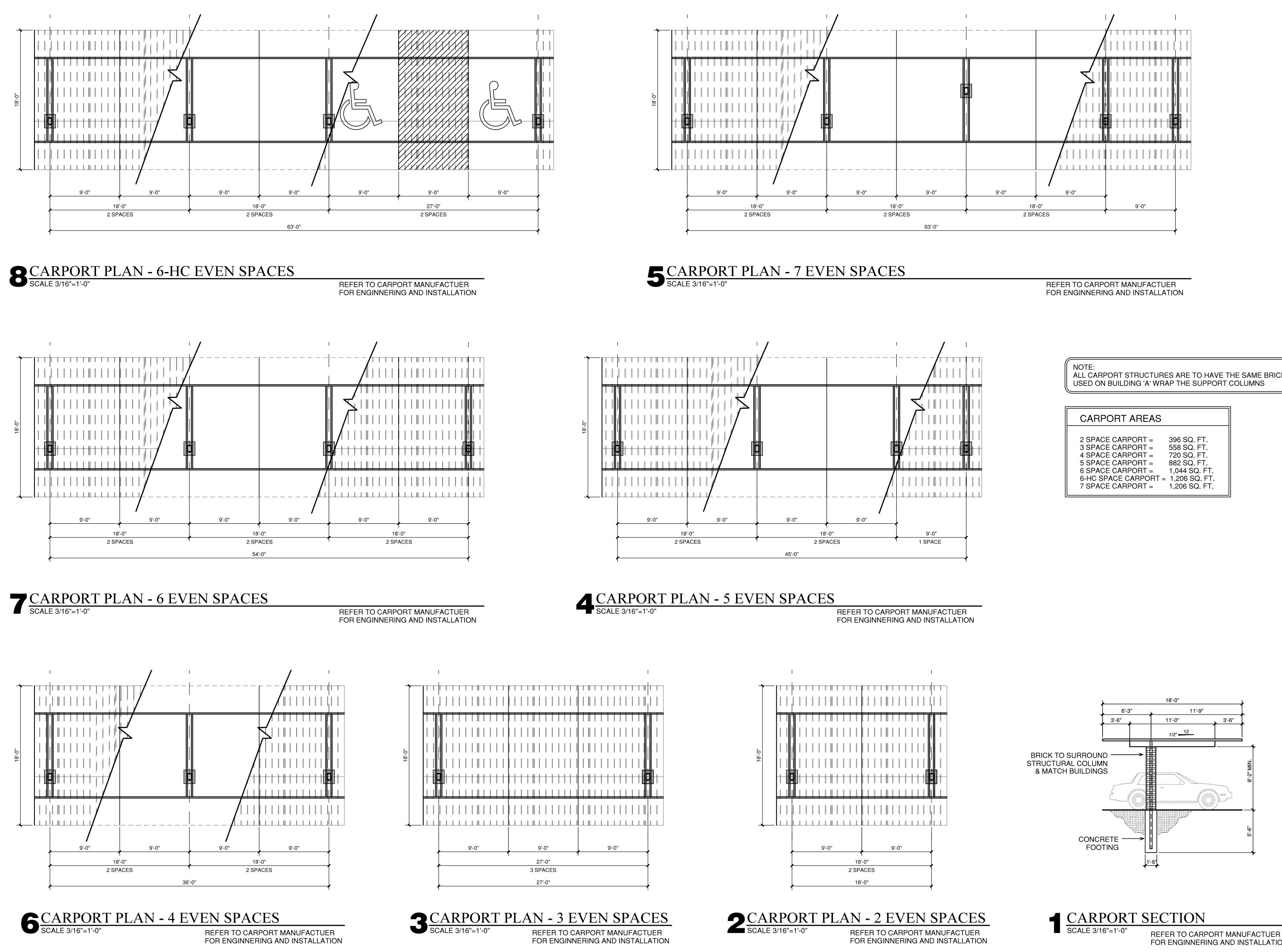






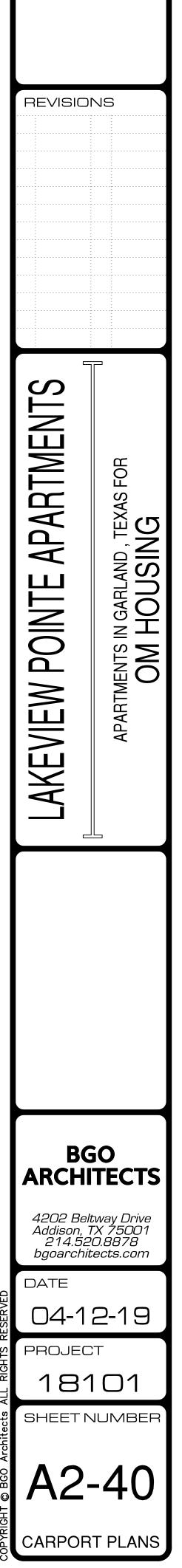






ALL CARPORT STRUCTURES ARE TO HAVE THE SAME BRICK USED ON BUILDING 'A' WRAP THE SUPPORT COLUMNS

CARPORT AREAS	
2 SPACE CARPORT = 3 SPACE CARPORT = 4 SPACE CARPORT = 5 SPACE CARPORT = 6 SPACE CARPORT = 6-HC SPACE CARPORT = 7 SPACE CARPORT =	396 SQ. FT. 558 SQ. FT. 720 SQ. FT. 882 SQ. FT. 1,044 SQ. FT. 1,206 SQ. FT. 1,206 SQ. FT.

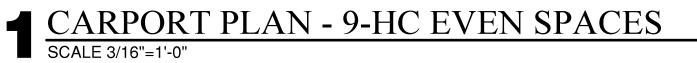


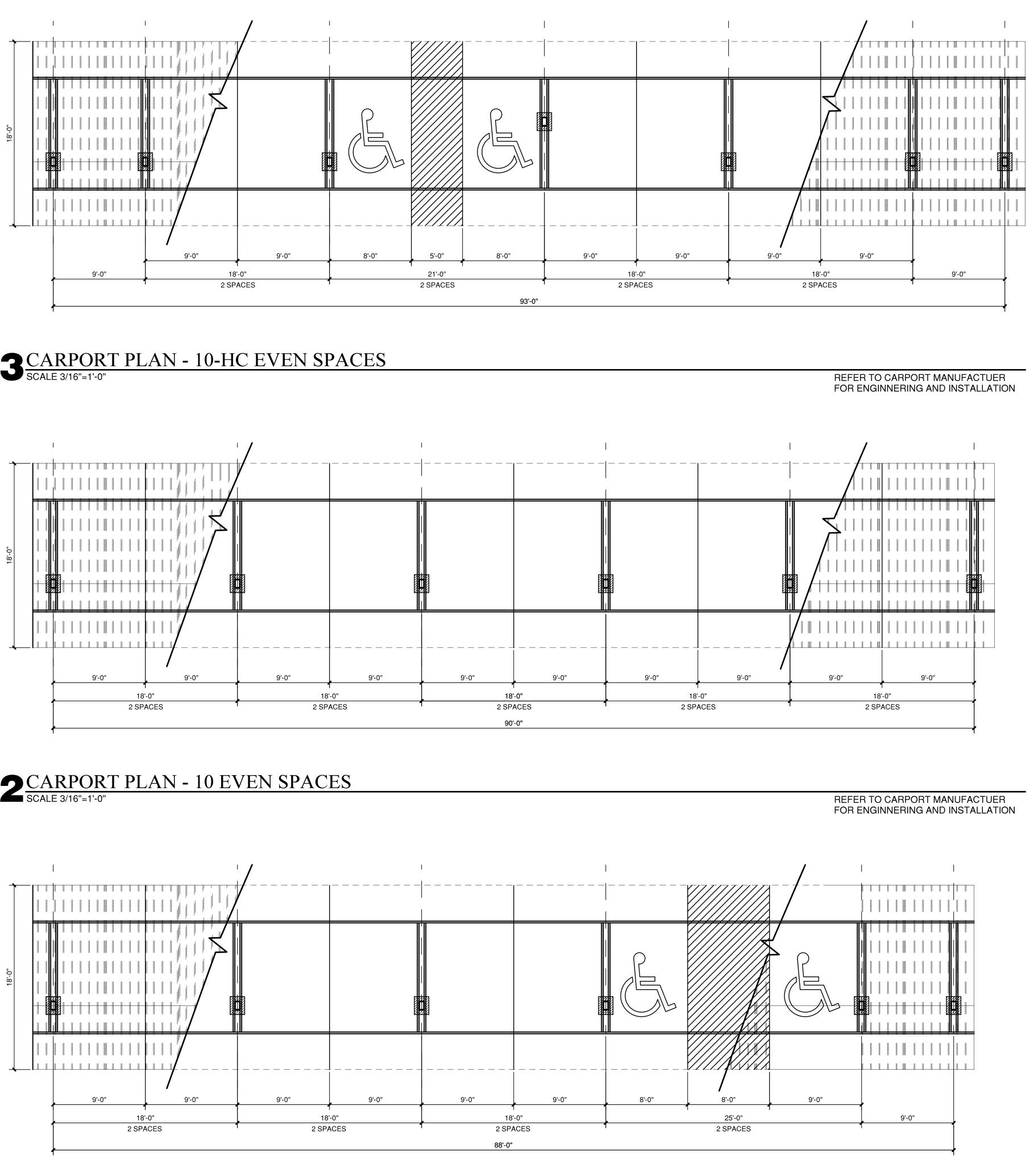
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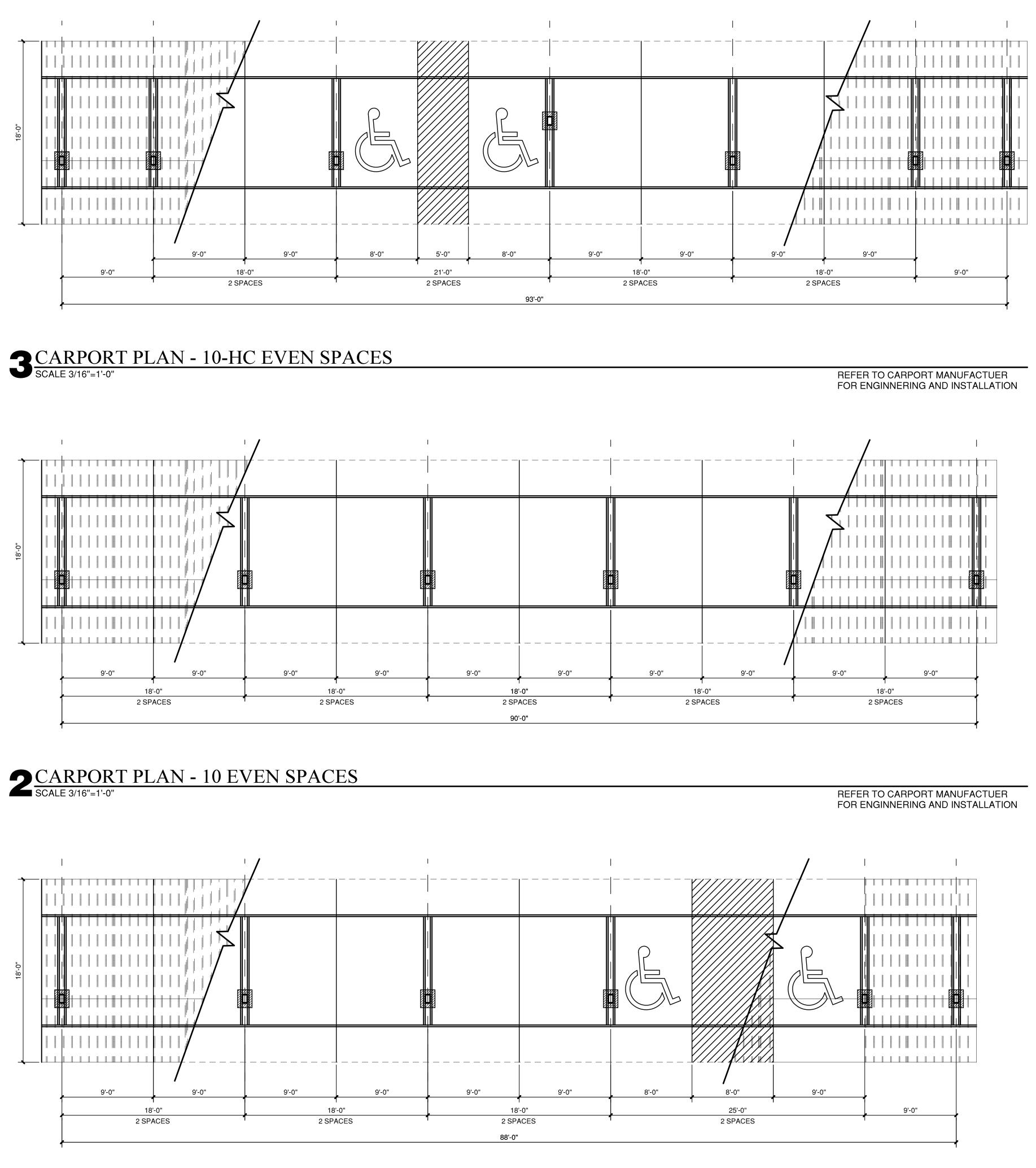
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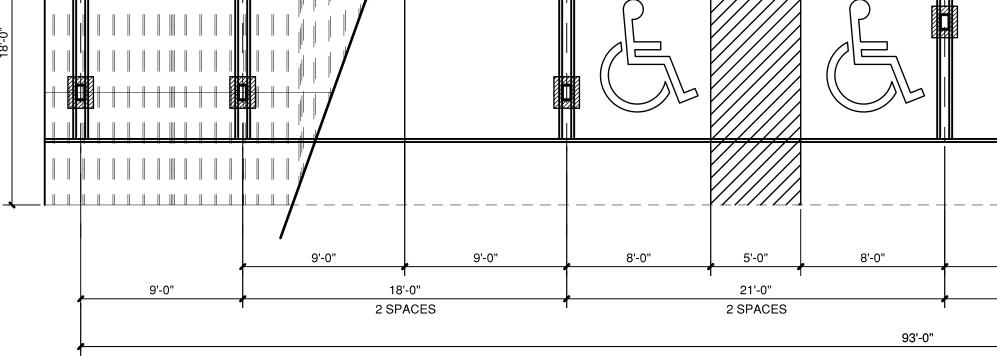
CARPORT AREAS

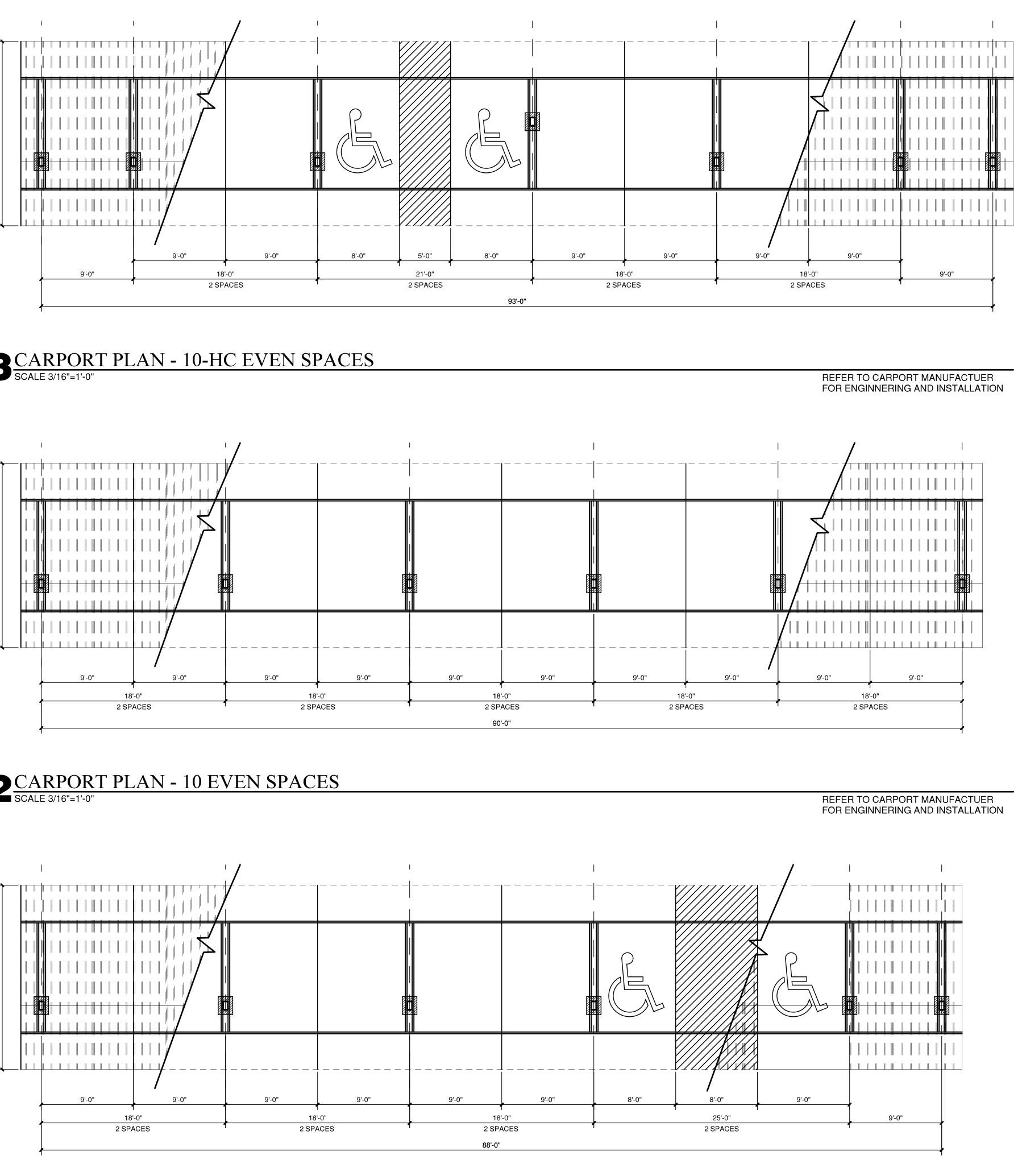
9-HC SPACE CARPORT =	1,656 SQ. FT.
10-HC SPACE CARPORT =	1,692 SQ. FT.
10-HC SPACE CARPORT =	1,746 SQ. FT.

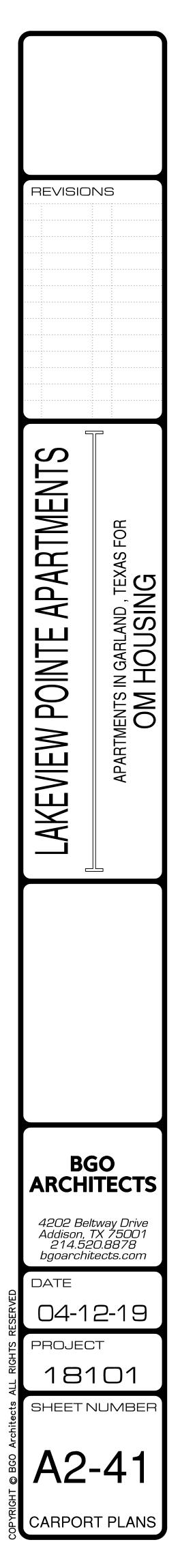


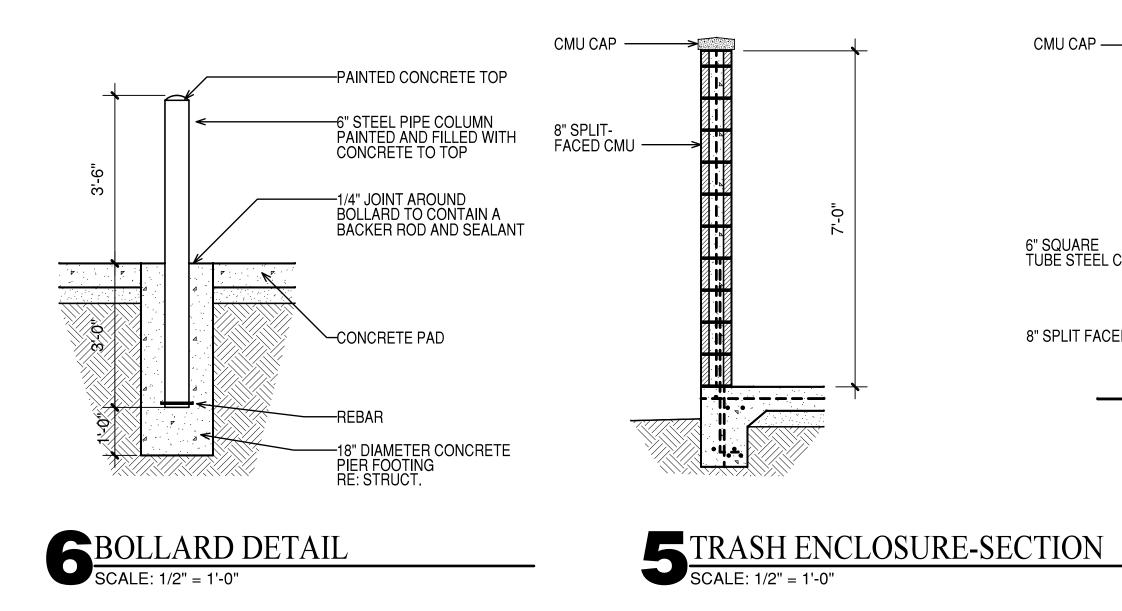


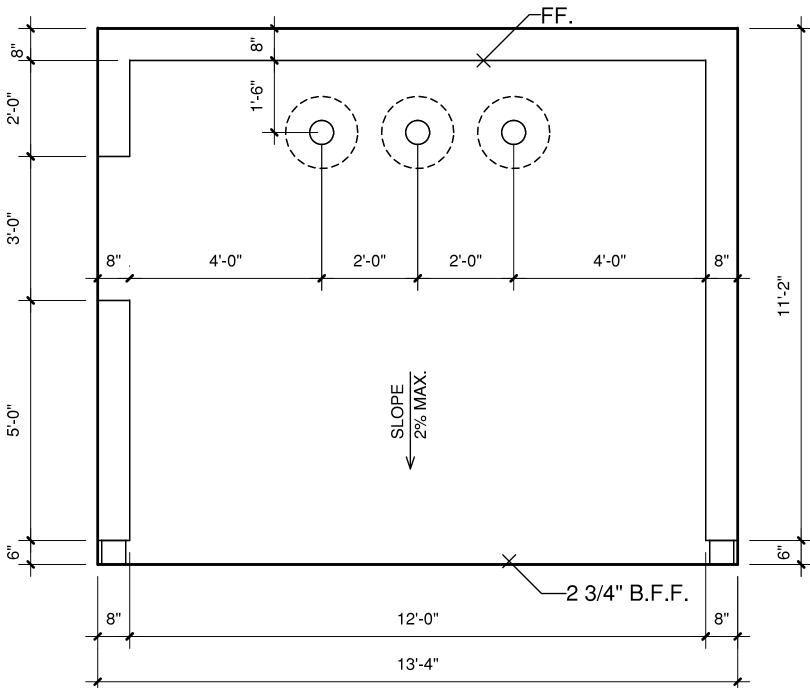




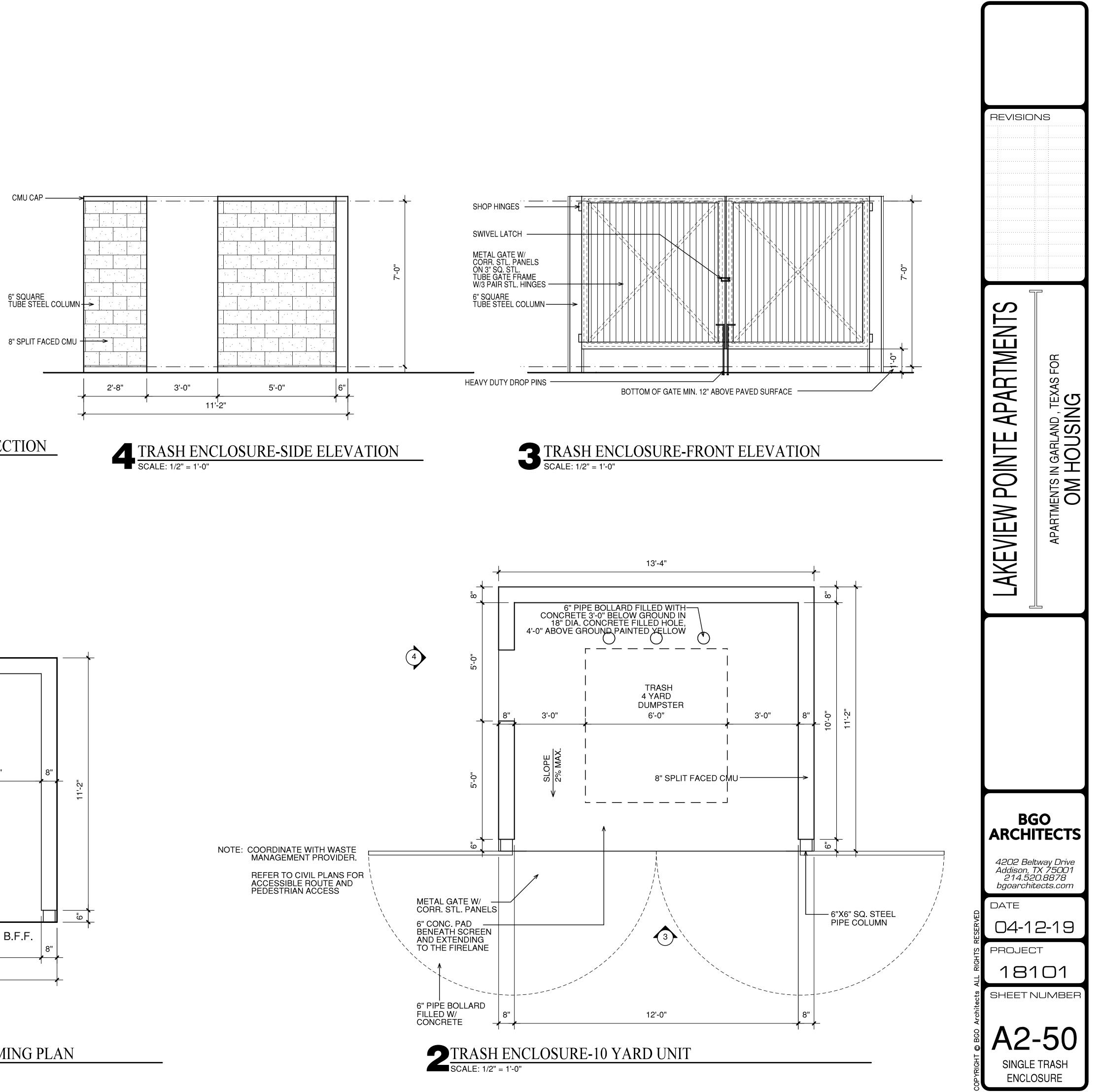






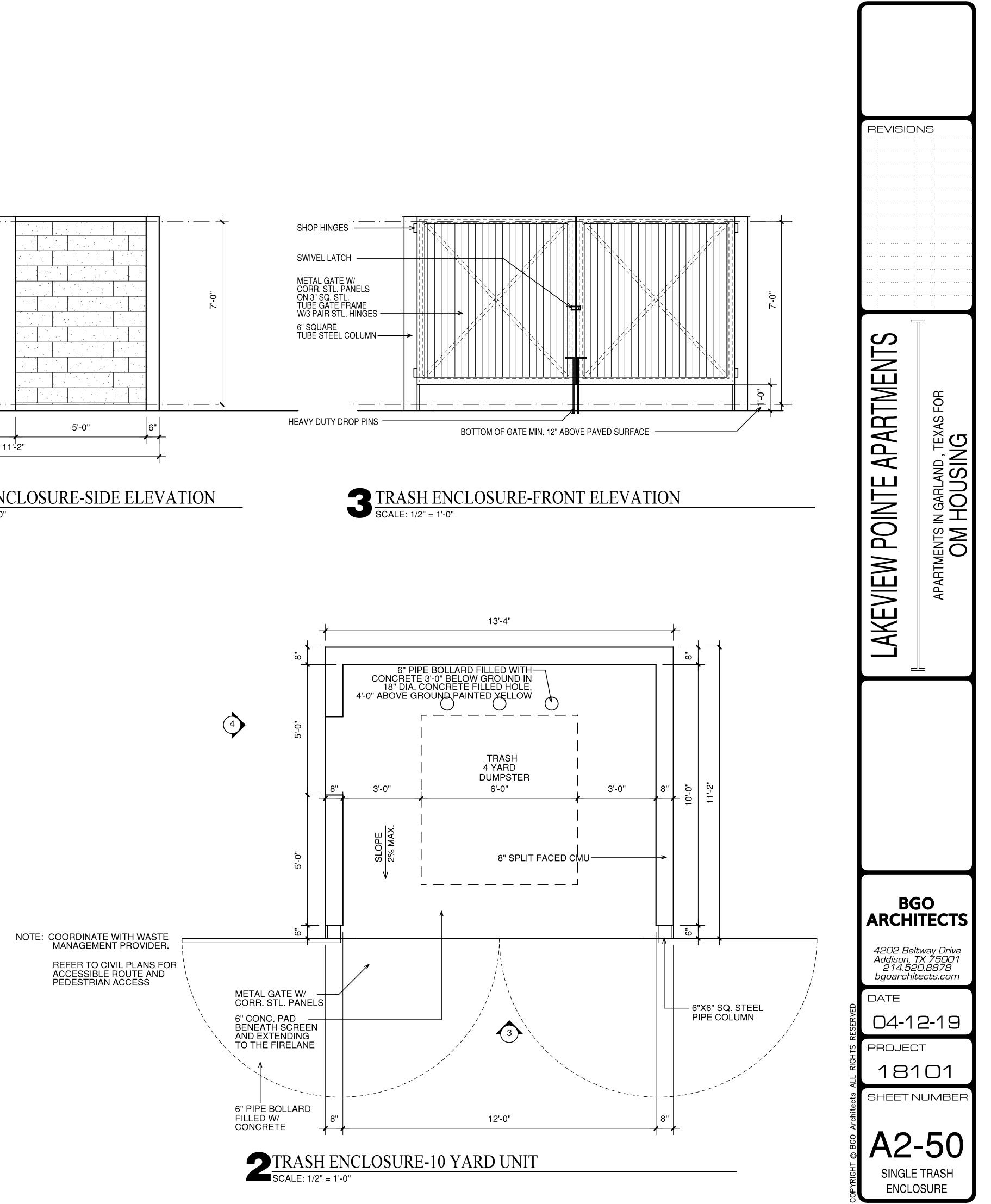


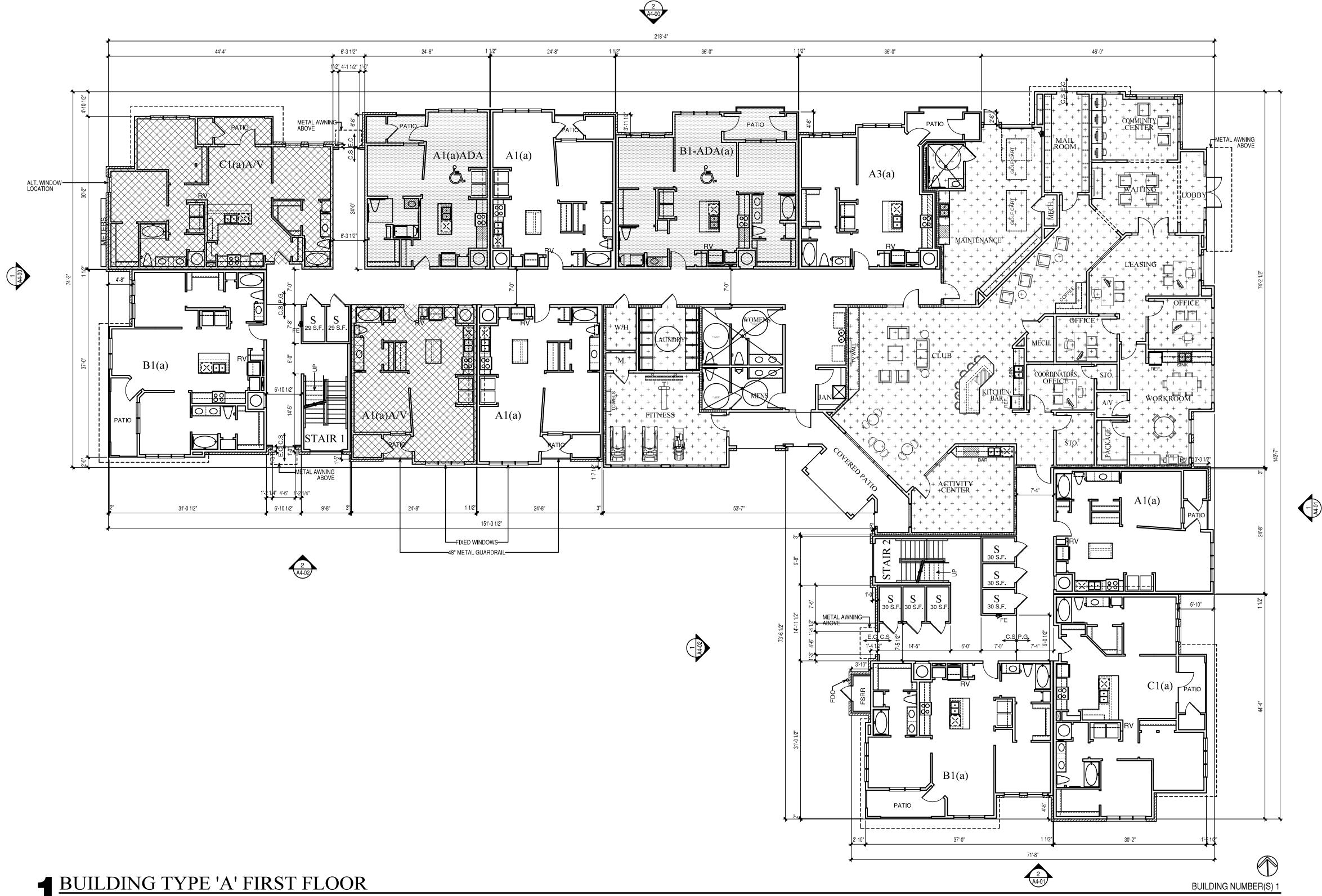
TRASH ENCLOSURE-10 YARD UNIT - FORMING PLAN SCALE: 1/2" = 1'-0"



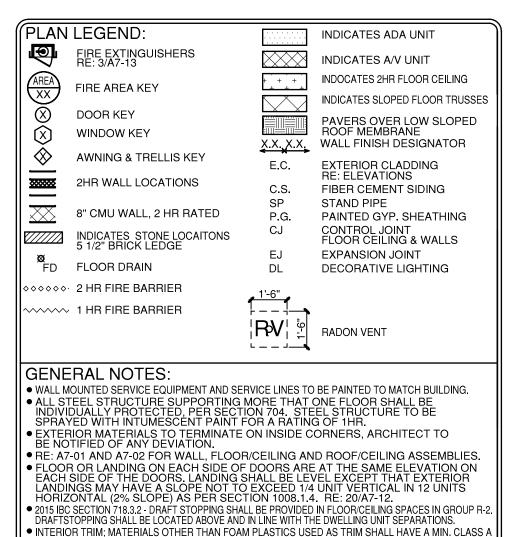






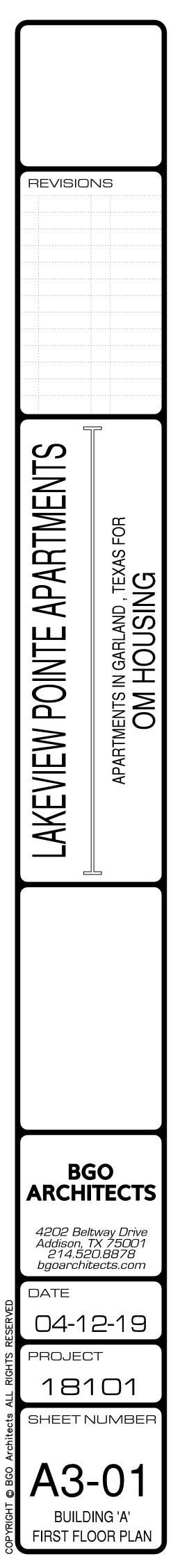


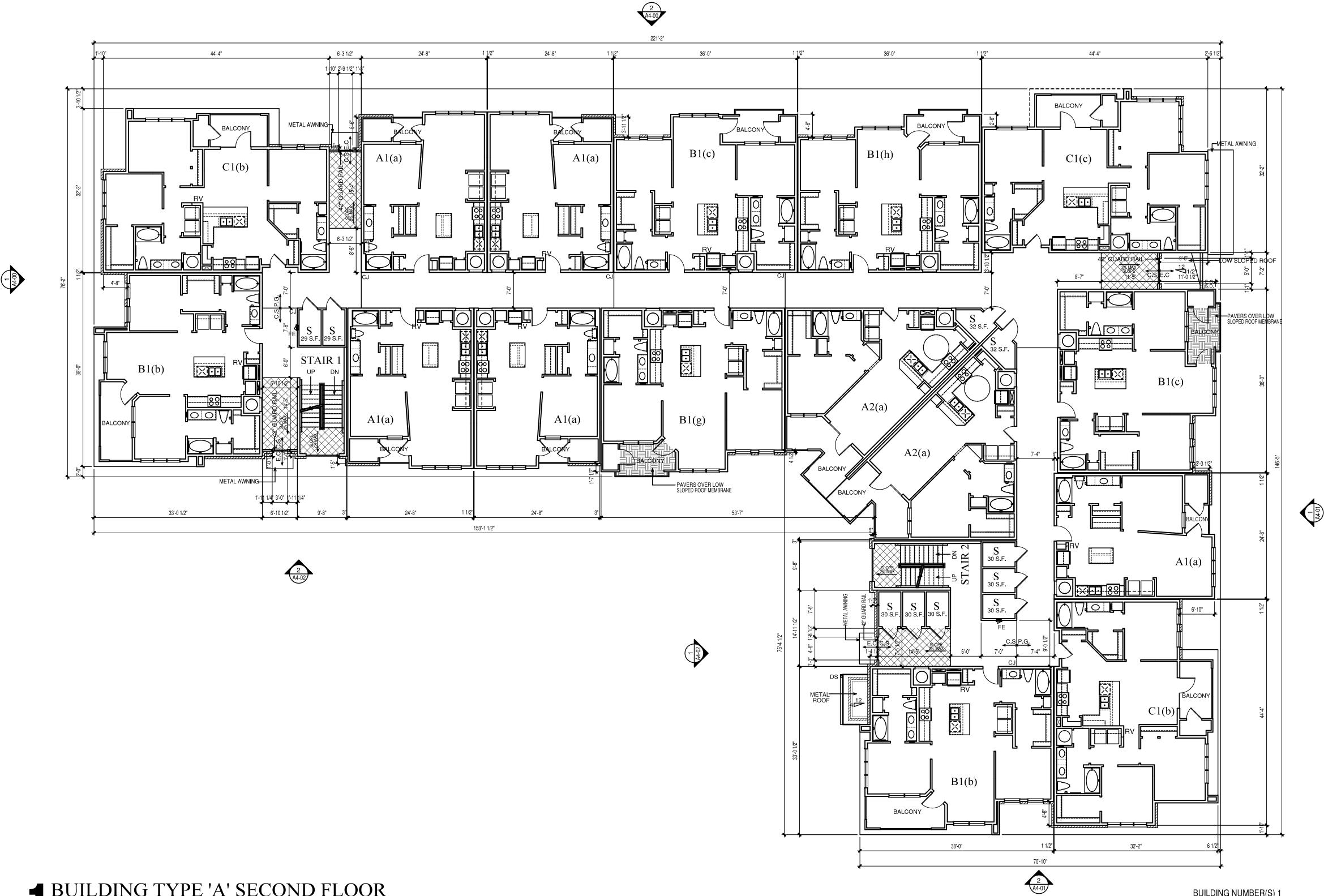




- INTERIOR TRIM; MATERIALS OTHER THAN FOAM PLASTICS USED AS TRIM SHALL HAVE A MIN. CLASS A FLAME SPREAD (0-25) & SMOKE-DEVELOPED INDEX (0-450) PER ASTM E-84 OR UL 723.
 COMBUSTIBLE TRIM, EXCLUDING HANDRAILS & GUARDRAILS, SHALL NOT EXCEED 10% OF THE AGGREGATE WALL OR CEILING AREA IN WHICH IT IS LOCATED (NFPA 701).
 ALL FURRDOWNS TO BE METAL STUD OR OTHER NON COMBUSTIBLE MATERIAL.

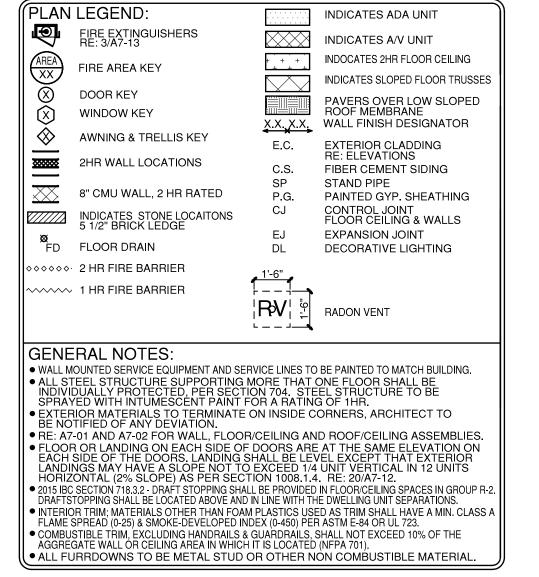
GROSS S.F.	
1ST FLOOR	19,179 s.f.
2ND FLOOR	19,205 s.f.
3RD FLOOR	19,205 s.f.
TOTAL S.F.	57,589 S.F.

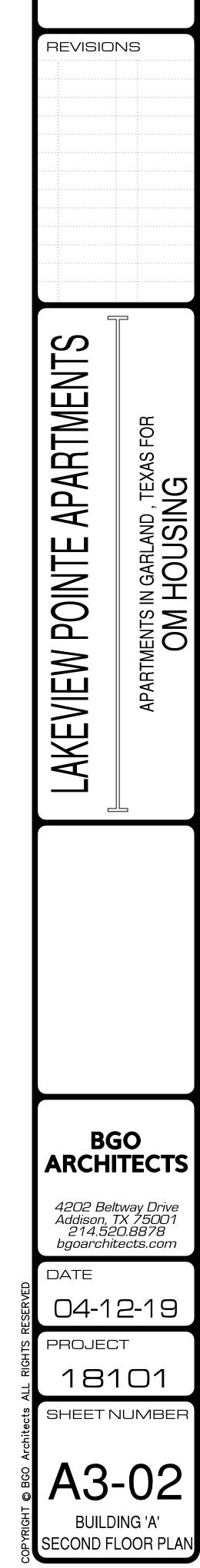


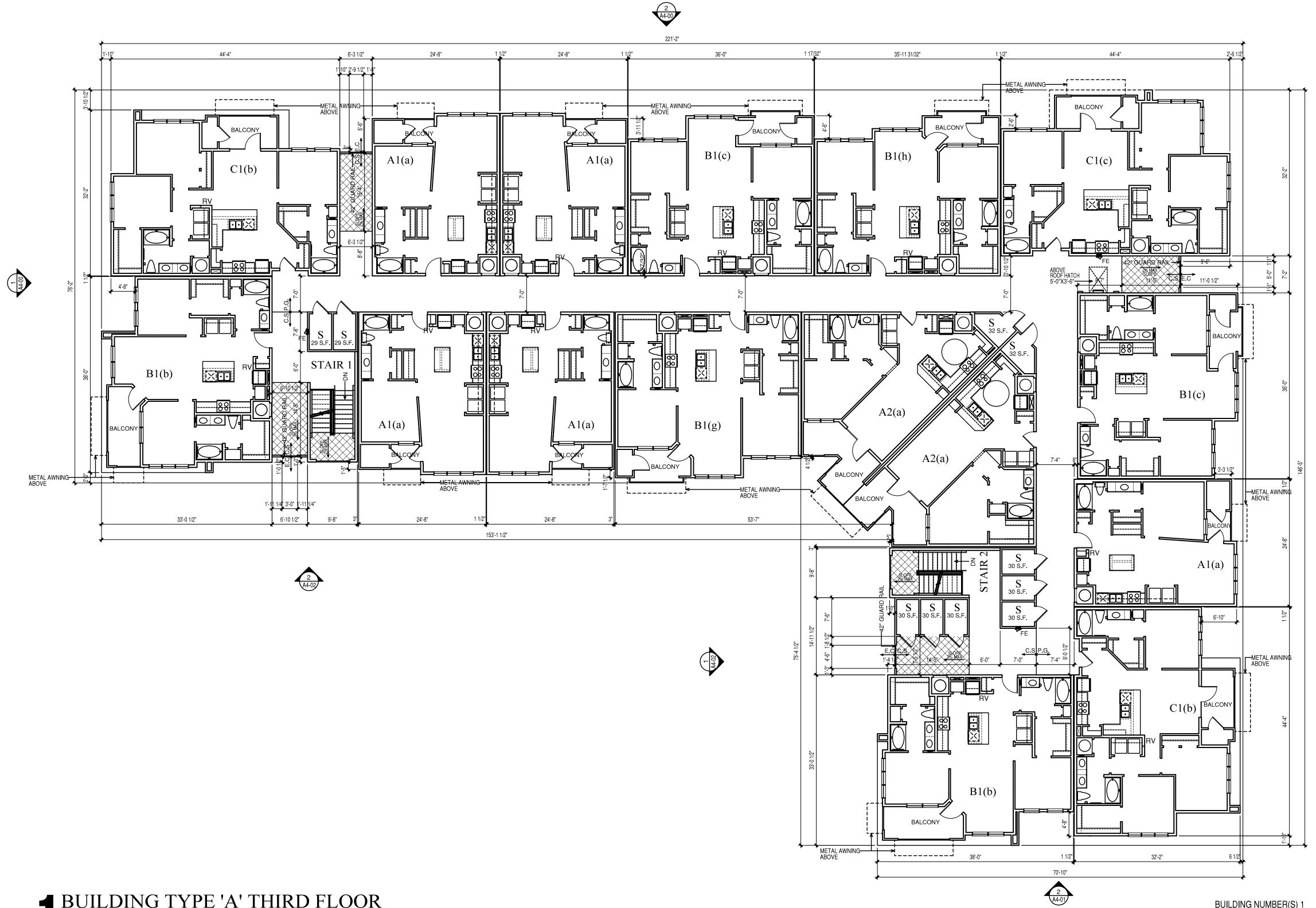




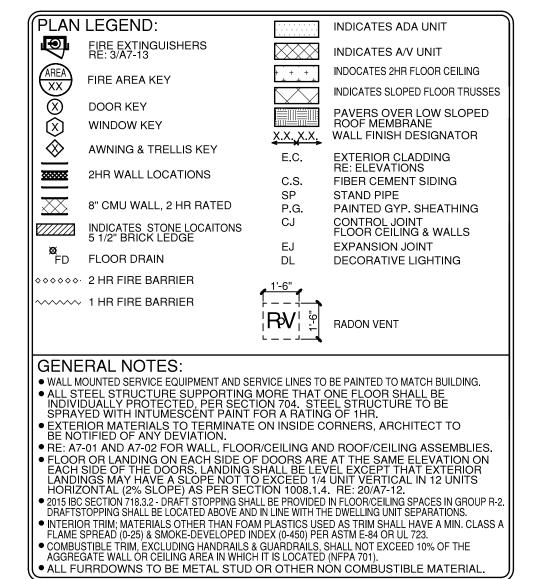


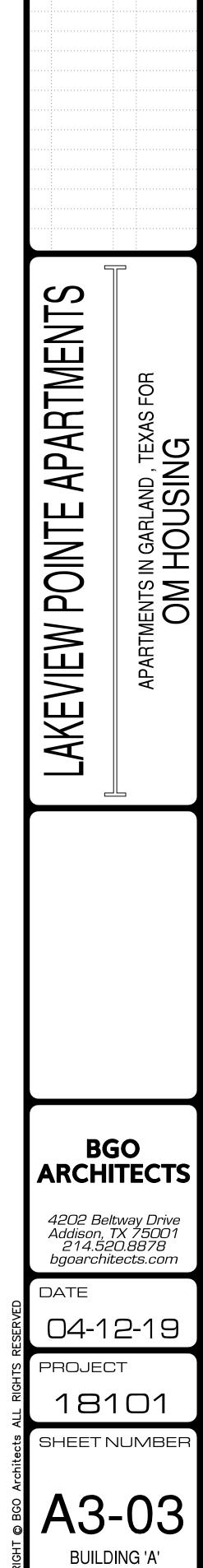






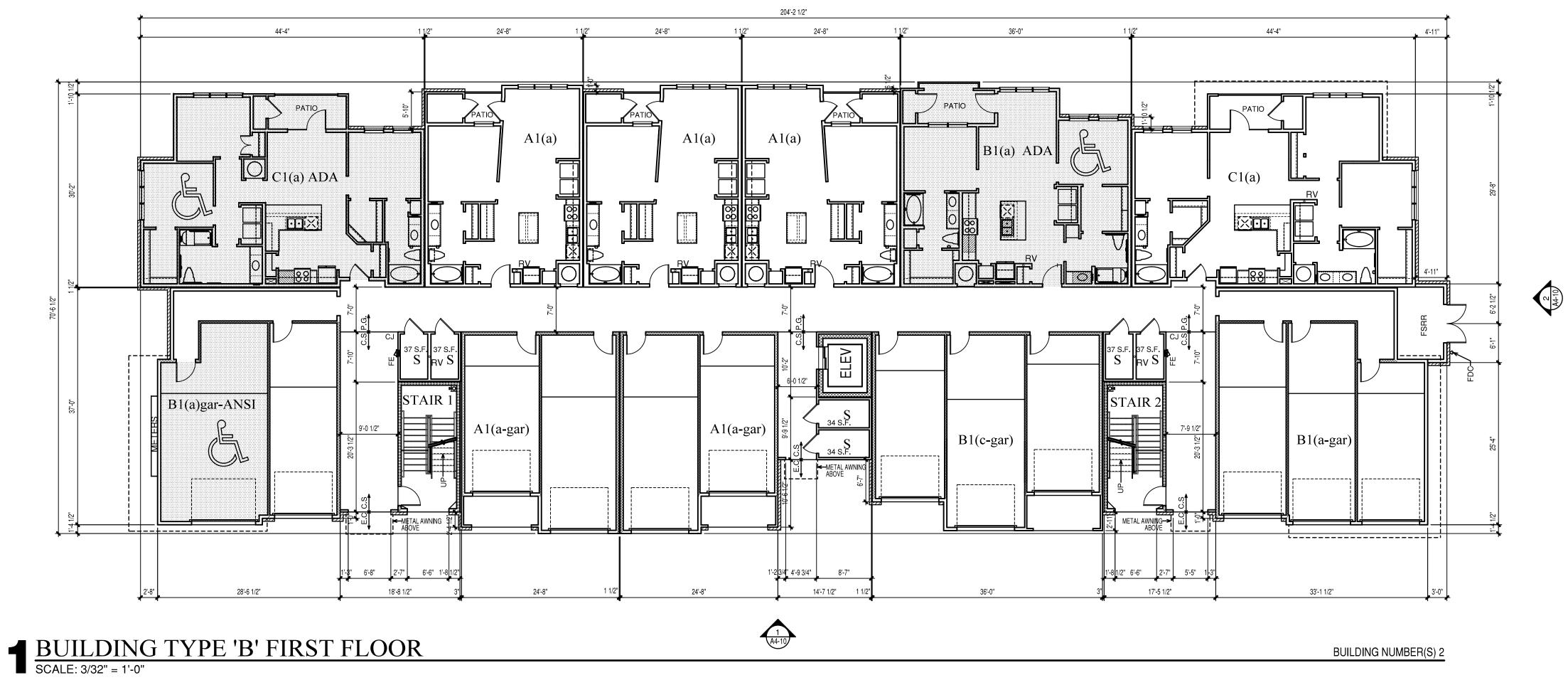






THIRD FLOOR PLAN

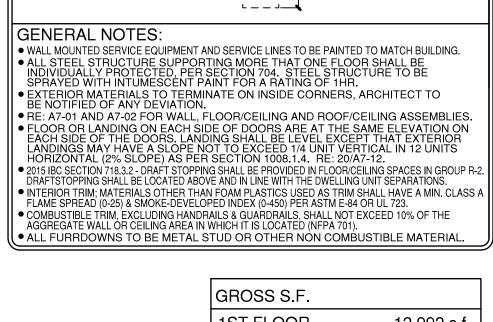
REVISIONS



2



1 A4-11



INDICATES ADA UNIT

INDOCATES 2HR FLOOR CEILING

INDICATES SLOPED FLOOR TRUSSES

EXTERIOR CLADDING RE: ELEVATIONS

EXPANSION JOINT

DECORATIVE LIGHTING

FIBER CEMENT SIDING

PAINTED GYP. SHEATHING CONTROL JOINT FLOOR CEILING & WALLS

X.X.X.X. WALL FINISH DESIGNATOR

STAND PIPE

INDICATES A/V UNIT

+ + + +

E.C.

C.S.

SP

CJ

EJ

DL

<u>+ - - +</u>

P.G.

(PLAN LEGEND:

AREA

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FIRE EXTINGUISHERS

DOOR KEY WINDOW KEY

2HR WALL LOCATIONS

Ø FD FLOOR DRAIN

◇◇◇◇◇◇ 2 HR FIRE BARRIER

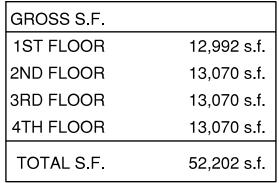
1 HR FIRE BARRIER

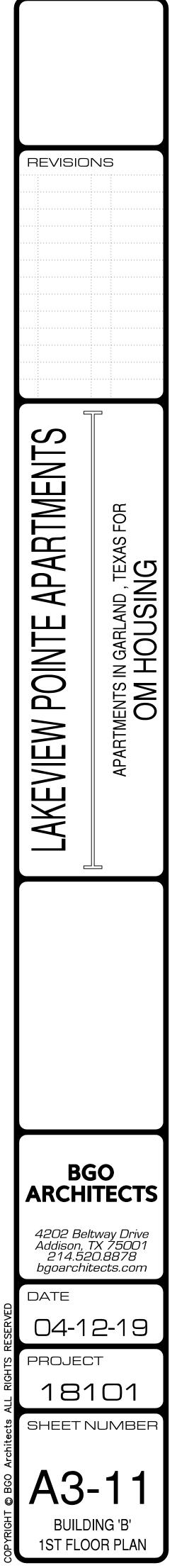
INDICATES STONE LOCAITONS 5 1/2" BRICK LEDGE

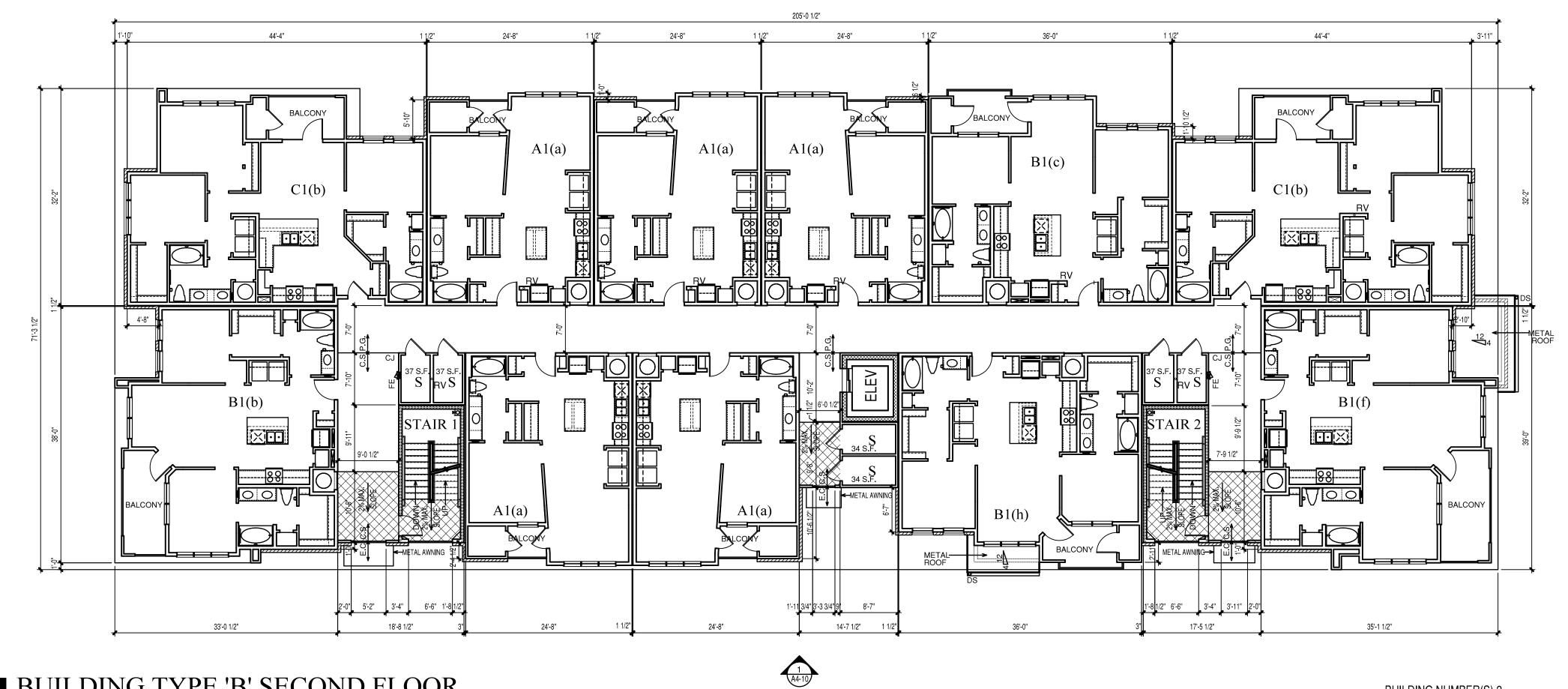
FIRE AREA KEY

AWNING & TRELLIS KEY

8" CMU WALL, 2 HR RATED





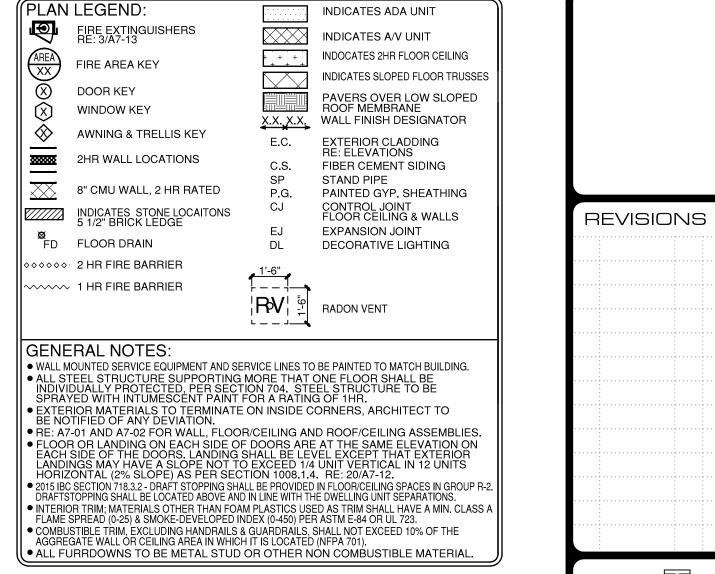


BUILDING TYPE 'B' SECOND FLOOR SCALE: 3/32" = 1'-0"

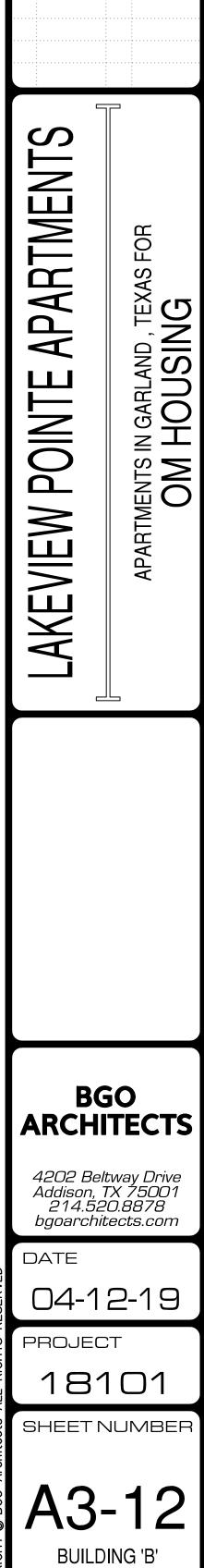
A4-11



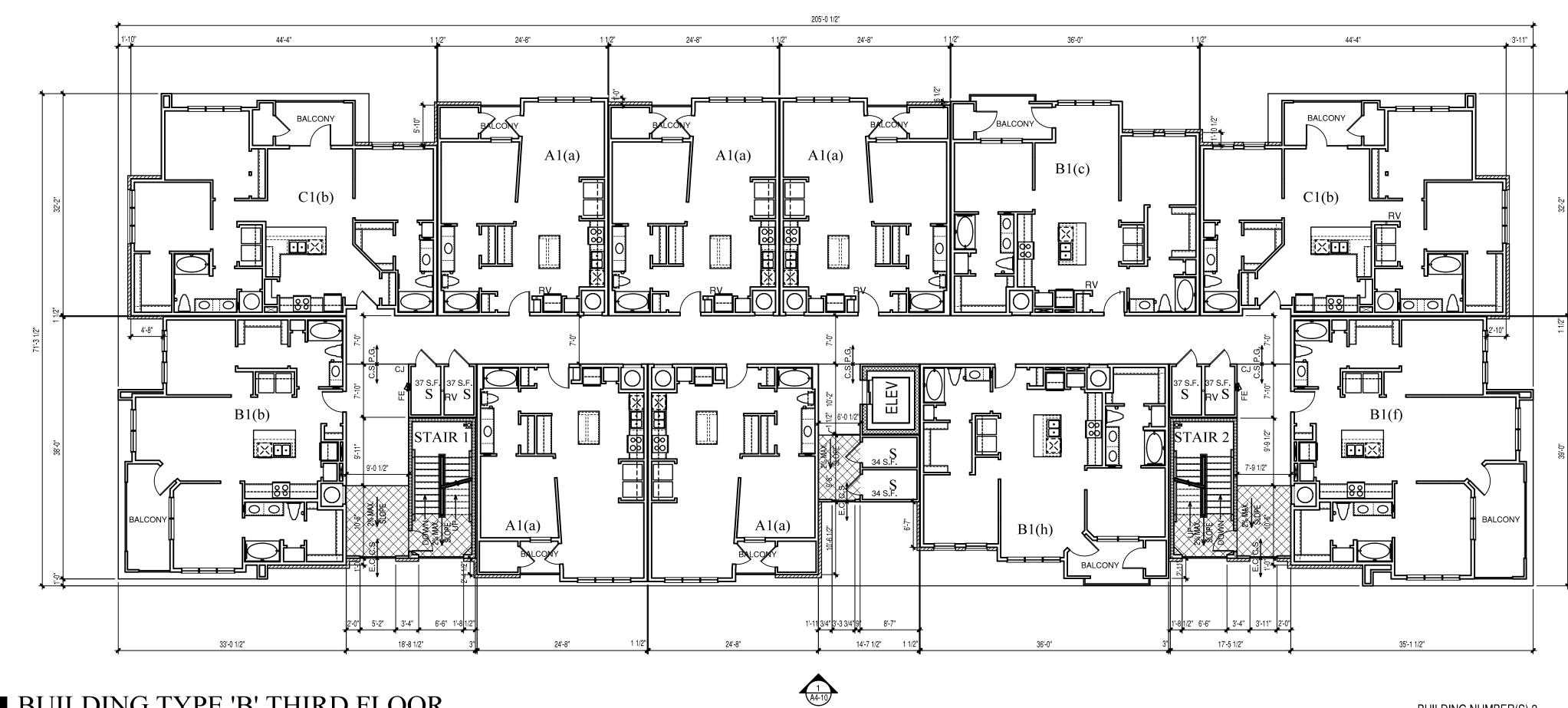
1 A4-11







2ND FLOOR PLAN

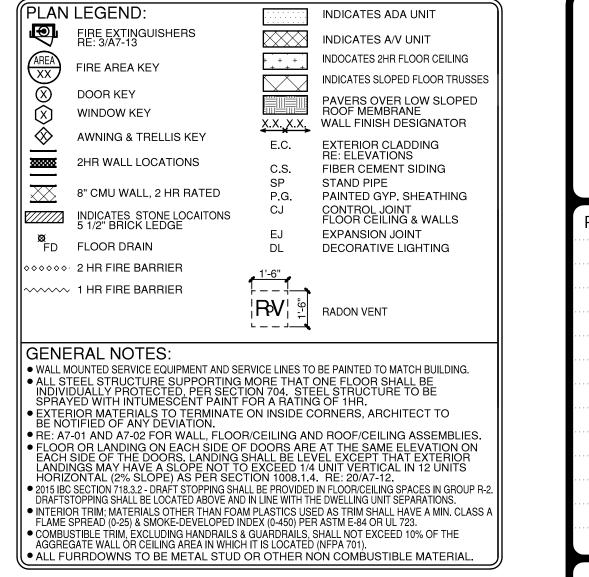


BUILDING TYPE 'B' THIRD FLOOR SCALE: 3/32" = 1'-0"

A4-11



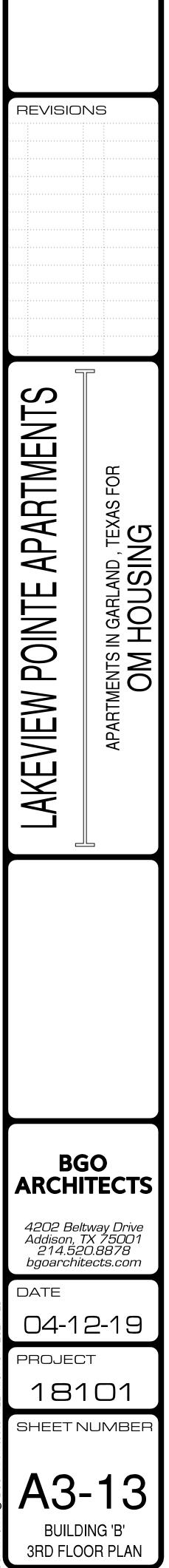
1 A4-11

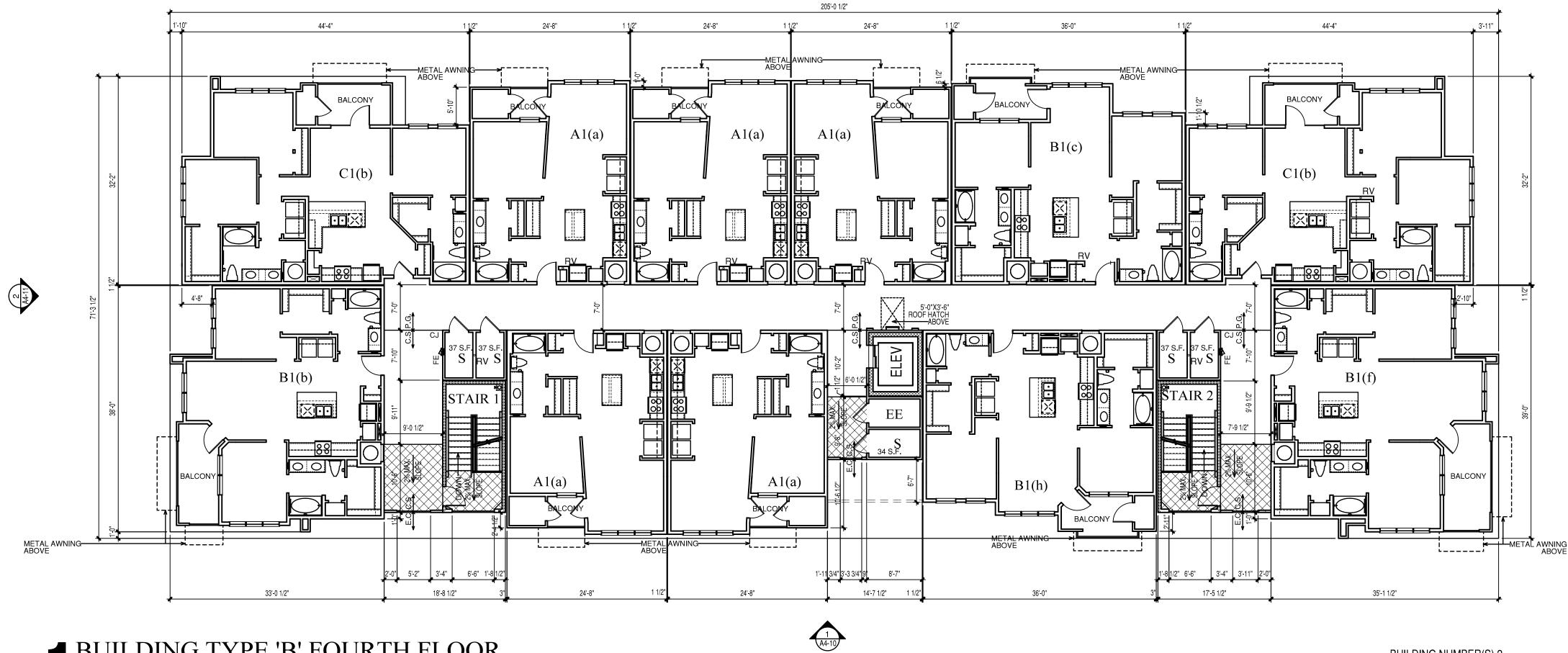








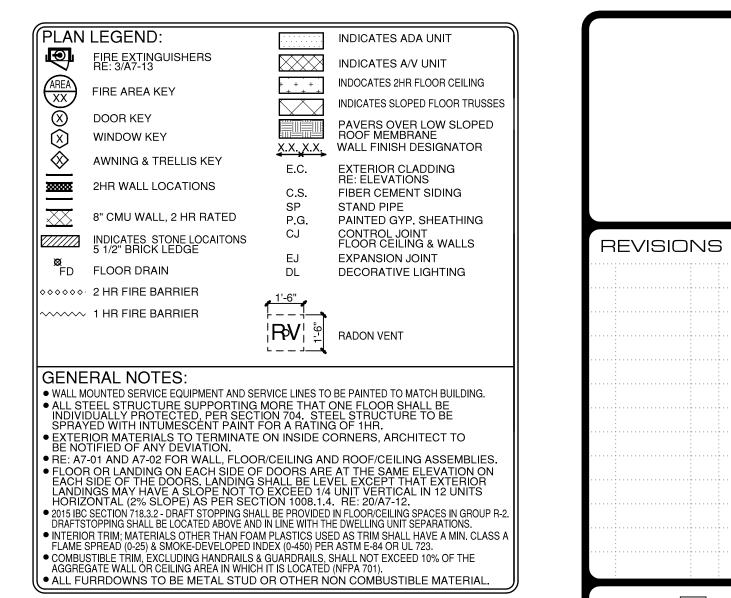




BUILDING TYPE 'B' FOURTH FLOOR SCALE: 3/32" = 1'-0"



1 A4-11





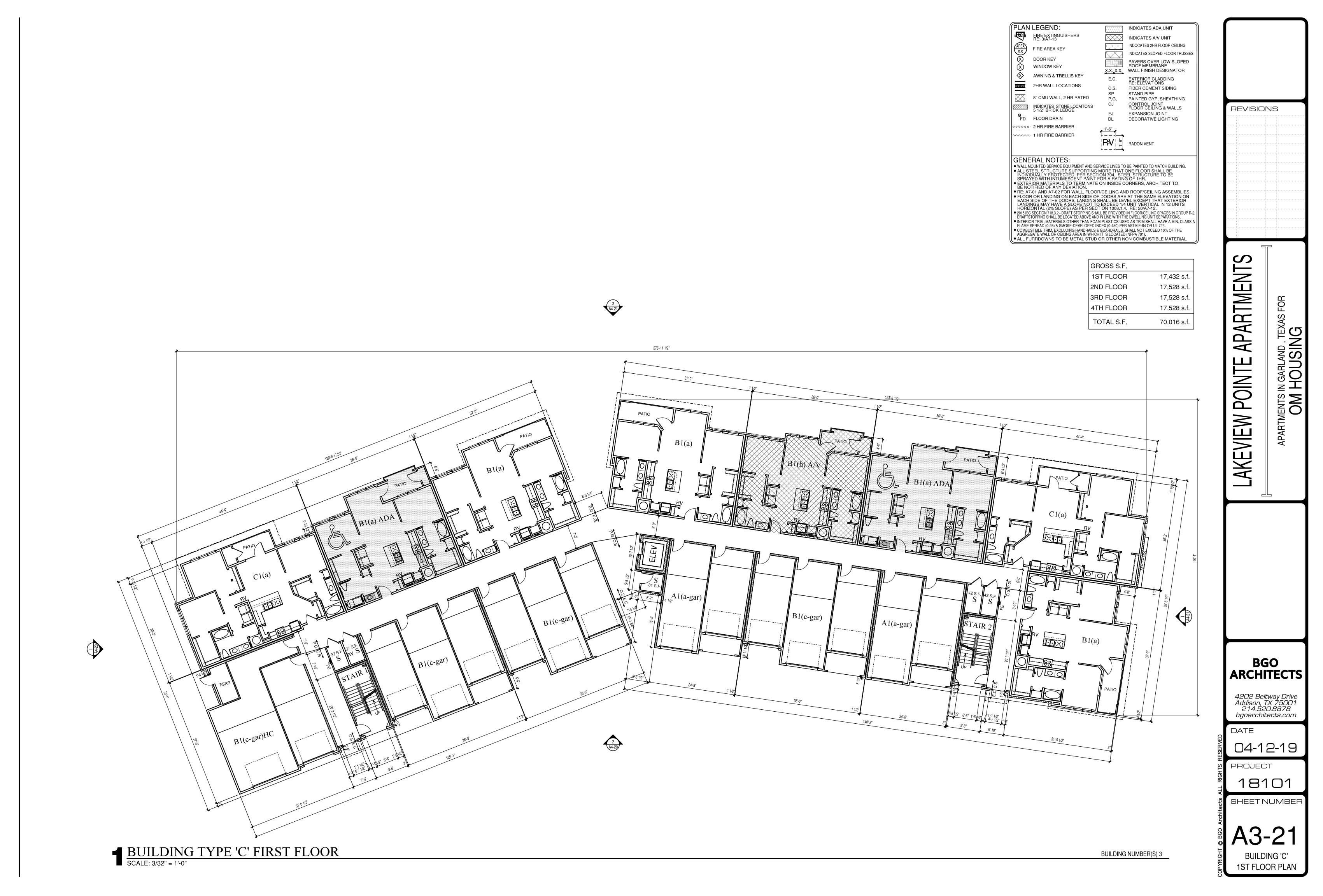


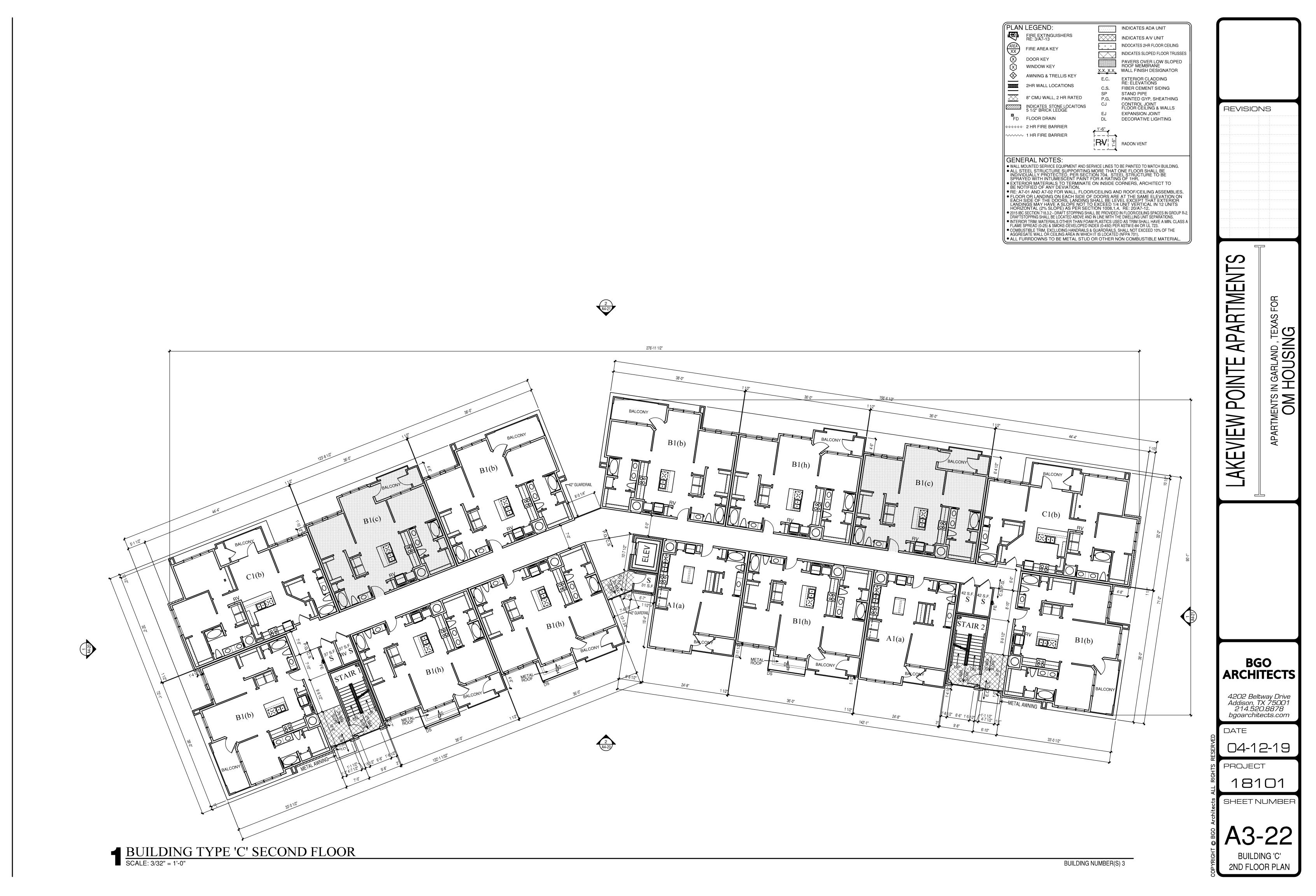
(EVIEW POINTE APARTMENTS</u>

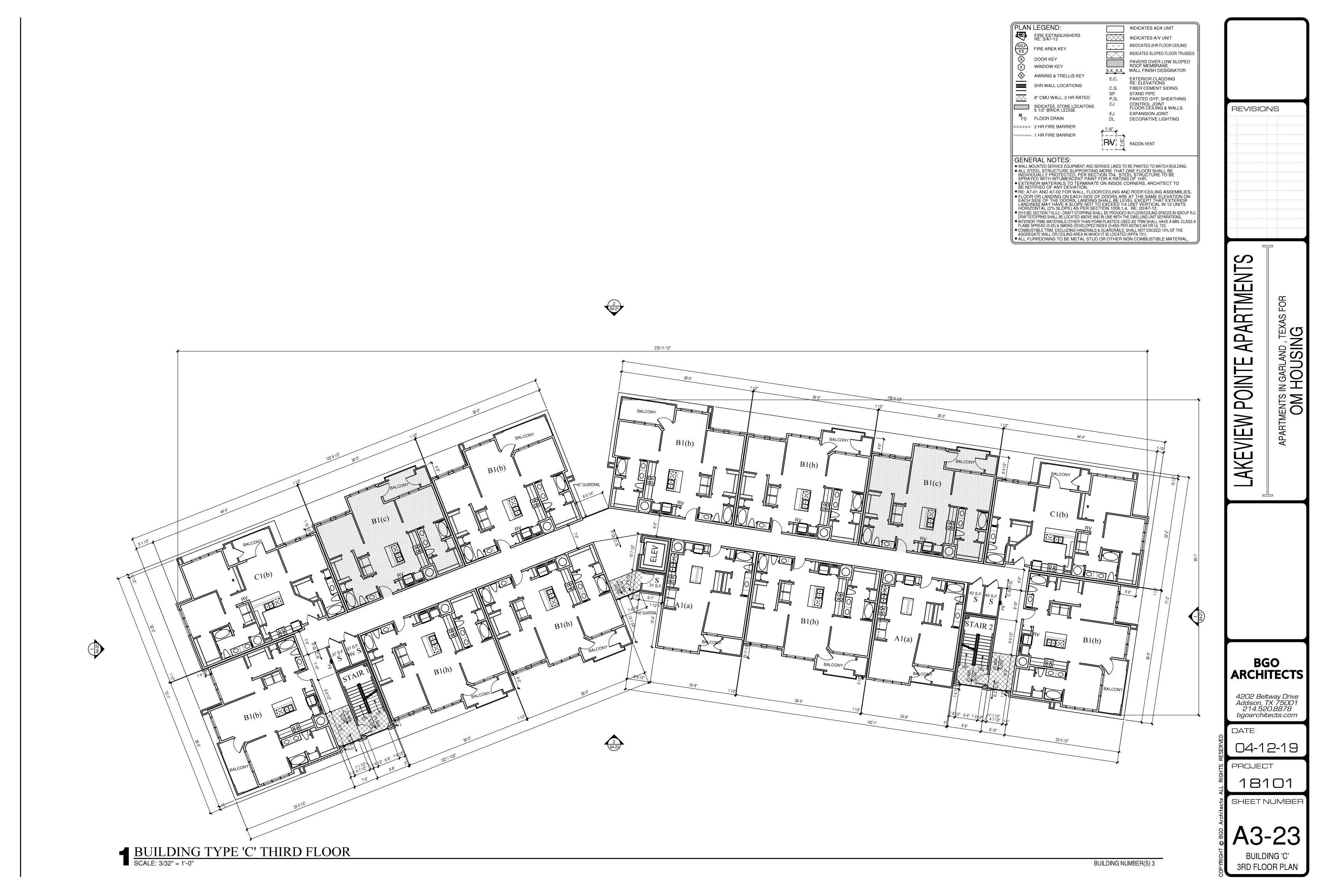
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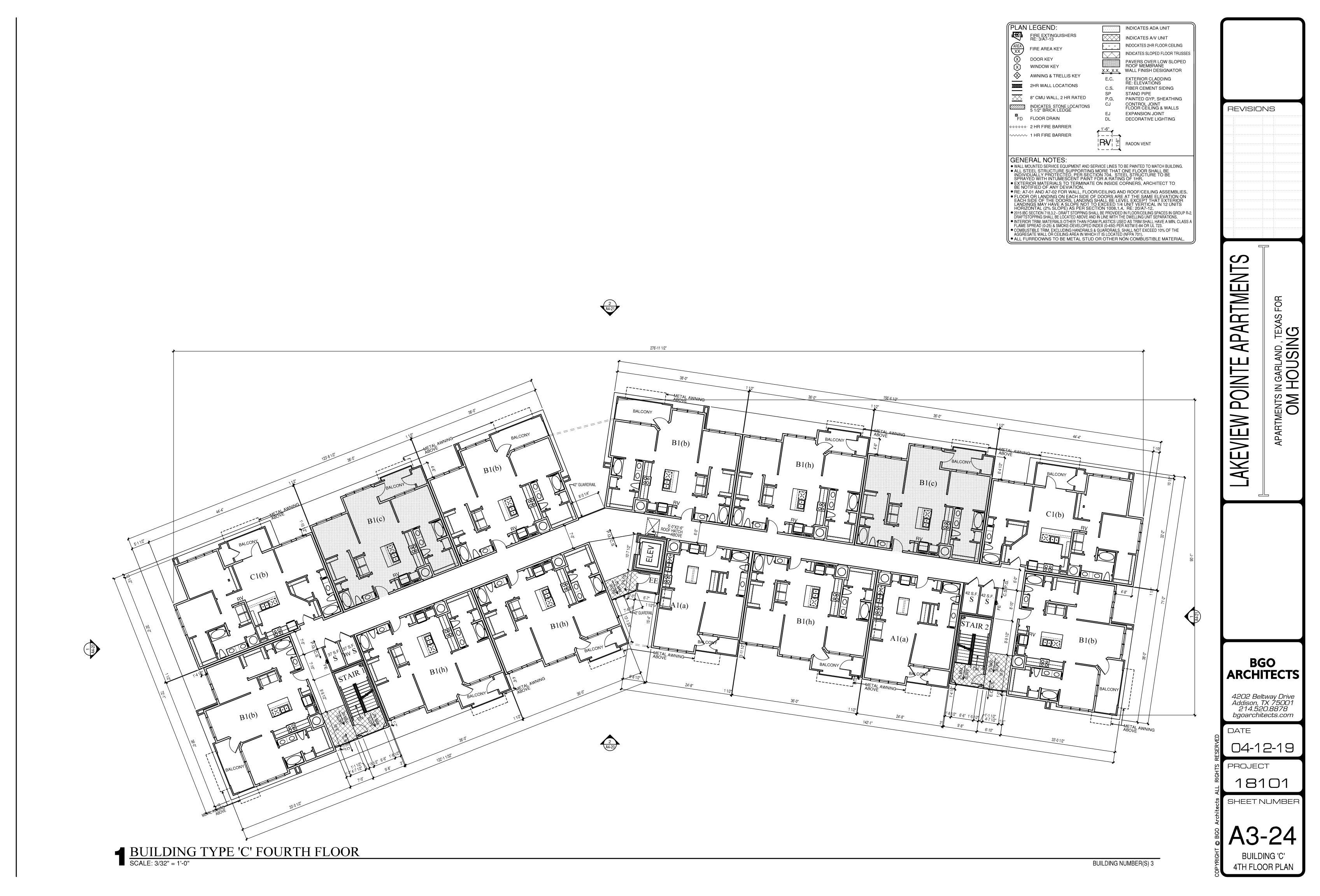
FOR

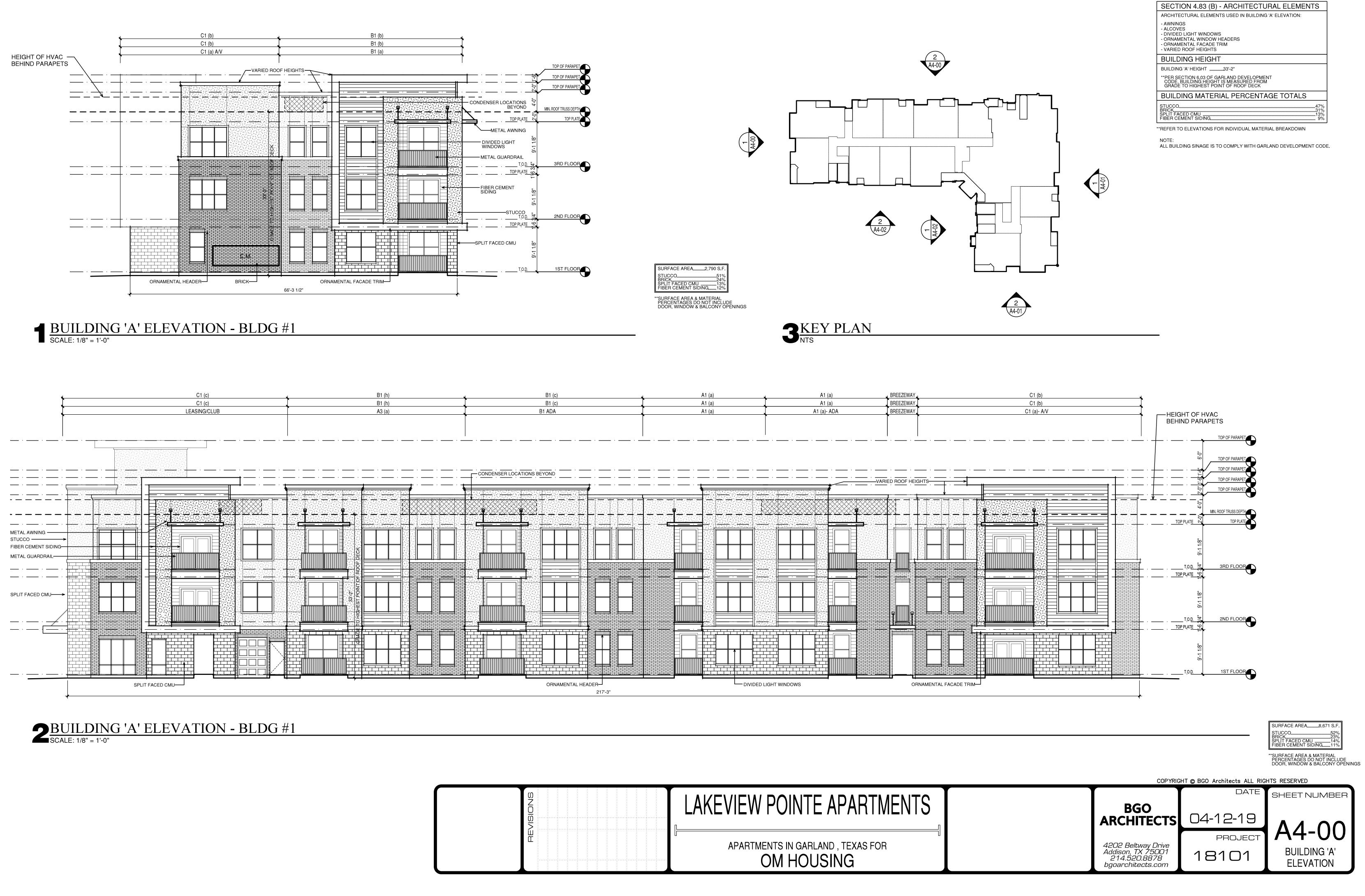
APARTMENTS IN GARLAND , TEXAS OM HOUSING

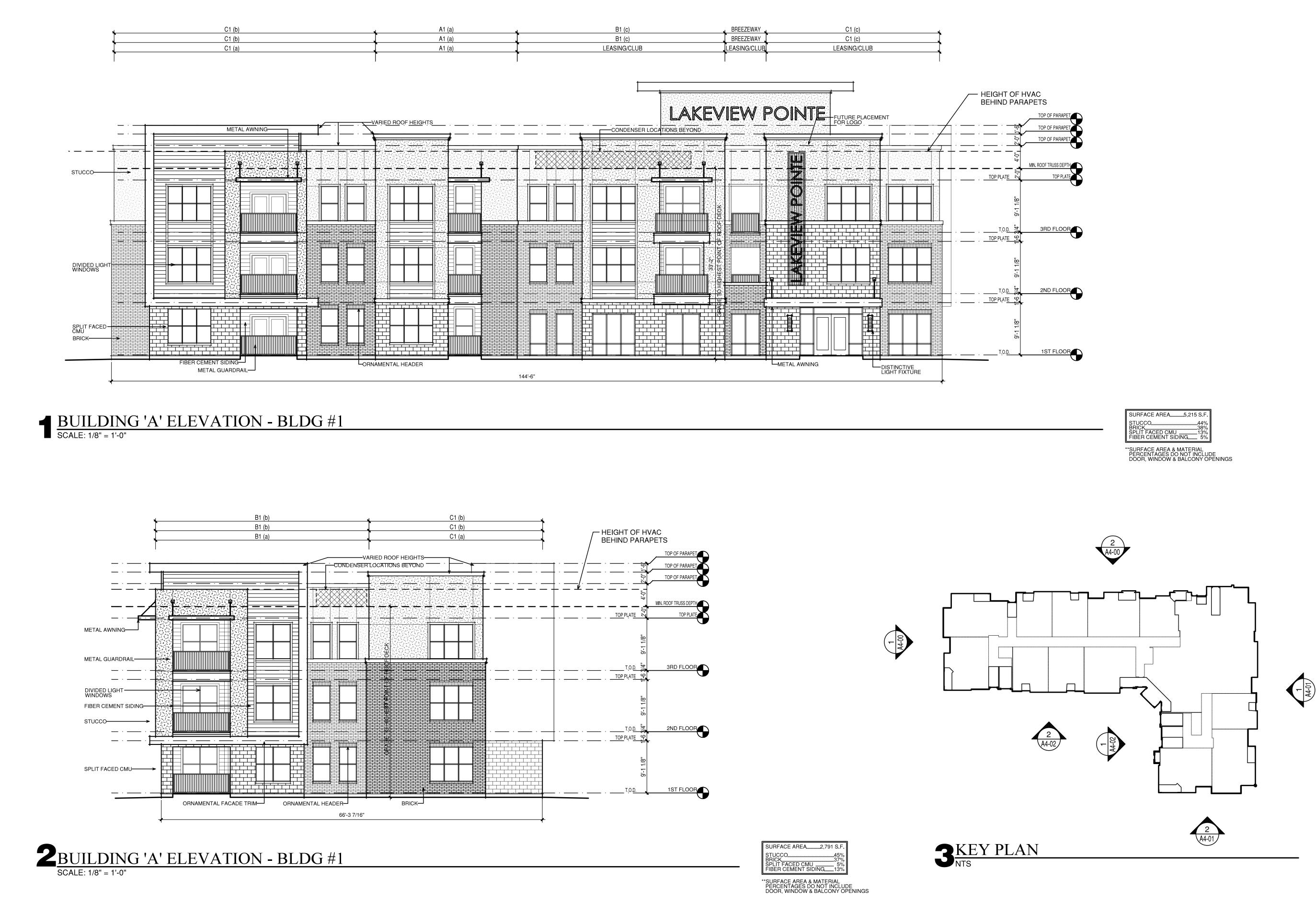






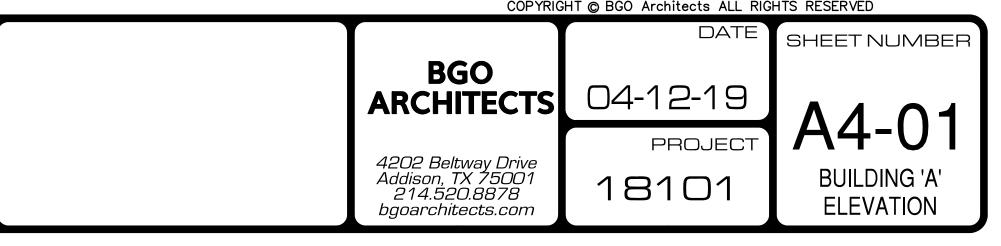








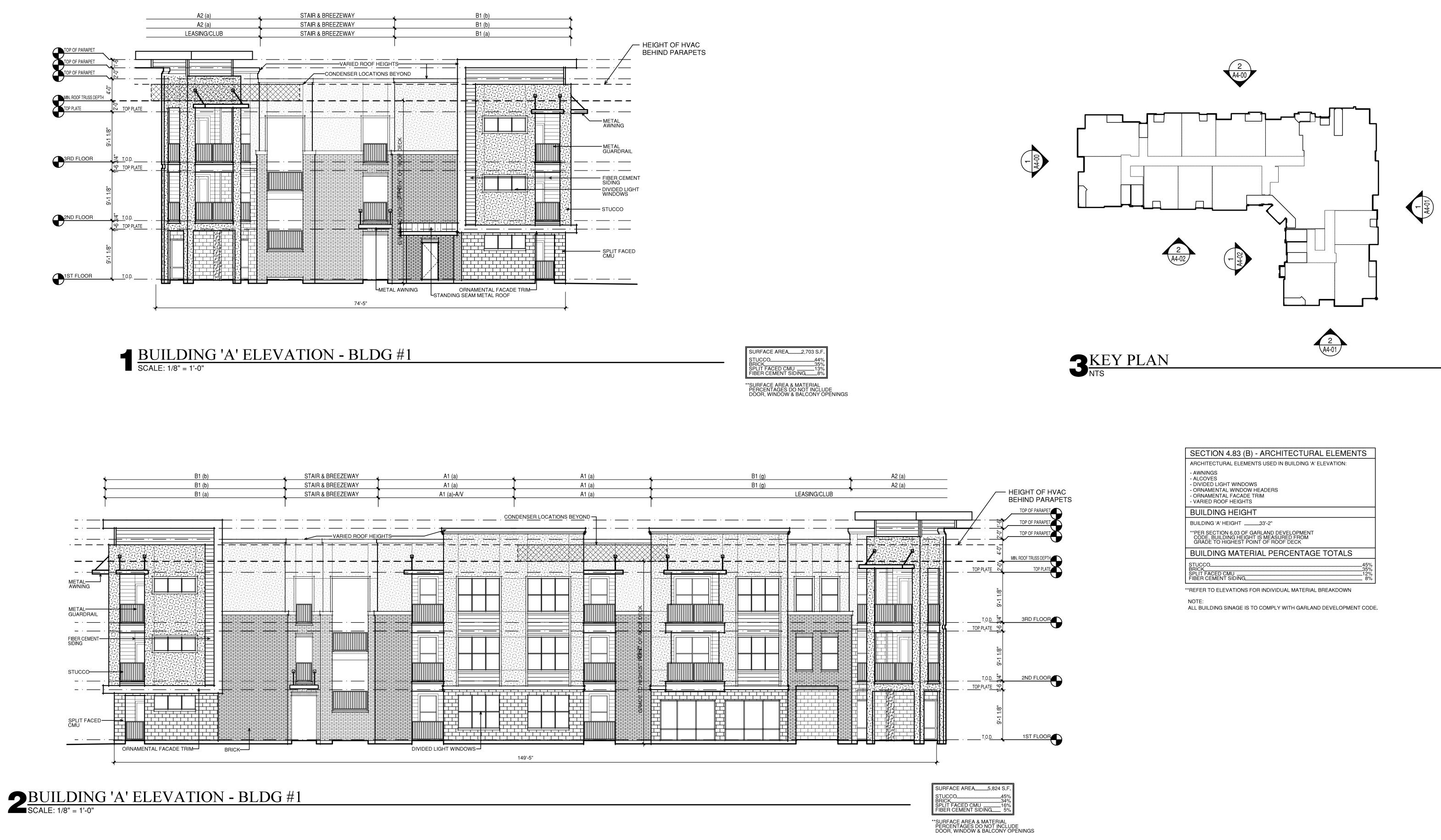
APARTMENTS IN GARLAND , TEXAS FOR OM HOUSING



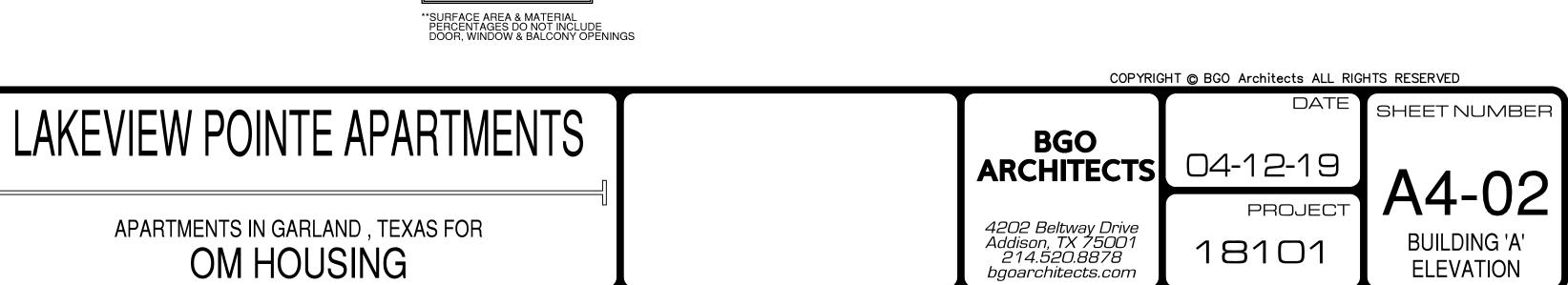
COPYRIGHT © BGO Architects ALL RIGHTS RESERVED

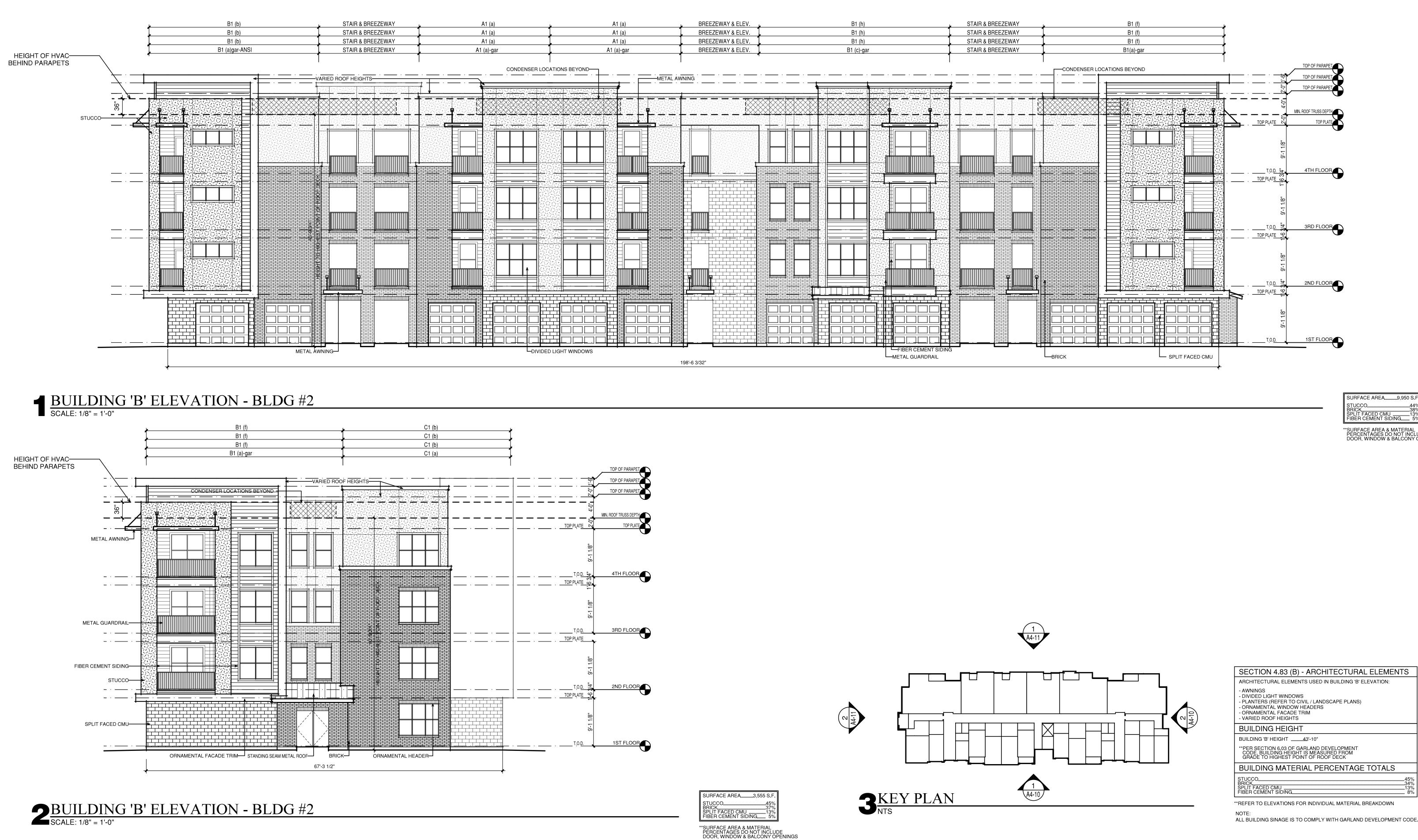
ALL BUILDING SINAGE IS TO COMPLY WITH GARLAND DEVELOPMENT CODE

	N 4.83 (B) - ARCHITECTURAL ELEMENTS
- ORNAMEN - ORNAMEN	IGHT WINDOWS TAL WINDOW HEADERS TAL FACADE TRIM DOF HEIGHTS
BUILDIN	IG HEIGHT
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CODE, BU	ION 6.03 OF GARLAND DEVELOPMENT ILDING HEIGHT IS MEASURED FROM) HIGHEST POINT OF ROOF DECK
BUILDIN	IG MATERIAL PERCENTAGE TOTALS
STUCCO BRICK SPLIT FACE FIBER CEME	
REFER TO E	LEVATIONS FOR INDIVIDUAL MATERIAL BREAKDOWN



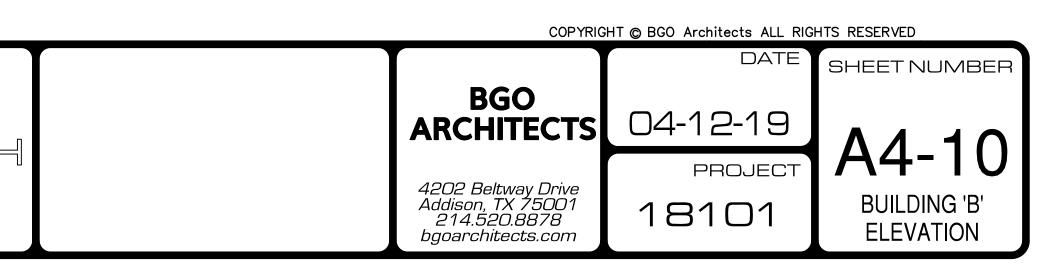
APARTMENTS IN GARLAND, TEXAS FOR OM HOUSING





LAKEVIEW POINTE APARTMENTS

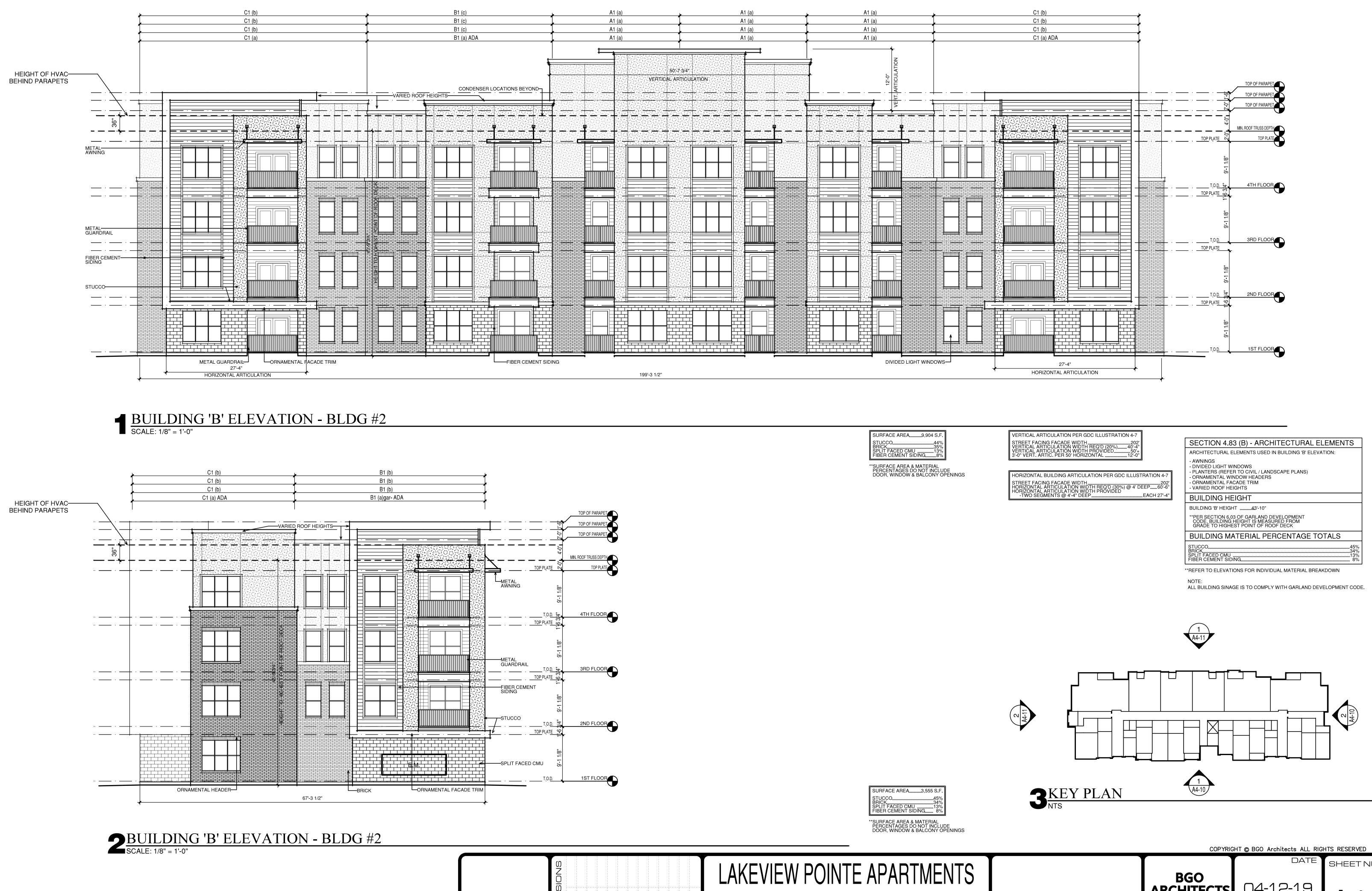
APARTMENTS IN GARLAND , TEXAS FOR OM HOUSING



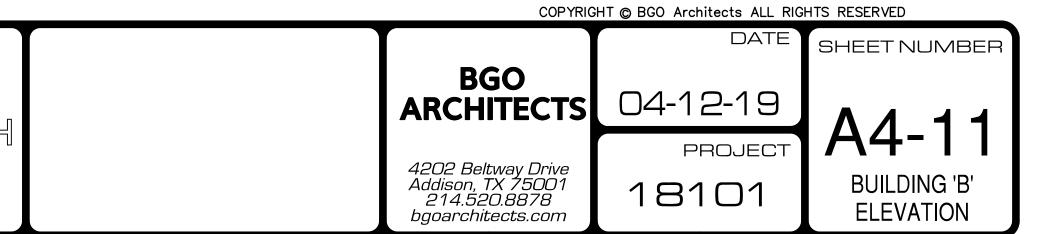
SECTION 4.83 (B) - ARCHITECTURAL ELEMENTS
ARCHITECTURAL ELEMENTS USED IN BUILDING 'B' ELEVATION:
- AWNINGS - DIVIDED LIGHT WINDOWS - PLANTERS (REFER TO CIVIL / LANDSCAPE PLANS) - ORNAMENTAL WINDOW HEADERS - ORNAMENTAL FACADE TRIM - VARIED ROOF HEIGHTS
BUILDING HEIGHT
BUILDING 'B' HEIGHT
**PER SECTION 6.03 OF GARLAND DEVELOPMENT CODE, BUILDING HEIGHT IS MEASURED FROM GRADE TO HIGHEST POINT OF ROOF DECK
BUILDING MATERIAL PERCENTAGE TOTALS
STUCCO
**REFER TO ELEVATIONS FOR INDIVIDUAL MATERIAL BREAKDOWN
NOTE:

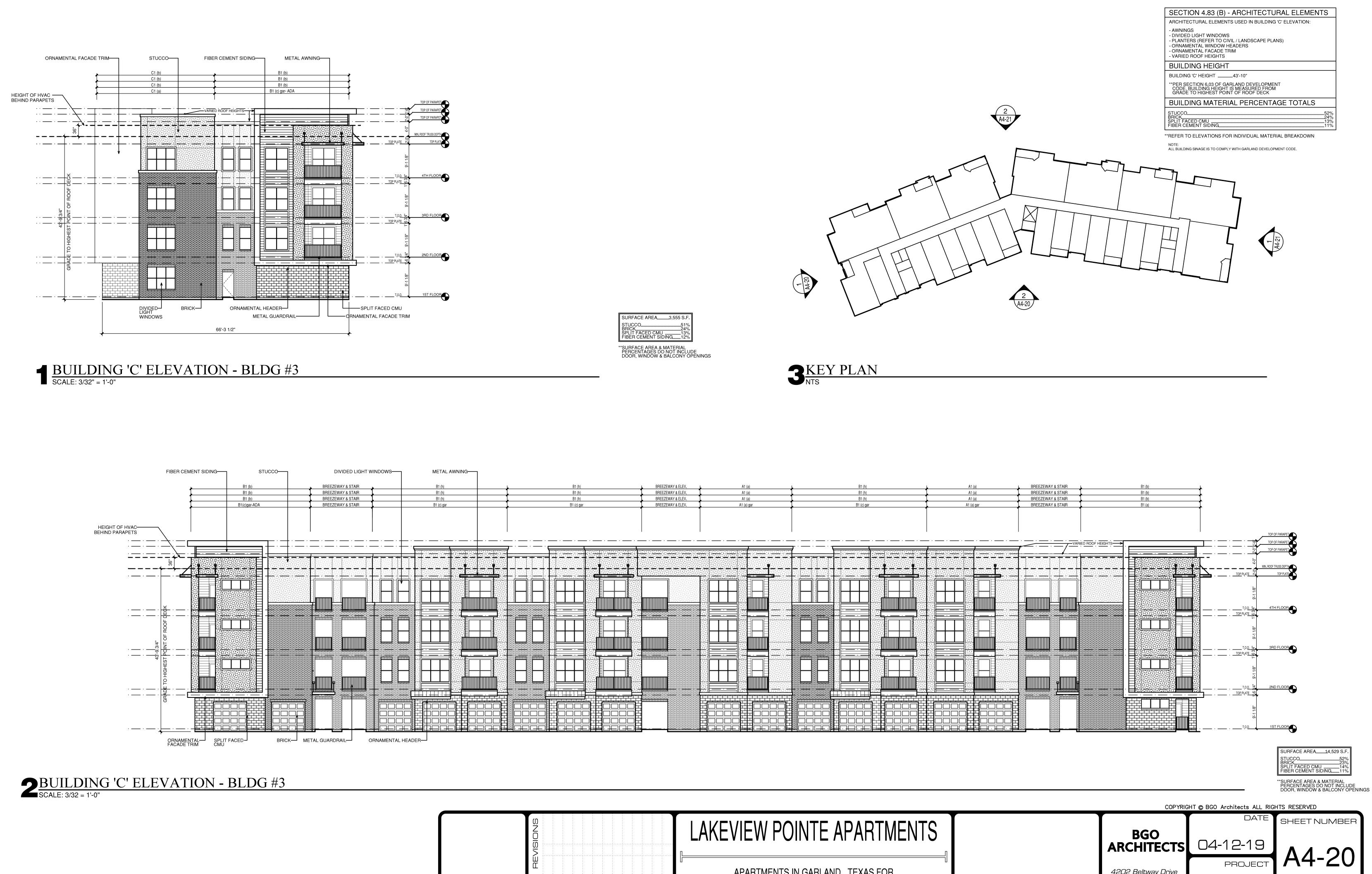
**SURFACE AREA & MATERIAL PERCENTAGES DO NOT INCLUDE DOOR, WINDOW & BALCONY OPENINGS

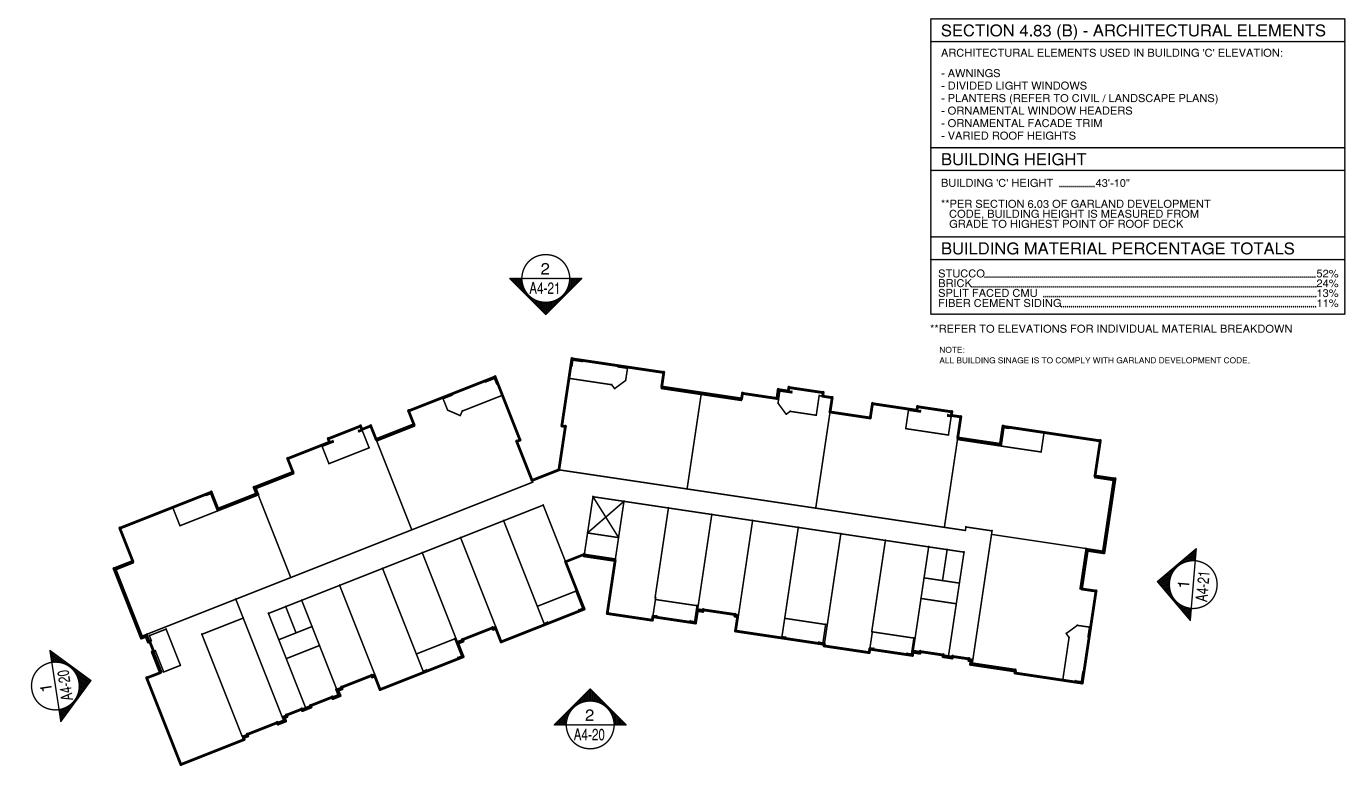
BRICK..... SPLIT FACED CMU FIBER CEMENT SIDING...

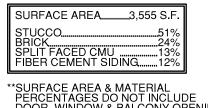


APARTMENTS IN GARLAND, TEXAS FOR OM HOUSING



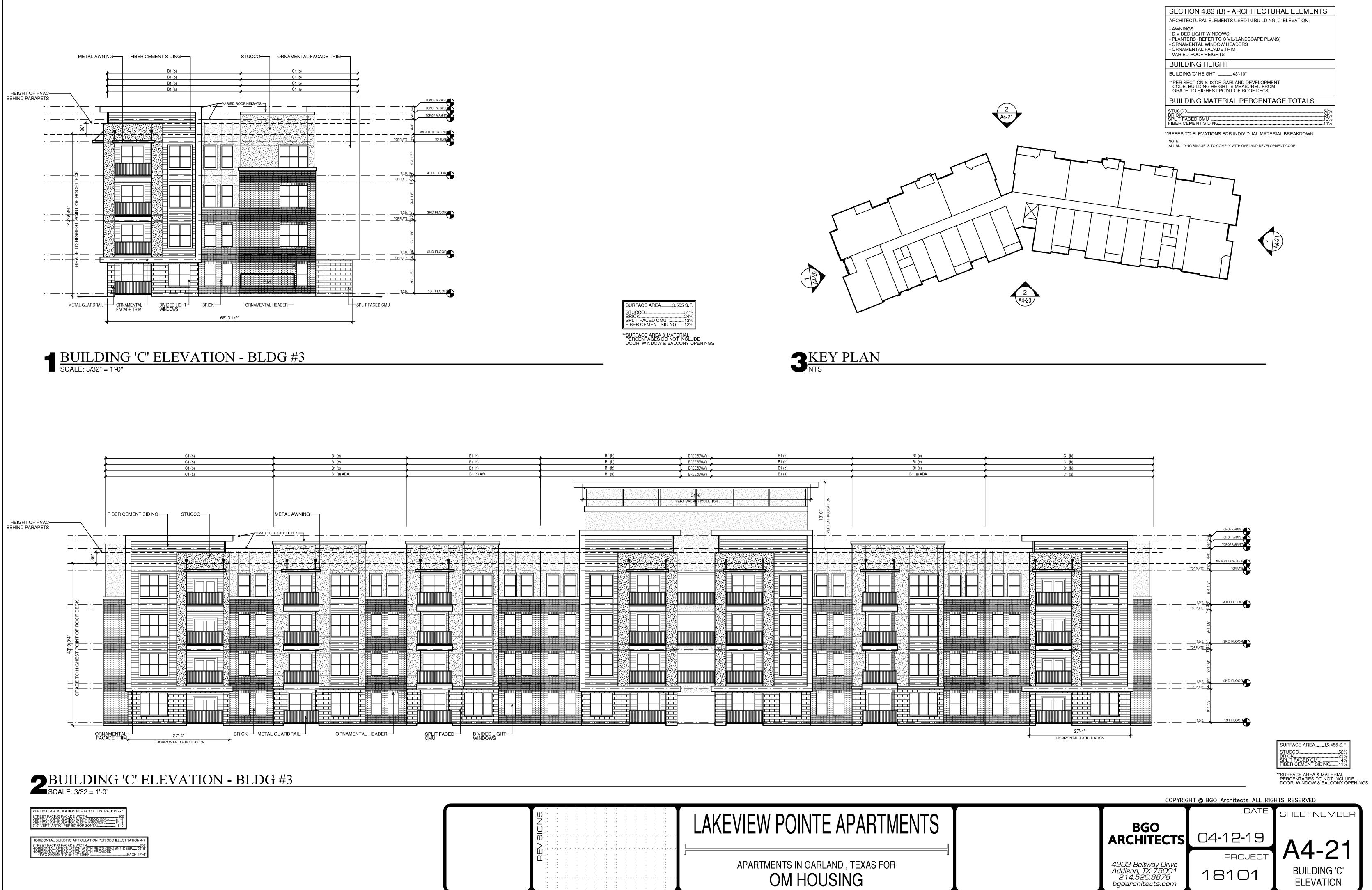


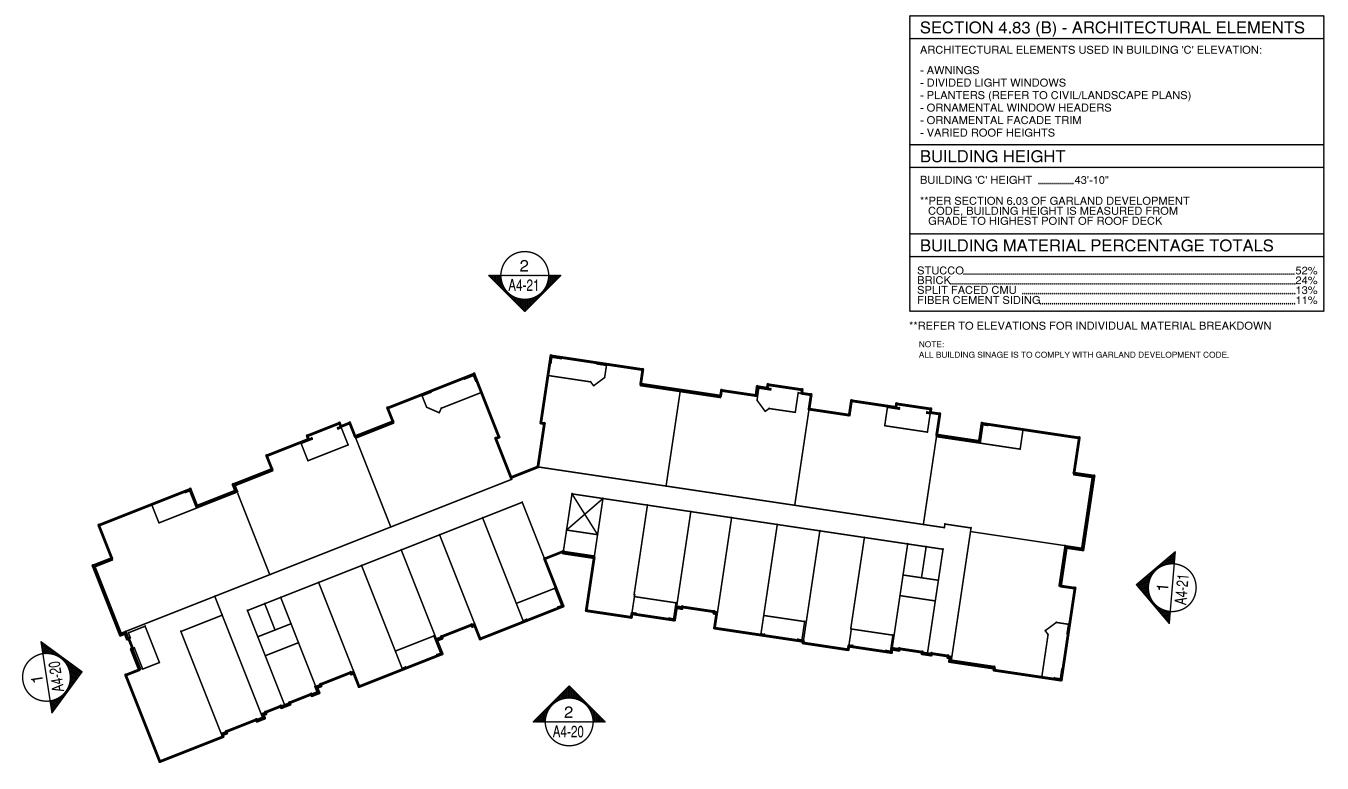




S N N N N N N N N N N N N N N N N N N N	LAKEVIEW POINTE APARTMENTS
	APARTMENTS IN GARLAND , TEXAS FOR OM HOUSING

SHEET NUMBER 4202 Beltway Drive Addison, TX 75001 ____214.520.8878 BUILDING 'C' 18101 ELEVATION bgoarchitects.com





SURFACE AREA3,555 S.F.
STUCCO51% BRICK24% SPLIT FACED CMU13% FIBER CEMENT SIDING12%
**SURFACE AREA & MATERIAL

1f

BOARD ACTION REQUEST

ASSET MANAGEMENT DIVISION

SEPTEMBER 5, 2019

Presentation, discussion, and possible action regarding a Placed in Service deadline extension for a development located in a Major Disaster Area for Provision at West Bellfort (HTC #16258)

RECOMMENDED ACTION

WHEREAS, Provision at West Bellfort, LP (the Development Owner or Owner) was allocated \$1,500,000 in 9% Housing Tax Credits (HTCs) in 2016 for Provision at West Bellfort (the Development), a development consisting of 116 new multifamily units in Houston, Fort Bend 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 (PIS) 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 August 25, 2017, under FEMA-4332-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 excessive rain, wind and flooding that included Fort Bend County in a list of Texas counties eligible to receive individual and/or public assistance;

WHEREAS, on October 12, 2017, the Department's board approved a three-month extension to the original PIS deadline for the Development, from December 31, 2018, to March 31, 2019, with the further authorization of the Executive Director to grant an additional three-month extension to the deadline, if warranted;

WHEREAS, on February 13, 2019, the Acting Director approved a subsequent threemonth extension to the PIS deadline for the Development to June 30, 2019; **WHEREAS,** on May 23, 2019, the Department's board approved a third three-month extension to the PIS deadline for the Development to September 30, 2019;

WHEREAS, the Owner has indicated that the Development has continued to incur significant construction delays in the aftermath of Hurricane Harvey related to the construction labor shortage and is still dealing with issues with the City of Houston critical path permitting, and as a result, the Owner is requesting relief under IRS Revenue Procedure 2014-49 in the form of a fourth 90-day extension, from September 30, 2019, to December 31, 2019, to the Development's PIS deadline;

WHEREAS, based on construction progress and the remaining work to be completed, staff recommends a two-month extension from September 30, 2019, to November 30, 2019, to the Development's PIS deadline, and the Owner has agreed to this recommended 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 extension of the PIS deadline to November 30, 2019, is hereby approved, and the Executive Director and his designees are each authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

BACKGROUND

Provision at West Bellfort was approved for a 9% Housing Tax Credit award in 2016. The Development is a 116-unit, new construction, property located in southwest Houston near Sugar Land, Fort Bend County. The Development Owner, Provision at West Bellfort, LP, and its General Partner, Provision at West Bellfort GP, LLC, are ultimately controlled by Mark Gardner of Gardner Capital and Laolu Yemitan.

On September 29, 2017, the Development Owner submitted to the Department a letter requesting a six-month extension to the date that the Development Owner is required to place each building in service in accordance with IRC §42(h)(1) and the Development's Carryover Allocation Agreement. The Development Owner sought the relief under IRS Revenue Procedure 2014-49 relating to Owners of low-income buildings and housing credit agencies of States in Major Disaster Areas declared by the President.

The Department verified that Fort Bend County was included in the list of designated counties eligible for assistance under FEMA Notice of Major Disaster Declaration (DR-4332) declared on August 25, 2017, due to damage in the State of Texas from Hurricane Harvey resulting from severe flooding, storm surge, and damaging winds from the period of August 23, 2017, through September 15, 2017.

On October 12, 2017, the Department board approved a three-month extension to the original PIS deadline to March 31, 2019, with the further authorization of the Executive Director to grant an additional three-month extension to the PIS deadline, if warranted. On February 13, 2019, the Acting Director approved a subsequent three-month extension to the PIS deadline to June 30, 2019.

The Development began construction in November 2017, and construction was initially anticipated to be completed in March 2019. However, in addition to the impact of Hurricane Harvey, severe weather persisted through 2018. The Owner provided a Proclamation from Governor Abbott dated November 4, 2018, stating that the state of disaster continues to exist in Texas counties (including Fort Bend County) as a result of catastrophic damage caused by Hurricane Harvey and severe weather that continued through 2018.

On April 29, 2019, the Owner submitted to the Department a letter requesting a third 90-day extension to the date that the Owner is required to place each building in service. The Owner stated that construction progress had also been impeded by insufficient labor forces provided by the subcontracting companies, which is directly caused by the very active construction market in the Houston area post-Hurricane Harvey. Also, the Owner stated the City of Houston was overwhelmed with the large amount of development, and the course-of-construction permitting by the City was continually delayed. On May 23, 2019, the Department's board approved a third three-month extension to the PIS deadline for the Development to September 30, 2019.

On August 13, 2019, the Owner submitted to the Department a letter requesting a fourth extension to the date that the Owner is required to place each building in service, from September 30, 2019, to December 31, 2019. The Owner stated that the aftermath of Hurricane Harvey is still being felt in the construction labor shortage. Additionally, the City of Houston critical path permitting delays continue to exist. The Owner stated that the negative repercussions of failing to meet the PIS deadline are severe, and would have a huge detrimental impact on the development.

The latest Construction Status Report from CA Partners, Inc. submitted by the Owner to the Department on August 19, 2019, for the period ending June 30, 2019, reported that job progress has been at a slow pace, but is expected to pick up during the month of August with subcontractor trades returning to complete tasks. The report stated that due to several liens on the property, subcontractor work slowed or stopped for some trades. The liens were cleared as of July 31, 2019. The report also stated that several subcontractors were expected to return to the site to complete tasks the week of August 5, 2019.

The report also mentioned a potential issue with the completion of the pool area as the pool subcontractor walked off the site and did not return to finish the work. The report stated that discussions are in progress with other pool subcontractors to complete the unfinished work.

As for the construction schedule, the third-party report as of August 5, 2019, anticipated that Temporary Certificates of Occupancy (TCOs) would be available about August 15, 2019, for the Clubhouse and Buildings 1-4 and that TCOs should be available for Buildings 5-9 around the beginning of September 2019. As of June 30, 2019, construction was approximately 90% complete.

However, the Owner also submitted a letter dated August 16, 2019, from CA Partners, Inc. to Amegy Bank stating that TCOs have not been issued for the Clubhouse or any of the buildings. The letter states that, based on current job progress, Buildings 7-9 still have interior finish work to complete before the parking lot striping can be done, which is required for issuance of the TCOs. The letter also states that the September 30, 2019, timeline would be tight to receive TCOs for the project and states that the request for an extension to November 30, 2019 would ensure the project would meet the PIS deadline.

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 severe weather and heavy rains, which continued through 2018 and early 2019, affected the construction progress of this Development, and construction was further delayed by the impact of Hurricane Harvey in the construction market in the Houston area.

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% 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 fourth extension to the placed-in-service deadline for the Development, from September 30, 2019, to November 30, 2019, as presented herein. This new deadline is one month prior to the deadline requested by the Owner, but the Owner has agreed to this recommended deadline.



August 13, 2019

By Email to <u>lucy.trevino@tdhca.state.tx.us</u> Lucy Trevino, Senior Asset Manager Asset Management Division Texas Department of Housing and Community Affairs 221 East 11th Street Austin, Texas 78701

RE: #16258 - Provision at West Bellfort, Houston, Fort Bend County, Texas; Request for Further Extension of Placed in Service Deadline to **December 31, 2019**.

Dear Ms. Trevino:

This is a request that the TDHCA Board extend the Placed in Service deadline for Provision at West Bellfort (the "Project") from September 30, 2019 to **December 31, 2019**.

The TDHCA previously has provided extensions through September 30^{th} , but a further extension is needed due to the continuing side effects of Hurricane Harvey on the construction industry in Houston. Revenue Procedure 2014-49 permits a housing agency to extend the Placed in Service deadline for a tax credit development in a Major Disaster Area, as long as the development is placed in service not later than December 31 of the year following the two-year period provided in \$42(h)(1)(E)(i). The extension requested is authorized by Rev. Proc. 2014-49.

Previously, the TDHCA Board extended the Placement in Service deadline through September 30, 2019, primarily due to the continuing slow construction progress resulting from conditions created by Hurricane Harvey. Those conditions have lessened some, but still exist. Governor Greg Abbott has acknowledged the continuing state of disaster in the 60 counties covered by the Presidential Declaration of Disaster by reissuing his Proclamation of disaster every month since Hurricane Harvey occurred, through July 6, 2019: While the Governor's Proclamation does not affect the FEMA response, it was done pursuant to Section 418.014 of the Texas Government Code. In the most recent Proclamation, Governor Abbott stated that "... due to the catastrophic damage caused by Hurricane Harvey, a state of disaster continues to exist in those same counties'. He concluded that "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."

In the Houston Metroplex, the aftermath of Hurricane Harvey is still being felt in the construction labor shortage. The General Contractor has not been able to make up any substantial time, due to subcontractors failing to maintain adequate work forces on site, which appears to be the result of spreading themselves too thin among post-Harvey contractual obligations.

Additionally, the issues with the City of Houston critical path permitting continue to exist. Currently completed buildings will not be issued Temporary Certificates of Occupancy, as explained in CA Partners, Inc.'s *Construction Progress & Funding Disbursement Report No. 019* dated June 27, 2019 (the "June Report"), Section 4.3:

The municipality is requiring striping and signage done before Temporary Certificate of Occupancy can be issued for Buildings 1-5. Thus, the Contractor is waiting for the finish out of Buildings 6-9, and the remaining landscaping work, to approach final stages for the construction for on-site traffic to slow down before engaging the striping subcontractor to finish striping the parking lot and ADA areas.

As of the June Report, the Project was 86% complete. CA Partners, Inc. opined that the Project could receive TCOs by July 15, 2019, but as of today, no TCOs have been issued – primarily due to the City's requirement that the striping be complete.

The negative repercussions to the Project if it fails to have all of its buildings placed in service by the deadline are severe. Each of the nine residential building is 100% LIHTC, so the failure of any one of them to be timely placed in service would mean more than a 10% reduction in available tax credits. Such a reduction in the equity financing would have a huge detrimental impact upon the Project.

We respectfully request that the TDHCA extend the Placed in Service deadline for Provision at West Bellfort for the maximum time available under Rev. Proc. 2014-49 – until December 31, 2019.

Sincerely,

Name: Willie Tedoe, Authorized Representative

cc: Rosalio Banuelos, Director, Asset Management



Republic Center 325 N. St. Paul St. Suite 3200 Dallas, Texas 75201 P: (214) 468-0807 F: (214) 468-0724

August 16, 2019

Amegy Bank 4576 Research Forest Drive The Woodlands, Texas 77381

RE: Provision at West Bellfort Temporary Certificate of Occupancy Letter Houston, Texas CA Partners, Inc Project No.: 17221

Dear Amegy,

We are providing this letter to provide an update on the expected date of the Temporary Certificates of Occupancy for the Clubhouse and Buildings 1-9 at the Provisions at West Bellfort Project.

Based on recent job progress, Buildings 7-9 still have interior finish work to complete and then parking lot striping. With the coordination with the City for inspections, the September 30, 2019 timeline will be tight to receive TCOs for the project. The request of the extension to November 30, 2019 would ensure the project would meet the Place-In-Service deadline.

If you have any questions, please do not hesitate to call me at (214) 468-0807 or email me at jbenson@capartnersinc.com.

Sincerely,

James Benson Project Manager

Construction Reporting · Monitoring/Funding/Compliance · Document/Drawing Review · Property Condition Assessment Budget Analysis · Due Diligence · Cost Control · Building Evaluation · General Consulting Professionals serving the southwest, southeast, midwest, and western United States www.capartnersinc.com



BOARD ACTION REQUEST

HOME AND HOMELESSNESS PROGRAMS DIVISION

SEPTEMBER 5, 2019

Presentation, discussion, and possible action on an order adopting new 10 TAC Chapter 23 Subchapter H, Homebuyer Assistance with New Construction or Rehabilitation (HANC), and directing 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, staff proposed a new rule to address the shortage of quality affordable housing available in rural communities by allowing homeownership through new construction or rehabilitation of single family housing on acquired or owned real property;

WHEREAS, at the Board meeting of May 23, 2019, the Board approved the publication of the new 10 TAC Chapter 23, Subchapter H, Homebuyer Assistance with New Construction or Rehabilitation (HANC), and the proposed rule was published for public comment in the Texas Register on June 7, 2019; and

WHEREAS, public comment was accepted from June 7, 2019, through July 12, 2019, and no public comment was received;

NOW, therefore, it is hereby

RESOLVED, that the Executive Director and his designees be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department, to cause the proposed new rule to 10 TAC Chapter 23, Subchapter H, §§23.80 – 23.82, Homebuyer Assistance with New Construction (HANC) or Rehabilitation to be approved; 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 HOME and Homelessness Program Division (HHPD) proposed a new HOME Program activity that provides HOME Program Administrators the ability to offer a homebuyer assistance program which includes mortgage financing in conjunction with major rehabilitation of an existing home, or construction of a new home. This activity is allowable under the federal HOME Program regulations, but has not historically been offered by the Department. The proposed rule was approved in draft form by the Board on May 23, 2019.

HANC was proposed with a purpose to help solve the shortage of quality affordable housing for homeownership available in rural communities. While HANC is a program designed for administration by subrecipients, like our legacy Homeowner Rehabilitation Assistance (HRA) Program and the Homebuyer Assistance (HBA) Program, HANC provides a much needed third, household driven, option for prospective low income homeowners. HANC is designed to assist those low-income homebuyers who are ready to purchase a home, but there is not adequate housing available to them due to the price of housing or the condition of existing housing on the market. HANC may also help those who already live on land they own, or own some land that they would like to build on, but cannot be assisted though the HRA Program because their housing doesn't meet HUD's definition of owner occupied housing, such as those that may currently live in an RV or an untitled unit of manufactured housing.

Assistance provided under HANC will be repayable, and eligible buyers will be able to access affordable permanent financing for the purchase and construction costs for their home through the program activity.

In preparation for the new program activity, HOME Program staff facilitated roundtable discussions with stakeholders in El Paso, Brownsville, and Austin from January to March of 2019. Feedback from these stakeholders was utilized to refine the initial staff draft of the new rule, and no comment was received during the public comment period.

The proposed rule was published in the June 7, 2019, issue of the Texas Register (43 TxReg 7620) for public comment, and no comment was received. Staff recommends adoption of the proposed rule as published in the Texas Register.

If adopted by the Board, the rule will be published in the Texas Register and become effective thereafter.

At this meeting, under a separate agenda item, HHPD is requesting approval of a Notice of Funding Availability for this activity utilizing \$1,000,000 in deobligated HOME funds. Based on demand, staff may request additional funding for HANC in an amendment to the NOFA.

Attachment A: Preamble for adopting new 10 TAC §§23.80 – 23.82 Homebuyer Assistance with New Construction (HANC) or Rehabilitation

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 23, Subchapter H, Homebuyer Assistance with New Construction (HANC) or Rehabilitation, §§23.80 – 23.82 without changes to the proposed text as published in the June 7, 2019, issue of the Texas Register (44 TexReg 23). The purpose of the new sections is to provide a new program activity to address the shortage of quality affordable housing available in rural communities by allowing homeownership through new construction or rehabilitation of single-family housing on acquired or owned real property.

Tex. Gov't Code §2001.0045(b) does apply to the rule being adopted; however, the costs associated with the new activity created by this rule are only those typical and customary costs associated with an administrator voluntarily electing to participate in a single family activity similar to those in other sections of this chapter related to homebuyer and reconstruction/rehabilitation activities.

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. Robert Wilkinson, Executive Director, has determined that, for the first five years the proposed new rule would be in effect:

1. The new rule does not create a new government program but does establish another eligible activity type within the existing HOME Program. This new activity type provides for increased opportunities for rural Texans to access quality affordable housing opportunities.

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 underwriting and loan processing applications under the new activity, the Department anticipates handling this additional work with existing staff resources; the new rule does 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 to address an identified need for a household driven option for prospective low-income homeowners in rural communities.

6. The new rule will not limit or repeal an existing regulation, but can be considered to "expand" the existing regulations because the proposed rule adds a new category of homebuyer assistance under the HOME Program. However, this new rule is necessary to

establish regulations for access to and implementation of the new activity which will serve to increase the opportunity for eligible low income rural families to access affordable homes for purchase.

7. The new rule will increase the number of individuals subject to the rule's applicability but only so far as administrators voluntarily elect to participate in this new Department activity.

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 proposed rule enables homebuyers to access new or rehabilitated homes at a lower cost and provides communities with a tool to increase and update their housing stock.

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 new rule, has attempted to reduce any adverse economic effect on small or microbusiness or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, §2306.002.

1. The Department has evaluated this rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

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 rule may provide a possible positive economic effect on local employment in association with this rule because the construction activities associated with the program will allow local contractors to bid on jobs in their area; however, because the work would be bid on a project-by-project basis, and because it is unknown what communities will end up pursuing this activity, a local impact is not able to be quantified for any given community.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has also determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will be increased opportunity to access affordable housing for homeownership. There will not be any economic cost to any individuals required to comply with the new sections because the costs associated with this activity and that are incurred to administer the activity are allowable and payable under the grant though which the activity is offered.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new sections are in effect, enforcing or administering the new sections do not have any foreseeable implications related to costs or revenues of the state or local governments. The costs incurred to comply with the rule are reimbursable by the federal funding source under which the activity is offered.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between June 7, 2019, and July 12, 2019. Comments regarding the proposed new rule were accepted in writing and by e-mail and no comments were received.

The Board adopted the final order adopting the new rule on September 5, 2019.

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 new sections affect no other code, article, or statute.

<u>§23.80.</u> Homebuyer Assistance with New Construction (HANC) or Rehabilitation Threshold and Selection Criteria.

(a) Threshold Match requirement. The Department shall use population figures from the most recently available U.S. Census Bureau's American Community Survey (ACS) as of the date that an Application is first submitted under the NOFA to determine the applicable Threshold Match requirement. The Department may incentivize or provide preference to Applicants committing to provide additional Threshold Match above the requirement of this subsection. Such incentives may be established as selection criteria in the NOFA. Excluding Applications under the disaster relief and persons with disabilities set asides, Threshold Match shall be required based on the tiers described in paragraphs (1) and (2) of this subsection:

(1) No Threshold Match is required when:

(A) the Service Area includes the entire unincorporated area of a county and where the population of Administrator's Service Area is less than or equal to 20,000 persons; or

(B) the Service Area does not include the entire unincorporated area of a county, and the population of the Administrator's Service Area is less than or equal to 3,000 persons.

(2) One percent of Direct Activity Costs, exclusive of Match, is required as Match for every 1,000 in population up to a maximum of 15%.

(b) Cash Reserve Threshold Requirement. When HOME funds will be utilized for construction activities, documentation, as described below, must be submitted at the time of Application that demonstrates that the Applicant has at least \$40,000 in cash reserves. The cash reserves may be utilized to facilitate administration of the program, and to ensure the capacity to cover costs prior to reimbursement or costs determined to be ineligible for reimbursement. The

amount of the cash reserve commitment must be included in the Applicant's resolution. To meet this requirement, Applicants must submit:

(1) financial statements indicating adequate local unrestricted cash or cash equivalents to utilize as cash reserves and a letter from the Applicant's bank(s) or financial institution(s) indicating that current account balances are sufficient; or

(2) evidence of an available line of credit or equivalent in an amount equal to or exceeding the requirement in this subsection.

(c) Other Threshold and/or Selection criteria for this Activity may be outlined in the NOFA.

§23.81. Homebuyer with New Construction or Rehabilitation (HANC) General Requirements.

(a) Eligible Activities must meet the ownership requirement in subparagraph (1) of this subsection and an Activity described in subparagraph (2) of this subsection:

(1) Ownership requirement. A site must be owned by the beneficiary or the HOME Activity must include one of the two following Activities:

(A) Acquisition of existing single family housing or a parcel; or

(B) Refinance of non-owner occupied real property parcel not prohibited for single family housing by zoning or restrictive covenants.

(2) All Activities must include New Construction or Rehabilitation of a unit of single family housing not occupied by the Household prior to assistance; New Construction described in this subsection includes the purchase and installation of a new unit of Manufactured Housing (MHU). Rehabilitation of an MHU is not an eligible Activity.

(b) The unit of housing in any of the Activities described in subsection (a) of this paragraph must be occupied by the assisted Household as their principal residence for a minimum of 15 years from the Construction Completion Date.

(c) If the assisted property is owned by the Household prior to participation, the Household must be current on any existing Mortgage Loans and taxes, and the property cannot have any existing home equity loan liens. HOME funds may not be utilized to refinance loans made or insured by any federal program.

(d) The purchase price of acquired property and the post-improvement value of the unit may not exceed the limitations set forth in 24 CFR §92.254. Compliance with the purchase price limitation must be evidenced prior to loan closing. Compliance with the post-improvement value limitation must be evidenced with a final appraisal of the completed project prior to release of retainage. (e) Activity Costs. Total Activity Costs, exclusive of Match funds, are limited to an amount not to exceed the federal subsidy limitations defined in 24 CFR §92.250. Direct Activity Costs, exclusive of Match and leverage, for construction are limited to:

(1) Construction of new site-built housing: The Direct Activity Costs are not restricted beyond the Total Activity Costs as identified in subsection (e) of this section;

(2) Placement of an energy efficient MHU: \$75,000; and

(3) Rehabilitation that is not Reconstruction: \$60,000, or up to \$100,000 for properties listed in or identified as eligible for listing in the National Register of Historic Places.

(f) In addition to the Direct Activity Costs allowable under subsection (e) of this section, a sum not to exceed \$10,000 and not causing the total subsidy to exceed the limitations set forth by 24 CFR §92.250 may be requested and, if approved, used to pay for any of the following as applicable:

(1) Necessary environmental mitigation as identified during the Environmental review process;

(2) Installation of an aerobic septic system; or

(3) Homebuyer requests for accessibility features.

(g) Activity soft costs eligible for reimbursement are limited to:

(1) New Construction: no more than \$11,500 per housing unit; or

(2) Replacement with an MHU: no more than \$5,000 per housing unit;

(3) Rehabilitation: \$8,500 per housing unit. This limit may be exceeded for lead-based remediation and only upon prior approval of the Division Director. The costs of testing and assessments for lead-based paint are not eligible Activity soft costs for housing units that are reconstructed or if the existing housing unit was built after December 31, 1977.

(h) Funds for administrative costs are limited to no more than 4% of the Direct Activity Costs, exclusive of Match funds.

(i) Homebuyers may choose to obtain financing for the acquisition or construction, or any combination thereof, from a third-party lender so long as the loan meets the requirements of Chapter 20 of this title (relating to Loan, Lien and Mortgage Requirements for Activities).

(j) Direct assistance will be structured as a fully amortizing, repayable loan and will initially be evaluated at zero percent interest. The minimum loan term shall be equal to the required federal affordability period based on the HOME investment, and shall be calculated by setting the total estimated housing payment (including principal, interest, property taxes, insurance, and any other homebuyer assistance), equal to at least the minimum required housing payment. Should the estimated housing payment, including all funding sources, be less than the minimum required housing payment for the minimum term, the Department may charge an interest rate to the homebuyer such that the total estimated housing payment is no less than the required minimum housing payment. In no instance shall the interest rate charged to the homebuyer exceed 5% and such result may deem the applicant as overqualified for assistance. The term shall not exceed 30 years and not be less than 15 years.

(1) The total Mortgage Loan may include costs incurred for Acquisition or Refinance, Mortgage Loan closing costs, and Direct Activity Costs, exclusive of Match funds.

(2)The total Debt-to-Income Ratio shall not exceed the limitations set forth in Chapter 20 of this title.

(3) For buyers whose income is equal to or less than 50% AMFI, the minimum required housing payment shall be no less than 15% of the household's gross income. For homebuyers whose income exceeds 50% AMFI, the minimum required housing payment shall be no less than 20% of the household's gross income.

(k) Earnest money may be credited to the homebuyer at closing, but may not be reimbursed as cash. HOME funds may be used to pay other reasonable and customary closing costs that are HOME eligible costs.

(I) To ensure affordability, the Department will impose recapture provisions established in this <u>Chapter.</u>

(m) For New Construction, site-built housing units must meet or exceed the 2000 International Residential Code and all applicable local codes, standards, ordinances, and zoning requirements. In addition, New Construction housing is required to meet 24 CFR §92.251(a)(2) as applicable. Housing that is Rehabilitated under this Chapter must meet the Texas Minimum Construction Standards (TMCS) and all other applicable local codes, Rehabilitation standards, ordinances, and zoning ordinances in accordance with the HOME Final Rule. MHUs must be installed according to the manufacturer's instructions and in accordance with Federal and State laws and regulations.

(n) Housing proposed to be constructed under this subchapter must meet the requirements of Chapters 20 and 21 of this title (relating to Single Family Programs Umbrella Rule and Minimum Energy Efficiency Requirements for Single Family Construction Activities, respectively) and must be certified by a licensed architect or engineer.

(1) To the extent that a set of architectural plans are generated and used by an Applicant for more than one home site, the Department will reimburse only for the first time a set of architectural plans is used, unless any subsequent site specific fees are paid to a Third Party architect, or a licensed engineer for the reuse of the plans on that subsequent specific site. (2) A NOFA may include incentives or otherwise require architectural plans to incorporate "green building" elements.

§23.82. Homebuyer with New Construction (HANC) Administrative Requirements.

(a) Commitment or Reservation of Funds. The Administrator must submit the true and complete information, certified as such, with a request for the Commitment or Reservation of Funds as described in paragraphs (1) - (14) of this subsection:

(1) Head of Household name and address of housing unit for which assistance is being requested;

(2) A budget that includes the amount of Activity funds specifying the acquisition costs, construction costs, soft costs and administrative costs requested, a maximum of 5% of hard construction costs for contingency items, proposed Match to be provided, evidence that Direct Activity Cost and Soft Cost limitations are not exceeded, and evidence that any duplication of benefit is addressed;

(3) Verification of environmental clearance from the Department;

(4) A copy of the Household's intake application on a form prescribed by the Department;

(5) Certification of the income eligibility of the Household signed by the Administrator and all Household members age 18 or over, and including the date of the income eligibility determination. All documentation used to determine the income of the Household must be provided;

(6) Project cost estimates, construction contracts, and other construction documents necessary to ensure applicable property standard requirements will be met at completion;

(7) Identification of any Lead-Based Paint (LBP) if activity involves an existing unit and certification that LBP will be mitigated as required by 24 CFR §92.355;

(8) Evidence that the housing unit will be located outside of the 100-year floodplain;

(9) If applicable, documentation to address or resolve any potential conflict of interest, Identity of Interest, or duplication of benefit;

(10) Information necessary to draft Mortgage Loan documents, including issuance of an SOL;

(11) Life event documentation, as applicable, and all information necessary to prepare any applicable affidavits such as marital status and heirship;

(12) Documentation of homebuyer completion of a homebuyer counseling program/class provided by a HUD certified housing counselor;

(13) For Activities involving acquisition of real property;

(A) A title commitment to issue a title policy that evidences that the property will transfer with no tax lien, child support lien, mechanics or materialman's lien or any other restrictions or encumbrances that impair the good and marketable nature of title to the ownership interest and that the definition of Homeownership will be met. The effective date of the title commitment must be no more than 30 days prior to the date of project submission. Commitments that expire prior to execution of closing must be updated at closing and must not have any adverse changes in order to close;

(B) Executed sales contract; and

(C) A loan estimate or letter from any other lender confirming that the loan terms and closing costs will be consistent with the executed sales contract, the first lien Mortgage Loan requirements, and the requirements of this Chapter.

(14) For Activities that do not involve acquisition of real property:

(A) A title commitment or policy, or a down date endorsement to an existing title policy, and the actual documents, or legible copies thereof, establishing the Household's ownership, such as a warranty deed or ground lease for a 99-year leasehold. The effective date of the title commitment must be no more than 30 days prior to of the date of project submission. Title commitments for loan projects that expire prior to the loan closing date must be updated and must not have any adverse changes. These documents must evidence the definition of Homeownership is met;

(B)A tax certificate that evidences a current paid status;

(C) Written consent from all Persons who have a valid lien or ownership interest in the Property for the Rehabilitation or New Construction Activities;

(D) Consent to demolish from any existing Mortgage Loan lien holders and consent to subordinate to the Department's loan, if applicable; and

(15) Any other documentation necessary to evidence that the Activity meets the Program requirements.

(b) Loan closing. In addition to the documents required under subsection (a) of this section, the Administrator must submit the appraisal or other valuation method approved by the Department which establishes the post Rehabilitation or New Construction value of improvements prior to the issuance of loan documents by the Department.

(c) Disbursement of funds. The Administrator must comply with all of the requirements described in paragraphs (1) - (10) of this subsection, for a request for disbursement of funds to reimburse eligible costs incurred. Submission of additional documentation related to the Administrator's compliance with requirements described in paragraphs (1) - (10) of this subsection, may be required with a request for disbursement:

(1) For construction costs that are part of a loan subject to the requirements of this subsection, a down date endorsement to the title policy not older than the date of the last disbursement of funds or 45 calendar days, whichever is later, is required. For release of retainage, the down date endorsement must be dated at least 40 calendar days after the Construction Completion Date.

(2) If applicable, a maximum of 50% of Activity funds for an Activity may be drawn before providing evidence of Match. Thereafter, each Administrator must provide evidence of Match, including the date of provision, in accordance with the percentage of Activity funds disbursed.

(3) Property inspections, including photographs of the front and side elevation of the housing unit and at least one picture of the kitchen, family room, one of the bedrooms and one of the bathrooms with date and property address reflected on each photo, are required to be submitted. The inspection must be signed and dated by the inspector and Administrator.

(4) Certification of the following is required:

(A) That its fiscal control and fund accounting procedures are adequate to assure the proper disbursal of, and accounting for, funds provided;

(B) That no Person that would benefit from the award of HOME funds has satisfied the Applicant's cash reserve obligation or made promises in connection therewith;

(C) That each request for disbursement of HOME funds is for the actual cost of providing a service; and

(D) That the service does not violate any conflict of interest provisions.

(5) Original, fully executed, legally enforceable loan documents for each assisted Household containing remedies adequate to enforce any applicable affordability requirements are required. Certified copies of fully executed, recorded loan documents that are required to be recorded in the real property records of the county in which the housing unit is located must be returned to the Department, duly certified as to recordation by the appropriate county official. This documentation prior to disbursement is not applicable for funds made available at the loan closing.

(6) Expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness for expenditures submitted for reimbursement. The Department may request Administrator to make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of HOME funds to Administrator as may be necessary or advisable for compliance with all Program Rules.

(7) The request for funds for administrative costs must be proportionate to the amount of Direct Activity Costs requested or already disbursed.

(8) Disbursement requests must include the withholding of 10% of hard construction costs for retainage. Retainage will be held until at least 40 calendar days after the Construction Completion Date.

(9) For final disbursement requests, the following is required:

(A) Submission of documentation required for Activity completion reports and evidence that the demolition or, if an MHU, salvage and disposal of all dilapidated housing units on the lot occurred for Newly Constructed or Rehabilitated housing unit;

(B) Certification or other evidence acceptable to Department that the replacement house, whether site-built or MHU, was constructed or placed on and within the same lot for which ownership was established and on and within the same lot secured by the loan; and

(C) A final appraisal of the property after completion of improvements.

(10)The final request for disbursement must be submitted to the Department with support documentation no later than 60 calendar days after the termination date of the Contract in order to remain in compliance with the Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract.

1h

BOARD ACTION REQUEST

HOME AND HOMELESSNESS PROGRAMS DIVISION

SEPTEMBER 5, 2019

Presentation, discussion, and possible action directing closing of the Program Year 2017-2018 Emergency Solutions Grants Program Notice of Funding Availability

RECOMMENDED ACTION

WHEREAS, Emergency Solutions Grants (ESG) funds are received by the Department from the US Department of Housing and Urban Development (HUD) and are subject to expenditure occurring within 24 months from the date HUD signs the grant agreements with the Department per 24 Code of Federal Regulations (CFR) §576.203(b);

WHEREAS, ESG funds from the Program Year 2017 and 2018 allocations were distributed through a Notice of Funding Availability (2017 and 2018 NOFA), which included direction for the subsequent handling of deobligated funds; and

WHEREAS, the provisions relating to deobligation in the 2017 and 2018 NOFA could result in the Department not meeting the 24-month deadline for expenditures for those funding years, and is no longer necessary because the current ESG rule, adopted by the Board on June 28, 2018, provides for award and reobligation of deobligated ESG funds which are subject to a 24-month expenditure deadline;

NOW, therefore, it is hereby

RESOLVED, that the Board directs the closure of the Program Year 2017-2018 ESG NOFA, upon the one partially-award Application under the 2017-2018 NOFA reaching its original requested amount and authorizes staff to thereafter apply the Rule as adopted to any remaining deobligated funds originally awarded under the 2017 and 2018 NOFA.

BACKGROUND

The ESG Program is funded by the U.S. Department of Housing and Urban Development (HUD). The purpose of ESG is to assist people to regain stability in permanent housing quickly after experiencing a housing crisis and/or homelessness. Per 24 CFR §576.203(b), recipients must expend ESG funds with 24 months after the date HUD signs the grant agreement with the recipient. The expenditure deadline for the 2017 ESG funds is October 29, 2019, and for 2018 ESG funds is September 11, 2020.

On December 15, 2016, the Board approved a two-year NOFA for the ESG Program for program years 2017 and 2018, and the NOFA did not include an expiration date. The NOFA included provisions to award

funds that were deobligated or returned from Contracts awarded under the NOFA, or in prior year NOFAs. The 2017-2018 NOFA outlined that ESG funds that became deobligated or returned would be utilized first to increase any partial awards made under the NOFA to the original requested amount (in this case the partial award made was to Salvation Army – Temple and Families in Crisis). Funds received from deobligation in excess of this amount would be distributed to the highest performing Subrecipients if the fund were less than \$50,000, and would be awarded to the next-highest ranked unfunded Applicant if the funds exceeded \$50,000. This requirement was intended to bring funding for partially awarded subrecipients or next in line sub-recipients up to their original request in the weeks and months after the original allocation was made. Unfortunately over time, unawarded or partially funded subrecipients would necessarily have to make structural changes to continue to operate with less resources and as such when an influx of funding appeared later in the year such a subrecipient) to gear up quickly to spend the newly redistributed deobligated funds. In the past this risk was mitigated, as the old method of distribution was closed once awards under a new NOFA were made.

On June 28, 2018, the Board adopted new, more comprehensive administrative rules for the ESG Program. Rather than relying on language in a NOFA, the new ESG Rules include a provision for the reallocation of deobligation funds at 10 TAC §7.41(g) which states that deobligated funds will be awarded to the highest performing current ESG Subrecipient in the region from which the funds were deobligated first, and then statewide. Such reallocation requires approval of the Board. This rule allows the Department to reallocate funding to existing, high-performing Subrecipients and helps to ensure that ESG funds are expended on or before the federal expenditure deadline.

Because the rule did not specifically state that it would control over existing NOFAs, it could be expected that the 2017 and 2018 NOFA would continue to guide the redistribution of deobligated or returned funds. Because the rule revision came into effect in the middle of a two year NOFA, the NOFA does not address the applicability of the rule to deobligated and returned funds will exceed the amount needed to fund the joint Application of Salvation Army – Temple and Families in Crisis. According to the 2017-2018 NOFA, the excess funding would be offered to the next-highest scoring unfunded Applicant. However because that entity applied for funding almost two years ago, and is currently not receiving ESG funding, they are not in a position to rapidly expend fund within the deadline. The start-up time for projects from a new award under the NOFA may result in the Department not meeting the expenditure deadlines required by HUD.

To clarify the redistribution of deobligated funds and to ensure that the Department is able to meet the 24 month expenditure deadline for all ESG funding, staff recommends closure of the 2017-2018 ESG NOFA, and recommends that all deobligated funds in excess of the funds that remain available after the original joint Application from Salvation Army - Temple and Families in Crisis, be distributed in accordance with the adopted rule governing the ESG Program.

1i

BOARD ACTION REQUEST

HOME AND HOMELESSNESS PROGRAMS DIVISION

SEPTEMBER 5, 2019

Presentation, discussion, and possible action to authorize the issuance of the 2019 HOME Investment Partnerships Program Single Family Homebuyer Assistance with New Construction or Rehabilitation Set-Asides Reservation System Notice of Funding Availability and publication of the NOFA in the Texas Register.

RECOMMENDED ACTION

WHEREAS, the Board of the Texas Department of Housing and Community Affairs (the Department) has authorized adoption of the new rule at 10 TAC, Chapter 23, Subchapter H, which governs administration of a new HOME Investment Partnerships (HOME) Program Activity;

WHEREAS, the new activity, Homebuyer Assistance with New Construction or Rehabilitation (HANC) may be administered through the HOME Program Reservation System;

WHEREAS, the Department has identified approximately \$1,000,000 of deobligated HOME funds to reprogram and provide initial funding for HANC; and

WHEREAS, the Department wishes to release a Notice of Funding Availability (NOFA) for HOME Program single family activities for \$1,000,000 for HANC activity;

NOW, therefore, it is hereby

RESOLVED, that the Executive Director and his designees be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department, to post on the Department's website and to publish a notification in the Texas Register, a 2019 HOME Single Family Homebuyer Assistance with New Construction Reservation System NOFA for funding in the amount of approximately \$1,000,000, to be released into the Reservation System, and to make any technical corrections or perform such other acts as may be necessary to effectuate the foregoing.

BACKGROUND

The Department has adopted new rules that created the Homebuyer Assistance with New Construction or Rehabilitation (HANC) HOME Single Family Programs activity, which will be published in the Texas Register to be effective on September 19, 2019. The HANC Program,

offered to respond to the need for high quality affordable housing for low-income homebuyers, has not been available prior to adoption of the new rule.

The Department staff is proposing release of the 2019 HOME Single Family Programs Reservation System NOFA that includes \$1,000,000 of deobligated HOME funds for the HANC program activity. This limited initial funding amount is recommended at the present time until a demonstrated demand for funds for this new program activity is evidenced. Deobligated funds made available under this NOFA are not subject to the Regional Allocation Formula and may be accessed statewide (excluding use in HOME Participating Jurisdictions) on a first-come, first-served basis as projects are ready to proceed.

The availability and use of these funds are subject to state and federal regulations including, but not limited to Texas Administrative Code in Title 10 Part 1, Chapter 20, Single Family Umbrella Rule, and Chapter 23, the Single Family HOME Program, as amended (HOME Program Rule), and the federal regulation governing the HOME Program at 24 CFR Part 92, as amended (HOME Final Rule).

The HANC funds will be made available to single family HOME Program Reservation System Administrators. Administrators may amend existing agreements to include the ability to access these funds, and entities that wish to participate in the new program may apply for a HOME Program Reservation System Participation Agreement. Approval for participation in the Reservation System is not a guarantee of funding availability. Applications to participate in the Reservation System are accepted on an on-going basis.



HOME Investment Partnerships Program (HOME) CFDA# 14.239

2019 HOME Investment Partnerships Program Single Family Homebuyer Assistance with New Construction Reservation System Notice of Funding Availability

- 1. Summary.
 - a. The Texas Department of Housing and Community Affairs (the Department) announces a NOFA of approximately \$1,000,000 in HOME funds for single family housing programs under the Homebuyer Assistance with New Construction or Rehabilitation (HANC) set-aside under a Reservation System. These funds will be made available to HOME Reservation System Participants with a current Reservation System Participation (RSP) Agreement.
 - b. The availability and use of these funds are subject to the HOME rules including, but not limited to the following Texas Administrative Code (TAC) rules in effect at the time of contract execution, Title 10, Part 1, Chapter 1, Administration; Chapter 2, Enforcement; Chapter 20, the Single Family Programs Umbrella Rule; Chapter 21, the Minimum Energy Efficiency Requirements for Single Family Construction Activities; Chapter 23, the Single Family HOME Program, effective August 3, 2017, (State HOME Rules); and Tex. Gov't Code §2306. Other federal and state regulations include but are not limited to, 24 CFR Part 58 for environmental requirements, 2 CFR Part 200 for Uniform Administrative Requirements, 24 CFR §135.38 for Section 3 requirements, 24 CFR Part 5, Subpart A for fair housing, (Federal HOME Rules), and for units of government, the Uniform Grant Management Standards (UGMS) as outlined in Chapter 783 in the Texas Local Government Code. Applicants must familiarize themselves with all of the applicable state and federal rules that govern the HOME Program.
 - c. Capitalized terms in this NOFA have the meanings defined herein or as defined in State HOME Rules and the Federal HOME Rules.
 - d. If changes to the RSP are required during the RSP term due to required changes in Federal or State law, the Department may initiate an amendment process to ensure compliance.

- 2. Source of Funds. For this NOFA, funds totaling \$1,000,000 are made available for single family activities through deobligated funds. The Department, in its sole discretion, also reserves the right to cancel or modify the amount available in this NOFA. Deobligated funding is not subject to the Regional Allocation Formula in accordance with 10 TAC §1.19(e) related to Reallocation of Financial Assistance.
- 3. Homebuyer Assistance with New Construction or Rehabilitation (HANC) Activity. HANC provides HOME Program Administrators the ability to offer a homebuyer assistance program which includes mortgage financing in conjunction with major rehabilitation of an existing home, or construction of a new home. Specific program guidelines can be found at 10 TAC Chapter 23, Single Family HOME Program, Subchapter H, Homebuyer Assistance with New Construction or Rehabilitation Program, §§23.80 23.82.
- 4. Prohibited Activities. Prohibited activities include those at 24 CFR §92.214 and in the State HOME Rules. Funds will not be eligible for use in a Participating Jurisdiction.
- 5. Allocation of Funds. Approximately \$1,000,000 in funds is available through the Reservation System beginning Monday, November 4, 2019 at 10:00 a.m. Austin local time.
 - a. The funds will be set aside in the manner described until Friday, June 12, 2020, at 9:00 a.m. Austin local time, after which any remaining funds in any of the set asides described below may be reprogrammed in a manner that is consistent with the 2019 One-Year Action Plan (OYAP) approved by HUD. :
 - b. Except as limited in this NOFA or by statute, the Department may reprogram funds at any time to the Reservation System, or to administer directly.
 - c. An alternative timeline and method of releasing funds may be implemented, at the Department's sole discretion. Subsequent changes to the timeline or method of release will be published on the Department's website. However, failure to do so will not invalidate reservations that are otherwise made in accordance with this NOFA.
 - d. Updated balances for the Reservation System may be accessed online at <u>www.tdhca.state.tx.us/home-division/home-reservation-summary.htm</u>. Reservations of funds may be submitted at any time during the term of a RSP Agreement, as long as funds are available in the Reservation System. Participation in the Reservation System is not a guarantee of funding availability.
- 6. Application Selection Process.
 - a. Funding under this NOFA will be made available through the Reservation System to HOME Administrators with active RSP Agreements if such agreements are amended to allow for provision of HANC. Applications to request a RSP Agreement are accepted on an on-going basis. Applicants requesting a RSP Agreement must submit a completed application, required documentation, and associated application materials as detailed in the Application Submission Procedures Manual (ASPM).
 - b. All Application materials including manuals, program guidelines, and applicable HOME rules, are available on the Department's website at

http://www.tdhca.state.tx.us/home-division/applications.htm. Applications for an RSP Agreement will be required to adhere to the HOME Rule and threshold requirements in effect at the time of the Application submission. Applications must be on forms provided by the Department, cannot be altered or modified, and must be in final form before submitting them to the Department.

- c. Reservations of funds may be submitted at any time during the term of a RSP Agreement, as long as funds are available in the Reservation System. Updated balances for the Reservation System may be accessed online at www.tdhca.state.tx.us/home-division/home-reservation-summary.htm.
- d. Administrative deficiencies noted during the review of an RSP Application shall be subject to the administrative deficiency process outlined in 10 TAC §23.24(c).
- e. All Applicants will be subject to a Previous Participation Review by the Department as outlined in 10 TAC Chapter 1, Subchapter C.
- 7. Audit Requirements. All Applicants are subject to the requirements of 10 TAC §1.403 concerning Single Audits. Pursuant to Tex. Gov't Code §2306.1112, the Executive Award and Review Advisory Committee will make recommendations to the Board regarding funding and allocation decisions.
- 8. Eligible and Ineligible Applicants.
 - a. Eligible Applicants include Units of General Local Government, nonprofit organizations, Public Housing Authorities, Local Mental Health Authorities, and Councils of Government.
 - b. Applicants are required to familiarize themselves with the Department's certification and debarment policies prior to application submission.
- 9. Application Submission.
 - a. The Department will accept applications for the Reservation System on an on-going basis. Applications for the Reservation System are to be submitted as an upload to the Department's FTP server in the format requirements detailed in the RSP ASPM.
 - b. Applicants must submit a completed Application, required documentation, and associated application materials, as described in this NOFA and as detailed in the RSP ASPM. All scanned copies must be scanned in accordance with the guidance provided in the RSP ASPM.
 - c. All Application materials including manuals, this NOFA, program guidelines, and applicable HOME rules are available on the Department's website at http://www.tdhca.state.tx.us/home-division/applications.htm. Applications will be required to adhere to the HOME Rule and threshold requirements in effect at the time of the Application submission. Applications must be on Application forms published online at the above reference site provided by the Department which

cannot be altered or modified, and must be in final form before they are submitted to the Department.

- d. Applicants are required to remit a non-refundable Application fee payable to the Texas Department of Housing and Community Affairs in the amount of \$30 per Application. Payment must be in the form of a check, cashier's check or money order. Do not send cash. Pursuant to Tex. Gov't Code §2306.147(b), the Department will waive Application fees for private nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services. These organizations must request a waiver of the grant application fee in a board resolution authorizing the submittal of the application to the Department, and must include with the application proof of their exempt status and a description of their supportive services in lieu of the Application fee. The Application fee is not an allowable or reimbursable cost under the HOME Program.
- e. This NOFA does not include text of the various applicable regulatory provisions that may be important to the HOME Program. For proper completion of the application, the Department strongly encourages potential Applicants to review the State and Federal regulations, and contact the HOME and Homelessness Programs Division for guidance and assistance.
- 10. Dispute Resolution/Appeal.
 - a. The Department encourages the use of alternative dispute resolution in accordance with Tex. Gov't Code §2306.082 and as described more fully in 10 TAC §1.17.
 - b. An Applicant may appeal decisions made by staff in accordance with 10 TAC §1.7.

For questions regarding this NOFA, please contact Raul Salazar, HOME Production Coordinator for the HOME and Homelessness Programs Division, at (512) 475-2975 or via email at HOME@tdhca.state.tx.us.

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BOARD ACTION REQUEST

HOME AND HOMELESSNESS PROGRAMS DIVISION

SEPTEMBER 5, 2019

Presentation, discussion, and possible action to authorize the issuance of the 2019 HOME Investment Partnerships Program Single Family Persons with Disabilities Set-Aside Reservation System Notice of Funding Availability and publication of the NOFA in the *Texas Register*

RECOMMENDED ACTION

WHEREAS, the Board of the Texas Department of Housing and Community Affairs (the Department) has previously authorized the Department's submission of the 2019 Consolidated Plan One-Year Action Plan (OYAP) to the U.S. Department of Housing and Urban Development (HUD) which identified funding percentages and amounts for each of its HOME Investment Partnerships Program (HOME) Single Family activities;

WHEREAS, HUD has approved the OYAP and is releasing the State of Texas 2019 allocation of funds to TDHCA for the HOME Program;

WHEREAS, the OYAP identified and set-aside a percentage that equates to approximately \$1,577,813 for HOME Program single family activities for Persons with Disabilities (PWD);

WHEREAS, TDHCA is experiencing continued demand for funding for HOME Program single family activities under the Reservation System; and

WHEREAS, the Department now wishes to release a Notice of Funding Availability (NOFA) for HOME Program single family activities in the full amount of the PWD to be set-aside into the Reservation System, and out of the \$1,577,813, \$78,891 will be for Homebuyer Assistance with or without Rehabilitation (HBA/R), \$867,797 for Homeowner Rehabilitation Assistance (HRA), and \$631,125 for Tenant-Based Rental Assistance (TBRA);

NOW, therefore, it is hereby

RESOLVED, that the Executive Director and his designees be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department, to post on the Department's website and to publish a notification in the *Texas Register*, a 2019 HOME Single Family Programs Reservation System NOFA for funding in the amount of approximately \$1,577,813, to be released into the Reservation System, and to make any technical corrections or perform such other acts as may be necessary to effectuate the foregoing.

BACKGROUND

The U.S. Department of Housing and Urban Development's HUD State of Texas 2019 allocation

to TDHCA for the HOME Program is approximately \$31,556,262 and the grant agreement was received on July 12, 2019. TDHCA has programmed the funds for various uses in accordance with the HUD-approved 2019 Consolidated Plan One-Year Action Plan (OYAP). Staff is proposing to release a HOME Single Family Programs Reservation System NOFA that includes \$1,577,813 of the 2019 HOME allocation for the PWD set-aside. The PWD funds will be made available to single family HOME Program Reservation System Administrators for Homeowner Rehabilitation Assistance, Homebuyer Assistance, and Tenant-Based Rental Assistance activities. Approval for participation in the Reservation System is not a guarantee of funding availability.

Of the \$1,577,813, \$78,891 will be for Homebuyer Assistance with or without Rehabilitation (HBA/R), \$867,797 for Homeowner Rehabilitation Assistance (HRA), and \$631,125 for Tenant-Based Rental Assistance (TBRA). These PWD set-aside funds are not subject to the Regional Allocation Formula but are available statewide on a first come first served basis.

The availability and use of these funds are subject to state and federal regulations including, but not limited to Texas Administrative Code in Title 10 Part 1, Chapter 20, Single Family Umbrella Rule, and Chapter 23, the Single Family HOME Program, as amended (HOME Program Rule), and the federal regulation governing the HOME Program at 24 CFR Part 92, as amended (HOME Final Rule).

The 2019 HOME Single Family Programs Reservation System NOFA was developed in accordance with the Single Family Umbrella and HOME Program Rules. Administrators will access the funds available under this NOFA either through existing agreements or by for a Reservation System Participation Agreement. Applications to participate in the Reservation System are accepted on an on-going basis.



HOME Investment Partnerships Program (HOME) CFDA# 14.239

2019 HOME Investment Partnerships Program Single Family Persons with Disabilities Set-Aside Reservation System Notice of Funding Availability

1. Summary.

- a. The Texas Department of Housing and Community Affairs (the Department) announces a NOFA of approximately \$1,577,813 in HOME funds for single-family housing programs under the Persons with Disabilities (PWD) set-aside under a Reservation System. These funds will be made available to HOME Reservation System Participants with a current Reservation System Participation (RSP) Agreement.
- b. The availability and use of these funds are subject to the HOME rules including, but not limited to the following Texas Administrative Code (TAC) rules in effect at the time of contract execution, Title 10, Part 1, Chapter 1, Administration; Chapter 2, Enforcement; Chapter 20, the Single Family Programs Umbrella Rule; Chapter 21, the Minimum Energy Efficiency Requirements for Single Family Construction Activities; Chapter 23, the Single Family HOME Program, effective August 3, 2017, (State HOME Rules) and Tex. Gov't Code Chapter 2306. Other federal and state regulations include but are not limited to, 24 CFR Part 58 for environmental requirements, 2 CFR Part 200 for Uniform Administrative Requirements, 24 CFR §135.38 for Section 3 requirements, 24 CFR Part 5, Subpart A for fair housing, (Federal HOME Rules), and for units of government, the Uniform Grant Management Standards (UGMS) as outlined in Chapter 783 in the Texas Local Government Code. Applicants must familiarize themselves with all of the applicable state and federal rules that govern the HOME Program.
- c. Capitalized terms in this NOFA have the meanings defined herein or as defined in State HOME Rules and the Federal HOME Rules.
- d. If changes to the RSP are required during the RSP term due to required changes in Federal or State law, the Department may initiate an amendment process to ensure compliance.
- 2. Source of Funds. Funds totaling \$1,577,813 are made available for single-family activities through the Department's 2019 annual HOME allocation from the U.S. Department of Housing and Urban Development (HUD). In accordance with Tex. Gov't Code §2306.111(d), these set-asides satisfy a legislatively mandated set-aside and therefore are not subject to the Regional Allocation Formula. The Department, in its sole discretion, may also release unallocated HOME funds, deobligated funds, Program Income, and funds reallocated from undersubscribed set-asides, as allowable and available, under this NOFA. The Department, in its sole discretion, also reserves the right to cancel or modify the amount available in this NOFA.

- **3.** Eligible Activities. The following activity types are eligible uses of HOME funds awarded under this NOFA:
 - a. **Homeowner Rehabilitation Assistance (HRA)**. HRA provides funds for the rehabilitation, reconstruction, or new construction of a single-family residence owned and occupied by eligible low-income Households. Specific program guidelines can be found at 10 TAC Chapter 23, Single Family HOME Program, Subchapter C, Homeowner Rehabilitation Assistance Program, §§23.30 23.32.
 - b. **Tenant-Based Rental Assistance (TBRA)**. TBRA provides rental subsidies to eligible lowincome Households. Assistance may include rental, security, and utility deposits. Specific program guidelines can be found at 10 TAC Chapter 23, Single Family HOME Program, Subchapter F, Tenant-Based Rental Assistance Program, §§23.60 - 23.62.
 - c. **Homebuyer Assistance (HBA)**. HBA provides down payment and closing cost assistance, as well as possible rehabilitation assistance for accessibility modifications for eligible low-income Households. Specific program guidelines can be found at 10 TAC Chapter 23, Single Family HOME Program, Subchapter D, Homebuyer Assistance Program, §§23.40 23.42.
- **4. Prohibited Activities.** Prohibited activities include those prohibited in 24 CFR §92.214 and in the State HOME Rules.

5. Allocation of Funds

- a. Approximately \$1,577,813 in funds is available through the Reservation System for single-family HRA, TBRA, and HBA activities under the Persons with Disabilities (PWD) set-aside beginning Monday, September 23, 2019. The funds will be set aside in the manner described until Monday, April 6, 2020, after which any remaining funds in any of the set asides described below may be reprogrammed in a manner that is consistent with the 2019 One-Year Action Plan (OYAP) approved by HUD:
- b. The balances that are available in the Reservation System from any prior year funds for PWD set-aside activities will be incorporated into the PWD Set-Aside for TBRA under this NOFA and combined with the funds specified in this NOFA to assist eligible Households. Funds may be reserved for individual households for the following activities:
 - i. HRA. Approximately \$867,797 in set-aside funding will be available beginning Monday, September 23, 2019, at 10:30 a.m. Austin local time for HRA activities until Friday, November 22, 2019, at 10:30 a.m. Austin local time, at which time all remaining funding will be made available for any activity under the PWD set-aside until Monday, April 6, 2020 at 8:00 a.m. Austin local time.
 - ii. HBA. Approximately \$78,891 in set-aside funding will be available beginning Monday, September 23, 2019, at 11:00 a.m. Austin local time for HBA activities until Friday, November 22, 2019, at 11:00 a.m. Austin local time, at which time all remaining funding will be made available for any activity under the PWD set-aside until Monday, April 6, 2020 at 8:00 a.m. Austin local time.
 - iii. TBRA. Approximately \$631,125 in set-aside funding will be available beginning Monday, September 23, 2019, at 11:30 a.m. Austin local time for TBRA activities until Friday, November 22, 2019, at 11:30 a.m. Austin local time, at which time all remaining funding

will be made available for any activity under the PWD set-aside until **Monday, April 6, 2020 at 8:00 a.m. Austin local time**.

- c. Except as limited in this NOFA or by statute, the Department may reprogram funds at any time to the Reservation System, or to administer directly.
- d. An alternative timeline and method of releasing funds may be implemented, at the Department's sole discretion. Subsequent changes to the timeline or method of release will be published on the Department's website. However, failure to do so will not invalidate reservations that are otherwise made in accordance with this NOFA.
- e. Updated balances for the Reservation System may be accessed online at <u>www.tdhca</u>.state.tx.us/home-division/home-reservation-summary.htm. Reservations of funds may be submitted at any time during the term of a RSP Agreement, as long as funds are available in the Reservation System. Participation in the Reservation System is not a guarantee of funding availability.

6. Application Selection Process.

- a. Funding under this NOFA will be made available through the Reservation System to HOME Administrators with active RSP Agreements. Applications to request a RSP Agreement are accepted on an on-going basis. Applicants requesting a RSP Agreement must submit a completed application, required documentation, and associated application materials as detailed in the Application Submission Procedures Manual (ASPM).
- b. All Application materials including manuals, program guidelines, and applicable HOME rules, are available on the Department's website at http://www.tdhca.state.tx.us/homedivision/applications.htm.
- c. Applications for an RSP Agreement will be required to adhere to the HOME Rule and threshold requirements in effect at the time of the Application submission. Applications must be on forms provided by the Department, cannot be altered or modified, and must be in final form before submitting them to the Department.
- d. Reservations of funds may be submitted at any time during the term of a RSP Agreement, as long as funds are available in the Reservation System. Updated balances for the Reservation System may be accessed online at <u>www.tdhca</u>.state.tx.us/home-division/home-reservation-summary.htm.
- e. Administrative deficiencies noted during the review of an RSP Application shall be subject to the administrative deficiency process outlined in 10 TAC §23.24.
- f. An Applicant may appeal decisions made by staff in accordance with 10 TAC §1.7
- g. All Applicants will be subject to a Previous Participation Review by the Department as outlined in 10 TAC Chapter 1, Subchapter C

7. Audit Requirements. All Applicants are subject to the requirements of 10 TAC §1.403 concerning Single Audits. Pursuant to Tex. Gov't Code §2306.1112, the Executive Award and Review Advisory Committee will make recommendations to the Board regarding funding and allocation decisions.

8. Eligible and Ineligible Applicants

- a. Eligible Applicants include Units of General Local Government, nonprofit organizations, Public Housing Authorities, Local Mental Health Authorities, and Councils of Government.
- b. Applicants are required to familiarize themselves with the Department's certification and debarment policies prior to application submission.

9. Application Submission.

- a. The Department will accept applications for the Reservation System on an on-going basis. Applications for the Reservation System are to be submitted as an upload to the Department's FTP server in the format requirements detailed in the RSP ASPM.
- b. Applicants must submit a completed Application, required documentation, and associated application materials, as described in this NOFA and as detailed in the RSP ASPM. All scanned copies must be scanned in accordance with the guidance provided in the RSP ASPM.
- All Application materials including manuals, this NOFA, program guidelines, and applicable c. HOME rules are available on the Department's website at http://www.tdhca.state.tx.us/home-division/applications.htm. Applications will be required to adhere to the HOME Rule and threshold requirements in effect at the time of the Application submission. Applications must be on Application forms published online at the above reference site provided by the Department which cannot be altered or modified, and must be in final form before they are submitted to the Department.
- d. Applicants are required to remit a non-refundable Application fee payable to the Texas Department of Housing and Community Affairs in the amount of \$30 per Application. Payment must be in the form of a check, cashier's check or money order. Do not send cash. Pursuant to Tex. Gov't Code §2306.147(b), the Department will waive Application fees for private nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services. These organizations must request a waiver of the grant application fee in a board resolution authorizing the submittal of the application to the Department, and must include with the application proof of their exempt status and a description of their supportive services in lieu of the Application fee. The Application fee is not an allowable or reimbursable cost under the HOME Program.
- e. This NOFA does not include text of the various applicable regulatory provisions that may be important to the HOME Program. For proper completion of the application, the Department strongly encourages potential Applicants to review the State and Federal regulations, and contact the HOME and Homelessness Programs Division for guidance and assistance.

10. Dispute Resolution/Appeal.

- a. The Department encourages the use of alternative dispute resolution in accordance with Tex. Gov't Code §2306.082 and as described more fully in 10 TAC §1.17.
- b. An Applicant may appeal decisions made by staff in accordance with 10 TAC §1.7.

For questions regarding this NOFA, please contact Raul Salazar, HOME Production Coordinator for the HOME and Homelessness Programs Division, at (512) 475-2975 or via email at HOME@tdhca.state.tx.us.

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BOARD ACTION REQUEST

HOME AND HOMELESSNESS PROGRAMS DIVISION

SEPTEMBER 5, 2019

Presentation, discussion, and possible action to authorize the issuance of the 2019 HOME Investment Partnerships Program Single Family Contract for Deed Set-Aside Reservation System Notice of Funding Availability and publication of the NOFA in the *Texas Register*.

RECOMMENDED ACTION

WHEREAS, the Board of the Texas Department of Housing and Community Affairs (TDHCA or the Department) has previously authorized the submission of 2019 Consolidated Plan One-Year Action Plan (OYAP) which identified funding percentages and amounts for each of its HOME Investment Partnerships Program (HOME) Single Family activities;

WHEREAS, the U.S. Department of Housing and Urban Development's (HUD) has approved the OYAP and is releasing the State of Texas 2019 allocation of funds to TDHCA for the HOME Program;

WHEREAS, the OYAP identified and set-aside an amount that equates to \$1,000,000 of HOME Single Family Contract for Deed activities;

WHEREAS, TDHCA is experiencing continued demand for funding for HOME Program single family activities under the Reservation System, and

WHEREAS, the Department now wishes to release a Notice of Funding Availability (NOFA) for HOME Program single family activities in the full amount of \$1,000,000 for the Contract for Deed (CFD) set-aside;

NOW, therefore, it is hereby

RESOLVED, that the Executive Director and his designees be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department, to post on the Department's website and to publish a notification in the *Texas Register*, a 2019 HOME Single Family Programs Reservation System NOFA for funding in the amount of approximately \$1,000,000, to be released into the Reservation System, and to make any technical corrections or perform such other acts as may be necessary to effectuate the foregoing.

BACKGROUND

HUD's State of Texas 2019 allocation to TDHCA for the HOME Program is approximately \$31,556,262 and the grant agreement was received on July 12, 2019. TDHCA has programmed

these funds for various uses in accordance with the HUD-approved 2019 Consolidated Plan One-Year Action Plan (OYAP). Staff is proposing to release a HOME Single Family Programs Reservation System NOFA that includes \$1,000,000 of the 2019 HOME allocation for the CFD set-aside. The CFD funds will be made available to single family HOME Program Reservation System Administrators. Approval for participation in the Reservation System is not a guarantee of funding availability.

These CFD set-aside funds are not subject to the Regional Allocation Formula, and are available in designated colonia areas of the state on a first come first served basis. The availability and use of these funds are subject to state and federal regulations including, but not limited to Texas Administrative Code in Title 10 Part 1, Chapter 20, Single Family Umbrella Rule, and Chapter 23, the Single Family HOME Program, as amended (HOME Program Rule), and the federal regulation governing the HOME Program at 24 CFR Part 92, as amended (HOME Final Rule).

The 2019 HOME Single Family Programs Reservation System NOFA was developed in accordance with the Single Family Umbrella and HOME Program Rules. Administrators will access the funds available under this NOFA either through existing agreements, or by applying under an open application cycle.



HOME Investment Partnerships Program (HOME) CFDA# 14.239

2019 HOME Investment Partnerships Program Single Family Contract for Deed Set-Aside Reservation System Notice of Funding Availability

1. Summary.

- a. The Texas Department of Housing and Community Affairs (the Department) announces a NOFA of approximately \$1,000,000 in HOME funds for single family housing programs under the Contract for Deed (CFD) set-aside under a Reservation System. These funds will be made available to HOME Reservation System Participants with a current Reservation System Participation (RSP) Agreement.
- b. The availability and use of these funds are subject to the HOME rules including, but not limited to the following Texas Administrative Code (TAC) rules in effect at the time of contract execution, Title 10, Part 1, Chapter 1, Administration; Chapter 2, Enforcement; Chapter 20, the Single Family Programs Umbrella Rule; Chapter 21, the Minimum Energy Efficiency Requirements for Single Family Construction Activities; Chapter 23, the Single Family HOME Program, , (State HOME Rules); and Tex. Gov't Code Chapter 2306. Other federal and state regulations include but are not limited to, 24 CFR Part 58 for environmental requirements, 2 CFR Part 200 for Uniform Administrative Requirements, 24 CFR §135.38 for Section 3 requirements, 24 CFR Part 5, Subpart A for fair housing, (Federal HOME Rules), and for units of government, the Uniform Grant Management Standards (UGMS) as outlined in Chapter 783 in the Texas Local Government Code. Applicants must familiarize themselves with all of the applicable state and federal rules that govern the HOME Program.
- c. Capitalized terms in this NOFA have the meanings defined herein or as defined in State HOME Rules and the Federal HOME Rules.
- d. If changes to the RSP are required during the RSP term due to required changes in Federal or State law, the Department may initiate an amendment process to ensure compliance.
- 2. Source of Funds. Funds totaling \$1,000,000 are made available for single-family activities through the Department's 2019 annual HOME allocation from the U.S. Department of Housing and Urban Development (HUD). In accordance with Tex. Gov't Code §2306.111(d), these set-asides satisfy a legislatively mandated set-aside and therefore are not subject to the Regional

Allocation Formula. The Department, in its sole discretion, may also release unallocated HOME funds, deobligated funds, Program Income, and funds reallocated from undersubscribed setasides, as allowable and available, under this NOFA. The Department, in its sole discretion, also reserves the right to cancel or modify the amount available in this NOFA.

- **3.** Contract for Deed (CFD) Activity. CFD provides funds for the acquisition or refinance, in combination with rehabilitation or reconstruction, of single family housing occupied by the purchaser as shown on an executory contract for conveyance. Specific program guidelines can be found at 10 TAC Chapter 23, Single Family HOME Program, Subchapter E, Contract for Deed Program, §§23.50 23.52.
- **4. Prohibited Activities.** Prohibited activities include those at 24 CFR §92.214 and in the State HOME Rules. Funds will not be eligible for use in a Participating Jurisdiction.
- 5. Allocation of Funds. Approximately \$1,000,000 in funds is available through the Reservation System beginning Monday, September 23, 2019, at 10:00 a.m. Austin local time. The funds will be set-aside in the manner described below until Monday, April 6, 2020, at 8:00 a.m. Austin local time after which any remaining funds in any of the set asides described below may be reprogrammed in a manner that is consistent with the 2019 One-Year Action Plan (OYAP) approved by HUD.
 - Beginning Monday, September 23, 2019, at 10:00 a.m. Austin local time, funds may be reserved for eligible activities where the activity is located in a colonia as defined by Tex. Gov't Code, Chapter 2306, and where the household income does not exceed 60% of the Area Median Family Income (AMFI) as defined by HUD.
 - b. Beginning Tuesday, January 21, 2020, at 8:00 a.m. Austin local time, funds may be reserved for eligible activities in any area of the state, excluding Participating Jurisdictions, where the household income does not exceed 80% of the AMFI as defined by HUD.
 - c. Except as limited in this NOFA or by statute, the Department may reprogram funds at any time to the Reservation System, or to administer directly.
 - d. An alternative timeline and method of releasing funds may be implemented, at the Department's sole discretion. Subsequent changes to the timeline or method of release will be published on the Department's website. However, failure to do so will not invalidate reservations that are otherwise made in accordance with this NOFA.
 - e. Updated balances for the Reservation System may be accessed online at www.tdhca.state.tx.us/home-division/home-reservation-summary.htm. Reservations of funds may be submitted at any time during the term of a RSP Agreement, as long as funds are available in the Reservation System. Participation in the Reservation System is not a guarantee of funding availability.

6. Application Selection Process.

a. Funding under this NOFA will be made available through the Reservation System to HOME Administrators with active RSP Agreements. Applications to request a RSP Agreement are accepted on an on-going basis. Applicants requesting a RSP Agreement must submit a completed application, required documentation, and associated application materials as detailed in the Application Submission Procedures Manual (ASPM).

- b. All Application materials including manuals, program guidelines, and applicable HOME rules, are available on the Department's website at http://www.tdhca.state.tx.us/homedivision/applications.htm. Applications for an RSP Agreement will be required to adhere to the HOME Rule and threshold requirements in effect at the time of the Application submission. Applications must be on forms provided by the Department, cannot be altered or modified, and must be in final form before submitting them to the Department.
- c. Reservations of funds may be submitted at any time during the term of a RSP Agreement, as long as funds are available in the Reservation System. Updated balances for the Reservation System may be accessed online at www.tdhca.state.tx.us/home-division/home-reservation-summary.htm.
- d. Administrative deficiencies noted during the review of an RSP Application shall be subject to the administrative deficiency process outlined in 10 TAC §23.24(c).
- e. All Applicants will be subject to a Previous Participation Review by the Department as outlined in 10 TAC Chapter 1, Subchapter C.
- **7.** Audit Requirements. All Applicants are subject to the requirements of 10 TAC §1.403 concerning Single Audits. Pursuant to Tex. Gov't Code §2306.1112, the Executive Award and Review Advisory Committee will make recommendations to the Board regarding funding and allocation decisions.

8. Eligible and Ineligible Applicants.

- a. Eligible Applicants include Units of General Local Government, nonprofit organizations, Public Housing Authorities, Local Mental Health Authorities, and Councils of Government.
- b. Applicants are required to familiarize themselves with the Department's certification and debarment policies prior to application submission.

9. Application Submission.

- a. The Department will accept applications for the Reservation System on an on-going basis. Applications for the Reservation System are to be submitted as an upload to the Department's FTP server in the format requirements detailed in the RSP ASPM.
- b. Applicants must submit a completed Application, required documentation, and associated application materials, as described in this NOFA and as detailed in the RSP ASPM. All scanned copies must be scanned in accordance with the guidance provided in the RSP ASPM.
- c. All Application materials including manuals, this NOFA, program guidelines, and applicable HOME rules are available on the Department's website at http://www.tdhca.state.tx.us/home-division/applications.htm. Applications will be required to adhere to the HOME Rule and threshold requirements in effect at the time of the Application submission. Applications must be on Application forms published online at the

above reference site provided by the Department which cannot be altered or modified, and must be in final form before they are submitted to the Department.

- d. Applicants are required to remit a non-refundable Application fee payable to the Texas Department of Housing and Community Affairs in the amount of \$30 per Application. Payment must be in the form of a check, cashier's check or money order. Do not send cash. Pursuant to Tex. Gov't Code §2306.147(b), the Department will waive Application fees for private nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services. These organizations must request a waiver of the grant application fee in a board resolution authorizing the submittal of the application to the Department, and must include with the application proof of their exempt status and a description of their supportive services in lieu of the Application fee. The Application fee is not an allowable or reimbursable cost under the HOME Program.
- e. This NOFA does not include text of the various applicable regulatory provisions that may be important to the HOME Program. For proper completion of the application, the Department strongly encourages potential Applicants to review the State and Federal regulations, and contact the HOME and Homelessness Programs Division for guidance and assistance.

10. Dispute Resolution/Appeal.

- a. The Department encourages the use of alternative dispute resolution in accordance with Tex. Gov't Code §2306.082 and as described more fully in 10 TAC §1.17.
- b. An Applicant may appeal decisions made by staff in accordance with 10 TAC §1.7.

For questions regarding this NOFA, please contact Raul Salazar, HOME Production Coordinator for the HOME and Homelessness Programs Division, at (512) 475-2975 or via email at HOME@tdhca.state.tx.us.

BOARD REPORT ITEM

TEXAS HOMEOWNERSHIP DIVISION

SEPTEMBER 5, 2019

Presentation, discussion, and possible action on the Participating Lender List for the Single Family Mortgage Loan and Mortgage Credit Certificate Programs.

RECOMMENDED ACTION

WHEREAS, pursuant to Tex. Gov't Code §2306.149, the Board has the specific duty and power to compile a list of approved mortgage lenders; and

WHEREAS, the Department has compiled a Participating Lender List for the Single Family Mortgage Loan and Mortgage Credit Certificate Programs;

Now, therefore, it is hereby

RESOLVED, that the attached Participating Lender List is approved for use in conjunction with the Single Family Mortgage Loan and MCC Programs.

BACKGROUND

Attached is the current Participating Lender List for both the Single Family Mortgage Loan and Mortgage Credit Certificate Programs. The process to request to become a Participating Lender is open, ongoing, and non-competitive. The Single Family Mortgage Loan lender approval process is a shared process between TDHCA and the Master Servicer (currently Idaho Housing and Finance Association). As a condition precedent to participation in a Program, the Mortgage Lender must first have been approved by the Servicer and shall have executed and delivered an executed Application to Participate, the Master Mortgage Origination Agreement and/or the Master Mortgage Credit Certificate Participation Agreement, and shall have provided to the Department and the Servicer certain other materials requested by the Department and Servicer in connection therewith, including the Opinion of Counsel to Mortgage Lender and Board Resolution of Mortgage Lender, each in the form provided by the Department and the Servicer. New mortgage lenders are able to submit documentation for consideration at any time. To keep participating lenders advised of current policies and maintain current written agreements, all lenders are required to execute the Annual Acknowledgement of Program Participation in the TDHCA Single Family Mortgage Loan and/or Mortgage Credit Certificate programs. Additionally, a 3 year lender recertification including execution of all program documents is required for all participating lenders. A review of the participating lender's financial statements and quality control systems is required by the Master Servicer on an annual basis. To date, 218 lending institutions providing

mortgage options throughout the state have signed documents to participate in one or both of the programs. Of the list below, 35 are new participants to the program(s).

In an effort to maintain a well trained and knowledgeable lender network, online lender trainings are available year round on demand by our program administrator on any current mortgage loan program to any existing and/or new participating lender. Additionally, Department staff conducts webinars or on-site lender trainings upon request.

In accordance with Tex. Gov't Code §2306.149, staff is requesting the Board approve the attached list of mortgage lenders for use in conjunction with the Single Family Mortgage Loan and Mortgage Credit Certificate Program(s).

Approved Lenders
1st Alliance Mortgage, LLC dba Alliance Home Lending
5 Home Plate Group, LLC dba Home Plate Mortgage*
(AMEC) American Mortgage & Equity Consultants, Inc.
Academy Mortgage Corporation
Affiliated Bank, N.A.
Affiliated Mortgage Company
Alliance Mortgage Group, LLC*
Amarillo National Bank
Amcap Mortgage, Ltd.
American Financial Network, Inc.
American Pine Mortgage, LLC (affiliated with PrimeLending)*
American Southwest Mortgage Corp.
America's Choice Home Loans, LP
AmeriFirst Financial, Inc.*
AmeriPro Funding, Inc.
AmRes Corporation dba American Residential Living*
AnnieMac Home Mortgage Ark-La-Tex Financial Services LLC dba Benchmark Mortgage
Aspire Financial, Inc. dba TexasLending.com
Associated Mortgage Corporation*
Austin Capital Bank SSB dba Homeadvantage
Axia Financial, LLC
BancorpSouth Bank
Bank of America
Bank of Oklahoma dba Bank of Texas
Barton Creek Lending Group, LLC
Bay Equity, LLC
BBMC Mortgage, a division of Bridgeview Bank Group
Bluesky Lending
Bluewater Mortgage, LLC dba Upward Home Loans
Broker Solutions Inc. dba New American Funding
CalAtlantic Mortgage, Inc.
CalCon Mutual Mortgage, LLC dba OneTrust Home Loans
Caliber Home Loans, Inc.
Caltex Funding, LP
Capstar Lending, LLC
Cardinal Financial Company, LP
Castle & Cooke Mortgage, LLC
Cendera Funding, Inc.

Approved Lenders
Certainty Home Loans (f/n/a WR Starkey)
Champions Lending, LLC dba Champions Mortgage
Cherry Creek Mortgage Co., Inc.*
City Bank Mortgage
City First Mortgage Services, LLC
Citywide Home Loans DBA Citywide Funding Corp.
CLM Mortgage, LLC
CMG Mortgage dba CMG Financial
Colonial Savings, F.A./Colonial National Mortgage
Columbus Capital Lending
Commerce Home Mortgage, LLC*
Commonwealth Mortgage of Texas, LP
Community Development Corporation of Brownsville
Compass Mortgage, Inc.
Cornerstone Home Lending
Corridor Mortgage Group, Inc.
Counselors Mortgage Corp.
Crestmark Mortgage Co., Ltd.
CrossCountry Mortgage, Inc.
DAS Acquisition Company, LLC
DHI Mortgage Company, Ltd.
Data Mortgage, Inc. dba Essex Mortgage, Inc.
Diamond Residential Mortgage Corp.
Directions Equity, LLC*
Draper and Kramer Mortgage Corp dba 1st Advantage Mtg.
Eagle Home Mortgage, LLC
Elite Financing Group, LLC
eCU Mortgage, LLC*
Encompass Lending Group*
Envoy Mortgage
Eustis Mortgage Corporation dba Finance Home America
Fairway Independent Mortgage
FBC Mortgage, LLC*
Finance of America Mortgage, LLC
First American Mortgage
First California Mortgage Company dba FirstCal
First Centennial Mortgage Corporation
First Choice Loan Services
First Community Bank - Home Loan Center
First Continental Mortgage Company

First National Bank of Trenton First National Bank Texas dba First Community Mortgage Freedom Mortgage Corporation* Gardner Financial Services dba Legacy Mutual Mortgage Gateway Mortgage Group, LLC GenEquity Mortgage, Inc.
Freedom Mortgage Corporation* Gardner Financial Services dba Legacy Mutual Mortgage Gateway Mortgage Group, LLC
Gardner Financial Services dba Legacy Mutual Mortgage Gateway Mortgage Group, LLC
Gardner Financial Services dba Legacy Mutual Mortgage Gateway Mortgage Group, LLC
SenEquity Mortgage, Inc.
Geneva Financial Services, Ltd.
Gershman Investment Corporation*
Global Home Finance, Inc.
Gold Standard Mortgage
Gold Star Mortgage Financial Group
Goldwater Bank, N.A.
Great Plains National Bank
Guaranteed Rate, Inc.*
Guaranteed Rate Affinity*
Guild Mortgage Company
lamilton Group Funding, Inc.
lancock Mortgage Partners, Inc.
lancock Whitney Bank
lighlands Residential Mortgage
IomeBridge Financial Services, Inc. (fka Real Estate Mortgage Network, Inc.)
Iomespire Mortgage Corporation*
lometown Lenders, LLC
Iometrust Mortgage Company
Iomeway Mortgage fka Stanford Lending, LLC
Iomewood Mortgage LLC
loustonian Mortgage Group, Inc.
beriaBank Mortgage Company
HS Mortgage, LLC
mpact Capital Mortgage
ndependent Bank
nfinity Mortgage Holdings, LLC
nspire Home Loans, Inc.*
ntegrity First Financial Group, Inc.
nterlinc Mortgage Services
nternational City Mortgage, Inc.
P Morgan Chase
MJ Financial Group*
NC Mortgage Company*
SB Mortgage Corporation*

Approved Lenders
K. Hovnanian American Mortgage
KBHS Home Loans, LLC
Keller Mortgage LLC
LHM Financial Corp dba CNN Mortgage
Land Home Financial Services, Inc.
LeaderOne Financial Corp.
Liberty Bank and Trust Co.
Liberty Mortgage (Wendeburg Interests, Inc.)
Loan Simple, Inc.
loanDepot.com LLC
LoanStar Home Loans, LLC dba Loan Star Home Lending
M/I Financial, LLC
Mid America Mortgage, Inc.
Mission Mortgage of Texas, Inc.
MLD Mortgage Inc. DBA The Money Store*
Moria Development, Inc. dba Peoples Mortgage Company
Mortgage Financial Services, LLC
Mortgage Pros, Inc.
Mortgage Services, Inc. dba Mortgage E-Z, Inc.
Mountain West Financial, Inc.
Movement Mortgage, LLC*
Nations Reliable Lending, LLC
NationStar Mortgage
Network Funding, L.P.
New ERA Mortgage Services, Inc.
NewRez, LLC (F/K/A NewPenn Financial, LLC)
Northpointe Bank
Northstar Bank
Norwich Commerical Group, Inc. dba Norcom Mortgage
Oak Mortgage Group
On Q Financial, Inc.
Open Mortgage
Origin Bank*
Pacific Union Financial, LLC
Panorama Mortgage Group, LLC (f/k/a Alterrra Group, LLC)
Paramount Residential Mortgage Group, Inc.*
Patriot Bank Mortgage, Inc.
Peoples Home Equity Mortgage Lending
Perl Mortgage, Inc.
Pilgrim Mortgage, LLC*

Approved Lenders
Planet Home Lending, LLC
PNC Mortgage
Precious Realty & Mortgage, LLC
Premier Nationwide Lending (NTFN, Inc.)
Primary Residential Mortgage Inc.
PrimeLending, a Plains Capital Company
Primewest Mortgage Corp.
Princess Palace, LLC dba Impact Mortgage
Prodigy, Inc. dba Prodigy Mortgage
Prompt Mortgage
Prospect Mortgage
Pulte Mortgage
RANLife, Inc.
Regions Bank*
Reliance First Capital, LLC*
Republic State Mortgage Company
Residential Bancorp
Residential Wholesale Mortgage, Inc.*
Right Start Mortgage, Inc.
Rocky Mountain Mortgage Company
Security America Mortgage, Inc.
Secure Financial Services, Inc. dba Secure Mortgage Co.
Security National Mortgage Company
Sente Mortgage, Inc.
Sequoia Mortgage, LLC
Service First Mortgage Co. (SFMC, LP)
Secure Financial Services, Inc. dba Secure Mortgage Co.
Southwest Funding, LP
Starboard Financial Management, LLC dba Starboard Financial*
Stearns Lending, Inc.
Success Mortgage Partners, Inc.
Sun West Mortgage Company, Inc.*
Supreme Lending (aka Everett Financial, Inc.)
SWBC Mortgage Corporation
Synergy One Lending, Inc.*
Texana Bank
Texas Bank Financial dba Texas Bank Mortgage Co.*
The Home Lending Group, LLC dba Modern Mortgage
The Lending Partners
Thrive Mortgage

Approved Lenders
Top One Mortgage LLC
Town Square Mortgage & Investments, Inc.
Tri-State Mortgage Company
TXL Mortgage Corporation
U.S. Bank Home Mortgage
Union Home Mortgage Corporation
Veterans United Home Loans
Victorian Finance, LLC
V.I.P. Mortgage, Inc.*
VIP Mortgage*
Wallick & Volk, Inc.
Waterstone Mortgage Corporation
Wells Fargo Home Mortgage
WestStar Bank
Weststar Mortgage Corp.
Willow Bend Mortgage
Wolfe Financial, Inc. dba Integrity Mortgage Group
Woodside Mortgage
* Approved within last 12 months

* Approved within last 12 months

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BOARD ACTION REQUEST

BOND FINANCE DIVISION

SEPTEMBER 5, 2019

Presentation, discussion, and possible action on Inducement Resolution No. 20-001, Scott Street Lofts, for Multifamily Housing Revenue Bonds Regarding Authorization for Filing an Application for Private Activity Bond Authority and a Determination of Eligibility relating to 10 TAC §11.101(a)(3) regarding Neighborhood Risk Factors

RECOMMENDED ACTION

WHEREAS, a bond pre-application for Scott Street Lofts, 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;

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;

WHEREAS, pursuant to 10 TAC §11.101(a)(3) of the 2019 Qualified Allocation Plan (QAP) related to Neighborhood Risk Factors, applicants are required to disclose to the Department the existence of certain risk factors of a proposed development site;

WHEREAS, the applicant has disclosed that the development site is located within 1,000 feet of multiple vacant and blighted structures; and

WHEREAS, staff has conducted a further review of the proposed development site and surrounding neighborhood and based on the documentation provided and discussed herein recommends the proposed site be found eligible under 10 TAC §11.101(a)(3);

NOW, therefore, it is hereby

RESOLVED, that the development site is found to be eligible; and

FURTHER RESOLVED, that based on the foregoing, Inducement Resolution No. 20-001 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 Scott Street Lofts, is hereby approved in the form presented to this meeting.

BACKGROUND

<u>General Information</u>: The BRB administers the state's annual private activity bond authority for the State of Texas. The Department is an issuer of Private Activity Bonds and is required to induce an application for bonds prior to the submission to the BRB. Approval of the inducement resolution does not constitute approval of the development but merely allows the Applicant the opportunity to move into the full application phase of the process. Once the application receives a Certificate of Reservation, the Applicant has 150 days to close on the private activity bonds.

During the 150-day process, the Department will review the complete application for compliance with the Department's Rules, including but not limited to site eligibility and threshold as well as previous participation as it relates to developments previously funded through the Department. During the review of the full application, staff will also underwrite the transaction and determine financial feasibility in accordance with the Real Estate Analysis Rules. The Department will schedule and conduct a public hearing, and the complete application, including a transcript from the hearing, will then be presented to the Board for a decision on the issuance of bonds as well as a determination on the amount of housing tax credits anticipated to be allocated to the development. This inducement resolution would reserve approximately \$18 million in private activity bond volume cap.

Scott Street Lofts is located at 1320 Scott Street in Houston, Harris County, and proposes the new construction of 123 units serving the elderly population. This transaction is proposed to be Priority 3 with 10 of the units rent and income restricted at 30% of the Area Median Family Income (AMFI), 20 of the units rent and income restricted at 50% of AMFI, 45 of the units rent and income restricted at 60% of AMFI, and 23 of the units rent and income restricted at 80% AMFI. The Department received a letter of support for the development from Robert Gallegos, District I, Houston Council Member. The Department has not received any letters of opposition.

<u>Site Analysis</u>: The presence of neighborhood risk factors under 10 TAC §11.101(a)(3) requires additional site analysis and the risk factor attributable to Scott Street Lofts is that the development site is located within 1,000 feet of several vacant structures that may be regarded as blighted or abandoned. The area surrounding the proposed project historically was an industrial and warehouse district due to its proximity to railroads and Downtown Houston. The development site is located in census tract 48201310200, which according to the most recent five-year American Community Survey (ACS), is a first quartile census tract, with a median income of \$111,542, and a poverty rate of 7.5%. Moreover, according to the ACS data, the percentage of adults age 25 years and older with an Associate degree or higher is 73.83% in the census tract. The area is currently described as containing several abandoned homes, well-maintained older single-family homes, newly constructed single-family homes and townhomes that, according to the applicant, are within the \$300,000 range. The applicant presented mitigation in accordance with 10 TAC §11.101(a)(3)(D)(iii) that new construction has occurred as recently as 2017, within a 1,000-foot radius of the proposed Development.

With the area surrounding the development in the process of gentrification and revitalization, the presence of the few blighted structures does not appear to be of such a nature or severity as to render the development site ineligible. Staff recommends the development site for Scott Street Lofts be

found eligible. Staff notes that because Board action today is for the adoption of an inducement resolution, should new information become known as it relates to blight or any of the other Neighborhood Risk Factors at the time the full housing tax credit application is submitted to the Department, or should the full application be submitted under a different program year with different rules, then staff will need to re-evaluate and bring a new determination of eligibility before the Board at that time.

RESOLUTION NO. 20-001

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 <u>Exhibit A</u> attached hereto. The ownership of the Developments as more fully described in <u>Exhibit A</u> will consist of the applicable ownership entity and its principals or a related person (the "Owners") within the meaning of the Internal Revenue Code of 1986, as amended (the "Code"); and

WHEREAS, the Owners have made not more than 60 days prior to the date hereof, payments with respect to the Developments and expect to make additional payments in the future and desire that they be reimbursed for such payments and other costs associated with the Developments from the proceeds of tax-exempt and taxable, as applicable, obligations to be issued by the Department subsequent to the date hereof; and

WHEREAS, the Owners have indicated their willingness to enter into contractual arrangements with the Department providing assurance satisfactory to the Department that the requirements of the Act and the Department will be satisfied and that the Developments will

satisfy State law, Section 142(d) and other applicable Sections of the Code and Treasury Regulations; and

WHEREAS, the Department desires to reimburse the Owners for the costs associated with the Developments listed on <u>Exhibit A</u> attached hereto, but solely from and to the extent, if any, of the proceeds of tax-exempt and taxable, as applicable, obligations to be issued in one or more series to be issued subsequent to the date hereof; and

WHEREAS, at the request of the Owners, the Department reasonably expects to incur debt in the form of tax-exempt and taxable, as applicable, obligations for purposes of paying the costs of the Developments described on Exhibit A attached hereto; and

WHEREAS, in connection with the proposed issuance of the Bonds (defined below), the Department, as issuer of the Bonds, is required to submit for the Developments one or more Applications for Allocation of Private Activity Bonds or Applications for Carryforward for Private Activity Bonds (the "Application") with the Texas Bond Review Board (the "Bond Review Board") with respect to the tax-exempt Bonds to qualify for the Bond Review Board's Allocation Program in connection with the Bond Review Board's authority to administer the allocation of the authority of the State to issue private activity bonds; and

WHEREAS, the Governing Board of the Department (the "Board") has determined to declare its intent to issue its multifamily revenue bonds for the purpose of providing funds to the Owners to finance the Developments on the terms and conditions hereinafter set forth; NOW, THEREFORE,

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

ARTICLE 1

OFFICIAL INTENT; APPROVAL OF CERTAIN ACTIONS

Section 1.1. <u>Authorization of Issue</u>. 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 <u>Exhibit A</u>; (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. <u>Terms of Bonds</u>. 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. <u>Reimbursement</u>. The Department reasonably expects to reimburse the Owners for all costs that have been or will be paid subsequent to the date that is 60 days prior to the date hereof in connection with the acquisition of real property and construction of its Development and listed on <u>Exhibit A</u> attached hereto ("Costs of the Developments") from the proceeds of the Bonds, in an amount which is reasonably estimated to be sufficient: (a) to fund a loan to provide financing for the acquisition and construction or rehabilitation of its Development, including reimbursing the applicable Owner for all costs that have been or will be paid subsequent to the date that is 60 days prior to the date hereof in connection with the acquisition and construction or rehabilitation of the Developments; (b) to fund any reserves that may be required for the benefit of the holders of the Bonds; and (c) to pay certain costs incurred in connection with the issuance of the Bonds.

Section 1.4. <u>Principal Amount</u>. 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 <u>Exhibit A</u> 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. <u>The Developments</u>. 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. <u>Payment of Bonds</u>. 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.

Costs of Developments. The Costs of the Developments may include any Section 1.8. 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. <u>No Commitment to Issue Bonds</u>. 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. <u>Conditions Precedent</u>. 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. <u>Authorization to Proceed</u>. 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. <u>Related Persons</u>. 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. <u>Declaration of Official Intent</u>. This Resolution constitutes the Department's official intent for expenditures on Costs of the Developments which will be reimbursed out of the issuance of the Bonds within the meaning of Sections 1.142-4(b) and 1.150-2, Title 26, Code of Federal Regulations, as amended, and applicable rulings of the Internal Revenue Service thereunder, to the end that the Bonds issued to reimburse Costs of the Developments may qualify for the exemption provisions of Section 142 of the Code, and that the interest on the Bonds (except for any taxable Bonds) will therefore be excludable from the gross incomes of the holders thereof under the provisions of Section 103(a)(1) of the Code.

Section 1.14. <u>Execution and Delivery of Documents</u>. 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. <u>Authorized Representatives</u>. The following persons are hereby named as authorized representatives of the Department for purposes of executing, attesting, affixing the Department's seal to, and delivering the documents and instruments and taking the other actions referred to in this Article 1: the Chair or Vice Chair of the Board, the Executive Director or Acting Director of the Department, the Director of Administration of the Department, the Director of Bond Finance and Chief Investment Officer of the Department, the Director of Multifamily Bonds, the Director of Texas Homeownership of the Department and the Secretary or any Assistant Secretary to the Board. Such persons are referred to herein collectively as the "Authorized Representatives." Any one of the Authorized Representatives is authorized to act individually as set forth in this Resolution.

ARTICLE 2

CERTAIN FINDINGS AND DETERMINATIONS

Section 2.1. <u>Certain Findings Regarding Developments and Owners</u>. 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. <u>No Indebtedness of Certain Entities</u>. 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. <u>Certain Findings with Respect to the Bonds</u>. 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. <u>Books and Records</u>. 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. <u>Notice of Meeting</u>. 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. <u>Effective Date</u>. This Resolution shall be in full force and effect from and upon its adoption.

[Execution page follows]

PASSED AND APPROVED this 5th day of September, 2019

[SEAL]

Ву:_____

Chair, Governing Board

ATTEST:

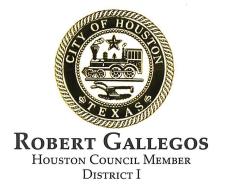
Secretary to the Governing Board

Signature Page to Inducement Resolution

EXHIBIT "A"

Descriptions of the Owners and the Developments

Project Name	Owner	Amount Not to Exceed									
	a Texas limited partnership	General Partner/Member: Scott Street Lofts Advisors, LLC, a Texas limited liability company	\$18,000,000								
Costs: Acquisition/construction of a 123-unit affordable, multifamily housing development to be known as Scott Street Lofts, to be located at 1320 Scott Street, Harris County, Houston, TX 77003											



March 25, 2019

Housing and Community Development Department 2100 Travis Street, 9th Floor Houston, TX 77002

Re: Support for Scott Street Lofts, Harvey Recovery NOFA

Dear Director McCasland,

I am writing in support of an application submitted by Scott Street Lofts, LP, for a proposed Senior affordable housing community to be located near Scott Street and Clay Street in the East Downtown community.

My district encompasses the area where the proposed development site is located, and I believe the surrounding community will benefit from the availability of affordable housing options for senior residents. In addition, I am confident this project will help continue an exciting redevelopment of this area and bring new amenities and options for residents.

I am happy to support Scott Street Lofts and their Harvey Recovery NOFA Application. If you have any questions, please call my office at 832-393-3011.

Respectfully,

legen

Robert Gallegos Houston Council Member District I



1n

BOARD ACTION REQUEST

MULTIFAMILY FINANCE DIVISION

SEPTEMBER 5, 2019

Presentation, discussion, and possible action on a Determination Notice for Housing Tax Credits (#19412 Majestic Ranch Apartments, San Antonio)

RECOMMENDED ACTION

WHEREAS, a 4% Housing Tax Credit application for Majestic Ranch Apartments, sponsored by Hogan Properties and Michael A. Hogan, was submitted to the Department on June 11, 2019;

WHEREAS, in lieu of a Certification of Reservation, a Carryforward Designation Certificate was issued by the Texas Bond Review Board on January 10, 2017, and will expire on December 31, 2019;

WHEREAS, the proposed issuer of the bonds is the San Antonio Housing Trust Finance Corporation; and

WHEREAS, in accordance with 10 TAC §1.301(d)(1), the compliance history is designated as a Category 2 and deemed acceptable by Executive Award and Review Advisory Committee (EARAC);

NOW, therefore, it is hereby

RESOLVED, that the issuance of a Determination Notice of \$1,698,636 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 Majestic Ranch Apartments, is hereby approved as presented to this meeting.

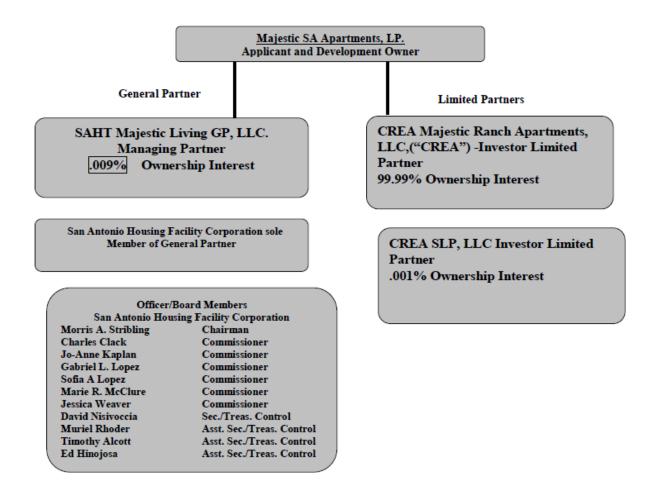
BACKGROUND

General Information: Majestic Ranch Apartments proposes the new construction of 288 units to be located at approximately 4862 Callaghan Road (East Village) and 118 Woodside (West Village) in San Antonio, Bexar County. The East Village and West Village are separated by a drainage area owned and maintained by the city. The development will serve the general population and all of the units will be rent and income restricted at 60% of Area Median Family Income (AMFI). The site conforms to the current zoning.

Organizational Structure: The Borrower is Majestic SA Apartments, LP and includes the entities and principals as indicated in the organization chart in Exhibit A. The applicant's portfolio is considered a Category 2, and the previous participation was deemed acceptable by EARAC.

Public Comment: There were no letters of support or opposition received by the Department.

EXHIBIT A



19412 N	lajestic Ranch Apa	nary	REAL ESTATE ANALYSIS DIVISION August 28, 2019												
F	Property Identification	R	ECOMMEND	KEY PRINCIPAL / SPONSOR											
Application #	19412	TDHCA Program	Request	Red	commended	Hogan Properties Company, Inc. dba HomeSpring									
Development	Majestic Ranch Apartments	ноуаг	relopente	-	Partners	ира нош	esping								
City / County	San Antonio / Bexar			5	l Hogan										
Region/Area	9 / Urban														
Population	General			San		lousing Fa	acility								
Set-Aside	General	0						Corpo	oration						
Activity	New Construction	0				Related	Parties	Contra	ctor - N	lo Sel	ler - No				
	ΤΥΡΙΟ	L BUILDING ELEVATION/PHOTO				UNI	DISTRIBU	TION	INCO	ME DISTR	IBUTION				
						# Beds	# Units	% Total	Income	# Units	% Total				
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						Pro Forma Underwritten TDHCA's Pro Forma									
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						Breakeven Occ. 📀 85.5% Breakeven Rent \$78					\$782				
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											L OT 100%				
						Total Exp	ense	\$4,085/u	unit Contro	ollable \$	52,942/unit				
		SITE PLAN				MARKET FEASIBILITY INDICATORS									
		4 UNITS				Gross Ca	pture Rat	e (10% M	aximum)		3.1%				
		BUNTS MURRE				Highest l	Jnit Captu	ire Rate	0 12%	2 BR/6	0% 156				
						Dominar	nt Unit Cap	o. Rate	0 12%	2 BR/6	0% 156				
			akar			Premiums (↑60% Rents) N/A N/A									
	- 0044.04 WEST VILLOG 11 BYCODDIC 14 BYCODDIC 3477 AC. 84 JATS		()			Rent Assisted Units N/A									
						DEVELOPMENT COST SUMMARY									
						Costs Un	derwritten		Applic	ant's Cos	sts				
		PART PROVIDE THE PART OF THE P	3 AG.			Avg. Unit	Size	930	SF D	Density	22.1/acre				
			Acquisition			/K/unit	\$1,900K								
		The set of				Building		\$77.05	/SF \$72	2K/unit	\$20,636K				
	vite Transformer		Hard Cos			\$95	5K/unit	\$27,252K							
						Total Cos				6K/unit	\$44,941K				
		And the second s	_			Develop		\$5,20		Deferred)	Paid Year: 9				
		286 UNIT APARTMENT PROJECT ON 13.06 ACRE STE	_			Contract	or Fee	\$3,12	21K 30%	Boost	Yes				

DEBT (N	DEBT (Must Pay)						RANT FUN	EQUITY / DEFERRED FEES					
Source	Term	Rate	Amount	DCR	Source	Term	Rate	Amount	DCR	Source	Amount		
Bellwether Enterprise	40/40	4.25%	\$27,800,000	1.05	San Antonio CDBG	40/	2.00%	\$1,250,000	1.15	CREA	\$15,286,199		
Adjustment to Debt Per §11.302(c)40/40	4.25%	(\$2,350,000)	1.15	San Antonio Housing Authority	40/	0.00%	\$500,000	1.15				
										Hogan Properties Company, Inc	\$2,454,858		
										TOTAL EQUITY SOURCES	\$17,741,057		
			1							TOTAL DEBT SOURCES	\$27,200,000		
TOTAL DEBT (Must Pay)			\$25,450,00	00	CASH FLOW DEBT / GRANTS			\$1,750,000		TOTAL CAPITALIZATION	\$44,941,057		
					CONDITION	IS							
- Receipt and acceptance before Determination Notice:													
- Updated ESA conforming to §11.305(b) of the REA rules.													
Should any terms of the proposed	d capital	l structur	e change or i	if there	are material changes to the overa	all deve	elopment	plan or costs, t	he ana	alysis must be re-evaluated and adjustme	nt to the credit		
allocation and/or terms of other 1	TDHCA fu	unds ma	y be warrante	ed.									
BOND RESERVATIO	DN / ISSU	JER					Aei	RIAL PHOTOGR	APH(s)				
Issuer San	n Antonic	o Housing	g Trust FC	100		N.	- all		6 8	A Falcon Tires	banke		
Expiration Date					SHOW STOLARD	23	1		21	Falcon Tire S & Auto Serv	ices		
Bond Amount		\$23	,000,000	C III.					1	8			
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Bond Structure		FHA 2	221(d)(4)	20	WHICK A I A R		1		-		1==		
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				Parts -			1000	1	and the	Sector allow the	The Car		
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BOARD ACTION REQUEST

MULTIFAMILY FINANCE DIVISION

SEPTEMBER 5, 2019

Presentation, discussion, and possible action on a Determination Notice for Housing Tax Credits (#19417 Green Oaks Apartments, Houston)

RECOMMENDED ACTION

WHEREAS, an application for 4% Housing Tax Credits for Green Oaks Apartments, sponsored by APV Redevelopment Corporation and AMTEX Multi-Housing, LLC, was submitted on April 29, 2019;

WHEREAS, the Certification of Reservation from the Texas Bond Review Board was issued on May 29, 2019, and will expire on October 26, 2019;

WHEREAS, the proposed issuer of the bonds is the Victory Street Public Facility Corporation; and

WHEREAS, in accordance with 10 TAC §1.301(d)(1), the compliance history is designated as a Category 2 and deemed acceptable by Executive Award and Review Advisory Committee (EARAC) as conditioned herein;

NOW, therefore, it is hereby

RESOLVED, that the issuance of a Determination Notice of \$995,271 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 Green Oaks Apartments, is hereby approved and conditioned upon the following as presented to this meeting:

1. The Project Owner of 2100 Memorial Drive will provide a letter updating EARAC on the status of the Project and its proposed redevelopment, including the pending tenant litigation, every three months, beginning October 17, 2019, through December 17, 2020.

BACKGROUND

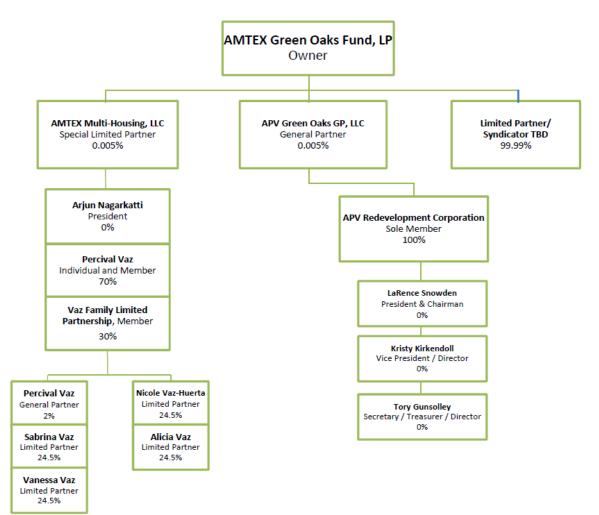
General Information: Green Oaks Apartments is a proposed new construction development to be located at 1475 Gears Road in Houston, Harris County. The site will serve the general population and conforms to current zoning requirements. The Certificate of Reservation from the Bond Review Board was issued 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. The development will consist

of 177 units, of which eight units will be rent and income restricted at 50% of AMFI, 167 units will be rent and income restricted at 60% AMFI, and the remaining two units will be employee-occupied.

Organizational Structure and Previous Participation: The Borrower is AMTEX Green Oaks Fund, LP and includes the entities and principals as illustrated in Exhibit A. The applicant's portfolio is considered a Category 2, and the previous participation was deemed acceptable by EARAC, subject to the condition as noted herein.

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

EXHIBIT A



19417 0	Green Oaks Apartm	REAL ESTATE ANALYSIS DIVISION August 28, 2019										
	Property Identification	A A A A A A A A A A A A A A A A A A A	RECOMMEND	ATION		KEY PRINCIPAL / SPONSOR						
Application # Development City / County Region/Area Population	19417 Green Oaks Apartments Houston / Harris 6 / Urban General	AMTEX Development, LLC Arjun Nagarkatti David Yarden APV Redevelopment										
Set-Aside	General			Tory Gu	unsolley							
Activity	New Construction		Related	Parties	Contra	ictor - Y	es Se	ller - No				
	Typica	AL BUILDING ELEVATION/PHOTO				UNI	i Distribu	TION	INCO	ME DISTR		
						# Beds	# Units	% Total	Income	# Units		
						Eff	-	0%	30%	-	0%	
1						1	35	20%	40%	-	0%	
						2	92	52%	50%	8	5%	
						3	50	28%	60%	167	94%	
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						TOTAL	177	100%	TOTAL	17	7 100%	
							PRO FOR	MA FEAS	ibility ind	DICATOR	S	
						Pro Forma Underwritten Applicant's Pro Forma						
			TINN	T C T		Debt Co	1.20	D Expense Ratio 🔮 38.9%				
						Breakeven Occ. 📀 83.0% Breakeven Rent					\$833	
						Average Rent \$930 B/E Rent Margin 🤡 \$98						
						Property Taxes Exempt Exemption/PILOT 100%						
		، د. ان ۲۰۰۰ د. از ۲۰۰۰ د. از ۲۰۰۰ د.				Total Expense \$4,081/unit Controllable \$2,827/unit						
		SITE PLAN				MARKET FEASIBILITY INDICATORS						
	GEAR	UP-27176 40:50 1				Gross Capture Rate (10% Maximum) 2.89						
							Jnit Captu		0 11%	2 BR/6		
							nt Unit Cap		0 11%	2 BR/6		
							<u>s (↑60% R</u>		N/A		N/A	
						Rent Ass	sted Units		N/A Cost Sun			
						Costs Un	derwritten			ant's Co	ete	
						Avg. Unit		914	1	ensity	25.5/acre	
						Acquisiti		71-		9K/unit	\$1,545K	
			PERTYLINE			Building		\$87.74		DK/unit	\$14,192K	
			H a			Hard Co				9K/unit	\$19,349K	
	Total Cost				1K/unit	\$33,809K						
						Develop	er Fee	\$3,82	27K (57% [Deferred)	Paid Year: 9	
			NY HISTANILA			Contract	or Fee	\$2,53	32K 30%	Boost	No	
		Manual Contraction of ACONI		_								

	DEBT (N	lust Pay	()			CASH FLOW DEBT	/ GR	ANT FUN	EQUITY / DEFERRED FEES				
Source		Term	Rate	Amount	DCR	Source Te	erm	Rate	Amount	DCR	Source	Amount	
Citibank		15/35	4.78%	\$16,013,299	1.20						CREA	\$9,354,620	
						HCDD - Eligible Costs 20	/n/a	1.00%	\$4,493,545	1.20			
						HCDD - Ineligible Costs 20.	/n/a	1.00%	\$1,779,568	1.20	AMTEX Development LLC	\$2,168,088	
											TOTAL EQUITY SOURCES	\$11,522,708	
											TOTAL DEBT SOURCES	\$22,286,412	
TOTAL DEBT (Must Pay)			\$16,013,29	99	CASH FLOW DEBT / GRANTS			\$6,273,113		TOTAL CAPITALIZATION	\$33,809,120	
						CONDITIONS							
1 Receipt and acce	1 Receipt and acceptance before Determination Notice:												
a: Certification by a CPA that the updated Site Work costs should be applied to Eligible Basis.													
b: Firm commitment from City of Houston for \$6,273,113 HOME loan stating all terms and conditions.													
2 Receipt and acce	ptance by C	Cost Ce	rtification										
a: Architect certifi	cation that a	all noise	assessme	ent recomme	ndatio	ns were implemented and the Develo	pmei	nt is com	pliant with HUD	noise	guidelines.		
b: Certification that	at a vapor ba	arrier wa	as implen	nented as rec	comme	ended by the ESA provider.							
						•	tavic	redit bas	is eligible. If an		IE funds are used for tax credit basis eligibl	e costs	
											icted from eligible basis, provide an attorn		
						· ·					rsis must be re-evaluated and adjustment t	÷ .	
allocation and/or term								p		anary		ine stoan	
BOND	RESERVATIO	N / ISS	UER					AEF	RIAL PHOTOGRA	APH(s)			
			Public Fac	cility	1.00		-		Print				
Issuer	,	Corpor		5	11	- CALLER AND ADDRESS	80	1	2 1 1 1	1.48	and the second second	A Distant	
Expiration Date			10.	/26/2019					i.c.	121		C	
Bond Amount			\$20,	,000,000	T	Autom Participant	100		-	101		6 1 3 1	
BRB Priority				Priority 3			66.			1 All		The state of the	
Bond Structure	Priv	vate Pla	acement	6			1.72	RE	1 1	at the			
% Financed with Tax- Exempt Bonds		61.6	0/		1	The second secon	100	國主					
			070			Gearaird	and a		Genel	ad.	GeeraRd	AND MONTONE	
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40 units / month.	MATIAS Deci	neasin	gappion								A SELLA	-	
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	AREA MA	Р		1			L.	33	1000	200			
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NORTHWEST IN	DEPENDENCE		S HO	UNITY / UNTON RDENE	and a second	Sa	nHo	uston T	ollway (Ilollin	oad)			

BOARD ACTION REQUEST

MULTIFAMILY FINANCE DIVISION

SEPTEMBER 5, 2019

Presentation, discussion, and possible action on a Determination Notice for Housing Tax Credits (#19419 Palladium Redbird, Dallas)

RECOMMENDED ACTION

WHEREAS, a 4% Housing Tax Credit application for Palladium Redbird, sponsored by Palladium USA, Inc. and the Dallas Housing Finance Corporation, was submitted to the Department on June 21, 2019;

WHEREAS, the Certification of Reservation from the Texas Bond Review Board was issued on August 15, 2019, and will expire on January 12, 2020;

WHEREAS, the proposed issuer of the bonds is the Dallas Housing Finance Corporation;

WHEREAS, pursuant to 10 TAC §11.101(a)(3) of the 2019 Qualified Allocation Plan (QAP) related to Neighborhood Risk Factors, applicants are required to disclose to the Department the existence of certain risk factors of a proposed development site;

WHEREAS, the applicant has disclosed the presence of a middle school (William Hawley Atwell Middle School) within the attendance zone of the proposed development site that did not achieve a Met Standard rating based on the 2018 Accountability Ratings by the Texas Education Agency (TEA);

WHEREAS, staff has conducted a further review of the proposed development site and surrounding neighborhood and based on the documentation provided and discussed herein recommends the proposed site be found eligible under §11.101(a)(3); and

WHEREAS, in accordance with 10 TAC §1.301(d)(1), the compliance history is designated as a Category 2 and deemed acceptable by Executive Award and Review Advisory Committee (EARAC);

NOW, therefore, it is hereby

RESOLVED, that the development site is found to be eligible; and

FURTHER RESOLVED, that the issuance of a Determination Notice of \$1,585,280 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 Palladium Redbird, is hereby approved as presented to this meeting.

BACKGROUND

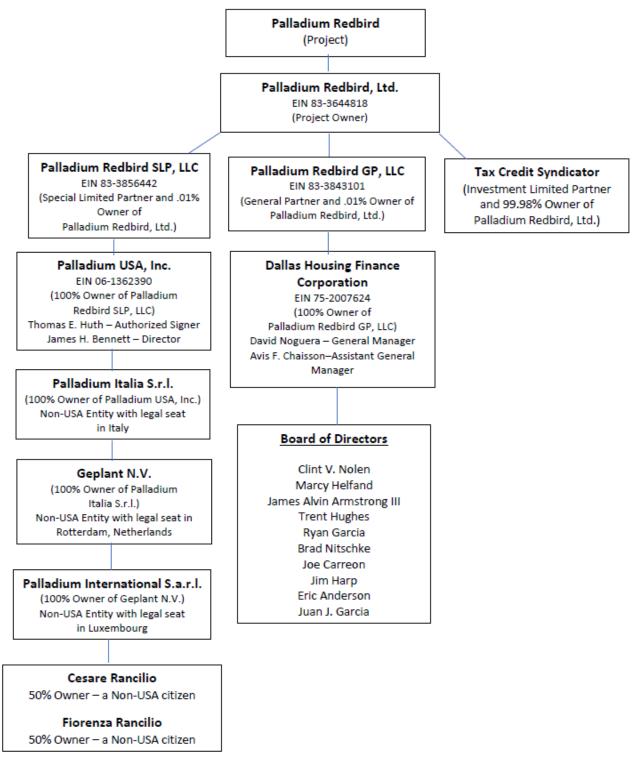
General Information: Palladium Redbird proposes the new construction of 300 units to be located at the southeast quadrant of S. Westmoreland and W. Camp Wisdom Road in Dallas, Dallas County. The development will serve the general population and the site conforms to current zoning. Among the 300 units, 12 units will be rent and income restricted at 30% of Area Median Family Income (AMFI), seven units will be rent and income restricted at 50% AMFI, 191 units will be rent and income restricted at 60% AMFI. The remaining 90 units will be at market rate with no rent or income restrictions.

Site Analysis: The applicant disclosed the presence of a middle school (William Hawley Atwell Middle School) within the attendance zone of the proposed development site that did not achieve a Met Standard rating based on the 2018 Accountability Ratings by TEA. A letter was submitted by Michael Hinojosa, Ed.D., Superintendent of Schools for the Dallas Independent School District that explained the specific plans in place for restoring Atwell Middle School to an acceptable rating. According to the applicant, Atwell Middle School achieved the Met Standard rating or the equivalent from 1995-2017. In 2018 Atwell missed achieving the Met Standard rating by one point. Based on this information, staff recommends the proposed site be found eligible under 10 TAC §11.101(a)(3) of the 2019 QAP.

Organizational Structure: The Borrower is Palladium Redbird, Ltd. and includes the entities and principals as indicated in the organization chart in Exhibit A. The applicant's portfolio is considered a Category 2, and the previous participation was deemed acceptable by EARAC.

Public Comment: There were no letters of support or opposition received by the Department.





19419 P	alladium Redbird -	REAL ESTATE ANALYSIS DIVISION August 28, 2019											
	Property Identification	R	ECOMMEND	ATION			KEY	PRINCIPA	al / Spon	SOR			
Application #	19419	TDHCA Program	Request	Re	ecommended	Palladium is Co-developer and SLP							
Development	Palladium Redbird	LIHTC (4% Credit)	\$1,585,280	\$1,585,280	\$5,284/Unit \$0.94	City of Dallas Housing Finance Corp is Co-developer							
City / County	Dallas / Dallas		bond issu		ce Corp I	s Co-aev	reioper						
Region/Area	3 / Urban	/ Urban											
Population	General	0		Sarah Re	idy/Casa	Linda De	velopme	nt Corp is	5				
Set-Aside	General	Consulta	int										
Activity	New Construction	0				Related	Parties	Contra	ctor - N	o Sell	er-No		
	ΤΥΡΙϹΑ	l Building Elevation/Photo				UNIT	DISTRIBU	TION	INCO	/IE DISTRI	BUTION		
						# Beds	# Units	% Total	Income	# Units	% Total		
1						Eff	-	0%	30%	-	0%		
		- 1X DED FT ELATION	0581005			1	129	43%	40%	-	0%		
						2	130	43%	50%	7	2%		
						3	41	14%	60%	203	68%		
						4	-	0%	MR	90	0 30%		
						TOTAL	300	100%	TOTAL	300	100%		
				99 99 <u>99</u>		PRO FORMA FEASIBILITY INDICATORS							
				n in E		Pro Forma Underwritten Applicant's Pro Forma							
						Debt Coverage 📀 1.21 Expense Ratio 📀 33.7%					-		
		<u> </u>				Breakeve	en Occ.	81.8%	Breakeve	en Rent	\$933		
						Average Rent\$1,057B/E Rent MarginImage: State\$1,057\$1,057\$1,057							
						Property Taxes Exempt Exemption/PILOT 100%					OT 100%		
						Total Expense \$4,034/unit Controllable \$2,846/unit							
		SITE PLAN					Marke	et Feasibi	Lity Indic	ATORS			
	Over all latest an Over all latest an Over all latest an Over all latest and Over all latest	CANES Internet of the second sec	N(N) I I I R(N) I I I G(N) I I I	2 200 1 107			pture Rat				2.3%		
		CONTRACTION OF ANY DRIVE	A.	04 1		- U	Jnit Captu		9%	1 BR/60			
			MONERTY LINE				nt Unit Cap		9%	2 BR/60			
			C C C				s (↑60% Re	•	Yes		\$209/Avg.		
						Rent Assi	sted Units		33		otal Units		
								OPMENT (
							derwritten			ant's Cos			
						Avg. Unit		892		ensity	47.8/acre		
	Acquisiti		¢114.07		K/unit	\$1,300K							
		Building Hard Cos		\$114.36		K/unit	\$30,620K						
	Total Cos				K/unit K/unit	\$37,413K							
	Develop		\$7,03			\$60,481K Paid Year: 1							
			A1 A1 C1			Contract		\$5,03		Boost	Yes		
				9					1	1			
	B Contraction of the Contraction												

DEBT (N		CASH FLOW D	ebt / Gi	RANT FUN	EQUITY / DEFERRED FEES							
Source	Term	Rate	Amount	DCR	Source	Term	Rate	Amount	DCR	Source	Amount	
PNC FHA 221(d)(4)	40/40	4.00%	\$37,276,800	1.21	City of Dallas- Gen Oblig Bonds	40/40	0.00%	\$2,028,424	1.21	PNC	\$14,900,138	
0	0	Х	\$0	0.00	City of Dallas - HOME - Cash Flow Loan	40/40	1.00%	\$5,000,000	1.21	Palladium USA/DHFC Deferred Fee	\$4,513	
0	0	Х	\$0	0.00	City of Dallas - CDBG - Cash Flow Loan	40/40	1.00%	\$1,271,576	1.21	0	\$0	
				Additional (Excess) Funds Req'd								
										TOTAL EQUITY SOURCES	\$14,904,651	
			1						-	TOTAL DEBT SOURCES	\$45,576,800	
											\$60,481,451	
CONDITIONS												
1 Receipt and acceptance by Cost Certification:												
a: Certification from Appraisal			1 1 2 1									
 b: Executed ground lease with the lease. 	n City c	of Dallas I	Housing Finan	ce Cor	poration clearly specifying all term	ns and c	condition	s, including who	⊃ will re	etain ownership of land and improvement	is at the end of	
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					ons were implemented and the De	•		•		0		
, , , , , , , , , , , , , , , , , , , ,		ally sourc	ed funds can	be cor	nsidered bona fide debt with a rea	asonable	e expecta	ation that it will	be rep	baid in full and further stating that the func	ds should not	
be deducted from eligible												
Should any terms of the proposed allocation and/or terms of other T					are material changes to the over	all deve	elopment	plan or costs, t	he ana	alysis must be re-evaluated and adjustme	nt to the credit	
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BOND RESERVATIO			nanaa Carn				AE	RIAL PHOTOGR	APH(s)			
Issuer City of Expiration Date	Dallas	ě	nance Corp 1/12/2020		Office	-D		Calertail		Real Provide State	Ň	
Bond Amount			0,000,000	23	Building	1					1.6	
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BRB Priority Close Date			Priority 3 TBD		Office Building				22	Southwest		
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Feasibility dependent on prop	erty ta	k exempt	1011			0	1 mar		-		Contraction 1	
AREA MA	P				Multi-Tenant Commercial			A de			Million The	
		dia f	4112	1	Building			100	Parkin	g Lot		
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	SZ /				and the second second	adda a		EAA NET	E Gamb	Continent or Open Street for contributors, Est. MERE, County, & Constr	etMann	
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BOARD ACTION REQUEST

MULTIFAMILY FINANCE DIVISION

SEPTEMBER 5, 2019

Presentation, discussion, and possible action on a Determination Notice for Housing Tax Credits (#19434 Limestone Ridge Senior Apartments, Austin extraterritorial jurisdiction)

RECOMMENDED ACTION

WHEREAS, a 4% Housing Tax Credit application for Limestone Ridge Senior Apartments, sponsored by the AMTEX Multi-Housing, LLC, and TCC Hill Country Development Corporation was submitted to the Department on June 21, 2019;

WHEREAS, the Certification of Reservation from the Texas Bond Review Board was issued on July 19, 2019, and will expire on December 16, 2019;

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

WHEREAS, pursuant to 10 TAC §11.101(a)(2) of the 2019 Qualified Allocation Plan related to Undesirable Site Features, applicants are required to disclose to the Department the existence of certain features of a proposed development site;

WHEREAS, the applicant has disclosed the presence of one or more pipelines, situated underground or aboveground, which carry highly volatile liquid;

WHEREAS, staff has conducted a further review of the proposed development site based on the documentation provided and discussed herein relating to the undesirable site feature, and recommends the proposed site be found eligible, conditioned upon the conditions in the proposed Pipelines and Informed Planning Alliance (PIPA) Report under submitted in the application; and

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

NOW, therefore, it is hereby

RESOLVED, that the site for Limestone Ridge Senior Apartments is hereby found to be eligible; and

FURTHER RESOLVED, that the issuance of a Determination Notice of \$1,470,110 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 Limestone Ridge Senior Apartments, is hereby approved as presented to this meeting.

BACKGROUND

General Information: The property is located at 6907 and 7011 McKinney Falls Parkway, in the Austin ETJ, Travis County, and involves the new construction of 225 units serving the elderly population. All of the units will be rent and income restricted at 60% of the Area Medium Family Income with the exception of one unit designated to be employee-occupied. The proposed development conforms to current zoning requirements.

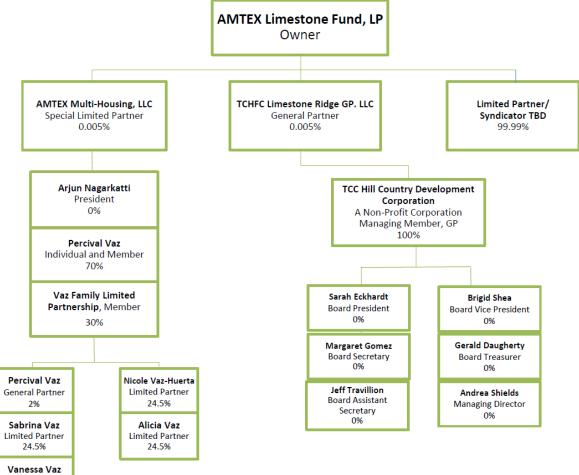
Site Analysis: The presence of an undesirable site feature under 10 TAC §11.101(a)(2) requires further analysis. The undesirable site feature related to the project is the presence of four underground pipelines that contain highly volatile liquid (HVL). A metes and bounds survey shows four pipelines located along the northwestern edge of the development site. The pipelines carry natural gas, propane, and crude oil.

According to John Jacobi, P.E., the Independent Pipeline Consultant that provided the PIPA review, there are no local ordinances that govern the required distance of the development site from the pipelines, since no portion of the development site is located within the Austin city limits. PIPA requirements include the following to ensure safety: a minimum setback of at least 50 feet from all pipelines and at least 10 feet from the edge of all pipeline easements, utilization of flame retardant materials in the construction of buildings and structures, and appropriate locations of building ingress and egress. As required under 10 TAC §11.101(a)(2)(I) a development site that contains a pipeline carrying HVL must be developed in a manner that conforms to the PIPA and the applicant has provided documentation to indicate that some of the PIPA best practices would be implemented by the development owner. Conditioned upon the implementation of the mitigation provided in the PIPA Report, staff recommends the site be found eligible.

Organizational Structure: The Borrower is, AMTEX Limestone Fund, LP and includes the entities and principals as indicated in the organization chart in Exhibit A. The applicant's portfolio is considered a Category 1 and the previous participation was deemed acceptable by EARAC.

Public Comment: There were no letters of support or opposition received by the Department.

EXHIBIT A



Limited Partner 24.5%

19434 Li	imestone Ridge Se	nior Apartments	s - Appli	cation Summa	ry	RE	al Estate A		DIVISION 28, 2019
F	PROPERTY IDENTIFICATION		RECOMMENDATIO	N		KEY PRIN	icipal / Spo	NSOR	
Application #	19434	TDHCA Program	Request	Recommended					
Development	Limestone Ridge Senior Apartments	LIHTC (4% Credit)		470,110 \$6,534/Unit \$0.93	1				
City / County	Austin / Travis		•		-				
Region/Area	7 / Urban	0			Arj	un Nagarkatti	AIVITEX Dev	elopment	I, LLC
Population	Elderly Limitation	0							
Set-Aside	General	0							
Activity	New Construction	0			Related	Parties Co	ontractor -	Yes Sel	ller - No
	ΤΥΡΙС	AL BUILDING ELEVATION/PHOTO			UNI	DISTRIBUTION	INCO	OME DISTR	IBUTION
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					2	111	49% 50%	-	0%
			_		3		0% 60%	223	99%
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			- mil		TOTAL	225	00% TOTAL	. 225	5 100%
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					Debt Cov	verage 🌔	1.16 Expens	e Ratio	35.6%
					Breakeve	en Occ. 🕑 8	4.4% Breake	ven Rent	\$996
ALL OF AL	An experience of the second		1	and the second	Average	Rent \$1	093 B/E Ren	<u> </u>	\$97
			AND DESCRIPTION OF THE PARTY OF THE PARTY OF		Property	Taxes	Exempt Exe	mption/Pl	LOT 100%
		, , ,	and the second se		Total Exp	ense \$4,3	363/unit Cont	rollable \$	\$3,273/unit
		SITE PLAN				MARKET FE	asibility Ind	ICATORS	
	PROPERTY LINE				Gross Ca	pture Rate (10	% Maximum)	0 8.8%
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			=		Dominar	it Unit Cap. Ra	t e 189	% 1 BR/6	0% 114
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			'@{ ┤ }@'		Avg. Unit			Density	16.2/acre
L		日		[님티 한片 네.	Acquisiti)9K/unit	\$2,055
4		白 日月代初	┝┯╣╞═╴║┞┯╴		Building			76K/unit	\$17,023k
	RANT HUE				Hard Cos)1K/unit	\$22,711k
	NY LIGE		91日 19		Total Cos			78K/unit	\$40,051K
(UNESERVE) F	▝▙▁▁▁▁▁▆▀▀▖▋▁▁▁				Develop Contract			6 Deferred)	Paid Year: 3
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	Рислентузые	PENIMETER PENCING			-				

DEBT (N	/lust Pa	y)			CASH FLOW	Debt / Grant Fun	IDS		EQUITY / DEFERRED FEES	
Source	Term	Rate	Amount	DCR	Source	Term Rate	Amount	DCR	Source	Amount
Citibank Tax Exempt - Tranche A	15/35	4.45%	\$20,000,000	1.55		-• • •		•	Hudson Housing Capital	\$13,672,021
Citibank - Tranche B	15/35	5.64%		1.16					AMTEX Development LLC	\$529,361
									TOTAL EQUITY SOURCES	\$14,201,382
									TOTAL DEBT SOURCES	\$25,849,192
TOTAL DEBT (Must Pay)			\$25,849,1	92	CASH FLOW DEBT / GRANTS		\$0		TOTAL CAPITALIZATION	\$40,050,574
					CONDITI	ONS			-	
1 Receipt and acceptance by 0	Cost Ce	ertificatio	n:							
- Certification from Appraisa	I Distric	t that the	property qua	alifies fo	r property tax exemption.					
Should any terms of the proposed	d capita	al structu	re change or	if there	are material changes to the ov	erall development	plan or costs	the ana	lysis must be re-evaluated and adjustme	nt to the credit
allocation and/or terms of other 1					are material enanges to the ove					
BOND RESERVATIO	DN / ISS	SUER				AE	RIAL PHOTOGE	RAPH(s)		
Issuer			unty HFC	「おり」の			Me	T AS		a particular to
Expiration Date			2/16/2019	Contraction of the	Charles F	Capital States	The second second	A LANK		- Bigger and Talk
Bond Amount		\$20	0,000,000					SPACE &	alles Rd	Dee Gabriel Collin
BRB Priority			Priority 3	Car all					Dee Gabriel Collins Rd	CONSTRAINTS IN
Close Date			TBD	N				A reason of	Dee	And in
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Goodnight Ranch.				retta Whit	eln -				The second s	Terra In
WEAKNESSES/			hito	Dr	ALLE CON DOCT		a lande -		6609 McKinney	
 Final Plat & Permitted could ta 	ike 6-9	months d	lue to	-	Person				Falls Parkway	
backlog in City of Austin.		do from o	untran a a	anes	Ranchito Dr		12	and the second second	A REAL PROPERTY AND A REAL	STREET,
 An approximate 25 ft downwa on McKinney Falls Pkwy. 	nu grad	Le llom é		Ran		La Malanda (*)	ta:			12000
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et Valley		NTOPOLIS	cold 1			Torture Officia	al World 🟹		State Charles and the	
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BOARD ACTION REQUEST

MULTIFAMILY FINANCE DIVISION

SEPTEMBER 5, 2019

Presentation, discussion, and possible action on a Determination Notice for Housing Tax Credits (#19430, Kyle Dacy Apartments, Kyle extraterritorial jurisdiction)

RECOMMENDED ACTION

WHEREAS, a 4% Housing Tax Credit application for Kyle Dacy Apartments, sponsored by the Capital Area Multi-Housing, Inc., and the NRP Group was submitted to the Department on June 21, 2019;

WHEREAS, in lieu of a Certification of Reservation, a Carryforward Designation Certificate was issued by the Texas Bond Review Board on January 4, 2019, and will expire on December 31, 2021;

WHEREAS, the proposed issuer of the bonds is the Capital Area Housing Finance Corporation;

WHEREAS, in accordance with 10 TAC §1.301(d)(1), the compliance history is designated a Category 2 and deemed acceptable by Executive Award and Review Advisory Committee (EARAC); and

WHEREAS, due to the Carryforward Designation Certificate, EARAC recommends the issuance of the Determination Notice with the condition that the closing occur within 120 days (on or before January 3, 2020).

NOW, therefore, it is hereby

RESOLVED, that the issuance of a Determination Notice of \$1,515,943 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 Kyle Dacy Apartments is hereby approved as presented to this meeting; and

FURTHER RESOLVED, that provided the Applicant has not closed on the bond financing on or before January 3, 2020, the Board authorizes the Director of Multifamily Finance or the Executive Director to approve or deny an extension of the Determination Notice date, subject to an updated previous participation review, if necessary.

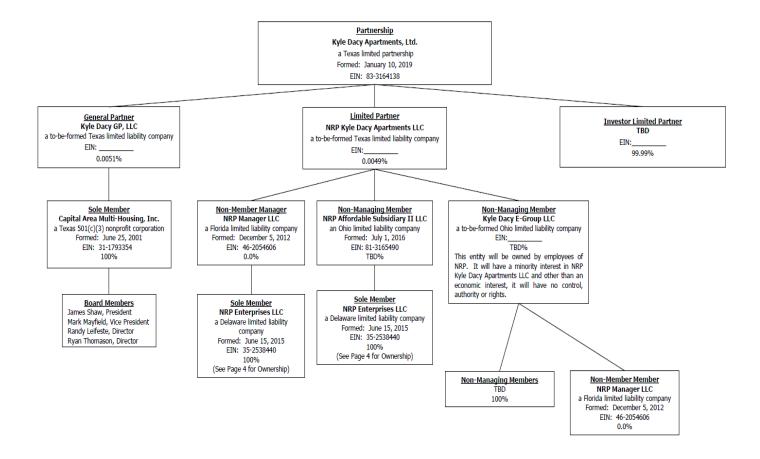
BACKGROUND

General Information: The property is located at approximately 3800 Dacy Lane in the ETJ of Kyle, Hays County, and proposes the new construction of 324 units serving the general population. All of the units will be rent and income restricted at 60% of the Area Median Family Income. The development site conforms to current zoning requirements.

Organizational Structure: The Borrower is Kyle Dacy Apartments, Ltd. and includes the entities and principals as illustrated in Exhibit A. The applicant's portfolio is considered a Category 2 and the previous participation was deemed acceptable by EARAC.

Public Comment: There were no letters of support or opposition received by the Department.

EXHIBIT A



19430 K	yle Dacy Apartme	nts - Applicatio	n Sum	mary				REAL ESTA	ATE ANALYSIS Augus	5 DIVISION t 28, 2019
I	PROPERTY IDENTIFICATION	F	RECOMMEND	ATION			KEY	PRINCIPAL /	SPONSOR	
Application # Development City / County Region/Area Population	19430 Kyle Dacy Apartments Kyle / Hays 7 / Urban General	TDHCA Program LIHTC (4% Credit)	Request \$1,515,943	Re \$1,515,943	commended \$4,679/Unit	\$0.92	• James Shaw / Ca • Debra Guerrero /			nt LLC
Set-Aside	General	0								
Activity	New Construction	0					Related Parties	Contracto	or - Yes Se	eller - No
	5.12 5.12 5.12	AL BUILDING ELEVATION/PHOTO	5.12				Pro Forma Underw Debt Coverage	% Total In 0% 44% 44% 11% 100% T MA FEASUBIL 115 Ex 84.6% Brew \$1,243 B/ \$398/unit	INCOME DIST come # Unit 30% 40% 50% 60% 32 MR OTAL 3: ITY INDICATO Applicant's P pense Ratio eakeven Rent E Rent Margin Exemption/F Controllable	% Tota - - -
		SITE PLAN					MARKE	T FEASIBILIT	(INDICATORS	
	Induct to Market State (Second Second S	24 Acre Site	Cone A					ne Rate	58% 3 BR/ 58% 3 BR/ N/A N/A ST SUMMARY	140% 14
	1 전 10,101 년 1 10 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1		- 🔏	a.			Costs Underwritten		Applicant's Co	
		I Zone X	$\sqrt{ }$	~			Avg. Unit Size Acquisition	1,070 SF	Density \$10K/unit	13.5/ao \$3,10
				~			Building Cost	\$62.81/SF	\$67K/unit	\$21,78
			11				Hard Cost Total Cost		\$89K/unit \$179K/unit	\$28,90 \$58,0!
							Developer Fee Contractor Fee	\$6,250K \$3,841K	(7% Deferred)	Paid Ye
	Class Concerning Conce	Contraction of the second seco								

	DEBT (Must	Pay)				CASH FLOW	DEBT / GRANT	FUN	IDS		EQUITY / DEFERRED FEES	
Source	Те	rm R	Rate	Amount	DCR	Source	Term Ra	te	Amount	DCR	Source	Amount
Key Bank - Freddie Ma	ac TEL 15	′35 4.	.78%	\$43,695,000	1.15						Navistone	\$13,945,280
											NRP / Capital Area HFC	\$413,596
											TOTAL EQUITY SOURCES	\$14,358,876
											TOTAL DEBT SOURCES	\$43,695,000
TOTAL DEBT (Must Pay	()			\$43,695,0	000	CASH FLOW DEBT / GRANTS			\$(D	TOTAL CAPITALIZATION	\$58,053,876
						CONDIT	IONS					
1 Receipt and acce	ptance before	Determ	ninatio	n Notice:		0011211	0.10					
					wleda	es Supportive Services pursuant	to §11.302(d)(2)(K)(ii).			
					-					the and	alysis must be re-evaluated and adjustme	nt to the credit
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BOARD ACTION REQUEST

MULTIFAMILY FINANCE DIVISION

SEPTEMBER 5, 2019

Presentation, discussion, and possible action on a Determination Notice for Housing Tax Credits (#19431 Scharbauer Flats, Midland)

RECOMMENDED ACTION

WHEREAS, a 4% Housing Tax Credit application for Scharbauer Flats, sponsored by the THF Housing Development Corporation, and Midland Leased Housing Associates LP II, LLC was submitted to the Department on June 21, 2019;

WHEREAS, the Certification of Reservation from the Texas Bond Review Board was issued on August 20, 2019, and will expire on January 17, 2019;

WHEREAS, the proposed issuer of the bonds is the Texas State Affordable Housing Corporation;

WHEREAS, pursuant to 10 TAC §11.101(a)(2) of the 2019 Qualified Allocation Plan related to Undesirable Site Features, applicants are required to disclose to the Department the existence of certain features of a proposed development site;

WHEREAS, the development is proposed to be located within 100 feet of an overhead high voltage transmission line;

WHEREAS, staff has conducted a further review of the proposed development site and based on the mitigation provided and discussed herein, recommends the site be eligible pursuant to 10 TAC §11.101(a)(2) of the 2019 Qualified Allocation Plan; and

WHEREAS, in accordance with 10 TAC §1.301(d)(1), the compliance history is designated as a Category 2 and deemed acceptable by Executive Award and Review Advisory Committee (EARAC);

NOW, therefore, it is hereby

RESOLVED, that the site for Scharbauer Flats is hereby found to be eligible; and

FURTHER RESOLVED, that the issuance of a Determination Notice of \$2,667,296 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 Scharbauer Flats, is hereby approved as presented to this meeting.

BACKGROUND

General Information: The property is located at 2300 N. Fairgrounds Road, in Midland, Midland County, and involves the new construction of 300 units serving the general population. 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% of AMFI. The proposed development conforms to the current zoning requirements.

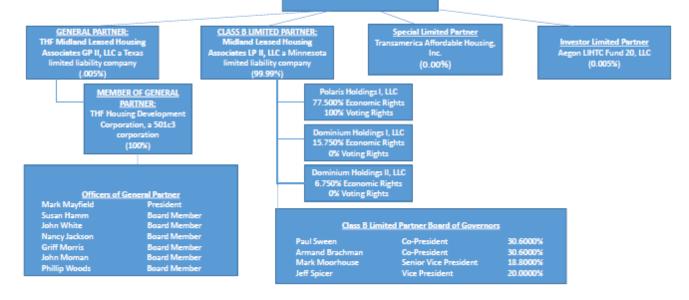
Site Analysis: The presence of undesirable site features under 10 TAC §11.101(a)(2) requires further analysis. The feature pertaining to Scharbauer Flats includes high voltage transmission lines located within 100 feet of the building(s). The high voltage power line is approximately 95 feet to the east of the property. Information provided in the application indicated that to allow the proposed development, a zoning change was required. Through the ordinance that was adopted by the City of Midland approving the zoning change, the city confirmed that the proposed development's proximity to the power lines was not restricted by ordinance or municipal code, and the development site plan that is an attachment to the ordinance passed by the city council reflects the proximity to the power lines to the development. Based on the information provided, staff recommends the site be found eligible.

Organizational Structure: The Borrower is THF Midland Leased Housing Associates II, LP and includes the entities and principals as indicated in the organization chart in Exhibit A. The applicant's portfolio is considered a Category 2 and the previous participation was deemed acceptable by EARAC.

Public Comment: There were no letters of support or opposition received by the Department.

EXHIBIT A

THF Midland Leased Housing Associates II, Limited Partnership a Texas limited partnership



19431 S	charbauer Flats -	Application Sum	mary						REAL ES	STATE AN		28, 2019
	Property Identification		RECOMMEND	ATION				Key	PRINCIPA	al / Spon	SOR	
Application #	19431	TDHCA Program	Request	Re	commended							
Development	Scharbauer Flats	LIHTC (4% Credit)	\$2,667,296	\$2,667,296	\$8,891/Unit	\$0.85	1.4 0					
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TOTAL DEBT (Must Pay)			\$37,870,0	000	CASH FLOW DEBT / GRANTS			\$0)	TOTAL CAPITALIZATION	\$66,512,387
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TDHCA Outreach Activities, July-September

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
Meeting	Texas Interagency Council for the Homeless Quarterly Meeting	July 30	Austin	Housing Resource Center
Meeting	Housing and Health Services Coordination Council Quarterly Meeting	July 31	Austin	Housing Resource Center
Training	Income Determination Training	August 1	Austin	Compliance
Homebuyer Fair	2019 City of Grand Prairie Homeownership Fair	August 3	Grand Prairie	Homeownership
Homebuyer Fair	2019 Fourth Annual Homeownership Fair	August 10	Arlington	Homeownership
Training	Texas Affordable Housing Specialist Training: United Texas – Housing Initiatives that Work	August 14	Austin	Homeownership

Internet Postings of Note

A list of new or noteworthy postings to the Department's website.

Asset Management

- Posted updated Cost Certification Application
- Added presentation, discussion and possible action regarding a Material Amendment to the Housing Tax Credit Application (#18376, Lakeview Pointe Apartments)
- Added presentation, discussion and possible action regarding a Material Amendment to the Housing Tax Credit Land Use Restriction Agreement (#96038, 2100 Memorial)

Colonia Initiatives

• Posted Request for Applications to administer the Self Help Center in Maverick County **Communications:**

- Posted new homepage articles (Amy Young Barrier Removal Program serves 1000th household, TDHCA mortgage loan lowest in five years (3.60%); TDHCA Board names Bobby Wilkinson as executive director; Board approves 2019 9% HTC award list)
- Posted Texas Affordable Housing By the Numbers (FY 2018) infographic
- Posted mortgage rate artwork for Homeownership

- Posted new homepage article (Shared Experience; also posted to TDHCA Showcase) related to Section 811 PRA Program
- Updated Ending Homelessness Fund program page with total contributions to date (July 2019)

Community Affairs

- Added 2020 LIHEAP State Plan in pdf format
- Added 2020 and 2021 CSBG State Application and Plan in pdf format
- Added 2019 WAP State Plan in pdf format
- Posted updated Master List of Community Affairs subrecipients
- Added Income Calculations for Transitioning Out of Poverty video to CSBG video library
- Replaced CAP Form (2020)
- Added Organizational Standards tracking tool to CSBG Best Practices
- Replaced SurveyMonkey Training Survey with link to Wufoo survey
- Posted updated DOE WAP Historic Preservation Report (2018)
- Added Case Management Flowchart for CSBG training series
- Replaced file for CSBG Timeline under Training and Technical Assistance
- Posted updated CSBG 2020 Budget Instructions form and 2020 CAP instructions form
- Posted updated US Citizenship/US National and SAVE Certification Form
- Posted updated US Citizenship Documentation Matrix

Compliance

- Added notice of property damage form (DR-4454) to Disaster page
- Added Section 811 PRA Tenant Selection Criteria Addendum

HOME and Homeless:

- Replaced updated version of HOME Determination of Conflict of Interest form
- Posted 2019 ESG Program Application Log (August 21)
- Updated Budget and Match Amendment Form for ESG
- Added ESG Program HMIS Manual
- Posted FY 2020 HHSP subrecipients, allocations and contacts list
- Posted updated HOME Work Write-Up/Cost Estimate worksheet

Homeownership:

- Added Income Limits table
- Posted updated Bond Allocation FAQs
- Posted updated TDHCA Lender Guide

Housing Resource Center

- Added 2019 State of Texas Consolidated Plan Annual Performance Report: Reporting on Program Year 2018
- Added 2020 Regional Allocation Formula Methodology with examples for 2020 Housing Tax Credits, State Housing Trust Fund, Multifamily HOME, and Single-Family HOME
- Added 2019 One Year Action Plan

Human Resources

Posted updated agency-wide organizational chart

Information Systems

Posted updated Information Security and Privacy Agreement

Migrant Labor Housing Facilities

Posted updated list for active Migrant Labor Housing Facilities (219 active licenses)

Multifamily:

- Posted Amended 2019-1 Multifamily Direct Loan Annual NOFA (July 25)
- Posted 2019 9% Housing Tax Credit Award List and Waiting List
- Posted 2019-2 Multifamily Special Purpose NOFA: Predevelopment Application Log (July 29)
- Posted updated HTC Property Inventory list (June 27)
- Posted updated 2019 9% HTC full application log and updated HTC Award Limits and Estimated Regional Allocation 2019 (July 16)
- Posted updated 2019-1 Multifamily Direct Loan NOFA Application log (August 16)
- Posted links for 2020 Qualified Allocation Plan Staff Draft
- Posted updated 2019 4% HTC Bond Status Log (August 2)

NOFA

• 2019 CEAP RFA

Program Services

- Added HUD Uniform Relocation Assistance and Section 104(d) training videos and relocation guidelines link
- Added HUD Handbook 1344.1 REV-2, Change 2 Federal Labor Standards Requirements in Housing and Community Development Programs

Public Comment

- Public comment period open for Proposed Rule Changes to 10 TAC Section 2.203
 Termination and Reduction of Funding for CSBG Eligible Entities and Section 2.204
 Contents of a Quality Improvement Plan
- Public comment period open for Proposed Rule Changes to 10 TAC 26, Texas Housing Trust Fund Rule
- Public comment period open for Proposed Rule Changes to 10 TAC 24, Texas Bootstrap Loan Program Rule
- Public comment period open for Proposed Rule Changes to 10 TAC 21, Minimum Energy Efficiency Requirements for Single Family Construction Activities
- Public comment period open for Proposed Rule Changes to 10 TAC 20, Single Family Programs Umbrella Rule

Purchasing

- Posted Request for Proposals for Underwriting Services
- Updated list of No-Bid contracts as required by state
- Posted Request for Proposals for Mortgage Warehouse Facility
- Posted Request for Proposals for TBA Program Administrator Services

Section 811 PRA Program

- Added Outside Service Area Referral Form
- Posted updated Participation Agreement
- Posted updated Section 811 PRA Application

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	MFTH	My First Texas Home Program
	Program	MRB	Mortgage Revenue Bond Program

CFD	Contract for Deed Program	NHTF	National Housing Trust Fund
CFDC	Contract for Deed Conversion	NOFA	Notice of Funding Availability
	Assistance Grants	NSP	Neighborhood Stabilization Program
CHDO	Community Housing Development	OIG	Office of Inspector General
	Organization	QAP	Qualified Allocation Plan
CMTS	Compliance Monitoring and Tracking	QCP	Quantifiable Community Participation
	System	REA	Real Estate Analysis
CSBG	Community Services Block Grant	RFA	Request for Applications
	Program	RFO	Request for Offer
ESG	Emergency Solutions Grants Program	RFP	Request for Proposals
FAQ	Frequently Asked Questions	RFQ	Request for Qualifications
HBA	Homebuyer Assistance Program	ROFR	Right of First Refusal
HHSCC	Housing and Health Services	SLIHP	State of Texas Low Income Housing
	Coordination Council		Plan
HHSP	Homeless Housing and Services	ТА	Technical Assistance
	Program	TBRA	Tenant Based Rental Assistance
HRA	Homeowner Rehabilitation Assistance	•	Program
	Program	TICH	Texas Interagency Council for the
HRC	Housing Resource Center		Homeless
HTC	Housing Tax Credit	TSHEP	Texas Statewide Homebuyer
HTF	Housing Trust Fund		Education Program
HUD	U.S. Department of Housing and	TXMCC	Texas Mortgage Credit Certificate
	Urban Development	VAWA	Violence Against Women Act
IFB	Invitation for Bid	WAP	Weatherization Assistance Program

2b

BOARD REPORT ITEM

TEXAS HOMEOWNERSHIP DIVISION

SEPTEMBER 5, 2019

Quarterly Report on Texas Homeownership Division Activity

BACKGROUND

The Texas Homeownership Division is primarily responsible for the creation, oversight, and administration of the Department's homeownership programs, which are designed to provide affordable financing options for low-to-moderate income homebuyers. This is accomplished through the issuance of tax-exempt and taxable single family mortgage revenue bonds, and through the Department's Taxable Mortgage Program (TMP).

Currently, the Department offers the following statewide options to homebuyers:

- My First Texas Home Program. Offers expanded mortgage loan opportunities to qualifying first-time homebuyers, including government and conventional 30-year fixed rate mortgage loan options. All loans originated through the program are tax-exempt eligible, meeting Internal Revenue Service (IRS) requirements for inclusion in a taxexempt bond issue or for receipt of a Mortgage Credit Certificate (MCC). As such, borrowers using this option must be first-time homebuyers (cannot have had an ownership interest in a primary residence within the last three years or must qualify for a veteran or targeted area exception), and borrower income and the purchase price of the home must be within IRS designated limits. Continuous funding for this program is provided through the issuance of tax-exempt single family mortgage revenue bonds (SFMRBs) and through TMP. The Department's SFMRBs typically offer two options, a low rate mortgage loan with no down payment or closing cost assistance provided by the Department, and a mortgage loan with 4 points of down payment and closing cost assistance. Down payment and closing cost assistance is secured by a 30-year, nonamortizing, 0% interest second loan that is due upon sale of the property or refinance of the first loan. Loans funded with TMP include loans accompanied by an MCC (the IRS does not permit these loans to be included in SFMRBs) and tax-exempt eligible loans that are not used as collateral for SFMRBs.
- <u>My Choice Texas Home Program</u>. Offers mortgage loan opportunities to qualifying firsttime and non-first-time homebuyers, including government and conventional 30-year fixed rate mortgage loan options. Down payment and closing cost assistance is provided with each loan. While the same income and purchase price limits applicable to the My First Texas Home Program apply, income eligibility is based on the standard credit qualifying (1003) income instead of IRS methodology. Because all loans are funded through TMP, no IRS recapture provisions apply.

Texas Mortgage Credit Certificate (MCC) Program. Makes homeownership more affordable by providing first-time homebuyers a federal income tax credit, reducing the homebuyer's potential federal income tax liability. By having an MCC, the homebuyer has the ability to convert a portion of their annual mortgage interest into a direct income tax credit on their U.S. individual income tax return. The credit may be applied for the life of the loan, as long as the home remains the borrower's primary residence. The Texas MCC option is offered in combination with a My First Texas Home mortgage loan (TBA funding only), referred to as Combo loans for discussion and reporting purposes; or as a stand-alone option combined with any FHA, VA, USDA, or conventional fixed rate mortgage loan. The Department's MCC Program offers borrowers a choice of a 25% MCC Credit, which has a maximum \$2,000 annual credit, or a 20% MCC Credit, which has no annual maximum. Based on current mortgage rates, the 25% MCC Credit is typically the better choice for borrowers with loan amounts up to approximately \$250,000 (because the \$2,000 maximum is not a practical limitation), and the 20% MCC Credit is currently the better choice for higher loan amounts, as the annual credit typically exceeds \$2,000, at least for the early years of the loan.

Income and Purchase Price Limits for All Loan Options. The Maximum income for all loan options is 100% of Area Median Family Income (AFMI) for households of 1 or 2 persons, and 115% of AMFI for households of 3 persons or more. The maximum purchase price is 90% of the average area purchase price. The complete Income and Purchase Price Limits Table is available on the Department's website at https://www.tdhca.state.tx.us/homeownership/fthb/docs/limits.pdf, and an example, reflecting the limits with respect to loans originated in the San-Antonio-New Braunfels MSA is provided below.

					Ν	/laximum
Example		Income	e Lin	nits	Pur	chase Price
	Но	useholds	Но	ouseholds		
		of 1-2	of	3 persons		90% of
	p	ersons	c	or more	Ave	erage Area
Location	(10	0% AMFI)	(11	5% AMFI)	Pur	chase Price
San Antonio-New	Ś	76,957	Ś	88,500	Ś	222.060
Braunfels MSA	Ş	10,957	Ş	00,300	Ş	323,960

Higher income and purchase price limits apply with respect to homes purchased in targeted areas, which are areas of severe economic distress.

IRS Recapture. Loans that are financed through SFMRBs and loans that receive an MCC are subject to IRS recapture provisions. Under certain circumstances, a borrower may owe recapture to the IRS. To owe any recapture tax at all, the borrower must (1) sell the MCC- or MRB-financed home <u>at a gain</u> within nine years of purchase, **AND** (2) earn significantly more income than when the home was purchased (generally more than 5% increase in income per year). <u>Both of these criteria must be met</u> before a borrower has a recapture liability. In addition, the recapture liability cannot exceed the amount of the borrower's gain on the sale of the home.

<u>Current Mortgage Rates and Terms</u>. The following table details the Department's loan options and mortgage rates as of August 26, 2019. Down payment and closing cost assistance (DPA) is provided as a 30-year, non-amortizing, 0% interest second mortgage loan that is due on sale or refinance.

(B HOLIFING AND	B (Loans w	ith Down Payment A	ssistance	Unassist	ed Loans
	Rate Notice and Available Options 8/26/2019	Government Loans (FHA, USDA, VA)	Conventional Loans Fannie Mae Preferred	Conventional Loans Fannie Mae Preferred	Government Loans (FHA, USDA, VA)	Conventional Loans Fannie Mae Preferred
An	nount of DPA Provided	4 Points DPA	3 Points DPA	5 Points DPA	No DPA	No DPA
BOND PROGRAM - SUBJECT	T TO AVAILABILITY					
My FIRST Tex	xas Home Tax Exempt Bond Loan	4.375%	N/A	N/A	3.500%	N/A
TBA PROGRAM - CONTINU	OUS FUNDING					
My FIRST Texas	Home Bond Eligible Loans, No MCC	N/A	4.625%	4.875%		
My FIRST Texa	as Home Combo Loans with MCC*	4.875%	4.750%	5.000%		wailable with Bond
My CHOICE Te	exas Home Taxable Loans, No MCC	4.875%	4.750%	5.000%		
	*MCC Credit Rate (Borrower Option)	20% or 25%				

Texas Department of Housing and Community Affairs Texas Homeownership Programs

Minimum FICO Score	620	Loans must be purchased within 60 days of the date reserved
Origination Points	0%	Extensions are available at the following cost:
SRP to Lender	2.75%	7-Day 0.0625%
Program Compliance Fee	\$225	15-Day 0.1250%
Program Compliance Fee - MCC	\$200	22-Day 0.1875%
MCC Issuance Fee	\$500	30-Day 0.2500%
Loan Review and Acquisition Fee	\$150	
Tax Service Fee	\$85	
APPLICABLE TO 1	TEXAS MORTGAGE CREI	DIT CERTIFICATE

The attached reports have been revised from their previous format to include an Aggregate Summary Report that reflects activity for each available homeownership option over the prior three calendar years. Detailed reports show activity during the past 12 months, including a map that reflects Texas counties served, demographic information on households served, homes purchased, and other relevant information.

As always, if there is additional information that you wish to have added to the quarterly reports, please let staff know.

Texas Homeownership / Bond Finance Aggregate Summary Report

		My First Texas Home	Bond Program	My Choice	Combo (MFTH and MCC)	Stand Alone MCCs	AGGREGA	TE TOTAL
	Month	Loan Amount	Loan Amount	Loan Amount	Loan Amount	Loan Amount	Loan Amount	# Households Served
	1/31/2019	\$48,490,841	\$11,753,630	\$13,421,532	\$32,925,926	\$23,668,364	\$130,260,293	756
	2/28/2019	62,892,613	3,951,210	29,789,844	46,169,313	34,355,360	177,158,340	1,004
6]	3/31/2019	32,925,507	17,476,392	40,108,374	30,129,294	20,526,313	141,165,880	816
2019	4/30/2019	11,766,854	50,572,331	42,865,214	31,836,989	10,519,298	147,560,686	849
r 2	5/31/2019	6,994,839	47,029,048	60,135,663	31,504,199	2,924,023	148,587,772	836
6 G	6/30/2019	21,321,447	30,107,016	54,287,308	31,859,199	1,801,980	139,376,950	791
×	7/31/2019							
ar	8/31/2019							
Calendar Year	9/30/2019							
e	10/31/2019							
ů	11/30/2019							
	12/31/2019							
	2019 TOTAL	\$184,392,101	\$160,889,627	\$240,607,935	\$204,424,920	\$93,795,338	\$884,109,921	5,052
	· · · · ·							
	1/31/2018	\$49,518,433			\$31,988,642	\$25,695,000	\$107,202,075	642
	2/28/2018	39,694,156			18,551,484	18,606,044	76,851,684	483
2018	3/31/2018	37,707,798			20,937,493	20,511,592	79,156,883	480
Ö	4/30/2018	40,823,301			22,654,876	36,073,836	99,552,013	584
L Z	5/31/2018	43,224,815			29,864,325	44,729,156	117,818,296	705
Year	6/30/2018	40,686,899			31,715,654	36,899,222	109,301,775	645
×	7/31/2018	45,715,682			32,630,425	41,553,059	119,899,166	712
lar	8/31/2018	47,894,502	522,379		31,963,113	43,701,139	124,081,133	713
Calendar	9/30/2018	28,665,128	9,753,696		19,058,259	34,376,135	91,853,218	541
le	10/31/2018	18,810,509	45,317,386		33,191,952	43,102,859	140,422,706	816
ü	11/30/2018	13,507,006	46,933,554	370,160	32,521,066	33,287,562	126,619,348	730
	12/31/2018	33,984,949	23,166,920	4,940,782	29,560,190	29,922,921	121,575,762	773
	2018 TOTAL	\$440,233,178	\$125,693,935	\$5,310,942	\$334,637,479	\$408,458,525	\$1,314,334,059	7,824
	1/31/2017	\$32,200,708			\$22,244,813	\$16,327,540	\$70,773,061	438
	2/28/2017	35,878,062			22,725,762	30,307,153	88,910,977	536
2	3/31/2017	32,991,885			19,988,147	27,607,384	80,587,416	501
2017	4/30/2017	35,775,933			27,062,306	27,463,210	90,301,449	551
5	5/31/2017	34,132,731			26,544,509	30,551,467	91,228,707	560
ar	6/30/2017	50,436,451			28,927,620	38,399,240	117,763,311	725
Year	7/31/2017	46,380,266			26,136,484	37,244,746	109,761,496	680
ar	8/31/2017	56,475,652			32,826,086	37,765,486	127,067,224	769
Calendar	9/30/2017	61,732,556			27,854,480	34,183,058	123,770,094	737
ler	10/31/2017	63,299,628			39,957,441	36,963,232	140,220,301	842
Ca	11/30/2017	62,247,480			33,179,625	41,298,715	136,725,820	824
Ŭ	12/31/2017	46,465,198			35,166,614	25,301,460	106,933,272	647
	2017 TOTAL	\$558,016,550			\$342,613,887	\$383,412,691	\$1,284,043,128	7,810
			L	·			· · · · ·	

TDHCA Aggregate Loan Originations Over Past 12 Months Demographic Information As of June 30, 2019

Original Loan Amount Distribution						
Original Loan Amount (\$)	Or	iginal Loan Amount	# of Loans	% of Loans		
<= 25,000	\$	-	0	0.0%		
25,001 - 50,000	\$	194,781	4	0.0%		
50,001 - 75,000	\$	7,283,942	108	0.4%		
75,001 - 100,000	\$	39,944,868	446	2.5%		
100,001 - 125,000	\$	99,117,420	867	6.1%		
125,001 - 150,000	\$	196,106,652	1424	12.1%		
150,001 - 175,000	\$	308,445,998	1894	19.0%		
175,001 - 200,000	\$	366,762,396	1959	22.6%		
200,001 - 225,000	\$	307,564,421	1450	19.0%		
225,001 - 250,000	\$	167,320,909	710	10.3%		
250,001 - 275,000	\$	88,253,519	339	5.4%		
> 275,000	\$	40,690,463	139	1.8%		
Max: \$389,500 \ Min: \$45,000 \ WAvg: \$173,805						

New Construction vs Existing Dwelling					
New Construction / Existing	Original Loan Amount # of Loans % of Lo			% of Loans	
New	\$	603,387,058	3018	37.1%	
Existing	\$	1,021,697,569	6332	62.9%	

Loan Type						
Loan Type Original Loan Amount # of Loans % of Loans						
FHA	\$	1,239,641,016	7184	76.3%		
HFA Preferred	\$	311,238,458	1790	19.2%		
USDA-RHS	\$	38,021,005	192	2.3%		
VA	\$	36,184,148	184	2.2%		

Property Type						
Property Type	Or	riginal Loan Amount	# of Loans	% of Loans		
1 Unit Single Family Detached	\$	1,561,127,335	8935	96.1%		
Condominium	\$	30,013,126	170	1.8%		
Manufactured	\$	19,419,873	154	1.2%		
Townhouse	\$	7,784,356	54	0.5%		
Rowhouse	\$	4,018,767	21	0.2%		
Duplex	\$	2,637,809	15	0.2%		

Borrower Gender					
Gender Original Loan Amount # of Loans % of I			% of Loans		
Male	\$	945,583,381	5389	58.2%	
Female	\$	679,501,246	3961	41.8%	

Household Size							
Household Size	Original Loan Amount	# of Loans	% of Loans				
1	\$ 473,607,688	3 2803	29.1%				
2	\$ 381,855,227	2216	23.5%				
3	\$ 331,327,139	1882	20.4%				
4	\$ 263,229,243	3 1477	16.2%				
5	\$ 119,718,882	671	7.4%				
6	\$ 38,707,749	213	2.4%				
7	\$ 12,429,748	64	0.8%				
8+	\$ 4,208,951	24	0.3%				
Max: 8	Min: 1 \ WAvg: 2.	6					

First Time Home Buyer					
FTHB Status Original Loan Amount # of Loans % of L			% of Loans		
Yes	\$	1,610,096,937	9267	99.1%	
No	\$	14,987,690	83	0.9%	

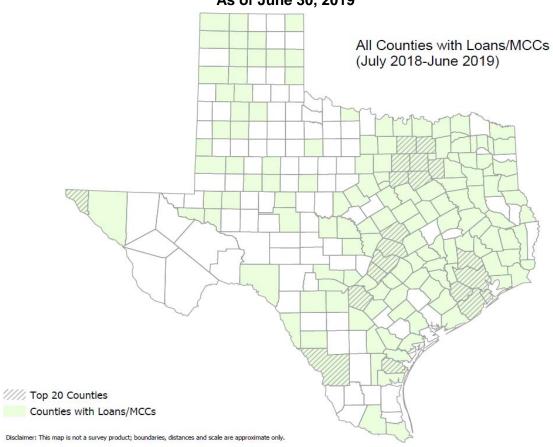
FICO Score Distribution								
FICO Score	Orig	ginal Loan Amount	# of Loans	% of Loans				
<= 640	\$	426,744,672	2466	26.3%				
641 to 660	\$	314,610,749	1848	19.4%				
661 to 680	\$	229,982,343	1343	14.2%				
681 to 700	\$	174,252,162	1000	10.7%				
701 to 720	\$	136,602,892	775	8.4%				
721 to 740	\$	123,540,924	703	7.6%				
741 to 760	\$	96,806,195	543	6.0%				
761 to 780	\$	65,241,336	362	4.0%				
780 to 800	\$	39,596,583	209	2.4%				
> 800	\$	17,706,771	101	1.1%				
Max:	818	\ Min: 533 \ WA	/g: 678					

Household Income Distribution								
Household Income (\$)	Ori	ginal Loan Amount	# of Loans	% of Loans				
<= 20,000	\$	3,926,438	34	0.2%				
20,001 - 30,000	\$	36,031,187	320	2.2%				
30,001 - 40,000	\$	136,746,209	1024	8.4%				
40,001 - 50,000	\$	282,926,665	1832	17.4%				
50,001 - 60,000	\$	391,571,257	2235	24.1%				
60,001 - 70,000	\$	343,846,039	1819	21.2%				
70,001 - 80,000	\$	255,825,927	1285	15.7%				
80,001 - 90,000	\$	133,883,687	624	8.2%				
90,001 - 100,000	\$	38,002,340	167	0.1%				
> 100,000	\$	1,563,345	8	0.0%				
Max: \$104,4	25	\ Min: \$15,080 \ W	/Avg: \$57,116	6				

AMFI Distribution								
AMFI	Origi	nal Loan Amount	# of Loans	% of Loans				
<= 30%	\$	13,088,883	115	0.8%				
30.1% to 60%	\$	450,212,978	3015	27.7%				
60.1% to 80%	\$	640,299,799	3567	39.4%				
80.1% to 100%	\$	520,654,354	2647	32.0%				
100.1% to 115%	\$	495,841	3	0.0%				
> 115.1%	\$	544,924	4	0.0%				
Other								
M	lax: 1.21 \	Min: 0.14 \ WA	/g: 0.68					

Age Distribution							
Age	Orig	inal Loan Amount	# of Loans	% of Loans			
<= 20	\$	16,716,623	107	1.0%			
21 to 25	\$	224,487,230	1340	13.8%			
26 to 30	\$	377,707,028	2187	23.2%			
31 to 35	\$	311,825,126	1754	19.2%			
36 to 40	\$	218,124,557	1218	13.4%			
41 to 45	\$	156,871,445	871	9.7%			
46 to 50	\$	121,871,207	692	7.5%			
51 to 55	\$	88,055,057	528	5.4%			
56 to 60	\$	58,995,589	345	3.6%			
>61	\$	50,430,765	308	3.1%			
Not Defined							
Max	: 87	\ Min: 19 \ WAv	g: 36				

Aggregate Single Family Loans and/or MCCs Over Past 12 Months Geographic Distribution As of June 30, 2019



Path Q:\Maps\Homeownership\Homeownership.aprx 8/14/2019

COUNTY by Loan Volume (Top 20)			
Top Originating Counties	# of Loans	% of Loans	Total Originated
Harris	1556	16.1%	\$ 262,304,331
Bexar	1089	11.2%	\$ 182,424,709
Tarrant	855	9.8%	\$ 159,201,863
Dallas	721	7.8%	\$ 127,414,134
Travis	588	7.8%	\$ 126,535,239
El Paso	788	6.2%	\$ 100,879,405
Williamson	430	5.6%	\$ 90,233,416
Hays	268	3.5%	\$ 56,217,989
Fort Bend	254	2.9%	\$ 47,147,612
Collin	198	2.8%	\$ 46,274,684
Montgomery	194	2.1%	\$ 34,761,353
Denton	150	2.1%	\$ 34,091,074
Kaufman	139	1.7%	\$ 27,762,469
Johnson	131	1.4%	\$ 22,257,883
Brazoria	106	1.2%	\$ 19,929,658
Bell	150	1.2%	\$ 19,826,355
Galveston	106	1.2%	\$ 18,707,631
Ellis	90	1.1%	\$ 17,475,262
Comal	71	1.0%	\$ 15,568,948
Webb	102	0.9%	\$ 15,256,805

BOARD REPORT ITEM

INTERNAL AUDIT DIVISION

September 5, 2019

Report on the Meeting of the Internal Audit and Finance Committee

REPORT ITEM

Verbal report.



BOARD ACTION REQUEST

FAIR HOUSING, DATA MANAGEMENT, AND REPORTING

SEPTEMBER 5, 2019

Presentation, discussion, and possible action to approve the Analysis of Impediments to Fair Housing Choice

RECOMMENDED ACTION

WHEREAS, the U.S. Department of Housing and Urban Development (HUD) requires the development of an Analysis of Impediments to Fair Housing Choice (AI) in accordance with the Affirmatively Furthering Fair Housing (AFFH) rule for HUD Community Planning and Development (CPD) funding recipients;

WHEREAS, the AI is required by HUD to be completed as a component of the Consolidated Planning process and serves as a basis for fair housing planning with an aim toward increasing housing choice and identifying any patterns of fair housing complaints;

WHEREAS, the AI is required because the Department operates several HUD Community Planning and Development (CPD) funded programs - the HOME Investment Partnerships Program (HOME), the National Housing Trust Fund (NHTF), and the Emergency Solutions Grants (ESG) programs;

WHEREAS, three other state agencies, the Texas General Land Office (GLO), Texas Department of State Health Services (DSHS), and Texas Department of Agriculture (TDA), are also recipients of CPD funds from HUD, and TDHCA leads the AI development and HUD Consolidated Planning process on behalf of the all Texas state agencies that receive CPD funds;

WHEREAS, at the TDHCA Board meeting of March 21, 2019, a Draft AI was approved to be released for public comment in compliance with the State's HUD-approved Citizen Participation Plan, and the public comment period for the Draft AI was open from March 25 through May 6, 2019, and 13 public hearings, one in each TDHCA State Service Region, were held during the public comment period;

WHEREAS, eight individuals gave comment at the public hearings, some of whom also submitted written comment via email; six additional email submissions of written comment were received; and two comments were received outside of the public comment period; and WHEREAS, HUD does not require that the AI be submitted nor does HUD provide for an approval process for the AI, however HUD does require that the AI be available upon request and that a summary of the AI be provided as part of the State's Consolidated Annual Performance and Evaluation Report (CAPER) as required by the Consolidated Plan regulation at 24 CFR §91.520(a);

NOW, therefore, it is hereby

RESOLVED, that the Analysis of Impediments to Fair Housing Choice, in the form presented to this meeting, is hereby approved and the Executive Director and his designees are each hereby authorized, empowered and directed, for and on behalf of the Department, to publish on the Department's website the Analysis of Impediments to Fair Housing Choice and, in connection therewith, to make such non-substantive grammatical and technical changes as they deem necessary or advisable.

BACKGROUND

The Analysis of Impediments to Fair Housing Choice (AI) is a process that recipients of U.S. Department of Housing and Urban Development (HUD) Community Planning and Development (CPD) grant funds, such as states, local governments, and public housing agencies, undertake as part of their obligation to affirmatively further fair housing (AFFH) under the Fair Housing Act.

At the state level, the Texas Department of Housing and Community Affairs (Department), the Texas Department of Agriculture (TDA), the Texas General Land Office (GLO), and the Texas Department of State Health Services (DSHS), are responsible for carrying out the work of the AI because these agencies receive and disburse HUD Community Planning and Development (CPD) funds. TDHCA administers the HOME Investment Partnerships Program (HOME), the National Housing Trust Fund (NHTF), and the Emergency Solutions Grants (ESG) programs. TDA administers the Community Development Block Grant (CDBG), GLO administers CDBG Disaster Recovery, and DSHS administers the Housing Opportunities for Persons With AIDS (HOPWA) program. TDHCA leads the AI development and HUD Consolidated Planning process on behalf of the all Texas state agencies that receive CPD funds. The Texas Workforce Commission, Civil Rights Division (TWC-CRD) also participates in the process, providing training, technical assistance, and data on fair housing complaints.

Consultation Process

In accordance with its Citizen Participation Process identified in its Consolidated Plan, the State conducted more than 40 separate consultations in order to garner input for the initial draft Analysis of Impediments during summer 2018. These consultations took the form of conference calls, webinars, inperson meetings, public hearings, and participation in regularly-scheduled meetings with specific stakeholder groups. Written input was also accepted during the consultation period by email, mail, and fax. This robust early input and participation period provided great insight in the State of Texas' identification of impediments and in its ability to assess progress made toward previously identified

impediments to fair housing choice. Following this consultation period, at the TDHCA Board meeting of March 21, 2019, the Draft AI was approved to be released for public comment.

Public Comment Period

To garner input on the draft AI, a public comment period was open from March 25 through May 6, 2019. Notification of the public comment period and public hearings was announced by email distribution and published in the *Texas Register* on April 5, 2019. Thirteen public hearings were held, one in each TDHCA State Service Region. Notification of the public hearings was also released by TDHCA's Twitter and Facebook accounts and posted on the TDHCA Events Calendar and the TDHCA Public Comment Center (https://www.tdhca.state.tx.us/events/index.jsp and <u>http://www.tdhca.state.tx.us/publiccomment.htm</u>).

Eight individuals gave comment at the public hearings. Staff also received six email submissions of written comments; however, some of the commenters at the public hearings also submitted written comment via email. Two comments were received outside of the public comment period. For a summary of public comment received and staff's reasoned responses, see Attachment A of this Board action and Chapter 1 of the AI. All written comments and transcripts of all hearings are provided as an Appendix to the AI.

About the AI

The AI both assesses where Texas is as a state as it relates to fair housing, and then identifies impediments and possible solutions, where applicable. This assessment is achieved by looking at a statewide overview and regional analysis of demographics and housing considerations, by reviewing statewide regulations and rules, by discussing and describing actions that have been taken and are currently being undertaken to affirmatively further fair housing by the state, by performing an assisted housing portfolio analysis and a lending analysis, and through an overview of fair housing complaints and cases. All of those topics together, presented chapter by chapter in the AI, lay the framework for the identification of statewide impediments. Recommended actions to address those identified impediments are then also provided. A separate chapter provides a review of specific considerations and actions that have been taken specifically as it relates to disaster recovery and response with CPD funds by the GLO.

The following five impediments, as detailed in Chapter 10 of the AI, represent five major themes on fair housing which the State determined based on input and analysis. There are opportunities within the five impediments for the Texas state agencies who receive HUD CPD funds to utilize those funds to alleviate, mitigate, or take steps to combat certain problems in accessing fair housing choice. While there may be other obstacles to fair housing choice in local areas or outside the purview of the State, these five impediments represent those issues for which the state agencies receiving CPD funds may have some influence to promote safe, decent, affordable, and fair housing.

Impediment 1: Not in My Backyard Syndrome (NIMBYism) can limit affordable housing development, which could limit housing choice for protected classes in some communities.

Impediment 2: There is a lack of understanding of and awareness of resources on fair housing law, rights, and duties available to local governments, stakeholders, and the public about fair housing requirements and programs to assist low-income residents and persons with disabilities.

Impediment 3: Protected classes may experience obstacles in accessing homeownership and lending products.

Impediment 4: The scarcity and location of accessible and visitable housing units limits fair housing choice for persons with disabilities.

Impediment 5: There are barriers for specific protected classes that may limit mobility and free housing choice.

Recommendations and proposed action steps to address to impediments identified above are listed below and are presented in detail in Chapter 11 of the AI.

Recommendation 1: Maximize accessible housing choice by promoting preservation and limiting displacement, continuing to encourage development in high opportunity areas, and encouraging creative, innovative solutions.

Recommendation 2: Increase the provision of educational resources to the developer, property manager, and tenant communities, and to the mortgage lending and realtor industries.

Recommendation 3: Reduce Stigmatizing Language and Practices

Recommendation 4: Actively Engage in the Enforcement of the Fair Housing Act

Recommendation 5: Work with Trade Organizations, Local Jurisdictions, and Regulatory Agencies for Mutual Benefit

In the development of the AI, the State has focused its efforts on those avenues where state agencies receiving HUD CPD funds could act within their authority, and with these HUD CPD resources. Once these impediments were identified, the state agencies receiving HUD CPD funds developed recommendations for ways to use these HUD CPD funds to alleviate obstacles. Over the next 5 years, until an updated fair housing document is required by HUD, the State intends to use the AI as a guide to take specific, measurable, actionable, reasonable, and time-bound actions to address the identified impediments that are likely to be achievable within current resource constraints.

Submission and Availability of the AI

While HUD does not require that the AI be submitted or approved, it does require that the AI be available upon request in the event of a complaint or as part of a routine monitoring. HUD also requires that a summary of the AI be provided as part of the State's 2020 Consolidated Annual Performance and Evaluation Report (CAPER), reporting on Program Year 2019, as required by the Consolidated Plan regulation at 24 CFR §91.520(a). The Department will place this completed AI on its website at https://www.tdhca.state.tx.us/fair-housing/analysis-impediments.htm.

Staff recommends approval of this action.

Attachment A: Summary of Public comment and Reasoned Response on the Draft State of Texas Analysis of Impediments to Fair Housing Choice (AI)

Summary of Public comment and Reasoned Response on the Draft State of Texas Analysis of Impediments to Fair Housing Choice (AI)

At the TDHCA Board meeting of March 21, 2019, the Draft AI was approved to be released for public comment. Two weeks prior to the TDHCA Board meeting, the Draft AI was posted to the TDHCA website and notification of this posting announced by email distribution to over 5,000 email addresses.

In accordance with the State's HUD approved Citizen Participation Plan, the public comment period for the Draft AI was open from March 25, 2019, to May 6, 2019. Notification of the public comment period and public hearings was announced by email distribution and published in the *Texas Register* on April 5, 2019. Thirteen public hearings were held, one in each TDHCA State Service Region. Notification of the public hearings was also released by TDHCA's Twitter and Facebook accounts and posted on the TDHCA Events Calendar (https://www.tdhca.state.tx.us/events/index.jsp) and the TDHCA Public Comment Center (http://www.tdhca.state.tx.us/public-comment.htm) webpages.

Eight individuals gave comment at the public hearings. Staff also received six email submissions of written comment; some of the commenters at the public hearings also submitted written comment via email. It should also be noted that one commenter at the public hearing in Midland did discuss HUD waivers with the Department, but did not specifically comment on the AI document or fair housing.

Comment Received Outside the Public Comment Period

One commenter submitted comment prior to the start of the public comment period. That commenter identified an error in a case citation of Sims v. TDHCA. While the case of Sims v. TDHCA had a correct citation, the State did, as a result, add some clarifying language to another related case citation in Chapter 8 to indicate that the case had originally been filed in the Western District of Louisiana. This change was already reflected in the final draft of the Analysis of Impediments that was approved by the TDHCA Board, and which was released for public comment. As a result, no changes to the Analysis of Impediments needed to be made to that version.

One comment was received after the public comment period closed; however three of the four topics addressed by this late comment were covered in other timely submitted public comments so are still addressed in the following summary. The fourth topic covered in this late submission was not germane to the Al.

Summary of Comments and Staff Responses

A summary of the comments received during the public comment period presented by topic, along with staff responses, is below.

1. Scope – Breadth of Agencies Covered

Four commenters indicated that the scope of the AI should not only focus on the agencies that administer the HUD CPD programs, but should be expanded to include a broader range of State and governmental agencies both in addressing impediments and in identifying actions to be taken. For example, one commenter indicated that the Texas Commission on Environmental Quality (TCEQ) should be included to consider environmental impacts of low income minority populations residing near industrial activity, and another felt that the Texas Department of Transportation (TXDOT) or the Texas Transportation Commission should be included so that regional mobility planning could be considered during housing development planning. Another agency noted as not having been involved in the development of the AI that should have been is the Texas Department of Emergency Management (TDEM).

One comment also noted that AFFH is not confined to expanding housing opportunities and encompasses remedying historical disinvestment and discrimination, and addressing structural factors that have deprived protected classes in Texas of access to opportunity and meaningful housing choice, and perpetuated segregation.

One commenter noted that such a narrow scope does not allow adequate consideration of all the factors in our state that influence fair housing; another suggests that the list of impediments and actions steps to address those impediments is incomplete by nature of excluding the broader scope of agencies. A commenter takes this further and suggests that if in fact the impediments and action list do not include this broader scope, then the AI is incomplete and cannot support the Department's AFFH certification, thus creating a basis for HUD to disapprove any Consolidated Plan submitted. One other comment related to scope critiqued the fact that the list of impediments is essentially the same as the list of issues for the 2013 AI.

(Comments made by: Madison Sloan, Texas Appleseed; Demetria McCain, Inclusive Communities Project; Amelia Adams, Texas Housers; Michael Bates, Alliance of East Lubbock Neighborhood Associations)

Staff response: In the development of the draft AI, the State used the HUD Fair Housing Planning Guide (FHPG) as a reference guide for much of the content and format. However, it should be emphasized that the FHPG is merely guidance for the AI, and is not a promulgated regulation.

In 2018, HUD promulgated two important Advance Notices of Proposed Rulemaking (ANPR): one requested comment on the changes to its disparate impact rule necessitated by the U.S. Supreme Court's ruling in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, 135

S. Ct. 2507 (2015) ("*ICP*"). The resulting new disparate impact rule proposed by HUD (currently out for public comment at the time of this response) will drastically change the HUD standard of what constitutes actionable disparate impact discrimination, and how it can be prosecuted under the FHA. The second ANPR was a broad-reaching request for comment on changes to the entire AFFH rule in light of this landmark Supreme Court opinion. Accordingly, the AI is most appropriately conformed to the current Supreme Court interpretation of the scope of the Fair Housing Act, as opposed to HUD's decades-old planning guide or its soon-to-be-superseded rules that HUD has already taken steps to rectify to conform with the Supreme Court's opinion.

In *ICP*, the Court adopted an exacting standard for disparate-impact claims under the FHA. At the *prima facie* stage, a disparate-impact claim requires the plaintiff identify a particular facially neutral practice, prove a robust causal connection between the identified practice and the claimed disparate impact, and demonstrate that the disparate impact causes a barrier to housing. *See id.* at 2523. Thus, in the disparate-impact context, the FHA prohibits only specific, identified practices that cause a statistical disparity regarding a classification protected under the Fair Housing Act and create a barrier to housing for that protected class. *See id.*; *see also id.* at 2521 (stating the "[t]he FHA . . . was enacted to eradicate discriminatory practices"). Notably, the Court found that the FHA may be used to remove artificial, arbitrary, and unnecessary barriers to housing, but stated, pointedly, that it "is not an instrument to force housing authorities to reorder their priorities," nor does it "decree a particular vision of urban development." *Id.* at 2522, 2523. It follows that any analysis of impediments to fair housing would use the current legal standard of what can be enforced under the FHA (as well as whether an identified impediment is within the control of the State) as the basis for its plan.

Regarding certain commenters' requests to include all State agencies in the AI, the FHPG states: "(a)Ithough the grantee's AFFH obligation arises in connection with the receipt of Federal funding, its AFFH obligation is not restricted to the design and operation of HUD funded programs at the State or local level."¹ Indeed, while the inclusion of a broader range of State agencies is "not restricted" in the AI, it is quite notably also not required. No law or regulation exists that requires states to expand the scope of a state AI beyond the programs that receive specific types of HUD CPD funding.

It is important to note that none of the Texas state agencies that administer these specific types of HUD CPD funding have the statutory authority or ability to direct or influence policy at other Texas state agencies. To suggest that the AFFH certification signed by TDHCA could only be accurately and truthfully signed if TDHCA exceeds its statutory scope by presuming the ability to set policy within other state agencies, except as specifically allowed for under state legislation or as agreed to by other state agencies

¹ HUD Fair Housing Planning Guide, page 1-3.

that receive specific types of HUD CPD funding, would be legally remiss. Therefore, while TDHCA understands that many things outside of its control may affect how low income Texans seek and find housing, TDHCA disagrees that all of those issues should fall within the scope of this document. No changes have been made to the AI as a result of these comments.

As it relates to the comment that the impediments appear to repeat the same issues from the prior AI, the State addressed the reason for this in the AI:

"In developing the specific impediments for the draft AI, the Department considered past impediments and whether they continued to exist, the trends and observations seen through the earlier chapters in this document, as well as new input received during consultations. Because the issues addressed in past AIs were broad and pervasive challenges, and continued to be reiterated and reaffirmed across many input sessions, the state does not consider those past impediments to be resolved. However, based on newer insights and input those impediment statements have been revised to make them as current and relevant as possible."

2. Scope – Local and Regional Coverage

One commenter indicated that the scope of the AI should be focused more locally to propose regionspecific solutions and implementation processes. They suggest that the AI should address how TDHCA will work with regulatory agencies and local jurisdictions within each of the state's 13 regions. They also suggest that the State should work with units of government that receive these types of HUD CPD funding on the development of their AIs. One commenter also noted that activities of the North Central Texas Council of Governments, who use their funds for infrastructure, also play a role in housing, and could better address environmental justice issues.

(Michael Bates, Alliance of East Lubbock Neighborhood Associations)

Staff response: The State does not agree that the development of local and regional AI documents is part of its responsibility; those activities are the responsibility of local units of government themselves. The commenter admittedly notes that it is because their local PJ, the City of Lubbock, has not performed an AI that they feel the Department should now step in. The process for developing a state level AI is different from the process that local municipalities and regional PJs use to develop their AI or Assessment of Fair Housing (AFH), whichever is required by HUD for a particular local entity. However, in an effort to enhance the actions identified to support Recommendation 5, regarding Work with Trade Organizations, Local Jurisdictions, and Regulatory Agencies for Mutual Benefit, the State has added language regarding coordination with units of government required to perform an AI, and sharing of best practices.

3. Scope – Historical Perspective

One commenter suggested that the AI should include a detailed historical account of the reasons for current patterns of discrimination and segregation. They posit that only through understanding the historic patterns of segregation can impediments to fair housing be understood; without explaining the history in the AI, the document will be weak in overcoming barriers. They appear to suggest that each region's analysis section should cover that region's history and background. Further, comment criticized the lack of more detailed statistical and regional patterns of historical and current segregation or race-related impediments.

(Michael Bates, Alliance of East Lubbock Neighborhood Associations)

Staff Response: As stated, above, the opinion in the ICP case makes clear that the FHA can be used to challenge current policies that are demonstrated to have a robust causal connection to a disparately impacting barrier to fair housing. As important as a city's history may be to its citizens, it is not particularly relevant to the legal analysis of whether a current policy is responsible for creating a barrier to fair housing. After all, only current policies could be enjoined as a remedy – not historical policies. No changes to the Analysis of Impediments have been made as a result of these comments.

4. Source of Income Discrimination

Six comments indicated that source of income discrimination, specifically discrimination against Housing Choice Voucher holders, was an obstacle in protecting tenants from discrimination. More specifically, several commenters criticize the state law that bars municipalities from enacting local ordinances that would protect tenants from discrimination based on source of income. These comments also pointed to the correlation between race and ethnicity and status as a Housing Choice Voucher holder. Commenters stated that this could be considered grounds for a claim of disparate impact and suggested the state look at the recent report published by the Urban Institute.

(Sandy Rollins, Texas Tenant's Union; Owen Wilson Chavez, Child Poverty Action Lab; Demetria McCain, Inclusive Communities Project; Maddison Sloan, Texas Appleseed; Amelia Adams, Texas Housers; Krista Walikonis, Disability Rights Texas)

Staff Response: Neither source of income nor poverty status are protected classes under the Federal Fair Housing Act or the Texas Fair Housing Act. While the Urban Institute's study on Housing Choice Voucher denials does support that in the metropolitan areas tested many landlords do not accept vouchers, the study only included one city in Texas (Fort Worth) and does not offer a full picture of the situation in the state. Moreover, the United States Court of Appeals for the Fifth Circuit upheld a previous District Court ruling in *Inclusive Communities Project v. Lincoln Property Company et al.*, 17-10943 (5th Cir. July 16, 2019) and found that refusal to participate in the Housing Choice Voucher Program did not constitute disparate impact or disparate treatment. Additionally, it is not under the jurisdiction of any of the State agencies who receive HUD CPD funds to mandate that private market landlords accept Housing Choice Vouchers. For the portfolio for which TDHCA does have authority, TDHCA requires any Development that receives Low Income Housing Tax Credits, Bonds, or Direct Loan funds from TDHCA to accept Housing Choice Vouchers, HOME Tenant Based Rental Assistance, or other federal, state, or local government rental assistance program. See 10 TAC §10.610(b)(2)(B). The Texas Legislature, in 2015, banned local jurisdictions from passing protections against source of income discrimination.² No changes to the Analysis of Impediments have been made as a result of these comments.

5. Income Levels

One commenter noted that programs that focus affordable housing at 80% of area median income are not often creating units that are below market rents; they are often at or above market rents. To serve those most in need, who are often protected classes, programs should be targeted to lower area median income levels.

(Sandy Rollins, Texas Tenants Union)

Staff Response: The Department agrees that program limits do not always result in rent levels that are achievable for all low income households. Many of TDHCA's programs do serve households well below 80% of area median income. No revision to the AI is suggested.

6. Persons with Disability

One commenter appreciated the inclusion of the impediments faced by persons with disabilities in the Draft AI. They stated that they felt the Department's representation of disability issues made good use of the most recent data, and that the Department made clear the connection between disability and poverty, and their combined effects on finding housing. They also were pleased to see the Department address service animals and possible training in that regard.

(Christa Walikonis, Disability Rights Texas)

Staff Response: Staff appreciates the feedback, and no revision to the AI is suggested as a result of this comment.

7. TDHCA Home Purchase Programs

² ICP sued Texas Governor Greg Abbott over the enforcement of this law, and the case was dismissed on jurisdictional grounds. *See ICP v. Abbott*, No. 3:2017cv00440 (N.D. Tex. 2018)(S. Fitzwater) Doc. 63 (Memorandum Opinion and Order).

One commenter made comments regarding the State of Texas homebuyer and homeownership programs. Specifically, comment was received that participation in TDHCA's homeownership and homebuyer programs was low in the City of Lubbock, and that TDHCA did not have enough low income homebuyer activities. Furthermore, the commenter suggested that the Analysis of Impediments should include a detailed plan for better educating the community on resources available to help lower income households.

(Michael Bates, Northwest Texas Legal Aid/Alliance of East Lubbock Neighborhood Associations)

Staff Response: TDHCA recognizes that there may be a lack of awareness of the homeowner and homebuyer programs that the agency provides. For this reason, the State proposed Recommendation 2 which is to increase the provision of educational resources to the developer, property manager, and tenant communities, and to the mortgage lending and realtor industries. Specifically, the state plans to provide and promote training for nonprofit and realtor groups who work with low income households on TDHCA's homeownership and homebuyer programs. Additionally, TDHCA will reach out to credit counseling agencies to provide targeted outreach and identify areas where there may be a shortage of HUD certified housing counseling organizations. Additionally, Recommendation 5, which increases collaboration with trade groups, local jurisdictions, and regulatory agencies, specifically mentions targeting outreach and collaboration with groups that can help low income Texans learn about and access TDHCA homebuyer programs. No changes have been made to the Analysis of Impediments as a result of these comments.

8. Lending Activities and Credit History

One comment indicated that the Analysis of Impediments ignored evidence of lending discrimination and suggests that the state perform testing to find said discrimination.

(Madison Sloan, Texas Appleseed)

Staff Response: The State disagrees with this comment, specifically the characterization that evidence was ignored. Chapter 7 of the Analysis of Impediments presented a detailed review of lending in the State of Texas. In this chapter, the State identifies differences in home mortgage loan denial rates for several different protected classes: sex, race, and national origin. Furthermore, the State further analyzed these differences by income grouping to add statistical controls and increase the generalizability of the analysis. Additionally, the State identified differences in the primary reasons given for loan denials between races and national origins. The State concludes that the data available is insufficient to establish a causal relationship statewide between an applicant's sex, race, or national origin, and their denial for a home mortgage loan. This insufficient data problem is echoed by many studies; conclusions cannot be determined on the causality of loan denials without data on credit scores of applicants, actual debt-to-income ratios of applicants, and the formulae used by credit agencies and

lending institutions to determine credit score and credit worthiness. The State does suggest that greater transparency from lenders and credit agencies on their lending decisions and credit worthiness decisions could shed light on what, if any, causal mechanisms account for denial rates that vary across protected classes. No changes have been made to the Analysis of Impediments as a result of this comment. One further comment objected to the framing of credit history as a problem attributable solely to housing seekers.

(Madison Sloan, Texas Appleseed)

Staff Response: The State does not agree with the characterization of credit history as a problem only attributable to housing seekers. In fact, the State identified the lack of clarity and transparency used by lenders to calculate credit score and evaluate credit history as the reason the State is unable to identify a causal mechanism statewide for the identified disparities in lending denial rates and reasons for those denials. Those same factors may affect those seeking rental housing; however, the lacking data still precludes a means of establishing causality statewide. No changes have been made to the Analysis of Impediments as a result of this comment.

One comment requested that the AI should also address the lack of private lending products available to low income households.

(Michael Bates, Alliance of East Lubbock Neighborhood Associations)

Staff Response: The State agencies that receive these HUD CPD funds do not have the authority to force or require private institutions that engage in lending to extend products to low income households. To help in addressing gaps in the private lending market, TDHCA does offer programs for low-income households through the My First Texas Home program, as well as several homeownership related products through its HOME, Bootstrap, and Self-Help Center Programs. No changes have been made to the Analysis of Impediments based upon this comment.

One other comment on this topic specifically noted the lack of Federal Housing Administration loans in the City of Lubbock.

(Michael Bates, Alliance of East Lubbock Neighborhood Associations)

Staff Response: Federal Housing Administration loans are federal products that are administered through private lenders. This loan program is not something overseen by TDHCA, nor does TDHCA dictate or control Federal Housing Administration policies. As a result, TDHCA is unable to take any action regarding these loans. No changes have been made to the Analysis of Impediments as a result of this comment.

9. Transportation and Increasing Mobility

One commenter noted a strong tie between public transportation and fair housing choice, and suggested that the AI include incorporating regional public transit planning, for areas of the state such as the City of Lubbock. Additionally, the commenter remarked on the state of public transit in Lubbock being ineffective and the siting of LIHTC properties in Lubbock being too far from transit services. The commenter suggested said that Lubbock needs State coordination to increase mobility. The commenter also suggests that the data provided regarding commute distances and times, because they are provided at the broader regional level, give a perspective that those who deal with housing barriers do not have mobility barriers.

(Michael Bates, Alliance of East Lubbock Neighborhood Associations)

Staff Response: The State is aware that individual cities and regions have their own critical issues to face and their own unique situations. However, the State of Texas Analysis of Impediments is focused on activities stemming from the State's allocation of HUD CPD funds. Because of the limited scope and amount of these funds, and the statewide breadth of the AI, the State is not in a position to generate data, information, and mobility planning services for every city, county, and region in Texas Additionally, any jurisdiction receiving these CPD funds has the duty to produce an AI. Lubbock, as a recipient of these funds, will have the ability to focus on the issues that are specific to this region in its own AI or AFH per HUD guidance.

In Chapter 5 of the Analysis of Impediments, the State performed analysis on the transportation situation of each TDHCA service region by way of commute times and inflow and outflow of workers; this data was not intended to imply that no mobility barriers exist, but only to show the relative commute data from region to region. While the amount and availability of public transportation will vary by city, none of the state agencies receiving these CPD funds have the authority to make any mandates to local transit authorities. In an area of policy that TDHCA can influence, TDHCA's Qualified Allocation Plan and Uniform Multifamily Rules have historically incentivized siting Multifamily properties near public transit opportunities. No changes have been made to the Analysis of Impediments as a result of this comment.

10. Data in the Al.

Several comments stated that the data used in the Analysis of Impediments should have included other groups, used different definitions or provided more analysis as provided more specifically below. One commenter noted that the definition of "disability" used in the analyses in the AI is not the same as the definition of "disability" as understood in the Fair Housing Act.

(Jason Howell, Recovery People)

Staff Response: The State agrees that the FHA definition is not used in the data presented. Unfortunately, the FHA definition of "disability" is not universally used and does not readily translate for the scale of the data that was needed and the broad range of data sources required to complete this document. For

instance, the American Community Survey does not report data on the type of disability in line with the definition offered by the FHA. As the ACS comprised a large portion of the data used and required, it was not possible to use the definition given by the FHA. In response to this comment, the State will add a disclaimer at the beginnings of Chapter 2 and Chapter 5 explaining that the FHA definition of "disability" is broader than the definitions used in the ACS data.

Another commenter indicated that the Analysis of Impediments should include individuals in recovery in the Special Needs Populations segment of Chapter 2.

(Jason Howell, Recovery People)

Staff Response: The State is not aware of statewide data that would reliably capture this population. Additionally the State, for consistency, used the same Special Needs Populations in the AI as are contained in other related Department documents such as the State of Texas Low Income Housing Plan and Report (SLIHP). Populations that the Department considers to be Special Needs are required to be in the SLIHP in accordance with §2306.0721(c)(1) of the Tex. Gov't Code. While the State does recognize that individuals in recovery are a subset of persons with a substance use disorder, it is not a specifically listed group in the aforementioned Tex. Gov't Code. No changes have been made to the Analysis of Impediments in response to this comment.

Two other comments recommended that data reported in the Analysis of Impediments should be broken out by race and ethnicity, especially in Chapters 2 and 5.

(Demetria McCain, Inclusive Communities Project)

Staff Response: Staff agrees that because race and national origin are protected classes, these are vital categories for data analysis. Unfortunately, the State is limited by the availability of data and the constraints of the data used. For instance, the HUD Comprehensive Housing Affordability Strategy data (CHAS) does not include race and national origin in all of their tables. Without this, the State is unable to create breakouts by race and national origin for data on housing problems such as cost burden, lacking complete kitchen and plumbing, and overcrowding. Wherever possible and germane, the State has tried to include data on any protected classes other than religion, which had a very low incidence of complaints. No changes were made to the Analysis of Impediments based on this comment.

11. Boarding Home and Group Home Terminology Usage

One commenter indicated that the Analysis of Impediments did not accurately define the term "boarding home" and used the term "group home" too loosely.

(Jason Howell, Recovery People)

Staff Response: The state appreciates this comment and has made changes to keep the use of terminology more consistent when discussing group home facilities. Staff used the HUD and Department of Justice Joint Statement on State and Local Land Use Laws and Practices and the Application of the Fair Housing Act as a guide for how to use the proper terminology. However, staff would note that the AI did correctly define boarding home per §260.001 of the Tex. Health and Safety Code.

12. State Laws

One commenter broadly addressed their concern over this section (Chapter 3) on state laws and regulations, and suggested that the list of state laws and regulations described in Chapter 3 do not account for the disparate impact of facially neutral laws on protected classes, and that the chapter "glaringly" excludes several state laws with discriminatory effects that may have been passed with discriminatory motives. (*Note: the specific laws noted by this commenter are described below.*) This commenter also noted that the AI fails to discuss state law as it relates to the QAP for the LIHTC program.

(Madison Sloan, Texas Appleseed)

More specifically, two comments stated that the State should identify the state statute that bans inclusionary zoning as an impediment. Inclusionary zoning refers to the practice of cities requiring or incentivizing developers to set aside a portion of new housing units produced for "below market rate" (BMR). In 2015, the Texas State Legislature passed legislation that disallowed Texas municipalities from engaging in inclusionary zoning. One of those commenters also noted that Chapter 3 did not include the state statute banning linkage fees. Texas Local Gov't Code §250.008 states that a political subdivision may not adopt or enforce a charter provision, ordinance, order, or other regulation that imposes, directly or indirectly, a fee on new construction for the purposes of offsetting the cost or rent of any unit of residential housing.

One comment also suggested that the State statute that requires any housing project by a Public Housing Authority to have a meeting in order for the project to begin construction, should be identified as an impediment. The law treats "public housing as a more noxious use than a major source of pollution…" Further, the commenter states that the signage requirements and meeting requirements for those meetings allow for NIMBYism.

This commenter also noted that state law parameters on non-entitlement CDBG programs can also have a disparate impact.

(Madison Sloan, Texas Appleseed; Demetria McCain, Inclusive Communities Project)

Staff Response: As previously stated, the opinion of the Supreme Court in *ICP* governs how a disparate impact theory of discrimination may be recognized under the FHA. Regarding a challenge to a state

policy, it is the claimant's burden of proof and persuasion to make a *prima facie* showing of discrimination (a demonstration of a robust causal link between the policy and a disparately impacting barrier to fair housing). Only then does the burden shift to the state to provide an explanation of the policy's rationale: "housing authorities and private developers [are provided] leeway to state and explain the valid interest served by their policies." *ICP*, 135 S. Ct. at 2522. Thereafter, the claimant then resumes their burden of proof and persuasion to rebut this explanation, and to satisfy the formidable legal standard that challenged policies "are not contrary to the disparate-impact requirement unless they are artificial, arbitrary, and unnecessary barriers." *ICP*, 135 S. Ct. at 2524 (internal citation and quotation omitted).

The Commenters would have TDHCA reverse this burden-shifting analysis, and have the Department presume the illegitimacy of a state law on the basis of the Commenter's suspicion that it was tainted at some point in the legislative process with "discriminatory motives." This, despite the fact that TDHCA (as an executive agency of the State of Texas) has no legal authority to simply ignore state law, or presume a lack of constitutionality, reasonableness, or public interest in any duly-enacted statute.³

Regarding the exclusion of the laws that relate to the Housing Tax Credit programs, as discussed earlier in the section on scope, the Department does not believe the LIHTC Program is subject to AI. Moreover, the elements of the QAP that were questioned by the Commenter are required by state statute to be in the QAP, raising the above-discussed issues of the burden-shifting analysis for showing a disparate impact, as well as TDHCA's lack of authority to manipulate state law. No changes to the AI are made in response to these comments.

13. Impediment One

One comment agreed with the inclusion of the first impediment regarding Not in My Backyard Syndrome (NIMBYism). It was criticized that several state laws might be considered as enabling and encouraging NIMBYism, which was addressed in the item above. Another commenter noted that they agreed with the inclusion of this impediment, but thought more detail on NIMBYism should be provided.

(Madison Sloan, Texas Appleseed; Johanna Rohan, Aging and Disability Resource Center)

Staff Response: The State appreciates these comments. Staff did not feel that further additions on the subject of NIMBYism were needed. No changes have been made to the Analysis of Impediments as a result of this comment.

³ See, e.g. Tex. Gov't Code §311.021 (Intention in Enactment of Statutes)

14. Impediment Two

One comment suggested that impediment 2, relating to a lack of understanding and awareness of resources on fair housing, should be reformulated to include reference to local government officials. Currently the impediment focuses on education and outreach to housing providers and housing seekers.

(Madison Sloan, Texas Appleseed)

Staff Response: The State agrees that outreach under Impediment Two should include local government and in the title to the Impediment specifies local government as part of those that warrant ongoing awareness.

Another commenter addressed a specific facet of Impediment Two, and an area of input received, relating to the negative impact that criminal background criteria have on seeking affordable housing, and that protected classes are impacted by this. Inconsistent provider policies, unreasonable look-back periods and challenges with reading criminal histories were all concerns. This commenter also noted concern with helping those that have been formerly incarcerated with accessing disability benefits.

(Natalie Burtzos)

Staff Response: Staff appreciates this comment, which further supports this issue as summarized in the AI. The Department is addressing this issue through Recommendation Two.

15. Impediment Four

One commenter indicated that the fourth identified impediment regarding the lack of accessible and visitable housing should be reworded to include issues with the location of accessible and visitable housing. The commenter did note that in the description of the impediment in the AI text the State did address location as part of the impediment.

(Madison Sloan, Texas Appleseed)

Staff Response: Impediment 4 has been revised to include the location of accessible and visitable housing, since location of accessible and visitable housing is discussed in the description of Impediment 4.

16. List of Impediments

Discussed in part already under Item One, relating to Scope, one commenter suggested that the list of impediments in Chapter 10 was incomplete. In particular, the commenter cited a bill regarding eviction history distribution when the eviction is dismissed, a lack of regulation of predatory lending, and a lack of regulation on insurance denials as examples of issues to be included with the fifth impediment. The

commenter also suggested adding deliberate zoning decisions and environmental hazards as further examples.

(Madison Sloan, Texas Appleseed)

Staff Response: While these issues may be perceived as having an effect on where low income households locate housing, these are not issues that the agencies receiving HUD CPD funds have statutory authority to effect. Therefore, no changes have been made to the AI as a result of these comments.

17. Public Comment Process

Two comments suggested that the Analysis of Impediments should include a list of the participants in the public comment process.

(Demetria McCain, Inclusive Communities Project; Owen Wilson Chavez, Child Action Poverty Lab)

Staff Response: The state conducted robust early public consultation for the initial Draft Analysis of Impediments in accordance with 24 CFR §91.110 and the State's HUD-approved Citizen Participation Plan. This initial consultation process, conducted prior to and outside of the official public comment process, is documented in Chapter 1. All public comment received during the public comment period of the draft AI is considered public. Those public comments will be summarized in Chapter 1 and given reasoned response, and the comments themselves will be provided in an appendix as well as transcripts of all hearings, in accordance with the State's HUD-approved Citizen Participation Plan. While this was already the plan for handling comment received, the State appreciates these comments.

Two commenters critiqued the public comment process itself. These comments suggested that the State needed to give more notice to the public regarding the AI process and public comment period. Additionally, these comments indicated that the State should have utilized methods other than mass emails to solicit input for the AI.

(Demetria McCain, Inclusive Communities Project; Michael Bates, Alliance of East Lubbock Neighborhood Associations)

Staff Response: The State appreciates these comments. While no changes have been made to the document itself as a result of these comments, the State will use these suggestions for outreach as it takes actions under Recommendations 3 and 5 to educate and work with stakeholders on implementing action, in the preparation of future Analyses of Impediments, and possibly other documents as appropriate. Changes to Recommendation 5 have been made as a result of these comments to indicate that the State will invite more local entities to join its fair housing communications distribution list.

18. Low Income Housing Tax Credits

Six comments discussed the importance of the process in the QAP for considering undesirable site and neighborhood features as an essential step in ensuring that new affordable housing does not perpetuate the concentration of affordable housing and of people of color who disproportionately comprise the tenants in the developments. The comment indicated that, during the 9% HTC application process specifically related to evaluating the undesirable site and neighborhood standards associated with specific properties, "while the TDHCA staff has routinely noted applications that fail to meet the criteria for an appropriate location, the [Governing Board] of TDHCA has waived the negative area determination and restored the application for consideration. This happens routinely to the point of rendering the criteria irrelevant. This segregative practice is now a major impediment to Fair Housing in Texas and must be identified as such in the AI and an action step proposed to restrain these board actions." One of the commenters also noted that there is no evaluation in the AI of whether there are patterns of discretionary decision-making that override QAP requirements, and that the program continues to be ineffective in providing low-income children with access to high-performing schools.

(Amelia Adams, Texas Housers; Madison Sloan, Texas Appleseed)

Staff Response: As a general legal matter, the question of whether the board's "discretion" in the interpretation and application of its rules, on its own, can serve as the basis for a discrimination suit under the FHA has already been answered in the negative. Following the Supreme Court's remand of the ICP case to the District Court, the plaintiff advanced this as their primary theory. The District court thoroughly rejected it:

By relying simply on TDHCA's exercise of discretion in awarding tax credits, ICP has not isolated and identified the specific practice that caused the disparity in the location of low-income housing. Like the plaintiff in *Anderson*, ICP has pointed to the "cumulative effects" of TDHCA's decision-making process over a multi-year period. ICP cannot rely on this generalized policy of discretion to prove disparate impact.

. . .

Finally, ICP maintains that TDHCA has used its discretion to approve projects located in areas of slum and blight, with high crime rates, adverse environmental conditions, and where there is a high concentration of LIHTC units. TDHCA responds that ICP's concerns are exaggerated, and that ICP has not demonstrated that the decision to approve projects in certain areas causes a statistically-significant disparity. ICP has not established that TDHCA's approval

of projects in areas of slum and blight caused a racially disparate impact, and ICP does not seek a constitutionally-permissible remedy.⁴

The statement by commenter that pairs the review of individual applications and the limited use of discretion, and then labels determinations as a "segregative practice" is without logical or factual foundation. It should be noted that in many cases exceptions to neighborhood risk factors made by the Board are related to rehabilitation activities – in other words, if the exception were not granted, the low income households residing in the affected properties would have continued to live at the property *without* rehabilitation and improved conditions. But in all cases, the record before the board will reflect the individual application's specific circumstances that would justify the request before the Board, and often contains pleas from members of the community who are seeking the low-income housing resources in their neighborhood. No changes to the Analysis of Impediments have been made as a result of these comments.

Two of these comments related to TDHCA's strategy of "balancing" the siting of new affordable housing against the preservation of aging housing or housing that is nearing the end of its affordability period. These comments specifically asked the State to conduct an analysis of LIHTC projects and siting to determine if the program helps to locate affordable housing in high opportunity areas. Two further comments indicated that the current definition of "Concentrated Community Revitalization Plans" in the LIHTC program is not clear and is too easy to circumvent. Finally, two comments asked TDHCA and the State to evaluate the impact of LIHTC sites that were near industrial areas and suggested that industrial zoning might be concentrated around minority neighborhoods.

(Madison Sloan, Texas Appleseed; Amelia Adams, Texas Housers; Demetria McCain, Inclusive Communities Project; Michael Bates, Alliance of East Lubbock Neighborhood Associations)

Staff Response: Tax Code requires that the QAP provide a priority for developments associated with community revitalization efforts; over the last several years, revisions to this section of the QAP have been made to try to ensure that they are not easy to circumvent. TDHCA's Qualified Allocation Plan has a point structure built to incentivize developments from being sited near undesirable site and neighborhood features such as heavy industry. Further, the State, maintains the strategy of balancing new development with preservation in order to maximize affordable housing stock without displacing residents from affordable units and improving the conditions of aging stock. Finally, in Recommendation 1, the State includes encouraging development in high opportunity areas. This recommendation also

⁴ ICP v. TDHCA, No 3:08-CV-0546, 2016 WL 4494322 (N.D. Tex. Aug. 26, 2016)

includes 9 action steps that the State can take to work toward this goal. No changes have been made to the Analysis of Impediments as a result of these comments.

Three comments related to letters of support or opposition from officials. One comment suggested that consideration should be given to the way local officials have used their power to support – or not – tax credit applications. These letters can effectively act as veto power. Another commenter noted that both local official and state official letters can stop a project completely and that this should be addressed as part of the cause of the NIMBYism that occurs.

(Amelia Adams, Texas Housers; Christa Walikonis, Disability Rights Texas; Demetria McCain, Inclusive Communities Project)

Staff Response: The requirement for the QAP to provide points for local government support is a state statutory requirement (Tex. Gov't Code §2306.6710(b)(1)(B)) therefore it must be included in the QAP. However, in an effort to highlight fair housing to local governments, the QAP states in this scoring item: "A municipality or county should consult its own staff and legal counsel as to whether its handling of their actions regarding such resolution(s) are consistent with Fair Housing laws as they may apply, including, as applicable, consistency with any Fair Housing Activity Statement-Texas (FHAST) form on file, any current Analysis of Impediments to Fair Housing Choice, or any current plans such as one year action plans or five year consolidated plans for HUD block grant funds, such as HOME or CDBG funds."

19. Fair Housing Testing

One comment suggested that the State include in Recommendation 4 of Chapter 11 funding for fair housing testing and enforcement of Affirmatively Furthering Fair Housing obligations on subrecipients. This comment further suggested that the state require AFFH training for all subrecipients of its funding.

(Madison Sloan, Texas Appleseed)

Staff Response: Funds available to perform fair housing testing are limited to those CPD funds provided to the State, and allowed to be spent on such activities.⁵ CPD administrative funds are used for enforcement of federal and state statutes, regulations, and rules, which as applicable for Fair Housing Act complaints may be referred to the Texas Workforce Commission. Additionally, the State's CPD

⁵ Fair Housing Testing is an allowable public service activity with non-administrative CDBG funds. However, unlike a local entitlement community the State cannot operate its own program, and may only award funds to units of general local government that do not receive direct CDBG funding. See 24 CFR §570.480(g) Thus, the State cannot award funds under the public services category to FHIPs or FHAPs, as there are no FHAPs in Texas that are non-entitlement communities. Fair Housing Testing is not an allowable program activity in other CPD programs.

subrecipients do receive fair housing and AFFH training. No changes have been made to the Analysis of Impediments as a result of this comment.

20. Recommended Actions

One comment stated that the Analysis of Impediments lacks metrics, timetables, and other measurable to determine the State's progress on the listed action steps. The comment further indicates that HUD's Fair Housing Planning Guide requires measurable and time-bound goals.

(Madison Sloan, Texas Appleseed)

Staff Response: The Fair Housing Planning Guide is a guide not a regulation, nor does it offer any guidance on timelines or metrics. The State contends that the AI and Consolidated Plan process is on a five year cycle and, as such, the State will be seeking to progress toward the stated action steps over the five year period. The action steps themselves are the metrics that will be used to prescribe and evaluate progress. No changes have been made to the Analysis of Impediments as a result of this comment.

21. Steering

One comment requested that the State present detailed steps to neutralize practices that steer households to high poverty and segregated areas. Steering is the policy or practice of, either through word or action, directing those seeking housing toward an area based upon that area's overrepresentation or paucity of member of protected classes.

(Demetria McCain, Inclusive Communities Project)

Staff Response: The State did not receive any comments during its consultation period indicating that steering practices were occurring, nor did the State's analysis uncover any evidence of overt steering practices. However, TDHCA, via its Qualified Allocation Plan, incentivizes LIHTC developments to seek sites that are integrated and have low poverty levels. Furthermore, as the AI is has focused on impediments and activities that were highly commented on, the State does not wish to direct efforts away from taking actions on the identified impediments. No changes were made to the Analysis of Impediments as a result of this comment.

22. TxCDBG AFFH

One comment stated that TDA requires AFFH actions only for potential housing projects.

(Madison Sloan, Texas Appleseed)

Staff Response: TDA disagrees with this comment. Chapter 10 of the TxCDBG Project Implementation Manual clearly requires all Grant Recipients, regardless of project type, to take action to Affirmatively Further Fair Housing prior to disbursement of any TxCDBG funding. In addition, each application for funding requires the applicant to identify those AFFH activities that have been performed and/or are

planned for the future. These activities are not limited to housing-specific projects in either the application or implementation documents. No changes have been made to the AI as a result of these comments.

23. TxCDBG – Project Selection

One comment was in favor of requiring an AFFH review and approval for each project funded through TxCDBG, including project site selection.

(Madison Sloan, Texas Appleseed)

Staff Response: TDA evaluates each proposed project for compliance with the National Program Objective and activity eligibility as described by statute. HUD regulations do not require each project scope to result directly in AFFH outcomes, nor does HUD define what threshold might be used for such an eligibility standard. Rather, HUD focuses the primary eligibility of each project on assisting low- to moderate-income persons or other National Program Objectives, and separately requires the program overall to Affirmatively Further Fair Housing. TDA, in turn, requires each Grant Recipient to conduct AFFH activities. The program meets its obligation, in part, by ensuring that communities across the state have formally adopted and regularly reviewed policies and ordinances to prohibit discrimination and affirm fair housing choice, and to ensure the public is informed of their rights related to fair housing choice in each benefitting community.

Should HUD choose to introduce a defined AFFH "test" for subrecipient project selection in its basic eligibility requirements, TDA will implement the policy for all non-entitlement communities. No changes have been made to the AI as a result of these comments.

24. Disaster Recovery – Distribution of Funding

One comment was made disagreeing with the current distribution of funding under FEMA's Hazard Mitigation Grant Program and recommending that the State step in to help smaller jurisdictions advocate for more grant funding. The commenter posited that well-connected and well-resourced jurisdictions like Houston and Harris County secure larger amounts of funding from this grant source because they have the resources to do so. Absent necessary aid from the State in applying for these funds, smaller jurisdictions will continue to fail in their acquisition of essential funds for long-term mitigation.

(Amelia Adams, Texas Housers)

Staff Response: The Texas General Land Office, as the primary administrator of Community Development Block Grant for Disaster Recovery (CDBG-DR) funds, continuously works with and advocates on behalf of impacted communities to ensure that long-term disaster recovery needs are properly addressed. It should be noted that FEMA's Hazard Mitigation Grant Program is beyond the scope of the Texas General Land Office's duties as the administrator of CDBG-DR funds in the State of Texas. No change has been made to the AI as a result of this comment.

One comment also disagreed with the GLO's acceptance of the South East Texas Method of Distribution as it allocated funds based solely on level of inundation and total population without considering unmet need, ability to recover, or the relative population of the impacted area.

(Amelia Adams, Texas Housers)

Staff Response: The Texas GLO has worked diligently with impacted areas to ensure that proposed and accepted Methods of Distribution are designed in a manner that fosters an effective and efficient recovery for the associated disaster-impact area. No change has been made to the AI as a result of this comment.

25. Disaster Recovery – Requirement to Benefit Low and Moderate Income Populations

One comment was made expressing concern that the requirement that 70% of the aggregate of CDBG-DR funds be utilized to benefit the low- and moderate-income population in the disaster impact area could, potentially, be reduced to a lower overall percentage.

(Amelia Adams, Texas Housers)

Staff Response: The Texas General Land Office (GLO) remains committed to the administration of CDBG-DR funds in strict compliance with all applicable local, state, and federal law. The current requirement that 70% of the aggregate of all CDBG-DR funds be utilized to benefit the low- and moderate-income population in the disaster impact area is mandated by HUD and, absent any changes issued directly by HUD, will remain unchanged. The GLO shall continue to advocate on behalf of all impacted Texans as it administers disaster recovery programs within the bounds of the law. No change has been made to the Al as a result of this comment.

26. Disaster Recovery – Assessment Method

One comment was made expressing concern about the methodology by which the GLO assessed unmet need in the area impacted by Hurricane Harvey. The GLO's usage of FEMA Verified Loss undercounts many low- and moderate-income disaster victims.

(Amelia Adams, Texas Housers)

Staff Response: The Texas GLO is committed to utilizing the most up-to-date and innovative methods of data analysis to adequately assess unmet need following a natural disaster. The GLO has recognized that there are issues with utilizing only FEMA verified loss when determining unmet need and, in an effort to

resolve some of those issues, supplemented that analysis with data presented by The Social Vulnerability Index. The GLO remains open to alternative means of data collection and analysis and seeks to ensure that the unmet need of every disaster-impacted Texan properly calculated. No change has been made to the AI as a result of this comment.

27. Disaster Recovery – Programs

One comment was made in favor of the creation of more disaster recovery programs that would directly benefit low- and moderate-income renters in a disaster area. They suggested that there should be a program to provide direct assistance to renters in order to aid them in being able to stay in their community while long-term recovery, i.e. the rebuilding of rental units, is ongoing.

(Amelia Adams, Texas Housers)

Staff Response: The Texas GLO recognizes the validity of this comment and will give it adequate consideration as disaster recovery programs continue to develop. No change has been made to the AI as a result of this comment.

28. Disaster Recovery – TDEM Mitigation

One comment was made recommending that The Texas Department of Emergency Management (TDEM) develop mitigation activities and plans that include a specific consideration of fair housing and civil rights implications of how these funds are awarded, targeted, and administered. TDEM has not participated in the Analysis of Impediments and should contribute alongside other State agencies.

(Madison Sloan, Texas Appleseed)

Staff Response: The substance of this comment is beyond the scope of the Texas General Land Office. No change has been made to the AI as a result of this comment.

29. Disaster Recovery – Support

One comment praised the Texas GLO for institutionalizing Affirmatively Furthering Fair Housing reviews as a part of the Community Development Block Grant for Disaster Recovery programs and commended the GLO's commitment to ensuring compliance with all federal fair housing and civil rights requirements. The GLO's statement of principles and criteria for buyout assistance is excellent.

(Madison Sloan, Texas Appleseed)

Staff Response: The Texas General Land Office remains committed to ensuring all disaster recovery programs are administered in full compliance with local, state, and federal laws, including all federal fair housing and civil rights requirements. No change has been made to the AI as a result of this comment.

30. Disaster Recovery – Hurricane Harvey

Comments were made regarding Hurricane Harvey funding:

a. Hurricane Ike programs run by the State offered homeowners the ability to utilize their reconstruction benefit amount to rebuild on site or, in the alternative, to voluntarily move to a safer area with less concentrated poverty and lower levels of segregation;

b. Buyout programs must provide families with real choice and this can be accomplished through the availability of certain incentives, like those available through The Harris County Flood Control District's buyout program. To date, there are no guidelines for local buyout programs that require the use of such incentives;

c. The Method of Distribution (MOD) process following Hurricane Harvey was flawed and the MOD submitted by Southeast Texas Regional Planning Commission failed to properly address unmet need as required by the Federal Register notice;

d. In conducting planning activities, the GLO is encouraged to look at previously conducted studies as models. Previous planning studies, like the Colonia Drainage Study, resulted in a comprehensive overview of the areas of need and infrastructure deficiencies, particularly in disinvested communities that may lack the most basic infrastructure protection;

e. The state-administered FEMA temporary housing programs do not help the LMI population because FEMA makes all eligibility determinations; and

f. Affirmatively Furthering Fair Housing and Civil Rights must be incorporated into the State's Action Plan for \$4 Billion in Mitigation funds when the Federal Notice for those funds in officially published.

(Madison Sloan, Texas Appleseed)

Staff Response: The Texas General Land Office, in response to the above-listed comments, presents the following:

a. Hurricane Ike programs allowed for homeowners to utilize their reconstruction benefit on-site or, in the alternative, to voluntarily move to a safer area. The Texas General Land Office recognizes the validity of this comment and is dedicated to exploring how the repeated usage of successful programs could benefit current disaster recovery efforts.

b. The Texas General Land Office shall, through coordinated efforts with areas receiving direct allocations, work to ensure that all programs are administered in accordance with developed policies within all applicable federal law. As programs develop, implementation policies and supporting guidelines shall be drafted in a manner that considers all relevant factors and works to establish the most effective and efficient means for program implementation.

c. The Method of Distribution submitted by the Southeast Texas Regional Planning Commission has been reviewed and approved by the GLO in accordance with all requirements outlined in the Federal Register notice.

d. The Texas General Land Office remains dedicated to utilizing all relevant data and analysis, including previously conducted studies, to inform the agency as planning activities are developed.

e. The Texas General Land Office, in its role as a State agency working to aid in the administration of a federal disaster relief program, is not charged with eligibility determinations. All eligibility determinations for FEMA Programs are the sole responsibility of FEMA and outside of the roles and responsibilities assigned to the GLO during that process. However, the GLO recognizes the issues presented in this comment and will continue to advocate for all impacted Texans during every stage of disaster response and recovery.

f. The Texas General Land Office remains committed to ensuring that all federal disaster funding is implemented in accordance with all applicable local, state, and federal law, including all Affirmatively Furthering Fair Housing and Civil Rights laws. As with each federal disaster allocation, a detailed Action Plan shall be published to govern the administration of funds once those funds have been officially published for award in the Federal Register.

No changes have been made to the AI as a result of these comments.

BOARD ACTION REQUEST

OCI, HTF, AND NSP DIVISION

SEPTEMBER 5, 2019

Presentation, discussion, and possible action authorizing the Department to implement limited and specific forgiveness provisions associated with Land Bank activities within the Neighborhood Stabilization Program

RECOMMENDED ACTION

WHEREAS, the Texas Department of Housing and Community Affairs (the Department) entered into Neighborhood Stabilization Program 1 (NSP1) contracts with certain Subrecipients (Texas State Affordable Housing Corporation, Affordable Homes of South Texas, Inc., City of Port Arthur, Community Development Corporation of Brownsville) who wish to acquire, maintain, and repurpose abandoned and foreclosed properties through a Land Bank activity;

WHEREAS, Subrecipients continue to make progress converting vacant Land Bank properties into their final eligible use by identifying and qualifying homebuyers, and constructing single family homes on the lots;

WHEREAS, despite this progress, Subrecipients in some markets have been challenged because total development costs exceed market values on some properties, creating a situation in which sufficient funds to repay the Department at the time of a home sale will not be realized, making it infeasible to proceed with this activity in such markets while repayment is required;

WHEREAS, there is no federal requirement that these amounts must be repaid, and the Department is requesting authorization to institute a forgiveness provision associated with NSP1 Land Bank activities, which will be exercised only for the amount that the total development costs for a property exceed that property's appraised market value; and

WHEREAS, the Department continues to monitor and work closely with Subrecipients to provide technical assistance towards timely contract completion; and

NOW, therefore, it is hereby

RESOLVED, that the Executive Director or his designee are hereby authorized, empowered, and directed, for and on behalf of this Board to implement a limited and specific forgiveness provision for these Subrecipients associated with Land Bank activities within the NSP1, as provided herein.

BACKGROUND

The Neighborhood Stabilization Program (NSP) is a U.S. Department of Housing and Urban Development (HUD)-funded program authorized by H.R. 3221, the "Housing and Economic Recovery Act of 2008," as a supplemental allocation to the Community Development Block Grant (CDBG) Program through an amendment to the existing State of Texas 2008 CDBG Action Plan. The purpose of the program is to redevelop, or acquire and hold, abandoned and foreclosed properties in areas with declining property values resulting from excessive foreclosures.

The majority of activities under NSP have been completed with the exception of the Land Bank activity. By design, the Subrecipients (Texas State Affordable Housing Corporation, Affordable Homes of South Texas, Inc., City of Port Arthur, Community Development Corporation of Brownsville) for the Land Bank were given up to ten years to bring their Land Bank properties into a final eligible NSP use, and they continue to make progress. However, Subrecipients experience difficulties related to fulfilling eligibility requirements and challenging local market conditions, including Hurricane Harvey recovery in Port Arthur. At times, Subrecipients' development costs for a house end up exceeding the appraised market value. Under the Department's NSP rules, the final sales price to the income-eligible homebuyer may not exceed *the lesser* of the total development costs or the market value. This requirement results in some Subrecipients' development expenses becoming non-reimbursable through the NSP, creating hardship for organizations that are trying to fulfil the mission of the Land Bank program.

To address the risk that some development expenses could become non-reimbursable because of low market value, the Department seeks the authority to forgive portions of lot acquisition expenses incurred by NSP Subrecipients on an infrequent, specific, case-by-case basis. The forgiveness provision for the Land Bank program would apply only to lot acquisition, and only for the dollar amount that the total development cost exceeds the appraised market value of a house. This would not provide for forgiveness for any other type of development expense. This authority would partially mitigate the unpaid financial investments made by the NSP Subrecipients, and enhance their ability to sustain Land Banking operations to the satisfaction of the Department to the end of their Contact Term.

Subrecipients are increasing the property disposition rate each year with 32 homebuyer closings in 2016, 37 in 2017, 47 in 2018, and 43 to date in 2019, as well as with other methods of disposition, such as a side lot program. The Department will continue to provide technical assistance and work closely with these NSP Land Bank Subrecipients to increase the property disposition rate.

a

TO BE POSTED NOT LATER THAN THE THIRD DAY BEFORE THE DATE OF THE MEETING

b

BOARD ACTION REQUEST

HOME AND HOMELESS PROGRAMS DIVISION

SEPTEMBER 5, 2019

Presentation, discussion, and possible action on Program Year 2019 Emergency Solutions Grants Program Awards

RECOMMENDED ACTION

WHEREAS, the Department received an allocation of \$9,127,824 for the Emergency Solutions Grants Program (ESG) for Fiscal Year 2019 from the U.S. Department of Housing and Urban Development (HUD) on July 12, 2019, of which \$8,717,072 was made available to subrecipients throughout the state via various funding mechanisms;

WHEREAS, HUD regulations require the Department to award ESG funds within 60 days of receipt of the award letter from HUD;

WHEREAS, ESG funds totaling \$4,609,841, were allocated to Continuum of Care (CoC) regions TX-500 San Antonio, TX-607 Balance of State, and TX-601 Tarrant County and these funds were subject to Local Competitions for ESG funds administered in accordance with 10 TAC §7.34 and for which TDHCA is now in receipt of the recommendations generated from these Local Competitions;

WHEREAS, Applicants recommended to the Department through a Local Competition may be awarded funding pursuant to 10 TAC §7.38(a);

WHEREAS, the Board previously authorized release of the 2019 Emergency Solutions Grants Notice of Funding Availability (ESG NOFA) for CoC regions not subject to Local Competition in the amount of \$4,107,221 on June 7, 2019;

WHEREAS, the Department received 60 Applications in response to the NOFA, with requests totaling \$7,662,002; and

WHEREAS, the Applications received under the NOFA have been reviewed and ranked in accordance with the requirements of 10 TAC §7.38(c);

NOW, therefore, it is hereby

RESOLVED, that the Executive Director, his designees, and each of them be and they hereby are authorized, empowered, and directed, for and on behalf of the Department, to take any and all such actions as they or any of them may deem necessary or advisable to effectuate awards totaling \$4,609,841 for ESG funding recommended under the Local

Competitions in CoC regions TX-500 San Antonio, TX-607 Balance of State, and TX-601 Tarrant County as detailed in Attachment B with the conditions recommended by EARAC; and

FURTHER RESOLVED, that the Executive Director, his designees, and each of them be and they hereby are authorized, empowered, and directed, for and on behalf of the Department, to take any and all such actions as they or any of them may deem necessary or advisable to effectuate awards totaling \$4,107,221 for ESG funding recommended under the ESG NOFA as detailed in Attachment C with the condition for City House, Inc. as recommended by EARAC.

BACKGROUND

The ESG Program is a HUD funded program designed to assist people experiencing homelessness or atrisk of homelessness to regain stability in permanent housing quickly after experiencing a housing crisis and/or homelessness. The program components under ESG include street outreach, emergency shelter, rapid re-housing, homelessness prevention, Homeless Management Information System (HMIS), and administration. Rapid re-housing and homelessness prevention may be used for housing relocation and stabilization services and short-term and medium-term rental assistance.

Funds allocated to the State of Texas for ESG are allocated based on the factors outlined in 10 TAC §7.33 by TDHCA to CoC regions, which are local planning bodies that coordinate housing and services funding for homeless families and individuals. Within Texas there are 11 geographically limited CoC regions. The largest of these regions is the Balance of State, which includes 215 counties. The amount of the allocation to reach region is outlined in Attachment A.

In order to facilitate better local coordination and collaboration through the CoCs, TDHCA allows CoCs to contract with the Department to administer a Local Competition for the funding amount allocated to their CoC. TDHCA issued a request for proposals for CoCs that wished to elect to perform a Local Competition, and ultimately contracted with three CoCs. The CoCs were responsible for Application development, Application review and evaluation, and recommendation of awards to the Department. The South Alamo Regional Alliance for the Homeless administered the Local Competition in TX-500 San Antonio/Bexar County CoC; the Tarrant County Homeless Coalition administered the Local Competition in TX-601 Fort Worth, Arlington/Tarrant County CoC; and Texas Homeless Network administered the Local Competition for TX-607 Balance of State.

Concurrently with the Local Competitions, on June 7, 2019, the Board approved release of a NOFA notifying prospective Applicants of availability of ESG funds for PY 2019 for the funds allocated to CoC regions where the CoC did not elect to administer a Local Competition.

The NOFA closed on June 21, 2019. Applicants were assigned a random number as a tie-breaker for use in case of a tied score, per 10 TAC §7.38(e). Applicants were ranked by score and then by tie-breaker number, with the high numbers ranking higher than lower numbers. The final scores were determined

after a staff review, which when necessary and requested by staff allowed the opportunity for Applicants to provide clarification, correction, or non-material missing information. This information was requested to resolve inconsistencies in the original Application or to assist staff in evaluating the Application, per 10 TAC §7.37(b).

After completion of the scoring and ranking process, award recommendations were determined in accordance with the process outlined in 10 TAC §7.38 through three levels of funding. Level one of funding is for the highest ranked Applicants within each CoC region, until the funding is exhausted or until there is an offer of a partial award. Level two pools the unused funds from the first level of funding and offers these pooled funds to the highest ranked Applicants in regions that were not fully funded. Level three pools unused funds from level two of funding and offers the pooled funds to highest ranked Applications statewide.

There is a requirement per 24 Code of Federal Regulations (CFR) §576.100(b)(1) that no more than 60% of the state's ESG allocation may be used for street outreach and emergency shelter. As a result, in some cases higher scoring Applicants with emergency shelter or street outreach Applications were not funded to ensure that the state would not exceed this cap.

All Applications except Abilene Hope Haven, Inc. and City House, Inc. were recommended for award though both the Local Competitions and the NOFA have been reviewed for previous participation and were approved for recommendation by EARAC on August 26, 2019.

EARAC approved for recommendation Abilene Hope Haven, Inc. on August 29, 2019.

EARAC approved City House, Inc. on August 29, 2019, with the following condition:

By September 9, 2019, at 5:00 p.m. Austin Local Time, City House, Inc. will resolve the findings from the April 5, 2019, Department monitoring of the ESG Program by providing support documentation for the disallowed costs (as identified in the August 19, 2019 follow up letter), repaying disallowed costs, or providing the Department a resolution from its Board of Directors agreeing to enter into a repayment plan that is to be executed no later than October 2, 2019, for no greater than one year for the disallowed costs, or any combination of the described methods to resolve the findings. If the findings are not resolved by September 9, 2019, at 5:00 p.m. Austin Local Time, by one or more of the described methods, the Department will not award the funds to City House, Inc, and instead will award an additional \$46,089 in 2019 ESG funds to Shared Housing Center in Dallas for Rapid Rehousing activities.

The results of the Local Competitions, including funding recommendations, are included for approval as Attachment B, and the results of the NOFA, including funding recommendations, are included for approval as Attachment C.

Attachment A – Allocation Amounts to CoC Regions

CoC Name	Total Funds Recommended	60% ES/SO Cap	TDHCA NOFA Funds Recommended	TDHCA 60% ES/SO Cap
San Antonio/ Bexar	\$679,715	\$407,829	N/A	N/A
County				
Austin/Travis County	\$537,301	\$322,381	\$537,301	\$322,381
Dallas City &	\$1,247,103	\$748,262	\$1,247,103	\$748,262
County/Irving				
Fort	\$597,993	\$358,796	N/A	N/A
Worth/Arlington/Tarrant				
County				
El Paso City & County	\$267,556	\$160,534	\$267,556	\$160,534
Waco/McLennan County	\$127,804	\$76,682	\$127,804	\$76,682
Texas Balance of State	\$3,332,143	\$1,999,286	N.A	N/A
Amarillo	\$154,050	\$92,430	\$154,050	\$92,430
Wichita Falls/Wise, Palo Pinto, Wichita, Archer Counties	\$132,757	\$79,654	\$132,757	\$79,654
Houston, Pasadena, Conroe/Harris, Ft. Bend, Montgomery Counties	\$1,447,557	\$868,534	\$1,447,557	\$868,534
Bryan/College Station/Brazos Valley	\$193,093	\$115,856	\$193,093	\$115,856
Totals	\$8,717,072	\$5,230,243	\$4,107,221	\$2,464,333

Application Number	Applicant in TX-500 CoC for Emergency Shelter	Component	Funding Requested	Recommended Funding
19500-002-Е	Family Violence Prevention Services	ES	\$116,165	\$116,165
19500-003-E	Haven for Hope	ES	\$51,500	\$51,500
19500-006-E	The Salvation Army	ES	\$150,000	\$-
19500-005-E	St. Vincent de Paul	ES	\$123,050	\$-
19500-008-E	San Antonio Food Bank	ES	\$150,000	\$-
19500-009-Е	Crosspoint	ES	\$169,500	\$-
	Total for Emergency Shelter in TX-500 CoC		\$760,215	\$167,665

Application Number	Applicant in TX-500 CoC for Street Outreach	Component	Funding Requested	Recommended Funding
19500-004-S	SAMMinistries	SO	\$51,500	\$51,500
19500-003-S	Haven for Hope	SO	\$92,700	\$92,700
19500-002-S	Family Violence Prevention Services	SO	\$12,075	\$-
19500-007-S	Standup for Kids	SO	\$109,250	\$-
19500-010-S	VetStrong	SO	\$51,750	\$-
	Total for Street Outreach in TX-500 CoC		\$317,275	\$144,200

Application Number	Applicant in TX-500 CoC for Rapid Rehousing	Component	Funding Requested	Recommended Funding
19500-004-R	SAMMinistries	RRH	\$89,682	\$89,682
19500-002-R	Family Violence Prevention Services	RRH	\$86,760	\$86,760
19500-001-R	Endeavors	RRH	\$257,007	\$-
	Total for Rapid Rehousing in TX-500 CoC		\$433,449	\$176,442

Application Number	Applicant in TX-500 CoC for Homelessness Prevention	Component	Funding Requested	Recommended Funding
19500-004-H	SAMMinistries	HP	\$158,818	\$107,318
19500-005-H	St. Vincent de Paul	HP	\$100,441	\$84,090
19500-010-H	VetStrong	HP	\$51,750	\$-
19500-011-H	THRU Project	HP	\$262,440	\$-
	Total for Homelessness Prevention in TX-500			
	CoC		\$573 <i>,</i> 449	\$191,408

Total Recommended for funding for TX-500

\$679,715

Applicatio n Number	Applicant in TX-601 CoC	ES Recommended Amount	HP Recommended Amount	RRH Recommended Amount	HP Recommended Amount	Requested Amount*	Recommended Amount
	Center for						
19601-001	Transforming Lives	\$-	\$93,378	\$-	\$-	\$101,127	\$93,378
19001-001	Tarrant	ې- ۲	393,370	ې- ا	ې- ا	\$101,127	22,270
	County						
	Hands of						
19601-002	Hope	\$140,080	\$-	\$-	\$-	\$220,000	\$140,080
	SafeHaven of	. ,				. ,	,
	Tarrant						
19601-003	County	\$-	\$30,384	\$71,400	\$-	\$120,000	\$101,784
	Salvation						
	Army Fort						
19601-004	Worth	\$-	\$49,660	\$72,361	\$47,000	\$50,000	\$169,021
	Presbyterian						
19601-007	Night Shelter	\$-	\$7,210.00	\$86,520.00	\$-	\$115,000	\$93,730
19601-006	LegUp	\$-	\$-	\$-	\$-	\$143,170	\$-
	The						
	Salvation						
	Army -						
1960-1005	Arlington	\$-	\$-	\$-	\$-	\$296,070	\$-
	Total for TX-						
	601 CoC						
	Region					\$1,045,367	\$597 <i>,</i> 993

*The total requested amount is higher than the recommended amounts because of negotiation during the award process.

Total Recommended for funding for TX-601

\$597,993

Application Number	Applicant for Emergency Shelter in TX- 607 CoC	Component	Requested Amount	Recommended Amount
19607-015-E	Mid-Coast Family Services	ES	\$113,382	\$113,382
	Resource and Crisis Center of Galveston	ES		
19607-019-E	County, Inc		\$180,000	\$180,000
19607-012-Е	La Posada Providencia	ES	\$116,028	\$116,028
19607-020-Е	Advocacy Outreach	ES	\$35,146	\$35,146
19607-022-E	The Children's Center	ES	\$344,072	\$344,072
19607-023-E	The Salvation Army GA Inc-Corpus Christi, TX	ES	\$115,000	\$115,000
19607-013-E	Loaves & Fishes of the Rio Grande Valley, Inc	ES	\$82,800	\$82,800
19607-011-E	Friendship of Women	ES	\$118,771	\$118,771
19607-016-E	Women's Center of East Texas, Inc	ES	\$63,564	\$63,564
19607-007-E	Corpus Christi Hope House, Inc	ES	\$50,000	\$50,000
19607-008-E	Denton County Friends of the Family Inc	ES	\$161,710	\$161,710
19607-021-E	The Salvation Army Temple	ES	\$152,825	\$152,825
19607-025-E	Abilene Hope Haven, Inc	ES	\$83,100	\$83,100
19607-010-E	Family Crisis Center, Inc - Harlingen	ES	\$69,991	\$-
19607-018-E	Randy Sams' Outreach Shelter	ES	\$273,800	\$-
19607-005-E	Bastrop County Women's Shelter, dba Family Crisis Center	ES	\$79,000	\$-
19607-017-E	Bishop Enrique San Pedro Ozanam Center Inc	ES	\$72,717	\$-
19607-009-E	Families In Crisis, Inc	ES	\$133,900	\$-
19607-002-Е	The Salvation Army, Tyler, Texas Corps	ES	\$114,226	\$-
19607-024-Е	The Salvation Army, a GA Corp - Denton	ES	\$150,000	\$-
19607-027-E		ES	\$56,500	\$-
	TOTAL EMERGENCY SHELTER FOR BALANCE OF STATE		\$2,566,532	\$1,616,398

Application	Applicant for Street Outreach in TX-607			
Number	CoC	Component	Requested Amount	Recommended Amount
19607-015-S	Mid-Coast Family Services	SO	\$65,323	\$65,323
	Loaves & Fishes of the Rio Grande	SO		
19607-013-S	Valley, Inc		\$57,500	\$57,500
	The Salvation Army GA Inc-Corpus	SO		
19607-023-S	Christi, TX		\$16,950	\$16,950
	The Chosen Ones Outreach Ministries of	SO		
19607-028-S	Galveston Inc		\$50,000	\$-
19607-025-S	Abilene Hope Haven, Inc	SO	\$39,567	\$-
19607-021-S	The Salvation Army Temple	SO	\$27,283	\$-
19607-018-S	Randy Sams' Outreach Shelter	SO	\$2,000	\$-
	WayWesX17 an Xavier Brown	SO		
19607-003-S	Foundation		\$57,500	\$-
	TOTAL STREET OUTREACH TX-607 COC		\$316,123	\$139,773

Application	Applicant for Rapid Rehousing in TX-607			
Number	CoC	Component	Requested Amount	Recommended Amount
19607-015-R	Mid-Coast Family Services	RRH	\$166,293	\$166,293
19607-020-R	Advocacy Outreach	RRH	\$70,722	\$70,722
	The Salvation Army GA Inc-Corpus			
19607-023-R	Christi, TX	RRH	\$45,450	\$45,450
	Loaves & Fishes of the Rio Grande			
19607-013-R	Valley, Inc	RRH	\$57,500	\$57,500
19607-009-R	Families In Crisis, Inc	RRH	\$51,500	\$51,500
19607-025-R	Abilene Hope Haven, Inc	RRH	\$51,953	\$51,953
19607-010-R	Family Crisis Center, Inc - Harlingen	RRH	\$64,516	\$64,516
19607-021-R	The Salvation Army Temple	RRH	\$59,946	\$59,946
19607-016-R	Women's Center of East Texas, Inc	RRH	\$122,564	\$122,564
19607-011-R	Friendship of Women	RRH	\$141,346	\$-
	Community Action Committee of			
19607-006-R	Victoria, Texas	RRH	\$100,797	\$-
19607-008-R	Denton County Friends of the Family Inc	RRH	\$83,945	\$-

Application	Applicant for Rapid Rehousing in TX-607			
Number	CoC	Component	Requested Amount	Recommended Amount
19607-002-R	The Salvation Army, Tyler, Texas Corps	RRH	\$181,925	\$-
19607-004-R	Combined Community Action	RRH	\$41,000	\$-
	Bishop Enrique San Pedro Ozanam			
19607-017-R	Center Inc	RRH	\$90,370	\$-
19607-026-R	Ark-Tex Council of Governments	RRH	\$150,000	\$-
19607-024-R	The Salvation Army, a GA Corp - Denton	RRH	\$40,000	\$-
	TOTAL RAPID REHOUSING FOR TX-607			
	COC		\$1,519,827	\$690,444

Application	Applicant for Homelessness Prevention in			
Number	ТХ-607 СоС	Component	Requested Amount	Recommended Amount
	Resource and Crisis Center of Galveston			
19607-019-H	County, Inc	HP	\$120,000	\$120,000
19607-023-H	The Salvation Army GA Inc-Corpus Christi, TX	HP	\$50,050	\$50,050
19607-013-H	Loaves & Fishes of the Rio Grande Valley, Inc	НР	\$107,000	\$107,000
19607-020-Н	Advocacy Outreach	НР	\$63,822	\$63,822
19607-021-H	The Salvation Army Temple	НР	\$59,946	\$59,946
19607-025-H	Abilene Hope Haven, Inc	НР	\$37,162	\$37,162
	Community Action Committee of Victoria,	НР		
19607-006-H	Texas		\$199,203	\$199,203
19607-008-H	Denton County Friends of the Family Inc	НР	\$63,345	\$63,345
19607-026-H	Ark-Tex Council of Governments	НР	\$150,000	\$150,000
19607-004-H	Combined Community Action	НР	\$35,000	\$35,000
19607-014-H	Mainland Children's Partnership	НР	\$345,000	\$-
19607-024-H	The Salvation Army, a GA Corp - Denton	НР	\$50,000	\$-
19607-001-H	New Hope Center of Paris	НР	\$40,000	\$-
	TOTAL HOMELESSNESS PREVENTION FOR			
	TX-607 COC		\$1,320,528	\$885,528

Total Recommended for funding for TX-607 Balance of State	\$3,332,143
Total Recommended for funding by Local Competitions	\$4,609,851

Attachment C – ESG Award Recommendations from the TDHCA NOFA

Total Allocation

Continuum of Care (CoC) Number	CoC Name	2019 ESG Funding Available	Street Outreach/Emergency Shelter 60% Cap
TX-503	Austin/Travis County	\$537,301	\$322,381
TX-600	Dallas City & County/Irving	\$1,247,103	\$748,262
TX-603	El Paso City & County	\$267,556	\$160,534
TX-604	Waco/McLennan County	\$127,804	\$76,682
TX-611	Amarillo	\$154,050	\$92,430
TX-624	Wichita Falls/Wise, Palo Pinto, Wichita, Archer Counties	\$132,757	\$79,654
TX-700	Houston, Pasadena, Conroe/Harris, Ft. Bend, Montgomery Counties	\$1,447,557	\$868,534
TX-701	Bryan/College Station/Brazos Valley	\$193,093	\$115,856
Total		\$4,107,221	\$2,464,333

TX-503 Austin/Travis County

Application	Applicant Name	Component	Final	Tie	Requested	Amount
Number			Score	Breaker	Amount	Recommended
19503-001-E	SAFE Alliance	ES	48	49	\$93,246	\$93,246
19503-001-R	SAFE Alliance	RR	47	40	\$60,123	\$60,123
19503-002-E	Youth and Family Alliance	ES	45	55	\$209,589	\$209,589
19503-002-R	Youth and Family Alliance	RR	38	3	\$135,409	\$135,409
Total \$498,367						\$498,367
Total allocation						\$537,301
Amount undersubscribed					\$38,934	

TX-600 Dallas City & County/Irving

Application Number	Applicant Name	Com- ponent	Final Score	Tie Breaker	Requested Amount	Amount Recommended
19600-001-E	Shelter Ministries of Dallas dba Austin Street Center	ES	55	4	\$160,000	\$160,000
19600-007-E	The Family Place	ES	54	63	\$22,687	\$22,687
19600-014-E	Family Gateway	ES	53	68	\$128,658	\$128,658
19600-011-E	Promise House	ES	53	64	\$20,110	\$20,110
19600-002-E	Bridge Steps	ES	53	31	\$277,500	\$277,500
19600-007-R	The Family Place	RR	53	26	\$106,791	\$106,791
19600-007-H	The Family Place	НР	53	11	\$11,666	\$11,666
19600-003-E	City House	ES	51	42	\$43,544	\$43,544
19600-012-E	Hopes Door Plano	ES	49	21	\$61,800	\$61,800
19600-011-R	Promise House	RR	49	5	\$55,244	\$55,244
19600-002-R	Bridge Steps	RR	48	71	\$51,500	\$51,500
19600-014-R	Family Gateway	RR	48	57	\$170,829	\$170,829
19600-013-S	City Square	SO	47	36	\$250,000	_*
19600-003-S	City House	SO	47	14	\$37,650	_*
19600-001-R	Shelter Ministries of Dallas dba Austin Street Center	RR	46	27	\$140,000	\$136,774**
19600-010-R	Shared Housing Center	RR	44	70	\$213,500	-
19600-003-R	City House	RR	44	48	\$78,669	-
19600-008-H	The Salvation Army Dallas	НР	44	17	\$182,075	-
19600-010-Е	Shared Housing Center	ES	43	16	\$52,500	-
19600-015-H	Under 1 Roof	НР	39	29	\$64,200	-
19600-005-S	City of McKinney	SO	36	24	\$75,386	-
19600-016-R	Brighter Tomorrows Inc	RR	28	20	\$133,900	-

Application Number	Applicant Name	Com- ponent	Final Score	Tie Breaker	Requested Amount	Amount Recommended	
19600-009-H	Community Council of Greater Dallas	НР	26	75	\$345,000	-	
19600-006-E	Legal Aid of Northwest Texas	ES	26	58	\$61,565	-	
19600-004-S	Metro Relief	SO	20	19	\$50,000	-	
				Total	\$2,794,774	\$ 1,247,103	
					Total allocation	\$ 1,247,103	
				Amoun	t undersubscribed	\$ -	
*Full funding for award not available under level one due to street outreach/emergency shelter 60% cap							
**Offered and	accepted partial award, so	amount oj	^f request o	decreased fr	om \$140,000 to \$13	36,774	

TX-603 El Paso City & County

Application Number	Applicant Name	Component	Final Score	Tie Breaker	Requested Amount	Amount Recommended	
19603-001-R	El Paso Center for	RR	47	56	\$107,022	\$107,022	
	Children						
19603-002-E	El Paso Human	ES	40	18	\$160,533	\$160,533	
	Services				+	+)	
				Total	\$267,555	\$267,555	
	Total allocation						
Amount undersubscibed						\$1	

TX-604 Waco/McLennan County

Application Number	Applicant Name	Component	Final Score	Tie Breaker	Requested Amount	Amount Recommended	
19604-001-H	Salvation Army Waco	НР	38	59	\$29,271	\$29,271	
19604-001-E	Salvation Army Waco	ES	38	15	\$57,031	\$57,031	
19604-001-R	Salvation Army Waco	RR	35	13	\$41,502	\$41,502	
		·		Total	\$127,804	\$127,804	
Total allocation						\$127,804	
	Amount undersubscribed						

TX-611 Amarillo

Application	Applicant Name	Component	Final	Tie	Requested	Amount	
Number			Score	Breaker	Amount	Recommended	
19611-001-S	City of Amarillo	SO	19	35	\$105,420	\$92,430***	
19611-001-R	City of Amarillo	RR	16	43	\$48,630	\$48,630	
	\$141,060						
					Total allocation	\$154,050	
				Amour	t undersubscribed	\$12,990	
***Full funding for award not available under level one due to street outreach/emergency shelter 60% cap.							

TX-624 Wichita Falls/Wise, Palo Pinto, Wichita, Archer Counties

Application Number	Applicant Name	Component	Final Score	Tie Breaker	Requested Amount	Amount Recommended
No Application	-					
	Total \$-					
					Total allocation	\$132,757
	Amount undersubscribed					

Application Number	Applicant Name	Com- ponent	Final Score	Tie Breaker	Requested Amount	Amount Recommended
19700-001-E	Bridge Over Troubled Waters, Inc.	ES	55	54	\$69,022	\$69,022
19700-011-E	The Salvation Army - Houston	ES	50	65	\$300,000	\$300,000
19700-006-S	SEARCH Homeless Services	SO	49	33	\$114,245	\$114,245
19700-003-E	Covenant House Texas	ES	49	30	\$125,000	\$125,000
19700-012-H	Alliance of Community Assistance Ministries	НР	48	53	\$300,000	\$300,000
19700-018-R	Houston Area's Women Center	RR	47	74	\$222,235	\$222,235
19700-015-Е	Magnificat House	ES	46	61	\$85,000	\$85,000
19700-008-R	Bay Area Turning Point	RR	45	73	\$120,445	\$120,445
19700-008-E	Bay Area Turning Point	ES	45	69	\$94,280	\$94,280
19700-018-E	Houston Area's Women Center	ES	44	22	\$77,566	_ ****
19700-009-E	The Beacon	ES	43	8	\$91,074	-
19700-005-H	Northwest Assistance Ministries	HP	41	37	\$300,000	-
19700-004-H	Catholic Charities Galveston Houston	HP	40	23	\$309,000	-
19700-010-H	Humble Area Assistance Ministries	HP	40	6	\$132,646	-
19700-010-R	Humble Area Assistance Ministries	RR	39	47	\$80,561	-
19700-002-R	CoalitionfortheHomelessofHouston/HarrisCounty	RR	36	44	\$300,000	-

TX-700 Houston, Pasadena, Conroe/Harris, Ft. Bend, Montgomery Counties

Application Number	Applicant Name	Com- ponent	Final Score	Tie Breaker	Requested Amount	Amount Recommended
19700-010-S	Humble Area Assistance Ministries	SO	35	32	\$30,242	-
19700-017-H	Crisis Assistance Center	HP	32	66	\$ 50,000	-
19700-007-S	Wesley Community Center Houston	SO	27	48	\$56,442	-
19700-016-S	US Veterans Initiative	SO	24	1	\$300,000	-
19700-014-E	Angel Reach (withdrawn)	ES	-	50	\$298,600	-
19700-019-E	Heartstrings Youth Village (withdrawn)	ES	-	12	\$300,000	-
19700-013-S	Wellsprings Village (terminated)	SO	-	45	\$15,450	-
19700-013-E	Wellsprings Village (terminated)	ES	-	25	\$80,767	-
				Total	\$3,852,575	\$1,430,227
					Total allocation	\$1,447,557
				Amour	nt undersubscribed	\$17,330
****Declined p	partial award offer					·

TX-701 Bryan/College Station/Brazos Valley

Application Number	Applicant Name	Component	Final Score	Tie Breaker	Requested Amount	Amount Recommended
No Application	\$-					
	Total \$-					
					Total allocation	\$193,093
Amount undersubscribed						\$193,093

CoC	Total	Total SO/ES	Amt Awarded	Amt Remain	ES/SO Cap	%			
Region	Amount	Сар			Remain	Underfunded			
	Available								
TX-503	\$537,301	\$322,381	\$498,367	\$38,934	\$-	7.25%*****			
TX-600	\$1,247,103	\$748,262	\$1,247,103	\$-	\$33,963	0.00%			
TX-603	\$267,556	\$160,534	\$267,555	\$1	\$-	0.00%*****			
TX-604	\$127,804	\$76 <i>,</i> 682	\$127,804	\$-	\$19,651	0.00%*****			
TX-611	\$154,050	\$92,430	\$141,060	\$12,990	\$-	8.43%*****			
TX-624	\$132,757	\$79 <i>,</i> 654	No Apps	\$132,757	\$79,654	100%*****			
TX-700	\$1,447,557	\$868,534	\$1,430,227	\$17,330	\$80,987	1.20%			
TX-701	\$193,093	\$115,856	No Apps	\$193,093	\$115,856	100%*****			
Total	\$4,107,221	\$2,464,333	\$3,712,116	\$395,105	\$330,111				
***** No u	***** No unfunded Applications remaining in this region.								

Level 1 Competition Summary

Level Two Funding

Total available from undersubscribed regions: \$395,105

Oversubscribed region

Application	Applicant	Comp-	Final	Tie	Requested	Amount
Number	Name	onent	Score	Breaker	Amount	Recommended
19700-018-E	Houston Area's Women Center	ES	44	22	\$77,566	\$77,566

Level Three Funding Total available from undersubscribed regions: \$317,539 Highest Ranking Applicants Statewide

Application Number	Applicant Name	Comp- onent	Final Score	Tie Breaker	Requested Funding	Amount Recommended		
19600-013-S	CitySquare	SO	47	36	\$250,000	\$250,000		
19600-003-S	City House	SO	47	14	\$37,650	\$2,545*****		
19600-010-R	Shared Housing Center	RR	44	70	\$213,500	\$64,994******		
*****Full funding for award not available under level one due to street outreach/emergency shelter 60% cap. Offered and accepted partial award, so amount of request decreased from \$37,650 to \$2,545.								
******Offere	d and accepted par	rtial awar	d, so am	ount of requ	lest decreased from	\$213,500 to \$64,994		

BOARD ACTION REQUEST

ASSET MANAGEMENT DIVISION

SEPTEMBER 5, 2019

Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Land Use Restriction Agreement for 2100 Memorial (HTC #96038)

RECOMMENDED ACTION

WHEREAS, 2100 Memorial (the Development) received a 9% Housing Tax Credit (HTC) award in 1996 to acquire and rehabilitate 197 units for elderly households in Houston, Harris County;

WHEREAS, the Land Use Restriction Agreement (LURA), as amended, requires a Compliance Period of 24 and five-sixths consecutive taxable years (24 years, 10 months) and an Extended Use Period of 39 and five-sixths consecutive taxable years (39 years, 10 months, each commencing with the first year of the Credit Period, 1999), unless the Multifamily Note in the amount of \$6,000,000 payable to the U.S. Department of Housing and Urban Development is prepaid before the maturity date of February 1, 2040, then in such event, the Compliance Period shall be a period of 20 consecutive taxable years;

WHEREAS, Hurricane Harvey's impact to the Development in August 2017 was devastating for the Development, due to major flooding to the parking structure, basement and first floor of the building, resulting in pervasive damage to the electrical system and other life safety systems which make the Development no longer safe or suitable for habitation;

WHEREAS, while most tenants relocated after Hurricane Harvey, a number of tenants refused to move out, filed a lawsuit, and obtained an injunction against Memorial Drive Elderly, L.P., the Development Owner and affiliate of the Houston Housing Authority;

WHEREAS, the Department has been informed that this lawsuit has been non-suited by all tenants, which has the effect of dissolving the injunction;

WHEREAS, the Development Owner is now planning a re-syndication of the Development using Tax-Exempt Bond financing with 4% Housing Tax Credits, which will include demolishing the existing structure and rebuilding on site, and in order to accomplish this, requests that the existing LURA be abated for a period of three years to permit the necessary time to demolish and reconstruct the Development and propose

to add, upon re-syndication, up to three additional years of restricted usage to compensate for the reconstruction period;

WHEREAS, the Development Owner has represented that the reconstructed Development will serve the same Target Population and have at least the same numbers of bedroom/bathroom mix as the current Development's LIHTC income restricted units;

WHEREAS, the LURA states that the Development may not be demolished and the Development Owner is seeking to amend this provision; and

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

NOW, therefore, it is hereby

RESOLVED, that the request to suspend monitoring under the LURA for this Development for a period of up to three years, with this period being added to the term of the LURA once the reconstructed units are available for occupancy, to allow for resyndication and reconstruction is approved as presented to this meeting, subject to receipt of acceptable documentation prior to September 5, 2019, that demonstrates the non-suit of all parties and claims by tenants and the dissolution of the injunction, and that Development will be imminently and voluntarily vacated by all tenants;

RESOLVED, that the LURA will be amended to remove the provision preventing demolition of the units;

RESOLVED, that LURA will also be amended to extend the term of the LURA for the Development by an additional two years to compensate for the period of time that the majority of the units in the Development were not available for occupancy after the damage caused to the Development by Hurricane Harvey, which, combined with the up to a three-year extension reference above, will result in an aggregate extension to the term of the LURA of up to five years; and

FURTHER RESOLVED, that the Executive Director and his designees are hereby authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

BACKGROUND

2100 Memorial received a 9% HTC award in 1996 for the Adaptive Reuse of a former Holiday Inn originally built in 1969. The award created 197 multifamily units for elderly households in Houston, Harris County. The HTC LURA restricts 148 units (75%) for low income households. The Development placed in service in October 1998 and began the credit period in 1999. The Development is in Year 21 of the extended Compliance Period.

The Development is owned by Memorial Drive Elderly, L.P. (Developer Owner or Owner), which is an affiliate of the Houston Housing Authority (HHA). HHA owns the fee title to the land on which the Development is located, and the Owner has a long-term leasehold estate.

Hurricane Harvey's impact in August 2017 was devastating for the Development. The parking structure, the basement, and the first floor of the building were flooded, and there was no access points into the building that could be reached by emergency vehicles, leaving the residents stranded. In the aftermath of the flood, inspectors found that substantial damage had been incurred, particularly to the electrical system which is primarily located in the basement. Although the tenants of the building never experienced a prolonged loss of electricity, examination of the facilities uncovered pervasive damage to the electrical system due to water damage. Other types of damage caused by the hurricane include life safety systems, including the laundry, trash, elevator, leasing office and all business equipment, mail room, and meeting space. The window walls leaked and caused sheetrock damage. The roof is also compromised and needs to be replaced.

The hurricane damage was so pervasive that the Owner and HHA determined that the Development was no longer safe or suitable for habitation and needed to be vacated in order to accomplish repairs. Notices were sent to tenants that leases were being terminated due to the extensive damage and health and safety concerns arising from the damage. While most tenants relocated, a number of tenants refused to move and obtained an injunction against the Owner, preventing the termination of leases to repair, renovate, or rebuild the Development. Trial was set for October 29, 2018, but was subsequently stayed until April 30, 2019, for HHA to obtain confirmation concerning availability of funding from FEMA and the City of Houston CDBG-DR funds. During the delays caused by the litigation, the Development has continued to deteriorate. There were 21 tenants who had refused to move out of the Development as of March 7, 2019.

The Owner states that repairing the Development to its condition prior to Hurricane Harvey is estimated to cost \$14 million. However, they believe that such repair has the following disadvantages: (i) it is not clear whether the repaired building would meet Code requirements; (ii) FEMA may not provide any reimbursement for repair because of the continuing long-term flood risk the Development represents; (iii) repairing the Development would entail losing some of the affordable units located on the second floor of the building, due to the need to move electrical and mechanical systems up out of the basement and first floor levels; and (iv) HHA and the Owner do not have the funding available to perform the required repairs without substantial assistance from governmental sources.

HHA and the Owner request that the Department permit a re-syndication of the Development using Tax-Exempt Bond financing with 4% Housing Tax Credits in order to demolish the existing structure and rebuild on site. To accomplish this, the existing LURA would need to be amended (as described herein) and monitoring suspended for a period of up to three years to remove noncompliance issues associated with Hurricane Harvey damage, and to permit time to demolish and reconstruct the Development. Upon re-syndication, a LURA amendment would be executed to include an extension of up to an additional three years of restricted usage to make up for the reconstruction period, so that the affordability of the Development would not be shortened. Demolition would not occur unless and until the Bond and 4% Housing Tax Credits have been closed. The 4% HTC application has not been submitted, and once it is submitted and reviewed, it will be presented to the board under a separate action.

The Development Owner states that such refinancing would permit replacement of the Development's structures with new construction improvements that: (i) meet current minimum unit size requirements under the Qualified Allocation Plan; (ii) meet current Code requirements; (iii) are designed to mitigate flood waters; (iv) raise residential units above projected flood heights; and (v) permit unimpeded flow of flood water from Buffalo Bayou through the Project site without obstructing access to vehicular ramp to the first residential floor, which will be located two feet above the 500-year floodplain. In resyndicating, it is anticipated that 100% of the planned units would be restricted as low-income units. The details of the proposed development are still in progress. However, the Owner has indicated that the Development will continue serving the same target population, and the bedroom and bathroom mix of the current LIHTC income restricted units in the Development will remain.

In summary, HHA and the Owner agree that the current condition of the Development does not warrant making the estimated \$14 million in repairs, in view of the likelihood of future flooding issues. Instead, they propose to replace this Elderly development with another structure that is specifically designed to withstand flooding while protecting its residents. It is anticipated that the replacement structure will use a podium design to elevate the residential floors above the 100-year flood plain and the mechanical and electrical systems will be above the 500-year floodplain. It is anticipated that access to the residential floors will be by elevated ramp. Additionally, using a "Stormtrap" design, there will be an approximately 100,000 cubic feet detention and flood mitigation vault located under the building.

HHA and the Owner intend to provide the households who were residents at the time that Hurricane Harvey occurred the opportunity to return to the Development, if they continue to meet restrictive covenant requirements.

The Development Owner held a public hearing regarding this proposed amendment request as required under 10 TAC §10.405(b)(3). Notices of the public hearing were sent to the tenants, including those that have already relocated, and the lender on March 21, 2019. The public hearing was held at Allen Parkway Village's Community Center on Tuesday, April 2, 2019, at 2 pm. The Owner reported that approximately 70 persons were in attendance, but only 38 signatures appear on the sign-in sheet. Significant public comment was received at the public hearing, including several comments against the proposed plan for reconstruction.

Since Hurricane Harvey, about 26 of the former and current tenants of the Development exercised their right to enforce the LURA by filing a lawsuit in Harris County District Court that sought specific performance of the LURA to compel HHA and the Owner to use their best efforts to make repairs to the facility because HHA and the Owner were refusing to make repairs. That suit also challenged the validity of notices to vacate posted by HHA and the Owner in mid-September 2017, giving tenants only five days in which to leave their homes. That led Judge Daryl Moore to enter a temporary injunction order in late October 2017 to compel repairs required by the LURA and to restrain the eviction of tenants without a showing of "good cause" as required by 26 U.S.C. §42(g)(6)(E)(iii) and the second amendment to the LURA filed on July 11, 2012. That suit was later amended to seek a declaration that the Development could not be demolished by reason of the aforementioned provision of the LURA.

However, all but one of the plaintiffs have settled with HHA and the Development Owner and have withdrawn their opposition to the proposed LURA amendment. The remaining plaintiff (Katie Koenig) has filed a notice of nonsuit without prejudice. TDHCA makes no legal determination or representation regarding the effect of enforceability of rights by tenants under the LURA following this amendment. Documentation must be provided prior to September 5, 2019, that demonstrates the non-suit of all parties and claims by tenants and the dissolution of the injunction, and that Development will be imminently and voluntarily vacated by all tenants in order for this amendment request to be recommended for approval by staff.

The Owner's representative explained that the routine flooding seen in the City of Houston today, and therefore, the need for this amendment request was not reasonably foreseeable or preventable at the time of Application. Staff has reviewed the request and agrees with the Owner's assertion that this amendment was not reasonably foreseeable at the time of Application.

Therefore, staff recommends approval to suspend monitoring of the LURA for up to three years to allow for the re-syndication and reconstruction of the Development. This recommendation for approval is conditioned on the Department receiving support documentation acceptable to the Department's Legal staff that resolves all legal issues brought by tenants against the Development Owner, and that the injunction order has been dissolved by September 4, 2019. Absent of such support, staff recommends denial of the requested amendment.

Additionally, the Owner has agreed to extend the term of the LURA by two additional years for the time that the majority of the units in the Development were unavailable for occupancy after Hurricane Harvey. Upon approval of this request by the Board, the LURA for the Development will be extended for this two-year period, and it will also be amended to allow for the demolition of the building. This will also resolve the compliance matter before the Department's Enforcement Committee. The amendment to the LURA for the additional extension of up to three years associated with the reconstruction period will be done once construction has been completed. Overall, upon approval of this request, the LURA would be amended to extend its term by a total of up to five years.



Texas Department of Housing and Community Affairs, Street Address: 221 East 11th Street, Austin, TX 78701 Mailing Address: PO Box 13941,Austin, TX 78701, Main Number: 512-475-3800, Toll Free: 800-525-0657, Email: <u>info@tdhca.state.tx.us</u>, Web: www.tdhca.state.tx.us

Asset Management Division

Amendment Request Form

Completed forms and supporting materials can be emailed to asset.management@tdhca.state.tx.us

TYPE OF AMENDMENT REQUESTED

Date Submitted: March 7, 2019	Amendment Requested: Material LURA Amendment
Has the change been implemented? No	Award Stage: Post 15-Year Compliance Period

NOTE: Material Application or LURA Amendment requests must be received 45 days before the Board Meeting.

<u>Contact</u> your Asset Manager if you are unsure what type of Amendment to request. Amendment submission requirements and Board dates pertaining to Material Amendments are located on the <u>Post Award Activities Manual page</u>.

DEVELOPMENT INFORMATION		
Dev. Name: 2100 Memorial	File No. / CMTS No.:	96038 /1500
CONTACT INFORMATION		
Request Submitted By: Barry J. Palmer	Phone #/Email: (713)	653-7395 /bpalmer@coatsrose.com
SECTION 1: COVER LETTER		
A cover letter <i>MUST</i> be submitted with your request.	. Review your cover letter	to ensure it includes:
\square The change(s) requested \square The reason the	e change is necessary	\square The good cause for the change
\square An explanation of whether the change was reason	ably foreseeable or preven	table at the time of Application
SECTION 2: REQUIRED DOCUMENTATION		
Entering an Amendment conveys to the Department to provide information about any changes made from the your request, including items that will be impacted by changes may result in delays, denials, or a request for	e time of Application (or a y the requested change. Fa	is last approved by the Department) in initiate to represent or properly document all
Revised Application Exhibits/Documents Reflection surveys, Building and Unit Configuration exhibit, Guarantors, etc.	0 0 1	
Revised Development Financing Exhibits or a Sig conditions, or amounts of financing will be impac exhibits and term sheets may be necessary (genera	ted or changed by your am	endment request, revised Application
Amendment fee of \$2,500 for first amendments, \$ amendment (Applicable only to Material Amendm implemented) – <i>N/A for Developments only funde</i>	nents and Non-Material Ar	nendments if changes have already been

SECTION 3A: MATERIAL APPLICATION AMENDMENT ITEMS

Check all items that have been modified from the original application (see *Post Award Rules*, §10.405(a)(3)):

Site plan Scope of tenant services

- □ Number of units* □ Reduction of 3%+ in unit sq ft
- Bedroom mix Reduction of 3%+ common are
 - $\square Reduction of 3\%+ common area$
- Architectural design Residential density (5%+ change)

If "Number of units" is selected above and the total LI units or LI units at any rent or income level will be reduced, also:

☐ Other

Written confirmation from the lender and syndicator that the development is infeasible without the adjustment in units

Evidence supporting the need for the adjustment in units

If "Request to implement a revised set aside" is selected above, also:

Revised financial exhibits to the Application

Written acknowledgement from all lenders and the syndicator that they are aware of the changes being requested and confirm any changes in terms as a result of the new election

NOTE: *The approved amendment may carry a penalty in accordance with §10.405(a)(6)(b).

SECTION 3B: MATERIAL LURA AMENDMENT ITEMS

Check all items that require a material LURA amendmer	nt (see Subchapter E, §10.405(b)(2)):
---	---------------------------------------

Reductions to the number of LI units	Changes to Target Population	Affecting Rights of Tenant/3 rd Parties
Changes to income or rent restrictions	Removal of Non-profit	🖂 Other
Change in ROFR period/provisions	Request to implement a revised	l set aside election
The following additional items are attached	for consideration or will be forthcom	ning:
Draft Notice of Public Hearing*	Evidence of public hearing*	

NOTE: *Draft Notices of Public Hearing must be provided with the Amendment materials 45 days prior to the Board meeting. *The Public Hearing must be held at least 15 business days prior to the Board meeting and evidence in the form of attendance sheets and a summary of comments made must be submitted to TDHCA within 3 days of the hearing.

SECTION 4A: NON-MATERIAL APPLICATION AMENDMENT SUMMARY

Check or explain items that require a non-material Application amendment (Contact your Asset Manager if you are unsure of whether your request is non-material):

Amendment is requesting a change in Developer(s) or Guarantor(s) and pre and post change org charts, agreements to the change, and Previous Participation forms are attached.

Changes in natural person(s) used to meet the experience requirement.

Representations made in the Application that exceed the scope of a notification item: Describe items needed

SECTION 4B: NON-MATERIAL LURA AMENDMENT SUMMARY

Check or explain items that require a non-material LURA amendment (Contact your Asset Manager if you are unsure of whether your request is non-material):

 \Box Exclusion of reqs in §11.101 or §11.201.

Req. to implement a revised set aside election

HUB participation removal (request must also include documentation showing that a) the HUB is requesting removal of its own volition or is being removed as a result of default, b) the participation has been substantive or meaningful, and c) where the HUB will be replaced as a GP or SLP that is not a HUB and will sell its ownership interest, an ownership transfer request has also been submitted). HUB removal requests will only be considered after the issuance of 8609s.

A change resulting from a Department work out arrangement as recommended by TDHCA.

A correction of error (Amendments to Applicable Fractions, BIN lists, Accessible Units, etc.)

Changes in amenities or supportive services that are referenced in the LURA (Requests to change amenities should address whether an amenity will be replaced by an item of equal benefit or point value).

Other Representations made in the LURA not identified above: Describe items needed

SECTION 4C: NOTIFICATION ITEM SUMMARY

Check or explain items that require a notification to the Department:

Change to the Development Site acreage required by the City or other local governmental authority, or changes resulting from survey discrepancies (less than 5% change in density)

Minor modifications to the site plan that will not significantly impact costs (relocation or rearrangement of buildings, changes in ingress/egress, etc.)

Increases or decreases in net rentable square footage or common areas (less than 3% change)

Changes in amenities not requiring a change to the LURA or negatively impacting scoring

Changes in Developers or Guarantors with no new Principals

Other: Describe items needed

A PROFESSIONAL CORPORATION

COATS | ROSE

BARRY J. PALMER

bpalmer@coatsrose.com Direct Dial (713) 653-7395 Direct Fax (713) 890-3944

March 7, 2019

Via Email to rosalio. <u>banuelos@tdhca.state.tx.us</u>

Rosalio Banuelos, Director Asset Management Division Texas Department of Housing and Community Affairs 221 East 11th Street Austin, Texas 78701-2410

Re: # 96038; CMTS 1500; 2100 Memorial, Houston, Harris County, Texas (the Property").

Dear Rosalio:

This letter requests a Material LURA Amendment for 2100 Memorial ("Project") which is owned by Memorial Drive Elderly, L.P. ("Owner"), an affiliate of the Houston Housing Authority ("HHA"). HHA owns the fee title to the land on which the Project is located. The Owner has a long-term leasehold estate. Our law firm represents both HHA and the Owner.

The change requested.

HHA and the Owner request that the TDHCA permit a resyndication of the Project in order to demolish the existing structure and rebuild on site. To accomplish this, the existing LURA would need to be abated for a period of three (3) years to remove noncompliance issues associated with Hurricane Harvey damage and to permit time to demolish and reconstruct the Project. Upon re-syndication, either an overlying LURA or an updated LURA would be executed that would include an additional three (3) years of restricted usage, so that the affordability period of the Project would not be shortened.

The reason the change is necessary.

The Project is a 196-unit high-rise restricted for use by the Elderly, with 152 of its units restricted for use by low-income residents. Hurricane Harvey's impact in August 2017 was devastating for the Project. The first floors of the parking structure and the basement and first floor of the building were flooded, and there were no access points into the building that could be reached by emergency vehicles, leaving the residents stranded. In the aftermath of the flood, inspectors found that substantial damage had been incurred - particularly to the electrical system

9 Greenway Plaza, Suite 1000 Houston, Texas 77046 Phone: 713-651-0111 Fax: 713-651-0220 Web: <u>www.coatsrose.com</u> Rosalio Banuelos, Director Asset Management Division March 7, 2019 Page 2

which is primarily located in the basement. Although the tenants of the Building never experienced a prolonged loss of electricity, examination of the facilities uncovered pervasive damage to the electrical system due to water. Other types of damage caused by the Hurricane include life safety systems, the laundry, trash, elevator, leasing office and all business equipment, mail room, and meeting space. The window walls leaked and caused sheetrock to be wet. The roof is also compromised and needs to be replaced.

The hurricane damage was so pervasive that the Owner and HHA determined that the Project was no longer safe or suitable for habitation and needed to be vacated in order to accomplish repairs. Notices were sent to tenants that leases were being terminated due to the extensive damage and health and safety concerns arising from that damage. While most tenants relocated, a few tenants refused to move, and obtained an injunction against the Owner, preventing the termination of leases to repair, renovate or rebuild the Project. Trial was set for October 29, 2018, but subsequently stayed until April 30, 2019, for HHA to obtain confirmation concerning availability of funding from FEMA and the City of Houston CDBG-DR funds. During the delays caused by the litigation, the Project has continued to deteriorate. Currently there are still 21 tenants who have refused to move out of the Project.

Given its current state, repairing the Project to its condition prior to Hurricane Harvey is estimated to cost \$14 million. Such repair has the following disadvantages: (i) it is not clear whether the repaired building would meet Code requirements; (ii) FEMA may not provide any reimbursement for repair because of the continuing long-term flood risk the Project represents; (iii) repairing the Project would entail losing some of the affordable units located on the second floor of the building, due to the need to move electrical and mechanical systems up out of the basement and first floor levels; and (iv) HHA and the Owner do not have the funding available to perform the required repairs without substantial assistance from governmental sources.

The good cause for the change.

If the TDHCA permits a Material LURA Amendment suspending for three (3) years the requirement that 156 units be provided for low-income tenants, then the Project could be resyndicated using Tax-Exempt Bond financing with 4% Housing Tax Credits. Such refinancing would permit replacement of the Project's structures with new construction improvements that: (i) meet current minimum unit size requirements under the Qualified Allocation Plan; (ii) meet current Code requirements; (iii) are designed to mitigate flood waters: (iv) raise residential units above projected flood heights; and (v) permit unimpeded flow of flood water from Buffalo Bayou through the Project site without obstructing access by vehicular ramp to the first residential floor, which will be located two feet above the 500-year floodplain. In resyndicating, it is anticipated that 100% of the 196 units will be restricted as low-income units.

Financial information related to the Amendment's financial impact on the Development.

Approval of the requested Material LURA Amendment will permit demolition of the existing structures and reconstruction with Tax-Exempt Bonds issued by HHA's public facility corporation and 4% Housing Tax Credits. The Project does not have a Right of First Refusal election, so progress toward redevelopment will not be delayed. Demolition would not occur unless and until the Bond and 4% Housing Tax Credits have been closed.

Rosalio Banuelos, Director Asset Management Division March 7, 2019 Page 3

All financial information currently associated with the Project will be made moot. As an Identity of Interest transaction, there will be an appraisal of the land value to establish the cost of a long-term ground lease from HHA, which will continue to be fee owner, thus permitting the Project to qualify for a 100% governmental ad valorem tax exemption. An affiliate of HHA will serve as the sole member of the general partner of the new tax credit limited partnership.

Preliminary financial projections for the reconstruction of the Project are enclosed, including a development cost schedule, operating expenses, summary sources and uses, maximum eligible and projected rents, and a summary proforma. These financial projections will be submitted on TDHCA forms with the 4% Application.

An explanation of whether the necessity of the amendment was reasonably foreseeable at the time of Application.

The Project received a 9% Housing Tax Credit award in 1996 for the Adaptive Reuse of a former Holiday Inn. At that time, although occasional flooding took place in Houston, the situation did not approach the status of routine flooding seen in the city today.

While Houston's flat terrain, elevation of only 50 feet above sea level, and clay soil have not changed since the Project was developed in 1996, the population has increased by a million residents in the last 25 years and commercial development has replaced half of the wetlands that used to soak up stormwater runoff. Flooding in Houston is generally attributed to the increase in paved land and unfettered development due to the lack of zoning restrictions. Additionally, downpours of 10 inches or more have doubled in frequency during the last three decades, reputedly due to increasing average temperatures and warmer water in the Gulf of Mexico that result in increased humidity in Houston. Although the original tax credit developer of the Project should have anticipated that Buffalo Bayou, located across Memorial Drive from the Project, might periodically overflow its banks, the frequency and severity of flooding that is experienced today was not reasonably foreseeable in 1996, otherwise the municipal building code would have required substantially more mitigation techniques for a development located so close to the bayou.

In summary, HHA and the Owner agree that the current condition of the Project does not warrant making the estimated \$14 million in repairs, in view of the likelihood of future flooding issues. Instead, they propose to replace this Elderly development with another structure that is specifically designed to withstand flooding while protecting its residents. The replacement structure will use a podium design to elevate the residential floors above the 100-year flood plan, and the mechanical and electrical systems will be above the 500-year floodplain. Access to the residential floors will be by elevated ramp. Additionally, using a "Stormtrap" design, there will be an approximately 100,000 cubic feet detention and flood mitigation vault located under the building.

By undertaking this plan, HHA and the Owner intend to provide the families and individuals who were residents at the time that Hurricane Harvey occurred the opportunity to return to the Project, if they continue to meet restrictive covenant requirements. We respectfully ask that the Rosalio Banuelos, Director Asset Management Division March 7, 2019 Page 4

TDHCA promote this goal by entering a Material LURA Amendment to permit the reconstruction of 2100 Memorial.

Copies of proposed Notices to Tenants and Lenders of a Public Hearing are attached for your review and comment. We would like to have the Public Hearing on April 2, 2019, so that this Material LURA Amendment Request may be heard at the April 25, 2019 TDHCA Board Meeting.

Please note that a check in the amount of \$2,500, representing the Material LURA Amendment Fee will be delivered to your office.

Very truly yours,

Barry J. Palmer

Enclosures

cc: Lucy Trevino Tory Gunsolley

From:	Tamea A. Dula
То:	Rosalio Banuelos; Lucy Trevino
Cc:	Gunsolley, Tory; Barry Palmer
Subject:	RE: #96038 2100 Memorial Drive - Request for Material LURA Amendment
Date:	Friday, March 08, 2019 12:45:52 PM

Rosalio,

Let's make the request for a three-year period to begin on the adoption of the Material LURA Amendment. Will that work for you?

Tamea

Tamea A. Dula
Of Counsel
COATS ROSE
A PROFESSIONAL CORPORATION

Board Certified, Commercial Real Estate Law Texas Board of Legal Specialization

9 Greenway Plaza Suite 1000 Houston, TX 77046 Direct: <u>713.653.7322</u> Fax: 713-890.3918 <u>tdula@coatsrose.com</u> <u>www.coatsrose.com</u>

From: Rosalio Banuelos <rosalio.banuelos@tdhca.state.tx.us>

Sent: Thursday, March 7, 2019 7:22 PM

To: Tamea A. Dula <tdula@coatsrose.com>; Lucy Trevino <lucy.trevino@tdhca.state.tx.us>

Cc: Gunsolley, Tory <TGunsolley@housingforhouston.com>; Barry Palmer

<bpalmer@coatsrose.com>

Subject: RE: #96038 2100 Memorial Drive - Request for Material LURA Amendment

Tamea,

Your email below and its attachment have been received. However, please identify the dates of the three-year abatement period that is being requested.

Thank you,

Rosalio Banuelos

Director of Multifamily Asset Management Texas Department of Housing and Community Affairs 221 E. 11th Street | Austin, TX 78701 Office: 512.475.3357 Fax: 512.475.4420 rosalio.banuelos@tdhca.state.tx.us Any person receiving guidance from TDHCA staff should be mindful that, as set forth in <u>10 TAC Section 11.1(b)</u> there are important limitations and caveats (Also see <u>10 TAC §10.2(b)</u>).

For more information about TDHCA, please visit <u>www.tdhca.state.tx.us</u>.

From: Tamea A. Dula <<u>tdula@coatsrose.com</u>>
Sent: Thursday, March 07, 2019 5:50 PM
To: Rosalio Banuelos <<u>rosalio.banuelos@mail.tdhca.state.tx.us</u>>; Lucy Trevino
<<u>lucy.trevino@mail.tdhca.state.tx.us</u>>
Cc: Gunsolley, Tory <<u>TGunsolley@housingforhouston.com</u>>; Barry Palmer
<<u>bpalmer@coatsrose.com</u>>
Subject: #96038 2100 Memorial Drive - Request for Material LURA Amendment

Rosalio,

On behalf of the Houston Housing Authority, I am forwarding to you the Request for Material LURA Amendment for 2100 Memorial. The request is to have a 3-year abatement in the enforcement of the obligation to lease to low-income elderly individuals and families while the existing Harveydamaged building is demolished and reconstructed. Then an overlapping LURA, or if preferred a new and updated LURA, will be recorded against the project with a term that includes an additional 3 years to make up for the "down" time.

The requisite check for \$2,500 Amendment Fee will be delivered separately to your attention.

Please let me know if you have any questions or need any additional information.

Thanks!

Tamea

Tamea A. Dula Of Counsel



A PROFESSIONAL CORPORATION

Board Certified, Commercial Real Estate Law Texas Board of Legal Specialization

9 Greenway Plaza Suite 1000 Houston, TX 77046 Direct: <u>713.653.7322</u> Fax: 713-890.3918 <u>tdula@coatsrose.com</u> www.coatsrose.com This e-mail and/or attachment is for the sole use of the intended recipient(s) and may contain confidential and/or legally privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

From:	Tamea A. Dula
To:	Rosalio Banuelos; Barry Palmer; "Gunsolley, Tory"
Cc:	Lucy Trevino
Subject:	RE: 2100 Memorial (#96038) - Number of Units
Date:	Tuesday, April 02, 2019 5:54:19 PM

Rosalio,

Confirming our telephone call – Yes, the correct number of units is 197 and at 75% LIHTC, there would need to be 148 LIHTC units.

Tamea

Tamea A. Dula Of Counsel COATS ROSE

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Board Certified, Commercial Real Estate Law Texas Board of Legal Specialization

9 Greenway Plaza Suite 1000 Houston, TX 77046 Direct: <u>713.653.7322</u> Fax: 713-890.3918 <u>tdula@coatsrose.com</u> www.coatsrose.com

From: Rosalio Banuelos <rosalio.banuelos@tdhca.state.tx.us>
Sent: Tuesday, April 2, 2019 4:46 PM
To: Tamea A. Dula <tdula@coatsrose.com>; Barry Palmer <bpalmer@coatsrose.com>; 'Gunsolley, Tory' <TGunsolley@housingforhouston.com>
Cc: Lucy Trevino <lucy.trevino@tdhca.state.tx.us>
Subject: 2100 Memorial (#96038) - Number of Units

The amendment request submitted indicates that 2100 Memorial has 196 total units and 152 lowincome units, which is consistent with the number of units originally underwritten. However, the LURA, CMTS, the Unit Status Report, and a rent roll previously submitted indicate 197 units and 148 low-income units; therefore, I am under the impression that 197 and 148 are the correct numbers. If this is not the case, let me know.

Thank you,

Rosalio Banuelos

Director of Multifamily Asset Management Texas Department of Housing and Community Affairs 221 E. 11th Street | Austin, TX 78701 Office: 512.475.3357 This e-mail and/or attachment is for the sole use of the intended recipient(s) and may contain confidential and/or legally privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

Memoriai - Replace						Nov
	Total		Per Unit		Construction: Section 42 Basis Eligible	Notes
cquisition Costs/Debt Settlement		\$4,992,847	1	\$25,474	Daars Engible	
Acquisition/Existing 3rd Party Debt	\$4,942,847		\$25,219			
Acquisition Legal Fees	\$50,000	\$35 998 046	\$255	\$183,663		
Residential Hard costs	\$ 26,553,528	300 330 040	\$135,477	3103,003	\$ 26,553,528	-
Demolition/Site Infrastructure	5 3,197,828		\$16,315			Only cost of vault included in basis
Podium	4,373,176	1	\$22,312		4,373,176	200 10 MD
Payment and Performance Bond	159,321	č –	813		159,321	
Construction Contingency redevelopment Costs	1,714,193	\$91,000	8,746	\$464	0	
Property Appraisal	\$20,000	391,000	\$102	3404	\$20,000	-
Market Study	20,000		102		20,000	
Environmental Report(s)	25,000		128		25,000	
Soil Borings	10,000		51		10,000	
Boundary and Topographical Survey	16,000		82	t 1.	16,000	
Zoning/Site Plan Fees					0	
Bond Issuer Closing Fee	\$150,000	\$1,235,500	\$765	\$6,304	£450.000	
Construction Loan Interest	700,000		3,571			HHFC - 50% > aggr princ amt or initial proc (est \$30m Assuming soft funding during construction
Lender's Legal Fees	100,000		510		\$100,000	
Construction Period Real Estate Tax	45,000		230		\$45,000	
Construction Insurance	100,000		510		\$100,000	
HUD Mortgage Insurance Premium	50,000		255		50,000	
HUD Application and Inspection Fees	40,000				40,000	
Application Fee	4,500			l		Per HHFC documentation
Issuer Bond Counsel	45,000					
Post Issuance Request Fee	1,000					
				0 1		
ofessional Services		\$1,405,800		\$7 172		
Architectural Fee - Design	\$490,000		\$2,500		\$490,000	
Architectural Fee - Supervision	98,000		500		98,000	
Architectural Fee - Reimbursables	49,000		250		49,000	
Landscape Architect	58,800		300		58,800	
Engineering Real Estate Attorney	250,000		1,276	1 6	250,000	
Accounting	150,000 50,000		765 255			
Green Building Certification/Registration	50,000		255	11 U		
Construction Inspection Fees	60,000		306	1 1	60,000	
Accessibility Consulting	50,000		255		55,555	
Construction Materials Testing	100,000		510			
scal Government Fees		\$276,697		\$1,412		
Building Permits	\$60,375		\$308			\$16,300 for first \$5mm + \$1 70/\$1,000
Impact Fees Plan review	151,228 15,094		772			Based on service unit fee of new units (possible exemp
Other local fees	50,000		77 255		15,094 50,000	25% of permit fee
manent Financing Fees	30,000	\$201 430	200	\$1_028	50,000	
Permanent Loan Fees	\$81,430	9201 400	\$415	01.020		
Permanent Loan Legal Fees	65,000		332			
Title and Recording Fees	50,000		255			
As-Built Survey	5,000		26			
x Credit Costs		\$170.329		\$869		
Application Fee	3,920		\$20			Per TDHCA - \$20/unit
Pre-application Fee Commitment Fee	1,960		10			Per TDHCA - \$10 per unit
Commitment Fee Bond Development Determination Fee	53,305 53,305		272 272	1		Per TDHCA - 4% of annual LIHTC allocation Per TDHCA - 4% of annual LIHTC allocation
LIHTC Allocation Processing Fee	50,000		272			Per TDHCA - 4% of annual LIH1C allocation Per TDHCA
LIHTC Compliance Monitoring Fee	7,840		40			Per TDHCA
	1,0.10				1	
uity Costs		\$105,000		\$536		
Partnership Organization Fees	\$25,000		\$128			
Tax Credit Legal Opinion	30,000		153			
Syndicator Legal Fees Syndicator Due Diligence Fee	30,000 20,000		153 102			
art Up and Reserves	20,000	\$1,544,800	102	\$7,882		
Marketing	\$50,000	01044000	\$255	97,002		
Rent -Up Reserves	518,000		2,643			
Operating Deficit Reserve	518,000		2,643			
Replacement Reserve	58,800		300			
Furniture, Fixtures and Equipment	400,000		2,041		400,000.00	
her Costs		\$50.000	·	\$255		
Relocation						
			255			
Soft Cost Contingency	50,000	640.074.440		6005 050	694 EAE 000	
Soft Cost Contingency tal, Excluding Developer Fee Developer Fee	\$ 6,000,000	\$46.071.449	\$235.058 \$30.612	\$235.058	\$34,505,003 \$ 6,000,000	



2100 Memorual - Risplace 12/7/18 3 48 PM

Page 3

OPERATING BUDGET / EXPENSES

2100 Memorial - Replace

2018 4% Application Development Model - Draft 1.0

Nov 2018

EXPENSES OPERATING EXPENSES	SUBJECT Prope		Average		mparable Prope Per Unit 133.00	rties		
TOTAL ADMINISTRATIVE EXPENSES TOTAL MARKETING EXPENSES TOTAL PAYROLL EXPENSES TOTAL MAINTENANCE EXPENSES TOTAL CONTRACT EXPENSES TOTAL CONTRACT EXPENSES TOTAL UTILITY EXPENSES tenant paid utilities TOTAL MANAGEMENT AND PROFESSIONAL EXPENSES TOTAL TAXES AND INSURANCE TOTAL TAXES AND INSURANCE	\$70,000 \$3,000 \$280,000 \$98,000 \$90,000 \$100,000 \$185,000 \$210,000 \$1,036,000 \$58,800	\$357 \$15 \$1,429 \$500 \$459 \$510 \$944 \$1,071 \$5,286 \$300	\$2: \$2: * \$1 \$1: \$1: \$1:	53,466 52,482 30,488 75,309 54,681 58,767 34,403 19,525 9,122	\$402 \$19 \$1,733 \$566 \$486 \$442 \$1,011 <u>\$372</u> \$5,031		6	
TOTAL EXPENSE + Repl Res. Property Taxes W/o Property Taxes or replacement reserves Net Revenue Expense Ratio NOI/Net Revenue	\$35,000 \$1,094,800 \$879,200 1,610,677 64.3% 35.7%	\$300 \$5,586 \$4,485.71),030 9,092	\$4,955.58			

SUMMARY SOURCES & USES 2100 Memorial - Replace

Nov 2013

2018 4% Application Development Model - Draft 1.0

196 Units

Sources: Per Unit Uses: Total Per Unit First Mortgage Commercient TCL \$ 1,443.000 \$ 4,542.000 \$ 4,542.000 \$ 4,542.000 \$ 4,542.000 \$ 4,542.000 \$ 4,542.000 \$ 4,542.000 \$ 4,542.000 \$ 5,539.000 \$ 5,529.0000 \$ 5,529.000 \$ 5,529.000.000<											Senior Only	, 100	196 Units % Affordable
First Mortgage Commence Tris, S. 8, 143,000 54,357 25, 477 25, 28, 567 Grid Mortgage First Mortgage First Mortgage 53,598,006 53,598,000 54,529,000 53,598,599,000 53,598,599,000 53,598,599,000 53,598,599,000 53,598,599,000 53,598,599,000 53,598,599,000 53,598,599,000 53,598,599,000 53,598,599,000 53,598,599,000 53,598,599,000 <	RCES & USES - Total Project					196	units						
2nd Mortgage city of vectors MF Private \$ 25,000,000 sizz sizz size size size size size size size size	Sources:				Per Unit		Uses:				Total		Per Unit
3rd Montgage FEAA \$ 4, 942.847 552.37 396 Predevelopment Costs \$ 1,035.000 \$ 6.5.99 5th Montgage n.a. 5 1,023.500 \$ 6.399 006 Financing \$ 1,023.500 \$ 7.223.500 \$ 7.223.500 \$ 7.223.500 \$ 7.223.500 \$ 7.223 6.399 006 Professional Services \$ 1,023.800 \$ 7.227 6.399 006 Professional Services \$ 1,023.800 \$ 6.699 6.999 6.699 6.	First Mortgage Com	merical TEL	\$	8,143,000	\$41,546	16%	Acquisitio	on Costs/Deb	t Settlement	\$	4,992,847	\$	25,474
Ath Mongage 3 5 5 7 50 OW Fundaming 5 1.205,500 5 6.004 Bith Mongage n.o. S 50 000 Frontestional Reviews S 1.405,500 5 7.77 Bith Mongage n.o. S 50 000 Frontestional Reviews S 1.402,500 5 1.412 Bith Mongage n.o. S 1.1992,332 361,183 S 1.005,000 5 3.53 Deferred Devel Fee investor S 1.1992,332 350,271 Stot.1/2 Verticet Costs S 1.544,000 S 2.35,200 3.26,22 Total Sources: S S.2,071,449 3.225,572 Total Uses: S S.2,071,449 S 2.55,000 3.26,22 Total Sources: S S.2,071,449 3.225,572 Total Uses: S S.2,071,449 S 1.332,615 S 1.332,615 LHTC Equity exiding exiding exiding exiding exiding exiding exiding 1.332,615 S 1.332,614 S 1.332,615	2nd Mortgage City of Houston	n MF Funds	\$	25,000,000	\$127,551	48%	Construct	tion Costs		\$	35,998,046	\$	183,663
Shi Mortgage n.a Dis Professional Services \$ 1.06,800 5 2.72 Other granu/loan PM2.AMP \$ 00 Portanent: Financing Fees \$ 276.697 1.012 Other granu/loan PM2.AMP \$ 00 Remarkert Financing Fees \$ 119.02.23 \$ 1.02.3 UHTC Equity (4%)-Fee investor \$ 1.993.270 30.170 4% Statt Up and Reserves \$ 1.944,000 \$ UHTC Equity (4%)-Fee enveloper \$ 5.20,71,449 \$ 255.672 Total Uses: \$ 5.20,071,449 \$ 266.671 UHTC Equity envineer \$ 5.20,71,449 \$ 266.671 UHTC Equity Pricing (5/credit) federal \$0.000 \$ 3.0.812 UHTC Equity Pricing (5/credit) federal \$0.000 \$ 1.0.93,631 \$ UHTC Equity Pricing (5/credit) state \$ 5.0.003 \$ 1.0.93,531 </td <td>3rd Mortgage</td> <td>FEMA</td> <td>\$</td> <td>4,942,847</td> <td>\$25,219</td> <td>9%</td> <td>Predevelo</td> <td>opment Costs</td> <td></td> <td>\$</td> <td>91,000</td> <td>\$</td> <td>464</td>	3rd Mortgage	FEMA	\$	4,942,847	\$25,219	9%	Predevelo	opment Costs		\$	91,000	\$	464
Bith Morgage n.a. ON Local Government Frees S 201,430 1.422 Other granuflow S 11,992,332 561,185 23% Tax Credit Costs S 201,430 5 1.622 UHTC Equity (4%)-Fed immetor S 11,992,332 561,185 23% Tax Credit Costs S 100,000 5 3.56 Deferred Devel Fiel anvertour S 10,992,70 501,170 S 1.544,800 5 2.56,000 5 2.55 Developer Overhead and Fee S 50,000 S 2.55 2.56,71 Developer Overhead and Fee S 50,0000 S 2.55,671 UHTC Equity anxing anxing anxing cetal acedits 1.1,32,615 1.3,32,51,46 1.1,322,51,46 1.1,322,51,46 1.1,322,51,46 1.1,322,51,46 1.1,322,51,46 1.1,323,51,46 1.1,323,51,46 1.1,323,51,46 1.1,323,51,46 1.1,323,51,46 1.1,323,51,46 1.1,322,51,46 1.1,323,51,46 1.1,323,51,46 1.1,323,51,46 1.1,322,51,46 1.1,32	4th Mortgage \$	-	\$. . .	\$0	0%	Financing	ζ		\$	1,235,500	\$	6,304
Bith Morgage n.a. ON Local Government Frees S 201,430 1.422 Other granuflow S 11,992,332 561,185 23% Tax Credit Costs S 201,430 5 1.622 UHTC Equity (4%)-Fed immetor S 11,992,332 561,185 23% Tax Credit Costs S 100,000 5 3.56 Deferred Devel Fiel anvertour S 10,992,70 501,170 S 1.544,800 5 2.56,000 5 2.55 Developer Overhead and Fee S 50,000 S 2.55 2.56,71 Developer Overhead and Fee S 50,0000 S 2.55,671 UHTC Equity anxing anxing anxing cetal acedits 1.1,32,615 1.3,32,51,46 1.1,322,51,46 1.1,322,51,46 1.1,322,51,46 1.1,322,51,46 1.1,322,51,46 1.1,323,51,46 1.1,323,51,46 1.1,323,51,46 1.1,323,51,46 1.1,323,51,46 1.1,323,51,46 1.1,322,51,46 1.1,323,51,46 1.1,323,51,46 1.1,323,51,46 1.1,322,51,46 1.1,32	5th Mortgage	n a	Ś	027		0%	Professio	nal Services		Ś	1.405.800	s	7,172
Other granufban Hus Aupl S 100 500 Permanent Financing Frees S 100.30 5 100.30 5 100.30 5 100.30 5 100.30 5 300 5 000 Financing Frees S 100.30 5 300 5 000 5 335 100.300 5 335 300 5 300 6 200.100 5 335 300 5 300 5 300 5 300 5 300 5 300.00 5 335 300.00 5 335 300.00 5 335 300.00 5 336 300.00 5 332.07 300.00 300.822 300.00 300.822 300.00 300.822 300.00 300.822 300.00 300.822 300.00 300.822 300.00 300.822 300.00 300.822 300.00 300.822 300.00 300.822 300.00 300.822 300.00 300.821 300.00 300.00						0%	Local Gov	ernment Fee	5				
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LHTC allocation (assumed DCA max) state S0.000 2 1,332,615 \$ 13,326,146 11,993,531 Total Equity Pricing (\$/credit) Total Equity Vield <u>\$40,505,003</u> Percentage Low Income 100,0% Eligible Basis: S \$40,505,003 Soot 100% Submined Basis: \$ \$40,505,003 Soot 100% Soot 100% Submined Basis: \$ \$40,505,003 Soot 100% Soot 100% Submined Basis: \$ \$40,505,003 Soot 100% Soot 10	Total Sources:		\$	52,071,449	\$265,571		Total Use	:5:		\$	52,071,449	\$	265,671
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Lst Mortgage: Commerical TEL 5.50% 35 35 \$8,143,000 \$524,751 Plus MIP MIP MIP 40 40 \$25,000,000 \$0 cos Brd Mortgage City of Houston MF Funds 1.0% 40 40 \$25,000,000 \$0 cos Brd Mortgage FEMA 0.0% 30 30 \$4,942,847 \$0 cos Alth Mortgage 1.0% 40 40 \$ - \$0 cos Sith Mortgage n.a. 1.0% 40 40 \$ - %-share of cos Sith Mortgage n. a. 1.0% 40 \$ - <i>%-share of cos</i>	Total Equity Yield		\$	11,992,332									
Plus MIP 2nd Mortgage City of Houston MF Funds 1.0% 40 40 \$25,000,000 \$0 case 3rd Mortgage FEMA 0.0% 30 30 \$4,942,847 \$0 case kth Mortgage n.a. 1.0% 40 40 \$	Debt Sources:						<u>rate</u>	amortiz	term		principal		annual DS
End MortgageCity of Houston MF Funds1.0%4040\$25,000,000\$0caseBrd MortgageFEMA0.0%3030\$4,942,847\$0caseIth Mortgage1.0%4040\$\$\$0caseSith Mortgagen.a.1.0%4040\$\$\$Sith Mortgagen.a.1.0%40\$\$\$\$Sith Mortgagen.a.1.0%40\$\$\$\$	1st Mortgage:		Со	mmerical TEL	<i></i>			35	35		\$8,143,000		\$524,751
1.0% 40 40 \$ - \$0 cos Sith Mortgage n.a. 1.0% 40 40 \$ - \$ \$ - \$	2nd Mortgage		Cit	y of Houston N				40	40		\$25,000,000		\$0 c
Sth Mortgage n.a. 1.0% 40 \$ - %-share of case Sth Mortgage n.a. 1.0% 40 \$ - <u>%-share of case</u>	3rd Mortgage		FEI	MA			0.0%	30	30		\$4,942,847		\$0 c
Sth Mortgage n. a. 1.0% 40 \$ - <u>%-share of</u> cas	4th Mortgage						1.0%	40	40	\$	2		\$0 c
	5th Mortgage		n.a	le:			1.0%	40	40	\$	Ŧ		%-share of c
totals: \$524,751	6th Mortgage		n. :	8.			1.0%		40	\$	5,		%-share of c
	to	tals:											\$524,751

2100 Memorial - Replace Maximum Eligible & Projected Rents

			Number of	Avg	Max Eligible					
Unit Type	Set-Aside	Income Limit	Units	NRSF	Gross Rent	UA	Net Rent	\$/NRSF		Annual Rent
EFF	50% PBV	50%	8	425	\$787	(\$121	\$666	\$1.57		\$63,936
EFF	60% LIHTC	60%	31	425	\$787	(\$121)	\$666	\$1.57		\$247,752
1 BR	50% PBV	50%	27	744	\$843	(\$121)	\$722	\$0.97		\$233,928
1 BR	60% LIHTC	60%	110	744	\$843	(\$121)	\$722	\$0.97		\$953,040
2 BR	50% PBV	50%	4	980	\$1,012	(\$153)	\$859	\$0.88		\$41,232
2 BR	60% LIHTC	60%	16	980	\$1,012	(\$153)	\$859	\$0.88		\$164,928
TOTAL			196	705			\$725			\$1,704,816
Other Incom	16				Per Unit/Mo.		All Units/Mo.			Annual Revenue
Laundry Ma	chine Collectio	ns			\$1.25		\$245			\$2,940
Late Fees					\$1.25		\$245			\$2,940
Application I	Fees				\$1.25		\$245			\$2,940
Security Dep	osit Forfeiture	S.			\$1.25		\$245			\$2,940
Other					\$10.50		\$2,058			\$24,696
					\$16		\$3,038			\$36,456
Subsidy Typ	e	Units 9	Share							
Public Assist	ance	39	20%				Gross Potential I	ncome		\$1,741,272
LIHTC		157	80%				Vacancy		7.5%	(\$130,595)
Market Rate		0	0%				Commercial Inco	me per year		\$0
Total		196	100%				Net Income			\$1,610,677
Unit Count		EFF	1 BR	2 BR	3 BR	Total		% of Total	% of LI	
50% PBV		8	27	4	0	39		20%	20%	
60% LIHTC		31	110	16	0	157		80%	80%	
Market		0	0	0	0	0		0%		
0		39	137	20	0	196		100%	100%	
		19.9%	69.9%	10.2%	0.0%	100.0%				

SUMMARY PROFORMA

Development Name:		3	2100 Memorial - F	Replace	_		2	018.4 Application	Development Mode	e) Draft 1 0 🔰 💈	2100 Memorial - Re	place					
	196		Annual Income Growl		2.0%	Vacanty Luss	7.5% A	nnual Operating Exper	se/unit	\$5,286	t en sar, foot boun	LP Investor Asset P	vlgmt Fee:	\$5,000	fee increases 3% per o	unum	
ital Rentable SF		,	Annual Expense Grow	th Rate	3 D%		A	nnual Replacement Re	serve/unit	\$300		AHA Asset Mgmt	Fee:	SD		oss revenues (PBRA uni	157
ar 1 = 20	020									\$5,586		GP Asset Mgmt Fe		\$5,000	lee muteases 3 a per o		,
		2016-2017	Year 1	Year Z	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12	Year 13	Year 14	Year 15
		baseline	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034
tal Potential Reni Income	/ents/expenses or	e trended from current levels \$1,704,816	\$1,773,691	\$1,809,164	Ca that same l	4	5			1	9	10	11	14	11	14	15
ADD Other Income					\$1,845,348	\$1,882,255	\$1,919,900	\$1,958,298	\$1,997,464	\$2,037,413	\$2,078,161	\$2,119,724	\$2,162,119	\$2,205,361	\$2,249,469	\$2,294,458	\$2,340,347
AUX) Other Income		\$35,456	\$37,929	\$38,687	\$39,461	\$40,250	\$41,055	\$41,876	\$42,714	\$43,568	\$44,440	\$45,328	\$46,235	\$47,160	\$48,103	\$49.065	\$50,046
ross Potential Income			\$1,811,619	\$1,847,852	\$1,884,809	\$1,922,505	\$1,960,955	\$2,000,174	\$2,040,178	\$2,080,981	\$2,122,601	\$2,165,053	\$2,20 8,3 54	\$2,252,521	\$2,297,571	\$2,343,523	\$2,390,393
LESS Vacancy Allowance/Bad Debt	ols/Concession	ns [\$133,027	5135,687	\$138,401	5141,169	\$143,992	5146,872	\$149,810	\$152,806	\$155,862	5158,979	\$162,159	\$165,402	5168,710	\$172.084	\$175,576
abilized income			\$1,678,593	\$1,712,164	\$1,746,408	\$1,781,336	\$1,816,963	\$1,853,302	\$1,890,368	\$1,928,175	\$1,966,739	\$2,006,074	\$2.046,195	\$2,087,119	\$2,128,861	\$2,171,439	\$2,214,867
LESS Operating Expenses	ſ	\$1,036,000	\$1,099,092	\$1,132,065	\$1,166,027	\$1,201,008	\$1,237,038	\$1,274,149	\$1,312,374	\$1,351,745	\$1,392,297	\$1,434,066	\$1,477,088	61 534 401	C1 (() (1))		
ADD Property Tax Reduction	Yes	-\$156,800	(\$161,504)	(\$166,349)	(5171,340)	(\$176,489)	(\$181,774)	(\$187,227)	(\$192.844)	(\$198,530)	(\$204,588)	(\$210,726)		\$1,521,401	\$1,567,043	\$1,614,054	\$1,662,476
FSS Replacement Reserves	58		\$58,800	\$60,564	562.381	\$64.252	\$66,180	\$68,165	\$70,210	\$72,317	\$74,486	576,721	(\$217,048) \$79,022	(\$223,559)	(\$230,266)	(5237,174)	(\$244,289
t Operating Income			\$682,204	\$685,884	\$689,339	\$692,555	5695,519	\$698,215	\$700,628	\$702,743	\$704,544	\$706,013	\$79,022	\$81,393 \$707,884	\$83,835	\$86,350	\$88,940
SCHEDULED DEBT SERVIC	0E:		37 7%					6/20056629277		9702)rHa	0.000	5760,015	\$101,132	2707,004	\$708,250	\$708,209	\$707,740
1ESS Debt Service 1"			\$524,751	\$524,751	\$524,751	\$524.751	\$524,751	\$524,751	\$524,751	\$524,751	\$524,751	\$524.751	Arou and L		-		
delerre	ed fee note	15	\$147,453	\$151,134	\$154,588	\$157,805	\$160,768	\$163,464	\$165,877	\$167.992	\$169,793		\$524,751	\$524,751	\$524,751	\$524,751	\$524 751
1						+++++++++++++++++++++++++++++++++++++++	,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,	5105,404	\$105,877	\$107,992	2109,193	\$171,262	\$172,381	\$173,134	\$173,499	\$173,458	\$172.990
perating Cash Flow Waterfall:																	
Nel Operaling Income			\$682,204	\$685,884	\$689,339	\$692,555	\$695,519	\$698,215	\$700.628	\$702.743	\$704,544	£ 107 01 3	6707.433				
(less) first mortgage debt		scheduled P&I	(\$524,751)	(\$524,751)	(\$524,751)	(\$524,751)	(\$524,751)	(\$524,751)	(\$524,751)	(\$524,751)	\$704,544 (\$524,751)	\$706,013	\$707,132	\$707,884	\$708,250	\$708,209	\$707,740
Cash Flow after 1st Mortg C	Deb1:		\$157,453	\$161,134	\$164,588	\$167,805	\$170,768	\$173,464	\$175,877	\$177,992	\$179,793	<u>(\$524,751)</u> \$181,262	(\$524,75 <u>1)</u> \$182,381	(\$524,751) \$183,134	(\$524,751) \$183,499	(\$524,751) \$183,458	<u>(\$524,751</u> \$182,99 0
(less) investor Asset Mgml fe	lee	from cash flow	(\$5,000)	(\$5,000)	(\$5,000)	(\$5,000)	(\$5,000)	(\$5,000)	(\$5,000)	(\$5,000)	(\$5,000)	(\$5,000)	(\$5,000)	(\$5,000)	(\$5,000)	(\$5,000)	(\$5,000
(less) AHA Assel Mgml fee		from cash frow	\$0	\$0	ŞU	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	50	SU	\$0	50
(less) GP Asset Mgmi fee		from cash flow	(\$5,000)	(\$5,000)	(\$5,000)	(\$5,000)	(\$5,000)	(\$5,000)	(\$5,000)	(\$5,000)	(\$5,000)	(\$5,000)	(\$5,000)	(\$5,000)	(\$5,000)	(\$5,000)	(\$5,000
(less) payment to DDF		from cash flow -to P&I	\$147,453	(\$151,134)	(\$154,588)	(\$157,805)	(\$160,768)	(\$163,464)	(\$165,877)	(\$167,992)	(\$169,793)	(\$1/1,262)	(\$172,381)	(\$173,134)	(\$1/3,499)	(\$173,45B)	(\$172,990
(less) 2nd morigage debi		from said flow to PAI	\$0	\$0	\$U	SU	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$U	\$0	şu
(less) 3rd morigage debt		from each flow to PA1	\$0	\$0	\$U	şu	\$0	\$0	\$0	\$0	\$0	\$0	\$0	50	SU	50	Şü
(less) 41h mortgage debt		from cash flow to P&I	<u>\$0</u>	<u>50</u>	<u>SU</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>50</u>	<u>\$0</u>	\$0	\$0	50	<u>\$0</u>	SU
Umski GP incentive mgml the		from cash flow	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	50	50	<u>50</u>	50
(less) 5th mortgage debt	50%	of cash flow>1.15	\$0	\$0	\$0	\$D	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	50	50	\$U \$U
(less) 6th mortgage debt	50%	of cash flow>1 15	<u>50</u>	<u>\$0</u>	<u>50</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	50	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>şu</u>
Net Cash Flow			\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
DSC -1st Morlgage			1 30	1.31	1.31	1.32	1.53	1.33	1.34	1.34	1.74	1.45	a ar		4.35		
DSC 1sl & subordinate mortg	gages+DDF		1.01	1 01	1.01	1.01	1.01	1.01	1.01		1.34	1.35	1.35	1,35	1.35	1 35	1.35
					2102	4.94	1.01	1.01	1.01	1.01	1 01	1.01	1.01	1 01	1.01	1 01	1.01

MEMORIAL DRIVE ELDERLY, L.P.

c/o Houston Housing Authority 2640 Fountain View Drive, Suite 400 Houston, Texas 77057

March 21, 2019

To All Residents of 2100 Memorial:

RE: LURA Amendment Request to TDHCA for 2100 Memorial Apartments; Address: 2100 Memorial Drive, Houston, Harris County, Texas 77007.

Dear Residents:

Memorial Drive Elderly, L.P. (Owner) is asking the Texas Department of Housing and Community Affairs Governing Board (the TDHCA Board) to approve an amendment to its Land Use Restriction Agreement (LURA) that will abate the time period during which 2100 Memorial (Development) must be held available for leasing to qualified tenants for a period of three (3) years, in order to permit demolition of the existing structures and reconstruction of the Development. The existing LURA will also be extended for an additional three-year period. Upon completion of the reconstruction, a new LURA will be executed and recorded against the Development, and such new LURA will add three (3) years to the normal extended use period, so that the construction period is made up. TDHCA rules require that notice of this request be provided to all residents of the property. This letter is to inform you that there will be a public hearing to discuss the request and we invite you to attend.

The public hearing is your opportunity to discuss the amendment request and voice your concern regarding the requested amendment. Information obtained from this meeting will be submitted for consideration by the TDHCA Board at their April 25, 2019 meeting. If you are unable to attend the public hearing and would like to submit your concerns in writing to the TDHCA, please send your comments via email to asset.management@tdhca.state.tx.us or you may mail them to:

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

A public hearing on this issue is scheduled at the Allen Parkway Village Community Center:

Location:	Allen Parkway Village's Community Center
	1600 Allen Parkway, Houston, TX 77019
Date:	Tuesday, April 2, 2019
Time:	2:00 pm

Transportation Shuttles will be provided to and from the meeting, solely for residents of 2100 Memorial. Shuttles will be available, an hour before and after, the meeting.

If you wish to contact the Owner, please call Jonathan Zimmerman at 713-260-0704.

Sincerely, MEMORIAL DRIVE ELDERLY, LP a Texas limited partnership

By: V.J. MEMORIAL CORP., a Texas non-profit corporation, General Partnership

Two bornelly

By: Tory Gunsolley, Secretary

4815-5385-5113.v2

MEMORIAL DRIVE ELDERLY, L.P.

c/o Houston Housing Authority 2640 Fountain View Drive, Suite 400 Houston, Texas 77057

March 21, 2019

Mr. Dan Darilek Davis-Penn Mortgage Company 12650 N. Featherwood, Suite 120 Houston, TX 77034

> RE: 2100 Memorial Apartments; 2100 Memorial Drive, Houston, Harris County, Texas 77007; LURA Amendment Request to TDHCA.

Dear Mr. Darilek:

Memorial Drive Elderly, L.P. (Owner) is asking the Texas Department of Housing and Community Affairs Governing Board (the TDHCA Board) to approve an amendment to its Land Use Restriction Agreement (LURA) that will abate the time period during which 2100 Memorial (Development) must be held available for leasing to qualified tenants for a period of three (3) years, in order to permit demolition of the existing structures and reconstruction of the Development. The existing LURA will also be extended for an additional three-year period. Upon completion of the reconstruction, a new LURA will be executed and recorded against the Development, and such new LURA will add three (3) years to the normal extended use period, so that the construction period is made up.

TDHCA Board Rules require that notice of this request be given to all the Owner's current lenders.

A public hearing on this issue is scheduled at the Allen Parkway Community Center:

Location:Allen Parkway Village's Community Center
1600 Allen Parkway, Houston, TX 77019Date:Tuesday, April 2, 2019Time:2:00 pm

Transportation Shuttles will be provided to and from the meeting, solely for residents of 2100 Memorial. Shuttles will be available, an hour before and after, the meeting.

You are invited to attend and offer your comments. If you wish to contact the Owner, please call Jonathan Zimmerman at 713-260-0704.

Sincerely, MEMORIAL DRIVE ELDERLY, LP a Texas limited partnership

By: V.J. MEMORIAL CORP., a Texas non-profit corporation, General Partnership

Try burnelby

By: Tory Gunsolley, Secretary

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

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

THE STATE OF TEXAS

COUNTY OF HARRIS

This Second Amendment to Declaration of Land Use Restrictive Covenants for Low-Income Housing Credits ("Amendment") is executed by and between **MEMORIAL DRIVE ELDERLY, L.P.,** a Texas limited partnership (together with its successors and assigns, the "Project Owner") and the **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS,** a public and official agency of the State of Texas (together with any successor to its rights, duties and obligations, the "Department").

§ § § §

WITNESSETH:

WHEREAS, effective April 4, 2000, the Project Owner and the Department executed that certain Declaration of Land Use Restrictive Covenants For Low-Income Housing Credits (the "Declaration"), which was filed of record on July 19, 2000 and recorded in/under File No. U514998 in the Official Public Records of Real Property of Harris County, Texas (the "Records"), upon and against the real property described herein and in <u>Exhibit "A"</u> attached hereto and made a part hereof;

WHEREAS, effective April 4, 2000, the Project Owner and the Department executed that certain First Amendment to Declaration of Land Use Restrictive Covenants For Low-Income Housing Credits (the "First Amendment"), which was filed of record on February 23, 2005 and recorded in/under File No. Y277079 of the Records, upon and against the real property described therein and in <u>Exhibit "A"</u> attached hereto and made a part hereof. The Declaration and the First Amendment, collectively with any future amendments, shall be referred to herein as the "Declaration";

WHEREAS, the Project Owner and the Department desire to amend the Declaration to to add language in Section 4 of the Declaration pertaining to Income Restrictions/Rental Restrictions and to revise Appendix A – Additional Use Restrictions ("Appendix A") of the Declaration;

T:\ldld\LURAs\LURAmendment20101213\MemorialDriveElderly96038LURAAmend20110627.doc Page 1 of 5 WHEREAS, the Project Owner and the Department desire to amend the Declaration in the manner provided hereinbelow.

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

1. Section 4 of the Declaration is hereby amended to add the following language:

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

2. In Appendix A of the Declaration, the section entitled "ELDERLY DEVELOPMENTS" is hereby amended to read as set forth below:

"Qualified Elderly Developments (2000 and later)

Throughout the Compliance Period, unless otherwise permitted by the Department, this Development must conform to the Federal Fair Housing Act and must be a Development which:

(i) is intended for, and solely occupied by Persons 62 years of age or older; or

(ii) is intended and operated for occupancy by at least one person 55 years of age or older per unit, where at least 80% of the total housing units are occupied by at least one person who is 55 years of age or older; and adheres to policies and procedures which demonstrate an intent by the owner and manager to provide housing for persons 55 years of age or older."

3. Each capitalized term not expressly defined herein shall have the meaning given to such term in the Declaration.

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

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

IN WITNESS WHEREOF, the Project Owner and the Department have executed this Amendment to be effective on the last date of execution of this Amendment by both parties.

PROJECT OWNER:

MEMORIAL DRIVE ELDERLY, L.P., a Texas limited partnership

By: V.J. Memorial Corp., a Texas nonprofit corporation

By: Name: To Gunge Title: CEO

Date: _____

THE STATE OF TEXAS COUNTY OF HARRIS

8888

BEFORE ME, the undersigned, a Notary Public in and for the State of Texas, on this day personally appeared <u>Toey</u> <u>Guiveolle</u>, known to me to be the <u>CEO</u> of J. Memorial Corp., a Texas nonprofit corporation, General Partner of **MEMORIAL DRIVE ELDERLY**, L.P., a Texas limited partnership, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of said limited partnership, and that he/she executed the same as its general partner and as the act of such limited partnership and for the purposes and consideration expressed in the foregoing instrument.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this_	day of
(Seal)	

Notary Public, State of Texas

Debra Ann Alfred **Commission Expires** 11-06-15

DEPARTMENT:

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

	the .
By:	AND
Name:	FIRGOTHY K. IRVINE
	Duly authorized representative

Date:

THE STATE OF TEXAS § COUNTY OF TRAVIS §

This instrument was acknowledged before me on this day of <u>the</u>, 2011, by <u>Timoling livine</u>, duly authorized representative of the TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS, a public and official agency of the State of Texas, on behalf of said agency.

(Seal)



NOTARY WITHOUT BOND

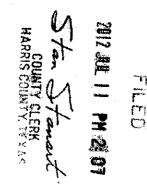
PREPARED BY:

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

Notary Public, State of Texas

AFTER RECORDING RETURN TO:

Texas Department of Housing and Community Affairs Portfolio, Mgmt. & Compliance Division P.O. Box 13941 Austin, Texas 78711-3941 Attn: Amy Hammond



T:\ldld\LURAs\LURAmendment20101213\MemorialDriveElderly96038LURAAmend20110627.doc Page 4 of 5 EXHIBIT "A"

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T:\ldld\LURAs\LURAmendment20101213\MemorialDriveElderly96038LURAAmend20110627.doc Page 5 of 5

EXHIBIT A TO DECLARATION - LEGAL DESCRIPTION



4900 Woodway, Sulls 1000 --- Houston, Texas 77056 --- (713) 993-0327 ---

METES AND BOUNDS DESCRIPTION 1.5613 ACRES (68,009 SQUARE FEET) JOHN AUSTIN SURVEY, ABSTRACT NUMBER 1 HARRIS COUNTY, TEXAS

RECORDER'S MEMORANDUM:

AEGUNDER'S MEMORANDUM: At the time of recordation, this instrument was found to be inadequate for the best photographic reproduction because of illegibility, carbon or photo copy, discolored paper, etc. All blockouts, additions and changes were present at the time the instrument was filed and recorded.

Being a tract or parcel containing 1,5613 acres (68,009 square leet) of land situated in the John Austin Survey, Abstract Number 1, Harris County, Texas; being that tract described under Harris County Clerk's File (H.C.C.F.) Number N396107; said acre tract being more particularly described as follows:

BEGINNING at a found 5/8-inch iron rod with plastic cap marking the intersection of the west Right-of-Way (R.O.W.) line of Hemphill Street (50.00 feet wide) with the south R.O.W. line of Memorial Way (formerly West Capitol Street, 50.00 feet wide at this point) and marking the northwest corner of the herein described tract;

THENCE, along the south R.O.W. line of Memorial Way by the following courses and distances:

North 89°50'00" East, 264.52 feet to a point from which a found chiseled "X" bears North 06°22'59" West, 0.15 feet:

South 85°55'49" East, 135.37 feet to a found chiseled "X" at a point at which the R.O.W. of Memorial Way becomes 60.00 feet wide;

North 89°50'00" East, 107.20 feet to a found 5/8-Inch Iron rod for the northeast corner of the herein described tract;

THENCE, departing the south R.O.W. of Memorial Way, South 00°10'00" East, 71.86 feet to a found 5/8-inch iron rod for the southeast corner of the herein described tract, and being in the northerly R.O.W. line of Memorial Drive (width varies) and In the arc of a curve;

THENCE, along the said northerly R.O.W. line the following courses and distances:

351.81 feet along the arc of a curve to the left, having a central angle of 08"34'32", a radius of 2350.51 feet, and a chord which bears South 75°07'10" West, 351.48 feet, to a point of reverse curvature.

179.26 feet along the arc of a curve to the right, having a central angle of 62°14'51", a radius of 165.00 feet and a chord which bears North 78°02'40" West, 170.57 feet to a found 5/8-inch Iron rod with plastic cap for the southwest corner of the herein described tract;

THENCE, departing said R.O.W. line, North 00°10'00" West, 135.31' feet to the POINT OF BEGINNING and containing 1.5613 acres (68,009 square feet) of land.

Compiled by: Ernst Roth, R.P.L.S. Checked by: Robert Gabler, R.P.L.S. Terra Surveying Company, Inc. 4900 Woodway, Suite 1000 Houston, Texas 77056 March 24, 1992 TSC Project Number 1920 9201 5 TSC Project Number 1830-9201-S BA MB15613.WS2

ANY PROVISION OF SHICK RESTRICTS THE SALE RENTAL, OR USE OF THE DESCRIPTION REAL PROTECTIVIES OF COLORIOR PACE STWALD ON BUNKFORCE ALL UNCER FEDERAL UNK THE STATE OF TEXAS COUNTY OF HARRIS Libridy carly hall the restured was FLED in Fae Hunter Sequence on the date and all the time stamped hences by micrael was day RECORDED, in the Official Public Records of Real Property of Hards for the state

JUL 11 2012

COUNTY CLERK HANNIS COUNTY, TEXAS





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

NOTICE OF CONFIDENTIALITY RIGHTS: EFFECTIVE JANUARY 1, 2004, IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

THE STATE OF TEXAS § COUNTY OF HARRIS §

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This First Amendment to Declaration of Land Use Restrictive Covenants for Low-Income Housing Credits ("Amendment") is executed to be effective as of the 4th day of April, 2000, and is executed by and between **MEMORIAL DRIVE ELDERLY**, **L.P.**, a Texas limited partnership (together with its successors and assigns, the "Project Owner") and the **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**, a public and official agency of the State of Texas (together with any successor to its rights, duties and obligations, the "Department").

WITNESSETH:

WHEREAS, on April 4, 2000, the Project Owner and the Department executed that certain Declaration of Land Use Restrictive Covenants For Low-Income Housing Credits (the "Declaration") which was recorded on July 19, 2000 under File Number U514998 in the Official Public Records of Real Property of Harris County, Texas; and

WHEREAS, the project Owner in consideration of a Multifamily Note in the amount of \$6,000,000.00 made payable to the U.S. Department of Housing and Urban Development, maturing in 35 years from the date of this Amendment, on or about February 1, 2040 ("Note");

WHEREAS, the Project Owner desires to impose additional use restrictions as set forth in Appendix A; and,

WHEREAS, the Project Owner and the Department desire to amend the Declaration in the manner provided hereinbelow.

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

FEB 23 PH 12:

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Hold For Land of America

\$20.00

APPENDIX A – ADDITIONAL USE RESTRCITIONS

1.

Longer Compliance Period and Extended Use Period

The Compliance Period shall be a period of twenty-four and five sixths (24 5/6) consecutive taxable years (24 years, 10 months) and the Extended Use Period shall be a period of thirty-nine and five sixths (39 5/6) consecutive taxable years (_39 years, 10 months), each commencing with the first year of the Credit Period, unless (i) said Note is prepaid before the maturity date of February 1, 2040, then in such event, the Compliance Period shall be a period of 20 consecutive taxable years and the Extended Use Period shall be a period of _35 consecutive taxable years.

2. The fifth (5th) complete paragraph on the first page of the Declaration shall be amended to read as follows:

"WHEREAS, the Project Owner has represented to the Department in the Project Owner's Low-Income Housing Tax Credit Application (the "Application"), authorized by the Department's Low-Income Rental Housing Tax Credit Rules (the "Department Rules"), that the Project Owner shall lease 75% of the units in the Project to individuals or families whose income is 60% or less of the area median gross income (including adjustments for family size), as more specifically provided herein;"

3. Each capitalized term not expressly defined herein shall have the meaning given to such term in the Declaration.

4. All of the remaining terms and provisions of the Declaration shall be and remain in full force and effect.

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

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

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PROJECT OWNER:

MEMORIAL DRIVE ELDERLY, L.P., a Texas

By: V.J. Memorial Corp., a Texas nonprofit corporation By: Name: <u>H. All'ison</u> Title: <u>DiRECTOP</u> Date: <u>1-31-2005</u>

DEPARTMENT:

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

By: Name: Edwina P. Carrington

Title: <u>Executive Director</u>

Date:

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THE STATE OF TEXAS

COUNTY OF HARRIS

Sworn to and subscribed before me on this \Im day of JANUARY 2005 by HORACE AllisON DiRector of V.J. MEMORIAL CORP., a Texas nonprofit corporation, General Partner of MEMORIAL DRIVE ELDERLY, L.P., a Texas limited partnership, on behalf of said company and limited partnership, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of said limited partnership, and that he/she executed the same as the act of such limited partnership for the purposes and consideration therein addressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _,2005.



Notary Pub

RECORDER'S MEMORANDUM: At the time of recordation, this instrument was found to be inadequate for the best photographic reproduction because # illegibility, carbon or photo copy, discolored paper, etc. All blockouts, additions and changes were present at the time the instrument was riled and recorded

COUNTY OF TRAVIS

THE STATE OF TEXAS

RRUARY dav of

This instrument was acknowledged before me on this , 200 5, by Edwina P. Carrington, Executive Director of the Texas Department of Housing and Community Affairs, a public and official agency of the State of Texas, on behalf of

said agency. (Seal)

DELORES GRONECK Notary Public, State of Texas My Commission Expires DECEMBER 30, 2007

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......... PREPARED Notary without Bond

Texas Department of Housing and Community Affairs Legal Services 507 Sabine St., 9th Floor Austin, Texas 78701 (512) 475-3902

Notary Public, State of Texas

AFTER RECORDING RETURN TO: Texas Department of/Housing and Community Affairs Portfolio, Mgmt & Compliance Division P.O. Box 13941/ Austin, Texas //871 -3941 Attn: Wendy/Quackenbush

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ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY SECURES OF COLOR OR RACE IS INVALID AND UNENFORCEASLE UNDER FEDERAL LAW THE STATE OF TEXAS COUNTY OF HARRIS I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me; and was duty RECORDED. In the Official Public Records of Real Property of Harris County, Texas on

FEB 2 3 2005

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Buraly 27 Supran COUNTY CLERK HARRIS COUNTY, TEXAS

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LARATION OF LAND USE RESTRI	CTIVE GOVENANTS FOR LOW-TNCOME HOU	SING CREDITS

DECLARATION OF LAND USE RESTRICTIVE QAWANANTS FOR LOW-INCOME HOUSING CREDITS 07/19/00 101371527 II514998 \$49.00

TDHCA #: 96038

CREDITS (this "Declaration"), dated as of April 4,2000

07/19/00 101371527 U514998 \$49.00 THIS DECLARATION OF LAND USE RESTRICTIVE COVENANTS FOR LOW-INCOME HOUSING TAX

____, is made by and between (together with its successors

Memorial Drive Elderly, L.P. (together with its successors and assigns, the "Project Owner") and The Texas Department of Housing & Community Affairs, an instrumentality of the State of Texas and a public corporation (together with any successor to its rights, duties and obligations, the "Department"), and is given by Project Owner as a condition precedent to [the determination that the Project, as defined herein, satisfies the requirements of the State of Texas's Qualified Allocation Plan] the allocation of lowincome housing tax credits (the "Tax Credits"), pursuant to Section 42 of the Internal Revenue Code of 1986, as amended, and regulations promulgated pursuant thereto (the "Code"), by the Department. This Declaration incorporates the extended low-income housing commitment required by Section 42(h)(6) of the Code and is promulgated in accordance with the provisions of Chapter 2306, Tex. Gov. Code, (the "Act"), as may be amended from time to time.

WITNESSETH:

WHEREAS, the Project Owner is or shall be the Project Owner of a low income rental housing development, known as or to be known as 2100 Memorial

(the "Project Improvements"), on real property located in the City of <u>Houston</u> County of <u>Harris</u>, State of Texas, more particularly described in Exhibit A hereto (the "Project Land") (the Project Improvements and the Project Land being collectively referred to herein as the "Project");

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

• WHEREAS, the Project Owner has applied to the Department for an allocation of Tax Credits to the Project in an amount not to exceed \$ ______ Tax Credit dollars annually;

WHEREAS, the Project Owner has represented to the Department in the Project Owner's Low-Income Housing Tax Credit Application (the "Application"), authorized by the Department's Low-Income Rental Housing Tax Credit Rules (the "Department Rules"), that the Project Owner shall lease 40 % of the units in the Project to individuals or families whose income is 60 % or less of the area median gross income (including adjustments for family size), as more specifically provided herein;

WHEREAS, the Department has determined that the Project would support an annual allocation of Tax Credits in the amount of \$ 866,469 ;

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

WHEREAS, the Project Owner is subject to the regulatory powers of the Department and other terms and conditions of chapter 2306, Tex. Gov. Code;

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

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

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

PAGE 1

SECTION 1 - DEFINITIONS

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

"Act" means the Texas Government Code, Chap. 2306, as amended or any corresponding provision or provisions of succeeding law as it or they may be amended from time to time.

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

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

"Board" means the governing Board of the Department.

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

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

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

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

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

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

"Low-Income" means, with respect to any Tenant, an income level not exceeding 50% or 60% of Area Median Gross Income, adjusted for family size, as provided in Section 4 hereof, unless an alternative income level shall be set forth at Appendix A hereto.

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

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

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

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

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

533-55-2210

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

"State" means the State of Texas.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PAGE 4



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(j) The Project Owner agrees to notify the Department in writing prior to any sale, transfer or exchange of the entire Project or any building therein, and to provide to the Department the name(s) and address(es) and financial reports, as applicable, of the prospective successor owner and operator of the Project or building, so the Department can determine the economic viability of such prospective successor and such Project or building and whether such prospective successor is acceptable as Project Owner under the Department Rules. The Project Owner further agrees to notify the Department in writing prior to any change in the identity of a General Partner or other principal of the Project Owner, and to provide to the Department the name(s) and address(es) and financial reports, as applicable, of any successor or additional General Partner or principal, so the Department can determine whether such party is acceptable in such role with the Project Owner under the Department Rules.

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

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

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

(n) The Project Owner agrees, warrants, and covenants to comply with all law, ordinances, statutes, codes, orders, rules, regulations and decrees of any Governmental Authority applicable to the Owner of the Project, including, without limitation, the following: the Civil Rights Act of 1964 (42 U.S.C. 2000(d); Executive Order 11-63, as amended by Executive Order 12259; Executive Order 11246; Age Discrimination Act of 1975 (42 U.S.C. 6101 et seg.); Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.); Fair Credit Reporting Act (15 U.S.C. 1681 et seq.); Fair Housing Act (42 U.S.C. 3601 et seq.); the Americans with Disabilities Act of 1990 (P.L. 101-336; Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); Architectural Barriers Act of 1968 (42 U.S.C. 4151 et seq.); Section 3 of the Housing and Urban Development Act of 1968; Executive Orders 11625, 12432 and 12138, as amended; the Copeland "Anti-Kickback" Act (18 U.S.C. § 874 et seq.); the Davis-Bacon Act (40 U.S.C. § 276a et seq.); Sections 103 and 107 of the Work Hours and Safety Standards Act. (40 U.S.C. § 327 et seq.); the Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 U.S.C. § 4201 et seq.); the Housing and Community Development Act of 1974; the National Environmental Policy Act (42 U.S.C. § 4321 et seq.); ("NEPA"); the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. § 4321 et seq.); the State of Texas Senate Bill 1356; Title 8, and Chapter 92 of the Texas Property Code; Solid Waste Disposal Act TEX. HEALTH & SAFETY CODE Ann. Ch. 361 (Vernon's 1992); Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act. TEX. HEALTH & SAFETY CODE Ann. Ch 363 (Vernon's 1992); County Solid Waste Control Act. TEX. HEALTH & SAFETY CODE Ann. Ch 364 (Vernon's 1992); Texas Clean Air Act, TEX. HEALTH AND SAFETY CODE Ann. Ch. 382 (Vernon's 1992); and Hazardous Communication Act, TEXAS HEALTH AND SAFETY CODE Ann. Ch. 502 (Vernon's 1992); and such Governmental Requirements as may be from time to time amended or superseded and all of their implementing regulations, as may be amended.

SECTION 4 - INCOME RESTRICTIONS/RENTAL RESTRICTIONS

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

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

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

(Check applicable percentage election)



533-55-2213

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

(c) The Project will contain a total of $\underline{197}$ Units (including Units occupied by a resident manager or other employee, such that they are not treated as "residential rental units" for purposes of Section 42 of the Code), of which at least $\underline{75}$ percent of the Units treated as residential rental units will be Low-Income Units. The amount of Tax Credits allocated to the Project is based on the requirement that the Minimum Applicable Fraction for each building in the Project will be as specified, building-by-building, at Appendix A hereto. During the Term of this Declaration, Units at the Project shall be leased and rented or made available to members of the general public who qualify as Low-Income Tenants, such that each building in the Project shall at all times satisfy the Minimum Applicable Fraction for such building. The Project Owner's failure to ensure that each building in the Project complies with such requirement will cause the Department to report such fact to the Service and may result in the reduction and recapture by the Service of Tax Credits, as well as other enforcement action.

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

(e) The Project Owner shall not discriminate on the basis of race, creed, sex, age or national origin in the lease, use or occupancy of the Project Improvements or in connection with the employment or application for employment of persons for the operation and management of the Project Improvements and shall not deny admission to any person exclusively on the basis of such person receiving rent assistance payments under a local, state, federal or other housing assistance program, including, but not limited to, Section 8 of the United States Housing Act of 1937 as amended.

SECTION 5 - TERM OF DECLARATION

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

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

(1) with respect to any building in the Project, on the date such building is acquired by foreclosure (or instrument in lieu of foreclosure), upon the recorded declaration of termination of the party so acquiring the building, unless the Secretary or his delegate determines that such acquisition is part of an arrangement with the taxpayer a purpose of which is to terminate such period. If any party acquiring a building by foreclosure (or instrument in lieu of foreclosure) fails to record a declaration terminating this Declaration, the building shall remain subject to this Declaration, and the eligibility of such party to receive Tax Credits shall not be adversely affected, if such party continues to comply with Section 42 of the Code and the terms of this Declaration; or

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

DECLARATION OF LAND USE RESTRICTIVE COVENANTS FOR LOW INCOME HOUSING TAX CREDITS lura99fnl.doc

PAGE 6

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

SECTION 6 - ENFORCEMENT, ADMINISTRATION AND COMPLIANCE

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

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

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

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

(e) The Project Owner agrees that the Department may enforce all state and federal law through this Declaration, and utilize for such purpose any and all remedies available to the Department including but not limited to administrative or judicial action, appointment of trustee or receiver, or assume the management and operations of the Development.

(f) The Project Owner agrees the Department may, at reasonable times and upon adequate notice at any time during the construction, rehabilitation, or operation of the Project, enter and inspect the Project to evaluate its physical and financial condition, construction, rehabilitation, operation, management and maintenance.

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

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

533-55-2214



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

(j) The Project Owner agrees to indemnify and hold harmless the Board members, Department officers, directors and employees from and against all liabilities, losses, claims, damages, judgments, costs and expenses (including, without limitation, reasonable attorneys' fees) incurred by the Department as a result of any material inaccuracy in any of the representations and warranties contained in this Declaration, or as a result of any action by the Project Owner, including claims by third parties.

(k) The Project Owner agrees that should any claims, demands, suits or other legal proceedings be made or instituted by any person against the Department which arise out of any of the matters relating to this Declaration, Project Owner will cooperate fully with the Department in the defense or other disposition thereof.

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

(m) The Project Owner agrees to notify the Department if any federal grant or loan of below market rate federal funds is received with respect to the Project at any time during the Compliance period.

SECTION 7 - FEES

(a) To compensate the Department for its responsibilities pursuant to the Act and Section 42(m)(1)(B)(iii) of the Code, the Project Owner shall pay to the Department an annual administrative fee for the first twelve month period of this Declaration in the amount shown below. This fee shall be based on the total number of Low-Income Units in the development. In no event shall the fee be less than \$100.

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

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

(b) If the Department shall find the Project not to be in compliance with the terms hereof, the Project Owner shall pay to the Department (i) an additional administrative fee in an amount prescribed from time to time by the Department, which amount for the first twelve month period of this Declaration, shall not exceed \$25 per Unit (without regard to the number of Low-Income Units), for additional monitoring and enforcement activities undertaken with respect to the Project and (ii) all amounts required to reimburse the Department for its expenses in performing such additional monitoring and enforcement activities. The administrative fee payable in the event of noncompliance shall be in addition to, and distinct from, the amount due pursuant to Section 7(a), as well as any reimbursements of costs and legal fees to which the Department may be entitled as a result of judicial enforcement activities, and any right to be compensated therefor, for a period of up to three years following its most recent finding of noncompliance with respect to the Project.

(c) For each successive twelve month period following the initial twelve month period of this Declaration, the administrative fees payable to the Department hereunder shall be the amounts established for the most recent administrative fee, multiplied by the increase in the Consumer Price Index for All Urban Consumers (CPI-U) published by the Bureau of Labor Statistics of the United States Department of Labor (or generally recognized successor to such Index) for the same twelve month period of time.

(d) The Project Owner agrees that it will pay the annual administrative fee at the times required by the Department therefor and that it will pay all additional charges, fees, and expenses assessed hereunder by the Department within ten (10) days of receipt of written notice of any such assessment.

SECTION 8 - MISCELLANEOUS

(a) <u>Severability</u>. This Declaration is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Declaration or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Declaration and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

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

To the Department:	Texas Department of Housing & Community Affairs	
	507 Sabine, Suite 400	
	Austin, Texas 78701	
	Attn: Low Income Housing Tax Credit Program	
To the Project Owner:	Memorial Drive Elderly, L.P.	
	4900 Woodway, Suite 880	
	Houston, Texas 77056	
	Attn: Michael G. Robinson	

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

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

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

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

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

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

533-55-2216

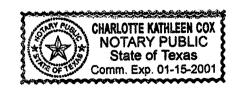
IN WITNESS WHEREOF, the Project Owner has caused this Declaration to be signed by its duly authorized representative, as of the day and year first written above. TEXAS DEPARTMENT OF HOUSING AND **PROJECT OWNER:** Memorial Drive Elderly, L.P. COMM NTY AFFAIRS By: STATE OF Texas STATE OF TEXAS **COUNTY OF Harris** COUNTY OF TRAVIS This instrument was acknowledged before me on the This instrument was acknowledged before me on the 2000 _4th_day of April day of by Michael G. Robinson bv Name Manager of General Partner Title Title of the Texas Department of Housing and Community of Memorial Drive Elderly, L.P. Project Owner Name Affairs, a public and official department of the State of Texas, on behalf of said department. a Limited Partnership Type of Partnership on behalf of said Limited Partnership Type of Partnership

Sackman

Notary Public

ANNE BLACKMAN MY COMMISSION EXPIRES JUNE 26, 2002

Notary Public, State of Texas



DECLARATION OF LAND USE RESTRICTIVE COVENANTS FOR LOW INCOME HOUSING TAX CREDITS lura99fnl.doc

ADDENDUM A TO DECLARATION - CONSENT AND SUBORDINATION OF LIENHOLDER

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

The undersigned lienholder ("Lienholder") hereby consents to the execution by Project Owner of the foregoing Declaration for <u>2100 Memorial</u> (the "Project Improvements").

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

Lienholder acknowledges and agrees that, pursuant to Section 5(b)(1) of the Declaration, the Declaration will terminate on the date the Project is acquired by foreclosure or deed in lieu of foreclosure, upon the recorded declaration of the party so acquiring the building (unless it is determined that such acquisition is part of an arrangement with Borrower a purpose of which is to terminate such period); provided, however, Lienholder hereby acknowledges and agrees that the acquisition of the Project by any party by foreclosure or instrument in lieu of foreclosure shall be subject to the provisions of Section 5(c) of the Declaration, which provisions shall continue in full force and effect for a period of three (3) years from the date of such acquisition; provided, further, that such provisions shall not apply during such period if and to the extent that compliance therewith is not possible as a consequence of damage, destruction, condemnation or similar event with respect to the project.

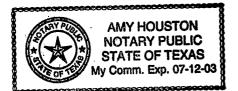
Executed to be effective the 18th day of Apric

LIENHOLDER: Bank of America BUTTERWORTH

533-55-2218

STATE OF COUNTY OF

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that <u>ChuChy H. Buterworth</u>, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day, being informed of the contents of such document, executed the same voluntarily. Given under my hand, official seal this <u>light</u> day of <u>ADII</u>

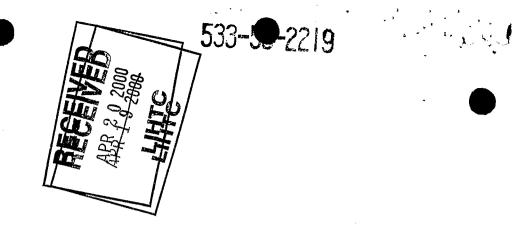


Notary Public

My Commission expires:

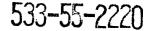
DECLARATION OF LAND USE RESTRICTIVE COVENANTS FOR LOW INCOME HOUSING TAX CREDITS ADDENDUM A TO DECLARATION - CONSENT AND SUBORDINATION OF LIENHOLDER lura99fnl.doc





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EXHIBIT A TO DECLARATION - LEGAL DESCRIPTION



' 4900 Woodway, Sulle 1000 - Houston, Texas 77056 - (713) 993-0327 - Fax (713) 993-9231

METES AND BOUNDS DESCRIPTION 1.5613 ACRES (68,009 SQUARE FEET) JOHN AUSTIN SURVEY, ABSTRACT NUMBER 1 HARRIS COUNTY, TEXAS

Being a tract or parcel containing 1.5613 acres (68,009 square feet) of land situated in the John Austin Survey, Abstract Number 1, Harris County, Texas; being that tract described under Harris County Clerk's File (H.C.C.F.) Number N396107; said acre tract being more particularly described as follows:

BEGINNING at a found 5/8-inch iron rod with plastic cap marking the intersection of the west Right-of-Way (R.O.W.) line of Hemphill Street (50.00 feet wide) with the south R.O.W. line of Memorial Way (formerly West Capitol Street, 50.00 feet wide at this point) and marking the northwest corner of the herein described tract;

THENCE, along the south R.O.W. line of Memorial Way by the following courses and distances:

North 89°50'00" East, 264.52 feet to a point from which a found chiseled "X" bears North 06°22'59" West, 0.15 feet;

South 85°55'49" East, 135.37 feet to a found chiseled "X" at a point at which the R.O.W. of Memorial Way becomes 60.00 feet wide;

North 89°50'00" East, 107.20 feet to a found 5/8-inch iron, rod for the northeast corner of the herein described tract;

THENCE, departing the south R.O.W. of Memorial Way, South 00°10'00" East, 71.86 feet to a found 5/8-inch iron rod for the southeast corner of the herein described tract, and being in the northerly R.O.W. line of Memorial Drive (width varies) and in the arc of a curve;

THENCE, along the said northerly R.O.W. line the following courses and distances:

351.81 feet along the arc of a curve to the left, having a central angle of $08^{\circ}34'32''$, a radius of 2350.51 feet, and a chord which bears South $75^{\circ}07'10''$ West, 351.48 feet, to a point of reverse curvature.

179.26 feet along the arc of a curve to the right, having a central angle of $62^{\circ}14'51''$, a radius of 165.00 feet and a chord which bears North $78^{\circ}02'40''$ West, 170.57 feet to a found 5/8-inch iron rod with plastic cap for the southwest corner of the herein described tract;

THENCE, departing said R.O.W. line, North 00°10'00" West, 135.31' feet to the POINT OF BEGINNING and containing 1.5613 acres (68,009 square feet) of land.

Compiled by: Ernst Roth, R.P.L.S. Checked by: Robert Gabler, R.P.L.S. Terra Surveying Company, Inc. 4900 Woodway, Suite 1000 Houston, Texas 77056 March 24, 1992 TSC Project Number 1830-9201-S BA MB15613.WS2

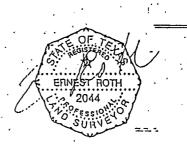
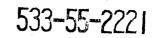


EXHIBIT "A"

DECLARATION OF LAND USE RESTRICTIVE COVENANTS FOR LOW INCOME HOUSING TAX CREDITS EXHIBIT A TO DECLARATION - LEGAL DESCRIPTION lura99fnl.doc





APPENDIX A - ADDITIONAL USE RESTRICTIONS

(Check all restrictions which were elected at the time of Application.)

Additional Rent and Occupancy Restrictions

At least <u>20</u> Units in the Project must be occupied by Tenants at or below <u>50</u>% of Area Median Gross Income. The rents for these Units must not be higher than the allowable tax credit rents at the <u>50</u>% AMGI level.

Additional Rent and Occupancy Restrictions for Developments with below market rate HOME funding included in the total eligible basis and utilizing the "9%" Applicable Percentage

At least 40% Units in the Project must be occupied by Tenants at or below 50% of Area Median Gross Income.

X Longer Compliance Period and Extended Usc Period

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

Material Participation by Qualified Nonprofit Organization

Throughout the Compliance Period, a "qualified nonprofit organization" within the meaning of Section 42(h)(5)(C) of the Code shall control the Project as defined in the QAP and shall materially participate (within the meaning of Section 469(h) of the Code) in the development and operation of the Project. At the time this Declaration is filed, the qualified nonprofit organization which shall own such interest and shall so materially participate in the development and operation of the Project is __________, The Project Owner shall notify the Department (i) of any change in the status or role of such organization with respect to the Project and (ii) if such organization is proposed to be replaced by a different qualified nonprofit organization.

Historically Underutilized Businesses (HUB)

Throughout the Compliance Period, unless otherwise permitted by the Department, the HUB shall remain the Managing General Partner. The HUB must also maintain regular, continuous, and substantial participation in the development, operation and ownership of the project. At the time this Declaration is filed, the HUB which serves as the Managing General Partner is _______. The Project Owner shall notify the Department (i) of any change in the status or role of such organization with respect to the Project and (ii) if such organization is proposed to be replaced by a different qualified HUB.

X Supportive Services

Throughout the Compliance Period, unless otherwise permitted by the Department, a Local Tax Exempt Organization shall provide the following special supportive services that would not otherwise be available to the tenantsNcighborhood Centers

continuing education, job referrals, budget counseling, social activities, health related activities

At the time this Declaration is filed, the organization(s) providing these services is <u>Neighborhood</u> <u>Centers</u>. The Project Owner shall notify the Department (i) of any change in the status or role of such organization with respect to the Project and (ii) if such organization is proposed to be replaced by a different qualified Tax Exempt Organization.

DECLARATION OF LAND USE RESTRICTIVE COVENANTS FOR LOW INCOME HOUSING TAX CREDITS APPENDIX A - ELDERLY PROJECTS

APPENDIX A - ADDITIONAL USE RESTRICTIONS - CONTINUED

533-55-2222

Transitional Housing for the Homeless

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

Public Housing Waiting Lists

Throughout the Compliance Period, unless otherwise permitted by the Department, the Project Owner shall consider prospective Tenants referred to from the waiting list of the Housing Authority of <u>City</u> of Houston

ELDERLY DEVELOPMENTS1

[^X] 1996 Elderly Projects

Throughout the Compliance Period, unless otherwise permitted by the Department, this project must conform to the Federal Fair Housing Act and must be a project which:

(i) is intended for, and solely occupied by persons 60 years of age or older (excluding those occupied by an employee or owner); and

(ii) adheres to policies and procedures which demonstrate a firm commitment by the owner and manager to provide housing for persons 60 years of age or older.

1997 Elderly Projects

Throughout the Compliance Period, unless otherwise permitted by the Department, this project must conform to the Federal Fair Housing Act and must be a project:

(i) in which all of the Units are intended for, and occupied by at least one person who is 62 years of age or older (excluding those occupied by an employee or owner); and

(ii) that adheres to policies and procedures which demonstrate a firm commitment by the owner and manager to provide housing for Persons 62 years of age or older.

1998 & 1999 Elderly Projects

Throughout the Compliance Period, unless otherwise permitted by the Department, this project must conform to the Federal Fair Housing Act and must be a project which:

(I) is intended for, and solely occupied by Persons 62 years of age or older; or

(ii) in which all Units (excluding those occupied by an employee or owner) are constructed for, and occupied by at least one Person who is 60 years of age or older; and

(iii) which adheres to policies and procedures which demonstrate a firm commitment by the owner and manager to provide housing for Persons 60 years of age or older.



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



APPENDIX A - ADDITIONAL USE RESTRICTIONS - HANDICAPPED ACCESSIBILITY

(Only Projects which made a Handicapped Accessibility election should include this page as part of the LURA.)

Handicapped Accessibility for 1996 Allocations

Throughout the Compliance Period, unless otherwise permitted by the Department, the percentage of Units which are/will be designed to meet American National Standards for buildings and facilities providing accessibility and usability for Persons with Disabilities [ANSI A117.1 - 1986 or successor] and will conform to the Fair Housing Act is indicated below. "Equipped" means that features that make the Units fully usable to such persons are installed in the Units at the time of construction or provisions have been included in construction for easy modification to meet the ANSI A117.1 standards. For Units targeted for tenants with mental disabilities, the Project must maintain a referral agreement with an entity that provides on-site supportive services specifically designed for such tenants.

- 6% to 10% of Units are set-aside for persons with physical disabilities or targeted for persons with mental disabilities.
- 11% to 15% of Units are set-aside for persons with physical/mental disabilities.
- 16% + of Units are set-aside for persons with physical/mental disabilities.

Handicapped Accessibility for 1997 and 1998 Allocations

Throughout the Compliance Period, unless otherwise permitted by the Department, the percentage of Units which are/will be designed to meet American National Standards for buildings and facilities providing accessibility and usability for Persons with Disabilities (ANSI A117.1 - 1992 or successor) and will conform to the Fair Housing Act is indicated below. "Equipped" means that features that make the Units fully usable to such persons are installed in the Units at the time of construction or provisions have been included in construction for easy modification to meet the ANSI A117.1 standards. The Department will require a minimum of two years during which set-aside units must either be occupied by tenants who are physically or mentally disabled or held vacant while being marketed to such tenants. If after this two year period, the Project Owner is unable to locate qualified Persons with disabilities following a good-faith effort, the units may be rented to tenants without disabilities, provided that the next available unit (from among those set-aside for Persons with disabilities) shall first be made available to Persons with disabilities. To comply with this provision all Project Owners must maintain a waiting list of qualified tenants with disabilities throughout the Compliance Period. When such Units become available, Project Owners must contact persons on the waiting list and/or provide notice to local service providers that such Units are available.

6% to 10% of Units are set-aside for persons with physical or mental disabilities;

- 11% to 15% of Units are set-aside for persons with physical/mental disabilities; or,
- 16% + of Units are set-aside for persons with physical/mental disabilities.

DECLARATION OF LAND USE RESTRICTIVE COVENANTS FOR LOW INCOME HOUSING TAX CREDITS APPENDIX A - HANDICAPPED ACCESSIBILITY

APPENDIX A - ADDITIONAL USE RESTRICTIONS - HANDICAPPED ACCESSIBILITY

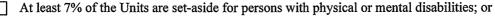
(Only Projects which made a Handicapped Accessibility election should include this page as part of the LURA.)

533-55-2224

Handicapped Accessibility for 1999 Allocations – Option §50.6(c)(6)(B)(i)

Throughout the Compliance Period, unless otherwise permitted by the Department, the Project Owner agrees to set aside units for Persons with Disabilities. The Department will require a minimum of nine months during which the set aside units must either be occupied by tenants who are physically or mentally disabled or held vacant while being marketed to such tenants. The nine month period will begin on the date that each building receives its certificate of occupancy. For buildings which do not receive a certificate of occupancy, the nine month period will begin on the placed in service date as provided in the Cost Certification Manual. When a qualified tenant is located, the Project Owner will be responsible for adapting the unit per the tenant's requirements. The cost of adapting the unit will be borne by the Project Owner. If the Project Owner is unable to locate qualified Persons with Disabilities following a good-faith effort throughout the nine month set aside period, then the units may be rented to tenants without disabilities, provided that the next available unit (from among those set aside for Persons with Disabilities) shall first be made available to Persons with Disabilities. To comply with this provision, the Project Owner must maintain a waiting list of qualified tenants with disabilities throughout the Compliance Period. Each time a Unit set aside for Persons with Disabilities becomes available, the Project Owner must contact persons on the waiting list and/or provide notice to local service providers that such Units are available. If the waiting list or the local service provider cannot locate a qualified tenant for the next available unit, then the unit may be rented to a tenant without disabilities.

- (a) For physical disabilities, such Units must be designed to meet American National Standards for buildings and facilities providing accessibility and usability for Persons with Disabilities (ANSI A117.1 1986) and will conform to the Fair Housing Act.
- (b) For persons with mental disabilities, there must be a contract to provide appropriate supportive services for persons with mental disabilities between the Project Owner and an experienced service provider.



at least 10% of the Units are set-aside for persons with physical or mental disabilities.

Handicapped Accessibility for 1999 Allocations – Option §50.6(c)(6)(B)(ii)

The subject development provides Units specifically accessible to persons with physical, visual or hearing disabilities as required by §504 of the Rehabilitation Act of 1973. As required by §504, a one time inspection and corresponding Accessibility Transition Plan will be required upon completion of construction. Project Owners making this election must also comply with the Fair Housing Act.

At a minimum, 5% of the units must be usable for persons with mobility impairments and 2% of the units shall be made accessible for people with hearing or visual impairments; or

at a minimum 10% of the units must be usable for persons with mobility impairments and 2% of the units shall be made accessible for people with hearing or visual impairments.

DECLARATION OF LAND USE RESTRICTIVE COVENANTS FOR LOW INCOME HOUSING TAX CREDITS APPENDIX A - HANDICAPPED ACCESSIBILITY

APPENDIX A - ADDITIONAL USE RESTRICTIONS - RIGHT OF FIRST REFUSAL

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

533-55-77

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

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

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

(i) the principal amount of outstanding indebtedness secured by the building (other than indebtedness incurred within the 5-year period ending on the date of the sale to the tenants), and

(ii) all Federal, State, and local taxes attributable to such sale.

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

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

(Check Only One)

(i) by entering into an agreement with a specific qualified nonprofit organization (or tenant organization) providing for such right of first refusal. The qualified nonprofit organization will be _________. In the event that this organization is not operating when the right of first refusal is to be made, the right of first refusal must be provided to

operating when the right of first refusal is to be made, the right of first refusal must be provided to another qualified nonprofit organization.

(ii) by entering into an agreement with the Department providing that upon the earlier of:

(I) the Sponsor's determination to sell the Project, or

(II) the Sponsor's request to the Department, pursuant to \$42 (h) (6) (I)² of the Code, to find a buyer who will purchase the Project pursuant to a "qualified contract" within the meaning of \$42 (h) (6) (F) of the Code, the Department shall be authorized to identify a qualified nonprofit organization (or tenant organization) to which the Sponsor shall sell the Project at the minimum purchase price provided in \$42 (i) (7) (B) of the Code (as fully described above).

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

APPENDIX A - ADDITIONAL USE RESTRICTIONS - RIGHT OF FIRST REFUSAL

533-55-2226

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

Right of First Refusal to Tenant or Qualified Nonprofit Organizations for 1998 and 1999 allocations

The Project Owner has entered into an Agreement for Provision of the Right of First Refusal with the Department. If at any time after the fifteenth year of the Compliance Period, the Project Owner shall determine to sell the Project, this agreement shall serve as evidence that the sponsor agrees to provide, and provides, to a qualified nonprofit organization (as defined in $\S42$ (h) (5) (C) of the code) or a tenant organization, a right of first refusal to purchase the Project for the minimum purchase price provided in, and in accordance with the requirements of $\S42$ (i) (7) (B) of the Code as shown below.

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

(i) the principal amount of outstanding indebtedness secured by the building (other than indebtedness incurred within the 5-year period ending on the date of the sale to the tenants), and

(ii) all Federal, State, and local taxes attributable to such sale.

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

Sponsor agrees that the LURA with respect to the Project will, in substance, contain the following terms:

(i) Upon the earlier to occur of:

(I) the Sponsor's determination to sell the Project, or

(II) the Sponsor's request to the Department, pursuant to \$42 (h)(6)(I) of the Code, to find a buyer who will purchase the Project pursuant to a "qualified contract" within the meaning of \$42 (h)(6)(F) of the Code, the Sponsor shall provide a notice of intent to sell the Project ("Notice of Intent") to the Department and to such other parties as the Department may direct at that time. If the Sponsor determines that it will sell the Project at the end of the Compliance Period, the Notice of Intent shall be given no later than two years prior to expiration of the Compliance Period.

(ii) During the two years following the giving of Notice of Intent, the Sponsor may enter into an agreement to sell the Project only in accordance with a right of first refusal for sale at the Minimum Purchase Price with parties in the following order of priority:

(I) during the first six-month period after the Notice of Intent, only with a Qualified Nonprofit Organization that is also a community housing development organization, as defined for purposes of the federal HOME Investment Partnerships Program at 24 C.F.R. § 92.1 (a "CHDO") and is approved by the Department;

(II) during the second six-month period after the Notice of Intent, only with a Qualified Nonprofit Organization or a Tenant Organization; and

(III) during the second year after the Notice of Intent, only with the Department or with a Qualified Nonprofit Organization approved by the Department or a Tenant Organization approved by the Department.

(iii) After the later to occur of (I) the end of the Compliance Period or (II) two years from delivery of a Notice of Intent, the Sponsor may sell the Project without regard to any right of first refusal established by the LURA if: (x) no offer to purchase the Project at or above the Minimum Purchase Price has been made by a Qualified Nonprofit Organization, a Tenant Organization or the Department, or (y) a period of 120 days has expired from the date of acceptance of such offer without the sale having occurred, provided that the failure to close within such 120-day period shall not have been caused by the Sponsor or matters related to the title for the Project.

(iv) At any time prior to the giving of the Notice of Intent, the Sponsor may enter into an agreement with one or more specific Qualified Nonprofit Organizations and/or Tenant Organizations to provide a right of first refusal to purchase the Project for the Minimum Purchase Price, but any such agreement shall only permit purchase of the Project by such organization in accordance with and subject to the priorities set forth in paragraph (ii) of this section.

(v) The Department shall, at the request of the Sponsor, identify in the LURA a Qualified Nonprofit Organization or Tenant Organization which shall hold a limited priority in exercising a right of first refusal to purchase the Project at the Minimum Purchase Price, in accordance with and subject to the priorities set forth in paragraph (ii) of this section.

APPENDIX A - MINIMUM APPLICABLE FRACTION BY BUILDING

533-55-2227

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Building		Minimum Applicable
Number	Building Identification Number (BIN)	Fraction
1.	TX- 96-00532	
2.	TX-	
3.	TX-	
4.	TX-	
5.	TX-	
6.	TX-	
7.	TX-	<u></u>
8.	TX-	
9.	TX-	
10.	TX-	
11.	TX-	
12.	TX-	
13.	TX-	
14.	TX-	
15.	TX-	<u></u>
16.	TX-	
17.	TX-	
18.	TX-	
19.	TX-	·····
20.	TX-	
21.	TX-	
22.	TX-	
23.	TX-	<u>,</u>
24.	TX-	
25.	TX-	· ·
26.	 TX-	<u>_</u>
27.		·
28.	TX-	
29.	 TX-	
30.	TX-	
31.	TX-	
32.	 TX-	, <u></u> _, <u></u> , <u></u> , <u></u> , <u></u> , <u></u> , <u></u> , <u></u> _, <u></u> , <u></u> _, <u></u> , <u></u> _, <u></u> _, <u></u> , <u></u> _, <u></u> , <u></u> _, <u></u> , <u></u> _, <u></u> ,
33.	TX-	
34.	TX-	
35.	TX-	·
35. 36.	TX-	
30. 37.	TX-	
	TX-	Annes
38.	17-	

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RECORDERS MEMORANDUM AT THE TIME OF RECORDATION, THIS INSTRUMENT WAS FOUND TO BE INADEQUATE FOR THE BEST PHOTOGRAPHIC REPRODUCTION BECAUSE OF ILLEGIBILITY, CARBON OR PHOTO COPY, DISCOLORED PAPER, ETC.

533-55-2228

ANY PROVISION HEREN WARCH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL PROPERTYBECALSE OF COLOR OR RACE IS INVALD AND UNENFORCEABLE UNDER FEDERAL LAW THE STATE OF TEXAS COUNTY OF HARRIS I haraby cattiny that this instrument was FLED in File Number Sequence as the data the time stamped hereen by may and was duly RECORDED, in the Official Public Records of Real Preparty of Harris County, Texas on

JUL 1 9 2000



COUNTY CLERK

HARRIS COUNTY TEXAS

• • • •

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LONE STAR LEGAL AID

P.O. Box 398, Houston, Texas 77001-0398 Tel: (713) 652-0077, ext. 1154 • Fax: (713) 652-3814

April 2, 2019

Rosalio Banuelos, Director Asset Management Division Texas Department of Housing and Community Affairs 221 East 11th Street Austin, Texas 78701-2410

Re: CMTS #96038/1500; 2100 Memorial Drive, Houston, Harris County, Texas

Dear Mr. Banuelos:

Lone Star Legal Aid represents a number of current and former tenants of the project located at 2100 Memorial Drive in a lawsuit against the Houston Housing Authority ("HHA") and Memorial Drive Elderly, L.P. ("MDE"), including Connie Castillo, Sheila Henderson, Paul Blinn, Kathleen Koenig, Ronald Castro, Calvin Mills, Marlistine Marlei Cannedy, Jerry Dohalick, Melitta Schulte, Rosemary Sharp, Billy Roy Brawdy, Florentina Rodriguez, Judith Hudnall, Larry Jackson, Laverne Fielder, Wallace Roland, Dorothy Shelley, William Hamilton, Edna Besiant, George Horan, Gracie Garcia, Stephen Lormore, Lilian Beaty, Roger Williams, Edward Erwin and Stefani Maher.

Many, if not all, of the current tenants at 2100 Memorial received a notice last week that MDE was asking the Texas Department of Housing and Community Affairs ("TDHCA") to approve an amendment to the applicable land use restriction agreement ("LURA") to permit demolition of the building and the construction of a new building. Attached as Exhibit A is a copy of this notice. In effect, the amendment would authorize the project owner to avoid providing affordable housing to the elderly on this property for a period of three years while the demolition and construction occurred, and three years would be added to the end of the compliance period. As required by 10 T.A.C. § 10.405(b)(2) and (3), this document gives notice that a public hearing on this requested LURA amendment would be held on April 2, 2019 at 2:00 p.m. This letter reflects the opposition of current and former tenants to this application for a LURA amendment as it is currently worded. We oppose this application for a number of reasons.

1. The scope of the proposed LURA amendment is unprecedented.

First, the scope of this proposed LURA amendment is unprecedented, and you recognized that when we discussed this matter over the telephone on March 28th. Most LURA amendments seen by the undersigned add duties upon a project owner by extending the compliance period or imposing new obligations like a promise not to evict

Lone Star Legal Aid is a United Way Agency



tenants without good cause. See original LURA and first two amendments to the LURA already approved by TDHCA for this property attached hereto as Exhibits B-D. Bv contrast, this proposed LURA amendment might be construed to override a number of provisions in the LURA providing protections to tenants. Specifically, the original LURA applicable to 2100 Memorial prohibits demolition and requires the project owner to use its best efforts to repair the building when it is damaged. See ¶s 4(k) and 4(l) of the LURA. Exhibit B. As required by 26 U.S.C. § 42(g)(6)(B), the original LURA applicable to 2100 Memorial further provides that "THE PROJECT OWNER . . . HEREBY AGREES THAT . . . ANY INDIVIDUAL WHO MEETS THE APPLICABLE INCOME LIMITATION UNDER SECTION 42 (WHETHER PROSPECTIVE, PRESENT, OR FORMER TENANT) SHALL BE ENTITLED, FOR ANY BREACH OF THE PROVISIONS HEREOF . . . TO ENFORCE SPECIFIC PERFORMANCE BY THE PROJECT OWNER OF ITS OBLIGATIONS UNDER THIS DECLARATION IN A STATE COURT OF COMPETENT JURISDICTION." See ¶ 6(b) of the original LURA, Exhibit Β.

Since Hurricane Harvey in late September of 2017, about 26 of the former and current tenants of 2100 Memorial¹ exercised their right to enforce the LURA by filing a lawsuit in Harris County District Court that sought specific performance of the LURA to compel HHA and MDE to use their best efforts to make repairs to the facility, see $\P 4(I)$ of the LURA (Exhibit B), because HHA and MDE were refusing to make repairs. That suit also challenged under Tex. Prop. Code § 92.054 the validity of notices to vacate posted by HHA and MDE in mid-September, giving almost 200 elderly tenants only 5 days in which to leave their homes. That led Judge Daryl Moore to enter a temporary injunction in late October of 2017 to compel repairs required by the LURA and to restrain the eviction of tenants without a showing of "good cause" as required by 26 U.S.C. § 42(g)(6)(E)(iii) and the second amendment to the LURA filed on July 11, 2012. Attached as Exhibit E is a copy of the temporary injunction order. Later, we amended that suit to seek a declaration that the project could not be demolished by reason of the aforementioned provision of the LURA. Attached as Exhibit F is a copy of our sixth amended petition. While abated until late April of this year, that suit is currently pending, and it is anticipated that the case will be re-set for trial as soon as the abatement period ends.

In effect, it appears that HHA and MDE are seeking this amendment to attempt to moot out the tenants' existing claims in the pending lawsuit relating to enforcement of the applicable LURA and its two amendments. From our conversation on March 28th, it appears that no project owner has ever tried to obtain a LURA amendment to deny tenants' rights under the existing LURA or to foreclose their rights in existing litigation. It seems particularly inappropriate, then, for this agency to release a developer from its

¹ As of this moment, there are 24 current plaintiffs in this suit, because one plaintiff, Jerry Dohalick, has died and one other, David Furman, who was represented by counsel other than LSLA, has non-suited his claims.

duties under an existing LURA when it has already been found in serious violation of the original LURA.²

2. The proposed LURA amendment is ineffective without the consent of the tenants.

Second, TDHCA should consider whether any LURA amendment would be legally effective to permit demolition and rebuilding. We believe that, even if TDHCA issued a LURA amendment, it would not abrogate the rights of the tenants to enforce the original LURA --- any such amendment may govern the relationship between the Department and HHA and MDE. There are two reasons why the proposed LURA amendment should not be effective unless consented to by tenants with standing to enforce the existing LURA and its two amendments.

To start, the *only appellate case* to address the effect of an amendment or release of a LURA denying rights to tenants found that reduction of tenant rights under the LURA could only occur with their consent. *Nordbye v. BRCP/GM Ellington*, 266 P.3d 92, 94-98, 100-104 (Ore. App. 2011), a copy of which is attached hereto as Exhibit H. In that case, a project owner entered into a settlement agreement with the Oregon Housing and Community Services Department after the agency had found a number of LURA violations and reported them to the IRS so that the tax credits could be recaptured. *Id.* at 94 n. 1, 95-97. That settlement agreement released this project owner from further compliance with most of the LURA but required the project owner for 3 years to refrain from evicting any existing tenants residing in a low-income apartment other than for good cause and from raising the rent on such apartments. *Id.* at 97. Nevertheless, the settling project owner then sold the property to a new entity within 1

² While HHA and MDE mentioned this lawsuit in their application materials, see summary of current 2100 Memorial litigation attached as exhibit 3 to February 27, 2019 memorandum from Tory Gunsolley to TDHCA, this discussion of the course of the litigation has gaps and is misleading. First, while this summary notes that HHA sought to terminate the leases of tenants based on purported health and safety concerns and concedes that an injunction was entered which prevented HHA from terminating the leases, it does not disclose that a district court held a 1-day temporary injunction hearing and found that HHA lacked grounds to terminate the leases and had failed in its duty to repair the building. See temporary injunction order and transcript of hearing attached hereto as Exhibits E and G. In short, the district court found that the building was not so uninhabitable as to justify termination of leases and any safety concerns arose from HHA and MDE's failure to make repairs after Harvey as required by the applicable LURA. Second, while this summary notes that the defendants filed a motion for summary judgment seeking leave from the district court to terminate leases of a few tenants and to refuse to renew leases of the remaining tenants, HHA fails to disclose that this motion was denied after massive briefing by both sides. Similarly, this summary notes that defendants filed a plea to the jurisdiction, but it fails to disclose that this plea was denied by the district court and defendants did not bring an interlocutory appeal to challenge that ruling although entitled to do so. Third, this summary further fails to disclose that the 5day notice to vacate generated a great deal of media interest in September and October of 2017, and that it led one HHA commissioner to resign. See transcript of the deposition of Nicola Toubia attached hereto as Exhibit I, 4/5-6, 11/23-12/10, 12/25-14/7, 19/23-20/6, 25/7-26/11, 27/7-28/6,29/3-30/14, 31/6-16, 32/11-18, 33/8-21, 35/22-37/7, 37/21-39/16 and 55/19-56/22. Anticipating the issue before TDHCA now, Ms. Toubia further stated her opposition to demolition of the building shortly after Harvey to the CEO of HHA. Exhibit I, 48/2-8, 48/17-50/12.

year, and this new project owner proceeded to issue 30-day, no-cause eviction notices. *Id.* One of the existing tenants filed suit in state court to enforce the LURA provision which, like the LURA in this case, prohibited eviction for anything other than good cause. *Id.* The trial court granted summary judgment, finding the release in the settlement agreement between the state agency and a previous project owner extinguished the enforcement rights conferred on low-income tenants in the project. *Id.* at 97-98.

On appeal, the appellate court refused to confer *Chevron* deference to the action of the state agency, because that doctrine was inapplicable to a state agency implementing a federal statute, 26 U.S.C. § 42, the same statute at issue in this case. Id. at 97-100. The appellate court then found that the tenant plaintiff was an intended beneficiary of the LURA and explicitly accorded enforcement rights in the LURA. Id. at 100. Applying Oregon law, the court found the agency's release of the project owner from the LURA to be ineffective, because "a grantor and grantee may not terminate a restrictive covenant without the consent of the intended beneficiary." Id. The court went on to find that "[e]ven assuming the release agreement could somehow be deemed a mere 'amendment' to the declaration, its content does not 'comply' with the Internal Revenue Code or other applicable law." Id. at 103. More specifically, the court ruled that "abrogation of the enforcement rights conferred on plaintiff is inconsistent with the proper application of IRC section 42 and applicable regulations and authoritative pronouncements pertaining to the LIHTC program." Id. The defendants conceded that there was no express authority under federal law to extinguish the enforcement rights of affected tenants and argued instead that it was consistent with the spirit of the program, but the court disagreed, finding those rights to be an integral part of the Congressional scheme. Id. at 103-104. In effect, this court found that the terms of the LURA could not be changed or released without the consent of the tenants entitled to enforce it.

Next, the LURA at issue in this case permits only amendments that do not contradict the terms of the original LURA. One provision does permit written amendments "signed by the Project Owner and approved by the Department" and requires the Project Owner to consent to amendments the Department deems necessary to comply with the Code and any rules relating to Section 42 tax credits. See On the other hand, another provision explicitly provides that the ¶ 8(c), Exhibit B. Project Owner "will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and that in any event, the requirements of this Declaration are paramount and controlling as to rights and obligations herein set forth and supersede any other requirements in conflict herewith." See ¶ 4(m), Exhibit B. In other words, the existing LURA supersedes any subsequent amendment which purports to contradict the original LURA. Thus, an amendment that imposes new duties upon the project owner when deemed necessary by TDHCA to comply with the requirements of Section 42, such as the second amendment here which imposed a duty to refrain from evicting any low-income tenant on any basis other than good cause. By contrast, an amendment that would permit demolition and no provision of affordable housing to low-income elderly for a period of 3 years surely contradicts paragraph 4(m).

This reading of the LURA is further supported by state law. Texas courts have traditionally found that an amendment to restrictive covenants is valid only if three conditions are met. *Wilchester West Concerned Homeowners LDEF, Inc. v. Wilchester West Fund, Inc.*, 177 S.W.3d 552, 562 (Tex. App. – Houston [1st Dist.] 2005, pet. denied), citing to *Hanchett v. E. Sunnyside Civic League*, 696 S.W.2d 613, 615 (Tex. App. – Houston [14th Dist.] 1985, writ ref'd n.r.e.). "First, the instrument creating the original restrictions must establish both the right to amend and the method of amendment." *Wilchester West*, 177 S.W.3d at 562. "Second, the right to amend implies only those changes contemplating a correction, improvement, or reformation of the agreement rather than its complete destruction." *Id.* "Third, the amendment must not be illegal or against public policy." *Id.*

While the first condition is met here, the last two conditions are not met. The proposed amendment not only violates paragraph 4(m), it is also invalid because it effectively destroys most of the important terms of the LURA. Specifically, there are at least 4 major contradictions between the existing LURA and the amendment:

- (1) HHA and MDE are allowed to go 3 years without providing affordable housing to the elderly;
- (2) HHA and MDE are allowed to demolish the building;
- (3) HHA and MDE are avoiding their obligation to repair the building after it was damaged; and

(4) Tenants are being displaced for grounds that do not amount to "good cause." In addition, as noted above, an amendment that circumscribes the right of tenants to enforce the original LURA violates 26 U.S.C. § 42. See *Nordbye* cited above. In short, this proposed amendment goes too far, even under the terms of the LURA and state law.³

Assuming the proposed amendment would not actually extinguish the rights of the tenants, this whole administrative proceeding is a wasted effort. As such, the Board should not approve this proposal, as it would not accomplish what the applicants are seeking to do.

3. The application for LURA amendment does not address the needs of affected tenants.

Third, the LURA amendment proposal makes no effort to address the needs of affected tenants, even though a Board policy dating back to 2011 explicitly states that "[i]f any tenants' continuing occupancy under their leases will be affected, the owner must take appropriate measures to address those tenants' situations." See copy of

³ We further believe that the proposed amendment to the LURA would violate the constitutional prohibitions against impairing existing contracts. Moreover, we deny that even the Texas Legislature would have authority to deny the tenants' rights as asserted in the pending litigation, and in any event the Legislature could not convey such power to this agency.

Board policy attached hereto as Exhibit J.⁴ The application paperwork filed by HHA and MDE asserts that 21 tenants continue to reside in the building at 2100 Memorial, see first page of February 27, 2019 memorandum from Tory Gunsolley to TDHCA, and yet the materials filed by HHA and MDE only promise in passing to make the new building available to all former and current tenants at 2100 Memorial. See first page of February 27, 2019 memorandum ("The redevelopment plan includes the right to return to 2100 Memorial for all residents who were living at 2100 Memorial on the date of Hurricane Harvey, regardless of whether they have subsequently relocated or are still living at 2100 Memorial."); page 3 of March 7, 2019 letter from Barry J. Palmer to Rosalio Banuelez ("By undertaking this plan, HHA and [MDE] intend to provide the families and individuals who were residents at the time that Hurricane Harvey occurred the opportunity to return to the Project, if they continue to meet restrictive covenant requirements."). Nowhere in these materials do HHA and MDE discuss when, how or where the current tenants of the building can relocate during the period of demolition and rebuilding. Likewise, in the pending lawsuit, the tenant plaintiffs have made 2 settlement offers, but HHA and MDE have not responded to either of those offers nor have they made any offers of their own.⁵

More specifically, the Board policy further provides that "[i]f any tenant is to be relocated . . . [and] [i]f the development is receiving financing from any source that imposes or applies by law or rule requirements for tenant relocation, such other requirements shall apply." See Exhibit E. Funding received under the Community Development Block Grant ("CDBG") program is subject to both the Uniform Relocation Act ("URA"), 42 U.S.C. § 4601 et seq., and Section 104(d) of the Housing and Community Development Act of 1974 ("Section 104(d)"), 42 U.S.C. § 5304(d). 24 C.F.R. § 42.1; TDHCA Relocation Handbook (April 4, 2018 version). Since CDBG funds appear to be a major part of the financing for the demolition and rebuilding of the property here, see reference to "City of Houston MF Funds" on third page of attachment to March 7, 2019 letter from Barry J. Palmer to TDHCA,⁶ the URA and Section 104(d) are applicable to the displacement of the current tenants of 2100 Memorial. Under the URA, HHA and MDE are required to provide a number of services to low-income tenants displaced by a demolition, including engagement in relocation planning, distribution of detailed relocation notices, the offer of relocation assistance advisory services, the provision of payment for actual reasonable moving and related expenses, replacement housing payments for up to 42 months and provision of replacement housing of last resort (when comparable housing is unavailable). 49 C.F.R. §§ 24.203, 24.205, 24.301, 24.402 and 24.404; TDHCA Relocation Handbook. Similarly, under

⁴ This Board policy was apparently in effect from 2011 until an administrative rule on LURA amendments was promulgated in January of 2017. See 10 T.R. § 10.405. Unlike the previous Board policy, the rule does not list the substantive factors to consider on such amendments --- rather it emphasizes only the process whereby such an application can be made. Presumably, the substantive factors set forth in Board policy remain relevant to the Board's consideration of LURA amendment applications.

- ⁵ The tenants would welcome any good faith settlement negotiations, if HHA and MDE would engage. They would further welcome any assistance from this agency to facilitate such negotiations.
- ⁶ Mr. Palmer has advised the undersigned that the source of the City of Houston funds cited in the financial projections were CDBG-DR funds received by the City after Harvey.

Section 106(d), HHA and MDE are required to develop a residential anti-displacement and relocation assistance plan, provide advisory services to displaced tenants, moving expenses, security deposits and credit checks, interim living costs and replacement housing assistance for up to 60 months. 24 C.F.R. §§ 42.325 and 42.350; TDHCA Relocation Handbook. A displaced tenant may choose to receive benefits under either scheme. *Id.* Displaced tenants are also required to receive a notice of eligibility, a relocation brochure, and a 90-day notice to vacate that identifies at least three comparable dwellings. *Id.* Nowhere in the application for a LURA amendment does HHA or MDE address their obligations as prospective subrecipients of CDBG funds under the URA or Section 106. That omission demonstrates the utter and complete failure of the applicants to address their duty to "address the needs of affected tenants." In short, the tenants currently residing in the building are expected to address the involuntary relocation being proposed by HHA and MDE entirely on their own, despite the fact that they are all lower-income elderly.

4. Demolition and replacement is a choice that costs more and causes far more displacement.

Fourth, demolition and replacement is not necessarily the best choice for the property at 2100 Memorial. Demolition and replacement is not an unwelcome option which was unwillingly foisted upon HHA and MDE by Hurricane Harvey. Instead, they were already exploring this option before the hurricane arrived in late August of 2017. Before Hurricane Harvey arrived, HHA and MDE had already hired PDG Architects "to develop a scope of work to repair the building pre-Harvey and develop a relocation plan for the new and improved building." See e-mail from Armando Lazo dated November 21, 2017 attached hereto as Exhibit K. Before the hurricane arrived, the tenants had already complained about the leaky roof for years, and the project already had a long term problem with persistent mold. Clearly, HHA and MDE already wanted a "new and improved building" before the arrival of Hurricane Harvey. Now that their building has incurred some hurricane damage, they are arguing for demolition and replacement.

Demolition and replacement, however, is not a necessary option. Neither is it the cheapest option, nor is it the least disruptive option for the existing tenants. After the hurricane, HHA and MDE retained PDG Architects first to assess the option of repair versus replacement of the building, and then to develop an estimate of the damages to the building which included the cost of repair. PDG Architects determined that repairing the building to its pre-Harvey condition would only cost a third of the price of demolition and replacement. See the decision analysis report attached hereto as Exhibit L at 7. The written assessment concluded that "...the only viable alternative is to recover and renovate the existing building and garage. Construction of a new facility only makes sense in the case of compelling programmatic requirements that cannot be met using the existing building." *Id.* at 8.

PDG Architects also developed a Project Worksheet For 2100 Memorial Apartments as a calculation of total damages which was submitted as evidence in

support of HHA's and MDE's FEMA application. See excerpts of this 758-page project worksheet attached collectively hereto as Exhibit M. According to this documentation, the total cost for damages is \$8,483,167.84. *Id.* at 758.

Importantly, the documentation submitted to FEMA showing the total amount of damages includes a 5% premium which represents the additional cost of making repairs while the tenants remain living in their apartments. Id. at 5, part B.1 and C.2. In other words, whereas the tenants would be displaced from their homes if the building is demolished and replaced, they could continue living in their homes if the building is merely repaired. Rebuilding the building would therefore be less disruptive and harmful to the existing tenants than demolition and replacement.

The total amount of damages also includes goods and services which have already been paid, or which will never actually be incurred. For instance, the damage estimate includes the cost of furniture which was lost in the flood, the amounts paid for those repairs which had already been made, the price of various services which had already been paid (including almost \$200,000 for the fire watch which lasted until February of 2018) and the cost of making further repairs to return the property to its condition under the architectural floor plans from 1997. E.g. *id.* at p. 8. More than a quarter of the total damages represents the cost of making repairs to the first floor. Specifically, \$2,186,560.37 (*id.* at 82) represents the cost of rebuilding the first floor to include such things as offices, a reception room, a laundry room, a nurses' room, three different shops, a dining area with a commercial kitchen, a lounge, various closets and storage rooms, a janitor's room, a laundry room and several hallways. *Id.* at 7-82. HHA and MDE, however, have indicated that the first floor is unusable for such purposes because the entire floor sits within a flood plain. Consequently, they will not spend over \$2 million to renovate the first floor.

Admittedly, mere repair by itself would cause the loss of some residential apartments if the facilities formerly located on the first floor were moved onto another existing floor. In their letter asking to amend the LURA, neither HHA nor MDE presented the option that these facilities could be moved and built into the adjoining garage. Nor have they discussed the alternate option of building another floor onto the building in order to offset the loss of apartments. If either of these two options were included along with the building's repair, then the overall cost would be significantly less than the price of the new construction currently proposed by HHA and MDE. And the existing elderly tenants would avoid the problems posed by forcing them to relocate for the next three years.

In short, HHA and MDE are apparently using Hurricane Harvey as an opportunity to obtain federal funding in order to achieve their desire of building a big new building with better amenities. While this would indeed be a wonderful thing for future tenants, it is not the only option nor is it the cheapest option. Instead, it sacrifices the rights and welfare of the currently existing tenants for benefits to be enjoyed by others at least three years in the future.

5. The tenants have not been afforded the same time to respond as HHA and MDE have had to craft their proposal.

Fifth, the current tenants have had relatively little time to review the application of the LURA amendment application and respond. The first inkling that the current tenants had of the LURA amendment proposal came on the evening of March 21st when notices of a public hearing to occur on April 2nd were posted on their doors. On March 22nd, LSLA made a Public Information Act request to TDHCA for all of the written materials related to the LURA amendment application. On March 27th, we received those documents.⁷ Without those documents, we would have been in no position to respond adequately in writing to the LURA amendment application nor to give relevant testimony at the public hearing on April 2nd. Given that you need to receive our written comments by April 2nd to be mentioned or possibly included in the Board packet for the April 25th meeting, we only had 6 days in which to draft our comments. By contrast, HHA and MDE have been communicating with TDHCA about amending the LURA since February 11th, and they had much more time to discuss their need for the LURA amendment with staff and to prepare their written filings. If our comments have raised any doubts with the staff or Board of TDHCA, we would hope that we would be given more time to address any remaining questions or issues relating to the LURA amendment application.

6. Should the proposed LURA amendment be approved, it will be challenged in court.

Finally, should the proposed amendment be approved and be filed, we reserve all rights to challenge the legal sufficiency of the amendment in our current lawsuit and elsewhere if needed. Given how little time we have had to date to review this proposal, we expect to develop additional legal bases for challenges. At a minimum, it should be recognized that this proposed amendment would likely only govern the relationship between the TDHCA, on the one hand, and HHA and MDE, on the other hand. We firmly believe that the consent of the tenants is needed before this proposed LURA amendment can become effective, and we will continue to oppose this measure until such time as HHA and MDE address the needs of the current tenants.

Thanks for giving us the opportunity to respond. Should anyone at TDHCA have any questions, please feel free to call me at 713-652-0077, ext. 1154. We will endeavor to appear at the Board's meeting on April 25th as well.

⁷ We sincerely appreciate the speed with which our PIA request was handled. A normal request with no issues can easily take 10 days, and yet we received a response in only 5 days.

Rosalio Banuelos April 2, 2019 Page 10

Very truly yours,

/s/ Richard Tomlinson

Richard Tomlinson

/s/ Mark Grandich

Mark Grandich

Attorneys for Plaintiffs

cc: Barry J. Palmer Coats Rose

> Scott Nichols Clark Hill Strasburger

CONNIE CASTILLO, ET AL., Plaintiffs, v. MEMORIAL DRIVE ELDERLY L.P., HOUSTON HOUSING AUTHORITY, IN THE CIVIL DISTRICT COURT

OF HARRIS COUNTY, TEXAS

Defendants.

and TORY GUNSOLLEY,

333rd JUDICIAL DISTRICT

TEMPORARY INJUNCTION

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On October 23, 2017, the Court conducted a hearing on Plaintiffs' request for injunctive relief. The Court first heard then denied Defendants' plea to the jurisdiction. The Court, having read the parties' briefing in support of and in opposition to the request for injunctive relief, then heard the parties' opening arguments, live testimony, considered documentary evidence, and arguments of counsel. At the conclusion of the hearing, the Court orally granted Plaintiffs' request for injunctive relief, but solicited proposed orders from both parties, which the parties' lawyers provided. The Court now issues this temporary injunction.

A. Findings of Fact/Conclusions of Law

1. The Court has jurisdiction over the parties and the subject matter.

2. Plaintiffs are tenants and residents of 2100 Memorial Drive, Houston, Texas (2100 Senior Living), a multi-unit, high-rise residential facility that serves low-income

KHIBIT E

	EXHIBIT
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	RECORDER'S MEMORANDUM This instrument is of poor quality at the time of imaging

senior citizens.

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4/2/19 comments to TDHCA

3. On August 25, 2017, 2100 Memorial suffered flood damage from Hurricane Harvey, including flooding of the basement and first floor.

4. Some of the common areas suffered water damage. The fire-protectionand-sprinkler system also suffered damaged. But, the residents of 2100 Senior Living never lost power and only lost water service temporarily.

5. On September 8, 2017, Jessie Wilhite authored an inspection report for the City of Houston Fire Department, a "Fire Marshal, Life Safety Bureau Inspection Report" ("the Report," which is attached and incorporated by reference into this Temporary Injunction). The Report concluded – among other things -- that the "fire pump, sprinkler system and alarm system is out of service and need[s] restored ASAP," and that the "fire command room" needs to be "clean[ed] and restor[ed]." The Report also stated that, "where required by the fire code official, the building shall either be evacuated or an approved fire watch or standby inspector . . . shall be provided for all occupants left unprotected by the shut down until the life safety or fire protection system has been returned to service."

6. Since the Report, an approved fire watch or standby inspector has been provided around the clock for all occupants who remained at 2100 Senior Living.

7. The Report set a compliance date of October 13, 2017, for 2100 Senior Living to cure the deficiencies noted in the Report.

8. After receiving the Report, Defendants made no attempts to cure the deficiencies in the Report even though – according the credible testimony of Inspector

3107297.1/SPH/33383/0107/102617

Certified Document Number: 77214082 - Page 2 of 14

Wilhite – the deficiencies could have been cured on or before the October 13, 2017, deadline.

9. Instead, on September 18, 2017, Tory Gunsolley, the President/CEO of Houston Housing Authority (HHA), which owns and effectively controls the land and the buildings that constitute 2100 Senior Living, sent a letter attempting to terminate Plaintiffs' lease agreements and directing them to evacuate the building within 5 days and to remove all of their personal possessions (or be charged for the storage of their possessions).

10. In his letter, Mr. Gunsolley stated that, "as a practical matter," 2100 Senior Living "has become . . . totally unusable for residential purposes due to health and safety reasons."

11. At the hearing, Mr. Gunsolley testified he believed two transformers at 2100 Senior Living are unsafe, could fail, explode, and cause fire and therefore need replacing. The Court finds this testimony incredible as Mr. Gunsolley lacks the qualifications or experience to make that determination. The Court further finds that the controverting testimony offered by Plaintiffs' witness, Mr. Vossler, a journeyman electrician, is credible. And, Mr. Vossler testified that, by observing and listening to the transformers, he could determine they are "dry transformers" and that, if they fail, that would not result in an explosion. Mr. Vossler also testified that he is not convinced the transformers need replacing. Thus, the Court finds that whether the transformers need replacing is unknown and that an inspection is necessary to make that determination.

12. Mr. Gunsolley further testified that his "state of mind" at the time he decided to issue the September 18th notice to vacate was that there "could be a fire at any point in

3107297.1/SPH/33383/0107/102617

3

4/2/19 comments to TDHCA EXHIBIT E

Certified Document Number: 77214082 - Page 3 of 14

time." At the time he made this decision, Mr. Gunsolley had not received any reports or objective information to support his subjective determination or his assertion that, as a practical matter, 2100 Senior Living had become totally unusable for residential purposes due to health and safety reasons.

13. Mr. Gunsolley also testified that his concern about imminent safety issues was a reason for his decision to terminate the lease and to evacuate 2100 Senior Living. But, the Court finds that testimony incredible in light of Mr. Gunsolley's testimony that, rather than attempt to repair the damage to the fire-protection-and-sprinkler systems, HHA instead made a \$250,000 interest-free loan to cover any expenses that would result from moving the residents out of their leased premises.

14. Neither at the time of his eviction letter, nor since, has 2100 Senior Living, as a practical matter, become totally unusable for residential purposes due to health-and-safety reasons. Thus, Defendants failed to establish the grounds for terminating the Plaintiffs' leases under section 92.054(b) of the Texas Property Code.

15. Plaintiffs adduced credible evidence – which Defendants did not controvert – that the deficiencies in the Report could be cured for an amount as low as \$30,000. Plaintiffs also adduced credible evidence – which Defendants did not controvert – that the electrical transformers, if damaged and needed replacing, could be removed and replaced (and elevated if necessary) in a matter of days, without interrupting the electrical service to the tenants of 2100 Senior Living, for approximately \$30,000 to \$40,000.

16. Defendants, by refusing even to attempt to cure the deficiencies in the Report, have not made their "best efforts" to maintain 2100 Senior Living.

3107297.1/SPH/33383/0107/102617

4

17. Plaintiffs adduced credible evidence that, if forced to evacuate, they would not be able to move into comparable properties for the same or even similar rental rates. Rather, Plaintiffs would be forced to spend substantially more for comparable properties, which Plaintiff cannot afford, or, be forced to move to substantially less desirable properties than their current residences.

18. The Plaintiffs who testified, one of whom is undergoing treatment for large B-cell lymphoma, offered uncontroverted testimony about the unnecessary "hardship trauma" or "transfer trauma" they would endure if forced to relocate. Mr. Gunsolley acknowledged the existence such "transfer trauma" in his testimony, and also testified that he considered it. The Court finds Mr. Gunsolley's testimony the he considered such "transfer trauma" in his decision to terminate incredible.

B. Injunctive Relief

It is therefore ORDERED that Defendants, Memorial Drive Elderly, L.P., Houston Housing Authority, and their successors, assigns, officers, agents, servants, employees, attorneys, and any other person in active concert or participation with them who receive actual notice of this order by personal service or otherwise, shall be restrained from:

1. Terminating Plaintiffs' leases or treating their leases as terminated under section 92.054(b) of the Texas Property Code unless and until Defendants can demonstrate to the Court that 2100 Senior Living has "as a practical matter become totally unusable for residential purposes."

2. Terminating Plaintiffs' leases or treating their leases as terminated unless and until Defendants can demonstrate to the Court that "good cause" exists to terminate the leases.

It is further ORDERED that Defendants, within 45 days of this Temporary Injunction:

1. Cure the deficiencies in the Report.

2. Secure the removal of the Red Tag currently affixed to the building at 2100 Senior Living.

3. Request a re-inspection and pay any re-inspection fee necessary for that reinspection to the Houston Fire Department, per HFC 105.8.2.

4. Test the transformers at 2100 Senior Living within 10 days of this Temporary Injunction to determine whether they pose an actual or potential safety threat to warrant repair or replacement and, if so, to repair or replace the transformers within 45 days of this Temporary Injunction to remove any actual or potential safety threat that the transformers pose.

This Temporary Injunction shall not be effective unless and until Plaintiffs execute and file with the clerk a bond, in conformity with the law, in the amount of \$1,000.00

The clerk, on the filing by Plaintiffs of the bond, shall issue a temporary injunction in conformity with the law and the terms of this order. This temporary injunction will remain in full force pending a final trial or until further order of the Court.

4/2/19 comments to TDHCA

Certified Document Number: 77214082 - Page 6 of 14

EXHIBIT E

This case is set for a trial on the merits on March 26, 2018, at 9:00 a.m.

SIGNED this 27th day of October, 2017.

DARYL L. MOORE

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EXHIBIT E

4/2/19 comments to TDHCA

NO. 2017-63022

CONNIE CASTILLO, SHEILA HENDERSON, PAUL BLINN, KATHLEEN KOENIG, RONALD CASTRO, CALVIN MILLS, MARLISTINE MARLEI CANNEDY, JERRY DOHALICK, MELITTA SCHULTE, ROSEMARY SHARP, BILLY ROY BRAWDY, FLORENTINA RODRIGUEZ, JUDITH HUDNALL, LARRY JACKSON, LAUREN FIELDER as next friend of LAVERNE FIELDER, WALLACE ROLAND, DOROTHY SHELLEY, WILLIAM HAMILTON, EDNA BESIANT, GEORGE HORAN, GRACIE GARCIA, STEPHEN LORMORE, LILIAN BEATY, ROGER WILLIAMS, EDWARD ERWIN and STEFANI MAHER		CIVIL DISTRICT COURT OF
v. MEMORIAL DRIVE ELDERLY, L.P., V.J. MEMORIAL CORPORATION, HOUSTON HOUSING AUTHORITY, TORY GUNSOLLEY, CEO of Houston Housing Authority, sued only in his official capacity, LARENCE SNOWDEN, PHILLIS WILSON, KRISTY M. KIRKENDOLL, SHONDRA E. WYGAL, TIM HORAN, DAVID ENRIQUE RUIZ, Commissioners of the Houston Housing Authority, sued in their official capacities only	<i>ᅈᅈᅈᅈᅈᅈᅈ๛๛๛๛๛๛๛๛๛๛๛๛๛๛๛๛๛๛๛๛๛๛๛๛๛๛๛๛๛๛</i>	HARRIS COUNTY, TEXAS 333 rd JUDICIAL DISTRICT

PLAINTIFFS' SIXTH AMENDED PETITION

COME NOW Connie Castillo, Sheila Henderson, Paul Blinn, Kathleen Koenig, Ronald Castro, Calvin Mills, Marlistine Marlei Cannedy, Jerry Dohalick, Melitta Schulte, Rosemary Sharp, Billy Roy Brawdy, Florentina Rodriguez, Jerry Dohalick, David

Furman, Rosemary Sharp, Billy Roy Brawdy, Florentina Rodriguez, Judith Hudnall, John Kevin Doyle, Larry Jackson, Lauren Fielder as next friend of Laverne Fielder, Wallace Roland, Dorothy Shell, William Hamilton, Edna Besiant, George Horan, Gracie Garcia, Stephen Lormore, Lilian Beaty, Roger Williams, Edward Erwin and Stefani Maher, Plaintiffs herein, and file this Sixth Amended Petition and in support thereof would show the following:

I. Preliminary Statement

1. This is a landlord-tenant dispute concerning a residential high rise for senior citizens. The high rise is owned by a public housing authority (a unit of local government), and it receives annual benefits as a tax credit property under the federal Low Income Housing Tax Credit Program ("LIHTC Program"). The LIHTC Program is a federal program which is administered statewide by the Texas Department of Housing and Community Affairs ("TDHCA"). Under the LIHTC Program, a land use restriction agreement ("LURA") was filed in Harris County real estate records, and it is binding on Defendants.

2. Defendants have violated the LURA and Texas Government Code §§ 2306.6720 and 2306.6735 by failing to use their best efforts to repair the building after Hurricane Harvey and to maintain the high rise in a condition that was suitable for occupancy. Rather than comply with their obligations under the LURA and statutes, Defendants have discussed demolition of the building instead as an option. Defendants have also misstated their right to terminate Plaintiffs' leases under Texas Property Code § 92.054 and paragraph 26.5 of Plaintiffs' leases.

3. While Plaintiffs do pray for monetary damages under a statute and the lease,

2

they primarily seek prospective declaratory and injunctive relief. Plaintiffs also incorporate all of the allegations in their second amended petition, including the prayer for a temporary injunction.

II. Discovery Control Plan

4. Plaintiffs intend to conduct discovery under Level 2 of Texas Rule of Civil Procedure 190.3. Plaintiffs affirmatively seek both injunctive and declaratory relief in this cause.

III. Defendants

5. Defendant Memorial Drive Elderly L.P. "(Memorial Drive Elderly") is a Texas limited partnership. This Defendant has already been served with process and has already made an appearance in this cause.

6. Defendant V.J. Memorial Corporation ("V.J. Memorial") is a Texas non-profit corporation. This Defendant has already been served but has not yet made an appearance.

7. Defendant Houston Housing Authority ("HHA") is a locally established and administered public body situated in Houston, Texas. Specifically, HHA is a public housing authority formed under Chapter 392 of the Texas Local Government Code. As such, HHA is a local "unit of government" and its functions "are essential governmental functions and not proprietary functions." TEX. LOCAL GOV'T CODE § 392.006. This Defendant has already been served with process and has already made an appearance in this cause.

8. Defendant Tory Gunsolley ("Gunsolley") is an individual who is being sued only in his official capacity as the CEO of the Houston Housing Authority. This Defendant has

3

already been served with process and has already made an appearance in this cause.

9. Defendants LaRence Snowden, Phillis Wilson, Kristy M. Kirkendoll, Shondra E. Wygal, Tim Horan and David Enrique Ruiz are commissioners for the Houston Housing Authority, and they are only being sued in their official capacity. These Defendants have already made an appearance in this cause.

IV. Plaintiffs

10. Plaintiffs Connie Castillo, Sheila Henderson, Paul Blinn, Kathleen Koenig, Ronald Castro, Calvin Mills, Marlistine Marlei, Jerry Dohalick, Melitta Schulte, Rosemary Sharp, Billy Roy Brandy, Judith Hudnall, John Kevin Doyle, Larry Jackson, Lauren Fielder as next friend of Laverne Fielder, Wallace Roland, Dorothy Shell, William Hamilton, Edna Besiant, George Horan, Gracie Garcia, Stephen Lormore, Lilian Beaty, Roger Williams, Edward Erwin and Stefani Maher are natural persons who have resided in Harris County, Texas at all times relevant to this lawsuit. Service of all pleadings, notices, discovery requests and other documents related to this cause should be made upon Plaintiffs through their Counsel.

V. Jurisdiction

11. This Court has jurisdiction under Texas Constitution Article V, § 8, as it has original jurisdiction of all actions, proceedings and remedies. This broad grant of jurisdiction includes actions seeking declaratory and injunctive relief.

VI. Venue

12. Venue is mandatory in Harris County pursuant to Texas Civil Practice and Remedies Code § 15.015.

4

VII. Conditions Precedent

13. All conditions precedent to Plaintiff's claim for relief have been performed or have

occurred.

VIII. Legal Framework for Lease Cancellations from a Casualty Loss

14. The Texas Property Code generally allows either party to a residential lease to

terminate that lease if the leased premises are effectively rendered unlivable by a

casualty loss. Section 92.054(b) of the Texas Property Code provides, in part, that:

If after a casualty loss the rental premises are as a practical matter totally unusable for residential purposes and if the casualty loss is not caused by the negligence or fault of the tenant, a member of the tenant's family, or a guest or invitee of the tenant, either the landlord or the tenant may terminate the lease by giving written notice to the other any time before repairs are completed.

IX. Legal Framework for the LIHTC Program

15. The LIHTC Program is a federal program created by Section 42 of the Internal Revenue Code to encourage the development of affordable housing. The LIHTC Program is administered within the State of Texas by the Texas Department of Housing and Community Affairs ("TDHCA"). Under this program, entities can apply for the award of annual tax credits if they develop affordable housing and if they also meet additional requirements of the LIHTC Program.

16. The federal statute which created the LIHTC Program provides, in part, as

follows:

(A) In general. No credit shall be allowed by reason of this section with respect to any building for the taxable year unless an extended low-income housing commitment is in effect as of the end of such taxable year.

(B) Extended low-income housing commitment. For purposes of this paragraph, the term "extended low-income housing commitment" means any agreement between the taxpayer and the housing credit agency ---

(i) which requires that the applicable fraction (as defined in subsection (c)(1)) for the building for each taxable year in the extended use period will not be less than the

applicable fraction specified in such agreement and which prohibits the actions described in subclauses (I) and (II) of subparagraph (E)(ii),

(ii) which allows individuals who meet the income limitation applicable to the building under subsection (g) (whether prospective, present, or former occupants of the building) the right to enforce in any State court the requirement and prohibitions of clause (i),

(iii) which prohibits the disposition to any person of any portion of the building to which such agreement applies unless all of the building to which such agreement applies is disposed of to such person,

(iv) which prohibits the refusal to lease to a holder of a voucher or certificate of eligibility under section 8 of the United States Housing Act of 1937 [42 USCS § 1437f] because of the status of the prospective tenant as such a holder,

(v) which is binding on all successors of the taxpayer, and

(vi) which, with respect to the property, is recorded pursuant to State law as a restrictive covenant." 26 USC \$42(h)(6)(B).

17. In Texas, the TDHCA requires the owner of a tax credit property to enter a Land

Use Restriction Agreement ("LURA"), which is defined as "...an agreement between the

[TDHCA], the development owner, and the development owner's successors in interest

that encumbers the development with respect to the requirements of this subchapter

and the requirements of Section 42, Internal Revenue Code of 1986 (26 U.S.C. Section

42)." Tex. Gov't Code § 2306.6702. The LURA, which is an extended low-income

housing commitment, must then be filed as a restrictive covenant which runs with the

land. 10 TAC § 10.3(a)(67).

18. The LURA sets out the representations made by the owner of the tax credit

development to obtain the annual allocation of tax credits. At Section 2306.6720, the

Texas Government Code provides:

Each material representation made by an applicant to secure a housing tax credit allocation is enforceable by the department and the tenants of the development supported with the allocation. Subject to modification and enforcement as provided by this chapter, a land use restriction agreement that is recorded with respect to a development is considered to state the development owner's ongoing obligations with regard to the matters addressed in the agreement. X. Facts

A. The Property

19. 2100 Memorial Senior Living Apartments ("the Apartment Building") is a residential high-rise located at 2100 Memorial, Houston, Texas. The Apartment Building was established as low-income housing for seniors under the LIHTC Program. Only applicants who meet the income guidelines described at Section 42 were allowed to lease an apartment at the Apartment Building.

B. Plaintiffs as Tenants

20. All of the Plaintiffs are elderly, and some are disabled. Each Plaintiff was allowed to lease a rent-restricted, tax credit unit at the Apartment Building, because each met the income requirements set out by Section 42 of the Internal Revenue Code. All of the Plaintiffs continue to meet those requirements.

21. On August 25, 2017, all of the Plaintiffs lived at the Apartment Building under a written lease, and all of them used their leased apartments as their sole places of habitation. Currently, some of the Plaintiffs continue to reside at the Apartment Building, while others have temporarily relocated pending repairs to that property.

C. The Leases

22. Each of the Plaintiffs' leases consists of a form agreement with blanks filled in to name a particular person as the tenant of a specific apartment. At Clause 3, each lease contains an automatic renewal provision which states that the lease shall have an initial lease term for one year, and "[a]fter that, this lease will automatically renew month-to-month unless either party gives at least 60 days' written notice of termination or intent to move out as required by Par. 36." None of the Plaintiffs have received the type of 60-

7

day written termination notice described by Clause 3.

23. Clause 26.5 of the Lease provides:

If we believe that fire or catastrophic damage is substantial, or that performance of needed repairs poses a danger to you, we may terminate this Lease by giving you at least 5 days' written notice. We also have the right to terminate this Lease during the Lease term by giving you at least 30 days' written notice of termination if we are demolishing your apartment or closing it and it will no longer be used for residential purposes for at least 6 months. If the Lease is so terminated, we'll refund prorated rent and all deposits, less lawful deductions. We may also remove personal property if it causes a health or safety hazard.

24. At Clause 31.1, each lease provides that "[w]e'll act with customary diligence to:

(a) keep common areas reasonably clean, subject to Par. 25...."

(b) maintain fixtures, hot water, heating and air-conditioning equipment;

(c) substantially comply with all applicable laws regarding safety, sanitation, and fair housing; and

(d) make all reasonable repairs, subject to your obligation to pay for damages for which you're liable.

25. Each Lease also contains an addendum entitled "Lease Contract Addendum for

Units Participating in Government Regulated Affordable Housing Programs" ("the

Addendum"). This Addendum provides:

For rental properties participating in the HTC program, IRS Revenue Ruling 2004-82, provides that a property owner may not evict a resident or terminate a tenancy except for good cause. In addition, for [Housing Tax Credit] units, we must provide the notice required under Par. 32.2 of the Lease, if terminating your residency at the end of an initial or renewal term.

D. Defendant HHA

(1) HHA owns the Apartment Building

26. Defendant HHA holds title to the Apartment Building pursuant to a general

warranty deed on file in the Harris County deed records (File No. V449978).

(2) HHA's Board and Executive Director

27. Defendants LaRence Snowden, Phillis Wilson, Kristy M. Kirkendoll, Shondra E.

Wygal, Tim Horan and David Enrique Ruiz (hereinafter collectively "the Board") comprise the current board of commissioners for the Houston Housing Authority. The powers of HHA are vested in these defendants, Tex. Loc. Gov't Code 392.051(b), and they are responsible for establishing HHA's policies and for overseeing HHA's operation. The Board is also responsible for assuring that HHA complies with state and federal law. Section 392.051(c) authorizes the commissioners to delegate some of these duties and powers to HHA's employees or agents, as they see proper.

28. Defendant Gunsolley is HHA's Executive Director. As HHA's chief executive officer, he is responsible for the operation of HHA, for carrying out the policies of the Board, and for assuring that HHA complies with state and federal law.

(3) HHA's Affiliated Companies

29. Defendant HHA set up both Defendant V.J. Memorial Corporation and Victory Street Public Facilities Corporation as non-profit corporations. These two non-profit entities ultimately replaced two other entities that had initially formed Defendant Memorial Drive Elderly as a limited partnership. Since approximately 2001, V.J. Memorial has served as the general partner with a one percent ownership interest and Victory Street has served as the limited partner with a ninety-nine per cent interest. While serving as CEO of HHA, Defendant Gonsolley has also served as a corporate officer for V.J. Memorial Corporation and Victory Street. Since at least 2001, V.J. Memorial, Victory Street and Memorial Drive Elderly have been operated to serve HHA's purposes and to work for its benefit. Since at least 2001, HHA has controlled each of these companies.

30. Defendant Memorial Drive Elderly arranged for the acquisition and financing of

9

the Apartment Building on behalf of HHA. Memorial Drive Elderly acquired the Apartment Building and successfully entered it into the LIHTC Program. After doing so, Memorial Drive Elderly executed a general warranty deed on October 17, 2001, which conveyed title to the Apartment Building from Memorial Drive Elderly to HHA. HHA still holds title to the Apartment Building.

31. Although Memorial Drive Elderly is no longer the owner of the Apartment Building, it has continued to act as such with the knowledge and permission of HHA's Board and CEO.

E. A LURA was signed and filed for the Apartment Building.

32. Memorial Drive Elderly signed and filed a LURA before it transferred title to HHA. The LURA was signed by Memorial Drive Elderly on April 4, 2000, and then filed and recorded on July 19, 2000 under File Number U514998 in the real property records for Harris County, Texas.

33. Memorial Drive Elderly signed the First Amendment To Declaration Of Land Use Restrictive Covenants For Low-Income Housing Credits ("the First Amendment) on January 31, 2005, about four years after it conveyed title for the Apartment Building to HHA. Memorial Drive Elderly filed the First Amendment under File Number Y277079 in the real property records for Harris County, Texas. Memorial Drive Elderly signed and filed the First Amendment to the LURA with the knowledge, approval and authority of HHA.

34. Memorial Drive Elderly filed a Second Amendment To Declaration Of Land Use Restrictive Covenants For Low-Income Housing Credits ("the Second Amendment) on July 11, 2012. Defendant Gunsolley signed the Second Amendment on behalf of

10

Memorial Drive Elderly, and he did so in his capacity as the CEO of Memorial Drive Elderly's general partner, V.J. Memorial Corp. Memorial Drive Elderly then filed the Second Amendment under File Number 20120307956 in the real property records for Harris County, Texas. The Second Amendment to the LURA was signed and filed with the knowledge, approval and authority of HHA's Board and its CEO.

F. Relevant Provisions of the LURA and its Amendments

(1) LURA binds future owners and operators.

35. In its initial recitations, the LURA provides that "...the regulatory and restrictive covenants set forth herein governing the use, occupancy and transfer of the Project shall be and are covenants running with the Project Land for the Term stated herein, are binding upon all subsequent owners and operators of the Project during such term, and are not merely personal covenants of the Project Owner."

(2) Former and present tenants are beneficiaries of the LURA.

36. Under Section 2(b), the LURA is not only binding upon subsequent owners and

operators of the Apartment Building, but the benefits of the LURA shall inure to past,

present and prospective tenants of the Apartment Building. More particularly, Section

2(b) provides in pertinent part:

The Project Owner intends, declares and covenants, on behalf of itself and all future owners and operators of the Project during the Term of this Declaration, that this Declaration and the covenants and restrictions set forth in this Declaration regulating and restricting the use, occupancy and transfer of the Project (i) shall be and are covenants running with the Project Land, encumbering the Project Land for the Term of this Declaration and binding upon the Project Owner's successors in title and all subsequent owners and operators of the Project Land, and (ii) shall bind the Project Owner (and the benefits shall inure to the Department and any past, present or prospective Tenant of the Project) and its respective successors and assigns during the Term of this Declaration.

(3) Owner must operate building as a housing project.

37. At Section 3(e), the LURA provides that the owner of the Apartment Building "...shall maintain the Project as a qualified low-income housing project", as defined in Section 42(g) of the Code."

(4) Owner must keep all units in a habitable condition.

38. At Section 3(h), the LURA provides that "[d]uring the term of this Declaration, the Project Owner covenants, agrees and warrants that each Low-Income Unit is and will remain suitable for occupancy to the extent required by Texas Law and under regulations prescribed by the Secretary, taking into account local health, safety and building codes."

(5) Owner must not demolish building unless required by law.

39. At Section 3(k), the LURA provides that "[t]he Project Owner shall not demolish any part of the Project or substantially subtract from any real or personal property in the Project or permit the use of any Unit for any purpose other than rental housing during the Term of this Declaration, unless required by law."

(6) Owner must use best efforts to repair damages.

40. At Section 3(I), the LURA states that the "[t]he Project Owner represents, warrants and agrees that if the Project, or any part thereof, shall be damaged or destroyed or shall be condemned or acquired for public use, the Project Owner will use its best efforts to repair and restore the Project to substantially the same condition as existed prior to the event causing such damage or destruction, or to relieve the condemnation and thereafter to operate the Project in accordance with the terms of this Declaration."

12

(7) Former, current and prospective tenants may enforce LURA.

41. At Section 6(b), the LURA states in all caps that:

THE PROJECT OWNER, IN CONSIDERATION FOR RECEIVING THE TAX CREDITS FOR THIS PROJECT, HEREBY AGREES THAT THE DEPARTMENT AND ANY INDIVIDUAL WHO MEETS THE APPLICABLE INCOME LIMITATION UNDER SECTION 42 (WHETHER PROSPECTIVE, PRESENT OR FORMER TENANT) SHALL BE ENTITLED, FOR ANY BREACH OF THE PROVISIONS HEREOF AND IN ADDITION TO ALL OTHER REMEDIES PROVIDED BY LAW OR IN EQUITY, TO ENFORCE SPECIFIC PERFORMANCE BY THE PROJECT OWNER OF ITS OBLIGATIONS UNDER THIS DECLARATION IN A STATE COURT OF COMPETENT JURISDICTION.

(8) LURA was amended to lengthen the compliance and extended use periods.

42. The First Amendment lengthened the Compliance Period under the LURA to

twenty-four years and ten months. It also lengthened the Extended Use Period to thirty-

nine years and ten months.

(9) LURA was amended to require good cause for lease terminations.

43. The Second Amendment to the LURA provides that "Section 4 of the Declaration

is hereby amended to add the following language:

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

G. Damage Caused by Hurricane Harvey

44. Hurricane Harvey arrived in Houston on August 25, 2017. The Apartment Building began flooding the following day, and it continued to incur damages during the following week. Although the flooding was limited to the ground floor, it nevertheless destroyed the manager's office, the computer room, the television room, the mail room, the laundry room and a storage room. More importantly, the fire pump, alarm system

and sprinkler system were rendered inoperable. Although the two electrical transformers for the building were submerged by the flood waters, the tenants never lost power, and they only temporarily lost water service. No residential units were flooded, and none of the leased apartments were directly damaged by the flood.

H. Defendants' Conduct following the Hurricane

(1) Defendants' Lack of Effort to Make Repairs

45. Although the electrical and life safety systems were inspected shortly after Harvey and found to be either inoperable or unsafe, Defendants made no effort to repair those systems. The life safety system was red-tagged as early as August 31, 2017, and Defendants were given until October 13, 2017 to cure the deficiencies found in a fire marshal's report.

46. After a fire marshal issued an inspection report giving Defendants until October 13, 2017 to bring the building back into compliance with the Houston Fire Code, Defendants nevertheless failed and refused to make the repairs required by the fire marshal.

47. In September of 2017, a contractor retained by Defendants tendered an offer to repair the life safety system, and this contractor was initially led to believe that it would be hired to make such repairs. After the contractor made an order for components to replace damaged parts, this contractor was informed that the order should be withdrawn.

48. Plaintiffs' request for a temporary injunction was heard in this cause on October 23, 2017. At the time, Defendants had still not made any effort to repair the fire or electrical systems at the Apartment Building. On October 27, 2017, the Court issued a

14

Temporary Injunction which gave Defendants forty-five days (or until December 11, 2017) to test the transformers outside the building, to replace them if found to be unsafe, and to cure the deficiencies outlined in the fire marshal's report, and to secure the removal of the red tag on the Apartment Building. Defendants did not immediately begin making any effort to meet this deadline, and they delayed ordering materials for the court-ordered repairs to the fire system until the very end of November, which was only about two weeks before their deadline. Some of the materials which Defendants needed for the repairs, and which they only ordered at the last minute, were not delivered until after the court-ordered deadline had already run. Defendants did not meet the court-ordered deadline to make repairs to the electrical and fire systems, and they did not secure the removal of the red tag from the Apartment Building until February 16, 2018.

49. Once Defendants made the needed, but limited, repairs which were required by the Temporary Injunction Order, they stopped making any other significant repairs. Defendants are currently making no apparent added efforts to restore the Apartment Building to its pre-storm condition. In fact, as a result of its failure to make additional repairs, HHA asserts that the building does not meet HUD housing quality standards, and it has sought recently to arrange the termination of several Plaintiffs' vouchers as a result.

50. HHA's CEO and Board have knowingly condoned, approved and ratified the failure of HHA (including people acting as agents on behalf of HHA) to use its best efforts to make the repairs which are needed to restore the Apartment Building to its pre-storm condition and to assure that the Apartment Building was suitable for

15

occupancy.

(2) Termination Notices

51. Defendants learned immediately after the Hurricane that the life safety systems (e.g., the fire alarm, fire control panel, fire sprinkler and fire pump) for the Apartment Building had been rendered inoperable. Rather than choose to make emergency repairs for the safety of their tenants, Defendants decided to force all of those tenants to vacate the building.

52. On September 18, 2017, all of the residents of the Apartment Building (including the Plaintiffs in this cause) were provided written notice from V.J. Memorial Corp. which was signed by Defendant Gunsolley. In that notice, Gunsolley told each resident that "... the damage to the Apartment is so extensive the Apartment has become as a practical matter totally unusable for residential purposes due to health and safety reasons." Gunsolley's notice also stated that "[w]e are therefore forced to exercise our right under Section 92.054(b) of the Texas Property Code and Paragraph 26 of the TAA Lease Contract to terminate the TAA Lease Contract by giving you this written notice, which will effectively terminate your TAA Lease Contract for the Apartment on September 23, 2017. You have until September 23, 2017, at 5:00 p.m. to remove your possessions from the unit. If you do not remove your personal possessions by that time, we will be forced to remove your possessions and store them at a cost to you."

53. When Gunsolley sent those notices, he knew that the notices would greatly disturb and upset the senior citizens living there. Gunsolley had also already considered the possibility that forcing the senior residents to involuntarily leave could subject them to transfer trauma. Gunsolley nevertheless decided to send those notices

16

based upon his unsupported belief that the residents would be better off if they were involuntarily relocated. At the time, the residents had electrical service and running water, and none of their apartments had flooded during the Hurricane.

54. The termination letters caused an immediate uproar amongst the residents, who were extremely vocal in raising their concerns. HHA's Board held an emergency meeting to discuss these concerns with the tenants. That meeting was held in the parking garage at 2100 Memorial on Thursday, September 21, 2017, and was heavily attended by the residents. Despite their concerns and desires, the residents were told that they would have to move because of damages to the Apartment Building. The Board then passed Resolution No. 2914, in which the Board approved an interest-free loan to V.J. Memorial to help pay for tenant moving expenses at the Apartment Building.

55. To date, Defendants have not relied upon Gunsolley's termination notices to file any forcible detainer actions. Neither have they obtained a writ of possession nor any other judicial order authorizing them to take possession of any of the Plaintiffs' leased homes. Nor have Defendants obtained any judicial authorization to remove any of the personal property which Plaintiffs keep and maintain within their homes at the Apartment Building.

56. HHA's CEO and HHA's Board have knowingly condoned, approved and ratified the lease terminations for all of the Residents of the Apartment Building based upon the mere allegation that damages from Hurricane Harvey rendered all of the apartments there uninhabitable for all practical purposes.

(3) Decline in Maintenance

57. After Defendants served the five-day termination notices, they aggressively

encouraged the residents to move away. Defendants provided financial assistance to those who agreed to move, and Defendants promised that anyone who moved would be allowed to return after the Apartment Building is repaired. Most of the residents (including some of the Plaintiffs) agreed to temporarily relocate based on this promise. 58. As tenants have moved away following Hurricane Harvey, Defendants have taken the vacated units off of the rental market. Sheetrock has been removed from many of these vacated units, which has rendered them unsuitable for occupancy. Many of these units have sat vacant for months in an unleasable condition, without any repairs being made, and without any apparent plans for repairs in the foreseeable future.

59. Defendants' ongoing failure to repair the property is not only delaying the ability of the temporarily displaced tenants to return, but the growing number of vacancies and the attendant loss of rental revenue has accompanied (and is likely causing) a decrease in the maintenance services performed at the Apartment Building. Before Hurricane Harvey, Defendants customarily kept the hallways clean and uncluttered of trash. Defendants no longer do so. Now the hallways are sometimes dirty, and occasionally trash accumulates in the hallways and around the garbage chutes.

XI. Harm to Plaintiffs

60. Plaintiffs have been harmed, and are threatened with further imminent harm, by Defendants who: (1) failed to use their best efforts to make repairs and to maintain the high rise in good repair and suitable for occupancy; (2) purported to terminate Plaintiffs' leases for minimal damages pursuant to Section 92.054(b) of the Texas Property Code where that statute only allows a lease to be canceled if a casualty loss renders a leased

18

residence completely unusable for residential purposes; (3) purportedly terminated Plaintiffs' leases without good cause for doing so, where the LURA only allows a termination for good cause; and (4) failed to continue the customary provision of maintenance.

XII. Claims For Relief

A. Texas Declaratory Judgment Act

(1) Generally

61. Plaintiffs' rights are affected by the construction of particular provisions of their lease agreements, a LURA which has been filed as a restrictive covenant, Section 92.054 of the Texas Property Code, and Section 42 of the Internal Revenue Code (26 U.S.C. § 42). Plaintiffs are therefore entitled to seek a declaration of their rights under these provisions under Texas Civil Practice and Remedies Code §§ 37.003 and 37.009.

(2) Enforceability of Lease Clause 26.5

62. Plaintiffs' leaseholds are affected by the first sentence of Clause 26.5 of their Lease Agreements, which states that "[i]f we believe that fire or catastrophic damage is substantial, or that performance of needed repairs poses a danger to you, we may terminate this Lease by giving you at least 5 days' written notice."

63. Plaintiffs generally seek a declaration of their rights under this part of Lease Clause 26.5. More particularly, Plaintiffs seek a declaration that this part of Lease Clause 26.5 is void and unenforceable for five reasons.

64. First, it amounts to an unlawful waiver of certain rights and duties which cannot be waived under Section 92.006(c) of the Texas Property Code. While Section 92.054(b) does permit either the landlord or the tenant to terminate the lease if a

19

casualty loss has rendered a "rental premises ... as a practical matter totally unusable for residential purposes[,]" Section 92.054(c) provides that a tenant is entitled to a reduction of rent if a casualty loss has rendered a "rental premises . . . partially unusable for residential purposes" In other words, the relevant statute only authorizes termination if a casualty loss, such as a flood, renders an apartment totally unusable for residential purposes and not when the damage only rendered the apartment partially unusable for residential purposes. The lease clause effectively denies tenants the right afforded by Section 92.054 to avoid lease termination if the damage to an apartment is not complete.

65. Second, this clause is so broadly written as to be unduly vague and ambiguous, and is therefore susceptible to various interpretations. Under one reading, this sentence could simply allow the landlord to terminate the lease for a particular apartment which has actually incurred substantial damages. Under another reading, this sentence could allow the termination of every lease in the high rise (even for apartments which have not been damaged) if any room in the Apartment Building (including non-residential rooms) has been substantially damaged.

66. Third, this lease clause purportedly allows a unit of government to terminate a lease, a valuable property right, without reference to any verifiable standards or guidelines, in violation of the guarantee of the due course of law promised by the Texas Constitution, and the guarantee of due process rights promised by the Constitution of the United States of America.

67. Finally, this sentence of Lease Clause 26.5 conflicts with the LURA requirement that the lease can only be terminated for good cause. Specifically, this lease clause

20

allows the landlord to cancel a lease if necessary repairs pose *any* risk of danger to the tenant. This clause allows the landlord to cancel without regard to the gravity or likelihood of the dangers resulting from the repairs, and irrespective of whether those dangers may be outweighed by the foreseeable dangers which the tenant would face if forced to involuntarily leave. Such a lease cancellation for a tenant's safety is not for "good cause" if that cancellation actually increases that tenant's exposure to danger. Plaintiffs therefore seek a declaration that this sentence of Lease Clause 26.5 is void, because it conflicts with the "good cause" requirements of the Second Amendment to the LURA.

(3) Statutory Clause about Casualty Loss

68. Plaintiffs' tenancies are also affected by the construction of Section 92.054(b) of the Texas Property Code, which provides that an innocent tenant's lease may be involuntarily terminated by the landlord if "...the rental premises are as a practical matter totally unusable for residential purposes..." following a casualty loss. Plaintiffs seek a declaration that Defendants violated this statute by terminating their leases when their homes were not, as a practical matter, rendered totally unusable for residential purposes.

(4) LURA Requirement of Suitability for Occupancy

69. Plaintiffs' tenancies are also affected by construction of Clause 3(h) of the LURA, which provides that "...the Project Owner covenants, agrees and warrants that each Low-Income Unit is and will remain suitable for occupancy to the extent required by Texas Law and under regulations prescribed by the Secretary, taking into account local health, safety and building codes." These tenancies are similarly affected by the

21

regulatory requirement that "[a]II Developments funded by the [TDHCA] must be decent, safe, sanitary, in good repair, and suitable for occupancy throughout the Affordability Period." 10 TAC § 10.621(a). Plaintiffs seek a declaration that beginning on September 1, 2017, Defendants had a duty to keep each unit at the Apartment Building in a condition which is suitable for occupancy, and that Defendants breached that duty.

(5) LURA Clauses requiring "Best Efforts" to Repair and Operate Building for Residential Purposes

70. Plaintiffs' tenancies are also affected by construction of Clause 3(I) of the LURA, which provides that "[t]he Project Owner represents, warrants and agrees that if the Project, or any part thereof, shall be damaged or destroyed..., the Project Owner will use its best efforts to repair and restore the Project to substantially the same condition as existed prior to the event causing such damage or destruction, ... and thereafter to operate the Project in accordance with the terms of this Declaration" and Clause 3(e) of the LURA which provides that the owner "shall maintain the Project as a qualified lowincome housing project." Defendants, however, made no significant effort to make certain necessary repairs during the month or so following the Hurricane, and they only made minimal efforts to make those repairs thereafter. Following the Hurricane, Defendants vigorously encouraged existing tenants to vacate, they have declined to allow former occupants to return and regain occupancy, and they have declined to lease any vacant units to new tenants. Plaintiffs seek a declaration that Defendant HHA violated Clauses 3(e) and 3(l) of the LURA in two ways – first by failing to use their best efforts to make repairs, and second by failing to operate the high rise for residential purposes according to the terms of the LURA.

22

(6) Lease Clause about Customary Custodial Services

71. Plaintiffs' rights are also affected by construction of Clause 31.1(a) of the Lease, which provides that the landlord will "...act with customary diligence to...[k]eep common areas reasonably clean, subject to Par. 25." For reasons likely related to the loss of tenants and the loss of rental income following the Hurricane, Defendants stopped performing its customary level of routine housecleaning around the common areas. Defendants allowed trash to accumulate in the hallways and by the trash chute for long periods of time, and the overall cleanliness of the common areas fell to unreasonable levels. Plaintiffs therefore seek a declaration that Defendants failed to comply with Lease Clause 31.1(a).

(7) LURA Clause Barring Demolition

72. Plaintiffs' rights and tenancies are also affected by construction of Clause 3(k) of the LURA, which provides that "[t]he Project Owner shall not demolish any part of the Project or substantially subtract from any real or personal property of the Project or permit the use of any Unit for any purpose other than rental housing during the Term of this Declaration, unless required by law." Specifically, as landlords, Defendants have discussed the possible demolition of the property and are currently leaving apartments vacant for no purpose, effectively subtracting from the real and personal property of the project at 2100 Memorial. Plaintiffs therefore seek a declaration that the LURA bars Defendants from opting to demolish the high rise unless that demolition is required by law.

B. Application For Permanent Injunction, Specific Performance and Appointment of Receiver and/or Special Master

73. Texas Civil Practice and Remedies Code § 65.011(1) and (3) authorizes a writ of

23

injunction to be granted "if the applicant is entitled to the relief demanded and all or part of the relief requires the restraint of some act prejudicial to the applicant" or if the applicant "is entitled to a writ of injunction under the principles of equity." Here, Plaintiffs are entitled to injunctive relief under both of these prongs.

74. Plaintiffs request that the Court issue a mandatory permanent injunction against Defendants and their administrators, officers, employees and agents, enjoining them to repair the high rise to the condition it was in prior to Hurricane Harvey and to maintain the building in good repair and suitable for occupancy. Alternatively, Plaintiffs request specific performance of Defendants' obligation to repair the building under the LURA and the lease provision incorporating state law and the state regulation requiring maintenance of high rise in good repair and suitable for occupancy, 10 T.A.C. § 10.621(a).

75. Plaintiffs request that the Court issue a permanent injunction against Defendants and their administrators, officers, employees and agents, enjoining them from demolishing the residential high rise located at 2100 Memorial, Houston, Texas, unless they are required to do so by law.

76. Plaintiffs request that the Court issue a permanent injunction against Defendants and their administrators, officers, employees and agents, enjoining them from treating the Lease Termination Notices signed by Tory Gunsolley on September 18, 2017 as valid and effective.

77. Plaintiffs request that the Court issue a permanent injunction against Defendants and their administrators, officers, employees and agents, mandating that Defendants' customary custodial services be reinstated to insure that the common areas are kept

24

reasonably clean and free from trash.

78. Defendants consist of the Plaintiffs' landlord (which is a unit of local government) and the landlord's agents, officers and affiliates. Defendants wrongfully purported to terminate Plaintiffs' leases, wrongfully threatened to remove Plaintiffs' goods from their homes, have refused to make repairs to restore the property to its pre-storm condition, have allowed the number of the leased units to dwindle until most units are now vacant, have reduced custodial services in the common area, and have cause Plaintiffs to fear that Defendants are ultimately seeking to demolish the Apartment Building. Plaintiffs face imminent, irreparable harm from such conduct, and they have no other adequate remedy at law.

79. Plaintiffs also request the Court to appoint a post-judgment receiver under Tex. Civ. Prac. & Rem. Code § 64.001(a)(3) to take control of the property and assure that the permanent injunction is enforced. Plaintiffs are entitled to this relief, because they have an enforceable interest in the high rise property under the LURA as tenants (and the resident Plaintiffs have a continuing interest in possession of their apartments in the building) and this high rise property is in danger of being lost or materially damaged through Defendants' non-compliance with the LURA and various statutes.

80. As an alternative to the appointment of a receiver or in addition to such an appointment, Plaintiffs request the Court to appoint a special master in chancery under its inherent powers and Rule 171 to monitor and assure compliance with any permanent injunction, imposing the cost of the master on the Defendants as well. There is good cause for this appointment, because Defendants have continually failed to comply with the LURA and the temporary injunction and appointment of a master could assure

25

compliance with any permanent injunction that is issued.

C. Monetary Claims

81. Plaintiffs are also entitled to recover monetary damages from HHA and Memorial Drive Elderly, L.P. for two reasons. First, under Texas Property Code section 92.054(c), Plaintiffs are entitled to a reduction in rent that they paid after Hurricane Harvey to the extent that their apartments and the building were partially unusable for residential purposes. As such, Plaintiffs are entitled to a return of a portion of the rent that they paid after Hurricane Harvey in an amount proportionate to the extent their premises were unusable because of the flood. In addition, Plaintiffs are entitled to attorney's fees on this claim under Tex. Prop. Code § 92.005. Second, Defendants HHA and Memorial Drive Elderly, L.P. violated the provision of the lease that required the landlord and owner to substantially comply with safety laws when they demanded and accepted rental payments from Plaintiffs during a period when that was prohibited by the City of Houston Fire Code, Code of Ordinances § 10-302. As such, Plaintiffs are entitled to a refund of all rent paid during a period when acceptance of rent was prohibited by the Fire Code. In addition, Plaintiffs are entitled to recover attorney's fees on this claim under section 32.5 of Plaintiffs' leases. Third, HHA and Memorial are liable as landlords for their breach of Plaintiffs' leases under Tex. Prop. Code § 91.004(a), and, to secure payment of damages, Plaintiffs have a lien on the landlords' nonexempt property in their possession and on the rent due to the landlords under the lease under Tex. Prop. Code § 91.004(b).

XIII. Statutory Waiver Of Immunity and Ultra Vires Acts

82. All of Plaintiffs' claims are subject to a statutory waiver of immunity.

83. First, Plaintiffs' claims for declaratory and injunctive relief relating to Texas Property Code § 92.054(b), see paragraphs 68 and 76 above, are encompassed within a statutory waiver of governmental immunity set forth in Section 392.006 of the Local Government Code. That statutory provision provides that public housing authorities, such as Defendant HHA, are "... subject to all landlord obligations and tenant remedies, other than a suit for personal injuries, as set forth in any lease or rental agreement and in Chapters 24, 54, 91, 92, and 301 of the Property Code." Plaintiff's claims for declaratory and injunctive relief under Texas Property Code § 92.054(b) are encompassed within this statutory waiver of immunity, because Plaintiffs are seeking to enforce a landlord obligation set forth in section 92.054, namely to avoid termination of leases unless the premises were rendered totally unusable for residential purposes as a result of a casualty loss. Immunity may also be abrogated, because Plaintiffs seek declaratory relief that is defensive to Defendants' counterclaim for declaratory relief filed on June 18, 2018.

84. In addition, Plaintiffs' leases all provide that the landlord shall "act with customary diligence to . . . substantially comply with all applicable laws regarding safety, sanitation, and fair housing[.]" Based on this clause, Plaintiffs' claims for declaratory relief under Texas Property Code § 92.054(b) are encompassed within this statutory waiver of immunity, because Plaintiffs are seeking to enforce a provision of the lease to assure compliance with section 92.054(b), a "law regarding safety [and] sanitation." Section 92.054(b) effectively allows landlords and tenants to terminate a lease when an apartment is totally uninhabitable due to a casualty loss, like a flood, so that tenants can escape living in unsafe and unsanitary conditions and landlords can avoid the cost of

27

repairing a space that has been become unsafe or unsanitary.

85. Second, Plaintiffs' claim for declaratory relief regarding the meaning and enforceability of section 26.5 of the lease, see paragraphs 62-67, is encompassed within the statutory waiver of 392.006 of the Local Government Code, because it is seeks to determine the nature and extent of one of HHA's obligations as a landlord and the rights of Plaintiffs as tenants under this clause.

86. Third, Plaintiffs' claims for declaratory and injunctive relief regarding the LURA, see paragraphs 69-70, 72 and 74-75, are encompassed within the statutory waiver of section 392.006 of the Local Government Code, because the lease provision requiring substantial compliance with "all applicable laws regarding safety, sanitation and fair housing" necessarily encompasses Texas Government Code § 2306.6720. That statutory provision provides that "[e]ach material representation made by an applicant to secure a housing tax credit allocation is enforceable by the department and the tenants of the development supported by the allocation" and that "a land use restriction agreement is considered to state the development owner's ongoing obligations with respect to the matters addressed in the agreement." The LURA in this case included safety provisions, such as the obligations to use best efforts to repair a building once it is damaged and to assure that each low-income unit will remain "suitable for occupancy to the extent required by Texas law . . . , taking into account local health, safety and building codes." In short, these LURA provisions are aimed at assuring safety and sanitation. Moreover, execution of a LURA with its many representations and promises was a prerequisite to receipt of tax credits for the building located at 2100 Memorial Drive. See Commitment Notice signed by a representative of the Texas Department of

Housing and Community Affairs on November 12, 1996 and by a representative of the owner of the project on November 18, 1996, a copy of which is attached hereto as Exhibit A.

87. Similarly, the claims for declaratory and injunctive relief relating to the LURA are encompassed within the statutory waiver of section 392.006 of the Local Government Code, because the same lease provision requiring substantial compliance with safety and sanitation laws encompasses Texas Government Code § 2306.6735. That statutory provision requires leases in tax credit properties "to be consistent with state and federal law." Since this statute renders the LURA in this case, including its provisions for repair and maintenance of habitable conditions, enforceable as a matter of state law and binding as a matter of federal law under 26 U.S.C. § 42(h)(6)(B)(v), this statute itself is a form of safety-related law under the lease. Moreover, under the obligation of LITC properties to comply with state law in Texas Government Code § 2306.6735, Defendants were required by 10 T.A.C. § 10.621(a), applicable to this LITC property under 10 T.A.C. § 10.1, to keep the property in good repair and suitable for occupancy under HUD's uniform physical condition standards. Likewise. by encompassing federal law, a tax credit property is required by 26 U.S.C. § 42(i)(3)(B) to comply with local health, safety and housing codes.¹ The duties to maintain the property under 10 T.A.C. § 10.621(a) and 26 U.S.C. § 42(i)(3)(B) demonstrate further that section 2306.6735 is a safety-related statute enforceable under the lease, and thereby within the waiver of immunity provided by Section 392.006 of the Local Government Code.

¹ To the extent that paragraph 31.2 of the lease suggests that the only remedies for tenants of the provisions in paragraph 31.1 are Texas Property Code remedies, it conflicts with the aforementioned state and federal laws and is overridden by paragraph 9 of the affordable housing addendum to the lease.

88. In addition, enforcement of the LURA provisions are encompassed within the statutory waiver of section 392.006 of the Local Government Code, because the obligations of the LURA are implied terms of the lease. That is so, because the affordable housing addendum recognizes that the building at 2100 Memorial is a tax credit property and is thereby presumably covered by a LURA that is enforceable by tenants. Specifically, this addendum recognizes that the building is covered by either the "Housing Tax Credit" or "HOME" programs and that it encompasses a "good cause" limitation on eviction and limitations on landlord liens and lockouts. Since the property is covered in fact by the low income housing tax credit provided under 26 U.S.C. § 42 and it was unnecessary to expressly reference the LURA, implying the LURA as a term of the lease reflects the parties' real intentions.

89. Fourth, Plaintiffs' claims for declaratory and injunctive relief regarding maintenance of the common areas, see paragraphs 71 and 77, are encompassed within the statutory waiver of section 392.006 of the Local Government Code, because a clause in the lease imposes an obligation upon HHA, as the landlord and project owner, to "keep common areas reasonably clean."

90. Fifth, Plaintiffs' claims for monetary relief, paragraph 81 above, are encompassed within the statutory waiver of section 392.006 of the Local Government Code for three reasons. Under Texas Property Code section 92.054(c), a statute within Chapter 92 of the Property Code, Plaintiffs, as tenants, are entitled to seek a reduction of rent when their premises are damaged by a casualty loss, but that damage has not rendered the premises totally uninhabitable. In addition, the lease provision requiring substantial compliance with safety and sanitation laws would necessarily include the Houston Fire

30

4/2/19 comments to TDHCA EXHIBIT F

Code which prohibits the acceptance of rent for the period after a red tag is placed on a building and the period for compliance has passed. Here, many Plaintiffs were required to pay rent during the period after the red tag was imposed and after a period for compliance had expired. Since this claim relates to enforcement of a lease provision requiring substantial compliance with safety laws, section 392.006 waives governmental immunity for this claim as well. Finally, all of Plaintiffs' claims for breach of the lease are encompassed within section 392.006 of the Local Government Code, because Tex. Prop. Code § 91.004 provides them a cause of action for breach of their leases and that provision is part of the claims excepted from governmental immunity.

91. Should this Court find that there is no statutory waiver of governmental immunity as to any of the LURA claims relating to repair of the building and maintenance of the building in a habitable condition, Plaintiffs allege, alternatively, that the CEO and the Board of Commissioners have acted *ultra vires* in failing to use their best efforts to repair the Apartment Building following Hurricane Harvey and to assure that the property remains suitable for occupancy in violation of both the LURA and Texas Government Code § 2306.6720. Also, should this Court find that there is no statutory waiver of governmental immunity as to the LURA declaratory claim relating to potential demolition, Plaintiffs allege, alternatively, that the CEO and the Board of Commissioners acted *ultra vires* in effectively seeking to demolish the building in violation of the LURA. In addition, should this Court find that there is no statutory waiver of governmental immunity as to the section 92.054 claims, Plaintiffs allege, alternatively, that the CEO and the CEO and the Board of Commissioners acted *ultra vires* in seeking to terminate Plaintiffs' leases when there was no basis for termination under section 92.054. Consequently,

31

these ultra vires claims are not subject to governmental immunity.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that Defendants be

cited to appear and answer, and upon the trial of this cause, the Court enter judgment

for Plaintiffs which grants the following relief:

- a) The declaratory relief requested above;
- b) The permanent injunction and specific performance requested above; and
- c) Damages as requested above and attorney's fees for damages claims made under the lease; and
- All such other and further relief to which they might be legally or equitably entitled.

Respectfully submitted,

/s/ Mark J. Grandich Mark J. Grandich (713) 652-0077, ext. 1251 State Bar No. 08294850 /s/ Richar<u>d Tomlinson</u> Richard Tomlinson (713) 652-0077, ext. 1154 State Bar No. 20123500 Lone Star Legal Aid P.O. Box 398 Houston, Texas 77001-0398 Fax (713) 652-3814 mgrandich@lonestarlegal.org rtomlinson@lonestarlegal.org ATTORNEYS FOR PLAINTIFF EXCEPT DAVID FURMAN

UNIVERSITY OF HOUSTON LAW CENTER CONSUMER LAW CLINIC

By: /s/ Ryan Marquez

Ryan Marquez Tex. Bar No. 24064321 4604 Calhoun Road, RM 56 TUII Houston, Texas 77004 Telephone : (713) 743-2094 Fax (713) 743-2195 Ryan.M.Marquez@gmail.com ATTORNEY FOR PLAINTIFF DAVID FURMAN

CERTIFICATE OF SERVICE

I hereby certify that on September 21, 2018, the above document was delivered to all attorneys or parties of record in compliance with the Texas Rules of Civil

Procedure.

<u>/s/ Richard Tomlinson</u> Richard Tomlinson PUBLIC HEARING

2100 MEMORIAL

APRIL 2, 2019

SIGN-IN SHEETS

Note: At the beginning of the Public Hearing a head count indicated approximately 70 persons were in attendance. Only 38 signatures appear on the sign-in sheet.

2100 Memorial Public Meeting April 2, 2019 2:00 PM

NAME (Please Print)	ADDRESS	PHONE NUMBER	CITY / ZIP CODE
BENNY LEE CLARK	2100 MEMORIAL # 611	713-445-281 25 0475	HOUSTON TX 77006
BARRY PALMER	HOST SHEAMAY PLAZA	832-867-4920	HOUSTON TX
TAMEA DULA	9 Greenway Plaza, Surte 1000 Houston TX 77046 9 Circenway Plaza, suite 1000	713-653-7322	Houton 77046
Esmeralda montalro	9 Circenwal Placa, suite 1000 Houston Th 19046	713-653-000 7320	Houston Mo46
BILLY BRAWDY	2100 Memorial # 907	281-881-0094	
RAY Huniansky	Columbia Poside field prochy by MIX Prochase Sh Stelldy Busing	414-\$19-1435	Arcuta 6231309
LICION GREEP	2308 NAN 5 HOUGON 22092	713-705-0353	

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2100 Memorial Public Meeting April 2, 2019 2:00 PM

NAME (Please Print)	ADDRESS	PHONE NUMBER	CITY / ZIP CODE
ANONE JOHNSON	23,09 W MAIN ST.	404 877 3030	74089
Emily Kniep	The Lynd Co.	832-798-2616	
BORNABING SPULLIN BENTO	734.74	832 394 7818	77026
Richard Tomlinson	P. O. Box 398, H 77001	713-652-001T ×1154	
Robert A. Meek	14310 Sugar Mil (CV- 74095	281-794-4180	7-7095
Ira Dember	10314 Harmonerly Blud -17043	ive & fermourong	77643
Rang Klein	2207 Hady St.	713-224-4144	77026

2640 Fountain View Dr., Houston, Texas 77057 www.housinaforhouston.com A Fair Housing and Equal Opportunity Agency For assistance: Individuals with disabilities may contact the 504/ADA Administrator at 713-260-0353. TTY 713-260-0547 or 504ADA@housion.dothouston.com

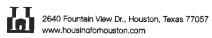
2100 Memorial Public Meeting April 2, 2019 2:00 PM

NAME (Please Print)	ADDRESS	PHONE NUMBER	CITY / ZIP CODE
Edwin Bhyston	390764035-6-219-77205	7135230119	# 77505
STEPHEM LORMORE	2100 MEMORIAL # 509	832-272-8042	HUSTON TX 7700)
JAY HAMBURGER	1617 STATE 7707	713.869.0869	H+ 77007
Mark Grandich	@1500 Jefferson, 17th Floor	713-652-0077 ×1251	11T 77002
RICHARD HANNA	3802 FLOXINDA	6326678208	77021
Jerenny Clau	900 Kingley Si	878-193-7000	- 7-7000 -
Und 12 A Hechyde	2100 Memoria	281840-127	77007

2640 Fountain View Dr., Houston, Texas 77057 www.housinaforhoustori.com A Fair Housing and Equal Opportunity Agency For assistance: Individuals with disabilities may contact the 504/ADA Administrator at 713-260-0353, TTY 713-260-0547 or 504ADA@housingforhoustop.com

2100 Memorial Public Meeting April 2, 2019 2:00 PM

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Bul Binn	2100 menureal	713-574-9665	Hor. X
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April 2, 2019 2:00 PM NAME **ADDRESS CITY / ZIP CODE PHONE NUMBER** (Please Print) 2215 Union St 7-303-8090 77007 la Jarza de 519 P2 164992 2100 Menonal da # 713-864-267 612 7705 713-657-5542 JI UL 72000 Memorial 3 7769 008 #24 Gene Walker 72057 346-801-1662 2311 Forntain View Dr. 77018 ap 2303 2814609592 NR

2100 Memorial Public Meeting

2640 Fountain View Dr., Houston, Texas 77057 www.housinaforhouston.com A Fair Housing and Equal Opportunity Agency For assistance: Individuals with disabilities may contact the 504/ADA Administrator at 713-260-0353, TTY 713-260-0547 or 504ADA@housingforhouston.com

2100 Memorial Public Meeting April 2, 2019 2:00 PM

NAME (Please Print)	ADDRESS	PHONE NUMBER	CITY / ZIP CODE
E.M. BesiANT	2100 MemoRIA/ #-1213	8325673703	Hon 72007
SLENN EVERITE	2100 MEMORIAL H BIY	713-620-8646	How 77667
Connie Castillo	2100 Memorial #1113	-713-807-1808	77007
RenBRAWDY	2100 MEMORIAL	713-201-6907	77007
NMD Harrilton	2100 Merioria (Do# 302	346266-4368	τ. (
Katle Kopnia	2100' 4512	73-898-2529	77007
Roger Willims	2100 MENOSTALSOME LAND 2100 MENOSTAL. 1124	832.566 2938	77607

2640 Fountain View Dr., Houston, Texas 77057 www.housingforhouston.com A Fair Housing and Equal Opportunity Agency For assistance: Individuals with disabilities may contact the 504/ADA Administrator at 713-260-0353. TTY 713-260-0547 or 504ADA@housingforhoustori.com

Houston Housing Authority 2100 Memorial Public Hearing Hearing Minutes April 2, 2019

Houston Housing Authority ("HHA") Board Chairman LaRence Snowden announced at 2:13 pm that there was a delay pending the arrival of a translator. He further indicated that if anyone had the need for a Spanish translator to please raise their hand and they would be properly assisted.

At 2:30 pm, after arrival of said translator, Chairman Snowden thanked everyone for attending. He introduced his panel, Tory Gunsolley, President and CEO of the HHA, Ray Kuniansky, Columbia Residential and Barry Palmer, Coats Rose.

Chairman Snowden announced that as a part of the rebuilding process the HHA wanted to hear from them and Donna Dixon was providing everyone with cards for questions. If the HHA didn't have answers at the end of the meeting, they would do their best to get back to each person. All questions would be addressed at the end of the meeting.

Tory Gunsolley thanked everyone for attending the public hearing. He indicated that the purpose of today's meeting was to discuss a proposed amendment to the LURA (Land Use Restriction Agreement) in place by TDHCA. The amendment would be an abatement of the LURA for 3 years during development of the proposed new building and extension of the LURA for an additional 3 years - in essence putting the LURA restrictions on 'hold' while the new building was built.

Ray Kuniansky gave a brief summary of what services Columbia Residential provides. They have done investigative work to see what is needed at 2100 Memorial and indicated all prior damage has rendered the building unhealthy and unsafe. In analyzing new regulations, the current building cannot meet all of them through a renovation. The way to redevelop the site is to rebuild. Stated goals of the HHA is to replace the 196 units currently there. They must meet the current watershed requirements. He gave a technical explanation of what the new building would entail, including a retention pond for floodwater to be held on site (underneath the parking deck). The parking deck will now be a flow through parking deck so the water would flow instead of being contained as it was during the previous floods. Finished floor area has to be 2 feet above the 500 year flood plain height, which is 2 stories above where it is currently. Lastly, he indicated that Columbia would like to have several meetings with tenants (current and former) throughout the process to determine what needs to be incorporated into the new building.

PUBLIC COMMENT: At 2:45 pm, Chairman Snowden introduced Donna Dixon who would be assisting with the public comments, including the questions/comment cards, etc.

19 people gave comments, including 5 who commented multiple times.

Q&A: At 3:41 pm, Mr. Snowden addressed the crowd and let them know how important the seniors are to the HHA and that providing a safe environment is priority #1. He addressed the distrust issue raised by some of the persons giving public comment, stating that it will not be fixed overnight but will continue to be worked on. He reassured the attendees that the goal is for them to leave the meeting with understanding and responses to their questions and concerns and if there was anything that couldn't be answered at the hearing, it would be a point of the HHA to get an answer for them.

The attendees' questions about the LURA were addressed by Barry Palmer. He explained the purpose for the LURA and what the amendment would entail.

Tory Gunsolley addressed concerns about the FEMA money that hadn't been received. He explained that money was received by the City not the HHA. Further he reassured them that in the HHA's opinion a rebuild would be safer and more cost efficient than rehabbing the property.

The tenants were told that the LURA requires that the property be used for senior housing and will remain for senior housing.

4:25 PM Chairman Snowden gave a heartfelt closing in addressing the seniors, and emphasized that all tenants at the time of Hurricane Harvey will have the priority right to return to 2100 Memorial after its redevelopment, if they wish to do so.

SUMMARY OF PUBLIC COMMENTS, QUESTIONS AND ANSWERS OFFERED AT 2100 MEMORIAL PUBLIC HEARING

APRIL 2, 2019

Public comments commenced at 2:45 pm and concluded at 3:40 p.m. when the HHA Board Chair took up common questions raised during the public comment (A - F), and other questions raised by the attendees (G - M).

1. Connie Castillo – HHA has to deal with the distrust of HHA. She needs safe housing close to work and easy transport. Last week on NPR radio it was stated that there is little or no affordable housing in Houston. HHA has been using lies and deception. There was damage to the building prior to Harvey. Her opinion is that HHA decided years ago to get rid of the LURA.

2. Bernadine Benton – It is reassuring that HHA wants input. She is a former resident and values the sense of community. No crime or violence. The building had problems. There is a waiting list and a shortage of affordable housing for seniors. She hopes the project is approved.

3. Barry Klein – He worked to save APV [Allen Parkway Village] from demolition. FEMA has documents about flood proofing – he urges that we look at flood proofing before demolishing. The Houston Press published a story in 1995 about HHA, providing history on the issue.

4. Margaret Lindsey – She is a former resident. She questions whether 3 years or 6 years is lost from the LURA. She lived at 2100 because she works in Midtown, no crime, felt safe. Now she lives in Midtown and her rent is \$200 more a month. What do we do for rent?

5. Rhonda Skillern-Jones – She is the relative of a former resident who is in support of the project. It will meet new standards. Here HHA is offering to spend more to give residents what they need.

6. Edna Besiant – She is a 17-year resident of 2100. She questioned Rhonda Skillern-Jones as to her connection to 2100 because she was an unfamiliar face (Ms. Skillern-Jones' mother was a resident.) What is a LURA? Are you telling us that 2100 will definitely be demolished? What are we going to do? How long will we have to be out of the building?

7. Sheila Henderson Jones – She is a new resident. Doesn't understand abatement – wants to leave the restrictions that the building be used for senior citizens so it can be rebuilt for senior citizens. Are you [HHA] going to give yourselves the option of building a for-profit building? Need reassurance that it will remain Senior housing. Was the building financially viable before the flood? Has trust problem. They need to be reassured that 2100 will remain a seniors building.

8. Paul Blinn – He has been a resident since June 2013. His apartment is in the same condition was it was when he moved in. Can't find comparable housing at a price a Veteran with

multiple sclerosis and need for medical care. He is opposed to the 3-year period unless HHA makes up the rent difference.

9. [Speaker who did not identify herself] - Her parents' life was enriched by living in 2100. Asking HHA to be in touch with wise people regarding future concerns and needs of senior citizens. All look at money differently. All would like to see a nonprofit take the lead [in redevelopment].

10. Ben Clark – He has been a resident of 2100 for several years. He is surrounded by destroyed apartments, and there is no one else living on his floor. HHA has decided that he doesn't mean anything. He needs some place to move that means something. His doctor is in the neighborhood and it is unsafe to be out at night.

11. Roy de la Garza - He is President of the Old Sixth Ward Neighborhood Association. We need back and forth conversation. Why is it that 2100 is being demolished?

12. Richard Hanna - Distrust due to HUD. The same promises were made regarding APV [Allen Parkway Village]. Relocating people who could not be with their families. When closed, APV promises were not kept. Distrust towards HHA is not personal, it's from experience.

13. Margaret Lindsey (speaking again) – There is a waiting list from here to eternity.

14. Glenn Everett – He has been a resident since 2001. He has concern that the land will be unloaded. He supports his adult son who is under a doctor's care, and he works every day. Wants to live here for the rest of his life.

15. Jay Hamburger - He is a longtime resident of the 6^{th} Ward, and a historic preservationist. Adaptive reuse is good – but here individuals are being disregarded as insignificant. He worked with Lynnwood Johnson on APV. Public housing is for the people. Pockets are opening and people are waiting to get money. People are taken advantage of in the process.

16. Connie Castillo (speaking again) – How are you going to afford tearing down the building? Where is she going to move? She's stressed – called the suicide line last month. She is paying rent, wants maintenance.

17. Barry Klein (speaking again) – [inaudible].

18. Roger Williams – His family has a historical home in the neighborhood. He has been a resident since May 1994. He moved there because the judge told him to find a safe place to live due to a death threat against him. Army Corps reworked the curb 13 time while he lived there – couldn't fix it. Stress due to what was not done. Told to move. Movers didn't bring half of this stuff, broke half of what they brought. Increased his living expenses 300%.

19. Rich Tomlinson – The amendment to the LURA is unprecedented in the history of the TDHCA. Amendment to the LURA is not effective without tenant consent. One case (Oregon) that explicitly states you can't take away tenants' rights under the LURA. Policy of the TDHCA is that if any tenants are living under the LURA, the LURA will be effective. URA will apply. Plan required. Not a word in the application to address rights of tenants.

20. Gene Walker – He was a resident for a couple years. When Allison occurred, buildings did not need to be rebuilt. Does it have to be rebuilt? It's a gem in the area. Can their leases remain when they return?

21. Rich Tomlinson (speaking again) – HHA talked with TDHCA- only found out about it last Tuesday. Not given the same time to respond as HHA had to forge an Application. Will continue to litigate over the LURA. Have never even had an offer to settle.

22. Mark Grandich – He is a lawyer involved in this. Other experts have come to other conclusions. PDG and Dan Sharp were hired to assess whether to repair or rebuild. Determined better to repair. Also hired to estimate to FEMA the costs of repair (\$8.4M) under penalty of perjury, the False Claims Act. The decision to demolish the building is optional. It's not necessary. New building will help tenants in future, not tenants now. Remembers Spanish Village – same thing. Closed, 10 years later reopened. Owe a duty to the people you have already.

23. Edwin Johnston – He's an activist. You [HHA] need to cut it out and serve current residents' needs before you do anything else. We want progress but preserve as much as we can.

* * * * * *

At 3:40 p.m., Board Chair Snowden began to respond to the common questions and issues raised in the Public Comments.

A. **Distrust of HHA** – Chair Snowden indicated that we are in the early stages of this proposed redevelopment. HHA is trying to make it known that the tenants are its priority – as is having a safe environment. HHA has been trying to improve the relationship with its tenants, but they know that they have to continue to work on this.

B. LURA. Barry Palmer of Coats Rose addressed "What is a LURA?" He stated that the property was previously a hotel, and then in the 1990s a private developer redeveloped it as senior housing. A Land Use Restriction Agreement ("LURA") was filed, requiring that the property be operated as affordable housing for seniors for 30 years. We are 18 years into this. The TDHCA recognized that sometimes the LURA is not appropriate for current conditions and developed a process to request restrictions be put on hold for a period of time in order to redevelop. The 3-year abatement would be effective as of the time the TDHCA approves the amendment (April or May 2019). But prior to demolition taking place, litigation has to be resolved, the City must agree to fund its \$25M loan and TDHCA must agree to put additional tax credits on the site. The LURA will be extended for an additional 3 years, or the TDHCA may put a new LURA on the property for 33 years.

C. Why Columbia Residential? Addressed by Tory Gunsolley, President and CEO of HHA. They are experienced and can do the demolition and reconstruction in 2 years. HHA is a developer, but we did not feel we had the ability to do it ourselves.

D. Doesn't the time frame provide you the opportunity to get around the LURA? Addressed by President Gunsolley. Part of the problem is that HHA has not presented any solutions. We have been forking to get answers so we can make proposals. Have looked into flood proofing and are in discussion with FEMA. But without the LURA Amendment we cannot get started. If we put \$8.4M into repair, the City would require that the whole building be brought up to Code – which would be millions more. It would take 2 years or more for a rehab with tenants in the building and contractors won't touch it. For a few million more, we could have a brand new building. Columbia does not want to be part of the litigation process. HHA needs to clear that up, then Columbia can talk with the tenants about how to rebuild.

E. Relocation – Addressed by President Gunsolley. The Uniform Relocation Act does apply. Current residents are entitled to special customized offers. We have made offers to tenants (but not in a long time) but have not made a litigation offer.

F. Financial Viability – Addressed by President Gunsolley. You inquired how a new building could be afforded when the old one was barely making ends meet. A new building will cost a lot, but by starting over we will eliminate all the debt on the building. We will start with a clean slate. The same Housing Tax Credit levels of rent will apply.

G. FEMA Money –. Q – *The Mayor has already stated that a large amount of FEMA money is available. Why have you not used it?* Addressed by President Gunsolley. HHA has not received any of the FEMA money yet. The City has received FEMA money, but not HHA.

H. Assistance for Former Residents – Q – You're not going to do anything for those who moved out already? Addressed by President Gunsolley. At 2100 we have market rate, Housing Tax Credit and Voucher tenants. There are restrictions in how HHA can help each group.

I. Units Proposed – Q – How many units are there currently? How may are proposed? Are they for the same income levels? Addressed by Chair Snowden. The project currently has 196 units, now 21 occupied. A senior development with at least 196 affordable senior units is promised. We don't see support from funders for more units. Those residents who live at 2100 now and those who had to move out will have first priority to move back. Units being proposed are actually larger than the current units.

J. Temporary Relocation – Q- We haven't heard that seniors will be taken care of. Where will I be living during the 3 years? Addressed by President Gunsolley. This LURA for 2100 will remain senior. If the LURA Amendment passes, there will still be 6 months or more until demolition could start. There's a FEMA process to go through and during that time the HHA would work with the tenants to relocate them to acceptable housing.

K. Former Residents – Q – *Residents who initially moved out had to compromise. They are not in 55+ communities now. There is a voucher waiting list. Is there some help for previous residents?* Addressed by President Gunsolley. If you moved out and are now looking for more help, please fill out a Comment Card and HHA will follow up individually. Everyone's case is different and we will reach out individually.

L. Relocation – Q – *Tenants at the time of the Hurricane were not relocated successfully. They are traumatized. It threw people into a panic, and multiple deaths were accelerated by the Hurricane. Lots of people were scattered all over the country without their possessions.* Addressed by Chair Snowden. HHA agrees that it was not a perfect relocation process. HHA commits to making it the goal to accommodate the seniors more adequately.

M. Maintenance – Q – Those still at 2100 and paying rent are not getting needed routine maintenance. They are not being treated well. Addressed by Chair Snowden. He has an elderly mother, and the same compassion he has for her, he brings here. The #1 priority is to make their lives better. Everyone will not get 100% of what they want, but you will have the priority right to return, if you want.

The Public Hearing concluded at 4:25 p.m.

HOUSING AUTHORITY
Comment Carel
Name: Diane MORIN
Address: 1910 Kane St.
Phone:E-mail address: diane morin27eqmail.com
Comment: OMy experience working with HAIA
Conaboration with Avenue COC, Tom Long, tom Mecholand,
Carmel Dree, MD, Head of Genontology, UT, Memorial
N 91



Comment Card

Name: BENNY LEE CLARK
Address: 2100 MEMOVIAL Apt. 611
Phone: 713 445 6030 E-mail address: DONOT HAVE ONE
Comment: How do I obtain ASSISTANCE in MOUING to #
temporary houseing

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AUTHORIT USING Name: Maraaret RUNDSU Address _E-mail address: Elasheart-619Cam Phone JONIT he able to ge h QUMALA Comme UNLOSS INP. 0 Ootton to leave in a wot iority. Nothing said about situation Now! 1 statiority USING AUTHORITY ronnemit Carr Name: Gene Walker I Address: <u>a311</u> Fountainview Phone: 346.801.1662 E-mail address: <u>genew 693@ gmail</u> Comment: I'm currently not at a 55 and commonity and To live in one, I am on The voucher program list. So while w

for 2105 Memorial Situation is Resolved, if Possible maybe get assisstance in that AREA

Comment Card Name: Gregory Williams #1,303 Address: Tidwell -466-9692E-mail address: Phone: Comment: How long after the \$ building is built will the residence be able to move back in? the letter they sent to residence he did not ge



CONDEME CAR

Name: <u>Rod Rodniguez</u> Address: <u>Aldo Memorical</u> # 612 Phone: <u>117.864.2011</u> E-mail address: _____ Comment: <u>Its Obvious that he doesn't know consthing about</u> Buttalo Bayou in Houston since its rea level.

FOR God STATE Cleage Stop Raying Cirmes with My Life - It have Lived at 2100 MEMORICA DRIVE Store 1914 If you want the out (SAY So Sincerty apt.# Dorothy Shelley 1101

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MEMORIAL DRIVE ELDERLY, L.P.

c/o Houston Housing Authority 2640 Fountain View Drive, Suite 400 Houston, Texas 77057

March 21, 2019

To All Residents of 2100 Memorial:

RE: LURA Amendment Request to TDHCA for 2100 Memorial Apartments; Address: 2100 Memorial Drive, Houston, Harris County, Texas 77007.

Dear Residents:

Memorial Drive Elderly, L.P. (Owner) is asking the Texas Department of Housing and Community Affairs Governing Board (the TDHCA Board) to approve an amendment to its Land Use Restriction Agreement (LURA) that will abate the time period during which 2100 Memorial (Development) must be held available for leasing to qualified tenants for a period of three (3) years, in order to permit demolition of the existing structures and reconstruction of the Development. The existing LURA will also be extended for an additional three-year period. Upon completion of the reconstruction, a new LURA will be executed and recorded against the Development, and such new LURA will add three (3) years to the normal extended use period, so that the construction period is made up. TDHCA rules require that notice of this request be provided to all residents of the property. This letter is to inform you that there will be a public hearing to discuss the request and we invite you to attend.

The public hearing is your opportunity to discuss the amendment request and voice your concern regarding the requested amendment. Information obtained from this meeting will be submitted for consideration by the TDHCA Board at their April 25, 2019 meeting. If you are unable to attend the public hearing and would like to submit your concerns in writing to the TDHCA, please send your comments via email to asset.management@tdhca.state.tx.us or you may mail them to:

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

A public hearing on this issue is scheduled at the Allen Parkway Village Community Center:

Location: Date:

Time:

Allen Parkway Village's Community Center 1600 Allen Parkway, Houston, TX 77019 **Tuesday, April 2, 2019 2:00 pm**

Transportation Shuttles will be provided to and from the meeting, solely for residents of 2100 Memorial. Shuttles will be available, an hour before and after, the meeting.

If you wish to contact the Owner, please call Jonathan Zimmerman at 713-260-0704.

Sincerely, MEMORIAL DRIVE ELDERLY, LP a Texas limited partnership

By: V.J. MEMORIAL CORP., a Texas non-profit corporation, General Partner

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By: Tory Gunsolley, Secretary

4815-5385-5113.v2

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A PROFESSIONAL CORPORATION

COATS ROSE

BARRY J. PALMER

bpalmer@coatsrose.com Direct Dial (713) 653-7395 Direct Fax (713) 890-3944

April 12, 2019

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

RE: # 96038/ CMTS #1500; 2100 Memorial Drive, Houston, Harris County, Texas.

Dear Mr. Banuelos:

This letter replies to the filing by Rich Tomlinson of Lone Star Legal Aid dated April 2, 2019. For ease in considering this response, we will address the issues raised by Mr. Tomlinson in the order given.

1. The Scope of the Proposed LURA Amendment Is Unprecedented.

Mr. Tomlinson first suggests that a LURA amendment such as that proposed by Memorial Drive Elderly, L.P. ("Memorial Drive") is unprecedented. This is incorrect. In approximately 2009, the TDHCA considered a request to permit redevelopment of a 404-unit LIHTC development in Dallas known as "Parks at Wynnewood." Parks at Wynnewood was a 60+ year old development that had been last rehabilitated with LIHTC in 1995, and rising maintenance costs were making the project infeasible. The owner proposed to re-syndicate the development in phases after the 15-year Compliance Period, demolishing and rebuilding buildings required by the existing LURA. The TDHCA Staff agreed that tenants were not being truly served by rental units that could not be economically maintained and approached the Board regarding developing a means of permitting such redevelopment. As a result, the TDHCA adopted the "Board Policy Regarding Direction to Staff on the Evaluation of Requests for Material Amendments to Land Use Restriction Agreements ("LURAs") Under the Low Income Housing Tax Credit Program and other Department Programs" on March 3, 2011. This Policy is now implemented in Section 10.405(b) of the TDHCA's Post Award and Asset Management Requirements. found at 10 TAC Chapter 10 Subchapter E of the Uniform Multifamily Rules. The Material LURA Amendment was utilized in 2011 (#11003 Wynnewood Seniors Housing) to demolish 19 buildings (108 units) subject to an existing LURA by partially abating the LURA for 24 months, building one new replacement building (140 units), adding 24 months to the end of the LURA, and changing the target population from General to Elderly. The process was used again in 2013 (#13234 HighPoint Family Living), where the original LURA was partially abated for 24 months to permit the demolition of 8

> 9 Greenway Plaza, Suite 1000 Houston, Texas 77046 Phone: 713-651-0111 Fax: 713-651-0220 Web: <u>www.coatsrose.com</u>

HOUSTON | AUSTIN | DALLAS | SAN ANTONIO | NEW ORLEANS | CINCINNATI

Page 2

buildings (22 units) and construction of four new replacement buildings (161 units). An additional 24 months was added to the original LURA to compensate for the temporary suspension. These instances of the temporary suspension of the LURA to demolish and replace buildings show successful precedents to Memorial Drive's Material LURA Amendment request. Existing tenants received all relocation assistance required by law, as will the existing tenants of 2100 Memorial (the "Project").

Moreover, as set forth in the 2005 Austin Court of Appeals case of *Witkowski v. Brian, Fooshee and Yonge Properties*,¹ which is discussed in more detail below, the TDHCA has not only amended LURAs to allow for demolition, but it has also entirely *released* at least one LURA where the property was found to be unsuitable for residential housing, not financially feasible to repair, and in need of demolition. Accordingly, there is ample precedent for the proposed LURA amendment before the TDHCA.

Nevertheless, Memorial Drive does recognize that its proposed LURA amendment is not common. The reason for this reality is simple: there must be good cause to make a material amendment to a LURA, such as that requested by Memorial Drive. Hurricane Harvey was a catastrophic event that caused severe damage to a building with a pre-existing history of flooding. Indeed, the property has flooded at least five times since 2015. The result is this request for a finding of good cause to amend the LURA to allow the construction of a new building that will be fit to service the community of Houston long-term. If this unprecedented natural disaster does not constitute good cause, we are unsure what does.

Mr. Tomlinson's letter further assumes that Memorial Drive's purpose for seeking the proposed amendment to the LURA is motivated solely by the prospect of mooting the tenants' existing claims in a pending lawsuit. This is also incorrect. Regardless of whether the Project is ultimately replaced with a new building (as proposed) or simply repaired, Memorial Drive will need an amendment of the LURA because both projects would require extensive construction work that would render compliance with the LURA impossible (in particular, the requirement that 197 units be made available for occupancy) and present a clear danger to any tenants who continue to reside at the property.

In addition, while Mr. Tomlinson's account of the pending litigation against Memorial Drive and other related entities is, in large part, factually accurate, there are a few additional facts worth mentioning. To begin, Mr. Tomlinson places much emphasis on the five-day notice period that was provided in the notice to vacate provided to the tenants at the Project following Hurricane Harvey. What Mr. Tomlinson fails to mention is that said five-day period was never enforced and was specifically included in the notice letter for the benefit of the tenants by the Houston Housing Authority ("HHA"): (1) because of the urgency of the health and safety concerns as understood at that time, and (2) at the suggestion of FEMA in order to assist the tenants of the Project in obtaining the maximum amount of federal funding assistance possible.

2. The Proposed LURA Amendment Is Ineffective without Consent of the Tenants.

Next, Mr. Tomlinson affirmatively states that the "only appellate case to address the effect of an amendment or release of a LURA denying rights to tenants found that reduction of tenant rights under the LURA could only occur with their consent." (emphasis in original). This is not only incorrect, but also is a mischaracterization of the case law cited in support.

¹ See Witkowski v. Brian, Fooshee and Yonge Properties, 181 S.W.3d 824 (Tex. App.—Austin 2005, no pet.).

The case cited by Mr. Tomlinson, *Nordbye v. BRCP/GM Ellington*, held, under Oregon state law, that a tenant's right to enforce a land use restriction cannot be abrogated without the tenant's consent. It did not hold that "the terms of the LURA could not be changed or released without the consent of the tenants entitled to enforce it." Indeed, the terms of the LURA at the Project have already been changed via amendment on two separate occasions without tenant consent. Furthermore, Memorial Drive's proposed LURA amendment does not seek to abrogate any tenant's right to enforce the LURA – it is only seeking a suspension of the LURA requirements for a reasonable period of time needed to resolve the problems with the Project, with the suspended time being made up at the end of the Project's Extended Use Period.

Notably, the Austin Court of Appeals has faced a similar situation in the case of Witkowski v. Brian, Fooshee and Yonge Properties.² There, a lawsuit was filed by former low-income tenants and persons eligible for low-income tenancy at the River Woods apartment complex, which was also subject to a LURA establishing low-income restrictions. In particular, the River Woods complex was sold during the term of the LURA on the condition that there be a release of the low-income housing restrictions contained in the LURA. In an attempt to obtain such a release, the new and former owners of the property petitioned the TDHCA requesting that it release the LURA "due to the condition of the property." The physical inspection report submitted in conjunction with said request described the property as "dilapidated and unsuitable for residential habitation" and included a redevelopment proposal, "which suggested demolishing the existing structure and constructing a new facility on the land." Thereafter, the TDHCA recommended to the Federal Deposit Insurance Corporation ("FDIC") that the River Woods LURA be released, explaining, "There are project conditions which support a finding of obsolescence and that it is not economically feasible to rehabilitate the existing structures." The following month, the FDIC signed an order releasing and discharging the River Woods property from all conditions, obligations, restrictions, and duties of the LURA. The owners and the THDCA then entered into an agreement reflecting the FDIC's determination that the LURA should be released because the River Woods property was unsuitable for residential housing, not financially feasible to repair, and in need of demolition. The Austin Court of Appeals held that the former and prospective tenants did not have standing to assert their claims as third-party beneficiaries of the LURA.

The *Witkoswki* opinion shows that a LURA can not only be amended without tenant approval in light of circumstances such as those currently present at the Project, but can also be entirely *released*. Here, Memorial Drive does not seek a release from the LURA. Instead, Memorial Drive simply seeks an abatement period of three (3) years in order to rebuild the property to better serve the needs of the community on a long-term basis.

Lastly, we note that the LURA has only one section which speaks to amendment, Section 8(c), which does not restrict the ability for an amendment to contradict the terms of the original LURA. Indeed, most amendments, including those to the LURA at the Project, necessarily include some contradictory language.

3. Application for LURA Amendment Does Not Address Needs of Affected Tenants.

Mr. Tomlinson states that the request for a Material LURA Amendment did not address the needs of the affected tenants. While it is correct that no relocation plan was included in the request, it was not required to be filed concurrently with the initial submission of the request. Staff has asked for a copy of the Relocation Plan for the existing tenants, and it is being provided. Full consideration is being given

² See Witkowski v. Brian, Fooshee and Yonge Properties, 181 S.W.3d 824 (Tex. App.—Austin 2005, no pet.).

Page 4

to the applicability of the Uniform Relocation Act, HUD Handbook 1378 "Tenant Assistance, Relocation and Real Property Acquisition"; the City of Houston URA Training Guide; and the TDHCA Relocation Handbook, to the extent each is pertinent. It is intended that the tenants have all relocation rights and assistance to which they are entitled by law.

4. Demolition and Replacement is a Choice that Costs More and Causes Far More Displacement.

Upon review of the damage to the building caused by Hurricane Harvey, as well as normal wear and tear expected in a 60+ year old building, and with knowledge of tenants' complaints prior to Harvey regarding a leaky roof and persistent mold, Memorial Drive and the HHA (the Project's Sponsor) determined that the building was not safe for habitation and needed to be vacated. When a group of tenants refused to leave and obtained a court order preventing Memorial Drive from relocating them, the repair problems persisted, but could not be addressed. Delay in effecting repairs has resulted in more pervasive leaking and resultant mold problems. Memorial Drive has applied for FEMA financing of repair costs under Section 428, but it is not yet certain whether the Project will be accepted because of the continuing long-term flood risk of the current building. This risk could be ameliorated by reconstruction using modern technology and design techniques, and the reconstruction could still qualify for the FEMA 428 funding - however, the Project will not qualify for FEMA 428 funding if repairs are made prior to acceptance into the 428 Program. Given its current state, repairing the Project to its condition prior to Hurricane Harvey is estimated to cost \$14 million, but it is not clear whether the repaired building would be considered to meet City Code, which will be a requirement for such an extensive scope of repair. Additionally, the repair of the building would require the electrical and mechanical systems to be moved from the basement and first floors to the second floor, resulting in the permanent loss of affordable units located on the second floor and a permanent violation of the LURA requirements. With a combination of FEMA Section 428 funding, City of Houston CDBG Disaster Recovery financing, Housing Tax Credits and Deferred Developer Fee, a new building can be built which will provide the tenants with larger units, safer access, reduced environmental concerns and modern anti-flooding design.

5. Tenants Have Not Been Afforded the Same Time as HHA/MDE Had to Craft Proposal.

Mr. Tomlinson complains that the tenants were not afforded adequate time to prepare a response to the request for a Material LURA Amendment for presentation at the Public Hearing. Since the purpose of the Public Hearing is to advise the tenants of a proposed action and to obtain their input, such a complaint is inappropriate. The Public Hearing does not cut off the tenants' opportunity to be heard by the TDHCA – it initiates it! Interested parties may provide written response to the TDHCA, can request meetings with Staff, and may attend the Board Meeting and present testimony before the Board during its consideration of this Material LURA Amendment request.

6. Should the Proposed LURA Amendment Be Approved, It Will Be Challenged in Court.

In closing, Mr. Tomlinson notes that his clients reserve their right to challenge the legal sufficiency of the proposed amendment to the LURA, if approved. While the current and former tenants may indeed bring such a challenge, we remain confident that the TDHCA has full authority to approve the proposed amendment upon a finding of good cause. Indeed, as stated above, it has done so previously.

Page 5

Thank you for this opportunity to express the position of Memorial Drive and HHA in connection with this matter. We sincerely hope that the TDHCA will give just consideration to all the facts, including the safety and economics of any proposed resolution of this serious situation, and that a Material LURA Amendment will be granted.

A Sincerely,

Barry J. Palmer

cc: LaRence Snowden, Chair Tory Gunsolley, President & CEO



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April 26, 2019

Rosalio Banuelos, Director Asset Management Division Texas Department of Housing and Community Affairs 221 East 11th Street Austin, Texas 78701-2410

Re: CMTS #96038/1500; 2100 Memorial Drive, Houston, Harris County, Texas

Dear Mr. Banuelos:

As you know, Lone Star Legal Aid represents a number of current and former tenants of the project located at 2100 Memorial Drive in a lawsuit against the Houston Housing Authority ("HHA") and Memorial Drive Elderly, L.P. ("MDE") which is currently pending in Harris County district court. On April 2nd, I sent you a letter with a number of comments, reflecting my clients' opposition to the LURA amendment proposed by HHA and MDE. On April 12th, Barry J. Palmer, counsel for MDE, sent the Texas Department of Housing and Community Affairs ("TDHCA") a letter responding to those comments. What follows is the reply of my clients to the letter of April 12th sent to TDHCA.

The 2100 Memorial tenants that I represent contest most of the assertions made on behalf of MDE regarding the four most significant comments.

1. The scope of the proposed LURA amendment is unprecedented.

First, MDE asserts that the proposed LURA amendment is not unprecedented, citing to the Parks at Wynnewood matter in 2009 and the HighPoint Family Living matter in 2013. Neither of those LURA amendments, however, appear to have been proposed as part of an effort to moot out pending litigation brought by tenants, as is the case here. At a minimum, a LURA amendment, such as the one being proposed by MDE, is rare, and even MDE admits that it is "not common" and should only be allowed upon a showing of "good cause." 4/12/19 letter, p. 2.

Moreover, MDE asserts that on at least one occasion TDHCA even released a project owner from a LURA that was in the midst of litigation, citing to *Witkowski v. Brian, Fooshee and Yonge Properties*, 181 S.W.3d 824 (Tex. App. – Austin 2005, no pet.). A copy of that opinion is attached hereto as Exhibit N. In fact, TDHCA did recommend that the LURA in effect for the River Woods development at issue in that case be released, and the FDIC accepted that recommendation and issued an order

Lone Star Legal Aid is a United Way Agency



releasing the property from its LURA. *Id.* at 827-828. While citing this case as "ample precedent for the proposed LURA amendment[,]" 4/12/19 letter, p. 2, MDE fails to disclose that the LURA in that case was issued under the Affordable Housing Disposition Program arising out of the savings and loan crisis of the late 1980s. 181 S.W.3d at 826, citing to 12 U.S.C. § 1441a. The statute implementing that program explicitly authorized project owners to be released from their commitments under a LURA if the building becomes so obsolete it is no longer usable for housing and rehabilitation is not financially feasible. Id. at 826-827, 832-833. By contrast, most of the properties subject to LURAs in Texas, including 2100 Memorial, are tax credit properties under 26 U.S.C. § 42, which does not afford any such procedure for releasing project owners from their duties under LURAs. Nordbye v. BRCP/GM Ellington, 266 P.3d 92, 94-98, 100-104 (Ore. App. 2011). In short, MDE cannot point to a single prior case in which a LURA amendment was actually sought to moot out pending litigation involving a tax credit property.¹ Given that most of the properties in Texas subject to LURAs are financed under the tax credit statute, that alone demonstrates that the LURA amendment request here is actually unprecedented.²

2. The proposed LURA amendment is ineffective without the consent of the tenants.

Second, MDE only gave a partial and inadequate response to the tenants' argument as to why the proposed LURA amendment will not be effective. In part, MDE completely fails to address the tenants' contention, as set out on page 5 of the tenants' letter of April 2, 2019, that the proposed amendment was invalid for failing to meet two conditions: (1) the proposed amendment to the LURA must merely correct or improve the LURA and not destroy it; and (2) the proposed amendment must neither be unlawful nor against public policy. *Wilchester West Concerned Homeowners LDEF, Inc. v. Wilchester West Fund, Inc.*, 177 S.W.3d 552, 562 (Tex. App. – Houston [1st Dist.] 2005, pet. denied), citing to *Hanchett v. E. Sunnyside Civic League*, 696 S.W.2d 613, 615 (Tex. App. – Houston [14th Dist.] 1985, writ ref'd n.r.e.).

¹ The TDHCA director who recommended that River Woods be released from its LURA was Larry Paul Manley. See "Moving on Up," Austin Chronicle, October 1, 1999, available at

https://www.austinchronicle.com/news/1999-1-01/74224/ and a copy of which is attached hereto as Exhibit O. Even Mr. Manley "acknowledged that [the] decision [to recommend the demolition of the River Woods apartments] was highly unusual given the paucity of affordable housing in Central Texas." *Id.* In short, even the release of the LURA associated with the River Woods property under a different housing program was "highly unusual."

² HHA and MDE also state that the giving of a 5-day notice to vacate "was never enforced" and that the imposition of the 5-day deadline was included in the letter due to urgent health and safety concerns and at the suggestion of FEMA to assist tenants in recovering the greatest possible FEMA help. See 4/12/19 letter, p. 2. With regard to enforcement, it is true that eviction suits were never filed against tenants who did not vacate in a timely manner, but those notices were never withdrawn and their validity was litigated at the temporary injunction hearing on October 23, 2017 and remain an active issue in the lawsuit. See Exhibits E and G attached to the tenants' comment letter of April 2nd. Likewise, Judge Daryl Moore found HHA's health and safety concerns did not justify the actions that they took to evict the tenants. See Exhibit E. In fact, the 5-day notice to vacate was a horrible mistake, and HHA continues to ignore that fact.

Instead of addressing these concerns, MDE asserts that *Nordbye* is inapposite to the case at hand and that *Witkowski* constitutes precedent for a LURA amendment which eliminates tenant rights. MDE also asserts that the LURA itself does not limit amendments. MDE is wrong on all counts.

MDE misreads *Nordbye* to conclude that the opinion only held that a tenant's right to enforce an entire LURA could not be abrogated without the tenant's consent and that it did not hold that the terms of the LURA could not be amended without the consent of the tenants. That is a distinction without meaning here. In Nordbye, the Oregon Housing and Community Services Department sought to completely release a project owner from the obligations of a section 42 LURA, and the Oregon Court of Appeals ultimately held that this release, signed only by the Department and the project owner, did not abrogate the tenants' separate right to enforce the LURA. 266 P.3d at 212-217, 222-223. Given the distinction advocated here, MDE seems to be arguing that, as long as the tenants continue to possess some rights to enforce under the LURA, Nordbye does not stand in the way of an amendment that purports to abrogate other features of the existing LURA. The Oregon Court of Appeals, though, explicitly held that "[e]ven assuming that the release agreement could somehow be deemed a mere 'amendment' to the declaration, its content does not 'comply' with the Internal Revenue Code or other applicable law" and "abrogation of the enforcement rights conferred on plaintiff is inconsistent with the proper application of IRC section 42" Id. at 228 (emphasis added). The only fair reading of Nordbye then is that no enforcement right belonging to tenants can be abrogated solely through an agreement between TDHCA and the project owner. The LURA amendment proposed by MDE purports to abrogate the right of tenants to enforce the original LURA's prohibition on demolition, its command to use best efforts to repair the building after it is damaged and its promise to offer the building as affordable housing for elderly tenants. As such, it is invalid to the extent it seeks to abrogate the enforcement rights of tenants under the existing LURA.³

MDE also refers to Nordbye as a decision made ". . . under Oregon state law, that a tenant's right to enforce a land use restriction cannot be abrogated without the tenant's consent." 4/12/19 letter, p. 3 (emphasis added). Admittedly, the *Nordbye* court reached this conclusion, because ". . . under Oregon law . . ." a grantor and grantee cannot terminate a restrictive covenant without the consent of the intended

³ HHA and MDE also observe that two amendments the 2100 Memorial LURA have already been approved by TDHCA without the consent of the tenants. 4/12/19 letter, p. 3. Those two amendments, though, only added obligations upon the project owner and did not diminish the rights of the tenants in any way. See Exhibits C and D attached to the tenants' letter of April 2, 2019, which extend the initial compliance and extended use periods, expand the percentage of affordable units, impose a good cause basis for evictions, set restrictions on rent increases, and require a high percentage of tenants over the age of 55. By contrast, the proposed LURA amendment is fundamentally different, because it seeks to preclude tenants from enforcing the demolition ban, the repair after damage clause and the obligation to afford affordable housing to the elderly for a period of 3 years, thereby seeking to moot out pending litigation to enforce the existing LURA. Effectively, the proposed LURA amendment would seek to abrogate the right of tenants to enforce three of the most significant clauses of the LURA.

beneficiary." *Nordbye*, 266 P.3rd at 223. Nevertheless, MDE's apparent effort to limit the impact of *Nordbye* in Texas by dismissively referring to it as a matter of "Oregon law" is disingenuous, because Texas law itself generally imposes the same requirement that a restrictive covenant can only be abrogated with the agreement of its intended beneficiaries. *Smith v. Williams*, 422 S.W.2d 168, 172 (Tex. 1967); *Hanchett*, 696 S.W.2d at 615.

Next, MDE cites once again to *Witkowski* for the proposition that a LURA could be amended and even be entirely released without tenant approval. See 4/12/19 letter, p. 3 ("The Witkowski opinion shows that a LURA can be amended without tenant approval in light of circumstances such as those currently present at the Project, but can also be entirely *released*.")(emphasis in original). *Witkowski*, though, is completely inapposite. As noted above, the LURA in Witkowski was issued under a program that explicitly permitted its release, while the LURA in this case was issued under the section 42 tax credit program which does not explicitly permit release of these agreements. Nordbye, 266 P.3d at 228. Moreover, the tenants in Witkowski lacked standing to enforce the provisions of the LURA at issue, 181 S.W.3d at 829-833, but that is not at issue with the tenants seeking to enforce the 2100 Memorial LURA. See Exhibit G attached to the tenants' letter of April 2, 2019 where the standing of the plaintiffs to enforce the 2100 Memorial LURA was addressed. If further distinction is needed, the tenants in Witkowski were seeking damages as relief for LURA violations, 181 S.W.3d at 826, while the tenants from 2100 Memorial are only seeking specific performance of the existing LURA as allowed by its very terms. In short, *Witkowski* does not provide any guidance whatsoever as to the rights of tenants under a section 42 tax credit LURA, the one at issue here. One must wonder why MDE cited to this case at all.

Finally, MDE makes a conclusory comment to the effect that section 8(c) of the LURA "does not restrict the ability for an amendment to contradict the terms of the original LURA." MDE then suggests for good measure that the amendments already made to the LURA at 2100 Memorial included contradictory language, presumably implying that contradictory amendments were permitted by section 8(c) of the LURA. See 4/12/19 letter, p. 3. MDE's passing comment ignores the interplay between sections 3(m) and 8(c) of the LURA.⁴ See Exhibit B attached to the tenants' letter of April 2, 2019. Under section 3(m), the project owner promises not to execute any agreements with provisions contradictory to the LURA, while section 8(c) provides for amendment by TDHCA and the project owner specifically when necessary to assure compliance with the Internal Revenue Code and any applicable rules or policies pertaining to the tax credits. Id. Read together, the two provisions only allow contradictory amendments when necessary to assure compliance with section 42 and its applicable rules and policies. A LURA amendment that would foreclose the right of tenants to enforce significant rights under the existing LURA would not be consistent with 26 U.S.C. § 42 and would run afoul of section 3(m) of the LURA. By contrast, the

⁴ The tenants' initial comment letter dated April 2, 2019 mistakenly cited to section 4(m) instead of section 3(m). The undersigned apologizes for that error.

previous two amendments to the 2100 Memorial LURA made changes that effectively were made to assure compliance with the Internal Revenue Code.

3. MDE's application for LURA amendment does not address the needs of affected tenants.

Third, MDE recognizes the need for a relocation plan but offers nothing concrete. It concedes that no relocation plan for affected tenants was filed with its application for a LURA amendment. See 4/12/19 letter, p. 3. MDE promises to provide such a plan and states that it is intended that the tenants at 2100 Memorial receive all of the benefits to which they may be entitled under the law. *Id.* at pp. 3-4. To date, though, the tenants have not received any such relocation plan, and they do not trust promises made by MDE and HHA. The undersigned is unaware of the details of MDE's proposed plan of relocation, and the details of that plan may well determine the position of the tenants on the proposed LURA amendment. Regardless, no LURA amendment should be permitted until MDE actually develops such a plan, submits the plan to TDHCA and provides the tenants an opportunity to comment before TDHCA acts upon the proposed plan. If a resolution to the conflict is sincerely being sought by MDE, the terms of such a plan should be discussed with the tenants and their counsel before it is even submitted.

4. Demolition and replacement is a choice that costs more and causes far more displacement.

Fourth, MDE's response does not address the tenants' position that demolition and replacement is a matter of choice, not necessity, and that other viable options for the building exist which are not only less harmful to the existing tenants, but also less expensive. Instead, MDE's response to this point appears to consist of unsupported assertions that demolition *might* allow for additional funding so that MDE could construct a new building with larger units and with a modern anti-flooding design.

In its response, MDE does not contend that demolition is a necessity or that demolition offers the only viable option for the building's future. Nor could MDE credibly make such an argument in light of the cost-benefit analysis which MDE already received as to whether the building should be repaired or replaced. See Exhibit L attached to the tenants' letter of April 2, 2019. The expert, which MDE paid for that analysis, concluded that repair was the superior option and that mitigation efforts could be taken to effectively protect the building from future flooding. *Id*.

Neither does MDE's response ever raise any argument or evidence that repair and mitigation, as recommended by MDE's original expert, is no longer a viable option. Nor does the response show that MDE cannot eliminate the projected loss of apartments merely by adding another floor to the building or by relocating the office space and service rooms from the first floor into the connecting garage which already exists.

Furthermore, MDE's response does not address the consequences of relocating the current tenants of this senior housing facility for a three-year construction period if MDE is allowed to replace the existing building. No fewer than 3 tenants residing at 2100 Memorial have already passed away while waiting for MDE to make repairs after Hurricane Harvey, and it is unlikely that all of the still existing tenants will survive long enough to move into the new building which MDE wants to construct. MDE's response fails to discuss any reasons as to why it may be acceptable to forcibly relocate the existing tenants, who are all seniors, when other viable options for the building would not impose such hardships upon them.

MDE simply has not presented any argument or evidence to TDHCA that demolition is a matter of necessity, that no other viable option for the building exists, or that the hardships which demolition will visit upon the existing tenants will somehow be warranted by the benefits which a new building will convey upon future tenants. Instead, MDE has merely offered the unsupported argument that if it demolishes the building, MDE might possibly receive increased funding which it could use to construct a modern building with larger apartments. In short, MDE has not provided TDHCA with a good cause reason for changing the LURA so that the existing structure can be demolished and replaced.

Thanks for giving us an opportunity to respond to MDE's letter of April 12th. Should anyone at TDHCA have any questions, please feel free to call me at 713-652-0077, ext. 1154. We will endeavor to appear at the next Board's meeting on May 23rd as well should this issue be placed on the agenda.

Very truly yours, /s/ Richard Tomlinson Richard Tomlinson /s/ Mark Grandich Mark Grandich Attorneys for Plaintiffs

cc: Barry J. Palmer Coats Rose

> Scott Nichols Clark Hill Strasburger



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May 2, 2019

Rosalio Banuelos, Director Asset Management Division Texas Department of Housing and Community Affairs 221 East 11th Street Austin, Texas 78701-2410

Re: CMTS #96038/1500; 2100 Memorial Drive, Houston, Harris County, Texas

Dear Mr. Banuelos:

As you may recall, I asked you over the telephone whether this case could be considered a contested case proceeding. While it is not clear whether an application for a material LURA amendment under 10 T.A.C. § 405 can be treated as a contested case, my tenant clients hereby request that this matter be initiated as a contested case under 10 T.A.C. § 1.13(c) and refer this matter to the State Office of Administrative Hearings ("SOAH").

In addition, in the hope of resolving the tenants' dispute with Memorial Drive Elderly over its LURA amendment application and potentially any dispute with the Texas Department of Housing and Community Affairs, my tenant clients also request that this matter be referred to SOAH for mediation under Tex. Gov't Code § 2306.082.

Thank you in advance for your consideration of these two requests.

Very truly yours,

<u>/s/ Richard Tomlinson</u> Richard Tomlinson

<u>/s/ Mark Grandich</u> Mark Grandich

Attorneys for Plaintiffs

Lone Star Legal Aid is a United Way Agency



Rosalio Banuelos May 2, 2019 Page 2

cc: Barry J. Palmer Coats Rose

> Scott Nichols Clark Hill Strasburger

2100 Memorial Apartments

Houston, TX

Relocation Plan

For

Memorial Drive Elderly, L.P.

April 2019

INTRODUCTION

2100 Memorial Apartments is an affordable housing development located at 2100 Memorial Drive, Houston, TX 77007 ("Property") and owned by Memorial Drive Elderly, L.P. ("Owner"), an Affiliate of the Houston Housing Authority ("HHA"). The Property was substantially damaged as a result of Hurricane Harvey, presenting potential health and safety concerns. Tenants were advised to move out, with HHA providing assistance in locating substitute units from the HHA's portfolio of affordable housing and from elsewhere in the community.

Twenty-one residents declined to move. They and a few former tenants filed a lawsuit to enjoin Owner and HHA from forcing vacation of the Property. Meanwhile, HHA and the Owner have determined that the appropriate way in which to move forward is to demolish the existing building and to rebuild on the same site, with not less than the same unit mix and rent restrictions that currently exist. The Property is in noncompliance with the existing Land Use Restriction Agreement ("LURA") with the Texas Department of Housing and Community Affairs ("TDHCA"), because it is not currently being continuously maintained with at least 40% of its units being both rent restricted and income restricted for individuals whose income is 60% of less of Area Median Gross Income ("AMGI"). HHA and the Owner have requested a Material LURA Amendment which would abate the rental requirements for a period of three years while the existing building is demolished and replaced with a new construction building to be demolished and rebuilt in accordance with more modem techniques and flood suppression design to avoid or minimize flood damage in the future. A compensatory additional three years would be added to the end of the Extended Use Period, in order to assure that tenants have the entire Extended Use Period for low-income occupancy. HHA proposes to re-syndicate the Property as a 197-unit affordable housing development with at least 75% of the units being rent and income restricted.

The Project presents an unusual scenario because of unrepaired flood damage from Hurricane Harvey, which cannot be repaired at this time because of: (i) remaining tenants in the building who refused to move out when the Project Owner notified them of the unsafe and unhealthy status of the building; and (ii) the pending application to FEMA's Section 428 Program for reimbursement for damages. Under the Section 428 Program, the Project Owner cannot commence repairs until an agreed capped cost estimate of eligible costs of repairing, restoring or replacing the building has been negotiated with FEMA.

The Project Owner has determined that spending the approximately \$14M estimated for repair does not make sense when you are left with a building that is still vulnerable to flood damage and which may not comply with current City of Houston Code requirements.

Additionally, repair would entail the loss of units as a result of elevating both the electrical and mechanical systems currently located in the basement and first floor above the flood plain requirements.

This Relocation Plan has been developed to assist the 21 existing residents of the Property in relocating to other comparable affordable housing.

Subject Property Description:

The Property is located at 2100 Memorial Drive. Memorial Drive runs along Buffalo Bayou, and these two physical features provide the Property with a protected view of Downtown Houston. The Property is located within a half mile from the Central Business District.

The Property consists of 197 rental units housed in a high-rise tower of 14 floors. The Property includes 181 one-bedroom and 16 two-bedroom units, and is restricted by the LURA to be 75% income and rent restricted for tenants at and below the 60% AMGI.

Unit Type/Size	# of Total Units	# of Occupied Units
1 BR	181	17
2 BR	16	2
Total	197	19

Table 1: Current Unit Mix

Program	Qualification	Units	Percent
HTC	Market Rate	46	23.35%
HTC	Exempt Manager's Unit	1	00.51%
HTC	At or below 50% AMI	18	09.14%
НТС	At or below 60% AMI	132	67.01%
Additional Assistance	HUD Housing Choice	38	19.29%
	Voucher tenant-based		

Project Description:

HHA proposes the demolition of the existing building and replacement with a new construction mid-rise building that will utilize more of the land. A podium design will incorporate residential floors above parking floors, thus elevating the residential spaces in the development above the flood zone minimum elevation requirements (the "Project"). The Project will preserve an at-risk affordable housing property and provide the residents with modern, new construction units that will be larger than the current ones, which average under 600 square feet and were adapted from hotel units built in 1969. It is

anticipated that demolition will not commence until the Property is vacant, and once underway, the Project is estimated to take two years.

All current residents of the Property will have a priority right to return to the Project upon its completion, provided that they continue to meet any applicable income restrictions.

Financing Plan and Applicable Relocation Requirements:

The Owner intends to finance the demolition and reconstruction with Tax-Exempt Bonds issued by a public facility corporation affiliated with HHA. Application has been made to FEMA and to the City of Houston for multifamily disaster recovery financing which will be repayable out of cash flow. Finally, a portion of the development fee will be deferred.

LIHTC does not trigger any relocation requirements under the Uniform Relocation Act (URA), however, it is likely that the source of funding for the City's loan will trigger URA and require that relocation of the residents is carried out in accordance with the URA, the HUD Hand Book 1378 (the URA's implementing guidelines), and the City of Houston URA Training Guide.

Relocation Plan Scope:

Owner and HHA prepared this Relocation Plan (Plan) and will also implement it.

This Plan includes the policies, procedures and limitations of Owner's relocation program including assistance to persons who may be temporarily relocated. This plan generally describes the persons impacted by the project, the projected relocation schedule and phasing plan, and the estimated relocation program implementation cost.

RELOCATION PLAN

A. METHODOLOGY AND ASSESSMENT OF NEEDS

Owner has examined the current rent roll and breakdown of unit occupancy to evaluate the total number of households impacted by the Project, the temporary housing options that may be available within HHA's portfolio and other affordable housing developments in the area. Our discussions helped to identify broad special needs including disabilities and language requirements.

Personal interviews with households will be conducted by the Relocation Team to ascertain the household's needs including those related to physical, mental and emotional impairment, medical requirements, and transportation. This data will be used to finalize housing resource needs for temporary relocations and the move plan for the Project.

It is anticipated that the temporary relocation requirements and guidelines of the URA,

HUD Handbook 1378 "Tenant Assistance, Relocation and Real Property Acquisition"; the City of Houston URA Training Guide; and the TDHCA Relocation Handbook, will be followed, to the extent each is applicable.

B. DEMOGRAPHICS

Presently there are 21 residents in 19 households. These households will be temporarily relocated.

Households with special needs and language translation needs will require a higher level of assistance during the temporary relocation process. While specific data is not available at this time, many of the residents have physical (mobility, sight, and hearing) impairments and other impairments such as mental or emotional needs that must be planned for and accommodated during the temporary relocation process. Specific language assistance needs are not known at this time. It is expected that most households will prefer to communicate in English. The interview process will identify such concerns on a perhousehold basis.

Special needs will be a central and important consideration in the execution of the move program. Where possible, residents will be kept near the medical and social services that they may require. Where necessary, written communications will be translated into the household's primary language or an interpreter will be utilized to communicate with them effectively.

C. PROJECT OCCUPANCY ISSUES

All households are believed to be in appropriately-sized units for the number of persons in the household. Occupancy issues, including under-housing or over-housing are not anticipated. Any two-bedroom units occupied with a live-in aide are already identified.

D. TEMPORARY HOUSING RESOURCES

HHA's Administrative Plan states that "an applicant is or will be involuntarily and permanently displaced if the applicant has vacated or will have to vacate a unit owned by HHA or another unit where the applicant lives because of activities carried on by Houston Housing Authority in connection with public improvements or development program."

A requirement under URA, HUD Handbook 1378, 49 CFR Part 24 221.795, and the TDHCA Relocation Handbook (Applicable Relocation Requirements) is to determine the supply of temporary housing should any off-site temporary relocations be required. All 19 existing households will experience off-site temporary relocations.

Among the range of relocation options (described below) the potential availability of both temporary and permanent housing are sufficient to accommodate the need for off-site relocations for 19 existing households. A preliminary search of the market located a sufficient number of temporary apartment units at sufficient gross rents, to satisfy the demand for the Project.

Rent Limits	Households in 1BR Units	1BR	Households in 2 BR Units	2BR
Rent Linnts	Units	IDN	Units	ZDN
50%	2	\$703	0	\$843
60%	11	\$843	2	\$1,012
Market Rate	4	\$1,406	0	\$1,688
	Financing 9% Housing Tax Credits			
	Project PIS Date: Before 12-31-2008			
	•			
	Carryover / Determination Notice / Subaward			
	Agreement Date: Before 12-31-2008			

2100 Memorial Dr. Houston, TX 77007

Nineteen existing residential households will be temporarily relocated off-site during the demolition and construction and will have the right to return to the reconstructed 2100 Memorial development when the construction is completed approximately 24 -30 months later. HHA's private management company has identified households with significant medical conditions and/or disability issues.

Demolition and subsequent construction will start in approximately May 2020 and will be completed within 24-months from the start of demolition. At the full expense of HHA, residents that are relocated during the redevelopment have the right to return to the reconstructed 2100 Memorial development when the construction is completed. Assistance will be provided to residents in the moving process.

Construction will start in approximately early December 2020 and will be completed within 18months. At the full expense of HHA, residents that are relocated during the redevelopment have the right to return to the reconstructed 2100 Memorial development when the construction is completed. Assistance will be provided to residents to assist them in this moving process. Housing options available to residents include:

- At the resident's option and if eligible, relocate with temporary HCV vouchers to live in a rental market rental unit including but not limited to LIHTC units (bedroom size, payment standards, passing physical inspection standard and rent reasonableness permitting).
- At the resident's option, temporarily or permanently transfer to an HHA Project-Based Rental Assistance elderly development at Long Drive Townhomes (6767 Long Dr, Houston, TX 77087), vacancies and bedroom size permitting;
- Temporarily or permanently transfer to an HHA public housing development (vacancies and bedroom size permitting).

- Relocate permanently with an 811 voucher awarded from TDHCA to HHA and with supportive services from Texas Health and Human Services Commission to Sweetwater (bedroom size and vacancies permitting);
- Relocate permanently with an 811 voucher from TDHCA awarded to HHA and with supportive services from Texas Health and Human Services Commission to Independence Heights or other developments (bedroom size and vacancies permitting).
- HHA will offer relocating residents a permanent voucher on a case-by-case basis, as requested by residents.
- Other LIHTC properties that our partners own and manage.
- The Agency will comply with 42 U.S. Code §4624 "Replacement housing for tenants and certain others." If a resident declines or is not eligible for the housing options above, the Agency shall make a payment consisting of the amount necessary to enable such person to lease or rent for a period not to exceed 42 months, a comparable replacement dwelling, but not to exceed \$7,200, as adjusted by regulation, in accordance with section 4633(d) of this title. At the discretion of the head of the displacing agency, a payment under this subsection may be made in periodic installments. Computation of a payment dwelling shall take into account such person's income. Any person eligible for a payment may elect to apply such payment to a down payment on, and other incidental expenses pursuant to, the purchase of a decent, safe, and sanitary replacement dwelling.

If residents are determined to be eligible for relocation assistance in the future, they may be eligible for: 1) Relocation advisory services including help in finding another place to live; 2) at least 90-days advance written notice of the date they will be required to move; 3) payment for moving expenses; and 4) replacement housing payments to enable them to rent, or if they prefer to purchase, a comparable replacement home. Residents will also have the right to appeal the agency's determination, if they feel that their application for assistance was not properly considered. The HUD brochure, "Relocation Assistance To Tenants Displaced From Their Homes" provides an explanation of this assistance and other helpful information.

(NOTE: Pursuant to Public Law 105-117, aliens not lawfully present in the United States are not eligible for relocation assistance, unless such ineligibility would result in exceptional hardship to a qualifying spouse, parent, or child. All persons seeking relocation assistance will be required to certify that they are a United States citizen or national, or an alien lawfully present in the United States.)

Please be advised that unless ordered by the courts to withhold their rent payments, residents must continue to pay their rent and meet any other obligations as specified in their lease agreements. Failure to do so may be cause for eviction. If they choose to move or if they are evicted prior to receiving a formal notice of relocation eligibility they will not be eligible to receive relocation assistance. It is important for residents to contact us before making any moving plans.

HHA's notice is not a notice to vacate the premises and does not establish residents' eligibility for relocation payments or assistance at the time given. If residents are determined to be displaced and are required to vacate the premises in the future, they will be informed in writing. In the event the proposed project does not proceed or if a resident is determined not to be displaced, they will also be notified in writing.

Even though residents will be provided all of the assistance the URA requires for a temporary move, the Agency believes that every resident displaced from the site should have the right to reapply for occupancy once this project is complete. For this reason, after Project completion, every resident who receives assistance as a "displaced person" will be contacted and offered an opportunity to reapply for occupancy in the newly-revitalized community with a priority preference.

If residents choose an off-site dwelling on their own which is not listed in the options described above, but still want to return to 2100 Memorial, they may do so. However, it is up to these residents and their property owners to break their new lease in a timely manner so that they can move back into a newly built dwelling unit at 2100 Memorial upon completion. If these residents are not able to break their leases with their property owners in a timely fashion, they still have the right to return but they cannot be guaranteed an appropriate size unit will be available to them at that time. In this scenario, they would have a preference on the waiting list for 2100 Memorial but could not take occupancy until a unit in their bedroom size was vacated and made ready for them.

HUD brochure entitled, "Relocation Assistance To Tenants Displaced From Their Homes" is also accessible at: <u>https://www.hud.gov/sites/documents/tenadisp.pdf</u>

E. PROGRAM ASSURANCES AND STANDARDS

The Owner's relocation program assures the residents impacted by the Project of the following:

- Each household being temporarily relocated will be provided with reasonable assistance to relocate, including relocation advisory services and moving assistance, and where necessary, temporary housing assistance. The Project is subject to the applicable relocation requirements.
- 2. To comply with the Applicable Relocation Requirements 1) all households will be housed temporarily in suitable decent, safe, and sanitary housing; and 2) all eligible households will be able to re-rent/lease a suitable a decent, safe, and sanitary housing unit at the property upon completion of the Project.
- 3. Each household will receive a *minimum* of a 90-Day Notice to vacate and will have the relocation assistance they are eligible to receive documented in a Memorandum of Understanding (MOU). Where necessary, these documents will be translated into the head of household's primary language.
- 4. Adequate funds will be budgeted in the Project to assist the households in accordance with this Plan.
- 5. Relocation will be executed in accordance with Fair Housing Amendments Act, the Americans with Disabilities Act, Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, and Texas Property Code Title 15 Chapter 301 (Texas Fair Housing Act), as well as any otherwise arbitrary or unlawful discrimination.

F. RELOCATION PROGRAM

The relocation program has two components-Advisory Services and Relocation Assistance. The Advisory Services and Relocation Assistance components of the program are described below.

Advisory Services:

The Plan will be discussed with the residents of 2100 Memorial at a special meeting called for that purpose. The plan will be presented to the residents who will have an opportunity to ask questions and provide input to management. Input from the residents will be evaluated and considered for inclusion in the Plan. The meeting will be held at a meeting space close to the Property.

The Owner's designated relocation coordinator or specialist will be available to provide Advisory Services to all resident households which will be temporarily relocated. The intent of this part of the program is to inform residents about the program and their rights, answer their questions about the relocation program, and help them plan and execute their temporary relocations.

The Owner will provide ample and reasonable notice to the residents regarding the Project, the relocation program, and the date of the household's move.

Specific activities for each category of relocation are shown below.

Advisory Services will include:

- 1. Distribution of a General Information Notice/Notice of Non-Displacement.
- 2. Meet with residents.
- 3. Establish a relocation contact.
- 4. Assessment of applicable residents' move preferences.
- 5. Distribution of a *minimum* of a 90-Day notice to relocate.
- 6. Presentation and explanation of the MOU which the tenant must sign.
- 7. Coordination of moving assistance services.
- 8. Coordination of temporary housing services.
- 9. Coordination of necessary transportation, meals, and other services.
- 10. Assistance with completion and filing of any necessary relocation claims, and appeal forms, if necessary.
- 11. Placement and stabilization, including turning on the utilities, rental application fees and providing a revolving loan for security deposits, where applicable.
- 12. Relocation support and guidance.

Relocation Assistance:

HCVP Department Involvement

HHA's Housing Choice Voucher Program ("HCVP") Department has a role to assist the relocation team, made up of the private management company staff contracted with HHA, so that residents get the information they need about how the voucher program works, housing search assistance, HQS inspections and execution of the lease and HAP contract.

Relocation Assistance:

Moving Assistance

The Owner will hire a licensed, bonded and insured professional moving company. Once packed, the household will be provided with a list of their items that will be moved to their temporary housing unit.

All supplies necessary for the move will be provided. This includes, boxes, packing material and tape, tags, pads and markers. Management will provide assistance to those residents requiring same. Services will be provided to disabled persons based upon their individual needs. Movers will remove and return the residents' personal belongings upon completion.

The Owner will provide a flat rate for residents who choose to self-move.

Temporary Housing Assistance

Any leases or use agreements for the temporary housing unit will be entered between the Owner and the temporary housing operator. The resident will be responsible for their share of rent and utility allowance, if applicable, which will be calculated in accordance with the program rules governing the type of assisted-housing program they choose as their comparable housing option. After factoring for the resident's rent and utilities, if applicable, the remaining subsidy amount governed by the type of assisted-housing program they choose as their comparable housing option, will be paid by the Owner. The resident will enter into a use agreement for their temporary housing with the Owner. This agreement shall serve as their acknowledgment that they must comply with all temporary housing unit above normal wear and tear. All temporary housing units must be maintained in accordance with their lease. Residents commit to upkeep the temporary residence in accordance with house-keeping guidelines. All HHA-owned units will allow the early termination of the lease, in order to enable residents to return to the Project when complete.

G. PAYMENT OF RELOCATION BENEFITS

Should there be relocation benefit payments payable directly to the resident they will be made in a reasonable period of time. Tenants must have prior written approval to incur relocation expenses to ensure that they will be compensated.

H. APPEALS POLICY

All households will have the right to ask for review of a matter when there is a grievance regarding relocation assistance; including the determination as to eligibility, the amount of payment, or other issues germane to the relocation process.

I. PROJECTED DATES OF RELOCATION

The Project is expected to commence in May, 2020 and be completed within 24 months from the start of demolition. Notices to vacate will be provided 90-days in advance of each move.

J. ESTIMATED RELOCATION COSTS

The estimated cost of the relocation including moving cost is estimated at \$208,534 to be paid for by adequate project reserves for 2100 Memorial (see Appendix A). This amount has been included in the Project cost estimate. The estimate is subject to change. The estimate in no way should be assumed to be a fixed cost to be provided to any tenant as a direct payment. The Owner shall include the tracking of relocation costs in the Relocation Team's scope of work to ensure that the Project is being delivered in a reasonable and cost-effective manner.

Appendix A: URA Relocation Cost Estimate

Moving Expenses	Costs Per Move Off- site and Return to 2100 Memorial Dr. (2 ways)		Total Cost
Residential moves: 1 BR	\$ 1,950	\$ 17	\$ 33,150
Residential moves: 2BR	\$ 2,950	\$ 2	\$ 5,900
Subtotal		\$ 19	\$ 39,050
Moving Supplies			
Residential moves: 1 BR	\$ 100	\$ 17	\$ 1,700
Residential moves: 2BR	\$ 150	\$ 2	\$ 300
		\$ 19	\$ 2,000
Non-Refundable Utility Deposits Per Household (if applicable		\$ 100	\$ 1,900
Cable/Internet Re-connection		\$ 25	\$ 475
Phone Re-Connection		\$ 25	\$ 475
Subtotal			\$ 43,900
Replacement housing for tenants (42 U.S. Code §4624)			\$ 107,085
5% Contingency Costs per household			\$ 7,549
Relocation Coordinator			\$ 50,000
Total			\$ 208,534
Avg. Total Per HH & Total			\$ 10,975



LONE STAR LEGAL AID

P.O. Box 398, Houston, Texas 77001-0398 Tel: (713) 652-0077, ext. 1154 • Fax: (713) 652-3814

July 16, 2019

Rosalio Banuelos, Director Asset Management Division Texas Department of Housing and Community Affairs 221 East 11th Street Austin, Texas 78701-2410

Re: CMTS #96038/1500; 2100 Memorial Drive, Houston, Harris County, Texas

Dear Mr. Banuelos:

This is to advise you that most of my clients have now settled with the Houston Housing Authority (HHA) and Memorial Drive Elderly, LP (MDE). As a result, the following individuals withdraw their opposition to HHA and MDE's proposed material amendment to the land use restriction agreement (LURA) applicable to the tax credit property located at 2100 Memorial Drive, Houston, Texas: William Hamilton, Glenn Everitt, Wallace Roland, Billy Roy Brawdy, Gracie Garcia, Rosemary Sharp, Laverne Fielder by and through her next friend Lauren Fielder, Dorothy Shelley, Judith Hudnall, Paul "Robin" Blinn, John Kevin Doyle, Florentina Rodriguez, Stephen Lormore, Connie Castillo, Roger Williams, Lillian Beaty, Marlistine Marlei Cannedy, Ronald Castro, Edward Erwin, Sheila Henderson, George Horan, Larry Jackson, Stefani Maher, Melitta Schulte and Calvin Mills. In short, all but two of my clients have settled and agreed to withdraw their opposition to the pending application for a LURA amendment relating to the property located at 2100 Memorial Drive in Houston.

Call me if you have any questions.

Very truly yours,

<u>/s/ Richard Tomlinson</u> Richard Tomlinson Attorney for Plaintiffs

Lone Star Legal Aid is a United Way Agency



Rosalio Banuelos July 16, 2019 Page 2

cc: Barry J. Palmer Coats Rose

> Scott Nichols Daniel Ray Clark Hill Strasburger



LONE STAR LEGAL AID

P.O. Box 398, Houston, Texas 77001-0398 Tel: (713) 652-0077, ext. 1154 • Fax: (713) 652-3814

August 12, 2019

Rosalio Banuelos, Director Asset Management Division Texas Department of Housing and Community Affairs 221 East 11th Street Austin, Texas 78701-2410

Re: CMTS #96038/1500; 2100 Memorial Drive, Houston, Harris County, Texas

Dear Mr. Banuelos:

This is to advise you that my one remaining client, Edna Besiant, has now settled with the Houston Housing Authority (HHA) and Memorial Drive Elderly, LP (MDE). As a result, she hereby withdraws her opposition to HHA and MDE's proposed material amendment to the land use restriction agreement (LURA) applicable to the tax credit property located at 2100 Memorial Drive, Houston, Texas.

Call me if you have any questions.

Very truly yours,

<u>/s/ Richard Tomlinson</u> Richard Tomlinson Attorney for Plaintiffs

cc: Barry J. Palmer Coats Rose

> Scott Nichols Daniel Ray Clark Hill Strasburger

Lone Star Legal Aid is a United Way Agency



CAUSE NO. 2017-63022

§

DAVID FURMAN et al.

Plaintiffs

v.

MEMORIAL DRIVE ELDERLY L.P., et al.

Defendants

IN THE CIVIL DISTRICT COURT OF HARRIS COUNTY

333RD JUDICIAL DISTRICT

ORDER GRANTING PLAINTIFF DAVID FURMAN'S NOTICE OF NONSUIT WITHOUT PREJUDICE

On the date shown below, the Court considered Plaintiff David Furman's Notice of Nonsuit without Prejudice in the above-styled lawsuit. Having considered Plaintiff David Furman's Notice of Nonsuit, the Court hereby ORDERS that all Plaintiff David Furman's claims against Defendants be nonsuited without prejudice as to the refiling of same. The claims of any remaining Plaintiffs against Defendants shall remain.

It is further ORDERED that all costs of Court be taxed against the party incurring same.

SIGNED on this _____ day of _____, 2018.

Signed: Dary

PRESIDING JUDGE

CAUSE NO. 2017-63022

DAVID FURMAN	§	IN THE CIVIL DISTRICT COURT
Plaintiff	\$ \$	OF HADDIS COUNTY
*/	8	OF HARRIS COUNTY
V.	8	N-
MEMORIAL DRIVE ELDERLY L.P., et al.	8 § 8	
Defendants	\$ \$	333RD JUDICIAE DISTRICT

PLAINTIFF DAVID FURMAN'S NOTICE **OF PARTIAL NONSUIT WITHOUT PREJUDICE**

TO THE HONORABLE COURT:

COMES NOW Plaintiff David Furman in the above-styled case, and file this notice of partial nonsuit without prejudice as to all causes of action he asserts against Defendants Memorial Drive Elderly L.P., et al. The Defendants have not filed any pleadings seeking affirmative relief. This Notice of Partial Nonsuit is filed by Plaintiff David Furman only, and does not affect the claims of the other plaintiffs in the above-styled case.

Respectfully submitted,

/s/ Ryan Marquez Ryan Marquez Tex. Bar No. 24064321 Richard M. McElvaney Tex. Bar No. 13587795 **Consumer Clinic** 4604 Calhoun Rd., RM 56 TUII Houston, Texas 77004 Telephone: (713) 743-2094 Fax: (713) 743-2195

<u>Ryan.M.Marquez@gmail.com</u> ATTORNEYS FOR PLAINTIFF DAVID FURMAN

CERTIFICATE OF SERVICE

I certify that a true copy of the above Notice of Partial Nonsuit without Prejudice was served on all other parties in accordance with the Texas Rules of Civil Procedure on October 29, 2018, by state e-file.

<u>/s/ Ryan Marquez</u> Ry HANNER Ryan Marquez

7/31/2019 4:09:18 PM Marilyn Burgess - District Clerk Harris County Envelope No: 35590687 By: HENDERSON, MARCELLA L Filed: 7/31/2019 4:09:18 PM

NO. 2017-63022

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CONNIE CASTILLO, et al.

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MEMORIAL DRIVE ELDERLY L.P., et al. CIVIL DISTRICT COURT OF

HARRIS COUNTY, TEXAS

333rd JUDICIAL DISTRICT

ORDER OF NONSUIT WITHOUT PREJUDICE

A notice of nonsuit without prejudice was filed in the above-entitled and numbered cause by Plaintiff Kathleen Koenig pursuant to Tex R.Civ.P. 162.

IT IS HEREBY ORDERED that the notice of nonsuit without prejudice filed by Kathleen Koenig is approved.

IT IS FURTHER ORDERED that the suit filed by this Plaintiff is hereby dismissed without prejudice against Defendants Houston Housing Authority, Memorial Drive Elderly, L.P., V.J. Memorial Corporation and Tory Gunsolley.

Edna Besiant continues her suit as Plaintiff against these Defendants in this cause.

SIGNED this day of	, 2019.
	Signed: Dary Wore 8/2/2019
E.	JUDGE PRESIDING

NO. 2017-63022

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CONNIE CASTILLO, et al.

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MEMORIAL DRIVE ELDERLY L.P., et al. CIVIL DISTRICT COURT OF

HARRIS COUNTY, TEXAS

333rd JUDICIAL DISTRICT

FIRST AMENDED NOTICE OF NONSUIT WITHOUT PREJUDICE

COMES NOW Kathleen Koenig, Plaintiff herein, and gives notice to the Court and all parties pursuant to Rule 162 that she is taking a nonsuit without prejudice of the causes of action that she alleged in the sixth amendeed petition against Defendants Houston Housing Authority, Memorial Drive Elderly, L.P., V.J. Memorial Corporation and Tory Gunsolley, effective immediately. One Plaintiff, Edna Besiant, remains in this suit at this time.

Respectfully submitted,

LONE STAR LEGAL AID

<u>/s/ Richard Tomlinson</u> Richard Tomlinson Texas Bar No. 20123500 P.O. Box 398 Houston, Texas 77001-0398 Tel: 713 - 652 - 0077, ext. 1154 Fax: 713 - 652 - 3815 ATTORNEY FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I, Richard Tomlinson, certify that on July 31, 2019, I served a true and correct copy of the foregoing Plaintiffs' Notice of Nonsuit with Prejudice electronically and by email to Defendants' counsel and to Co-Plaintiff's Counsel, as follows:

Scott Nichols and Daniel Ray Clark Hill Strasburger 909 Fannin, Suite 2300 Houston, TX 77010 scott.nichols@clarkhillstrasburger.com

Richard Tomlinson Richard Tomlinson

Notice of Nonsuit with Prejudice Page 2

7/29/2019 6:04:11 PM Marilyn Burgess - District Clerk Harris County Envelope No: 35521615 By: HENDERSON, MARCELLA L Filed: 7/29/2019 6:04:11 PM

NO. 2017-63022

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CONNIE CASTILLO, et al.

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MEMORIAL DRIVE ELDERLY L.P., et al. CIVIL DISTRICT COURT OF

HARRIS COUNTY, TEXAS

333rd JUDICIAL DISTRICT

ORDER OF NONSUIT WITHOUT PREJUDICE

A notice of nonsuit without prejudice was filed in the above-entitled and numbered cause by Plaintiff Katie Koenig pursuant to Tex.R. Civ.P. 162.

IT IS HEREBY ORDERED that the notice of nonsuit without prejudice filed by Katie Koenig is approved.

IT IS FURTHER ORDERED that the suit filed by this Plaintiff is hereby dismissed without prejudice against Defendants Houston Housing Authority, Memorial Drive Elderly, L.P., V.J. Memorial Corporation and Tory Gunsolley.

Edna Besiant continues her suit as Plaintiff against these Defendants in this cause.

SIGNED this day of	, 2019.
	Signed: Dary Motel 7/30/2019
<u>E</u>	JUDGE PRESIDING

6/27/2019 12:24:55 PM Marilyn Burgess - District Clerk Harris County Envelope No: 34724456 By: HENDERSON, MARCELLA L Filed: 6/27/2019 12:24:55 PM

NO. 2017-63022

CONNIE CASTILLO, et al

V.

CIVIL DISTRICT COURT OF

HARRIS COUNTY, TEXAS

MEMORIAL DRIVE ELDERLY L.P., et al

§ § 333RD JUDICIAL DISTRICT €

ORDER OF NONSUIT OF HHA'S COMMISSIONERS

ON THIS DAY the Court considered Plaintiff's Notice of Nonsuit of HHA's

Commissioners. Pursuant to that notice

IT IS THEREFORE ORDERED, ADJUDGED and DECREED THAT all claims in

this cause which were raised against Defendants LaRence Snowden, Phillis Wilson,

Kristy M. Kirkendoll, Shondra E. Wygale, Tim Horan and David Enrique Ruiz be, and

hereby are, DISMISSED.

SIGNED on	2019.	
	>	
	Signed: 6/28/2019	Dary Wore
	JUDG	E PRESIDING
J.		
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NO. 2017-63022

CONNIE CASTILLO, et al

V.

HARRIS COUNTY, TEXAS

CIVIL DISTRICT COURT OF

MEMORIAL DRIVE ELDERLY L.P., et al

333RD JUDICIAL DISTRIC

DEFENDANT'S NOTICE OF NONSULT OF HHA'S COMMISSIONERS SUED ONLY IN THEIR OFFICIAL CAPACITIES

PLEASE TAKE NOTICE that Plaintiffs no longer wish to prosecute their claims against Defendants LaRence Snowden, Phillis Wilson, Kristy M Kirkendoll, Shondra E. Wygale, Tim Horan and David Enrique Ruiz, all of whom were sued in their official capacities as commissioners of the Houston Housing Authority. Plaintiffs therefore give notice that they are nonsuiting, without prejudice, their claims against these Defendants and no others.

Respectfully submitted.

LONE STAR LEGAL AID

/s/ Richard Tomlinson By: Richard Tomlinson rtomlinson@lonestarlegal.org Texas Bar No. 20123500 1415 Fannin Street, 3rd Floor Houston, Texas 77002-7632 Tel: 713 – 652 – 0077, ext. 1154 Fax: 713 - 652 - 3815 ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing notice of nonsuit electronically to Samuel Louis and Charles "Scott" Nichols of Strasburger & Price, 909 Fannin Street,

Suite 2300, Houston, Texas 77010 on this the 27th day of June, 2019.

/s/ Mark Grandich

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Notice of Intent to Take Oral Deposition of William "Bill" Bryant Page 2

7/16/2019 6:01:57 PM Marilyn Burgess - District Clerk Harris County Envelope No: 35181081 By: HENDERSON, MARCELLA L Filed: 7/16/2019 6:01:57 PM

NO. 2017-63022

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CONNIE CASTILLO, et al.

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MEMORIAL DRIVE ELDERLY L.P., et al. CIVIL DISTRICT COURT OF

HARRIS COUNTY, TEXAS

333rd JUDICIAL DISTRICT

ORDER OF NONSUIT WITH PREJUDICE

A notice of nonsuit with prejudice was filed in the above entitled and numbered cause by Plaintiffs Connie Castillo, William Hamilton, Wallace Roland, Billy Roy Brawdy, Gracie Garcia, Rosemary Sharp, Laverne Fielder by and through her next friend Lauren Fielder, Dorothy Shelley, Judith Hudnall, Paul Blinn, John Kevin Doyle, Florentina Rodriguez, Stephen Lormore, Roger Williams, Lillian Beaty, Marlistine Marlei Cannedy, Ronald Castro, Edward Erwin, Sheila Henderson, George Horan, Larry Jackson, Stefani Maher, Melitta Schulte and Calvin Mills pursuant to Tex.R.Civ.P. 162.

IT IS HEREBY ORDERED that the notice of nonsuit with prejudice filed by Connie Castillo, William Hamilton, Wallace Roland, Billy Roy Brawdy, Gracie Garcia, Rosemary Sharp, Laverne Fielder by and through her next friend Lauren Fielder, Dorothy Shelley, Judith Hudnall, Paul Blinn, John Kevin Doyle, Florentina Rodriguez, Stephen Lormore, Roger Williams, Lillian Beaty, Marlistine Marlei Cannedy, Ronald Castro, Edward Erwin, Sheila Henderson, George Horan, Larry Jackson, Stefani Maher, Melitta Schulte and Calvin Mills is approved.

IT IS FURTHER ORDERED that the suit filed by these Plaintiffs is hereby dismissed with prejudice against Defendants Houston Housing Authority, Memorial Drive Elderly, L.P., V.J. Memorial Corporation and Tory Gunsolley.

Katie Koenig and Edna Besiant continue their suit as Plaintiffs against these Defendants in this cause.

SIGNED this _____ day of ______, 2019.

Signed: 7/22/2019	Dary work
JUDGE	
JUDGE JUDGE	

NO. 2017-63022

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CONNIE CASTILLO, et al.

V.

MEMORIAL DRIVE ELDERLY L.P., et al. CIVIL DISTRICT COURT OF

HARRIS COUNTY, TEXAS

333rd JUDICIAL DISTRICT

NOTICE OF NONSUIT WITH PREJUDICE

COME NOW Connie Castillo, William Hamilton, Wallace Roland, Billy Roy Brawdy, Gracie Garcia, Rosemary Sharp, Laverne Fielder by and through her next friend Lauren Fielder, Dorothy Shelley, Judith Hudnall, Paul Blinn, John Kevin Doyle, Florentina Rodriguez, Stephen Lormore, Roger Williams, Lillian Beaty, Marlistine Marlei Cannedy, Ronald Castro, Edward Erwin, Shella Henderson, George Horan, Larry Jackson, Stefani Maher, Melitta Shculte and Calvin Mills, Plaintiffs herein, and give notice to the Court and all parties pursuant to Rule 162 that they are taking a nonsuit with prejudice of the cause of action that they alleged in their sixth amended petition against Defendants Houston Housing Authority, Memorial Drive Elderly, L.P., V.J. Memorial Corporation and Tory Gunsolley, effective immediately. Two Plaintiffs, Katie Koenig and Edna Besiant remain in this suit at this time.

Respectfully submitted,

LONE STAR LEGAL AID

/s/ Richard Tomlinson Richard Tomlinson Texas Bar No. 20123500 P.O. Box 398 Houston, Texas 77001-0398 Tel: 713 - 652 - 0077, ext. 1154 Fax: 713 - 652 - 3815 ATTORNEY FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I, Richard Tomlinson, certify that on July 16, 2019, I served a true and correct copy of the foregoing Plaintiffs' Notice of Nonsuit with Prejudice electronically and by email to Defendants' counsel and to Co-Plaintiff's Counsel, as follows:

Scott Nichols and Daniel Ray Clark Hill Strasburger 909 Fannin, Suite 2300 Houston, TX 77010 scott.nichols@clarkhillstrasburger.com

Richard Tomlinson Richard Tomlinson

Notice of Nonsuit with Prejudice Page 2

CAUSE NO. 2017-63022

DAVID FURMAN	§	IN THE CIVIL DISTRICT COURT
Plaintiff	§ §	OF HARRIS COUNTY
V.	8 §	
MEMORIAL DRIVE ELDERLY L.P.,	§ §	
et al.	§	\mathbb{O}^{\times}
Defendants	§	333RD JUDICIAE DISTRICT

PLAINTIFF DAVID FURMAN'S NOTICE OF PARTIAL NONSUIT WITHOUT PREJUDICE

TO THE HONORABLE COURT:

COMES NOW Plaintiff David Furman in the above-styled case, and file this notice of partial nonsuit without prejudice as to all causes of action he asserts against Defendants Memorial Drive Elderly L.P., et al. The Defendants have not filed any pleadings seeking affirmative relief. This Notice of Partial Nonsuit is filed by Plaintiff David Furman only, and does not affect the claims of the other plaintiffs in the above-styled case.

Respectfully submitted,

<u>/s/ Ryan Marquez</u> Ryan Marquez Tex. Bar No. 24064321 Richard M. McElvaney Tex. Bar No. 13587795 Consumer Clinic 4604 Calhoun Rd., RM 56 TUII Houston, Texas 77004 Telephone: (713) 743-2094 Fax: (713) 743-2195

<u>Ryan.M.Marquez@gmail.com</u> ATTORNEYS FOR PLAINTIFF DAVID FURMAN

CERTIFICATE OF SERVICE

I certify that a true copy of the above Notice of Partial Nonsuit without Prejudice was served on all other parties in accordance with the Texas Rules of Civil Procedure on October 29, 2018, by state e-file.

/s/ Ryan Marquez R, Ryan Marquez

NO. 2017-63022

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CONNIE CASTILLO, et al.

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MEMORIAL DRIVE ELDERLY L.P., et al. CIVIL DISTRICT COURT OF

HARRIS COUNTY, TEXAS

333rd JUDICIAL DISTRICT

FIRST AMENDED NOTICE OF NONSUIT WITHOUT PREJUDICE

COMES NOW Kathleen Koenig, Plaintiff herein, and gives notice to the Court and all parties pursuant to Rule 162 that she is taking a nonsuit without prejudice of the causes of action that she alleged in the sixth amended petition against Defendants Houston Housing Authority, Memorial Drive Elderly, L.P., V.J. Memorial Corporation and Tory Gunsolley, effective immediately. One Plaintiff, Edna Besiant, remains in this suit at this time.

Respectfully submitted,

LONE STAR LEGAL AID

<u>/s/ Richard Tomlinson</u> Richard Tomlinson Texas Bar No. 20123500 P.O. Box 398 Houston, Texas 77001-0398 Tel: 713 - 652 - 0077, ext. 1154 Fax: 713 - 652 - 3815 ATTORNEY FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I, Richard Tomlinson, certify that on July 31, 2019, I served a true and correct copy of the foregoing Plaintiffs' Notice of Nonsuit with Prejudice electronically and by email to Defendants' counsel and to Co-Plaintiff's Counsel, as follows:

Scott Nichols and Daniel Ray Clark Hill Strasburger 909 Fannin, Suite 2300 Houston, TX 77010 scott.nichols@clarkhillstrasburger.com

Richard Tomlinson Richard Tomlinson

Notice of Nonsuit with Prejudice Page 2

NO. 2017-63022

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CONNIE CASTILLO, et al.

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MEMORIAL DRIVE ELDERLY L.P., et al. CIVIL DISTRICT COURT OF

HARRIS COUNTY, TEXAS

333rd JUDICIAL DISTRICT

NOTICE OF NONSUIT WITHOUT PREJUDICE

COMES NOW Katie Koenig, Plaintiff herein, and gives notice to the Court and all parties pursuant to Rule 162 that she is taking a nonsuit without prejudice of the causes of action that she alleged in the sixth amended petition against Defendants Houston Housing Authority, Memorial Drive Elderly, L.P., V.J. Memorial Corporation and Tory Gunsolley, effective immediately. One Plaintiff, Edna Besiant, remains in this suit at this time.

Respectfully submitted,

LONE STAR LEGAL AID

<u>/s/ Richard Tomlinson</u> Richard Tomlinson Texas Bar No. 20123500 P.O. Box 398 Houston, Texas 77001-0398 Tel: 713 - 652 - 0077, ext. 1154 Fax: 713 - 652 - 3815 ATTORNEY FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I, Richard Tomlinson, certify that on July 29, 2019, I served a true and correct copy of the foregoing Plaintiffs' Notice of Nonsuit with Prejudice electronically and by email to Defendants' counsel and to Co-Plaintiff's Counsel, as follows:

Scott Nichols and Daniel Ray Clark Hill Strasburger 909 Fannin, Suite 2300 Houston, TX 77010 scott.nichols@clarkhillstrasburger.com

Richard Tomlinson Richard Tomlinson

Notice of Nonsuit with Prejudice Page 2

NO. 2017-63022

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CONNIE CASTILLO, et al

v.

HARRIS COUNTY, TEXAS

CIVIL DISTRICT COURT OF

MEMORIAL DRIVE ELDERLY L.P., et al

§ § 333RD JUDICIAL DISTRICT

DEFENDANT'S NOTICE OF NONSUIT OF HHA'S COMMISSIONERS

PLEASE TAKE NOTICE that Plaintiffs no longer wish to prosecute their claims against Defendants LaRence Snowden, Phillis Wilson, Kristy M. Kirkendoll, Shondra E. Wygale, Tim Horan and David Enrique Ruiz, all of whom were sued in their official capacities as commissioners of the Houston Housing Authority. Plaintiffs therefore give notice that they are nonsuiting, without prejudice, their claims against these Defendants and no others.

Respectfully submitted,

LONE STAR LEGAL AID

By: <u>/s/ Richard Tomlinson</u> Richard Tomlinson <u>rtomlinson@lonestarlegal.org</u> Texas Bar No. 20123500 1415 Fannin Street, 3rd Floor Houston, Texas 77002-7632 Tel: 713 – 652 – 0077, ext. 1154 Fax: 713 – 652 – 3815 ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing notice of nonsuit electronically to Samuel Louis and Charles "Scott" Nichols of Strasburger & Price, 909 Fannin Street, Suite 2300, Houston, Texas 77010 on this the 27th day of June, 2019.

/s/ Mark Grandich

NO. 2017-63022

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CONNIE CASTILLO, et al.

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MEMORIAL DRIVE ELDERLY L.P., et al. CIVIL DISTRICT COURT OF

HARRIS COUNTY, TEXAS

333rd JUDICIAL DISTRICT

NOTICE OF NONSUIT WITH PREJUDICE

COME NOW Connie Castillo, William Hamilton, Wallace Roland, Billy Roy Brawdy, Gracie Garcia, Rosemary Sharp, Laverne Fielder by and through her next friend Lauren Fielder, Dorothy Shelley, Judith Hudnall, Paul Blinn, John Kevin Doyle, Florentina Rodriguez, Stephen Lormore, Roger Williams, Lillian Beaty, Marlistine Marlei Cannedy, Ronald Castro, Edward Erwin, Shella Henderson, George Horan, Larry Jackson, Stefani Maher, Melitta Shculte and Calvin Mills, Plaintiffs herein, and give notice to the Court and all parties pursuant to Rule 162 that they are taking a nonsuit with prejudice of the cause of action that they alleged in their sixth amended petition against Defendants Houston Housing Authority, Memorial Drive Elderly, L.P., V.J. Memorial Corporation and Tory Gunsolley, effective immediately. Two Plaintiffs, Katie Koenig and Edna Besiant, remain in this suit at this time.

Respectfully submitted,

LONE STAR LEGAL AID

<u>/s/ Richard Tomlinson</u> Richard Tomlinson Texas Bar No. 20123500 P.O. Box 398 Houston, Texas 77001-0398 Tel: 713 - 652 - 0077, ext. 1154 Fax: 713 - 652 - 3815 ATTORNEY FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I, Richard Tomlinson, certify that on July 16, 2019, I served a true and correct copy of the foregoing Plaintiffs' Notice of Nonsuit with Prejudice electronically and by email to Defendants' counsel and to Co-Plaintiff's Counsel, as follows:

Scott Nichols and Daniel Ray Clark Hill Strasburger 909 Fannin, Suite 2300 Houston, TX 77010 scott.nichols@clarkhillstrasburger.com

Richard Tomlinson Richard Tomlinson

Notice of Nonsuit with Prejudice Page 2

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BOARD ACTION REQUEST

COMMUNITY AFFAIRS DIVISION

SEPTEMBER 5, 2019

Presentation, discussion, and possible action on an order proposing the repeal of 10 TAC, Subchapter A, Administration, §1.7, Appeals Process; an order proposing new 10 TAC, Subchapter A, Administration, §1.7, Appeals Process; and directing that they be published for public comment in the Texas Register

RECOMMENDED ACTION

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

WHEREAS, 10 TAC §1.7 provides the Department's rule regarding the processing of appeals, and staff has identified a need to update a citation; to clarify the admissibility of documentation not originally part of the application; and to clarify the timing of when an opportunity to appeal is triggered; and

WHEREAS, upon Board approval, the proposed rule actions will be published in the Texas Register for public comment from September 20, 2019, through October 21, 2019;

NOW, therefore, it is hereby

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

The Department process for Appeals is addressed in 10 TAC §1.7 and was last updated in September 2018. Staff has identified a citation that needs to be updated to align with the changes made to the multifamily rules and Qualified Allocation Plan since that time. The cite change ensures that the reference to the QAP section relating to appeals is correct. Additionally, the rule warranted revision to clarify the admissibility of documentation not originally part of the application and to clarify the timing of when an opportunity to appeal is triggered. Once approved in draft form, this amendment to the rule will be published in the Texas Register for public comment and will be returned to the Board for final adoption.

While the proposed rules reflect changes as blackline revisions to the current rule, the changes will be submitted to the Texas Register as a proposed repeal and proposed new rule. Staff will,

upon action by the Board, publish the proposed rule in the Texas Register for public comment from September 20, 2019, through October 21, 2019. Staff will return to the Board for final adoption of the rules.

Attachment 1: Preamble including required analysis, for proposed repeal of 10 TAC §1.7, Appeals Process.

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC §1.7, Appeals Process. The purpose of the proposed repeal is to eliminate an outdated rule that warrants revision while adopting new updated rules under separate action.

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

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

Mr. Robert Wilkinson, Executive Director, has determined that, for the first five years the proposed repeal would be in effect:

1. The proposed repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous re-adoption making a change to an existing activity, the procedures for the handling of Department appeals.

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 workload 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 existing regulations, but is associated with a simultaneous re-adoption making changes to an existing activity, the procedures for the handling of Department appeals.

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 the proposed repeal and determined that the proposed repeal will not create an economic effect on small or micro-businesses or rural communities.

1. The Department has evaluated the rules and determined that none of the adverse affect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. The rule relates to the Department's the procedures for the handling of Department appeals. Other than a Subrecipient of the Department that may find itself desiring to pursue an appeal to the Department, no small or micro-businesses are subject to the rules. However, if a Subrecipient considers itself a small or micro-business, the rule changes provide greater clarity regarding the appeals process.

3. The Department has determined that because the rules apply primarily to Applicants and existing Subrecipients, there will be no economic effect on small or micro-businesses or rural communities.

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

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6). The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the proposed repeal will be in effect there would be no economic effect on local employment because the rules relate only to processes that have already been in effect for existing Applicants and Subrecipients; therefore, no local employment impact statement is required to be prepared for the rules.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that the rules pertain to all parties that wish to file an appeal throughout the state, regardless of location, there are no "probable" effects of the revised rules on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has also determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of the repealed chapter would be an updated, more streamlined, and clearer version of the rule governing the appeals process. There will not be economic costs to individuals required to comply with the repealed chapter.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the proposed repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

g. REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 20, 2019, to October 21, 2019, to receive input on the proposed repealed chapter. Written comments may be mailed to the Texas Department of Housing and Community Affairs, Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or email to bboston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, October 21, 2019.

STATUTORY AUTHORITY. The repeal is adopted pursuant to TEX. GOV'T CODE, §2306.053, which authorizes the Department to adopt rules. Except as described herein the repeal affects no other code, article, or statute.

§1.7, Appeals Process.

Attachment 2: Preamble for proposed new 10 TAC Chapter 6 Community Affairs Programs The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC §1.7, Appeals Process. The purpose of the proposed new rule is to update the rule to update a legal citation to have the language mirror the language in 10 TAC §11.902; to clarify the admissibility of documentation not originally part of the application; and to clarify the timing of when an opportunity to appeal is triggered.

Tex. Gov't Code §2001.0045(b) does apply to the new rule, as no exceptions are applicable, however, there are no costs 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. Robert Wilkinson, Executive Director, has determined that, for the first five years the proposed rule will be in effect:

1. The rule does not create or eliminate a government program, but relates to the repeal and simultaneous readoption making changes to an existing activity, the process for the submission of appeals to the Department.

2. The rule does not reduce work load such that any existing employee positions can be eliminated nor does it increase work load such that any new employee positions are required.

3. The rule does not require additional future legislative appropriations.

4. The rule does not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The proposed rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.

6. The rule will not expand, limit, or repeal an existing regulation.

7. The rule will neither increase nor decrease the number of individuals subject to the rule.

8. The rule 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, 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 Chapter 2306, Subchapter E.

1. The Department has evaluated this rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable. There are no small or microbusinesses subject to the rule amendment for which the economic impact of the rule is projected to impact. There are no rural communities subject to the amendment for which the economic impact of the rule is projected to impact.

2. The rule relates to the Department's procedures for the handling of Department appeals. Other than a Subrecipient of the Department that may find itself desiring to pursue an appeal to the Department, no small or micro-businesses are subject to the rules. However, if a Subrecipient considers itself a small or micro-business, the rule changes provide greater clarity regarding the appeals process.

3. The Department has determined that because the rule applies primarily to Applicants and existing Subrecipients, 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 rule will be in effect the new rule has no economic effect on local 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 this rule relates to an appeals process that is applied statewide, the rule does not change issues affecting employment, there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has also determined that, for each year of the first five years the proposed rule is in effect, the public benefit anticipated as a result of the new section will be a more accurate and clear rule.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the proposed rule is in effect, enforcing or administering the rule does not have any foreseeable implications related to costs or revenues of the state or local governments.

g. REQUEST FOR PUBLIC COMMENT The public comment period will be held September 20, 2019, to October 21, 2019, to receive input on the proposed rule. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or email brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin local time, OCTOBER 21, 2019.

h. STATUTORY AUTHORITY. The rule is proposed pursuant to TEX. GOV'T CODE, §2306.053, which authorizes the Department to adopt rules. Except as described herein the new section affects no other code, article, or statute.

§1.7. Appeals Process.

(a) Purpose. The purpose of this rule is to provide the procedural steps by which an appeal can be filed relating to Department decisions as authorized by Tex. Gov't Code §2306.0321 and §2306.0504 which together require an appeals process be adopted by rule for the handling of appeals relating to Department decisions and debarment. Appeals relating to low income housing tax credits, or when multifamily mortgage revenue bonds or multifamily loans are contemporaneously layered with low income housing tax credits, and their-the associated underwriting, are governed by a separate appeals process provided at §1110.902 of this Title (relating to Appeals Process (§2306.0321; §2306.6715)).

(b) Definitions. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. If not defined below, Capitalized terms used in this section have the meaning in the rules that govern the applicable program under which the appeal is being filed.

(1) Affiliated Party--An individual, corporation, partnership, joint venture, limited liability company, trust, estate, association, cooperative or other organization or entity of any nature whatsoever that directly, or indirectly through one or more intermediaries, has Control of, is Controlled by, or is under common Control with any other Person. All entities that share a Principal are Affiliates.

(2) Appeal--An Appealing Party's notice to challenge a decision or decisions made by staff and/or the Executive Director regarding an Application, Commitment, Contract, Loan Agreement, Debarment, or LURA as governed by this section.

(3) Appeal file--The written record of an Appeal that contains the applicant's Appeal; the correspondence, if any, between Department staff or the <u>E</u>executive <u>D</u>elirector and the Appealing Party; and the final Appeal decision response provided to the Appealing Party.

(4) Appealing Party--The Administrator, Affiliated Party, Applicant, Person, or Responsible Party Subchapter D, §2.401 of this Title (relating to Debarment from Programs Administered by the Department) who files, intends to file, or has filed on their behalf, an Appeal before the Department.

(c) Persons Eligible to Appeal. An Appeal may be filed by any Administrator, Applicant, Person, or Responsible Party as provided for in Subchapter D, §2.401 of this Title, or Affiliated Party of the Administrator, Applicant, Person or Responsible Party who has filed an Application for funds or reservation with the Department, or has received funds or a reservation from the Department to administer.

(d) Grounds to Appeal Staff Decision. Appeals may be filed using this process on the following grounds:

(1) Relating to applying for funds or requesting to be approved for reservation authority an Appealing Party may appeal if there is:

(A) <u>dD</u>isagreement with the determination of staff regarding the sufficiency or appropriateness of documents submitted to satisfy evidence of a given threshold or scoring criteria, including the calculation of any scoring based items;

(B) <u>dD</u>isagreement with the termination of an application;

(C) <u>dD</u>isagreement with the denial of an award or reservation request;

(D) <u>dD</u>isagreement with the amount of the award recommended by the Department, unless that amount is the amount requested by the Applicant;

(E) e<u>C</u>oncern that the documents submitted were not processed by Department staff in accordance with the Application and program rules in effect; and/or

(F) <u>aA</u> determination by the Board or the Executive Director that there is good cause for an Appeal because there are implicated interests to be protected by due process.

(2) Relating to issues that arise after the award or reservation determination by the Board, an Appealing Party may appeal if there is:

(A) <u>dD</u>isagreement with a denial by the Department of a Contract, Commitment, Loan Agreement, or LURA amendment that was requested in writing; or

(B) <u>aA</u> determination by the Board or the Executive Director that there is good cause for an Appeal because there are implicated interests to be protected by due process.

(3) Relating to debarment a Responsible Party may appeal a determination of debarment, as further provided for in §2.401(k) of this Title.

(4) Affiliated Party Appeals. An Affiliated Party has the ability to appeal only those decisions that directly impact the Affiliated Party, not the underlying agreements. An Affiliated Party may appeal a finding of failure to adequately perform under an Administrator's Contract, resulting in a "Debarment" or a similar action.

(e) Process for Filing an Appeal of Staff Decision to the Executive Director.

(1) An Appealing Party must file a written Appeal of a staff decision with the Executive Director not later than the seventh calendar day after notice has been provided to the Appealing Party. For purposes of this section, the date of notice will be considered the date of an Application-specific written communication from the Department to the Applicant; in cases in which no Application-specific written communication is provided, the date of notice will be the date that posting of materials or logs are published on the Department's website is considered "notice" when such logs are identified as such in the application process, including but not limited to a Request for Proposals or Notice of Funding Opportunity, or in the rules for the applicable program as a public notification mechanism.

(2) The written appeal must include specific information relating to the disposition of the Application or written request for change to the Contract, Commitment, Loan Agreement, and/or LURA. The Appealing Party must specifically identify the grounds for the Appeal based on the disposition of underlying documents.

(3) Upon receipt of an Appeal, Department staff shall prepare an Appeal file for the Executive Director. The Executive Director shall respond in writing to the Appealing Party not later than the fourteenth <u>calendar</u> day after the date of receipt of the Appeal. The Executive Director may take one of the following actions:-

(A) Concur with the Appeal and make the appropriate adjustments to the staff's decision; or

(B) Disagree with the Appeal, in concurrence with staff's original determination, and provide the basis for rejecting the Appeal to the Appealing Party; or

(C) In the case of appeals in exigent circumstances (such as conflict with a statutory deadline) or with the consent of the appellant, for appeals received five calendar days or less of the next scheduled Board meeting, the Executive Director may decline to make a decision and have the appeal deferred to the Board per the process outlined in (f)(2), below, for final action.-

(f) Process for Filing an Appeal of the Executive Director's Decision to the Board.

(1) If the Appealing Party is not satisfied with the Executive Director's response to the Appeal provided in subsection (e)(3) of this section, they may appeal in writing directly to the Board within seven <u>calendar</u> days after the date of the Executive Director's response.

(2) In order to be placed on the agenda of the next scheduled meeting of the Department's Board, the Appeal must be received by the Department at least fourteen days prior to the next scheduled Board meeting. Appeals requested under this section received after the fourteenth calendar day prior to the Board meeting will generally be scheduled at the next subsequent Board meeting. However, the Department reserves the right to place the Appeal on a Board meeting

agenda if an Appeal that is timely filed under paragraph (1) of this subsection is received fewer than fourteen calendar days prior to the next scheduled Board meeting. The Executive Director shall prepare Appeal materials for the Board's review based on the information provided.

(3) If the Appealing Party receives additional information after the Executive Director has denied the Appeal, but prior to the posting of the Appeal for Board consideration, the new information must be provided to the Executive Director for further consideration or the Board will not consider any information submitted by the Applicant after the written Appeal. New information will cause the deadlines in this subsection to begin again. The Board will review the Appeal de novo and may consider any information properly considered by the Department in making its prior decision(s).

(4) Public Comment on an Appeal Presented to the Board. The Board will hear public comment on the Appeal under its Public Comment Procedures in §1.10 of this <u>Subchapter subchapter</u> (relating to Public Comment Procedures). While public comment will be heard, persons making public comment are not parties to the Appeal and no rights accrue to them under this section or any other Appeal process. Nothing in this section provides a right to Appeal any decision made on an Application, Commitment, Contract, Loan Commitment, or LURA if the Appealing Party does not have grounds to appeal as described in subsection (d) of this section.

(5) In the case of possible actions by the Board regarding Appeals, the Board may:

(A) Concur with the Appealing Party and grant the Appeal; or

(B) Disagree with the Appealing Party, in concurrence with the Executive Director's original determination, and provide the basis for rejecting the Appeal.

(C) In instances in which the Appeal, if granted by the Board would have resulted in an award to the Applicant, the Application shall be evaluated for an award as it relates to the availability of funds and staff will recommend an action to the Board in the meeting at which the Appeal is heard, or a subsequent meeting. If no funds are available in the current year's funding cycle, then the Appealing Party may be awarded funds from a pool of deobligated funds or other source, if available.

(D) In the case of actions regarding all other Appeals, the Board shall direct staff on what specific remedy is to be provided, allowable under current laws and rules.

(g) Board Decision. Appeals not submitted in accordance with this section will not be considered, unless the Executive Director or Board, in the exercise of its discretion, determines there is good cause to consider the appeal. The decision of the Board is final. <u>unless the Board determines</u> within 45 days of a Board decision that it has erred in fact or law in its determination, in which case an Appeal may be reconsidered by the Board on a motion by a party to the Appeal or the Department.

(h) Limited Scope. The appeals process provided in this rule is of general application. Any statutory or specific rule with a different appeal process, including the limitations expressed in subsection (a), above, will be governed by the more specific statute or rule. Except as provided for in §2.401 of this <u>±</u>itle, this <u>section</u> does not apply to matters involving a Contested Case Proceeding under §1.13 of this subchapter (relating to Contested Case Hearing Procedure).

8b

BOARD ACTION REQUEST

EXECUTIVE DIVISION

SEPTEMBER 5, 2019

Presentation, discussion, and possible action on an order proposing the repeal of 10 TAC §1.10, Public Comment Procedures; and an order proposing new 10 TAC §1.10, Public Comment Procedures; and directing their publication for public comment in the Texas Register

RECOMMENDED ACTION

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

WHEREAS 10 TAC §1.10 provides the Department's procedures for hearing public comments at Governing Board meetings open to the public and staff is recommending that revisions be made to clarify when the registration form method of comment can be used; to clarify that deference may be provided to reading written communications from elected officials; to clarify that no new materials may be provided to the Board when the item for consideration is part of a competitive award process; and to make other minor administrative and technical revisions; and

WHEREAS, upon Board approval the proposed actions on this rule will be published in the Texas Register for public comment to be received from September 20, 2019, to October 21, 2019;

NOW, therefore, it is hereby

RESOLVED, that the Executive Director and his designees, be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department to cause the proposed repeal of 10 TAC §1.10, Public Comment Procedures; and the proposed new 10 TAC §1.10, Public Comment Procedures, 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.

BACKGROUND

Tex. Gov't Code §2306.053 authorizes the Department to adopt rules governing the administration of the Department and its programs. 10 TAC §1.10, Public Comment Procedures, provides the Department's procedures for hearing public comments at Governing Board meetings that are open to the public. Staff is recommending that the rule be repealed, and adopted as new with revisions to its current form to clarify when the registration form method of comment can be used. These forms had been intended to allow those present at a public meeting, but not wishing to actually speak, to have their comment noted. A person who is not

present at a Board meeting but wishes to present comment on an agenda item has always been able to submit a written comment in accordance with the rule. However, because of lack of clarity in the rule on the purpose of the registration form, in several instances the forms are being submitted by a third party, on the day of the board meeting and often in large numbers, purporting to be the opinions of persons who are not present at the meeting. The rule is being amended to make clear when the registration form method of comment will be accepted.

Other revisions include:

- clarifying that deference may be provided to reading written communications from elected officials;
- clarifying that no new materials may be provided to the Board when the item for consideration is part of a competitive award process; and
- making other minor administrative and technical revisions.

Upon approval, the proposed rule will be published in the Texas Register for public comment. Comment will be accepted from September 20, 2019, to October 21, 2019. A final rule will be returned to the Board for adoption.

The rule attached is shown in black-line form from the current version of the rule.

Attachment 1: Preamble, including required analysis, for proposed repeal of 10 TAC §1.10, Public Comment Procedures

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC §1.10, Public Comment Procedures. The purpose of the proposed repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

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

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

1. Mr. Robert Wilkinson, Executive Director, has determined that, for the first five years the proposed repeal would be in effect, the proposed repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous adoption making changes to the rule governing the public comment procedures at the Department's Board meetings.

2. The proposed repeal does not require a change in work that would require the creation of new employee positions, nor would the repeal 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 repeal will repeal an existing regulation, but is associated with the simultaneous readoption making changes to the existing rule for the security of personal information.

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 affect the state's economy.

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

The Department has evaluated this proposed 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 proposed repeal does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

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

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

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the proposed repeal is in effect, the Page 3 of 9

public benefit anticipated as a result of the repealed sections would be elimination of an outdated rule while proposing 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. Wilkinson also has determined that for each year of the first five years the proposed repeal is in effect, enforcing or administering the repealed sections 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 September 20, 2019, to October 21, 2019, to receive input on the proposed repeal. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, OCTOBER 21, 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 amended sections affect no other code, article, or statute.

§1.10, Public Comment Procedures

Attachment 2: Preamble, including required analysis, for proposed new 10 TAC §1.10, Public Comment Procedures

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC §1.10, Public Comment Procedures. The purpose of the proposed rule is to clarify when the registration form method of comment can be used. These forms had been intended to allow those present at a public meeting, but not wishing to actually speak, to have their comment noted. A person who is not present at a Board meeting but wishes to present comment on an agenda item has always been able to submit a written comment in accordance with the rule. However, because of lack of clarity in the rule on the purpose of the registration form, in several instances the forms are being submitted by a third party, on the day of the board meeting and often in large numbers, purporting to be the opinions of persons who are not present at the meeting. The rule is being amended to make clear when registration form method of comment will be accepted. Other changes being reflected in the new rule include clarifying that deference may be provided to the Board when the item for consideration is part of a competitive award process; and making other minor administrative and technical revisions.

Tex. Gov't Code §2001.0045(b) does apply to the new rule, as no exceptions are applicable, however, there are no costs 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. Robert Wilkinson, Executive Director, has determined that, for the first five years the proposed rule will be in effect:

1. The new rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to the rule governing the public comment process at meetings of the Department's Board of Directors.

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 changes do 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 rule will not limit, expand, or repeal an existing regulation but merely revises procedures within a rule.

7. The new rule does technically increase the number of individuals to whom this rule applies, as there are those who may have attempted to utilize the registration form of public comment while not being present at a meeting of the Board and will no longer be able to do so; this rule change

will not permit the registration forms to be presented to the Board by persons not in attendance at the meeting.

8. The new rule will not negatively nor positively affect the state's economy.

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

The Department, 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 Chapter 2306, Subchapter E.

- 1. The Department has evaluated this rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.
- 2. There are no small or micro-businesses subject to the rule for which the economic impact of the rule is projected to impact. There are no rural communities subject to the rule for which the economic impact of the rule is projected to impact.
- 3. The Department has determined that because this rule relates only to the public comment process used at meetings of the Department's Board, there will be no economic effect on small or micro-business 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 public comment process used at meetings of the Department's Board.

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 only relates to the public comment process used at meetings of the Department's Board, there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the proposed new rule will be a clearer rule for how public comment will be accepted at meetings of the Department's Board. There will be no expected economic cost to any individuals required to comply with the proposed new rule.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new sections are in effect, enforcing or administering the new sections does not have any foreseeable implications related to costs or revenues of the state or local governments as the implementation of this rule generates no fees, nor requires any cost.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 20, 2019, to October 21, 2019, to receive input on the proposed new rule. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, OCTOBER 21, 2019.

§1.10. Public Comment Procedures.

(a) Purpose. The purpose of this section is to establish procedures for hearing public comment at Governing Board meetings open to the public held by the Texas Department of Housing and Community Affairs in accordance with §2306.032(f) and §2306.066(d) of the Tex. Gov't Code.

(b) Procedures for taking public comment.

(1) At each meeting open to the public the Governing Board ("Board") shall provide opportunity for members of the public to make:

(A) <u>gG</u>eneral public comment after the Board has taken action on all posted agenda items on which it intends to take action, general public comment on matters of relevance to the Department's business, or requests that the Board place specific items on future agendas for consideration. It is the prerogative of the Board Chair to place reasonable limits on public comment. Handouts of printed materials are permitted only as provided for in paragraph (6) of this subsection; and

(B) <u>sSpecific</u> public comment on each posted agenda item after the presentation made by Department staff and motions made by the Board. For purposes of this rule, the Board may consider the staff's presentation to be staff's written presentation in the Board's meeting book and posted on the Department's website, or additional printed materials <u>-It is the prerogative of the Board Chair to place reasonable limits on such comment</u>. Handouts of printed materials are permitted only as provided for in paragraph (6) of this subsection.

(2) The opportunity for general public comment under paragraph (1)(A) of this subsection may not be used to advocate for or against any specific action relating to any posted item or for or against any pending application. The opportunity for any such testimony is to be limited to the appointed time when action on such matter is requested to be formally considered as a posted agenda item as described in paragraph (1)(B) of this subsection.

(3) At the time general or specific public comment is taken, speakers should be prepared to come promptly to the podium or other place designated for speakers. They may, if they wish, agree among themselves on an order in which they will speak, or this may be directed by the Board Chair. If a large number of speakers wish to testify, the Cehair may, in his or her reasonable discretion, establish appropriate limits on the total amount of time to be devoted to testimony on any given item or items. As each individual speaker begins his or her testimony, they must state on the record their name and on whose behalf they are speaking, and sign in on a sheet provided by staff to indicate the correct spelling of their name and on whose behalf they are speaking.

(4) Individuals <u>present at the meeting</u>, not speaking who wish to register <u>their</u> positions for or against a posted agenda item, <u>but do not wish to speak</u>, may register their positions, for or against, <u>do so by submitting a comment registration form</u> with the secretary of the meeting, or another person designated by the <u>Board cChair</u>., on a <u>The comment registration form</u>, which the person wishing to register must sign, stateing their <u>commenter's</u> name, whom they represent, the action item to which their comment relates, and their position, and must be signed by the

<u>commenter</u>. At the end of the public comment on the item the <u>Board eC</u>hair will have registered positions for and against read into the record. <u>It is the Board Chair's discretion to determine if</u> <u>similar comments submitted are aggregated and reported as a total number providing their</u> <u>position</u>, as opposed to reading all names into the record.

(5) Additional limits on public comment.

(A) The Board Chair, in her/his sole discretion, may additionally limit the number and length of presentations of public comment, both general and specific, at any time during a meeting based on a consideration of:

(i) the number of persons wishing to give public comment;

(ii) the number of agenda items to be heard;

(iii) the time available for the meeting; and

(iv) the risk of losing a quorum of Board members.

(B) If the Board Chair limits presentations, she or he will not limit them in a manner that inappropriately favors a particular point of view.

(C) The Board Chair may, in her or his reasonable discretion, grant deference to elected officials and other persons who have traveled great distances. <u>Deference to elected officials may include,</u> <u>but is not limited to reading letters from elected officials to the Board into the record.</u>

(6) Presenting printed materials. An individual providing testimony to the Board may provide printed materials only if they are provided as outlined in subparagraphs (A) - (C) of this paragraph:

(A) In order to ensure that members of the Board and the public are given an opportunity to review any such materials, they must be provided to the Department staff not less than five (5) business days prior to the meeting at which they are to be. This is to enable staff to post them on the Department's website not later than the third day before the date of the meeting, as provided for in Tex. Gov't Code §2306.032(c). They must be made available in Adobe Acrobat (pdf) electronic format;

(B) Department staff will post such materials to the Department's website no later than the third day before the meeting at which they are to be used;

(C) In exceptional circumstances the Board Chair may, in her/his sole discretion, and only after giving Board members an opportunity to object, allow materials to be provided at a meeting in hard copy format provided:

(i) they are delivered to staff prior to the start of the meeting so that staff may log in the materials and the Board Chair may review for acceptance under this subsection. Materials may not be handed directly by the public to a Board member on the dais;

(ii) they are not so voluminous as to cause inordinate delay while members of the Board and public review them;

(iii) they are provided in hard copy format to all members of the public in attendance;

(iv) they are also provided to staff in Adobe Acrobat (pdf) format for inclusion in the electronic records of Board materials available to the public via the Department's website; and

(v) if the materials involve large size photos, maps, charts, or other information to be displayed for the Board, an identical copy must be displayed to the public attendees.

(7<u>D</u>) Persons seeking allowance of written materials under paragraph (6)(C) of this subsection should be aware that their proffered materials may be disallowed, and they should always be prepared to proceed with a verbal presentation within the time constraints for public speaking at Board meetings.

(E) If materials submitted relate to a competitive Application under any Department program, including Chapters 11 and 13 of this Title, such materials provided under either subparagraph (6)(A) or (6)(C) of this paragraph may be prohibited from presentation to the Board under applicable rules or statute. (c) To the extent that subsection (b) of this section, or the Board Chair, place limitations on the amount of time that a member of the public may address the Board, a member of the public who addresses the Board through a translator will be given at least twice the amount of time as a member of the public who does not require the assistance of a translator in order to ensure that non-English speakers receive the same opportunity to address the Board.



BOARD ACTION REQUEST

COMMUNITY AFFAIRS DIVISION

SEPTEMBER 5, 2019

Presentation, discussion, and possible action on an order proposing the repeal of 10 TAC Chapter 6, Community Affairs Programs; an order proposing new 10 TAC Chapter 6, Community Affairs Programs; and directing that they be published for public comment in the Texas Register

RECOMMENDED ACTION

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

WHEREAS, the Department has identified the need to revise 10 TAC Chapter 6 to improve clarity, to remedy discrepancies between rules, to reorganize subdivisions within the rules, to streamline the crisis assistance activity, and to correct identified areas of concern;

WHEREAS, the revisions are therefore proposed to Chapter 6, and it is the Department's intent that the changes in the rules be clear and understandable to subrecipients and compliant with federal rules and guidelines; and

WHEREAS, upon authorization of this item, the proposed rule actions will be published in the Texas Register for public comment from September 20, 2019, through October 21, 2019;

NOW, therefore, it is hereby

RESOLVED, that the Executive Director and his designees be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department, to cause the proposed 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 revised 10 TAC Chapter 6 to improve clarity, remedy discrepancies between rules, reorganize subdivisions within the rules, and correct identified areas of concern. It is staff's goal that readers of the revised rules will find them easier to follow and understand.

Staff released the proposed revisions to the network of Community Affairs subrecipients on July 23, 2019, and hosted a conference call on July 24, 2019, to garner stakeholder input and answer any questions prior to bringing a draft to the Board. Having received both input and questions, staff addressed each question and considered all input, some of which resulted in changes to the proposed rules reflected herein.

While the proposed rules reflect changes as blackline revisions to the current rules, the changes will be submitted to the Texas Register as a proposed repeal and proposed new rule. Staff will, upon action by the Board, publish the proposed rules in the Texas Register for public comment from September 20, 2019, through October 21, 2019. Staff will return to the Board for final adoption of the rules.

- §6.2, Definitions
 - Modified the definitions of Categorical Eligibility, Concern, Deficiency, Expenditure, Finding, High Energy Burden, Household, Means Tested Veterans Program, Outreach, Persons with a Disability, Poverty Income Guidelines, and Qualified Alien.
 - Added definitions for Contract System, Contract Term, Discretionary Funds, Eligible Entity, Monthly Performance and Expenditure Report, and Service Area.
 - o Removed the definitions for Subgrant and Subgrantee
- §6.3, Subrecipient Contract
 - In subsection (b), extended the timeframe for which Contract actions must be ratified by the governing body.
- §6.4, Income Determination
 - Divided subsection (a) into four separate subsections for clarity and specified that income data is collected for all Household members 18 years of age and older rather than just the applicant.
 - Moved language concerning Gross Annual Income and provided further clarification as to which income is determined for eligibility and certain exceptions.
 - Added an excluded income category for the ABLE Act of 2014.
 - Added state exclusions to excluded income.
- §6.6, Subrecipient Contract
 - In subsection (b), clarified the rule is for Eligible Entities only and indicated the rule pertains to both an Eligible Entity's Board of Directors and, in the case of a Public Organization, an advisory board of directors.
 - In subsection (e), clarified the rule is for activities funded by non-discretionary CSBG, LIHEAP, or DOE WAP.
- §6.7, Subrecipient Reporting Requirements
 - In subsection (b), clarified that it is the Subrecipient's responsibility to demonstrate compliant use of funds during the Contract Term.
 - Clarified steps to be taken by a Subrecipient if funds are owed to the Department at the end of a Contract Term.
- §6.8, Potential Applicant/Applicant/Customer Denials and Appeals Rights
 - Added a clause to clarify that this section does not apply to entities only receiving Discretionary CSBG funds.
 - In subsection (g), clarified that funds that could be pledged to a complainant's Household should remain unencumbered until a final decision is made.
- §6.10, Compliance Monitoring
 - In subsection (a), added additional program names to the list of programs with which the Department will try to coordinate monitoring visits.
 - In subsection (b)(3), added more examples of what the Department may monitor to

substantiate compliance.

- In subsection (c), added that for private and public organizations, monitoring reports and responses must be provided to the governing body of the Subrecipient at the next regularly scheduled meeting.
- §6.201, Background and Definitions
 - Added a clause to clarify that any references in this subchapter to an Eligible Entity's board means both the governing board of the Private Nonprofit or the advisory board of the Public organization.
 - o Removed unnecessary details from the Community Action Plan definition.
 - Removed definitions of Discretionary Funds and Eligible Entity from this section and inserted them into §6.2.
 - Referenced §§2.203 and 2.204 in the definition of a Quality Improvement Plan.
 - Added definitions for Results Oriented Management and Accountability and Strategic Plan.
 - Added language to specify that case management services are CSBG-supported when defining TOP.
- §6.206, CSBG Community Assessment, Community Action Plan, and Strategic Plan
 - In subsection (d), added that marketing and Outreach efforts must be demonstrated in one or more counties by an Eligible Entity with a Service Area of one or more counties (rather than in a single county).
 - In subsection (g), added that the Community Assessment and the CAP must also comply with federal guidance and the Subrecipient's Contract.
 - In subsection (i), clarified that a hearing must occur annually and must have been posted and reflect that year's funding amount.
 - o In subsection (j), added Strategic Plan requirements.
- §6.207, Subrecipient Requirements
 - In subsection (i), clarified that information in paragraphs (A) through (L) must be contained in the forms or systems used to document case management services for TOP Households.
- §6.210, Board Structure
 - Moved the Board residency requirement from §6.213 and clarified the requirement.
 - In subsection (f), added a 120-day timeframe within which a petition for adequate representation must be heard at a board meeting.
 - o Moved the language on an Improperly Constituted Board from 6.213.
- §6.211, Board Administrative Requirements
 - Moved and revised language concerning personal or financial interest in the firm or person selected to perform a subcontract from subparagraph (4) to subsection (b) for clarity.
 - o In subparagraph (4), changed "organization" to "entity or person".

- §6.212, Board Size
 - Specified in (b)(3) that it is an advisory board who may petition the Public Organization to remove an advisory board member.
- §6.213, Board Responsibility
 - In (b)(7), added that the Board must also receive monitoring correspondence transmitted by the Department.
 - Removed subsection (d) and (e) because they were moved to §6.210.
- §6.214, Board Meeting Requirements
 - Added that advisory board members must also receive training in Texas Open Government laws.
- §6.301, Background and Definitions
 - Added definitions for Customer Obligations, Crisis Assistance, Disaster, and Natural Disaster.
 - o Modified definitions for Extreme Weather Conditions and Life Threatening Crisis.
 - o Removed definition for Household Crisis.
- §6.303, Distribution of CEAP Funds
 - Removed subsection (c) and inserted it into §6.304 because it is more germane to that section.
- §6.304, Deobligation and Reobligation of CEAP Funds
 - In subsections (a) and (b), revised the Deobligation process for CEAP by lowering the benchmark of Expenditures and Obligations a Subrecipient must achieve and moving up the date to earlier in the year that each benchmark must be achieved to avoid Deobligation. The Deobligation "test" still has two phases: a test to obligate 30% of funds by the April 15 Monthly Performance and Expenditure Report, and a test to obligate 50% of funds by the June 15 Monthly Performance and Expenditure Report.
 - Opportunities to avoid Deobligation in both "tests" are also further detailed and clarified.
 - In subsection (c), moved language from §6.303 to this section concerning the method by which Deobligated funds will be Reobligated and also adding that if six months or less remain to expend the funds, another method approved by the Department's Board may be used to ensure full Expenditure.
 - In subsection (d), limited the timeframe by which a Subrecipient, which has had funds Deobligated, can expend its reduced amount to January 31 of the following year as reported in the Monthly Performance and Expenditure Report due February 15th.
 - In subsection (e), specified and referenced the formula which is used to Reobligate funds.
 - Added subsection (g) to identify that the consequence of not fully expending a prior year's Contract by the Monthly Performance and Expenditure Report due April 15th of the subsequent year for two consecutive original Contract Terms is good cause

for nonrenewal of a Contract.

- §6.305, Subrecipient Eligibility
 - o In subsection (b), clarified that the rule is referencing a Finding.
 - In subsection (d), clarified that special consideration would be given to Subrecipients operating LIHEAP or DOE WAP when designating a new Subrecipient to administer CEAP and referenced the statute from where this language originates.
- §6.307, Subrecipient Requirements for Customer Eligibility Criteria, and Establishing Priority for Eligible Households
 - Moved the CEAP specific Categorical Eligibility requirements from §6.2 to this section.
 - In subsection (g), added situations whereby Unqualified Aliens may receive CEAP benefits.
 - o Added a rule which requires Subrecipients to provide utility assistance year round.
- §6.309, Types of Assistance and Benefit Levels
 - In subsection (f), changed the rule to state that Non-Vulnerable Households can receive service and repair of existing heating and cooling units only in cases of a crisis whereas Vulnerable Households can receive service and repair of existing heating and cooling units under the utility assistance component.
 - In subsection (g), removed conditions placed on the receipt of service and repair or purchase of portable air conditioning/evaporative coolers and heating units and moved them to §6.310 under the Crisis Assistance Component.
 - Moved paragraphs (5) and (11) to subparagraph (h).
 - In (h)(1), changed the rule to distinguish that Vulnerable Households can receive two utility disconnection notice payments and Non-Vulnerable Households cannot receive any disconnection notice payments; however, the first bill payment for each Household may cover two separate fuel sources.
 - In (h)(2), reference an exception in the case of the first bill payment written in (h)(1)(C).
- §6.310, Household Crisis Component
 - Renamed this section to Crisis Assistance Component
 - Recrafted this section entirely to ensure crisis payments for utility assistance operates as a true crisis program and to streamline requirements.
 - Established that Crisis Assistance funds can only be expended in Extreme Weather Conditions, Disaster, or Life Threatening Crisis situation.
- §6.311, Utility Assistance Component
 - Added a rule that service and repair of existing heating and cooling units can be serviced or repaired for Vulnerable Households using the Utility Assistance Component and shall not exceed \$3,000.
- §6.312 Payment to Subcontractors and Vendors
 - o In subsection (c), clarified that the Subrecipient must let the Household know of the

amount of assistance that will be paid on their behalf.

- §6.313, Outreach, Accessibility, and Coordination
 - Removed a rule already inherent in the LIHEAP Act which must be followed regardless of whether it is written in Chapter 6 rules and added a rule that any Reasonable Accommodation requests must be handled in accordance with §1.204.
- §6.402, Purpose and Goals
 - In subsection (c), inserted language clarifying that special consideration would be given to Subrecipients operating LIHEAP or DOE WAP when designating a new Subrecipient to administer WAP and referenced the statute from where this language originates.
- §6.403, Definitions
 - Added a definition for Priority List.
- §6.404, Distribution of WAP Funds
 - Changed (5)(C) from subparagraph of paragraph (5) to its own subsection as it is not part of the county weather factor and therefore redesignated the formula into paragraphs instead of clauses.
 - Removed subsection (c) and inserted into §6.405 because it is more germane to that section.
 - Removed subsection (e) and (f) from this section and placed into §6.405 because it is more germane to that section.
- §6.405, Deobligation and Reobligation of Awarded Funds
 - Added subsections (a) and (b) from §6.404. Added language at the end of subsection (a) stating LIHEAP-WAP funding recapture will be consistent with Tex. Gov't Code, Chapter 2105.
 - In newly designated subsection (d), revised language for readability and clarity.
 - Moved the subsection which addresses situations wherein the Subrecipient does not submit an appeal within seven days of the Corrective Action Notice from being just after the subsection describing an appeal to the Board to the subsection just before it.
 - In newly designated subsection (m), revised to clarify situations wherein the Subrecipient wishes to appeal the Executive Director's denial of an appeal.
 - In subsection (n), clarified the language to indicate that one or more criteria will prompt Deobligation.
 - o Inserted subsection (p) from §6.404 because it is more germane to this subsection.
- §6.406, Subrecipient Requirements for Establishing Priority for Eligible Households and Customer Eligibility Criteria
 - Removed subsection (b) because Department rules already require Subrecipients to follow Department and federal rules as well as §6.414.
 - Moved the WAP specific Categorical Eligibility requirements from §6.2 to this section.

- §6.407, Program Requirements
 - o In subsection (b), clarified language concerning the use of an Energy Audit.
- §6.408, Department of Energy Weatherization Requirements
 - In subsection (d), removed redundant language concerning Electric Base Load (EBL) measures and Savings to Investment Ratio (SIR) which is already described in §6.403.
 - For further clarification in subsection (d), added language concerning the calculation of EBL and SIR when metering refrigerators.
 - In subsection (e), removed superfluous language regarding vehicles.
 - Removed subsection (f) because this rule already exists in §6.407(b).
 - In newly designated (f)(2), clarified that a Subrecipient must receive approval from the Department prior to beginning Weatherization on a multifamily building containing 25 or more units.
- §6.409, LIHEAP Weatherization Requirements
 - In subsection (b), revised the language to align with changes to the Priority List which now include instructions on how to use the Priority List.
 - Removed a rule already inherent in the LIHEAP Act which must be followed regardless of whether it is written in Chapter 6 rules and added a rule that any Reasonable Accommodation requests must be handled in accordance with §1.204.
 - Removed subsection (d) because this is already described in subsection (b) regarding Priority List above.
 - In paragraph (d)(2), updated the language to include actions listed in §1.411(f) to be taken by the Department if Subrecipient fails to correct a Deficiency or Finding.
 - Removed paragraph (d)(3) as a result of paragraph (d)(2) being updated.
 - Removed paragraph (d)(4) and placed in §6.402(c) because it applies to both LIHEAP and DOE WAP rather than just LIHEAP WAP.
- §6.414, Eligibility for Multifamily Dwelling Units and Shelters
 - Added Shelters to the title of this section.
 - Added subsection (a) to establish that Multifamily buildings and Shelters are exempt from Household Status verification requirements.
 - In subsections (d), clarified that income determination is not required for Shelter residents.
 - In subsection (f), revised for clarity and to rename the forms in paragraphs (1)-(6) to be consistent with the names of the forms on the Department's website.
 - Added subsection (g) for Shelter Weatherization. Because Weatherization of Shelters is a rare and complex activity, the Department would like to issue guidance only on a case-by-case scenario.
 - o Updated subsection (h) to align with Weatherization Program Notice (WPN) 17-4.
- §6.416, Whole House Assessment
 - Updated subsection (b) to align with changes to the Priority List which now include

instructions on how to use the Priority List.

• General: Many minor technical corrections are made throughout the rules including capitalizing definitions, grammatical corrections, revising the plural use of Subrecipient, renumbering, removing quotations from acronyms, etc.

Attachment 1: Preamble, including required analysis, for proposed repeal of 10 TAC Chapter 6 Community Affairs Programs

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of Chapter 6, Community Affairs Programs, including Subchapter A, General Provisions; Subchapter B, Community Services Block Grant; Subchapter C, Comprehensive Energy Assistance Program; and Subchapter D, Weatherization Assistance Program. The purpose of the proposed repeal is to eliminate outdated rules that warrant revision while adopting new updated rules under separate action.

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

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

Mr. Robert Wilkinson, Executive Director, has determined that, for the first five years the proposed repeal would be in effect:

1. The proposed repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous re-adoption making a change to an existing activity, the administration of Community Affairs programs.

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 workload 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 they are being replaced by new rules simultaneously to provide for revisions.

6. The proposed action will repeal existing regulations, but is associated with a simultaneous re-adoption making changes to an existing activity, of the rules governing the administration of Community Affairs programs.

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 the proposed repeal and determined that the proposed repeal will not create an economic effect on small or micro-businesses or rural communities.

1. The Department has evaluated the rules and determined that none of the adverse affect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. The rules relate to the Department's administration of all Community Affairs programs which include the Community Services Block Grant (CSBG), the Low Income Home Energy Assistance Program (LIHEAP) which can be further divided into the Comprehensive Energy Assistance Program and LIHEAP Weatherization Assistance Program (WAP), and the Department of Energy WAP (DOE WAP). Other than a Subrecipient of funds for any of these programs who may consider itself a small or micro-business, which would not generally be the case, no small or micro-businesses are subject to the rules. However, if a Subrecipient considers itself a small or micro-business, the rule changes provide greater clarity and streamline the crisis assistance activity.

3. The Department has determined that because the rules apply only to existing Subrecipients, there will be no economic effect on small or micro-businesses or rural communities.

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

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6). The Department has evaluated the rules as to their possible effects on local economies and has determined that for the first five years the proposed repeal will be in effect there would be no economic effect on local employment because the rules relate only to regulations which have already been in effect for existing Subrecipients; therefore, no local employment impact statement is required to be prepared for the rules.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that the rules pertain to all Subrecipients throughout the state, regardless of location, there are no "probable" effects of the revised rules on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has also determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of the repealed chapter would be an updated, more streamlined, and clearer version of the rules governing Community Affairs programs. There will not be economic costs to individuals required to comply with the repealed chapter.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the proposed repeal is in effect, enforcing or

administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

g. REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 20, 2019, to October 21, 2019, to receive input on the proposed repealed chapter. Written comments may be mailed to the Texas Department of Housing and Community Affairs, Gavin Reid, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by fax to (512) 475-3935; or email to gavin.reid@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, October 21, 2019.

STATUTORY AUTHORITY. The repeal is adopted pursuant to TEX. GOV'T CODE, §2306.053, which authorizes the Department to adopt rules. Except as described herein the repeal affects no other code, article, or statute.

10 TAC Chapter 6 Community Affairs Programs.

- Subchapter A., General Provisions.
- §6.1. Purpose and Goals.
- §6.2. Definitions.
- §6.3. Subrecipient Contract.
- §6.4. Income Determination.
- §6.5. Documentation and Frequency of Determining Customer Eligibility.
- §6.6. Subrecipient Contact Information and Required Notifications.
- §6.7. Subrecipient Reporting Requirements.
- §6.8. Potential Applicant/Applicant/Customer Denials and Appeal Rights.
- §6.9. Training Funds for Conferences.
- §6.10. Compliance Monitoring.

Subchapter B., Community Services Block Grant.

- §6.201. Background and Definitions.
- §6.202. Purpose and Goals.
- §6.203. Formula for Distribution of CSBG Funds.
- §6.204. Use of Funds.
- §6.205. Limitations on Use of Funds.
- §6.206. CSBG Community Assessment, Community Action Plan, and Strategic Plan.
- §6.207. Subrecipient Requirements.
- §6.208. Designation and Re-designation of Eligible Entities in Unserved Areas.
- §6.209. CSBG Requirements for Tripartite Board of Directors.
- §6.210. Board Structure.
- §6.211. Board Administrative Requirements.
- §6.212. Board Size.
- §6.213. Board Responsibility.
- §6.214. Board Meeting Requirements.
- Subchapter C. Comprehensive Energy Assistance Program.
- §6.301. Background and Definitions.
- §6.302. Purpose and Goals.
- §6.303. Distribution of CEAP Funds.
- §6.304. Deobligation and Reobligation of CEAP Funds.

§6.305. Subrecipient Eligibility.

§6.306. Service Delivery Plan.

§6.307. Subrecipient Requirements for Customer Eligibility Criteria and Establishing Priority for Eligible Households.

§6.308. Allowable Subrecipient Administrative and Program Services Costs.

§6.309. Types of Assistance and Benefit Levels.

§6.310. Household Crisis Component.

§6.311. Utility Assistance Component.

§6.312. Payments to Subcontractors and Vendors.

§6.313. Outreach, Accessibility, and Coordination.

Subchapter D. Weatherization Assistance Program.

§6.401. Background.

§6.402. Purpose and Goals.

§6.403. Definitions.

§6.404. Distribution of WAP Funds.

§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.

§6.408. Department of Energy Weatherization Requirements.

§6.409. LIHEAP Weatherization Requirements.

§6.410. Liability Insurance and Warranty Requirement...

§6.411 Customer Education.

§6.412. Mold-like Substances.

§6.413. Lead Safe Practices.

§6.414. Eligibility for Multifamily Dwelling Units.

§6.415. Health and Safety and Unit Deferral.

§6.416. Whole House Assessment.

§6.417. Blower Door Standards.

Attachment 2: Preamble for proposed new 10 TAC Chapter 6 Community Affairs Programs

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 6. Community Affairs Programs. including Subchapter A, General Provisions; Subchapter B, Community Services Block Grant; Subchapter C, Comprehensive Energy Assistance Program; and Subchapter D, Weatherization Assistance Program. The purpose of the proposed new chapter is to update the rules to provide greater clarity for Subrecipients while administering Community Affairs programs (i.e., CSBG, LIHEAP, and DOE WAP).

Tex. Gov't Code §2001.0045(b) does not apply to the rules proposed for action because it is exempt under §2001.0045(c)(4), which exempts rule changes necessary to receive a source of federal funds or to comply with federal law. This revision is being proposed to update, streamline, and make clearer the rules governing the administration of Community Affairs programs. The Department does not anticipate any costs associated with this proposed rule action. Compliance with the proposed rules are intended to ensure adherence to federal statute while operating federal grants.

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. Robert Wilkinson, Executive Director, has determined that, for the first five years the proposed new rules would be in effect:

1. The proposed rules do not create or eliminate a government program, but relate to the repeal, and simultaneous re-adoption making changes to an existing activity, the administration of Community Affairs programs.

2. The proposed new rules do not require a change in work that would require the creation of new employee positions, nor are the proposed new rules significant enough to reduce workload to a degree that eliminates any existing employee positions.

3. The proposed rule changes do not require additional future legislative appropriations.

4. The proposed rule changes will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The proposed rules are not creating new regulations, except that they are replacing rules being repealed simultaneously to provide for revisions.

6. The proposed rules will not expand, limit, or repeal existing regulations.

7. The proposed rules will not increase nor decrease the number of individuals subject to the rule's applicability.

8. The proposed rules will not negatively nor positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting the proposed rules, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, §2306, Subchapter E.

1. The Department has evaluated the proposed rules and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. The rules relate to the Department's administration of all Community Affairs programs which include the Community Services Block Grant (CSBG), the Low Income Home Energy Assistance Program (LIHEAP) which can be further divided into the Comprehensive Energy Assistance Program and LIHEAP Weatherization Assistance Program (WAP), and the Department of Energy WAP (DOE WAP). Other than a Subrecipient of funds for any of these programs who may consider itself a small or micro-business, which would not generally be the case, no small or micro-businesses are subject to the rules. However, if a Subrecipient considers itself a small or micro-business, the rule changes provide greater clarity and streamline the crisis assistance activity.

3. The Department has determined that because the rules apply only to existing Subrecipients, 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 rules do not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

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

The Department has evaluated the rules as to their possible effect on local economies and has determined that for the first five years the proposed rules will be in effect there would be no economic effect on local employment because the rules relate only to a process which has already been in effect for existing Subrecipients; therefore, no local employment impact statement is required to be prepared for the rules.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that the rules pertain to all Subrecipients throughout the state, regardless of location, there are no "probable" effects of the new rules on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has also determined that, for each year of the first five years the new chapter is in effect, the public benefit anticipated as a result of the new chapter would be an updated, more streamlined, and clearer version of the rules governing Community Affairs programs. There will not be

economic costs to individuals required to comply with the new chapter because the rules have already been in place through the rules found at the chapter being repealed.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new chapter is in effect, enforcing or administering the new chapter 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 September 20, 2019, to October 21, 2019, to receive input on the proposed new chapter. Written comments may be mailed to the Texas Department of Housing and Community Affairs, Gavin Reid, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by fax to (512) 475-3935; or email to gavin.reid@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, October 21, 2019.

STATUTORY AUTHORITY. The new chapter is proposed pursuant to TEX. GOV'T CODE, §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed new chapter affects no other code, article, or statute.

[Note that these rules are shown in blackline form below for the purpose of the posting of Board materials but will be shown as clean proposed new language when submitted to the Texas Register.]

10 TAC Chapter 6 Community Affairs Programs.

TITLE 10 COMMUNITY DEVELOPMENT PART 1 TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS CHAPTER 6 COMMUNITY AFFAIRS PROGRAMS

SUBCHAPTER A GENERAL PROVISIONS

§6.1. Purpose and Goals.

(a) The rules established herein are for CSBG, LIHEAP, and DOE-WAP. Additional program specific requirements are contained within each program subchapter and Chapters 1 and 2 of this title (relating to Administration and Enforcement, respectively).

(b) Programs administered by the Community Affairs ("CA") Division of the Texas Department of Housing and Community Affairs (the "Department") support the Department's statutorily assigned mission.

(c) The Department accomplishes its mission chiefly by acting as a conduit for federal grant funds and other assistance for housing and community affairs programs. Ensuring program compliance with the state and federal laws that govern the CA programs is another important part of the Department's mission. Oversight and program mandates ensure state and federal resources are expended in an efficient and effective manner.

(d) In instances of a disaster, the Department may pursue waivers or explore flexibilities as addressed in CSBG IM -_HHS Information Memorandum (IM)_154 (and any other subsequent guidance or similar guidance for LIHEAP or DOE WAP) through HHS or DOE within the CA programs in order to serve low income Texans.

§6.2. Definitions.

(a) To ensure a clear understanding of the terminology used in the context of the CSBG, LIHEAP, and DOE-WAP programs of the Community Affairs Division, a list of terms and definitions has been compiled as a reference. <u>Any capitalized terms not specifically defined in this section or any section referenced in this chapter shall have the meaning as defined in Chapter 2306 of the Tex. Gov't Code, Chapter 1 of this title (relating to Administration), Chapter 2 of this title (relating to Enforcement), or applicable federal regulations.</u>

(b) The words and terms in this chapter shall have the meanings described in this subsection unless the context clearly indicates otherwise. Refer to Subchapters B, C, and D of this chapter for program specific definitions.

(1) Affiliate--An entity related to an Applicant that controls by contract or by operation of law the Applicant or has the power to control the Applicant or a third entity that controls, or has the power to control both the Applicant and the entity. Examples include but are not limited to entities submitting under a common application, or instrumentalities of a unit of government. This term also includes any entity that is required to be reported as a component entity under Generally Accepted Accounting Standards, is required to be part of the same Single Audit as the Applicant, is reported on the same IRS Form 990, or is using the same federally approved indirect cost rate.

(2) Awarded Funds--The amount of funds or proportional share of funds committed by the Department's Board to a Subrecipient or service area.

(3) Categorical Eligible/Eligibility--A method where a Subrecipient must deem a Household to be eligible for <u>LIHEAP or DOE</u> benefits if that Household includes at least one member that receives assistance under specific federal programs as identified in §§6.307 and 6.406, as applicable.

<u>(A) SSI payments from the Social Security Administration; or</u>

(B) Means Tested Veterans Program payments. See paragraph (30) of this subsection.

(4) Child--Household member not exceeding eighteen (18) years of age.

(5) Code of Federal Regulations ("CFR")--The codification of the general and permanent rules and regulations of the federal government as adopted and published in the Federal Register.

(6) Community Action Agencies ("CAAs")--Private Nonprofit Organizations and Public Organizations that carry out the Community Action Program, which was established by the 1964 Economic Opportunity Act to fight poverty by empowering the poor in the United States.

(7) Community Services Block Grant ("CSBG")--An HHS-funded program which provides funding for CAAs and other Eligible Entities that seek to address poverty at the community level.

(8) Comprehensive Energy Assistance Program ("CEAP")--A LIHEAP-funded program to assist lowincome Households, in meeting their immediate home energy needs.

(9) Concern--A policy, practice or procedure that has not yet resulted in a Finding or Deficiency_ but if not changed will or may result in <u>a Finding</u>, <u>or Deficienciesy and/or disallowed costs</u>.

(10) Contract--The executed written agreement between the Department and a Subrecipient performing an activity related to a program that describes performance requirements and responsibilities assigned by the document, for which the first day of the Contract <u>T</u>term is the point at which program funds may be considered by a Subrecipient for Expenditure, unless otherwise directed in writing by the Department.

(11) Contract System--A web-based data collection platform which allows Subrecipients of Community Services programs to sign and view Contracts and submit performance and financial reports online.

(12) Contract Term--The period of Expenditure under a Contract.

(1113) Contracted Funds--The gross amount of funds Obligated by the Department to a Subrecipient as reflected in a Contract.

(1214) Cost Reimbursement--A Contract sanction whereby reimbursement of costs incurred by the Subrecipient is made only after the Department has conducted such review as it deems appropriate, which may be complete or limited, such as on a sampling basis, and approved backup documentation provided by the Subrecipient to support such costs. Such a review and approval does not serve as a final approval and all uses of advanced funds remain subject to review in connection with future or pending reviews, monitoring, or audits.

(1315) Declaration of Income Statement ("DIS")--A Department-approved form used only when it is not possible for an applicant to obtain third party or firsthand verification of income.

(14<u>16</u>) Deficiency--Consistent with the CSBG Act, a Deficiency exists when an Eligible Entity has failed to comply with the terms of an agreement or a State plan, or to meet a State requirement. The Department's determination of a Deficiency may be based on the Eligible Entity's failure to provide CSBG services, or to meet appropriate standards, goals, and other requirements established by the State, including performance objectives, or as provided for in §2.203(b) of this title. A Finding, Observation, or Concern that is not corrected, or is repeated, may become a Deficiency.

(<u>4517</u>) Deobligate/Deobligation--The partial or full removal of Contracted Funds from a Subrecipient. Partial Deobligation is the removal of some portion of the full Contracted Funds from a Subrecipient, leaving some remaining balance of Contracted Funds to be administered by the Subrecipient. Full Deobligation is the removal of the full amount of Contracted Funds from a Subrecipient. This definition does not apply to CSBG non-<u>D</u>eliscretionary funds.

(16<u>18</u>) Department of Energy ("DOE")--Federal department that provides funding for a weatherization assistance program.

(1719) Department of Health and Human Services ("HHS")--Federal department that provides funding for CSBG and LIHEAP energy assistance and weatherization.

(20) Discretionary Funds--CSBG funds, excluding the 90% of the state's annual allocation that is designated for statewide allocation to CSBG Eligible Entities under §6.203 of this subchapter (relating to Formula for Distribution of CSBG Funds) and state administrative funds, maintained by the Department, at its discretion, for CSBG allowable uses as authorized by the CSBG Act.

(1821) Dwelling Unit--A house, including a stationary mobile home, an apartment, a group of rooms, or a single room occupied as separate living quarters.

(1922) Elderly Person--

(A) for For CSBG, a person who is 55 years of age or older; and

(B) for For CEAP and WAP, a person who is 60 years of age or older.

(23) Eligible Entity--Those local organizations in existence and designated by the federal and state government to administer programs created under the Federal Economic Opportunity Act of 1964. This includes CAAs, limited-purpose agencies, and units of local government. The CSBG Act defines an Eligible Entity as an organization that was an Eligible Entity on the day before the enactment of the Coats Human Services Reauthorization Act of 1998 (October 27, 1998), or is designated by the Governor to serve a given area of the state and that has a tripartite board or other mechanism specified by the state for local governance.

(2024) Emergency--defined as:

(A) a <u>A</u> natural disaster;

(B)-aA significant home energy supply shortage or disruption;

(C) significant Significant increase in the cost of home energy, as determined by the Secretary

of HHS;

(D) <u>a A</u>significant increase in home energy disconnections reported by a utility, a state regulatory agency, or another agency with necessary data;

(E) a-<u>A</u> significant increase in participation in a public benefit program such as the food stamp program carried out under the Food Stamp Act of 1977 (7 U.S.C. §§2011, et seq.), the national program to provide supplemental security income carried out under Title XVI of the Social Security Act (42 U.S.C. §§1381, et seq.) or the state temporary assistance for needy families program carried out under Part A of Title IV of the Social Security Act (42 U.S.C. §§601, et seq.), as determined by the head of the appropriate federal agency;

(F) a <u>A</u> significant increase in unemployment, layoffs, or the number of Households with an individual applying for unemployment benefits, as determined by the Secretary of Labor; or

(G) an <u>An</u> event meeting such criteria as the Secretary of HHS, at the discretion of the Secretary of HHS, may determine to be appropriate.

(2125) Expenditure--Funds that have been accrued or remitted for purposes of the award... or in the case of CEAP, funds that have been pledged.

(2226) Families with Young Children--A Household that includes a Child age five or younger. For LIHEAP WAP only, a Family with Young Children also includes a Household that has a pregnant woman.

(27) Federal Poverty Income Guidelines--The official poverty income guidelines as issued by HHS annually.

(2328) Finding--A Subrecipient's material failure to comply with rules, regulations, the terms of the Contract or to provide services under each program to meet appropriate standards, goals, and other requirements established by the Department or funding source (including performance objectives). A Finding impacts the organizations ability to achieve the goals of the program and jeopardizes continued operations of the Subrecipient. Findings include the identification of an action or failure to act that results or may result in disallowed costs.

(2429) High Energy Burden--A Households with whose energy burden which exceeds 11% of annual gross income (as defined by the applicable program), determined by dividing a Household's annual home energy costs by the Household's annual gross income.

(2530) High Energy Consumption--A Household that is billed more than \$1000 annually for related fuel costs for heating and cooling their Dwelling Unit.

(2631) Household--Any individual or group of individuals, excluding unborn children, who are living together as one economic unit. For DOE WAP this includes all persons living in the Dwelling Unit. For CSBG/LIHEAP <u>it includes</u> these persons customarily purchase purchasing residential energy in common or make-making undesignated payments for energy. In CSBG/LIHEAP a live-in aide, or a Renter with a separate lease that includes a separate bill for utilities would not beis not considered a Household member.

(2732) Inverse Ratio of Population Density Factor--The number of square miles of a county divided by the number of poverty Households of that county.

(2833) Low Income Household--defined as:

(A) For DOE WAP, a Household whose total combined annual income is at or below 200% of the <u>HHS-Federal</u> Poverty Income guidelines, or a Household who is Categorically Eligible;

(B) For CEAP and LIHEAP WAP, a Household whose total combined annual income is at or below 150% of the HHS-Federal Poverty Income guidelines, or a Household who is Categorically Eligible; and

(C) For CSBG, a Household whose total combined annual income is at or below 125% of the

HHS-<u>Federal</u> Poverty Income guidelines.

(29<u>34</u>) Low Income Home Energy Assistance Program ("LIHEAP")--An HHS-funded program which serves Lłow Lincome Households who seek assistance for their home energy bills and/or weatherization services.

(3035) Means Tested Veterans Program--A program whereby applicants receive payments under §§41315, 1521, 1541, or 1542 of Title 38, United States Code, or under §306 of the Veterans' and Survivors' Pension Improvement Act of 1978. <u>Benefit letters under 38 U.S.C. §§1315, 1541, and 1542 must include language indicating dependency and indemnity compensation. Benefit letters under 38 U.S.C. §1521 must indicate that it is for a veteran's pension, rather than for a service connected disability.</u>

(3136) Mixed Status Household--A Household that contains one or more members that are U.S. Citizens, U.S. Nationals, or Qualified Aliens, and one or more members that are Unqualified Aliens.

(37) Monthly Performance and Expenditure Report--Two separate but linked reports indicating a Subrecipient's or Eligible Entity's performance and financial information, due to the Department on or before the fifteenth day of each month of the Contract Term following the reporting month. If the fifteenth falls on a weekend or holiday, the reports must still be entered on or before the fifteenth. The data the Department collects is subject to change based on changes required by DOE or HHS.

(3238) Obligation--Funds become obligated upon approval of an award to Subrecipient by the Department's Governing Board, unless the Department does not receive sufficient funding from the cognizant federal entity.

(3339) Observation--A notable policy, practice or procedure observed through the course of monitoring.

(3440) Office of Management and Budget ("OMB")--Office within the Executive Office of the President of the United States that oversees the performance of federal agencies and administers the federal budget.

(3541) OMB Circulars--Instructions and information issued by OMB to Federal agencies that set forth principles and standards for determining costs for federal awards and establish consistency in the management of grants for federal funds. Uniform cost principles and administrative requirements for local governments and for nonprofit organizations, as well as audit standards for governmental organizations and other organizations expending federal funds are set forth in 2 CFR Part 200, unless different provisions are required by statute or approved by OMB.

(3642) Outreach--The method <u>used by a Subrecipient</u> that attempts to identify customers who are in need of services, alerts these customers to service provisions and benefits, and helps them use the services that are available. Outreach is utilized to locate, contact and engage potential customers.

(37<u>43</u>) Performance Statement--A document which identifies the services to be provided by a Subrecipient.

(3844) Persons with <u>a Disabilities Disability</u>--Any individual who is:

(A) an <u>An</u> individual described in 29 U.S.C. §701 or has a disability under 42 U.S.C. §§12131 - 12134;

(B) <u>disabled_Disabled_as</u> defined in 42 U.S.C. 1382(a)(3)(A), 42 U.S.C. §423, or in 42 U.S.C. §15001; or

(C) receiving Receiving benefits under 38 U.S.C. Chapter 11 or 15; or

(D) aAn individual with a disability as defined.

(3945) Population Density--The number of persons residing within a given geographic area of the state.

(40) Poverty Income Guidelines The official poverty income guidelines as issued by HHS annually.

(41<u>46</u>) Private Nonprofit Organization--An organization described in §501(c) of the Internal Revenue Code (the "Code") of 1986 and which is exempt from taxation under subtitle A of the Code and that is not a Public Organization.

(42<u>47</u>) Production Schedule--The estimated monthly and quarterly performance targets and <u>E</u>expenditures for a Contract period. The Production schedule must be signed by the applicable approved signatory and approved by the Department in writing.

(43<u>48</u>) Program Year--January 1 through December 31 of each calendar year for CSBG and LIHEAP; and July 1 through June 30 of each calendar year for DOE WAP.

(44<u>49</u>) Public Organization--A unit of government, as established by the Legislature of the State of Texas. Includes, but may not be limited to, cities, counties, and councils of governments.

(4550) Qualified Alien--A person that is not a U.S. Citizen or a U.S. National and is described at 8 U.S.C. §1641(b) and (c).

(46<u>51</u>) Referral--The documented process of providing information to a customer Household about an agency, program, or professional person that can provide the service(s) needed by the customer.

(47<u>52</u>) Reobligation--The reallocation of Deobligated funds to other Subrecipients.

(53) Service Area--The geographical area where a Subrecipient must provide services under a Contract.

(48<u>54</u>) Single Audit--The audit required by Office of Management and Budget (OMB), 2 CFR Part 200, Subpart F, or Tex. Gov't Code, Chapter 738, Uniform Grant and Contract Management, as reflected in an audit report.

(49<u>55</u>) State--The State of Texas or the Department, as indicated by context.

(5056) Subcontractor--A person or an organization with whom the Subrecipient contracts with to provide services.

(51) Subgrant--An award of financial assistance in the form of money, made under a grant by a Subrecipient to an eligible Subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases.

(52) Subgrantee--The legal entity to which a Subgrant is awarded and which is accountable to the Subrecipient for the use of the funds provided.

(5357) Subrecipient--An organization that receives federal funds passed through the Department to operate the CSBG, CEAP, DOE WAP and/or LIHEAP program(s).

(5458) Supplemental Security Income (SSI)--A means tested program run by the Social Security Administration.

(5559) System for Award Management ("SAM")--Combined federal database that includes the Excluded Parties List System ("EPLS").

(5660) Systematic Alien Verification for Entitlements ("SAVE")--Automated intergovernmental database that allows authorized users to verify the immigration status of applicants.

(5761) Texas Administrative Code ("TAC")--A compilation of all state agency rules in Texas.

(5862) Uniform Grant Management Standards ("UGMS")--The standardized set of financial management procedures and definitions established by Tex. Gov't Code Chapter 783 to promote the efficient use of public funds by requiring consistency among grantor agencies in their dealings with grantees, and by ensuring accountability for the expenditure of public funds. State agencies

are required to adhere to these standards when administering grants and other financial assistance agreements with cities, counties and other political subdivisions of the state. This includes all Public Organizations. In addition, Tex. Gov't Code Chapter 2105, subjects Subrecipients of federal block grants (as defined therein) to the Uniform Grant and Contract Management Standards.

(5963) United States Code ("U.S.C.")--A consolidation and codification by subject matter of the general and permanent laws of the United States.

(6064) Unqualified Alien--A person that is not a U.S. Citizen, U.S. National, or a Qualified Alien.

(6165) Vendor Agreement--An agreement between the Subrecipient and energy vendors that contains assurances regarding fair billing practices, delivery procedures, and pricing for business transactions involving LIHEAP beneficiaries.

(6266) Vulnerable Populations--Elderly persons, Persons with a Disability, and Households with a Child at or below the age of five.

(6367) Weatherization Assistance Program ("WAP")--DOE and LIHEAP funded program designed to reduce the energy cost burden of Low Income Households through the installation of energy efficient weatherization materials and education in energy use.

§6.3. Subrecipient Contract.

(a) Subject to prior Board approval, the Department and a Subrecipient shall enter into and execute a Contract for the disbursement of program funds. The Department, acting by and through its Executive Director or his/her designee, may authorize, execute, and deliver authorized modifications and/or amendments to the contract, as allowed by state and federal laws and rules.

(b) The governing body of the Subrecipient must pass a resolution authorizing its Executive Director or his/her designee to have signature authority to enter into contracts, sign amendments, and review and approve reports. All Contract actions including extensions, amendments or revisions must be ratified by the governing body at <u>athe next subsequent</u> regularly scheduled meeting no later than 120 calendar days from the Contract action. Minutes relating to this resolution must be on file at the Subrecipient level.

(c) Within 45 calendar days following the conclusion of a Contract issued by the Department, the Subrecipient shall provide a final expenditure and final performance report regarding funds expended under the terms of the Contract.

(d) A <u>P</u>performance <u>S</u>statement and budget are attachments to the Contract between the Subrecipient and the Department. Execution of the Contract enables the Subrecipient to access funds through the Department's Community Affairs <u>C</u>eontract <u>S</u>system.

(e) Amendments and Extensions to Contracts.

(1) Except for quarterly amendments to non-<u>D</u>discretionary CSBG Contracts to add funds as they are received from HHS, and excluding amendments that move funds within budget categories but do not extend time or add funds, amendments and extension requests must be submitted in writing by the Subrecipient, and will not be granted if any of the following circumstances exist:

(A) if-<u>If</u> the award for the Contract was competitively awarded and the amendment would materially change the scope of Contract performance;

(B) if-<u>If</u> the Subrecipient is delinquent in the submission of their Single Audit or the Single Audit Certification form required by §1.403, (relating to Single Audit Requirements), in Chapter 1 of this title (relating to Administration);

(C) if-If the Subrecipient owes the Department disallowed amounts in excess of \$1,000 and a

Department-approved repayment plan is not in place or has been violated;

(D) for <u>For</u> amendments adding funds (not applicable to amendments for extending time) if the Department has cited the Subrecipient for violations within §6.10 of this subchapter (related to Compliance Monitoring) and the corrective action period has expired without correction of the issue or a satisfactory plan for correction of the issue; or

(E) a-<u>A</u>member of the Subrecipient's board has been debarred and has not been removed.
(2) Within 30 calendar days of a Subrecipient's request for a Contract amendment or extension request the request will be processed or denied in writing. If denied, the applicable reason from this subsection or other applicable reason will be cited. The Subrecipient may appeal the decision to the Executive Director consistent with Chapter 1, §1.7, of this title, (relating to the Appeals Process).

§6.4. Income Determination.

(a) Eligibility for program assistance is determined under the <u>Federal</u> Poverty Income Guidelines and calculated as described herein (some forms of income may qualify the Household as Categorically Eligible for assistance in §6.2(b)(3), however Categorical Eligibility does not determine the level of benefit, which is determined through the Income Determination process). (b) Income means cash receipts earned and/or received by the applicant all Household members 18 years of age and older before taxes during applicable tax year(s), but not the excluded income listed in paragraph (2) of this subsection. Income is to be based on the Gross <u>Annual iI</u>ncome (defined as the total amount of non-excluded income earned annually before taxes or any deductions) for all Household members 18 years of age and older.is to be used, not net income, (c) eExceptions to the use of Gross Income are:

<u>(1)</u> that f<u>F</u>rom non-farm or farm self-employment net receipts must be used (i.e., receipts from a person's own business or from an owned or rented farm after deductions for business or farm expenses); and

(2) From net income from gambling or lottery winnings net income must be used.

(d)(1) If an income source is not excluded below, it must be included when determining income eligibility. (2)-Excluded Income:

(A1) Capital gains;

(B2) Any assets drawn down as withdrawals from a bank;

 (G_3) Balance of funds in a checking or savings account;

(Đ4) Any amounts in an "individual development account" as provided by the Assets for Independence Act, as amended in 2002 (Pub. L. 107-110, 42 U.S.C. 604(h)(4));

(E5) Proceeds from the sale of property, a house, or a car;

(F6) One-time payments from a welfare agency to a family or person who is in temporary financial difficulty;

(G7) Tax refunds, Earned Income Tax Credit refunds;

(H<u>8</u>) Jury duty compensation;

(19) Gifts, loans, and lump-sum inheritances;

(J10) One-time insurance payments, or compensation for injury;

(<u>K11</u>) Non-cash benefits, such as the employer-paid or union-paid portion of health insurance or other employee fringe benefits;

(L12) Reimbursements (for mileage, gas, lodging, meals, etc.);

(M<u>13</u>) Employee fringe benefits such as food or housing received in lieu of wages;

(N<u>14</u>) The value of food and fuel produced and consumed on farms;

(O15) The imputed value of rent from owner-occupied non-farm or farm housing;

(P<u>16</u>) Federal non-cash benefit programs as Medicare, Medicaid, SNAP, WIC, and school lunches, and housing assistance (Medicare deduction from Social Security Administration benefits should not be counted as income);

 $(\underline{Q17})$ Combat zone pay to the military;

(R<u>18</u>) College scholarships, Pell and other grant sources, assistantships, fellowships and work study, VA Education Benefits ("GI Bill"), Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu);

(<u>\$19</u>) Child support payments (amount paid by payor may not be deducted from income);

 (∓ 20) Income of Household members under 18 years of age including payment to children under the age of 18 made payable to a person over the age of 18;

(U<u>21</u>) Stipends from senior companion programs, such as Retired Senior Volunteer Program and Foster Grandparents Program;

(¥22) AmeriCorps Program payments, allowances, earnings, and in-kind aid;

 $(\underline{23} \forall \forall)$ Depreciation for farm or business assets;

(24X) Reverse mortgages;

(25¥) Payments for care of Foster Children;

(<u>26</u>Z) Payments or allowances made under the Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f));

(<u>27</u>AA) Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act (42 U.S.C. 10602(c));

(<u>28</u>BB) Major disaster and emergency assistance received by individuals and families under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (93, as amended) and comparable disaster assistance provided by States, local governments, and disaster assistance organizations (42 U.S.C. 5155(d));

(<u>29</u>CC) Allowances, earnings, and payments to individuals participating in programs under the Workforce Innovation and Opportunity Act (29 U.S.C.3101));

(DD<u>30</u>)-)Payments received from programs funded under Title V of the Older Americans Act of 1965 (42 U.S.C. 3056(g));

(31EE) The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858(q));

(<u>32</u>FF) Certain payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c));

(<u>33</u>GG) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459(e));

(<u>34</u>HH) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (94, §6);

(35H) The first \$2,000 of per capita shares received from judgment funds awarded by the National Indian Gaming Commission or the U.S. Claims Court, the interests of individual Indians in trust or restricted lands, and the first \$2000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407 - 1408). This exclusion does not include proceeds of gaming operations regulated by the Commission;

(36)) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund

(101) or any other fund established pursuant to the settlement in In Re Agent Orange Liability Litigation, M.D.L. No. 381 (E.D.N.Y.);

(KK<u>37</u>) Payments received under the Maine Indian Claims Settlement Act of 1980 (96, 25 U.S.C. 1728);

(<u>LL38</u>) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (95);

(<u>39</u>MM) Any allowance paid under the provisions of 38 U.S.C. 1833(c) to children of Vietnam veterans born with spina bifida (38 U.S.C. 1802 - 05), children of women Vietnam veterans born with certain birth defects (38 U.S.C. 1811 - 16), and children of certain Korean service veterans born with spina bifida (38 U.S.C. 1821);

(<u>40</u>NN) Payments, funds, or distributions authorized, established, or directed by the Seneca Nation Settlement Act of 1990 (25 U.S.C. 1774f(b));

(OO<u>41</u>) Payments from any deferred U.S. Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts (42 U.S.C. §1437a(b)(4));

(PP42) A lump sum or a periodic payment received by an individual Indian pursuant to the Class Action Settlement Agreement in the case entitled Elouise Cobell et al. v. Ken Salazar et al., 816 F.Supp.2d 10 (Oct. 5, 2011 D.D.C.), for a period of one year from the time of receipt of that payment as provided in the Claims Resolution Act of 2010 (Pub. L. 111-291);

(QQ43) Per capita payments made from the proceeds of Indian Tribal Trust Cases as described in PIH Notice 2013-30 "Exclusion from Income of Payments under Recent Tribal Trust Settlements" (25 U.S.C. 117b(a));

(44) Payments of up to \$100,000 a year from an account established under the Achieving a Better Life Experience Act of 2014 or the ABLE Act of 2014 (P.L. 113-295) to a qualified beneficiary that are expended on qualified disability expenses; and

(RR45) Any other items which are excluded by virtue of federal or state legislation or by properly adopted federal regulations that have taken effect. The Department will, from time to time, provide on its website updated links to such federal or state exceptions exclusions. Notwithstanding such information, a Subrecipient may rely on any adopted federal or state exception exclusion on and after the date on which it took effect.

(eb) The requirements for determining whether an applicant Household is eligible for assistance require the Subrecipient to annualize the Household income based on verifiable documentation of income, within 30 days of the application date. Income is based on the Gross Annual Income for all household members 18 years or older. Annual gross income is the total amount of money earned annually before taxes or any deductions.

(<u>f</u>e) The Subrecipient must document all sources of income, including excluded income, for 30 days prior to the date of application, for all household members 18 years of age or older.

(gd) Identify all income sources, not on the excluded list, for income calculation.

(1) The Subrecipient must calculate projected annual income by annualizing current income. Income that may not last for a full 12 months should be calculated assuming current circumstances will last a full 12 months, unless it can be documented that employment is less than 12 months/year and pay is not prorated over the entire 12 month period. For incomes not able to be annualized over a twelve month period, the income shall be calculated on the total annual earning period (e.g., for a teacher paid only nine months a year, the annual income should be the income earned during those nine months). In limited cases where income is not paid hourly, weekly, bi-weekly, semi-monthly nor monthly, the Subrecipient may contact the Department to determine an alternate calculation method in unique circumstances on a case-bycase basis.

(2) For all customers including those with categorical eligibility, the Subrecipient must collect verifiable documentation of Household income received in the 30 days prior to the date of application.

(3) Once all sources of income are known, Subrecipient must convert reported income to an annual figure. Convert periodic wages to annual income by multiplying:

(A) Hourly wages by the number of hours worked per year (2,080 hours for full-time employment with a 40-hour week and no overtime);

(B) Weekly wages by 52;

(C) Bi-weekly wages (paid every other week) by 26;

(D) Semi-monthly wages (paid twice each month) by 24; and

(E) Monthly wages by 12.

(F) One-time employment income should be added to the total after the income has been annualized.

(4) Except where a more frequent period is required by federal regulation, re certification of income eligibility must occur at least every twelve months.

(<u>he</u>) If a federal or state requirement provides an updated definition of income or method for calculating income, the Department will provide written notice to Subrecipients about the implementation date for the new requirements.

(if) If proof of income is unobtainable, the applicant must complete and sign a Declaration of Income Statement (DIS).

(gj) For CSBG and LIHEAP, a live in aide or attendant is not considered part of the Household for purposes of determining Household income, but is considered for a benefit based on the size of the Household. Example 4(1): A Household applies for assistance. There are four people in the Household. One of the four people is a live-in aide. To determine if the Household is qualified, annualize the income of the other three Household members and compare it to the three person income limit. However, if the amount of benefit is based on Household size (such as benefit level based on the number of people in the Household), then this is a four person Household.

(<u>kh</u>) <u>A</u> Subrecipients shall not discourage anyone from applying for assistance. Subrecipients shall provide all potential customers with an opportunity to apply for programs.

§6.5. Documentation and Frequency of Determining Customer Eligibility.

(a) For CEAP and CSBG, income must be verified annually, with a new application each Program Year.

(b) For WAP, income must be verified at the initial application. If the customer is on a wait-list for over 12 months since initial application, <u>H</u>household income must be updated within at least 12 months of the unit being initially inspected.

§6.6. Subrecipient Contact Information and Required Notifications.

(a) In accordance with §1.22 of this title (relating to Providing Contact Information to the Department), Subrecipients will notify the Department through the CA <u>C</u>eontract <u>S</u>system and provide contact information for key management staff (Executive Director, Chief Financial Officer, Program Director/Manager/Coordinator or any other person, regardless of title, generally performing such duties) vacancies and new hires within 30 days of such occurrence.

(b) For Eligible Entities, aAs vacancies exceed the 90 day threshold within the organization's

<u>Eligible Entity's Board of Directors or for a Public Organization for the</u> advisory board of directors, the Department will be notified of such vacancies and, if applicable, the sector the advisory board member<u>or advisory board member</u> represented.

(c) Contact information for all members of the <u>B</u>board of <u>D</u>directors or advisory board of directors must be provided to the Department and shall include: each board member's name, the position they hold, their term, their mailing address (which must be different from the organization's mailing address), phone number (different from the organization's phone number), fax number (if applicable), and the direct e-mail address for the chair of the advisory board.

(d) The Department will rely solely on the contact information supplied by the Subrecipient in the Department's web-based Community Affairs <u>Contract</u> System. It is the Subrecipient's sole responsibility to ensure such information is current, accurate, and complete. Correspondence sent to the email or physical address shown in CA Contract System will be deemed delivered to the Subrecipient. Correspondence from the Department may be directly uploaded to the Subrecipient's CA contract account using a secure electronic document attachment system. Once uploaded, notification of the attachment will be sent electronically to the email address listed in the CA <u>C</u>eontract <u>S</u>system. The Department is not required to send a paper copy and if it does so it does as a voluntary and non-precedential courtesy only.

(e) Upon the hiring of a new program Coordinator <u>coordinator</u> (e.g., the weatherization program coordinator) <u>for an activity funded by non-discretionary CSBG</u>, <u>LIHEAP</u>, or <u>DOE-WAP</u> the Subrecipient is required to contact the Department with written notification within 30 <u>calendar</u> days of the hiring, and <u>to</u> request training and technical assistance.

(f) Contact information for a primary and secondary contact are required to be provided to the Department and accurately maintained as it relates to the handling of disaster response and emergency services as provided for in §6.207(d).

§6.7. Subrecipient Reporting Requirements.

(a) Subrecipient must submit <u>the a Mmonthly Pperformance and Eexpenditure Rreport through</u> the Community Affairs Contract System not later than the fifteenth (15th) day of each month following the reported month of the <u>Ceontract Pperiod</u>. Reports are required even if a fund reimbursement or advance is not being requested. It is the responsibility of the Subrecipient to upload information into the Department's designated database.

(b) Subrecipient shall reconcile their expenditures with their performance on at least a monthly basis before seeking a request for funds for the following month. If the Subrecipient is unable to reconcile on a month-to-month basis, the Subrecipient must provide at the request of the Department, a written explanation for the variance and take appropriate measures to reconcile the subsequent month. It is the responsibility of a Subrecipient to <u>demonstrate the compliant</u> <u>use of all funds provided during the Contract Term.</u> ensure that it has documented the compliant <u>use of all funds provided prior to receipt of additional funds, or if this cannot be done to address the repayment of such funds</u>.

(c) Subrecipient shall electronically submit to the Department no later than 45 days after the end of the Subrecipient Contract term a final expenditure or reimbursement and programmatic report utilizing the expenditure report and the performance report.

(dc) If the Department has provided funds to a Subrecipient in excess of the amount of reported <u>E</u>expenditures in the ensuing month's report, no additional funds will be released until those excess funds have been expended. For example, in January a Subrecipient requests and is advanced \$50,000. In February, if the Subrecipient reports \$10,000 in Expenditures and an

anticipated need for \$30,000, no funds will be released.

(d) Subrecipient shall electronically submit to the Department, no later than 45 days after the end of the Subrecipient Contract Term, a final accounting of the Contract's expenditure or reimbursement utilizing the final Monthly Performance and Expenditure Report. If this or a later reconciliation results in funds owed to the Department, Subrecipient shall, within ten calendar days, either send funds to the Department, or -contact the Department to enter into a time-limited Department approved repayment plan.

(e) CSBG Annual Report and National Survey. Federal requirements mandate all states to participate in the preparation of an annual performance measurement report. To comply with the requirements of 42 U.S.C. §9917, all CSBG Eligible Entities and other organizations receiving CSBG funds are required to participate.

(f) The Subrecipient shall submit other reports, data, and information on the performance of the DOE and LIHEAP-WAP program activities as required by DOE pursuant to 10 CFR §440.25 or by the Department.

(g) Subrecipient shall submit other reports, data, and information on the performance of the federal program activities as required by the Department.

(h) A Subrecipient may refer a <u>Ceontractor</u> to the Department for <u>D</u>debarment consistent with §2.401, regarding Debarment from Participation in Programs Administered by the Department, of this title.

§6.8. Potential Applicant/Applicant/Customer Denials and Appeal Rights.

(a) This section does not apply to entities that only receive Discretionary CSBG funds.

(b) Subrecipient shall establish a written procedure for the handling of denials of service when the denial involves an individual inquiring or applying for services/assistance whom is communicating or behaving in a threatening or abusive manner.

(\underline{bc}) Subrecipient shall establish a denial of service complaint procedure to address written complaints from program applicants/customers. At a minimum, the procedures described in paragraphs (\underline{b})(1) - (8) of this subsection shall be included:

(1) Subrecipient shall provide a written denial of assistance notice to applicant within ten (10) calendar days of the determination. Such a determination is defined as a denial of assistance, but does not include a level of assistance lower than the possible program limits or a reduction in assistance, as long as such process is in accordance with the Subrecipient's written policy. This notification shall include written notice of the right of a hearing and specific reasons for the denial by program. The applicant wishing to appeal a decision must provide written notice to Subrecipient within twenty (20) calendar days of receipt of the denial notice.

(2) A Subrecipient must establish an appeals committee composed of at least three persons. Subrecipient shall maintain documentation of appeals in their customer files.

(3) Subrecipient shall hold a private appeal hearing (unless otherwise required by law) by phone or in person in an accessible location within ten (10) business days after the Subrecipient received the appeal request from the applicant and must provide the applicant notice in writing of the time/location of the hearing at least seven (7) calendar days before the appeal hearing.
 (1) Subrecipient hearing at least seven (7) calendar days before the appeal hearing.

(4) Subrecipient shall record the hearing.

(5) The hearing shall allow time for a statement by Subrecipient staff with knowledge of the case.

(6) The hearing shall allow the applicant at least equal time, if requested, to present relevant information contesting the decision.

(7) Subrecipient shall notify applicant of the decision in writing. The Subrecipient shall mail the

notification by close of business on the third calendar day following the decision (three day turnaround).

(8) If the denial is solely based on income eligibility, the provisions described in paragraphs (2) - (7) of this subsection do not apply, and but the applicant may request a recertification of income eligibility based on initial documentation provided at the time of the original application. The recertification will be an analysis of the initial calculation based on the documentation received with the initial application for services and will be performed by an individual other than the person who performed the initial determination. If the recertification upholds the denial based on income eligibility documents provided at the initial application, the applicant <u>must beis</u> notified in writing.

(ed) If the applicant is not satisfied with Subrecipient's decision, the applicant may further appeal the decision in writing to the Department within ten (10) calendar days of notification of an adverse decision.

(de) Applicants/customers who allege that the Subrecipient has denied all or part of a service or benefit in a manner that is unjust, violates discrimination laws, or without reasonable basis in law or fact, may request a contested hearing under Tex. Gov't Code, Chapter 2001.

(ef) The hearing under subsection (d) shall be conducted by the State Office of Administrative Hearings on behalf of the Department in the locality served by the Subrecipient, for which the procedures are further described in §1.13, (relating to Contested Case Hearing Procedures), of this title.

(fg) If the applicant/customer appeals to the Department, the <u>Subrecipient's</u> funds <u>that could be</u> <u>pledged to that Household</u> should remain <u>un</u>encumbered until the Department completes its decision.

§6.9. Training Funds for Conferences.

The Department may provide financial assistance to Subrecipients for training and technical activities for state sponsored, federally sponsored, and other relevant workshops and conferences. Subrecipients may use program training funds to attend conferences provided the conference agenda includes topics directly related to administering the program. Costs to attend the conference must be prorated by program for the appropriate portion. Only staff billed to the specific program, directly or indirectly, may charge any training and travel costs to the program.

§6.10. Compliance Monitoring.

(a) Purpose and Overview.

(1) This section provides the procedures that will be followed for monitoring for compliance with the programs in 10 TAC Chapter 6.

(2) Any entity administering any or all of the programs detailed in 10 TAC Chapter 6 is a Subrecipient. A Subrecipient may also administer other programs, including programs administered by other state or federal agencies and privately funded programs. If the Subrecipient has contracts for other programs through the Department, including but not limited to the Emergency Solutions Grants, Ending Homelessness Fund, Homeless Housing and Services Program, HOME Partnerships Program, the Neighborhood Stabilization Program, or the Texas State Housing Trust Fund, the Department may, but is not required to and does not commit to, coordinate monitoring of those programs with monitoring of <u>C</u>eommunity <u>Aaffairs Division</u> programs-funds under this subchapter.

(3) Any entity administering any or all of the programs provided for in subsection (a) of this

section as part of a Memorandum of Understanding ("MOU"), contract, or other legal agreement with a Subrecipient is a Subgrantee.

(b) Frequency of Reviews, Notification, and Information Collection.

(1) In general, <u>a</u> Subrecipients or Subgrantees-will be scheduled for monitoring based on state or federal monitoring requirements and/or a risk assessment. Factors to be included in the risk assessment include but are not limited to: the number of Contracts administered by the Subrecipient-or Subgrantee, the amount of funds awarded and expended, the length of time since the last monitoring, findings identified during previous monitoring, issues identified through the submission or lack of submission of a single audit, complaints received by the Department, and reports of fraud, waste and/or abuse. The risk assessment will also be used to determine which Subrecipients or Subgrantees will have an onsite review and which may have a desk review.

(2) The Department will provide a Subrecipient or Subgrantee with written notice of any upcoming onsite or desk monitoring review, and such notice will be given to the Subrecipient and Subgrantee by email to the Subrecipient's and Subgrantee's chief executive officer at the email address most recently provided to the Department by the Subrecipient or Subgrantee. In general, a 30 day notice will be provided. However, if a credible complaint of fraud or other egregious noncompliance is received the Department reserves the right to conduct unannounced monitoring visits. It is the responsibility of the Subrecipient to provide to the Department the current contact information for the organization and the Board in accordance with §6.6 of this chapter (relating to Subrecipient Contact Information) and §1.22 of this title (relating to Providing Contact Information to the Department).

(3) Upon request, <u>a</u> Subrecipients or Subgrantees must make available to the Department all books and records that the Department determines are reasonably relevant to the scope of the Department's review. Typically, these records may include (but are not limited to):

(A) Minutes of the governing board and any committees thereof, together with all supporting materials;

(B) Copies of all internal operating procedures or other documents governing the Subrecipient's operations;

(C) The Subrecipient's Board approved operating budget and reports on execution of that budget;

(D) The Subrecipient's strategic plan or comparable document if applicable and any reports on the achievement of that plan;

(E) Correspondence to or from any independent auditor;

(F) Contracts with any third parties for goods or services and files documenting compliance with any applicable procurement and property disposition requirements;

(G) All general ledgers and other records of financial operations (including copies of checks and other supporting documents);

(H) Applicable customer files with all required documentation;

(I) Applicable human resources records;

(J) Monitoring reports from other funding entities;

(K) Customer files regarding complaints, appeals and termination of services; and

(L) Documentation to substantiate compliance with any other applicable <u>Department contract</u> <u>provisions and</u> state or federal requirements including, but not limited to <u>UGMS</u>, <u>2 CFR Part 200</u> <u>Uniform Administrative Requirements</u>, <u>Cost Principles</u>, <u>Audit Requirements for Federal Awards</u>, the Davis-Bacon Act, Lead Based Paint, the Personal Responsibility and Work Opportunity Act, and limited English proficiency requirements.

(c) Post Monitoring Procedures.

(1) In general, within 30 calendar days of the last day of the monitoring visit, a written monitoring report will be prepared for the Subrecipient describing the monitoring assessment and any corrective actions, if applicable. The monitoring report will be emailed to the Board Chair and the Subrecipient's and Subgrantee–Executive Director. For a Private Nonprofit Organization, all Department monitoring reports and Subrecipient responses to monitoring reports must be provided to the governing body of the Subrecipient at the next regularly scheduled meeting. For a Public Organization all Department monitoring reports and Subrecipient at the next regularly scheduled meeting. For a Public Organization all Department monitoring reports and Subrecipient, and for a CSBG Subrecipient to the advisory board at the next regularly scheduled meeting. Issues of concern over which there is uncertainty or ambiguity may be discussed by the Department with the staff of cognizant agencies overseeing federal funding. Certain types of suspected or observed improper conduct may trigger requirements to make reports to other oversight authorities, state and federal, including but not limited to the State Auditor's Office and applicable Inspectors General.

(2) Subrecipient Response. If there are any findings of noncompliance requiring corrective action, the Subrecipient will be provided 30 calendar days, from the date of the email, to respond which may be extended by the Department for good cause. In order to receive an extension, the Subrecipient must submit a written request to the <u>DirectorChief</u> of Compliance within the corrective action period, stating the basis for good cause that justifies the extension. The Department will approve or deny the extension request within five (5) calendar days.

(3) Monitoring Close Out. Within 45 calendar days after the end of the corrective action period, a close out letter will be issued to the Subrecipient. If the Subrecipient supplies evidence establishing continual compliance that negates the finding of noncompliance, the issue of noncompliance will be rescinded. If the Subrecipient's timely response satisfies all findings and concerns noted in the monitoring letter, the issue of noncompliance will be noted as corrected. In some circumstances, the Subrecipient may be unable to secure documentation to correct a finding. In those instances, if there are mitigating circumstances, the Department may note the finding is not correct all findings noted, the close out letter will identify the documentation that must be submitted to correct the issue.

(4) Options for Review. If, following the submission of corrective action documentation, Compliance staff continues to find the Subrecipient or Subgrantee in noncompliance, and the Subrecipient disagrees, the Subrecipient may request or initiate review of the matter using the following options, where applicable:

(A) If the issue is related to a program requirement or prohibition of a federal program, the Subrecipients may contact the applicable federal program officer for guidance or request that the Department contact applicable federal program officer for guidance without identifying the Subrecipient.

(B) If the issue is related to application of a provision of the Contract or a requirement of the Texas Administrative Code, the Subrecipient may request to submit an appeal to the Executive Director consistent with §1.7, Staff Appeals Process, in Chapter 1 of this <u>Titletitle</u>.

(C) <u>A</u> Subrecipients may request Alternative Dispute Resolution ("ADR"). A-Subrecipient may <u>should</u> send a proposal to the Department's Dispute Resolution Coordinator to initiate ADR pursuant to §1.17 of this title (relating to Appeals Process).

(5) If <u>a</u> Subrecipients does not respond to a monitoring letter or fail to provide acceptable evidence of compliance, the matter will be handled through the procedures described in Chapter 2 of this <u>Titletitle</u>, (relating to Enforcement).

SUBCHAPTER B COMMUNITY SERVICES BLOCK GRANT

§6.201. Background and Definitions.

(a) In addition to this subchapter, except where noted, the rules established in Subchapter A of this chapter (relating to General Provisions) and Chapters 1 and 2 (relating to Administration and Enforcement, respectively) of this Part<u>title</u> apply to the CSBG Program. The CSBG Act was amended by the "Community Services Block Grant Amendments of 1994" and the Coats Human Services Reauthorization Act of 1998. The Secretary is authorized to establish a community services block grant program and make grants available through the program to states to ameliorate the causes of poverty in communities within the states. Although Eligible Entities receive an allocation of CSBG funds, the CSBG program is not an entitlement program for eligible customers.

(b) The Texas Legislature designates the Department as the lead agency for the administration of the CSBG program pursuant to Tex. Gov't Code, §2306.092. CSBG funds are made available to Eligible Entities to carry out the purposes of the CSBG program.

(c) Except as otherwise noted herein all references in this subchapter to an Eligible Entity's board means both the governing board of the Private Nonprofit or the advisory board of the Public Organization.

(de) Definitions.

(1) Community Action Plan ("CAP")--An annual plan required by the CSBG Act which describes the local Eligible Entity service delivery system, how coordination will be developed to fill identified gaps in services, how funds will be coordinated with other public and private resources, and how the local entity will use the funds to support innovative community and neighborhood based initiatives related to the grant. A comprehensive CAP developed with extensive input from the local community and an engaged tripartite board is a fundamental underpinning of an Eligible Entity's role in administering its programs to ameliorate poverty and its causes and to transition eligible Households it serves out of poverty.

(2) CSBG Act--The CSBG Act is a law passed by Congress authorizing the Community Services Block Grant. The CSBG Act was amended by the Community Services Block Grant Amendments of 1994 and the Coats Human Services Reauthorization Act of 1998 under 42 U.S.C. §§9901, et seq. The CSBG Act authorized establishing a community services block grant program to make grants available through the program to states to ameliorate the causes of poverty in communities within the states.

(3) Direct Customer Support--includes salaries and fringe benefits of case management staff as well as direct benefits provided to customers.

(4) Discretionary Funds--CSBG funds, excluding the 90% of the state's annual allocation that is designated for statewide allocation to CSBG Eligible Entities under §6.203 of this Subchapter and state administrative funds, maintained by the Department, at its discretion, for CSBG allowable uses as authorized by the CSBG Act.

(5) Eligible Entity Those local organizations in existence and designated by the federal and state government to administer programs created under the Federal Economic Opportunity Act of 1964. This includes CAAs, limited purpose agencies, and units of local government. The CSBG Act

defines an eligible entity as an organization that was an eligible entity on the day before the enactment of the Coats Human Services Reauthorization Act of 1998 (October 27, 1998), or is designated by the Governor to serve a given area of the state and that has a tripartite board or other mechanism specified by the state for local governance.

(<u>46</u>) National Performance Indicator ("NPI")--A federally defined measure of performance within the Department's Community Affairs Contract System for measuring performance and results of Subrecipients of funds.

(57) Needs Assessment--An assessment of community needs in the areas to be served with CSBG funds.

(<u>68</u>) Quality Improvement Plan ("QIP")--A plan developed by a CSBG Eligible Entity to correct Deficiencies identified by the Department as further described in §§2.203 and 2.204 of this title (Termination and Reduction of Funding for CSBG Eligible Entities and Contents of a Quality Improvement Plan, respectively).

(79) Results Oriented Management and Accountability (ROMA)--ROMA provides a framework for continuous growth and improvement among Eligible Entities. ROMA implementation is a federal requirement for receiving federal CSBG funds, outlined in HHS IM 152.

(8) Strategic Plan--A planning document which takes into consideration the needs of the targeted community and identifies an organization's vision and mission; its strengths, weaknesses, opportunities, and threats; external and internal factors impacting the organization; and utilizes this information to set goals, objectives, strategies, and measure to meet over an identified period of time.

(9) Transitioned Out of Poverty ("TOP")--a Household who was CSBG eligible and as a result of the delivery of <u>CSBG-supported</u> case management services attains an annual income in excess of 125% of the poverty guidelines for 90 calendar days.

(ed) Use of certain terminology. In these rules and in the Department's administration of its programs, including the CSBG program, certain terminology is used that may not always align completely with the terminology employed in the CSBG Act. The term "monitoring" is used interchangeably with the CSBG Act term "review" as used in 42 U.S.C. §9915 of the CSBG Act. Similarly, the terms "findings," "concerns," and "violations" are used interchangeably with the term "deficiencies as used in 42 U.S.C. §9915 of the CSBG Act although, in a given context, they may be assigned more specific, different, or more nuanced meanings, as appropriate.

§6.202. Purpose and Goals.

The Department passes through CSBG funds to a network of Public Organizations and Private Nonprofits that are to comply with the purposes of the CSBG Act.

§6.203. Formula for Distribution of CSBG Funds.

(a) The CSBG Act requires that no less than 90% of the state's annual allocation be allocated to Eligible Entities. The Department currently utilizes a multi-factor fund distribution formula to equitably provide CSBG funds throughout the state to the CSBG Eligible Entities. The formula is subject to adjustment from time to time when amended as part of the CSBG State Plan.

(b) The distribution formula incorporates the most current U.S. Census Bureau Decennial Census and data from the American Community Survey for information on persons not to exceed 125% of poverty. The formula is applied as follows:

(1) each-Each Eligible Entity receives a \$50,000 base award;

(2) then Then, the factors of poverty population, weighted at 98% and inverse population density,

weighted at 2%, are applied to the state's allocation required to be distributed among Eligible Entities;

(3) if <u>If</u> the base combined with the calculation resulting from the weighted factors in subparagraph (2) do not reach a minimum floor of \$150,000, then a minimum floor of \$150,000 is reserved for each of those CSBG eligible entities, resulting in a proportional reduction in other funds available for formula-based distribution;

(4) then<u>Then</u>, the formula is re-applied to the balance of the 90% funds for distributing the remaining funds to the remaining CSBG eligible entities.

(c) Following the use of the decennial Census data, then on a biennial basis, the Department will use the most recent American Community Survey five year estimate data that is available. To the extent that there are significant reductions in CSBG funds received by the Department, the Department may revise the CSBG distribution formula through a rulemaking process.

(d) In years where permitted by the federal government, <u>an Eligible EntitySubrecipients</u> that do<u>es</u> not obligate more than 20% of <u>their_its</u> base allocation in a Program Year (excluding any additional funds that may be distributed by the Department) by the end of the first quarter of the year following the allocation year for two consecutive years will have funding recaptured consistent with 42 U.S.C. §9907(a)(3). This recapture of funds does not trigger the procedures or protections of HHS Information MemorandumIM 116. The Subrecipient of the funds will be provided a Contract for the average percentage of funds that they expended over the last two years. The Eligible Entity will be provided an opportunity to redistribute the funds through a competitive request for proposals to a Private Nonprofit Organization, located within the community served by the Eligible Entity. If the Eligible Entity selects this option it will be responsible for monitoring the Private Nonprofit Organization, located within the community served by the Subrecipient, the Department in accordance with CSBGHHS IM 42 shall redistribute the funds to an other Eligible Entity to be used in accordance with the CSBG and Department rules.

(e) Five percent of the Department's annual allocation of CSBG funds may be expended on activities listed in 42 U.S.C. §9907(b)(A) - (H) and further described in the annual plan or by Board approval. The Department may also opt to distribute unexpended funds described in subsection (f) of this section for these activities.

(f) Up to 5% of the State's annual allocation of CSBG funds will be used for the Department's administrative purposes consistent with state and federal law.

§6.204. Use of Funds.

CSBG funds are contractually obligated to Eligible Entities, and accessed through the Department's web-based Community Affairs <u>C</u>eontract <u>S</u>system. Prior to executing a Contract for CSBG funds, the Department will verify that neither the entity, nor any member of the Eligible Entity's Board is federally debarred or excluded. Unless modified by Contract, the annual allocation has a beginning date of January 1 and an end date of December 31, regardless of the Eligible Entity's fiscal year. Eligible Entities may use the funds for administrative support and/or for direct services such as: education, employment, housing, health care, nutrition, transportation, linkages with other service providers, youth programs, emergency services, i.e., utilities, rent, food, <u>S</u>shelter, clothing, etc.

§6.205. Limitations on Use of Funds.

(a) Construction of Facilities. CSBG funds may not be used for the purchase, construction or improvement of land, or facilities as described in (42 U.S.C. §9918(a)).

(b) The CSBG Act prohibits the use of funds for partisan or nonpartisan political activity; any political activity associated with a candidate, contending faction, or group in an election for public or party office; transportation to the polls or similar assistance with an election; or voter registration activity, (for example, contacting a congressional office to advocate for a change to any law is a prohibited activity).

(c) Utility and rent deposit refunds from vendors must be reimbursed to the Subrecipient and not the customer. Refunds must be treated as program income, and returned to the Department within ten calendar days of receipt.

§6.206. CSBG Community Assessment, Community Action Plan, and Strategic Plan.

(a) In accordance with the CSBG Act, each Eligible Entity must submit a Community Action Plan on an annual basis. The Community Action Plan is required to be submitted to the Department by a date directed by the Department, for approval prior to execution of a Contract.

(b) Consistent with organizational standards relating to Data Analysis and Performance, the Eligible Entity must present to its governing board for review or action, at least every twelve months, an analysis of the agency's outcomes and any operational or strategic program adjustments and improvements identified as necessary; and the organization must submit its annual CSBG Information Survey data report which reflects customer demographics and organization-wide outcomes.

(c) Every three (3)-years each Eligible Entity shall complete a Community Assessment (may also be called "Community Needs Assessment" or "CNA"), upon which the annual CAPommunity Action Plan will be based. Guidance on the content and requirements of the Community Assessment will be released by the Department. Information related to the Community Assessment shall be submitted to the Department on or before a date specified by the Department in the previous year's Contract. The Community Assessment will require, among other things, that the top five needs of the <u>Service Aarea are identified</u>.

(d) Services to Poverty Population. <u>An Eligible Entities Entity</u> administering services to customers in one or more <u>CSBG service area</u> counties in its <u>CSBG Service Area</u> shall ensure that such services are rendered reasonably and in an equitable manner to ensure fairness among all potential applicants eligible for services. Services rendered must reflect the poverty population ratios in the <u>Service Aarea</u> and services should be distributed based on the proportionate representation of the poverty population within a county. A variance of greater than plus or minus 20% may constitute a Deficiency. <u>An Eligible Entityies administering services to customers in one or more</u> with a service area <u>counties</u> a single county shall demonstrate marketing and outreach efforts to make available direct services to a reasonable percentage of the county's eligible population based on the most recent census or American Community Survey data, as directed by the Department. Services should also be distributed based on the proportionate representation of the poverty population within a county. Other CSBG-funded organizations shall ensure that services are rendered in accordance with requirements of the CSBG <u>C</u>eontract.

(e) The C<u>APommunity Action Plan</u> shall be derived from the Community Assessment and at a minimum include a budget, a description of the delivery of case management services, in accordance with the National Performance Indicators, and include a <u>Pperformance Sstatement</u> that describes the services, programs, activities, and planned outcomes to be delivered by the organization.

(f) The C<u>APommunity Action Plan</u> must take into consideration the outcomes expected by previous C<u>APommunity Action Plan(s)</u>. If past outcomes were not achieved as reported in the CA <u>C</u>eontract <u>S</u>system, or outcomes exceed the targeted goals, the Subrecipient must assess the reasons for the variance in outcomes, determine what will be done differently if continuing to include those outcome goals, and identify how any of issues or obstacles will be mitigated or addressed. An effective CAP should be constantly monitored and adjusted to optimize achievement of results consistent with CSBG Act goals.

(g) The Community Assessment and the CAP both require Department approval; those that do not meet the Department's requirements as articulated in these rules, in federal guidance, or in Department-Subrecipient's Contractactions described and contemplated in these rules will be required to be revised until they meet the Department's satisfaction.

(h) If circumstances warrant amendments to the Community Assessment or the CAP, a Subrecipient must provide a written request to the Department identifying the specific requested change(s) to the document with a justification for each change. The Department will approve or deny amendment requests in writing.

(i) Hearing. In conjunction with the submission of the CAP, the Eligible Entity must <u>annually</u> submit to the Department a certification from its board that a public hearing was <u>posted</u>, and conducted on the proposed use of <u>that year's</u> funds.

(j) <u>At least e</u>Every five (5)-years, each Eligible Entity shall <u>complete develop</u> a <u>S</u>strategic <u>P</u>plan using the full ROMA cycle or a comparable system. The Strategic Plan shall meet the requirements of CSBG Organizational Standards (specifically Organization Standards 4.3, 6.1 through 6.5, and 9.3) and meet, with which the annual Community Action Plan should be consistent the requirements in the Department's Strategic <u>Plan guidance</u>. Information related to t<u>T</u>he <u>S</u>strategic <u>P</u>plan shall be submitted to the Department on or before a date specified by the Department in the <u>previous year's</u>-Contract.

(k) Each CSBG Subrecipient must develop a <u>Pp</u>erformance <u>S</u>statement which identifies the services, programs, and activities to be administered by that organization.

§6.207. Subrecipient Requirements.

(a) <u>An Eligible Entities Entity</u> shall submit information regarding the planned use of funds as part of the CAP as described in §6.206 of this subchapter.

(b) HHS issues terms and conditions for receipt of funds under the CSBG. Subrecipients will comply with the requirements of the terms and conditions of the CSBG award.

(c) CSBG Eligible Entities, and other CSBG organizations where applicable, are required to coordinate CSBG funds and form partnerships and other linkages with other public and private resources and coordinate and establish linkages between governmental and other social service programs to assure the effective delivery of services and avoid duplication of services.

(d) CSBG Eligible Entities will provide, on an emergency basis, the provision of supplies and services, nutritious foods, and related services as may be necessary to counteract the conditions of starvation and malnutrition among low-income individuals. The nutritional needs may be met through a referral source that has resources available to meet the immediate needs.

(e) CSBG Eligible Entities and other CSBG organizations are required to coordinate for the provision of employment and training activities through local workforce investment systems under the Workforce Innovation and Opportunity Act, as applicable.

(f) CSBG Eligible Entities are required to inform custodial parents in single-parent families that participate in programs, activities, or services about the resources available through the Texas

Attorney General's Office with respect to the collection of child support payments and refer eligible parents to the Texas Attorney General's Office of Child Support Services Division.

(g) Documentation of Services. Subrecipient must maintain a record of referrals and services provided.

(h) Intake Form. To fulfill the requirements of 42 U.S.C. §9917, CSBG Subrecipients must complete and maintain an intake form that screens for income, assesses customer needs, and captures the demographic and household characteristic data required for the <u>Mmonthly Pp</u>erformance and <u>E</u>expenditure <u>R</u>report, referenced in Subchapter A of this chapter (relating to General Provisions), for all Households receiving a community action service. CSBG Subrecipients must complete and maintain a manual or electronic intake form for all customers for each program year.

(i) Case Management.

(1) <u>An Eligible Entity</u>Subrecipients are is required to provide integrated case management services. Subrecipients are is required to identify and set goals for <u>H</u>households they serve through the case management process. Subrecipients is are required to evaluate and assess the effect their its case management system has on the short-term (less than three months) and long-term (greater than three months) impact on customers, such as enabling the customer to move from poverty to self-sufficiency, to maintain stability. CSBG funds may be used for short term case management to meet immediate needs. In addition, CSBG funds may be used to provide long-term case management to persons working to transition out of poverty and achieve self-sufficiency.

(2) <u>An Eligible Entity</u> Subrecipients-must have and maintain documentation of case management services provided.

(3) <u>An EEligible Entities Entity are is each</u> assigned a minimum TOP goal by the Department. Eligible Entities must provide ongoing case management services for these transitioning out of poverty "TOP" <u>H</u>households. The case management services must include the components described in subparagraphs (A) - (L) of this paragraph. Subrecipients must also provide case management clients with a Customer Satisfaction Survey, <u>described in</u> subparagraph (M) of this paragraph, for the client to complete anonymously. <u>And, aA</u>t least annually, Subrecipients must evaluate the effectiveness of their case management services, <u>as described in</u> subparagraph (N) of this paragraph. The forms or systems utilized for each component may be manual or electronic forms provided by the Department or manual or electronic forms created by the Eligible Entity that at minimum contain the same information as the Department-issued form, <u>which include the same components as those described in subparagraphs (A) – (L) of this paragraph. including but not limited to:</u>

(A) Self-Sufficiency Customer Questionnaire to assess a customer's status in the areas of employment, job skills, education, income, housing, food, utilities, child care, child and family development, transportation, healthcare, and health insurance;

(B) Self-Sufficiency Outcomes Matrix to assess the customer's status in the self-sufficiency domains noted in subparagraph (A) of this paragraph;

(C) Case Management Screening Questions to assess the customer's willingness to participate in case management services on an ongoing basis;

(D) For customers who are willing to engage in long term case management services, a Case Management Agreement between Subrecipient and customer;

(E) Release of Information Form;

(F) Case Management Service Plan to document planned goals agreed upon by the case manager and customer along with steps and timeline to achieve goals;

(G) Case management follow-up, —A <u>which provides a</u> system to document customer progress at completing steps and achieving goals. Case management follow-up should occur, at a minimum, every 30 days, either through a meeting, phone call or email. In person meetings should occur, at a minimum, once a quarter;

(H) A record of referral resources and documentation of the results;

(I) A system to document services received and to collect and report NPI data;

(J) A system to document case closure for persons that have exited case management;

(K) A system to document income for persons that have maintained an income level above 125% of the <u>Federal</u> Poverty Income Guidelines for 90 days;

(L) A system to document and notify customers of termination of case management services;

(M) Customer Satisfaction Survey; and

(N) Evaluation System. On On an annual basis, an Eligible Entities Entity should determine the effectiveness of their-its case management services and identify strategies for improvement, including identification of reasons for customer terminations and strategies to limit their occurrence.

(j) Effective January 1, 2016, Eligible Entities shall meet the CSBG Organizational Standards as issued by HHS in Information Memorandum #IM_138 (as revised), except that where the word bylaws is used the Department has modified the standards to read Certificate of Formation/Articles of Incorporation and bylaws; also, Eligible Entities must follow the requirements in UGMS including the State of Texas Single Audit Circular. Failure to meet the CSBG Organizational Standards as described in this subsection may result in HHS Information Memorandum #IM_116 proceedings as described in Chapter 2 of this title (relating to Enforcement).

§6.208. Designation and Re-designation of Eligible Entities in Unserved Areas.

If any geographic area of the state ceases to be served by an Eligible Entity, the requirements of 42 U.S.C. §9909 will be followed.

§6.209. CSBG Requirements for Tripartite Board of Directors.

(a) General Board Requirements:

(1) The Coats Human Services Reauthorization Act (Public Law 105-285) addresses the CSBG program and requires that Eligible Entities administer the CSBG program through a tripartite board. The Act requires that governing boards or a governing body be involved in the development, planning, implementation, and evaluation of the programs serving the low-income sector.

(2) Federal requirements for establishing a tripartite board require board oversight responsibilities for public entities, which differ from requirements for private organizations. Where differences occur between private and public organizations, requirements for each entity have been noted in related sections of the rule.

(b) Each CSBG Eligible Entity shall comply with the provisions of this rule and if necessary, the Eligible Entity's by-laws/Certificate of Formation/Articles of Incorporation shall be amended to reflect compliance with these requirements.

§6.210. Board Structure.

(a) Eligible Entities that are Private Nonprofit Organizations shall administer the CSBG program through a tripartite board that fully participates in the development, planning, implementation,

and evaluation of the program to serve low-income communities. Records must be retained for all seated board members in relation to their elections to the board for the longer of the board member's term on the Board, or the federal record retention period. Some of the members of the board shall be selected by the Private Nonprofit Organization, and others through a democratic process; the board shall be composed so as to assure that the requirements of the CSBG Act are followed and are composed as:

(1) One-third of the members of the board shall be elected public officials, holding office on the date of the selection, or their representatives. In the event that there are not enough elected public officials reasonably available and willing to serve on the board, the entity may select appointive public officials to serve on the board. The public officials selected to serve on the board may each choose one permanent representative or designate an alternate to serve on the board. Appointive public officials or their representatives or alternates may be counted in meeting the 1/3 requirement.

(2) Not fewer than 1/3 of the members are persons chosen in accordance with the Eligible Entity's Board-approved written democratic selection procedures adequate to assure that these members are representative of low-income individuals and families in the neighborhood served; and each representative of low-income individuals and families selected to represent a specific neighborhood within a community resides in the neighborhood represented by the member;

(3) The remainder are members of business, industry, labor, religious, law enforcement, education, or other major groups and interests in the community served.

(b) For a Public Organization that is an Eligible Entity, the entity shall administer the CSBG grant through an advisory board that fully participates in the development, planning, implementation and evaluation of programs that serve low-income communities or through another mechanism specified by the state and that satisfies the requirements of a tripartite board in subsection (a) above of this section. The advisory board is the only alternative mechanism for administration the Department has specified.

(c) <u>An Eligible Entities Entity</u> administering the Head Start Program must comply with the Head Start Act (42 U.S.C. §9837) that requires the governing body membership to comply with the requirements of §642(c)(1) of the Head Start Act.

(d) Residence Requirement. Board members must follow any residency requirements outlined in 42 U.S. Code §9910, or federal regulations made pursuant to that section. Low income representatives must reside in the CSBG Service Area.

(de) Selection.

(1) Public Officials:

(A) Elected public officials or appointed public officials, selected to serve on the board, shall have either general governmental responsibilities or responsibilities which require them to deal with poverty-related issues; and

(B) Permanent Representatives and Alternates. The public officials selected to serve on the board may each choose one permanent representative or designate an alternate to serve on the board. (i) Permanent Representatives. The representative need not be a public official but shall have full authority to act for the public official at meetings of the board. Permanent representatives may hold an officer position on the board. If a permanent representative is not chosen, then an alternate may be designated by the public official selected to serve on the board. Alternates may not hold an officer position on the board.

(ii) Alternate Representatives. If the Private Nonprofit Entity or Public Organization advisory board chooses to allow alternates, the alternates for low-income representatives shall be elected

at the same time and in the same manner as the board representative is elected to serve on the board. Alternates for representatives of private sector organizations may be designated to serve on the board and should be selected at the same time the board representative is selected. In the event that the board member or alternate ceases to be a member of the organization represented, he/she shall no longer be eligible to serve on the board. Alternates may not hold an officer position on the board.

(2) Low-Income Representatives:

(A) The CSBG Act and its amendments require representation of low-income individuals on boards. The CSBG statute requires that not fewer than one-third of the members shall be representatives of low-income individuals and families and that they shall be chosen in accordance with democratic selection procedures adequate to assure that these members are representative of low-income individuals and families in the neighborhoods served; and that each representative of low-income individuals and families selected to represent a specific neighborhood within a community resides in the neighborhood represented by the member.

(B) Board members representing low-income individuals and families must be selected in accordance with a democratic procedure. This procedure, as detailed in subparagraph (D) of this paragraph, may be either directly through election, public forum, or, if not possible, through a similar democratic process such as election to a position of responsibility in another significant service or community organization such as a school PTA, a faith-based organization leadership group; or an advisory board/governing council to another low-income service provider; For a Private Nonprofit Entity the democratic selection process must be detailed in the agency's Certificate of Formation/Articles of Incorporation or Bylaws, but the method detailed in the Bylaws (if so described) must not be inconsistent with any method of selection of Board members outlined in the Certificate of Formation/Articles of Incorporation; failure to comply could result in a default procedure that does not meet the CSBG requirements and potentially jeopardizes the Eligible Entity status of the organization as detailed in §6.213 of this Subchapter. For <u>a</u> Public Organizations the democratic procedure must be written in the advisory board's procedures, and approved at a board meeting.

(C) Every effort should be made by the Private Nonprofit Entity or Public Organization to assure that low-income representatives are truly representative of current residents of the <u>CSBG</u> geographic area to be served<u>Service Area</u>, including racial and ethnic composition, as determined by periodic selection or reselection by the community. "Current" should be defined by the recent or annual demographic changes as documented in the needs/<u>C</u>eommunity <u>A</u>assessment. This does not preclude extended service of low-income community representatives on boards, but it does suggest that continued board participation of longer term members be revalidated and kept current through some form of democratic process.

(D) The procedure used to select the low-income representative must be documented to demonstrate that a democratic selection process was used. Among the selection processes that may be utilized, either alone or in combination, are:

(i)-<u>S</u>election and elections, either within neighborhoods or within the community as a whole; at a meeting or conference, to which all neighborhood residents, and especially those who are poor, are openly invited;

(ii) <u>Selection selection</u> of representatives to a community-wide board by members of neighborhood or sub-area boards who are themselves selected by neighborhood or area residents;

(iii) <u>Selectionselection</u>, on a small area basis (such as a city block); or

(iv) <u>Selection selection</u> of representatives by existing organizations whose membership is predominately composed of poor persons.

(E) A Public Organization must not adopt a democratic selection process that requires all of the low-income representatives to reside in the political boundaries of the Public Organization, or that excludes all residents not in the political boundaries of the Public Organization from all participation in the democratic selection of all of the low-income representatives.

(3) Representatives of Private Groups and Interests:

(A) The Private Nonprofit or Public Organization shall select the remainder of persons to represent the private sector on the board or it may select private sector organizations from which representatives of the private sector organization would be chosen to serve on the board; and

(B) The individuals and/or organizations representing the private sector shall-should be selected in such a manner as to assure that the board will benefit from broad community involvement. The board composition for the private sector shall draw from officials or members of business, industry, labor, religious, law enforcement, education, school districts, representatives of education districts and other major groups and interests in the community served.

(ef) <u>An</u> Eligible Entitityes must have written procedures under which a low-income individual, community organization, religious organization, or representative of such may petition for adequate representation as described in (a) - (d) of this section if such persons or organizations consider there to be inadequate representation on the board of the Eligible Entity. Such petitions must be heard at a subsequent board meeting not more than 120 days after receiving the petition.

(g) Improperly Constituted Board. If the Department determines that a board of an Eligible Entity is improperly constituted, the Department shall prescribe the necessary remedial action, a timeline for implementation, and possible sanctions as described in §2.202 of this ‡title (relating to Sanctions and Contract Closeout).

§6.211. Board Administrative Requirements.

(a) Compensation. Board members are not entitled to compensation for their service on the board. Reimbursement of reasonable and necessary expenses incurred by a board member in carrying out his/her duties is allowed.

(b) Conflict of Interest. No board member may participate in the selection, award, or administration of a <u>S</u>subcontract supported by CSBG funds if <u>the board member has the following</u> <u>financial or personal interests in the entity or person selected to perform a subcontract</u>:

(1)-<u>+</u>The board member;

(2) any <u>Any</u> member of his/her family related within three degrees of consanguinity, adoption, or by marriage;

(3) the <u>The</u> board member's partner or Household member; or

(4) <u>any Any organization entity or person</u> which employs or is about to employ any of the individuals described in paragraphs (1) - (3) of this subsection. <u>has a financial or person interest</u> in the firm or person selected to perform a subcontract.

(c) No employee of the local CSBG Subrecipient or of the Department may serve on the board.

(d) A seated board member is permitted to be appointed to serve as an interim Executive Director for up to 180 days so long as the Department is so notified, the board member did not participate in the vote that designated them as the interim Executive Director, the board member does not vote during the period for which they serve as the interim Executive Director, and the member is not considered a member for purposes of quorum. In such cases, Fthe board member seat is not

considered vacated, and is available for that board member to return.

§6.212. Board Size.

(a) Board Service Limitations for Private Nonprofit Entities and Public Organizations. Subrecipient boards The Eligible Entity may establish term limits and/or procedures for the removal of board members.

(b) Vacancies/Removal of Board Members.

(1) Vacancies. In no event shall the board allow 25% or more of either the public, private, or lowincome sector board positions to remain vacant for more than 90 days. <u>CSBG Subrecipients An</u> <u>Eligible Entity</u> shall report the number of board vacancies by sector in their its <u>Mm</u>onthly <u>Pperformance and Expenditure R</u>reports. Compliance with the CSBG Act requirements for board membership is a condition for Eligible Entities to receive CSBG funding. There is no provision for a waiver or exception to these requirements.

(2) Removal of Board Members/Private Nonprofit Entities. Public officials or their representatives, may be removed from the board either by the board or by the entity that appointed them to serve on the board. Other members of the board may be removed by the board or pursuant to any procedure provided in the private nonprofit's Certificate of Formation/Articles of Incorporation or bylaws.

(3) Removal of Board Members/Public Organizations. Public officials or their representatives may be removed from the advisory board by the Public Organization, or by the advisory board if the board is so empowered by the Public Organization. The <u>advisory</u> board may petition the Public Organization to remove a<u>n advisory</u> board member. All other board members may be removed by the advisory board.

(4) In order to meet the 1/3 requirement for the Public Official representation detailed in §6.210 of this rule, board size shall be a number divisible by <u>three</u>³.

§6.213. Board Responsibility.

(a) Tripartite boards have a fiduciary responsibility for the overall operation of the Eligible Entity. Members are expected to carry out their duties as any reasonably prudent person would do.

(b) At a minimum, board members are expected to:

(1) Maintain regular attendance of board and committee meetings;

(2) Develop thorough familiarity with core agency information as appropriate, such as the agency's bylaws, Certificate of Formation/Articles of Incorporation, sources of funding, agency goals and programs, federal and state CSBG statutes;

(3) Exercise careful review of materials provided to the board;

(4) Make decisions based on sufficient information;

(5) Ensure that proper fiscal systems and controls, as well as a legal compliance system, are in place;

(6) Maintain knowledge of all major actions taken by the agency; and

(7) Receive regular reports that include:

(A) Review and approval of all funding requests (including budgets);

(B) Review of reports on the organization's financial situation;

(C) Regular reports on the progress of goals specified in the <u>Pp</u>erformance <u>S</u>statement or program proposal;

(D) Regular reports addressing the rate of expenditures as compared to those projected in the budget;

(E) Updated modifications to policies and procedures concerning employee's and fiscal operations; and

(F) Updated information on community conditions that affect the programs and services of the organization; and

(G) Reports on any monitoring correspondence transmitted by the Department.

(c) Individuals that agree to participate on a tripartite governing board, accept the responsibility to assure that the agency they represent continues to:

(1) assess Assess and respond to the causes and conditions of poverty in their community;

(2) achieve Achieve anticipated family and community outcomes; and

(3) remains <u>Remains</u> administratively and fiscally sound.

(4) Excessive absenteeism of board members compromises the mission and intent of the program.

(d) Residence Requirement. All board members shall reside within the Subrecipient's CSBG service area designated by the CSBG Contract. Board members must be selected so as to provide representation for all geographic areas within the designated service area; however, greater representation may be given on the board to areas with greater low income population. Low income representatives must reside in the area that they represent.

(e) Improperly Constituted Board. If the Department determines that a board of an Eligible Entity is improperly constituted, the Department shall prescribe the necessary remedial action, a timeline for implementation and possible sanctions which may include:

(1) Cost Reimbursement;

<u>(2) withholding of funds;</u>

(3) Contract suspension; or

(24) termination of funding.

§6.214. Board Meeting Requirements.

(a) A Board of an Eligible Entity must meet and have a quorum at least once per calendar quarter, and at a minimum five (5) times per year and, must give each Board member a notice of meeting five (5) calendar days in advance of the meeting.

(b) Tex. Gov't Code, Chapter 551, Texas Open Meetings Act, addresses specific requirements regarding meetings and meeting notices. Tex. Gov't Code, §551.001(3)(J), includes in the definition of a governmental body and of a nonprofit corporation that is eligible to receive funds under the federal CSBG program, and that is authorized by the state to serve a geographic area of the state. All-Thus, all Eligible Entities must follow the requirements of the Texas Open Meetings Act. As set forth in that law, there is the potential for individual criminal liability for violations.

(c) Tex. Gov't Code, §551.005 requires elected or appointed officials to receive training in Texas Open Government laws. The Department requires that all board members or advisory board <u>members</u> receive training in Texas Open Government laws, according to the requirements of §551.005.

(d) A copy of the attendance roster for all Board trainings shall be maintained at the Subrecipient level.

(e) The minimum number of members required to meet quorum is three unless the Subrecipient's Certification of Formation/Articles of Incorporation, Bylaws, or the Texas Open Meetings Act requires a greater number.

SUBCHAPTER C COMPREHENSIVE ENERGY ASSISTANCE PROGRAM

§6.301. Background and Definitions.

(a) The Comprehensive Energy Assistance Program ("CEAP") is funded through the Low Income Home Energy Assistance Act of 1981 (Title XXVI of the Omnibus Budget Reconciliation Act of 1981, Public Law 97-35, as amended). LIHEAP has been in existence since 1982. LIHEAP is a federally funded block grant program that is implemented to serve Liow Lincome Households who seek assistance for their home energy bills. LIHEAP is not an entitlement program, and there are not sufficient funds to serve all eligible customers or to provide the maximum benefit for which a customer may qualify.

(b) Definitions.

(1) <u>Crisis Assistance--A type of CEAP assistance limited to Households who meet the requirements related to Extreme Weather Conditions, Life Threatening Crisis, or a Disaster.</u>

(2) Customer Obligations--Funds become obligated upon a Subrecipient's pledge of payment to a specific Household toward a service or form of assistance and it being recorded in Subrecipient's client tracking software.

(3) Disaster--An event declared -by the President of the United States or the Governor of the State of Texas.

(4) Extreme Weather Conditions--For winter months (November, December, January, and February), extreme cold weather conditions will-exist when the temperature has been at least 2 two degrees below the lowest winter month's temperature or below 32 degrees, for at least three days during the client's billing cycle. For summer months (June, July, August, and September), extreme hot weather conditions exist when the temperature is at least 2-two degrees above the highest summer month's temperature for at least three days during the client's billing cycle. Extreme <u>Ww</u>eather <u>C</u>eonditions will be based on either data for "1981-2010 Normals" temperatures recorded by National Centers for Environmental Information of the National Oceanic and Atmospheric Administration ("NOAA") and available at

https://www.ncdc.noaa.gov/cdo-web/datatools/normals

http://www.ncdc.noaa.gov/cdo-web/datatools/normals, or on data determined by the Subrecipient, and approved by the Department in writing. Subrecipient must maintain documentation of local temperatures and reflect their standard for <u>Eextreme Wweather</u> <u>C</u>eonditions in its Service Delivery Plan.

(2) Household Crisis--A bona fide Household Crisis exists when extraordinary events or situations resulting from extreme weather conditions and/or fuel supply shortages have depleted or will deplete Household financial resources and/or have created problems in meeting basic Household expenses, particularly bills for energy so as to constitute a threat to the well being of the Households, particularly Vulnerable Population Households.

(53) Life Threatening Crisis--A Life Tthreatening Cerisis exists when the life of at least one person in the applicant Household who is a U.S. Citizen, U.S. National, or a Qualified Alien would likely be endangered if utility assistance or heating and cooling assistance is not provided due to a Household member who needs electricity for life-sustaining equipment or whose medical professional has prescribed that the person with a medical condition requires that the ambient air temperature be maintained at a certain temperature. adversely affected without the Subrecipient's utility assistance, because there is a shut off notice or a delivered fuel source is below a ten (10) day supply (by customer report) to the degree that, in the opinion of a reasonable person, the effect could cause loss of life. Examples of life-sustaining equipment include, but are not limited to, kidney dialysis machines, oxygen concentrators, <u>and</u> cardiac monitors, and in some cases heating and air conditioning when ambient temperature control is prescribed by a medical professional. Documentation must not be requested about the medical condition of the applicant. <u>Acustomer</u> but <u>the applicant</u> must state that such a device is required in the Dwelling Unit to sustain life.

(<u>64</u>) Low on Fuel--A reference to propane tanks which are below 20% supply (according to customer).

(7) Natural Disaster--A Disaster that is primarily not of man-made origins.

(85) Vendor Refund--A sum of money refunded by a utility company or supplier due to a credit on the account or due to a deposit. See §6.312 of this subchapter for more information.

§6.302. Purpose and Goals.

The purpose of CEAP is to assist low-income Households, particularly those with the lowest incomes, and High Energy Consumption Households to meet their immediate home energy needs. The LIHEAP Statute requires priority be given to those with the highest home energy needs, meaning Liow Lincome Households with High Energy Consumption, a High Energy Burden and/or the presence of Vulnerable Population in the Household. CEAP services include: energy education, needs assessment, budget counseling (as it pertains to energy needs), utility payment assistance, repair of existing heating and cooling units, and crisis-related purchase of portable heating and cooling units.

§6.303. Distribution of CEAP Funds.

(a) The Department distributes funds to Subrecipients by an allocation formula.

(b) The formula allocates funds based on the number of <u>Low</u> <u>il</u>ncome Households in a service area and takes into account the special needs of individual service areas. The need for energy assistance in an area is addressed through a weather factor (based on heating and cooling degree days). The extra expense in delivering services in sparsely populated areas is addressed by an inverse population density factor. The lack of additional services available in very poor counties is addressed by a county median income factor. Finally, the Elderly are given priority by giving greater weight to this population. The five factors used in the formula are calculated as:

(1) County Non-Elderly Poverty Household Factor (weight of 40%)--Defined by the Department as the number of Non-Elderly Poverty Households in the county divided by the number of Non-Elderly Poverty Households in the State;

(2) County Elderly Poverty Household Factor (weight of 40%)--Defined by the Department as the number of Elderly Poverty Households in the county divided by the number of Elderly Poverty Households in the State; and

(3) County Inverse Household Population Density Factor (weight of 5%)--Defined by the Department as:

(A) The number of square miles of the county divided by the number of Poverty Households of the county (equals the Inverse Poverty Household Population Density of the county); and

(B) Inverse Poverty Household Population Density of the county divided by the sum of Inverse Household Densities.

(4) County Median Income Variance Factor (weight of 5%)--Defined by the Department as:

(A) State Median Income minus the County Median Income (equals county variance); and

(B) County Variance divided by sum of the State County Variances.

(5) County Weather Factor (weight of 10%)--Defined by the Department as:

(A) County heating degree days plus the county cooling degree days, multiplied by the poverty Households, divided by the sum of county heating degree days and county cooling degree days of counties (equals County Weather); and

(B) County Weather divided by the total sum of the State County Weather.

(c)(C) All demographic factors are based on the most recent decennial U.S. Census for which Census Bureau published information is available.

(d) (D) <u>The</u> <u>T</u>total sum of paragraphs (1) - (5) of this subsection multiplied by total funds allocation equals the county's allocation of funds. The sum of the county allocations within each Subrecipient service area equals the Subrecipient's total allocation of funds.

(c) To the extent balances remain in Subrecipient contracts that the Subrecipient appears to be unable to utilize or should additional funds become available, those funds will be allocated using the formula set out in this section or other method approved by the Board to ensure full utilization of funds within a limited timeframe.

(<u>ed</u>) The Department may, in the future, undertake to reprocure the <u>Subrecipients entities</u> that comprise the network of CEAP providers, in which case this allocation formula will be reassessed and, if material changes are needed, amended by rulemaking.

§6.304. Deobligation and Reobligation of CEAP Funds.

(a) The Department may determine to Deobligate funds from all budget categories from Subrecipients whose combined Expenditures and e<u>C</u>ustomer Obligations are less than <u>3045</u>% as of the <u>May April</u> 15 <u>Monthly Performance and Expenditure Reportreport, unless an exception is</u> approved by the Department in writing for extenuating circumstances. <u>Subrecipient may avoid</u> Deobligation at this point if one of the following has occurred:

(1) On or before the first business day in April, the Subrecipient has submitted a written request for an exception due to extenuating circumstances with a plan to improve Expenditures and Customer Obligations. The request and plan must be approved by the Department in writing; or (2) Subrecipients that On or before the first business day in April, the Subrecipient has submitted a written request for training and/or technical assistance. may avoid Deobligation at this phase if they request such assistance on or before the filing of the May 15 report. Once such assistance has been delivered, as determined by the Department, the Subrecipient must submit a clear specific plan, as outlined by the Department, for improving utility Expenditures and Customer eObligations, and that plan must be approved by the Department in writing.

(b) The Department may Deobligate funds from all budget categories from a-Subrecipients whose combined Expenditures and Ceustomer Obligations are less than 570% as of the July-June 15 Monthly Performance and Expenditure Reportreport, unless on or before the first business day in June the Subrecipient submits a written request for an exception due to extenuating circumstances with a plan to improve Expenditures and Customer Obligations. The request and plan must be is approved by the Department in writing for extenuating circumstances.

(c) <u>Funds Deobligated under this section, or additional funds should they become available, will</u> <u>be reobligated</u> <u>The cumulative amount of Deobligated funds will be allocated</u> proportionally by <u>the formula described in §6.303 of this subchapter (relating to Distribution of CEAP Funds), or if</u> <u>six months or less remain for the Department to expend the funds another method approved by</u> <u>the Department's Board</u> amongst all Subrecipients that did not have any funds Deobligated. <u>to</u> ensure full utilization of funds.

(d) A Subrecipient which has had funds Deobligated under subsection (a) or (b) of this section that fully <u>Eexpends</u> the reduced amount of its Contract <u>by January 31 of the following year as</u>

reported in the Monthly Performance and Expenditure Report due February 15, will have access to the full amount of the following Program Year CEAP allocation. A Subrecipient which has had funds Deobligated under subsection (a) or (b) of this section that fails to fully expend the reduced amount of its Contract will automatically have the following Program Year CEAP allocation Deobligated by the lesser of 24.99%, or the proportional amount that had been Deobligated infrom the prior year Contract.

(e) The cumulative balance of the funds made available through subsection (d) of this section will be allocated proportionally by <u>the</u> formula <u>described in §6.303 of this subchapter</u> to the Subrecipients not having funds reduced under that subsection.

(f) In no event will involuntary Deobligations that occur through any of the clauses above exceed 24.99% of the Subrecipient's Program Year CEAP Contracted Funds, without an opportunity for a hearing as required by Tex. Gov't Code, Chapter 2105.

(g) Failure by the Subrecipient to fully Expend a prior year Contract by the Monthly Performance and Expenditure Report due April 15th of the subsequent year for two consecutive original Contract Terms is good cause for nonrenewal of a Contract.

§6.305. Subrecipient Eligibility.

(a) The Department administers the program through the existing Subrecipients that have demonstrated that they are operating the program in accordance with their Contract, the Economic Opportunity Act of 1964, the Low-Income Home Energy Assistance Act of 1981, as amended (42 U.S.C. §§8621, et seq.), and the Department rules. If a Subrecipient is successfully administering the program, the Department may offer to renew the Contract.

(b) If the Department determines that a Subrecipient is not administering the program satisfactorily, the Subrecipient will be <u>notified of such a Finding as provided for in §6.10 of this</u> <u>chapter, and required to take corrective actions to remedy the problem. If Subrecipient fails to correct the Finding, in order to ensure continuity of services, the Department may reassign up to 24.99% of the funds for the service area to one or more other existing Subrecipients.</u>

(c) If the Subrecipient does not complete the corrective action within the required timeframe, the Department may conduct a solicitation for selection of an interim Subrecipient. The affected Subrecipient may request a hearing in accordance with the Tex. Gov't Code, §2105.204.

(d) If it is necessary to designate a new Subrecipient to administer CEAP, the Department shall give special consideration to <u>SubrecipientsEligible Entities and entities</u> <u>receiving funds under</u> <u>LIHEAP or DOE WAP</u>, <u>administering Weatherization in the service area in accordance with</u> <u>Assurance 6 of the Low Income Home Energy Assistance Act of 1981</u>.

§6.306. Service Delivery Plan.

Prior to any Eexpenditure of funds, Subrecipients are is required to submit on an annual basis a Department formatted Service Delivery Plan ("SDP"), which includes information on how they plan to implement CEAP in their service area. The Department will notify CEAP Subrecipients when the SDP template and the annual updated forms are posted on the Department's website. The SDP must establish a Subrecipient's the priority rating sheet and priority <u>H</u>households_i, the alternate billing method_i, how customer education is being addressed_i, and how the Subrecipient is determining the number of payments to be made and which types of Households are qualified for a given number of payments_i, and identify the local standard to be used for Extreme Weather Conditions.

§6.307. Subrecipient Requirements for Customer Eligibility Criteria, <u>Provision of Services</u>, and Establishing Priority for Eligible Households.

(a) The customer income eligibility level is at or below 150% of the federal poverty level in effect at the time the customer makes an application for services.

(b) Categorical Eligibility for CEAP benefits exists when at least one person in the Household receives assistance from:

(1) SSI payments from the Social Security Administration; or

(2) Means Tested Veterans Program payments. See paragraph (35) of §6.2 of this chapter (relating to Definitions).

(<u>c</u>b) A complete application is required for all Households. Subrecipient shall determine customer income using the definition of income and process described in §6.4 <u>of this chapter</u> (relating to Income Determination) of this chapter. Household income documentation must be collected by the Subrecipient for the purposes of determining the Household's benefit level.

(ed) Social security numbers are not required for applicants for CEAP.

(de) Subrecipient must establish a written procedure to serve Households that have a Vulnerable Population Household member, Households with High Energy Burden, and Households with High Energy Consumption. High Energy Burden shall be the highest rated item in sliding scale priority determinations. The Subrecipient must maintain documentation of the use of the criteria.

(ef) A Dwelling Unit cannot be served if the meter is utilized by another Household that is not a part of the application for assistance. In instances where separate structures share a meter and the applicant is otherwise eligible for assistance, Subrecipient must provide services if:

(1)-<u>t</u>The members of the separate structures that share a meter meet the definition of a Household per §6.2 of this <u>Chapter chapter (relating to Definitions)</u>;

(2) the <u>The</u> members of the separate structures that share a meter submit one application as one Household; and

(3) <u>all-All persons</u> and applicable income from each structure are counted when determining eligibility.

(gf) United States Citizen, United States National, or Qualified Alien. Except for items described in 10 TAC (2)(4), (2)(4), (5) and (76), Unqualified Aliens are not eligible to receive CEAP benefits. Mixed Status Households shall not be denied CEAP assistance based solely on the presence of a non-qualified member, except if the member is the sole member of the Household. A Public Organization must verify U.S. Citizen, U.S. National, or Qualified Alien status of all household members using SAVE.

(h) Subrecipient must begin providing utility assistance services to customers upon receipt of Contract and throughout the Contract Term unless Subrecipient has expended its entire Contract.

§6.308. Allowable Subrecipient Administrative and Program Services Costs.

(a) Funds available for Subrecipient administrative activities will be calculated by the Department as a percentage of direct services <u>Eexpenditures</u>. Administrative costs shall not exceed the maximum percentage of total direct services <u>Eexpenditures</u>, as indicated in the Contract. All other administrative costs, exclusive of administrative costs for program services, must be paid with nonfederal funds. Allowable administrative costs for administrative activities includes costs for general administration and coordination of CEAP, and all indirect (or overhead) costs, and activities as described in paragraphs (1) - (7) of this subsection:

(1) salaries<u>Salaries;</u>

(2) fringe Fringe benefits;

(3) non<u>Non</u>-training travel;

(4) equipmentEquipment;

(5) supplies Supplies;

(6) audit <u>Audit</u> (limited to percentage of the contract expenditures, excluding training/travel costs as indicated in the Contract); and

(7) <u>office_Office_space</u> (limited to percentage of the contract expenditures, excluding training/travel costs as indicated in the Contract).

(b) Program Services costs shall not exceed the maximum percentage of total direct services Expenditures, as indicated in the Contract. Program Services costs are allowable when associated with providing customer direct services. Program services costs may include outreach activities and expenditures on the information technology and computerization needed for tracking or monitoring required by CEAP, and activities as described in paragraphs (1) - (9) of this subsection:

(1) direct <u>Direct</u> administrative cost associated with providing the customer direct service;

(2) salaries <u>Salaries</u> and benefits cost for staff providing program services;

(3) supplies Supplies;

(4) equipmentEquipment;

(5) travelTravel;

(6) postagePostage;

(7) utilitiesUtilities;

(8) rental <u>Rental</u> of office space; and

(9) <u>staff_Staff_time</u> to provide energy conservation education, needs assessments, and referrals.

§6.309. Types of Assistance and Benefit Levels.

(a) Allowable CEAP <u>E</u>expenditures include customer education, utility payment assistance_L; repair of existing heating and cooling units, and crisis-related purchase of portable heating and cooling units.

(b) Total maximum possible annual Household benefit (all allowable benefits combined) shall not exceed \$5,9400 during a Program Year.

(c) Benefit determinations are based on the Household's income (even if the Household is Categorically Eligible), the Household size, Vulnerable Populations in the Household, plus other priority status, whether a Household has one or more Unqualified Aliens for which calculation adjustments must be made as described in paragraphs (1) and (2) of this subsection, and the availability of funds.

(1) Count income for all Household members eighteen <u>18</u> years of age and older, including Unqualified Aliens; and

(2) Adjust the Household size for determining eligibility and benefit assistance level to exclude all Unqualified Aliens.

(d) For purposes of determining Categorical Eligibility or Vulnerable Populations (i.e. priority status), the Household is not considered to satisfy the definition of having Categorical Eligibility or Vulnerable Population if the only individual(s) in the Household with that Categorical Eligibility or Vulnerable Population status are Unqualified Aliens. For purposes of reporting, all individuals in the Households should be reported.

 (e) Benefit determinations for the Utility Payment Assistance Component and the Household Crisis<u>Crisis Assistance</u> Component cannot exceed the sliding scale described in paragraphs (1) -(3) of this subsection: (1) Households with Incomes of 0 to 50% of Federal Poverty Guidelines may receive an amount not to exceed \$1,200 per Component;

(2) Households with Incomes of 51% to 75% of Federal Poverty Guidelines may receive an amount not to exceed \$1,100 per Component; and

(3) Households with Incomes of 76% to at or below 150% of Federal Poverty Guidelines may receive an amount not to exceed \$1,000 per Component.; and

(f) Service and Repair of existing heating and cooling units... Households may receive up to \$3,5000 for service and repair of existing heating and cooling units when the Household has an inoperable heating or cooling system based on requirements in §6.310 for Non-Vulnerable Population Households and §6.311 for Vulnerable Population Households, Relating to Household Crisis Component.

(g) Assistance with service and repair or purchase of portable air conditioning/evaporative coolers and heating units <u>cannot</u> to exceed \$3,5000. for Households that include a Vulnerable Population member, when the Household does not have an operable or non existing heating or cooling system, regardless of weather conditions. Refer to §6.310(c)(9) of this subchapter for requirements relating to service and repair or purchase of portable air conditioning/evaporative coolers and heating units.

(h) Subrecipients shall provide only the types of assistance described in paragraphs (1) - (911) of this subsection with funds from CEAP. Energy bills already paid may not be reimbursed by the program. Funds from CEAP shall not be used to weatherize dwelling units, for medicine, food, transportation assistance (e.g., vehicle fuel), income assistance, or to pay for penalties or fines assessed to customers.

(1) Payment to vendors and suppliers of fuel/utilities, goods, and other services, such as past due or current bills related to the procurement of energy for heating and cooling needs of the residence, not to include security lights and other items unrelated to energy assistance as follows:

(A) Subrecipient may make utility payments on behalf of Households based on the previous twelve (12) month's home energy consumption history, including allowances for cost inflation. If a twelve (12) month's home energy consumption history is unavailable, Subrecipient may base payments on current Program Year's bill or utilize a Department-approved alternative method. Subrecipient will note such exceptions in customer files. Benefit amounts exceeding the actual bill shall be treated as a credit for the customer with the utility company.

(B) Vulnerable <u>Population</u> Households can receive benefits to cover up to the eight highest remaining bills within the Program Year, <u>and up to two utility disconnection notice payments</u> as long as the cost does not exceed the maximum annual benefit. <u>The first bill payment may cover two separate fuel sources</u>.

(C) <u>Non-Vulnerable Population</u> Households that do not contain a Vulnerable Population member can receive benefits to cover up to the six highest remaining bills within the Program Year as long as the cost does not exceed the maximum annual benefit. <u>The first bill payment may cover two separate fuel sources</u>.

(2) Payment to vendors — <u>may</u> only <u>include</u> one energy bill payment per month <u>except in the case</u> <u>of subparagraphs 1(B) and 1(C) of this subsection</u>;

(3) Needs assessment and energy conservation tips, coordination of resources, and referrals to other programs;

(4) Payment of water, <u>waste waterwastewater</u> and solid waste charges are not an allowable LIHEAP expense even in cases where those charges are an inseparable part of a utility bill. Whenever possible, Subrecipient shall negotiate with the utility providers to pay only the "home

energy" (heating and cooling) portion of the bill or utilize other funds to pay for the water related charges;

(5) Energy bills already paid may not be reimbursed by the program;

(56) Payment of reconnection fees in line with the registered tariff filed with the Public Utility Commission and/or Texas Railroad Commission. Payment cannot exceed that stated tariff cost. Subrecipient shall negotiate to reduce the costs to cover the actual labor and material and to ensure that the utility does not assess a penalty for delinquency in payments;

(<u>6</u>7) Payment of security deposits only when state law requires such a payment, or if the Public Utility Commission or Texas Railroad Commission has listed such a payment as an approved cost, and where required by law, tariff, regulation, or a deferred payment agreement includes such a payment. Subrecipient shall not pay such security deposits that the energy provider will eventually return to the customer;

(78) While rates and repair charges may vary from vendor to vendor, Subrecipient shall negotiate for the lowest possible payment. Prior to making any payments to an energy vendor a Subrecipient shall have a signed vendor agreement on file from the energy vendor receiving direct CEAP payments from the Subrecipient;

(89) Subrecipient may make payments to landlords on behalf of eligible renters who pay their utility and/or fuel bills indirectly. Subrecipient shall notify each participating Household of the amount of assistance paid on its behalf. Subrecipient shall document this notification. Subrecipient shall maintain proof of utility or fuel bill payment. Subrecipient shall ensure that amount of assistance paid on behalf of customer is deducted from customer's rent; and

(910) In lieu of deposit required by an energy vendor, Subrecipient may make advance payments. The Department does not allow CEAP <u>Eexpenditures</u> to pay deposits, except as noted in paragraph (67) of this subsection. Advance payments may not exceed an estimated two months' billings<u>;</u> and

(11) Funds for the CEAP shall not be used to weatherize dwelling units, for medicine, food, transportation assistance (e.g., vehicle fuel), income assistance, or to pay for penalties or fines assessed to customers.

§6.310. Household Crisis <u>Assistance</u> Component.

(a) Crisis Assistance can be provided to persons who have already lost service or are in immediate danger of losing service only under one of the conditions listed in paragraphs (1) to (3) of this subsection, and shall not exceed the caps as defined in §6.309:

(1) Extreme Weather Conditions, as defined in §6.301 of this subchapter, with assistance provided within 48 hours;

(2) Disaster, as defined in §6.301 of this subchapter, with assistance provided within 48 hours; or (3) Life Threatening Crisis, as defined in §6.301 of this subchapter, with assistance provided within 18 hours.

(b) In order to resolve the crisis, Subrecipient shall ensure that for customers assisted through Crisis Assistance services are provided within the timeframes as described in (a) of this section. The time limit commences upon completion of the application process. The application process is considered complete when an agency representative accepts an application and completes the eligibility process. Subrecipient must maintain written documentation in customer files showing crises resolved within the appropriate timeframe. The Department may disallow improperly documented Expenditures.

(c) Low Income Households as defined in §6.2 of this chapter (relating to Definitions) may be

eligible for any one or more of the types of assistance listed in paragraphs (1) to (11) of this subsection:

(1) Payment of utilities or fuel bills and utility bill deposits necessary to retain heating or cooling.
 (2) Temporary Shelter in the limited instances that supply of power to the Dwelling Unit is disrupted causing a temporary evacuation.

(3) Emergency deliveries of fuel up to 250 gallons per crisis per Household, at the prevailing price. This benefit may include coverage for tank pressure testing.

(4) Cost to temporary Shelter or house individuals in hotel, apartments or other living situations in which homes have been destroyed or damaged when health and safety is endangered by loss of access to heating and cooling.

(5) Costs for transportation (i.e., cars, shuttles, buses) to move the individuals away from the crisis area to Shelters when health and safety is endangered by loss of access to heating and cooling.

(6) Utility reconnection costs.

(7) Blankets, as tangible benefits to keep individuals warm.

(8) For Non-Vulnerable Populations meeting the conditions described in subsection (a) of this section, service and repair of existing heating and cooling units when the Household has an inoperable heating or cooling system. If a component(s) of the heating or cooling system cannot be repaired using parts, the Subrecipient can replace the component(s) in order to repair the heating or cooling system.

(9) When a Household meets the definition of Life Threatening Crisis, purchase of portable heating and/or cooling units is allowable. Units must be Energy Star[®]. In cases where the type of unit is not Energy Star[®], or if Energy Star[®] units are not available due to supply shortages, Subrecipient may purchase the highest rated unit available. Purchase of more than two portable heating and/or cooling units, which require performance of electrical work for proper installation, requires prior written approval from the Department.

(10) Purchase of fans. The number, type, size and cost of these items may not exceed the minimum needed to resolve the crisis.

(11) If necessary, the purchase of a generator is allowable when a Household meets the definition of Life Threatening Crisis.

(d) The 18 and 48-hour timeframes do not apply in the case of a Natural Disaster.

(e) Benefit Level for Crisis Assistance:

(1) Crisis Assistance for one Household cannot exceed the maximum allowable benefit level in one Program Year as defined in §6.309 of this subchapter (relating to Types of Assistance and Benefit Levels). If a Household's Crisis Assistance needs exceed that maximum allowable benefit, Subrecipient may pay up to the Crisis Assistance limit only if the remaining amount of Household need can be paid from other funds. If the Household's crisis requires more than the Household limit to resolve and no other funds are available, the crisis exceeds the scope of this component.
(2) Payments may not exceed Household's actual utility bill.

(3) Payments may not exceed the Maximum Household allowable assistance benefit level.

(4) Service and repair or purchase of heating or cooling, or heating and cooling units for up to \$3,500 will not be counted towards the total maximum Household allowable assistance under the utility assistance and crisis components.

(5) Temporary Shelter not to exceed the annual Households benefit limit for the duration of the contract period.

<u>(a) Crisis assistance can be provided under the following conditions:</u>

(1) A Life Threatening Crisis exists, as defined in §6.301 of this Subchapter;

(2) Disconnection notice a utility disconnection notice may constitute a Household Crisis. Assistance provided to Households based on a utility disconnection notice is limited to two (2) payments per year. Weather criterion is not required to provide assistance due to a disconnection notice. The notice of disconnection must have been issued within 60 days of receipt by the Subrecipient; or,

(3) Extreme Weather Conditions exist, as defined in §6.301 of this Subchapter.

(b) Benefit Level for Crisis Assistance.

(1) Crisis assistance payments cannot exceed the minimum amount needed to resolve the crisis; e.g. when a shut off notice requires a certain amount to be paid to avoid disconnection and the same notice indicates that there are balances due other than the required amount. Crisis assistance payments that are less than the amount needed to resolve the crisis may only be made when other funds or options are available to resolve the Household's remaining crisis need and are documented in the customer file.

(2) Crisis assistance for one Household cannot exceed the maximum allowable benefit level in one Program Year as defined in §6.309 of this Subchapter relating to Types of Assistance and Benefit Levels. If a Household's crisis assistance needs exceed that maximum allowable benefit, Subrecipient may pay up to the Household crisis assistance limit only if the remaining amount of Household need can be paid from other funds. If the Household's crisis exceeds the scope of this component.

(3) Payments may not exceed Household's actual utility bill.

(4) Crisis funds, whether for utility payment assistance, disconnection notice, life threatening crisis, temporary shelter, emergency fuel deliveries, assistance related to natural disasters shall be considered part of the total maximum Household allowable assistance.

(5) Service and repair or purchase of heating or cooling, or heating and cooling units for up to \$3,000 will not be counted towards the total maximum Household allowable assistance under the utility assistance and crisis components.

(c) Where necessary to prevent undue hardships from a qualified crisis, Subrecipients may provide:

(1) Payment of utility bill(s) during the month(s) when Extreme Weather Conditions exist, as defined in §6.301 of this Subchapter.

(2) Temporary shelter not to exceed the annual Household expenditure limit for the duration of the contract period in the limited instances that supply of power to the dwelling is disrupted_causing temporary evacuation;

(3) Emergency deliveries of fuel up to 250 gallons per crisis per Household, at the prevailing price. This benefit may include coverage for tank pressure testing;

(4) For Non-Vulnerable Population Households, service and repair of existing heating and cooling units when the Household has an inoperable heating or cooling system when the county is experiencing Extreme Weather Conditions. If any component of the heating or cooling, or heating and cooling system cannot be repaired using parts, the Subrecipient can replace the component in order to repair the heating or cooling, or heating and cooling system. Documentation of service/repair and related warranty must be included in the customer file. Costs are not to exceed \$3,000 during the Contract period.

(5) For Vulnerable Population Households, regardless of weather conditions, service and repair of existing heating and cooling units or purchase of portable air conditioning/evaporative coolers

and heating units (portable electric heaters are allowable only as a last resort), when the Household has an inoperable or there is a nonexistent heating or cooling system. If any component of the heating or cooling, or heating and cooling system cannot be repaired using parts, the Subrecipient can replace the component in order to repair the heating or cooling, or heating and cooling system. Any service or repair of air conditioning or heating units must comply with the 2015 International Residential Code ("IRC") to ensure proper installation. Documentation of service/repair and related warranty must be included in the customer file. Costs are not to exceed \$3,000 during the Contract period.

(6) When a Household's crisis meets the definition of Life Threatening Crisis and the Household has a utility disconnection notice or is low on fuel, regardless of whether the county is experiencing Extreme Weather Conditions, utility or fuel assistance can be provided.

(d) When portable heating/cooling units are purchased or repaired, the following requirements must be met:

(1) Purchase of more than two portable heating or cooling, or heating and cooling units per Household requires prior written approval from the Department;

(2) Purchase of portable heating or cooling, or heating and cooling units which require performance of electrical work for proper installation requires prior written approval from the Department;

(3) Replacement of central systems and combustion heating units is not an approved use of crisis funds; and

(4) Portable heating or cooling, or heating and cooling units must be Energy Star[®]. In cases where the type of unit is not rated by Energy Star[®], or if Energy Star[®] units are not available due to supply shortages, Subrecipient may purchase the highest rated unit available.

(e) When natural disasters result in energy supply shortages or other energy-related emergencies, CEAP will allow home energy related expenditures for:

(1) Costs to temporarily shelter or house individuals in hotels, apartments or other living situations in which homes have been destroyed or damaged, i.e., placing people in settings to preserve health and safety and to move them away from the crisis situation;

(2) Costs for transportation (such as cars, shuttles, buses) to move individuals away from the crisis area to shelters, when health and safety is endangered by loss of access to heating or cooling; (3) Utility reconnection costs;

(4) Blankets, as tangible benefits to keep individuals warm;

(5) Crisis payments for utilities and utility deposits; and

(6) Purchase of fans, air conditioners and generators. The number, type, size and cost of these items may not exceed the minimum needed to resolve the crisis.

(f) Time Limits for Assistance. Subrecipients shall ensure that for customers who have already lost service or are in immediate danger of losing service, some form of assistance to resolve the crisis shall be provided within a 48-hour time limit (18 hours in life-threatening situations). The time limit commences upon completion of the application process. The application process is considered to be complete when an agency representative accepts an application, and completes the eligibility process.

(g) Subrecipients must maintain written documentation in customer files showing crises resolved within appropriate timeframes. Subrecipients must maintain documentation in customer files showing that a utility bill used as evidence of a crisis was received by the Subrecipient during the effective contract term. The Department may disallow improperly documented expenditures.

§6.311. Utility Assistance Component.

(a) <u>A</u>Subrecipients may use home energy payments to assist Low Income Households to reduce their home energy costs. Subrecipients shall combine home energy payments with energy conservation tips, participation by utilities, and coordination with other services in order to assist <u>I</u>Low <u>i</u>Income Households to reduce their home energy needs.

(b) Subrecipients must make payments directly to vendors and/or landlords on behalf of eligible Households.

(c) For Vulnerable Population Households, service and repair of existing heating and cooling units is allowed when the Household has an inoperable heating or cooling system. If a component(s) of the heating or cooling system cannot be repaired using parts, the Subrecipient can replace the component(s) in order to repair the heating or cooling system. The cost shall not exceed \$3,500 and will not be counted towards the total maximum per Household allowable under the Utility Assistance Component. Subrecipients may leverage this type of assistance with LIHEAP and/or DOE Weatherization.

§6.312. Payments to Subcontractors and Vendors.

(a) A bi-annual Vendor Agreement is required to be implemented by the Subrecipient and shall contain assurances as to fair billing practices, delivery procedures, and pricing procedures for business transactions involving CEAP beneficiaries. The Subrecipient must use the Department's current Vendor Agreement template, found on the CEAP Program Guidance page of the Department's website. These agreements are subject to monitoring procedures performed by the Department staff.

(b) Subrecipient shall maintain proof of payment to Subcontractors and vendors as required by Chapter 1, Subchapter D, of this <u>part</u>title.

(c) Subrecipient shall notify each participating Household of the amount of assistance <u>to be paid</u> on its behalf. Subrecipient shall document this notification.

(d) Subrecipients shall use the Vendor Payment method for CEAP components. Subrecipient shall not make cash payments directly to eligible Household for any of the CEAP components.

(e) Payments to Vendors for which a valid Vendor Agreement is not in place may be subject to disallowed costs unless prior written approval is obtained from the Department.

(f) A Vendor Refund is program income and must be reimbursed to the Subrecipient, and not the customer._(g)_When a Vendor Refund is issued, Subrecipient shall determine which TDHCA Contract the payment(s) was charged to, the Household associated to the payment, and if the Contract remains open.

(1) If the Contract remains open, Subrecipient must enter the amount into the Contract System in the appropriate budget line item into the adjustment column in the next monthly report, and make the appropriate note in the system. This will credit back the Vendor Refund for the Subrecipient to expend on eligible expenses.

(2) If the Contract is closed, Subrecipient must return the Vendor Refund(s) to the Department within ten calendar days of receipt. The payment must contain the Contract number and appropriate budget line item associated with the refund.

§6.313. Outreach, Accessibility, and Coordination.

(a) The Department may continue to develop interagency collaborations with other low-income program offices and energy providers to perform outreach to targeted groups.

(b) Subrecipients shall conduct outreach activities. (c) Outreach activities may include:

(1) <u>providing_Providing_information</u> through home visits, site visits, group meetings, or by telephone for disabled low-income persons;

(2) <u>distributing Distributing posters/flyers and other informational materials at local and county</u> social service agencies, offices of aging, Social Security offices, etc.;

(3) providing <u>Providing</u> information on the program and eligibility criteria in articles in local newspapers or broadcast media announcements;

(4) <u>coordinating_Coordinating_</u>with other low-income services to provide CEAP information in conjunction with other programs;

(5) providing Providing information on one-to-one basis for applicants in need of translation or interpretation assistance;

(6) providing <u>Providing</u> CEAP applications, forms, and energy education materials in English and Spanish (and other appropriate language(s));

(7) working Working with energy vendors in identifying potential applicants;

(8) assisting Assisting applicants to gather needed documentation; and

(9) mailing Mailing information and applications.

(<u>cd</u>) Subrecipients shall accept applications at sites that are geographically and physically accessible to all Households requesting assistance. If Subrecipient's office is not accessible, Subrecipient shall make-<u>handle R</u>reasonable <u>A</u>accommodation<u>requests</u>, in accordance with 10 <u>TAC §1.204 of this title (relating to Reasonable Accommodations)</u>. to ensure that all Households can apply for assistance.

(de) Subrecipients shall coordinate with other social service agencies through cooperative agreements to provide services to customer Households. Cooperative agreements must clarify procedures, roles, and responsibilities of all involved entities.

(<u>e</u>f) Subrecipients shall coordinate with other energy related programs. Specifically, Subrecipient shall make documented referrals to the local WAP Subrecipient.

(<u>fg</u>) Subrecipients shall coordinate with local energy vendors to arrange for arrearage reduction, reasonably reduced payment schedules, or cost reductions.

SUBCHAPTER D WEATHERIZATION ASSISTANCE PROGRAM

§6.401. Background.

The Weatherization Assistance Program was established by the Energy Conservation in Existing Buildings Act of 1976, as amended 42 U.S.C. §§6851, et seq. The Department funds the Weatherization Programs through the Department of Energy Weatherization Assistance Program (DOE-WAP) which is funded through the U.S. Department of Energy Weatherization Assistance Program for Low Income Persons grant and the Low Income Home Energy Assistance Program Weatherization Assistance Program ("LIHEAP-WAP") which is funded through the U.S. Department of Health and Human Services' Low-Income Home Energy Assistance Program (LIHEAP) grant.

§6.402. Purpose and Goals.

(a) DOE-WAP and LIHEAP-WAP offers awards to Private Nonprofit Organizations, and Public Organizations with targeted beneficiaries being Households with low incomes, with priority given to Vulnerable Populations, High Energy Burden, and Households with High Energy Consumption. In addition to meeting the income-eligibility criteria, the weatherization measures to be installed must meet specific energy-savings goals. Neither of these programs are entitlement programs

and there are not sufficient funds to serve all customers that may be eligible.

(b) The programs fund the installation of weatherization materials and provide energy conservation education. The programs help control energy costs to ensure a healthy and safe living environment.

(c) Organizations administering a Department-funded weatherization program must administer both the DOE-WAP and the LIHEAP-WAP. Organizations that have one Weatherization program removed will have both programs removed. <u>If it is necessary to designate a new Subrecipient to</u> <u>administer WAP, the Department shall give special consideration to Subrecipients receiving funds</u> <u>under LIHEAP or DOE WAP, in accordance with Assurance 6 of the Low Income Home Energy</u> <u>Assistance Act of 1981.</u>

(d) The Department shall administer and implement the DOE-WAP program in accordance with DOE rules (10 CFR Part 440), except that Categorical Eligibility will follow the eligibility reflected in <u>the</u> LIHEAP plan. The Department shall administer and implement the LIHEAP-WAP program in accordance with a combination of LIHEAP statute (42 U.S.C. §§6861, et seq.) and DOE rules. LIHEAP Weatherization measures may be leveraged with DOE Weatherization measures in which case all DOE rules and requirements <u>as described in this title and in the Contract will apply</u>.

§6.403. Definitions.

(a) Department of Housing and Urban Development ("HUD")--Federal department that provides funding for certain housing and community development activities.

(b) Electric Base-Load Measure (EBL)--Weatherization measures which address the energy efficiency and energy usage of lighting and appliances.

(c) Energy Audit--The energy audit software and procedures used to determine the cost effectiveness of Weatherization measures to be installed in a Dwelling Unit. The Energy Audit shall be used for any Dwelling Unit weatherized utilizing DOE funds.

(d) Energy Repairs--Weatherization-related repairs necessary to protect or complete regular Weatherization energy efficiency measures.

(e) Multifamily Dwelling Unit--A structure containing more than one Dwelling Unit.

(f) Priority List--For LIHEAP-WAP only, a list developed by the Department, as may be updated from time to time, included in the Contract, and which provides the prescribed method to be used by Subrecipients when addressing weatherization measures.

(fg) Rental Unit--A Dwelling Unit occupied by a person who pays rent for the use of the Dwelling Unit.

(gh) Renter--A person who pays rent for the use of the Dwelling Unit.

(hj) Reweatherization--Consistent with 10 CFR §440.18(e)(2), if a Dwelling Unit has been damaged by fire, flood, or act of God and repair of the damage to Weatherization materials is not paid for by insurance; or if a Dwelling Unit was partially weatherized under a federal program during the period September 30, 1975, through September 30, 1994, the Dwelling Unit may receive further financial assistance for Reweatherization.

(ij) Shelter--a Dwelling Unit or Units whose principal purpose is to house on a temporary basis individuals who may or may not be related to one another and who are not living in nursing homes, prisons, or similar institutional care facilities.

(jk) Significant Energy Savings--A Savings to Investment Ratio (SIR) of 1.0 or greater.

(kl) Single Family Dwelling Unit--A structure containing no more than one Dwelling Unit.

(<u>Im</u>) Weatherization Assistance Program Policy Advisory Council (<u>"WAP PAC"</u>)--The WAP PAC was established by the Department in accordance with 10 CFR §440.17 to provide advisory services

in regards to the DOE WAP program.

(mn) Weatherization Material--The material listed in Appendix A of 10 CFR Part 440.

(no) Weatherization--A program conducted to reduce heating and cooling demand of Dwelling Units that are energy inefficient.

§6.404. Distribution of WAP Funds.

(a) Except for the reobligation of deobligated funds, the Department distributes funds to Subrecipients by an allocation formula.

(b) The allocation formula allocates funds based on the number of Low Income Households in a service area and takes into account certain special needs of individual service areas, as set forth below. The need for energy assistance in an area is addressed through a weather factor (based on heating and cooling degree days). The extra expense in delivering services in sparsely populated areas is addressed by an inverse Population Density factor. The lack of additional services available in very poor counties is addressed by a county median income factor. Finally, the Elderly are given priority by giving greater weight to this population. The five factors used in the formula are calculated as follows:

 County Non-Elderly Poverty Household Factor--The number of Non-Elderly Poverty Households in the County divided by the number of Non-Elderly Poverty Households in the State;
 County Elderly Poverty Household Factor--The number of Elderly Poverty Households in the county divided by the number of Elderly Poverty Households in the State;

(3) County Inverse Household Population Density Factor---

(A) The number of square miles of the county divided by the number of Households of the county (equals the inverse Household population density of the county); and

(B) Inverse Household Population density of the county divided by the sum of inverse Household densities.

(4) County Median Income Variance Factor---

(A) State median income minus the county median income (equals county variance); and

(B) County variance divided by sum of the State county variances;

(5) County Weather Factor--

(A) County heating degree days plus the county cooling degree days, multiplied by the poverty Households, divided by the sum of county heating and cooling degree days of counties (equals County Weather); and

(B) County Weather divided by the total sum of the State County Weather.

(<u>c</u>C) The five factors carry the following weights in the allocation formula: number of Non-Elderly Poverty Households (40-<u>%percent</u>), number of poverty Households with at least one member who is 60 years of age or older (40-<u>percent</u>%), Household density as an inverse ratio (5<u>% percent</u>), the median income of the county (5-<u>percent</u>%), and a weather factor based on heating degree days and cooling degree days (10-<u>percent</u>%). All demographic factors are based on the most current decennial U.S. Census. The formula is as follows:

(1i) County Non-Elderly Poverty Household Factor (0.40) plus;

(2ii) County Elderly Poverty Household Factor (0.40) plus;

(3iii) County Inverse Household Population Density Factor (0.05) plus;

(4iv) County Median Income Variance Factor (0.05) plus;

(5+) County Weather Factor (0.10);

(<u>6vi</u>) total <u>Total</u> sum of <u>paragraphs</u> (<u>1</u>) through (<u>5</u>)<u>clauses</u> (i) (v) of this sub<u>section</u><u>paragraph</u> <u>is</u> multiplied by <u>the</u> total funds allocation <u>to generate</u><u>equals</u> the county's allocation of funds.

(<u>7vii</u>) the <u>The</u> sum of the county allocation within each Subrecipient service area equals the Subrecipient's total allocation of funds.

<u>(c) To the extent that Contract funds have been deobligated, or should additional funds become</u> available, those funds will be allocated using this formula or other method approved by the Department's Board to ensure full utilization of funds within a limited timeframe, including possible allocation of WAP funds to Subrecipients in varying populations from each funding source (DOE and LIHEAP), based on availability of the source.

(d) In the event that a Subrecipient who has been awarded LIHEAP WAP funds elects to voluntarily transfer some portion of their LIHEAP WAP funds to the LIHEAP CEAP activity, a request to do so must be submitted prior to August 1 of the first year of the federal LIHEAP award period. The amount of funds being voluntarily transferred will be returned to the Department and redistributed among LIHEAP CEAP providers to ensure appropriate coverage among counties. This may mean the LIHEAP funds are awarded to that same Subrecipient having made the request, but alternatively could mean that the funds may be awarded to one or more other CEAP Subrecipients providing CEAP services in the counties for which the WAP funds were transferred. The Department will distribute the funds proportionally to the affected counties and CEAP Subrecipients in the service area using the allocation formula in §6.303 of this title (relating to Distribution of CEAP Funds).

(e) Subrecipients that do not expend more than 20 percent of Program Year formula allocation (excluding any additional funds that may be distributed by the Department and any funds voluntarily transferred to LIHEAP CEAP) by the end of the first quarter of the year following the Program Year for two consecutive years will have funding recaptured. LIHEAP-WAP funding recapture will be consistent with Chapter 2105. The Subrecipient of the funds will be provided a Contract for the average percentage of funds that they expended over the last two years.

(f) The cumulative balance of the funds made available through subsection (e) of this section will be allocated proportionally by formula to the entities that expended 90 percent of the prior year's Contract, excluding adjustments made in subsection (e), by the end of the original Contract Term. (ge) To the extent federal funding awarded to Texas is limited from one of the two WAP funding sources, possible allocations of funds to Subrecipients may be made in varying proportions from each source to maximize efficient program administration.

(hf) The Department may, in the future, undertake to reprocure the <u>Subrecipients entities</u> that comprise the network of Weatherization providers, in which case this allocation formula will be reassessed and, if material changes are needed, amended by rulemaking.

§6.405. Deobligation and Reobligation of Awarded Funds.

(a) A Subrecipient that does not expend more than 20% of its Program Year formula allocation (excluding any additional funds that may be distributed by the Department and any funds voluntarily transferred to LIHEAP CEAP) by the end of the first quarter of the Contract Term following the Program Year for two consecutive years will have funding recaptured. A Subrecipient's Contract will be amended to reflect the average percentage of funds that expended over the last two years. LIHEAP-WAP funding recapture will be consistent with Tex. Gov't Code, Chapter 2105.

(b) The cumulative balance of the funds made available in subsection (a) of this section will be allocated proportionally by formula to Subrecipients that expended 90% of the prior year's Contract, excluding adjustments made in subsection (a), by the end of the original Contract Term. (ca) At any time that a Subrecipient believes they may be at risk of meeting one of the criteria

noted in subsection (<u>n</u>) of this section relating to criteria for Deobligation of funds, notification must be provided to the Department unless excepted under subsection (<u>om</u>) of this section.

(db) A written "Notification of Possible Deobligation" will be sent to the Executive Director of the Subrecipient by the Department as soon as <u>the Department identifies that</u> a criterion listed in subsection (<u>n</u>!) of this section is at risk of <u>not</u> being met. Written notice will be sent electronically and/or by mail. The notice will include an explanation of the criteria met. A copy of the written notice will be sent to the Board of Directors <u>or other governing body</u> of the Subrecipient by the Department on or after<u>at least</u> ten (10) calendar days after the notice to the Executive Director has been released. A Notification will not be sent, and the steps in this section not triggered, if an Amendment increasing funds by at least 20% has been provided to the Subrecipient in the prior 90 calendar days.

(<u>ee</u>) Within fifteen (15) calendar days of the date of the "Notification of Possible Deobligation" referenced in subsection (<u>db</u>) of this section, a Mitigation Action Plan must be submitted to the Department by the Subrecipient in the format prescribed by the Department unless excepted under subsection (<u>om</u>) of this section.

(fd) A Mitigation Action Plan is not limited to but must include:

(1) Explanation of why the identified criteria under this section occurred setting out all fully relevant facts.

(2) Explanation of how the criteria will be immediately, permanently, and adequately mitigated such that funds are expended during the Contract Period. For example, if production or expenditures appear insufficient to complete the Contract timely, the explanation would need to address how production or expenditures will be increased in the short- and long-term to restore projected full <u>Expenditure</u> and timely execution of the contract.

(3) If applicable because of failure to produce Unit Production or Expenditure targets under the existing Production Schedule, a detailed narrative of how the Production Schedule will be adjusted, going forward, to assure achievement of sufficient, achievable Unit Production and Expenditures to ensure timely and compliant full utilization of all funds.

(4) An explanation of how the other criteria under this section will be mitigated. For example, if Unit Production criteria for a time period were not met, then the explanation will need to include how the other criteria will not be triggered.

(5) If relating to a Unit Production or Expenditure criteria, a description of activities currently being undertaken including an accurate description of the number of units in progress, broken down by number of units in each of these categories: units that have been qualified, audited, assessed, contracted, inspected, and invoiced and as reflected in an updated Production Schedule.

(6) Provide any request for a reduction in Contracted Funds, reasons for the request, desired Contracted Funds <u>amount</u>, and revised Production Schedule reflecting the reduced Contracted Funds.

(ge) At any time after sending a Notification of Deobligation, the Department or a third-party assigned by the Department may monitor, conduct onsite visits <u>-or perform other assessments</u> or engage in any other oversight of the Subrecipient that is determined appropriate by the Department under the facts and circumstances.

(<u>h</u>f) The Department or a third-party assigned by the Department will review the Mitigation Action Plan, and where applicable, assess the Subrecipient's ability to meet the revised Production Schedule or remedy other Concern.

(ig) After the Department's receipt of the Mitigation Action Plan, the Department will provide the

Subrecipient a written Corrective Action Notice which may include one or more of the criteria identified in this section (relating to deobligation and other mitigating actions) or other acceptable solutions or remedies.

(jh) The Subrecipient has seven (7)-calendar days from the date of the Corrective Action Notice to appeal the Corrective Action Notice to the Executive Director. Appeals may include:

(1) <u>A rRequest to retain for the full Fund Award if Partial Deobligation was indicated;</u>

(2) <u>A r</u>Request for only partial Deobligation of the full Contracted Fund if full Deobligation was indicated in the Corrective Action Notice; <u>or</u>

(3) Request for other lawful action consistent with the timely and full completion of the <u>Ceontract</u> and Production Schedule for all Contracted Funds.

(<u>ki</u>) In the event that an appeal <u>of a staff decision under this section</u> is submitted to the Executive Director, the Executive Director may grant extensions or forbearance of targets included in the Production Schedule, <u>may provide for</u> continued operation of a Contract, <u>may</u> authorize Deobligation, or <u>may</u> take other lawful action that is designed to ensure the timely and full completion of the Contract for all Contracted Funds.

(I) In the event an appeal is not submitted within seven calendar days from the date of the Corrective Action Notice, the Corrective Action Notice will automatically become final without need of any further action or notice by the Department, and the Department will amend/terminate the Contract with the Subrecipient to effectuate the Corrective Action Notice. (mj) In the event the Executive Director denies an appeal of a staff decision under this section, the Subrecipient will have the opportunity to have their appeal presented at the next meeting of the Department's governing board for which the matter may be posted in accordance with law and submitted for final determination by the Board.may appeal that decision in accordance with §1.7(f) of this title (relating to the Process for Filing an Appeal of the Executive Director's Decision to the Board).

(k) In the event an appeal is not submitted within seven (7) calendar days from the date of the Corrective Action Notice, the Corrective Action Notice will automatically become final without need of any further action or notice by the Department, and the Department will amend/terminate the contract with the Subrecipient to effectuate the Corrective Action Notice. (nł) Any one or more of \mp the criteria noted in this subsection will prompt the Deobligation process under this rule. If the criteria are met, then notification and ensuing processes discussed elsewhere in this subchapter will apply.

(1) Subrecipient fails to provide the Department with a Production Schedule for <u>its</u>their current Contract within 30 calendar days of receipt of the draft Contract. The Production Schedule must be signed by the Subrecipient's Executive Director/Chief Executive Officer, and approved by the Department in writing;

(2) By the third program reporting deadline, Subrecipient must report at least one unit weatherized for each Weatherization <u>C</u>eontract;

(3) By the fifth program reporting deadline, less than 25% of total expected unit production has occurred based on the Production Schedule, or less than 20% of total Awarded Funds have been expended;

(4) By the seventh program reporting deadline, less than 50% of total expected unit production has occurred based on the Production Schedule, or less than 50% of total Awarded Funds have been expended; <u>or</u>

(5) The Subrecipient fails to submit a required monthly report explaining any variances between the Production Schedule and actual results on Production Schedule criteria.

(<u>om</u>) Notification of Deobligation will not be required to be sent to a Subrecipient, and a Mitigation Action Plan will not be required to be provided to the Department, if any one or more of the following <u>exceptions</u> are satisfied:

(1) The total cumulative unit production for the Subrecipient, based on the monthly report as reported in the Community Affairs <u>Ceontract</u> <u>S</u>system, is at least 75% of the total cumulative number of units to be completed as of the end of the month according to the Subrecipient's forecast unit production within the Production Schedule for the time period applicable (i.e. cumulative through the month for which reporting has been made).

(2) The total cumulative expenditures for the Subrecipient, based on the monthly report as reported in the Community Affairs <u>C</u>eontract <u>S</u>system, is at least 75% of the total cumulative estimated expenditures to be expended as of the end of the month according to the Subrecipient's forecast expenditures within the Production Schedule for the time period applicable (i.e., cumulative through the month for which reporting has been made).

(3) The Subrecipient's monthly reports as reported in the Community Affairs <u>C</u>eontract <u>S</u>system, for the prior two months, as required under the Contract, reflects unit production that is 80% or more of the expected unit production amount to be completed as of the end of the month according to the Subrecipient's forecast unit production within the Production Schedule.

(pn) A Subrecipient that has funds Deobligated under this section but that fully expends the reduced amount of its Contract, will have access to the full amount of the following Program Year WAP allocation. A Subrecipient which has had funds Deobligated under this section that fails to fully expend the reduced amount of its Contract will automatically have its following Program Year WAP allocation Deobligated by the lesser of 24.99% or the proportional amount that had been Deobligated in the prior year.

(q) Funds deobligated under this section, funds voluntarily relinquished, or additional funds should they become available, will be reobligated proportionally by the formula described in §6.403 of this subchapter or other method approved by the Department's Board amongst all Subrecipients that did not have any funds Deobligated during this evaluation period to ensure full utilization of funds within a limited timeframe including possible allocation of WAP funds to Subrecipients in varying populations from each funding source (DOE and LIHEAP), based on availability of the source.

§6.406. Subrecipient Requirements for Establishing Priority for Eligible Households and Customer Eligibility Criteria.

(a) Subrecipient shall establish eligibility and priority criteria to increase the energy efficiency of dwellings owned or occupied by Low Income persons who are particularly vulnerable such as the Elderly, Persons with Disabilities, Families with Young Children, Households with High Energy Burden, and Households with High Energy Consumption.

(b) Subrecipient shall follow the Department rules and established state and federal guidelines for determining eligibility for Multifamily Dwelling Units as referenced in §6.414 of this subchapter (relating to Eligibility for Multifamily Dwelling Units).

(eb) Subrecipient shall determine applicant income eligibility in compliance with §6.4 of this chapter (relating to Income Determination).

(c) Categorical Eligibility for DOE-WAP benefits exist when at least one person in the Hhousehold receives assistance payments under Title IV or XVI of the Social Security Act at any time during the 12-month period preceding the determination of eligibility. Categorical Eligibility for LIHEAP-WAP benefits are the same as those specified for CEAP benefits described in §6.307(b) of this

chapter.

(d) Social Security numbers are not required for applicants.

(e) U.S. Citizen, U.S. National or Qualified Alien. Unqualified Aliens are not eligible to receive WAP benefits. Mixed Status Households shall not be denied WAP assistance based solely on the presence of a non-qualified member, except if the member is the sole member of the Household. A Public Organization must verify U.S. Citizen, U.S. National, or Qualified Alien status of all Hhousehold members using SAVE. Assistance shall be determined as follows:

(1) Count income for all Household members eighteen years of age and older, including Unqualified Aliens; and

(2) Adjust the Household size for determining eligibility and benefit assistance level to exclude all Unqualified Aliens.

(f) For purposes of determining Categorical Eligibility or Vulnerable Populations (e.g. priority status) the Household is not considered to satisfy the definition of having Categorical Eligibility or Vulnerable Population if the only individual(s) in the Household with Categorical Eligibility or Vulnerable Population status is an Unqualified Alien. For purposes of reporting, all individuals in the Household should be reported.

§6.407. Program Requirements.

(a) Each Dwelling Unit weatherized requires completion of a written whole house assessment. Subrecipient must perform the whole house assessment then let that assessment guide whether the Dwelling Unit is best served through DOE funds using the audit, through LIHEAP WAP funds using the priority list, or a combination of DOE and LIHEAP funds.

(b) Any Dwelling Unit that is weatherized using DOE funds must use the <u>State of Texas approved</u> <u>Energy aA</u>udit as a guide for installed measures. A Subrecipient combining DOE funds with LIHEAP WAP funds <u>on an individual Dwelling Unit or building</u> may not mix the use of the <u>Energy aA</u>udit and the <u>Ppriority List</u>.

(c) Any Dwelling Unit that is weatherized using LIHEAP only must be completed using the pPriority <u>4List</u> as a guide for installed measures. Failure to complete a written whole house assessment as indicated in §6.416 of this subchapter (relating to Whole House Assessment) prior to Weatherization may lead to unit failure during quality control inspection.

(d) If a Subrecipient's Weatherization work does not consistently meet DOE Standard Work Specifications Weatherization standards, the Department may proceed with the removal of the programs from the Subrecipient.

§6.408. Department of Energy Weatherization Requirements.

(a) In addition to cost principles and administrative requirements listed in §1.402 in Chapter 1 of this <u>Part_part_(relating to Cost Principles and Administrative Requirements)</u>, Subrecipients administering DOE programs must also adhere to 10 CFR Part 440_10 CFR Part 600, and the <u>applicable International Residential Code (IRC)</u>.

(b) WAP Policy Advisory Council. In accordance with Tex. Gov't Code, §2110.005 and 10 CFR §440.17, the Department shall establish the Weatherization Assistance Program Policy Advisory Council (WAP PAC), with which it will consult prior to the submission of the annual plan and award of funds to DOE.

(c) Adjusted Average Expenditure Per Dwelling Unit. Expenditures of financial assistance provided under DOE-WAP funding for the Weatherization services for labor, weatherization materials, and program support shall not exceed the DOE adjusted average expenditure limit for the current

<u>Program Y</u>ear per Dwelling Unit as provided by DOE, and as cited in the Contract, without special agreement via an approved waiver from the Department.

(d) Electric Base Load Measures. DOE has approved the inclusion of selected Electric Base Load (EBL) measures as part of the Weatherization of eligible residential units. EBL measures must be determined cost effective with a Savings to Investment Ratio ("SIR") of one or greater by audit analysis. Refrigerators must be metered for a minimum of two (2) hours when calculating the EBL and SIR.

(e) Subrecipients may not enter into vehicle lease agreements for vehicles used in the WAP and paid for with WAP funds.

(f) Energy Audit. Subrecipients are required to complete a State of Texas approved Energy Audit to determine allowable weatherization measures prior to commencing Weatherization work. (fg) Energy Audit Procedures.

(1) SIR for the Energy Audit procedures will determine the installation of allowable Weatherization measures. The Weatherization measures must result in energy cost savings over the lifetime of the measure(s), discounted to present value, that equal or exceed the cost of materials, and installation. An Energy Audit may consist of Incidental Repairs, Energy-Saving Measures (starting with Duct Sealing and Infiltration Reduction), and Health and Safety Measures. All Energy-Saving Measures must rank with an SIR of one or greater. The total Cumulative SIR, prior to Health and Safety measures, must be a one or greater in order to weatherize the dwelling unit.

(2) The Energy Audit has not been approved for multifamily buildings containing 25 or more units. Subrecipients that propose weatherizing a building containing 25 or more units must <u>receive</u> <u>approval fromcontact</u> the Department for <u>assistance</u> prior to beginning any Weatherization activity.

(3) Energy Auditors must use the established R-values for existing measures provided in the International Energy Conservation Code ("IECC") when entering data into the Energy Audit. Subrecipients must follow minimum requirements set in the <u>applicable State of Texas adopted</u> International Residential Code ("IRC") or jurisdictions authorized by state law to adopt later editions.

(4) Subrecipients utilizing the Energy Audit must enter into the audit all materials and labor measures proposed to be installed.

§6.409. LIHEAP Weatherization Requirements.

(a) Allowable Expenditure per Dwelling Unit. Expenditures of financial assistance provided under LIHEAP-WAP funding for the weatherization services for labor, Weatherization materials, and program support shall not exceed the allowable figure as set forth in the current Contract-term, without prior written approval from the Department. The cumulative cost per unit (materials, labor and program support), shall not exceed the maximum allowable by the end of the <u>C</u>eontract <u>T</u>term.

(b) Allowable Activities. Subrecipients are is limited to allowed to perform Weatherization measures as detailed in the pPriority IList Exhibit to the Weatherization Contract. Measures must be performed addressed according to the instructions in the order detailed in the Exhibit. Subrecipient shall include in the customer file detailed documentation to explain omitted measures.

(c) Outreach and Accessibility.

(1) Subrecipients shall conduct outreach activities, which may include but are not limited to:

(A) <u>pP</u>roviding information through home visits, site visits, group meetings, or by telephone for disabled low-income persons;

(B) <u>dD</u>istributing posters/flyers and other informational materials at local and county social service agencies, offices of aging, social security offices, etc.;

(C) <u>Pp</u>roviding information on the program and eligibility criteria in articles in local newspapers or broadcast media announcements;

(D) e<u>C</u>oordinating with other low-income services to provide LIHEAP information in conjunction with other programs;

(E) <u>pP</u>roviding information on one-to-one basis for applicants in need of translation or interpretation assistance;

(F) <u>pP</u>roviding LIHEAP applications, forms, and energy education materials in English and Spanish (and other appropriate language);

(G) \underline{W} orking with energy vendors in identifying potential applicants;

(H) aAssisting applicants to gather needed documentation; and

(I) mMailing information and applications.

(2) Subrecipients and their field offices shall accept applications at sites that are geographically accessible to all Households requesting assistance.

(d) Priority Assessment. Subrecipients must conduct an assessment of Dwelling Units using the LIHEAP Priority List, including all required Health and Safety and energy efficiency measures. (de) LIHEAP Subrecipient Eligibility.

(1) The Department administers the program through the existing Subrecipients that have demonstrated that they are operating the program in accordance with their Contract, the Economic Opportunity Act of 1964, the Low-Income Home Energy Assistance Act of 1981, as amended (42 U.S.C. §§8621, et seq.), and the Department rules. If a Subrecipient is successfully administering the program, the Department may offer to renew the Contract.

(2) If the Department determines that a Subrecipient is not administering the program satisfactorily, the Subrecipient will be required to take corrective actions to remedy the problem within the timeframe referenced in the issued monitoring report, unless it is a case of customer health or safety. If Subrecipient fails to correct the Deficiency or Finding, in order to ensure continuity of services, the Department may take an action in accordance with §1.411(f) of this <u>Ttitle</u>, (relating to Nonrenewal or Reduction of Block Grant Funds to a Specific Subrecipient. (3) If the Subrecipient does not complete the corrective action within the required timeframe, the Department may conduct a solicitation for selection of an interim Subrecipient. The affected Subrecipient may request a hearing in accordance with the Tex. Gov't Code, §2105.204.

(4) If it is necessary to designate a new Subrecipient to administer LIHEAP WAP, the Department shall give special consideration to Eligible Entities and entities administering CEAP in the service area.

§6.410. Liability Insurance and Warranty Requirement.

Subrecipient Weatherization work shall be covered by general liability insurance for an amount not less than combined total of materials, labor, support and health and safety. The Department strongly recommends Pollution Occurrence Insurance to be part of or an addendum to Subrecipients's general liability insurance coverage. Subrecipients must ensure that each Subcontractor performing Weatherization activities maintain adequate insurance coverage for all units to be weatherized. Weatherization contractors must provide a one-year warranty on

their work for parts and labor; the period for the warranty coverage shall begin at the completion of installation. If Subrecipient relinquishes its Weatherization program, Weatherization work completed within 12 months of the date of surrender of the program, must be covered by general liability insurance or contractor warranty. Public Organizations that have self insurance complying with Tex. Gov't Code Chapter 2259 covering weatherization work, may, but are not required to, purchase additional coverage.

§6.411. Customer Education.

Subrecipients shall provide customer education to each WAP customer on energy conservation practices. Subrecipients shall provide education to identify energy waste, manage Household energy use, and strategies to promote energy savings. Subrecipients are is encouraged to use oral, written, and visual educational materials.

§6.412. Mold-like Substances.

(a) If the Subrecipient's energy auditor discovers the presence of mold-like substances that the Weatherization Subcontractor cannot adequately address, then the Dwelling Unit shall be referred to the Texas Department of Licensing and Regulation or its successor agency.

(b) The Subrecipient shall provide the applicant written notification that their home cannot, at this time, be weatherized and why. Subrecipient shall also inform the applicant in writing that they should contact the Texas Department of Licensing and Regulation, or successor agency, to report the presence of mold-like substances. The applicant should be advised that when the issue is resolved they may reapply for Weatherization. Should the applicant reapply for Weatherization, the Subrecipient must obtain written documentation of resolution of the issue from the applicant prior to proceeding with any Weatherization work.

(c) If the energy auditor determines that the mold-like substance is treatable and covers less than the 25 contiguous square feet limit allowed to be addressed by the Texas Department of Licensing and Regulation's, or successor agency's, guidelines, the Subrecipient shall notify the applicant of the existence of the mold-like substance and potential health hazards, the proposed action to eliminate the mold-like substance, and that no guarantee is offered that the mold-like substance will be eliminated, and that the mold-like substance may return. The <u>energy</u> auditor must obtain written approval from the applicant to proceed with the Weatherization work, and maintain the documentation in the customer file.

(d) Subrecipient shall be responsible for providing mold training to their employees and Weatherization Subcontractors.

§6.413. Lead Safe Practices.

Subrecipients are required to document that its Weatherization staff as well as <u>all</u> Subcontractors follow the Environmental Protection Agency's Renovation, Repair and Painting Program (RRP) Final Rule, 40 CFR Part 745 and HUD's Lead Based Housing Rule, 24 CFR Part 35, as applicable.

§6.414. Eligibility for Multifamily Dwelling Units and Shelters.

(a) Multifamily building and Shelter weatherization is not considered a federal public benefit and the activity is exempt from the requirements of §6.406(e) and (f) of this subchapter.

(ba) A Subrecipient may weatherize a building containing Rental Units if not less than 66% (50% for duplexes and four-unit buildings) of the Dwelling Units in the building are occupied by <u>Leow</u> <u>il</u>ncome Households, or will become occupied by Low-income Households within 180 days under

a Federal, State, or local government program for rehabilitating the building or making similar improvements to the building.

(<u>c</u>b) In order to weatherize large multifamily buildings containing twenty-five or more Dwelling Units or those with shared central heating (e.g., boilers) and/or shared cooling plants (e.g., cooling towers that use water as the coolant) regardless of the number of Dwelling Units, Subrecipient shall submit in writing to the Department a request for approval along with evidence which clearly shows that an investment of funds would result in Significant Energy Savings because of upgrades to equipment, energy systems, common space, or the building shell. When necessary, the Department will seek approval from DOE. Approvals from the Department in writing must be received prior to the installation of any Weatherization measures in this type of structure.

(de) In order to weatherize Shelters, Subrecipient shall submit a written request for approval from the Department. Written approval from the Department must be received prior to the installation of any Weatherization measures. Income determination is not required to be done for residents of Shelters.

(ed) If roof repair is to be considered as an eligible part of repair cost under the Weatherization process, the expenses must be shared equally by all eligible Dwelling Units weatherized under the same roof. If multiple storied buildings are weatherized, eligible ground floor units must be allocated a portion of the roof cost as well as the eligible top floor units. All Weatherization measures installed in multifamily units must meet the standards set in 10 CFR §440.18(d)(9) and (15), and Appendix A-Standards for Weatherization Materials.

(fe) WAP-Subrecipients shall establish a multifamily master file for each multifamily project in addition to the <u>applicable individual unitDwelling Unit record-keeping</u> requirements found in the record keeping requirement section of the cContract. The multifamily master file must include, at a minimum, the forms listed in paragraphs (1) - (6) of this subsection: (Forms available on the Department's website.)

(1) Multifamily Project Preparation Pre-Project Checklist Form;

(2) Multifamily Project Completion Post-Project Checklist Form;

(3) <u>Landlord</u> Permission to Perform an Assessment <u>and Inspections for Rental Unitsfor</u> Multifamily Project Form;

(4) Landlord Agreement Form;

(5) Landlord Financial Participation Form; and

(6) <u>Multifamily Project Building Data Checklist</u>Significant Data Required in all Multifamily Projects.

(g) Subrecipient shall contact the Department for record keeping guidance if it wishes to weatherize a Shelter.

(hf) For DOE WAP, if a public housing, or assisted multi-family or Low Income Housing Tax Credit (LIHTC) building has gone through the HUD Property Certification Procedure outlined in DOE Weatherization Program Notice 17-4 or is identified by the HUD and included on a list identified in Weatherization Program Notice 17-4 as having already gone through the HUD Property Certification Procedure published by DOE, that building meets certain income eligibility and may meet other WAP requirements without the need for further evaluation or verification by Subrecipient. A public housing, or assisted housing, and LIHTC building that does not appear on the list using HUD records may still qualify for the WAP. Income eligibility can be made on an individual basis by the Subrecipient based on information supplied by property owners and the Households in accordance with subsection (ba) (ig) For any Dwelling Unit that is weatherized using funding provided under DOE WAP, all Weatherization measures installed must be entered into an approved Energy Audit. Weatherization measures installed shall begin with repair items, then continue with those measures having the greatest SIR and proceed in descending order to the measures with the smallest SIR or until the maximum allowable per <u>Dwelling Uunit</u> expenditures are achieved, and finishing with Health and Safety measures.

§6.415. Health and Safety and Unit Deferral.

(a) Health and Safety expenditures with DOE WAP may not exceed 15% of total expenditures for Materials, Labor, Program Support, and Health and Safety at the end of the Contract <u>T</u>term. Health and Safety expenditures with LIHEAP WAP may not exceed 20% of total expenditures for Materials, Labor, Program Support, and Health and Safety at the end of the Contract <u>T</u>term.

(b) Subrecipient shall provide Weatherization services with the primary goal of energy efficiency. The Department considers establishing a healthy and safe home environment to be important to ensuring that energy savings result from Weatherization work.

(c) Subrecipient must test for high carbon monoxide ("CO") levels and bring CO levels to acceptable levels before Weatherization work can start. The Department has defined maximum acceptable CO readings in its Standard Work Specifications.

(d) A Dwelling Unit shall not be weatherized when there is a potentially harmful situation that may adversely affect the occupants or the Subrecipient's Weatherization crew and staff, or when a Dwelling Unit is found to have structural concerns that render the Dwelling Unit unable to benefit from Weatherization. The Subrecipient must declare their intent to defer Weatherization on an eligible unit on the assessment form. The assessment form should include the customer's name and address, dates of the assessment, and the date on which the customer was informed of the issue in writing. The written notice to the customer must include a clear description of the problem, conditions under which Weatherization could continue, the responsibility of all parties involved, and any rights or options the customer has. A copy of the notice must be given to the customer, and a signed copy placed in the customer application file. Only after the issue has been corrected to the satisfaction of the Subrecipient shall Weatherization work begin.

(e) If structural concerns or health and safety issues identified (which would be exacerbated by any Weatherization work performed) on an individual <u>Dwelling Uunit</u> cannot be abated within program rules or within the allowable WAP limits, the Dwelling Unit exceeds the scope of this program.

§6.416. Whole House Assessment.

(a) Subrecipients must conduct a whole house assessment on all eligible <u>unitsDwelling Units</u>. Whole house assessments must be used to determine whether the Priority List or an Energy Audit is most appropriate for the unit. Whole house assessments must include, but are not limited to the items described in paragraphs (1) - (15) of this subsection:

(1) Wall--Condition, type, orientation, and existing R-values;

(2) Windows--Condition, type material, glazing type, leakiness, and solar screens;

(3) Doors--Condition, type;

(4) Attic--Type, condition, existing R-values, and ventilation;

(5) Foundation--Condition, existing R-values, and floor height above ground level;

(6) Heating System--For all systems: unit type, fuel source (primary or secondary), thermostat, and output; for combustion systems only: vented or unvented efficiency, CO-levels, complete

fuel gas analysis, gas leaks, and combustion venting;

(7) Cooling System--Unit type, condition, area cooled, size in BTU rating, Seasonal Energy Efficiency Rating (SEER) or Energy Efficiency Rating ("EER"), manufacture date, and thermostat;

(8) Duct System--Condition, existing insulation level, evaluation of registers, duct infiltration, return air register size, and condition of plenum joints;

(9) Water Heater--For all water heaters: condition, fuel type, energy factor, recovery efficiency, input and output ratings, size, existing insulation levels, existing pipe insulation; for combustion water heaters only: carbon monoxide levels, draft test, complete fuel gas analysis;

(10) Refrigerator--Condition, manufacturer, manufacture date and make, model, and consumption reading (minutes and meter reading); customer refusal must be documented;

(11) Lighting System--Quantity, watts, and estimated hours used per day;

(12) Water Savers--Number of showerheads, estimated gallons per minute and estimated minutes used per day;

(13) Health and Safety--For all units: smoke detectors, wiring, minimum air exchange, moisture problems, lead paint present, asbestos siding present, condition of chimney, plumbing problems, mold; for units with combustion appliances: unvented space heaters, carbon monoxide levels on all combustion appliances, carbon monoxide detectors;

(14) Air Infiltration--To be determined from Blower Door testing; areas requiring air sealing will be noted; and

(15) Repairs--Measures needed to preserve or protect installed Weatherization measures may include lumber, shingles, flashing, siding, masonry supplies, minor window repair, gutters, downspouts, paint, stains, sealants, and underpinning.

(b) If using the Energy Audit, all allowable Weatherization measures needed must be entered. Measures will be performed in order of highest SIR to lowest depending on funds available. If using the Priority List, included Weatherization measures must be addressed <u>according to the</u> <u>instructions in the Exhibit to the Weatherization Contract.</u> in the order they appear on the list, or an explanation for excluding a measure must be provided.

§6.417. Blower Door Standards.

Subrecipients are is required to use the blower door/duct blower data form adopted by the Department and available on the Department's website (http://www.tdhca.state.tx.us/community-affairs/wap/index.htm).

8d

BOARD ACTION REQUEST

BOND FINANCE DIVISION

SEPTEMBER 5, 2019

Presentation, discussion, and possible action on an order proposing the repeal of 10 TAC Chapter 12, concerning the Multifamily Housing Revenue Bond Rules, and an order proposing new 10 TAC Chapter 12 concerning the Multifamily Housing Revenue Bond Rules, and directing their publication for public comment in the *Texas Register*

RECOMMENDED ACTION

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

WHEREAS, the Department is authorized to issue multifamily housing revenue bonds for the State of Texas by Tex. Gov't Code §2306.351 and Tex. Gov't Code §2306.359 requires the Department to provide for specific scoring criteria and underwriting considerations for multifamily private activity bond activities;

WHEREAS, the Department developed the Multifamily Housing Revenue Bond Rules to establish the procedures and requirements relating to the issuance of bonds; and

WHEREAS, such proposed rulemaking will be published in the *Texas Register* for public comment and subsequently returned to the Board for final adoption;

NOW, therefore, it is hereby

RESOLVED that the Executive Director and his designees be and each of them are hereby authorized, empowered, and directed for and on behalf of the Department, to cause the proposed repeal of the current 10 TAC Chapter 12, Multifamily Housing Revenue Bond Rules, and the proposed new 10 TAC Chapter 12, Multifamily Housing Revenue Bond Rules, together with the preambles in the form presented to this meeting, to be published in the *Texas Register* for public comment and, in connection therewith, make non-substantive technical corrections as they may deem necessary to effectuate the foregoing including any requested revisions to the preambles.

BACKGROUND

Attached to the Board Action Request is a draft that reflects the proposed changes to the 2020 Draft Multifamily Housing Revenue Bond Rules which incorporate staff's recommendations for the Board's consideration. The proposed changes are mostly to provide clarification or consistency with changes proposed to the Qualified Allocation Plan.

Attachment 1: Preamble, including required analysis, for proposed repeal of 10 TAC Chapter 12, Multifamily Housing Revenue Bond Rules

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 12, Multifamily Housing Revenue Bond Rules (Bond Rules). The purpose of the proposed repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

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

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

1. Mr. Robert Wilkinson, Executive Director, has determined that, for the first five years the proposed repeal would be in effect, the proposed repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, the issuance of Private Activity Bonds (PAB).

2. The proposed repeal does not require a change in work that would require the creation of new employee positions, nor is the proposed repeal significant enough to reduce work load to a degree that any existing employee positions are eliminated.

3. The proposed repeal does not require additional future legislative appropriations.

4. The proposed repeal does not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department.

5. The proposed repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The proposed action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, the issuance of PABs.

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 takings by the Department; therefore, no Takings Impact Assessment is required.

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

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

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5).

Mr. Wilkinson has determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of the repealed section would be an updated and more germane rule for administering the issuance of PAB. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4).

Mr. Wilkinson also has determined that for each year of the first five years the proposed repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 20, 2019 to October 11, 2019 to receive stakeholder comment on the proposed repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Shannon Roth, Bond Rule Public Comment, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-1895, attn: Shannon Roth, Bond Rule Public Comments, or by email to shannon.roth@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time OCTOBER 11, 2019.

STATUTORY AUTHORITY. The proposed repeal is made pursuant to TEX. GOV'T CODE §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed repealed sections affect no other code, article, or statute.

10 TAC Chapter 12, Multifamily Housing Revenue Bond Rule

§12.1. General.

§12.2. Definitions.

- §12.3. Bond Rating and Investment Letter.
- §12.4. Pre-Application Process and Evaluation.
- §12.5. Pre-Application Threshold Requirements.

§12.6. Pre-Application Scoring Criteria.

- §12.7. Full Application Process.
- §12.8. Refunding Application Process
- §12.9. Occupancy Requirements.

§12.10. Fees.

Attachment 2 Preamble, including required analysis, for proposed new 10 TAC Chapter 12, Multifamily Housing Revenue Bond Rules

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 12, Multifamily Housing Revenue Bond Rules (Bond Rule). The purpose of the proposed new section is to provide compliance with Tex. Gov't Code §2306.67022 and to update the rule to make minor administrative revisions, and to ensure that it is reflective of changes made in the Department's Qualified Allocation Plan.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action pursuant to item (9), which excepts rule changes necessary to implement legislation. The proposed rule provides compliance with Tex. Gov't Code §2306.359, which requires the Department to provide for specific scoring criteria and underwriting considerations for multifamily private activity bond activities.

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. Robert Wilkinson, Executive Director, has determined that, for the first five years the proposed new rule would be in effect:

1. The proposed rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to an existing activity, the issuance of Private Activity Bonds (PAB).

2. The proposed new rule does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.

3. The proposed rule changes do not require additional future legislative appropriations.

4. The proposed rule changes will not result in an increase in fees paid to the Department, but may, under certain circumstances, result in a decrease in fees paid to the Department regarding Tax-Exempt Bond Developments.

5. The proposed rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.

6. The proposed rule will not limit, expand or repeal an existing regulation but merely revises a rule.

7. The proposed rule will not increase nor decrease the number of individuals subject to the rule's applicability.

8. The proposed rule will not negatively nor positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this proposed rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, §2306.359. Although these rules mostly pertain to the filing of a bond pre-application, some stakeholders have reported that their average cost of filing a full Application is between \$50,000 and \$60,000, which may vary depending on the specific type of Application, location of the Development Site, and other non-state of Texas funding sources utilized. The proposed rules do not, on average, result in an increased cost of filing an application as compared to the existing program rules.

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 entities applying for multifamily PAB. Only those small or micro-businesses that participate in this program are subject to this rule. There are approximately 100 to 150 businesses, which could possibly be considered small or micro-businesses, subject to the proposed rule for which the economic impact of the rule would be a flat of \$8,500 which includes the filing fees associated with submitting a bond pre-application.

The Department bases this estimate on the potential number of Applicants and their related parties who may submit applications to TDHCA for PAB (and accompanying housing tax credits). There could be additional costs associated with pre-applications depending on whether the small or microbusinesses outsource how the application materials are compiled. The fee for submitting an Application for PAB layered with LIHTC is may range from \$480 to \$2,400 which is based on \$30 per unit, and all Applicants are required to propose constructing, at a minimum, 16 Units. The rule places a limit on the maximum number of Units that can be proposed, at 120 Units.

These Application Fee costs are not inclusive of external costs required by the basic business necessities underlying any real estate transaction, from placing earnest money on land, conducting an Environmental Site Assessment, conducting a market study, potentially retaining counsel, hiring an architect and an engineer to construct basic site designs and elevations, and paying any other related, third-party fees for securing the necessary financing to construct multifamily housing. Nor does this estimate include fees from the Department for Applications that successfully attain an award.

There are 1,296 rural communities potentially subject to the proposed rule for which the economic impact of the rule is projected to be \$0. 10 TAC Chapter 12 places no financial burdens on rural communities, as the costs associated with submitting an Application are born entirely by private parties. In an average year the volume of applications for PAB that are located in rural areas is not

more than 20% of all PAB applications received. In those cases, a rural community securing a PAB Development will experience an economic benefit, not least among which is the potential increased property tax revenue from a large multifamily Development.

3. The Department has determined that because there are rural PAB awardees, this program helps promote construction activities and long term tax base in rural areas of Texas. Aside from the fees and costs associated with submitting an Application, there is a probable positive economic effect on small or micro-businesses or rural communities that receive PAB awards and successfully use those awards to construct multifamily housing, although the specific impact is not able to be quantified in advance.

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

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

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the proposed rule may provide a possible positive economic effect on local employment in association with this rule since PAB Developments, layered with housing tax credits, often involve a total input of, typically at a minimum, \$5 million in capital, but often an input of \$10 million - \$30 million. Such a capital investment has concrete direct, indirect, and induced effects on the local and regional economies and local employment. However, because the exact location of where program funds or developments are directed is not determined in rule, and is driven by real estate demand, there is no way to determine during rulemaking where the positive effects may occur. Furthermore, while the Department knows that any and all impacts are positive, that impact is not able to be quantified for any given community until PABs and LIHTCs are actually awarded to a proposed Development, given the unique characteristics of each proposed multifamily Development and region in which it is being developed.

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 significant construction activity is associated with any PAB Development layered with LIHTC and each apartment community significantly increases the property value of the land being developed, there are no probable negative effects of the new rule on particular geographic regions. If anything, positive effects will ensue in those communities where developers receive PAB awards.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be an updated and more germane rule for administering the issuances of PABs and corresponding allocation of housing tax credits. There is no change to the

economic cost to any individuals required to comply with the new section because the same processes described by the rule have already been in place through the rule found at this section being repealed. The average cost of filing a pre-application and application remain unchanged based on these rules changes. The proposed rules do not, on average, result in an increased cost of filing an application as compared to the existing program rules.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new 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 same processes described by the rule have already been in place through the rule found at this section being repealed.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 20, 2019 to October 11, 2019 to receive stakeholder comment on the new proposed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Shannon Roth, Bond Rule Public Comment, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-1895, attn: Shannon Roth, Bond Rule Public Comments, or by email to shannon.roth@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time OCTOBER 11, 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.

§12.1. General.

(a) Authority. The rules in this chapter apply to the issuance of multifamily housing revenue bonds ("Bonds") by the Texas Department of Housing and Community Affairs ("Department"). The Department is authorized to issue Bonds pursuant to Tex. Gov't Code, Chapter 2306. Notwithstanding anything in this chapter to the contrary, Bonds which are issued to finance the Development of multifamily rental housing are subject to the requirements of the laws of the State of Texas, including but not limited to Tex. Gov't Code, Chapters 1372 and 2306, and federal law pursuant to the requirements of Internal Revenue Code ("Code"), §142.

(b) General. The purpose of this chapter is to state the Department's requirements for issuing Bonds, the procedures for applying for Bonds and the regulatory and land use restrictions imposed upon Bond financed Developments. The provisions contained in this chapter are separate from the rules relating to the Department's administration of the Housing Tax Credit program. Applicants seeking a Housing Tax Credit Allocation should consult Chapter 11 of this title (relating to the Housing Tax Credit Program Qualified Allocation Plan) for the current program year. In general, the Applicant will be required to satisfy the eligibility and threshold requirements of the Qualified Allocation Plan ("QAP") in effect at the time the Certificate of Reservation is issued by the Texas Bond Review Board ("TBRB"). If the applicable QAP or Uniform Multifamily Rules contradicts rules set forth in this chapter, the applicable QAP will take precedence over the rules in this chapter except in an instance of a conflicting statutory requirement, which shall always take precedence.

(c) Costs of Issuance. The Applicant shall be responsible for payment of all costs related to the preparation and submission of the pre-application and Application, including but not limited to, costs associated with the publication and posting of required public notices and all costs and expenses associated with the issuance of the Bonds, regardless of whether the Application is ultimately approved or whether Bonds are ultimately issued. At any point during the process, the Applicant is solely responsible for determining whether to proceed with the Application and the Department disclaims any and all responsibility and liability in this regard.

(d) Taxable Bonds. The Department may issue taxable Bonds and the requirements associated with such Bonds, including occupancy requirements, shall be determined by the Department on a case by case basis. Taxable bonds will not be eligible for an allocation of tax credits.

(e) Waivers. Requests for any permitted waivers of program rules must be made in accordance with §11.207 of this title (relating to Waiver of Rules).

§12.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Any capitalized terms not specifically mentioned in this section shall have the meaning as defined in Tex. Gov't Code, Chapter 2306, §§141, 142, and 145 of the Internal Revenue Code, and Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan).

(1) Institutional Buyer--Shall have the meaning prescribed under 17 CFR §230.501(a), but excluding any natural person or any director or executive officer of the Department (17 CFR §230.501(a)(4) - (6)), or as defined by 17 CFR §230.144(a), promulgated under the Securities Act of 1933, as amended.

(2) Persons with Special Needs--Shall have the meaning prescribed under Tex. Gov't Code, §2306.511.

(3) Bond Trustee--A financial institution, usually a trust company or the trust department in a commercial bank, that holds collateral for the benefit of the holders of municipal securities. The Bond Trustee's obligations and responsibilities are set forth in the Indenture.

§12.3. Bond Rating and Investment Letter.

(a) Bond Ratings. All publicly offered Bonds issued by the Department to finance Developments shall have a debt rating the equivalent of at least an "A" rating assigned to long-term obligations by Standard & Poor's Ratings Services, or Moody's Investors Service, Inc. If such rating is based upon credit enhancement provided by an institution other than the Applicant or Development Owner, the form and substance of such credit enhancement shall be subject to approval by the Board, evidenced by a resolution authorizing the issuance of the credit enhanced Bonds.

(b) Investment Letters. Bonds rated less than "A" or Bonds which are unrated must be placed with one or more Institutional Buyers and must be accompanied by an investor letter acceptable to the Department. Subsequent purchasers of such Bonds must also be qualified as Institutional Buyers and must execute and deliver to the Department an investor letter in a form satisfactory to the Department. Bonds rated less than "A" and Bonds which are unrated shall be issued in physical form, in minimum denominations of one hundred thousand dollars (\$100,000), and must carry a legend requiring any purchasers of the Bonds to be Institutional Buyers and sign and deliver to the Department an investor letter in a form acceptable to the Department.

§12.4. Pre-Application Process and Evaluation.

(a) Pre-Inducement Questionnaire. Prior to the filing of a pre-application, the Applicant shall submit the Pre-Inducement Questionnaire, in the form prescribed by the Department, so the Department can have a preliminary understanding of the proposed Development plan before a pre-application and corresponding fees are submitted. Information requested by the Department in the questionnaire includes, but is not limited to, the financing structure, borrower and key principals, previous housing tax credit or private activity bond experience, related party or identity of interest relationships and contemplated scope of work (if proposing Rehabilitation). After reviewing the pre-inducement questionnaire, Department staff will follow-up with the Applicant to discuss the next steps in the process and may schedule a pre-inducement conference call or meeting. Prior to the submission of a pre-application, it is essential that the Department and Applicant communicate regarding the Department's objectives and policies in the development of affordable housing throughout the State using Bond financing. The acceptance of the questionnaire by the Department does not constitute a pre-application or

Application and does not bind the Department to any formal action regarding an inducement resolution.

(b) Neighborhood Risk Factors. If the Development Site has any of the characteristics described in §11.101(a)(3)(B) of this title (relating to Site and Development Requirements and Restrictions), the Applicant must disclose the presence of such characteristics to the Department. Disclosure may be done at time of pre-application and handled in connection with the inducement or it can be addressed at the time of Application submission. The Applicant understands that any determination made by staff or the Board at the time of bond inducement regarding Site eligibility based on the documentation presented, is preliminary in nature. Should additional information related to any of the $\frac{n}{N}$ eighborhood $\frac{r}{R}$ isk $\frac{f}{F}$ actors become available while the $\frac{full}{Tax-Exempt Bond Development}$ Application is under review, or the information by which the original determination was made changes in a way that could affect eligibility, then such information should staff conclude that the Development Site has any characteristics found in §11.101(a)(3)(B) of this title (relating to Site and Development Requirements and Restrictions) and the Applicant failed to disclose.

(c) Pre-Application Process. An Applicant who intends to pursue Bond financing from the Department shall submit a pre-application by the corresponding pre-application submission deadline, as set forth by the Department. The required pre-application fee as described in §12.10 of this chapter (relating to Fees) must be submitted with the pre-application in order for the pre-application to be <u>considered</u> accepted by the Department. Department review at the time of the pre-application is limited and not all issues of eligibility, fulfillment of threshold requirements in connection with the full Application, and documentation submission requirements pursuant to Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan) are reviewed. The Department is not responsible for notifying an Applicant of potential areas of ineligibility or other deficiencies at the time of pre-application. If the Development meets the criteria as described in §12.5 of this chapter (relating to Pre-Application Threshold Requirements), the pre-application will be scored and ranked according to the selection criteria as described in §12.6 of this chapter (relating to Pre-Application Scoring Criteria).

(d) Scoring and Ranking. The Department will rank the pre-application according to score within each priority defined by Tex. Gov't Code, §1372.0321. All Priority 1 pre-applications will be ranked above all Priority 2 pre-applications which will be ranked above all Priority 3 pre-applications. This priority ranking will be used throughout the calendar year. The selection criteria, as further described in §12.6 of this chapter, reflect a structure which gives priority consideration to specific criteria as outlined in Tex. Gov't Code, §2306.359. Should two or more pre-applications receive the same score, the tie breaker will go to the pre-application with the highest number of points achieved under §12.6(8) of this chapter (relating to Underserved Area) to determine which pre-application will receive preference in consideration of a Certificate of Reservation.

(e) Inducement Resolution. After the pre-applications have been scored and ranked, the pre-

application will be presented to the Department's Board for consideration of an inducement resolution declaring the Department's initial intent to issue Bonds with respect to the Development. Approval of the inducement resolution does not guarantee final Board approval of the Bond Application. Department staff may recommend that the Board not approve an inducement resolution for a pre-application or that an inducement resolution be approved despite the presence of neighborhood risk factors not fully evaluated by staff. The Applicant recognizes the risk involved in moving forward should this be the case and the Department assumes no responsibility or liability in that regard. Each Development is unique, and therefore, making the final determination to issue Bonds is often dependent on the issues presented at the time the full Application is considered by the Board.

§12.5. Pre-Application Threshold Requirements.

The threshold requirements of a pre-application include the criteria listed in paragraphs (1) - (8) of this section. As the Department reviews the pre-application the assumptions as reflected in Chapter 11, Subchapter D of this title (relating to Underwriting and Loan Policy) will be utilized even if not reflected by the Applicant in the pre-application.

(1) Submission of the <u>required tabs of the Uniform Application as</u> <u>multifamily bond pre-application in the form</u> prescribed by the Department in the Multifamily Bond Pre-Application <u>Procedures Manual</u>;

(2) Submission of the completed Bond Pre-Application Supplement in the form prescribed by the Department;

(32) Completed Bond Review Board Residential Rental Attachment for the current program year;

(43) Site Control, evidenced by the documentation required under §11.204(10) of this title (relating to Required Documentation for Application Submission). The Site Control must be valid through the date of the Board meeting at which the inducement resolution is considered and must meet the requirements of §11.204(10) of this title at the time of Application;

(54) Boundary survey or plat clearly identifying the location and boundaries of the subject Property;

(65) Organizational Chart showing the structure of the Development Owner and of any Developer and Guarantor, providing the names and ownership percentages of all Persons having an ownership interest in the Development Owner, Developer and Guarantor, as applicable. The List of Organizations form, as provided in the pre-application, must include all Persons identified on the organizational charts, and further identify which of those Persons listed exercise Control of the Development;

(6) Distribution List Form, as provided in the pre-application, to include the anticipated financing participants;

(7) Evidence of Entity Registration or Reservation with the Texas Office of the Secretary of State; and

(8) A certification, as provided in the pre-application, that the Applicant met the requirements and deadlines for public notifications as identified in §11.203 of this title (relating to Public Notifications (§2306.6705(9)). Notifications must not be older than three months prior to the date of Application submission. Re-notification will be required by Applicants who have submitted a change from pre-application to Application that reflects a total Unit increase of greater than 10-percent% or a five percent-5% increase in density (calculated as Units per acre) as a result of a change in the size of the Development Site. In addition, should the person holding any position or role identifieddescribed in §11.203 of this title change between the submission of a pre-application and the submission of an Application, Applicants are required to notify the new person no later than the Full Application Delivery Date.

§12.6. Pre-Application Scoring Criteria.

This section identifies the scoring criteria used in evaluating and ranking pre-applications. The criteria identified below include those items required under Tex. Gov't Code, §2306.359 and other criteria considered important by the Department. Any scoring items that require supplemental information to substantiate points must be submitted in the pre-application, as further outlined in the Multifamily Bond Pre-Application Procedures Manual. Applicants proposing multiple sites will be required to submit a separate pre-application for each Development Site. Each Development Site will be scored on its own merits and the final score will be determined based on an average of all of the individual scores.

(1) Income and Rent Levels of the Tenants. Pre-applications may qualify for up to (10 points) for this item.

(A) Priority 1 designation includes one of clauses (i) - (iii) of this subparagraph. (10 points)

(i) <u>Set-set</u> aside 50<u>% percent</u> of Units rent capped at 50<u>percent</u> AMGI and the remaining 50<u>percent</u> of Units rent capped at 60<u>percent</u> AMGI; or

(ii) <u>Set_set</u> aside 15<u>percent%</u> of Units rent capped at 30<u>percent%</u> AMGI and the remaining 85<u>percen%</u>t of Units rent capped at 60<u>percent%</u> AMGI; or

(iii) Set set aside 100 percent% of Units rent capped at 60 percen% t AMGI for Developments located in a census tract with a median income that is higher than the median income of the county, MSA or PMSA in which the census tract is located.

(B) Priority 2 designation requires the set aside of at least $80 - \frac{\text{percent}}{\text{M}}$ of the Units capped at $60 - \frac{\text{percent}}{\text{M}}$ AMGI (7 points).

(C) Priority 3 designation. Includes any qualified residential rental development. Market rate Units can be included under this priority (5 points).

(2) Cost of Development per Square Foot. (1 point) For this item, costs shall be defined as either the Building Cost or the Hard Costs voluntarily included in Eligible Basis, as represented in the Development Cost Schedule, as originally provided in the pre-application. This calculation does not include indirect construction costs. Pre-applications that do not exceed \$95 per square foot of Net Rentable Area will receive one point. Rehabilitation will automatically receive (1 point).

(3) Unit Sizes. (5 points) The Development must meet the minimum requirements identified in this subparagraph to qualify for points. Points for this item will be automatically granted for Applications involving Rehabilitation (excluding Reconstruction).

- (A) Five-hundred-fifty (550) square feet for an Efficiency Unit;
- (B) Six-hundred-fifty (650) square feet for a one Bedroom Unit;
- (C) Eight-hundred-fifty (850) square feet for a two Bedroom Unit;
- (D) One-thousand-fifty (1,050) square feet for a three Bedroom Unit; and
- (E) One-thousand, two-hundred-fifty (1,250) square feet for a four Bedroom Unit.

(4) Extended Affordability. (2 points) A pre-application may qualify for points under this item for Development Owners that are willing to extend the State Restrictive Period for a Development to a total of 35 years.

(5) Unit and Development Construction Features. A minimum of (9 points) must be selected, as certified in the pre-application, for providing specific amenity and quality features in every Unit at no extra charge to the tenant. The amenities and corresponding point structure is provided in §11.101(b)(6)(B) of this title (relating to Site and Development Requirements and Restrictions). The points selected at pre-application and/or Application will be required to be identified in the LURA and the points selected must be maintained throughout the State Restrictive Period. Applications involving scattered site Developments must have a specific amenity located within each Unit to count for points. Rehabilitation Developments will start with a base score of (3 points).

(6) Common Amenities. All Developments must provide at least the minimum threshold of points for common amenities based on the total number of Units in the Development as provided in subparagraphs (A) - (F) of this paragraph. The common amenities include those listed in \$11.101(b)(5) of this title and must meet the requirements as stated therein. The Owner may change, from time to time, the amenities offered; however, the overall points as selected at Application must remain the same.

- (A) Developments with 16 to 40 Units must qualify for (4 points);
- (B) Developments with 41 to 76 Units must qualify for (7 points);
- (C) Developments with 77 to 99 Units must qualify for (10 points);
- (D) Developments with 100 to 149 Units must qualify for (14 points);
- (E) Developments with 150 to 199 Units must qualify for (18 points); or

(F) Developments with 200 or more Units must qualify for (22 points).

(7) Resident Supportive Services. (87 points) By electing points, the Applicant certifies that the Development will provide supportive services, which are listed in §11.101(b)(7) of this title, appropriate for the residents and that there will be adequate space for the intended services. The provision and complete list of supportive services will be included in the LURA and must be maintained throughout the State Restrictive Period. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application must remain the same. Should the QAP in subsequent years provide different services that those listed in $\frac{11.101(b)(7)(A)}{(A)}$ – (E), the Development Owner may be allowed to select services listed therein as provided in §10.405(a)(2) of this title (related to Amendments) and will be required to substantiate such service(s) at the time of compliance monitoring, if requested by staff. The services provided should be those that will directly benefit the Target Population of the Development and be accessible to all. No fees may be charged to the residents for any of the services. Services must be provided on-site or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one scoring item. These services are intended to be provided by a qualified and reputable provider in the specified industry such that the experience and background of the provider demonstrates sufficient knowledge to be providing the service. In general, on-site leasing staff or property maintenance staff would not be considered a gualified provider. Where applicable, the services must be documented by a written agreement with the provider.

(8) Underserved Area. An Application may qualify to receive up to (2 points) if the Development Site is located in an Underserved Areameets the criteria as further described in §11.9(c)(5)(A) - ($\in \underline{H}$) of this title. The pre-application must include evidence that the Development Site meets this requirement.

(9) Development Support/Opposition. (Maximum +24 to -24 points) Each letter will receive a maximum of +3 to -3 points and must be received 10 business days prior to the Board's consideration of the pre-application. Letters must clearly state support or opposition to the specific Development. State Representatives or Senators as well as local elected officials must be in office when the pre-application is submitted and represent the district containing the proposed Development Site. Letters of support from State or local elected officials that do not represent the district containing the proposed Development or do not explicitly state support will receive (zero points). A letter that does not directly express support but expresses it indirectly by inference (i.e., "the local jurisdiction supports the Development and I support the local jurisdiction") counts as a neutral letter except in the case of State elected officials. A letter from a State elected official that does not directly indicate support by the official, but expresses support on behalf of the official's constituents or community (i.e., "My constituents support the Development and I am relaying their support") counts as a support letter.

(A) State Senator and State Representative of the districts whose boundaries include the proposed Development Site;

(B) Mayor of the municipality (if the Development is within a municipality or its extraterritorial jurisdiction);

(C) All elected members of the Governing Body of the municipality (if the Development is within a municipality or its extraterritorial jurisdiction);

(D) Presiding officer of the Governing Body of the county in which the Development Site is located;

(E) All elected members of the Governing Body of the county in which the Development Site is located;

(F) Superintendent of the school district in which the Development Site is located; and

(G) Presiding officer of the board of trustees of the school district in which the Development Site is located.

(10) Preservation Initiative. (10 points) Preservation Developments, including Rehabilitation proposals on Properties which are nearing expiration of an existing affordability requirement within the next two years or for which there has been a rent restriction requirement in the past 10 years may qualify for points under this item. Evidence must be submitted in the pre-application.

(11) Declared Disaster Areas. (7 points) A pre-application may receive points if the Development Site is located in an area declared a disaster area under Tex. Gov't Code §418.014 at the time of submission, or at any time within the two-year period preceding the date of submission.

§12.7. Full Application Process.

(a) Application Submission. Once the inducement resolution has been approved by the Board, an Applicant who elects to proceed with submitting a full Application to the Department must submit the complete tax credit Application pursuant to §11.201 of this title (relating to Procedural Requirements for Application Submission).

(b) Eligibility Criteria. The Department will evaluate the Application for eligibility and threshold at the time of full Application pursuant to Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan). If there are changes to the Application at any point prior to closing that have an adverse affect on the score and ranking order and that would have resulted in the pre-application being placed below another pre-application in the ranking, the Department will terminate the Application and withdraw the Certificate of Reservation from the Bond Review Board (with the exception of changes to deferred developer's fees and support or opposition points). The Development and the Applicant must satisfy the requirements set forth in Chapter 11 of this title in addition to Tex. Gov't Code, Chapter 1372, the applicable requirements of Tex. Gov't Code Chapter 2306, and the Code. The Applicant will also be required to select a Bond Trustee from the Department's approved list as published on its website.

(c) Bond Documents. Once the Application has been submitted and the Applicant has deposited funds to pay initial costs, the Department's bond counsel shall draft Bond documents.

(d) Public Hearings. The Department will hold a public hearing to receive comments pertaining to the Development and the issuance of the Bonds. The <u>A representative of the Applicant or</u> member of the Development Team must be present at the public hearing and will be responsible for conducting a brief presentation on the proposed Development and providing handouts at the hearing that should include at minimum, a description of the Development, maximum rents and income restrictions. If the proposed Development is Rehabilitation, the presentation should include the proposed scope of work that is planned for the Development. The handouts must be submitted to the Department for review at least two days prior to the public hearing. Publication of all notices required for the public hearing shall be at the sole expense of the Applicant, as well as any facility rental fees or required deposits.

(e) Approval of the Bonds. Subject to the timely receipt and approval of commitments for financing, an acceptable evaluation for eligibility, the satisfactory negotiation of Bond documents, and the completion of a public hearing, the Board, upon presentation by Department staff, will consider the approval of the final Bond resolution relating to the issuance, final Bond documents and in the instance of privately placed Bonds, the pricing, terms and interest rate of the Bonds. The process for appeals and grounds for appeals may be found under §1.7 of this title (relating to Appeals Process). To the extent applicable to each specific Bond issuance, the Department's conduit multifamily Bond transactions will be processed in accordance with 34 TAC Part 9, Chapter 181, Subchapter A (relating to Bond Review Board Rules) and Tex. Gov't Code, Chapter 1372.

(f) Local Permits. Prior to closing on the Bond financing, all necessary approvals, including building permits from local municipalities, counties, or other jurisdictions with authority over the Development Site must have been obtained or evidence that the permits are obtainable subject only to payment of certain fees. <u>must be submitted to the Department</u>. For Rehabilitation Developments, in instances where such permits will be not received prior to bond closing, the Department may, on a limited and case-by-case basis allow for the closing to occur, subject to receipt of confirmation, acceptable to the Department, by the lender and/or equity investor that they are comfortable proceeding with closing.

§12.8. Refunding Application Process.

(a) Application Submission. Owners who wish to refund or modify tax-exempt bonds that were previously issued by the Department must submit to the Department a summary of the proposed refunding plan or modifications. To the extent such modifications constitute a re-issuance under state law the Applicant shall then be required to submit a refunding Application in the form prescribed by the Department pursuant to the Bond Refunding Application Procedures Manual.

(b) Bond Documents. Once the Department has received the refunding Application and the Applicant has deposited funds to pay initial costs, the Department's bond counsel will draft the necessary Bond documents.

(c) Public Hearings. Depending on the proposed modifications to existing Bond covenants a public hearing may be required. Such hearing must take place prior to obtaining Board approval and must meet the requirements pursuant to §12.7(d) of this chapter (relating to Full Application Process) regarding the presence of a member of the Development Team and providing a summary of proposed Development changes.

(d) Rule Applicability. Refunding Applications must meet the <u>applicable</u> requirements pursuant to Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan).-with the exception of criteria stated therein specific to the Competitive Housing Tax Credit Program. At the time of the original award the Application would have been subject to eligibility and threshold requirements under the QAP in effect the year the Application was awarded. Therefore, it is anticipated the Refunding Application would not be subject to the site and development requirements and restrictions pursuant to §11.101 of this title (relating to Site and Development Requirements and Restrictions). The circumstances surrounding a refunding Application are unique to each Development; therefore, upon evaluation of the refunding Application, the Department is authorized to utilize its discretion in the applicability of the Department's rules as it deems appropriate.

§12.9. Occupancy Requirements.

(a) Filing and Term of Regulatory Agreement. A Bond Regulatory and Land Use Restriction Agreement will be filed in the property records of the county in which the Development is located for each Development financed from the proceeds of Bonds issued by the Department. The term of the Regulatory Agreement will be based on the criteria as described in paragraphs (1) - (3) of this subsection, as applicable:

(1) The longer of 30 years, from the date the Development Owner takes legal possession of the Development;

(2) The end of the remaining term of the existing federal government assistance pursuant to Tex. Gov't Code, §2306.185; or

(3) The period required by the Code.

(b) Federal Set Aside Requirements.

(1) Developments which are financed from the proceeds of Private Activity Bonds must be restricted under one of the two minimum set-asides as described in subparagraphs (A) and (B) of this paragraph. Regardless of an election that may be made under Section 42 of the Code relating to income averaging, a Development will be required under the Bond Regulatory and Land Use Restriction Agreement to meet one of the two minimum set-asides described in subparagraphs (A) and (B) of this paragraph.

(A) At least 20-percent<u>%</u> of the Units within the Development shall be occupied or held vacant and available for occupancy at all times by persons or families whose income does not exceed 50

percen<u>%</u>t of the area median income; or

(B) At least 40-percent<u>%</u> of the Units within the Development shall be occupied or held vacant and available for occupancy at all times by persons or families whose income does not exceed 60 percent<u>%</u> of the area median income.

(2) The Development Owner must, at the time of Application, indicate which of the two federal set-asides will apply to the Development and must also designate the selected priority for the Development in accordance with Tex. Gov't Code, §1372.0321. Units intended to satisfy set-aside requirements must be distributed equally throughout the Development, and must include a reasonably proportionate amount of each type of Unit available in the Development.

(3) No tenant qualifying under either of the minimum federal set-asides shall be denied continued occupancy of a Unit in the Development because, after commencement of such occupancy, such tenant's income increases to exceed the qualifying limit. However, should a tenant's income, as of the most recent determination thereof, exceed 140-percent% of the applicable federal set-aside income limit and such tenant constitutes a portion of the set-aside requirement of this section, then such tenant shall only continue to qualify for so long as no Unit of comparable or smaller size is rented to a tenant that does not qualify as a Low-Income Tenant.

§12.10. Fees.

(a) Pre-Application Fees. The Applicant is required to submit, at the time of pre-application, the following fees: \$1,000 (payable to TDHCA), \$2,500 (payable to the Department's bond counsel) and \$5,000 (payable to the Texas Bond Review Board (TBRB) pursuant to Tex. Gov't Code, \$1372.006(a)). These fees cover the costs of pre-application review by the Department, its bond counsel and filing fees associated with the Certificate of Reservation to the TBRB.

(b) Application Fees. At the time of Application the Applicant is required to submit a tax credit application fee of \$30 per Unit based on the total number of Units and a bond application fee of \$20 per Unit based on the total number of Units, <u>unless otherwise modified by a specific program</u> <u>NOFA</u>. Such fees cover the costs associated with Application review and the Department's expenses in connection with providing financing for a Development. For Developments proposed to be structured as a portfolio the bond application fees may be reduced on a case by case basis at the discretion of Department staff.

(c) Closing Fees. The closing fee for Bonds, other than refunding Bonds, is equal to 50 basis points (0.005) of the issued principal amount of the Bonds, <u>unless otherwise modified by a specific program NOFA</u>. The Applicant will also be required to pay at closing of the Bonds the first two years of the administration fee equal to 20 basis points (0.002) of the issued principal amount of the Bonds, with the first year prorated based on the actual closing date, and a Bond compliance fee equal to \$25/Unit (excludes market rate Units). Such compliance fee shall be applied to the third year following closing.

(d) Application and Issuance Fees for Refunding Applications. For refunding <u>an</u> Applications the Page 19 of 20 application fee will be \$10,000 unless the refunding is not required to have a public hearing, in which case the fee will be \$5,000. The closing fee for refunding Bonds is equal to 25 basis points (0.0025) of the issued principal amount of the refunding Bonds. If applicable, administration and compliance fees due at closing may be prorated based on the current billing period of such fees. If additional volume cap is being requested other fees may be required as further described in the Bond Refunding Applications Procedures Manual.

(e) Administration Fee. The annual administration fee is equal to 10 basis points (0.001) of the outstanding bond amount at the inception of each payment period and is paid as long as the Bonds are outstanding, unless otherwise modified by a specific program NOFA.

(f) Bond Compliance Fee. The Bond compliance monitoring fee is equal to \$25/Unit (excludes market rate Units), and is paid for the duration of the State Restrictive Period under the Regulatory Agreement.



BOARD ACTION REQUEST

OCI, HTF & NSP DIVISION

SEPTEMBER 5, 2019

Presentation, discussion, and possible action on an order proposing the repeal of 10 TAC Chapter 25, Colonia Self-Help Center Program Rule; an order proposing new 10 TAC Chapter 25, Colonia Self-Help Center Program Rule; and directing their publication for public comment in the Texas Register

RECOMMENDED ACTION

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

WHEREAS, pursuant to Tex. Gov't Code, §2306.582, the Department is required to establish, operate, monitor, and fund Colonia Self-Help Centers (CSHCs) in El Paso, Hidalgo, Starr, and Webb counties, and in Cameron County to serve Cameron and Willacy counties;

WHEREAS, in 2001 the Department opened two additional CSHCs in Maverick and Val Verde counties, as authorized by Tex. Gov't Code §2306.582, to address the needs of colonias in those counties; and

WHEREAS, the CSHC rule was in need of revision and the proposed new 10 TAC Chapter 25, CSHC Program Rule, includes changes that: detail processes for addressing Administrator failure to meet Expenditure Thresholds, allow the Department to issue one-time contract extensions, remove the requirement that the Department impose liens upon certain participating households, increase the maximum assistance amounts for certain program activities, outline inspection requirements for all activity types, and improve readability and consistency throughout with the re-ordering of phrases and updating of terms;

NOW, therefore, it is hereby

RESOLVED, that the Executive Director and his designees, be and each of them hereby are authorized, empowered and directed, for and on behalf of the Department to cause the proposed repeal of 10 TAC Chapter 25, and the proposed new 10 TAC Chapter 25, regarding the CSHC Program Rule, 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 changes to the preambles.

BACKGROUND

The purpose of repealing and replacing the CSHC Program Rule is to detail processes for addressing Administrator failure to meet Expenditure Thresholds; allow the Department to issue one-time contract extensions; remove the requirement that the Department impose liens upon certain participating households; increase the maximum assistance amounts for certain program activities; outline inspection requirements for all activity types; and lastly, improve readability and consistency throughout with the re-ordering of phrases and updating of terms.

The proposed rule is attached with changes reflected as tracked changes to indicate to the Board and the public what is being changed. The significant updates proposed to 10 TAC Chapter 25 are:

- §25.3 Eligible and Ineligible Activities, clarifies applicable requirements regarding Fair Housing, Affirmative Marketing, Homebuyer Counseling, and Reasonable Accommodation.
- §25.5 Allocation, Deobligation and Termination, and Reobligation, provides more detail on the processes that address Administrator violations of program requirements, such as failure to meet Expenditure Thresholds. The subsection covers mitigation plans, compliance with Tx. Gov't Code Chapter 2105, and the process for publishing a Request for Administrators to utilize deobligated funds.
- §25.8 Colonia Self-Help Center Contract Operation and Implementation, clarifies that the Department may issue a one-time 6-month extension to contracts (currently, contracts may not be extended); removes the requirement that liens be issued to program beneficiaries earning more than 50% of the Area Median Income who receive New Construction, Reconstruction or Rehabilitation assistance, and provides that these types of assistance will now be offered as a grant or deferred forgiveable loan without a lien to any eligible participating household; Increases the maximum assistance amount for Rehabilitation activities from \$45,000 to \$60,000 per unit; Increases the maximum assistance amount for New Construction and Reconstruction activities from \$45,000 to \$75,000 per unit; and includes further clarification on inspection requirements for all construction activity types.

Attachment A: Preamble, including required analysis, for the proposed repeal of 10 TAC Chapter 25, Colonia Self-Help Center Program

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 25, §§25.1 – 25.9, Colonia Self-Help Center Program Rule. The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

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

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

Robert Wilkinson, Executive Director, has determined that, for the first five years the repeal will be in effect:

1. The repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous adoption making changes to the rule governing the Colonia Self-Help Center Program.

2. The repeal does not require a change in work that will require the creation of new employee positions, nor will the repeal reduce workload to a degree that any existing employee positions are eliminated.

3. The repeal does not require additional future legislative appropriations.

4. The repeal does not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department.

5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to the existing procedures for the Colonia Self-Help Center Program.

7. The repeal will not increase nor decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively nor positively affect the state's economy.

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

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

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

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

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

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be an elimination of an outdated rule while adopting a new updated rule under separate action. There will be no economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

g. REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 20, 2019, to October 21, 2019, to receive input on the repealed rule. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Raul Gonzales, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email htf@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, October 21, 2019.

STATUTORY AUTHORITY. The repeal is proposed pursuant to TEX. GOV'T CODE §2306.053, which authorizes the Department to adopt rules.

Except as described, herein the proposed repealed rule affects no other code, article, or statute.

10 TAC Chapter 25, Colonia Self-Help Center Program

- §25.1. Purpose and Services.
- §25.2. Definitions.
- §25.3. Eligible and Ineligible Activities.
- §25.4. Colonia Self-Help Centers Establishment.
- §25.5. Allocation and the Colonia Self-Help Center Application Requirements.
- §25.6. Colonia Residents Advisory Committee Duties and Award of Contracts.
- §25.7. Colonia Self-Help Center Contract Operation and Implementation.
- §25.8. Administrative Thresholds.
- §25.9. Expenditure Thresholds and Closeout Requirements.

Attachment B: Preamble, including required analysis, for proposed new 10 TAC Chapter 25, Colonia Self-Help Center Program

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 25, §§25.1 – 25.10, Colonia Self-Help Center Program Rule. The purpose of the new rule is to detail processes for addressing Administrator failure to meet Expenditure Thresholds; allow the Department to issue one-time contract extensions; remove the requirement that the Department impose liens upon certain participating households; increase the maximum assistance amounts for certain program activities; outline inspection requirements for all activity types; and improve readability and consistency throughout with the re-ordering of phrases and updating of terms.

Tex. Gov't Code §2001.0045(b) does apply to the rule being adopted because no exceptions apply, however it should be noted that no costs are associated with this action that would have prompted a need to be offset.

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

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

Robert Wilkinson, Executive Director, has determined that, for the first five years the proposed rule will be in effect:

1. The new rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes governing the Colonia Self-Help Center Program.

2. The new rule does not require a change in work that will require the creation of new employee positions, nor will the new rule reduce workload to a degree that any existing employee positions are eliminated.

3. The new rule does not require additional future legislative appropriations.

4. The new rule does not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department.

5. The new rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.

6. The new rule will not limit, expand or repeal an existing regulation but merely revises a rule.

7. The new rule will not increase nor decrease the number of individuals subject to the rule's applicability.

8. The new rule will not negatively nor positively affect the state's economy.

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

The Department has evaluated this new rule and determined that it will not create an economic effect on small or micro-businesses or rural communities.

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

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6). The Department has evaluated the new rule as to its possible effects on local economies and has determined that for the first five years the new rule will be in effect there will be no economic effect on local employment; therefore no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new rule is in effect, the public benefit anticipated as a result of the new rule would be to further clarify the Colonia Self-Help Center Program. The purpose of the new rule is to further clarify aspects of program administration and to improve readability. There will be no economic costs to individuals required to comply with the new rule.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new rule is in effect, enforcing or administering the rule does not have any foreseeable implications related to costs or revenues of the state or local governments.

g. REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 20, 2019, to October 21, 2019, to receive input on the new rule. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Raul Gonzales, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email htf@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, October 21, 2019.

STATUTORY AUTHORITY. The new rule is proposed pursuant to TEX. GOV'T CODE §2306.053, which authorizes the Department to adopt rules.

Except as described, herein the proposed new rule affects no other code, article, or statute. The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

CHAPTER 25 COLONIA SELF-HELP CENTER PROGRAM RULE

§25.1 Purpose and Services

The purpose of this Chapter is to establish the requirements governing the Colonia Self-Help Centers, created pursuant to Subchapter Z of Chapter 2306 of the Tex. Gov't Code, Chapter 20 of this Title (relating to Single Family Programs Umbrella Rule), Chapter 21 of this Title (relating to Minimum Energy Efficiency Requirements), Chapter 1 of this Title (relating to Administration), and Chapter 2 of this Title (relating to Enforcement), Chapter 20 of this Title (relating to Single Family Programs Umbrella Rule), Chapter 21 of this Title (relating to Enforcement), Chapter 20 of this Title (relating to Single Family Programs Umbrella Rule), Chapter 21 of this Title (relating to Single Family Programs Umbrella Rule), Chapter 21 of this Title (relating to Single Family Programs Umbrella Rule), Chapter 21 of this Title (relating to Single Family Programs Umbrella Rule), Chapter 21 of this Title (relating to Single Family Programs Umbrella Rule), Chapter 21 of this Title (relating to Single Family Programs Umbrella Rule), Chapter 21 of this Title (relating to Single Family Programs Umbrella Rule), Chapter 21 of this Title (relating to Single Family Programs Umbrella Rule), Chapter 21 of this Title (relating to Single Family Programs Umbrella Rule), Chapter 21 of this Title (relating to Single Family Programs Umbrella Rule), Chapter 21 of this Title (relating to Minimum Energy Efficiency Requirements), and its funding including the use and administration of all funds provided to the Texas Department of Housing and Community Affairs (the "Department") by the legislature of the annual Texas Community Development Block Grant ("CDBG") allocation from the U.S. Department of Housing and Urban Development ("HUD"). Colonia Self-Help Centers are designed to assist individuals and families of low-income and very low-income to finance, refinance, construct, improve, or maintain a safe, suitable home in the designated Colonia service areas or in another area the Department has determined is suitable.

§25.2 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. Other definitions may be found in Chapter 2306 of the Tex. Gov't Code, Chapter 1 of this Title (relating to Administration), Chapter 2 of this Title (relating to Enforcement), Chapter 20 of this Title (relating to Single Family Programs Umbrella Rule), and Chapter 21 of this Title (relating to Minimum Energy Efficiency Requirements). Common definitions used under the CDBG Program are incorporated herein by reference.

(1) Beneficiary--A person or family benefiting from the Activities of a Colonia Self-Help Center Contract.

(2) Colonia Resident Advisory Committee ("C-RAC")---<u>As established by Tex. Gov't Code §2306.584,</u> <u>advises</u>Advises the Department's Governing Board <u>regarding</u>and evaluates the needs of Colonia residents, <u>appropriate and effective</u>reviews programs and <u>Activities</u>-that are proposed or operated through the <u>CSHCs</u>, and activities that may be undertaken through the CSHCsColonia Self-Help Centers to better serve the needs of Colonia residents.

(3) Colonia Self-Help Center (CSHC)--Those centers established by the Department through its authority under Tex. Gov't Code §2306.582.

(4)(3) Colonia Self-Help Center Provider--An organization with which the Administrator has an executed Contract to administer Colonia Self-Help Center Activities.

(5)(4) Community Action Agency--A political subdivision, combination of political subdivisions, or nonprofit organization that qualifies as an eligible entity under 42 U.S.C. §9902.

(6)(5) Contract Budget--An exhibit in the Contract which specifies in detail the Contract funds by budget category, which is used in the Draw <u>processprocesses</u>. The budget also includes all other funds involved that are necessary to complete the Performance Statement specifics of the Contract.

(7)(6) Direct Delivery Costs--Soft costs related to and identified with a specific housing unit. Eligible Direct Delivery Costs include:

(A) Preparation of work write-ups, work specifications, and cost estimates;

(B) Legal fees, recording fees, architectural, engineering, or professional services required to prepare plans, drawings or specifications directly attributable to a particular housing unit;

(C) Home inspections, inspections for lead-based paint, asbestos, termites, and interim inspections; and

(D) Other costs as approved in writing by the Department.

(8)(7) Housing Assistance Guidelines ("HAG")--The guidelines provided by the Unit of <u>General</u>Local Government that outline the process and procedures used to administer <u>and implementation</u> implementation of the Colonia Self-Help Center Program. These guidelines cannot conflict with state statute, program rules, regulations and/or contract requirements.

(9)(8) Implementation Manual--A set of guidelines designed by the Department asto be an implementation tool for the Administrator and/or Colonia Self-Help Center SubawardeeProviders that have been awarded Community Development Block Grant Funds, -which providesand allows the Administrator to search for terms, regulations, procedures, forms, and attachments.

(10)(9) Income Eligible HouseholdFamilies--

(A) Low-income <u>householdsfamilies-householdsfamilies</u> whose annual incomes do not exceed 80%-percent of the median income of the area as determined by HUD <u>Fair Market Rent Limits</u>Section 8 income limits adjusted for family size;

(B) Very low-income <u>householdsfamilies-householdsfamilies</u> whose annual incomes do not exceed 60% percent of the median family income for the area, as determined by HUD <u>Fair Market Rent LimitsSection 8</u> income limits adjusted for family size; and

(C) Extremely low-income <u>householdsfamilies</u>--<u>householdsfamilies</u> whose annual incomes do not exceed 30% <u>percent</u> of the median family income for the area, as determined by HUD <u>Fair Market Rent</u> <u>LimitsSection 8 income limits adjusted for family size</u>.

(<u>11</u>)(10) M Number--a several digit identification number, preceded by the letter "M" and assigned <u>by the Texas Water Development Board</u> to colonias that have been identified by the Office of the Attorney General of Texas.

<u>(12)(11)</u> New Construction--A <u>Single Family Housing Unithousing unit</u> that is <u>newly</u> built only by certified Community Housing Development Organizations ("CHDOs") or Community Based Development Organizations ("CBDOs") on a previously vacant lot that will be occupied by <u>an</u> Income Eligible HouseholdFamilies.

(13)(12) Performance Statement--An exhibit in the Contract which specifies in detail the scope of work to be performed.

(14)(13) Public Service Activities--Activities other than New Construction, Reconstruction, and Rehabilitation activities that are provided by a Colonia Self-Help Center to benefit Colonia residents. These include, but are not limited to, construction skills classes, solid waste removal, tool lending library, technology classes, home ownership classes and technology access.

(15) Qualified Inspector--An individual that has been certified by the Administrator as having professional certifications, relevant education or a minimum of three years' experience in a field directly related to home inspection, which may include but is not limited to installing, servicing, repairing or maintaining the structural, mechanical, plumbing or electrical systems found in Single Family Housing Units, as evidenced by inspection logs, certifications, training courses or other documentation.

(16)(14) Reconstruction--The demolition and rebuilding <u>of</u> a Single Family Housing Unit on the same lot in substantially the same manner. The number of housing units may not be increased; however, the number of rooms may be increased or decreased dependent on the number of <u>Householdfamily</u> members living in the <u>Single Family Housing Unithousing unit</u> at the time of Application. Reconstruction of residential structures also permits replacing an existing substandard Manufactured Housing Unit with a new, site-built housing unit or a new ENERGY STAR Certified Manufactured Housing Unit."

(<u>17</u>)(15) Rehabilitation--The improvement or modification of an existing <u>Single Family Housing Unitsingle</u> family housing residential unit through an alteration, addition, or enhancement on the same lot.

(18)(16) Unit of General Local Government (UGLG)--A city, town, county, or other general purpose political

subdivision of the state.

§25.3 Eligible and Ineligible Activities

(a) A <u>CSHC</u>Colonia Self-Help Center may only serve Income Eligible <u>Households</u>Families in the targeted Colonias by:

(1) Providing assistance in obtaining Loans or grants to build a home;

(2) Teaching construction skills necessary to repair or build a home;

(3) Providing model home plans:

(4) Operating a program to rent or provide tools for home construction and improvement for the benefit of property owners in Colonias who are building or repairing a residence or installing necessary residential infrastructure;

(5) Assisting to obtain, construct, access, or improve the service and utility infrastructure designed to service residences in a Colonia, including potable water, wastewater disposal, drainage, streets, and utilities;

(6) Surveying or platting residential property that an individual purchased without the benefit of a legal survey, plat, or record;

(7) Providing credit and debt counseling, which if related to home purchase and or finance that will take place on or after August 1, 2020, must satisfy HUD's Counseling Requirements;

(8) Applying for Grants and Loans to provide housing and other needed community improvements;

(9) Providing other services that the <u>CSHCColonia Self-Help Center</u>, with the approval of the Department, determines are necessary to assist Colonia residents in improving their physical living conditions such as Rehabilitation, Reconstruction, and New Construction, including help in obtaining suitable alternative housing outside of a Colonia area;

(10) Providing assistance in obtaining Loans or grants to enable an <u>Income Eligible Household</u>individual or a family to acquire fee simple title to property that originally was purchased under a Contract for Deed, contract for sale, or other executory contract;

(11) Provide title-related services for unrecorded Contracts for Deed, clouded titles, property transfers, intestate estates, and other title ownership matters;

(12) Providing access to computers, the internet and computer training; and

(13) Providing monthly programs to educate <u>Income Eligible Householdsindividuals and families</u> on their rights and responsibilities as property owners.

(b) Ineligible Activities. Any type of Activity not allowed by the Housing and Community Development Act of 1974 (42 U.S.C. §§5301, et seq.) is ineligible for funding.

(c) A <u>CSHCColonia Self-Help Center</u> will only provide grants, financing, or Mortgage Loan services for New Construction, Reconstruction, and Rehabilitation of a home in a Colonia that is connected to a Department-approved source of potable water and wastewater disposal.

§25.4 Colonia Self-Help Centers Establishment

(a) Pursuant to Section 2306.582 of the Tex. Gov't Code, the Department has established <u>CSHCs</u>Colonia Self-Help Centers in El Paso, Hidalgo, Starr, Webb, Cameron (also serves Willacy), Maverick, and Val Verde Counties.

(b) The Department has designated:

(1) Appropriate staff in the Department <u>whom are designated to assist the CSHCs in understanding the</u> requirements of the Program, provide training, and access CDBG to act as liaison to the Colonia Self Help

Centers to assist the centers in obtaining funding to enable the <u>CSHCs</u>centers to carry out the center's Programs;

(2) Five (5)-Colonias in each service area <u>are to be identified by the UGLG</u> to receive concentrated attention from the <u>CSHCsColonia Self-Help Centers</u> in consultation with the C-RAC-and the appropriate unit of local government; and

(3) A geographic area for the services provided by each <u>CSHC</u>Colonia Self-Help Center.

(c) The Department shall make a reasonable effort to secure:

(1) Contributions, services, facilities, or operating support from the county commissioner's court of the county in which a <u>CSHC</u>Colonia Self-Help Center is located which it serves to support the operation of that <u>CSHC</u>Colonia Self-Help Center; and

(2) An adequate level of <u>CDBG funds</u>funding to provide each <u>CSHCColonia Self-Help Center</u> with funds for low interest Mortgage financing, Grants for Self-Help Programs, <u>a</u> revolving loan fund for septic tanks, a tool lending program, and other Activities the Department determines are necessary.

(d) <u>Consistent with federal rules and regulations, as provided for in the General Appropriations Act, the CSHC in El Paso shall provide technology and computer access to residents of targeted colonias. The El Paso Colonia Self-Help Center shall establish a technology center to provide internet access to Colonia residents pursuant to the General Appropriations Act for the appropriate biennium. Any <u>CSHC mayother Colonia Self-Help Center may also</u> establish a technology center to provide internet access to Colonia residents.</u>

§25.5 Allocation, <u>Deobligation and Termination</u>, and <u>Reobligation</u> and the Colonia Self-Help Center Application Requirements

(a) Allocation.

(<u>1</u>)(a) The Department distributes <u>CSHC</u>Colonia Self Help Center funds to UGLGs from the 2.5<u>% percent</u> setaside <u>appropriated to the Department from</u>of the annual CDBG allocation to the state of Texas.

(2)(b) The Department shall allocate no more than \$1 million per <u>CSHCColonia Self Help Center</u> award except as provided by this Chapter. If there are insufficient funds available from any specific program year to fully fund an Application, the awarded Administrator may accept the amount available at that time and wait for the remaining funds to be committed upon the Department's receipt of the CDBG set-aside allocation from the next program year.

(3) (c) With a A baseline award will first be calculated for a CSHC beginning at \$500,000 (or a lesser amount as provided for in paragraph (2)(b) of this subsectionSection). The, the Department will add to the baseline award up to an additional \$100,000 for each Expenditure Threshold that has been met on the current CSHC Contractexpenditure threshold, as defined in §25.109 of this Chapter (relating to Expenditure Thresholds and Closeout Requirements). , met on the current Colonia Self-Help Center Contract, and an An additional amount up to \$100,000 may be added for an accepted Application submitted by the deadline. An Administrator may request that the Board add additional funds to a baseline award, despite the failure to meet one or more Expenditure Thresholds. To add funds to a CSHC Contract being considered for award, the Board must find that the failure to meet each Expenditure Threshold requirement was principally related to factors beyond the control of the Administrator. If the Board decides to award these additional funds in whole or in part, it must also determine that the award of these funds to the Administrator does not create a substantial risk to the State of recapture of CDBG funds by HUD.If an Administrator can demonstrate that any violation of an Expenditure Threshold was beyond the control of the Administrator, it may request of the Board that an individual violation be waived for the purpose of future funding. The Governing Board, in its discretion and within the limits of federal and state law, may waive any one or more of the expenditure threshold requirements if it finds the waiver is appropriate to fulfill the purposes or

policies of the Tex. Gov't Code, or for other good cause as determined by the Board.

(b) Deobligation and Termination.

(1) At any point in which an Administrator has missed one of the Expenditure Thresholds required in §25.10 of this Chapter, the Department will send a notification of possible deobligation. An Administrator will have the opportunity to submit a mitigation plan that outlines how it will bring the Contract back into compliance, and how it will ensure that subsequent Expenditure Thresholds can be achieved. If the Department approves the mitigation plan, it will take no further action on deobligation at that time. If the Department receives no response, or if the mitigation plan is insufficient to be approved by the Department, the Department will send notice to the Administrator and the UGLG official to announce the initiation of deobligation proceedings and to identify the Administrator's rights under Tex. Gov't Code, Chapter 2105 and 10 TAC §1.411 (relating to Administration of Block Grants under Chapter 2105 of the Tex. Gov't Code). Approval of such action will be presented to the Department's Board.

(2) At any point in which the Department has determined that a Contract should be terminated for violation of program requirements, the Department will send a notification of possible termination of Contract. A Subrecipient will have the opportunity to submit a mitigation plan that outlines how it will bring the Contract back into compliance. If the Department approves the mitigation plan, it will take no further action on termination at that time. If the Department receives no response, or if the mitigation plan is insufficient to be approved by the Department, the Department will send notice to the Administrator and the UGLG official to announce the initiation of deobligation proceedings and to identify the Administrator's rights under Tex. Gov't Code, Chapter 2105 and 10 TAC §1.411 (relating to Administration of Block Grants under Chapter 2105 of the Tex. Gov't Code). Approval of such action will be presented to the Department's Board. (3) During the time that a deobligation or termination process is pending, the Department may reduce an Administrator's Contract by up to 24.99% of the Contract and may publish a Request for Administrators (RFA) to identify another UGLG to implement the CSHC Program in the affected service area. No award to a respondent of an RFA will be made in an amount greater than 24.99% of the original Administrator's Contract until the process provided by Tex. Gov't Code, Chapter 2105 has been completed. Once that process is completed, an Administrator awarded a Contract through the RFA may receive up to the maximum award available, subject to funding availability.

(c) Reobligation.

 (1) When funds become available from the proceedings of subsection (b) of this section, they will be held for a period of at least 90 days while an RFA for the service area is initiated. Unless debarred by HUD or the Department, a prior Administrator is not precluded from applying under an RFA for this service area.
 (2) In all cases, funds for a given service area will continue to be allocated to that service area unless no acceptable respondents are identified. Only in such cases that no qualified provider can be identified for a given service area will funds available for that area be reissued to other CSHC Contracts for other service areas.

§25.6. Colonia Self-Help Center Application Requirements

(a) At least three months prior to(d) The Administrator shall submit its Application no later than three (3) months before the expiration of its current Contract, or when <u>90%ninety (90) percent</u> of the funds under the current Contract have been expended, whichever comes first, the current Administrator may submit its <u>Application to the Department</u>.

(b) If an Application is received from a CSHC that is requesting additional funds, at approximately the same

time that an application is received from a CSHC whose Contract is reaching expiration, the Department will prioritize funds first to ensure continuity to a CSHC whose Contract is reaching expiration. Among all other non-expiring Applications, the Department shall review Applications on a first-come, first-served basis. Recommendations for award will be made until all CSHC(e) Application reviews are conducted on a first-come, first-served basis until all Colonia Self-Help Center funds for the current program year and deobligated <u>CSHCColonia Self-Help Center</u> funds are committed.

(c) Each Application must utilize the Department's forms and documents where applicable, and include:(f) In order to be accepted, each Application must include:

(1) Evidence of the submission of the Contract-Administrator's current Single Audit, if applicableannual single audit;

(2) A Colonia identification form and the M number, as assigned by the <u>Texas Water Development</u> <u>BoardOffice of the Attorney General of Texas</u>, for each Colonia to be served, including all required back-up documentation as identified on the form;

(3) A boundary map for each of the five <u>designated</u> Colonias;

(4) A description of the method of implementation. For each Colonia to be served by the <u>CSHC</u>Colonia Self-Help Center, the Administrator shall describe the services and Activities to be delivered. <u>Participating</u> households must provide at least 15% of the labor necessary to build or rehabilitate the proposed housing by contributing the labor personally and/or through non-contract labor assistance from family, friends, or volunteers. Volunteer hours at the Colonia Self-Help Center may also fulfill the 15% labor requirement.

(5) <u>AThe proposed Performance Statement which must include the number of Colonia residents estimated</u> to be assisted from each Activity, the Activities to be performed (including all Sub-Activities under each budget line item), and the corresponding budget;

(6) <u>AThe proposed Contract Budget which must adhere to the following limitations:</u>

(A) The Administration line item may not exceed 15% of the total Contractfifteen (15) percent;

(B) At least <u>8% but not more than 10% of the total Contracteight (8) percent</u>, but no more than ten (10) percent, must be used for the Public Service Activities;

(C) For UGLGs self-administering the Program, Colonia Self Help Center Program funds cannot exceed \$45,000 in Program funds per unit per Income Eligible Household. Program funds can be used for Rehabilitation, Reconstruction or New Construction. An additional \$5,000 in Program funds are available for properties with non functioning and/or unpermitted cesspools or septic tanks that need replacement with an appropriately sized on site sewage facility or connection to a Department approved source of potable water and wastewater disposal. Additional funds from other sources may be leveraged with Program funds. (D)-Direct Delivery Costs for all New Construction and Reconstruction Activities cannot exceed 10%ten (10) percent per unit provided by the <u>CSHCColonia Self Help Center</u> Program. Direct Delivery Costs for Rehabilitation are limited to 15% fifteen (15) percent per unit provided by the <u>CSHCColonia Self Help Center</u> Program. All Direct Delivery Costs must be eligible and based on actual expenses for the specific housing unit;

(7) <u>The CSHC's</u> Proposed <u>Housing Assistance Guidelines</u>, <u>which</u><u>HAG</u> must include an Affirmative Fair Housing</u> Marketing Plan as described under Chapter 20 of this <u>title</u><u>Title</u> and <u>all</u> program parameters for Rehabilitation, Reconstruction, or New Construction;

(A) Prior to Department approval of Colonia Self Help Center construction activity, the Colonia Self Help Center must document that existing on-site sewage facilities (septic systems) have been inspected by a Texas Commission on Environmental Quality-authorized agent to determine if the system is in substantial compliance with Health & Safety Code, Chapter 366 and the rules adopted under that chapter. Cesspools that have not been previously permitted are unacceptable and must be replaced by an appropriately sized on-site sewage facility or the home must be connected to a Department-approved source of potable water

and wastewater disposal.

(B) New Construction, Reconstruction, and Rehabilitation activities under the Colonia Self-Help Center Program must adhere to TDHCA's Minimum Energy Efficiency Requirements for Single Family Construction Activities under Chapter 21 of this Title.

(8) Evidence of model subdivision rules adopted by the County;

(9) Written policies and procedures, as applicable, for:

(A) Solid waste removal;

(B) Construction skill classes;

(C) Homeownership classes;

(D) Technology access, including any technology hardware inventory purchased with <u>CSHC</u>Colonia Self-Help Center funds;

(E) Homeownership assistance; and/or

(F) Tool lending library, including any library inventory purchased with <u>CSHC</u>Colonia Self-Help Center funds. All <u>CSHCsColonia Self-Help Centers</u> are required to operate a tool lending library;

(10) Authorized signatory form and direct deposit authorization;

(11) UGLG resolution authorizing the submission of the Application and appointing the primary signatory for all Contract documents;

(12) Acquisition report (even if there is no acquisition activity);

(13) Certification of exemption for HUD funded projects; and

(14) Initial disclosure report for the Texas Department of Agriculture:-

(15) All required forms needed for a Previous Participation Review under §1.302 of this title, Previous Participation Reviews; and

(16) All required forms required by §20.9 of this title, Fair Housing, Affirmative Marketing and Reasonable Accommodations.

(g) Upon receipt of the Application, the Department will perform an initial review to determine whether the Application is complete and that each Activity meets a national objective as required by §104(b)(3) of the Housing and Community Development Act of 1974 (42 U.S.C. 5304(b)(3)).

(h) The Department may reduce the funding amount requested in the Application in accordance to subsection <u>§25.5(a) of this chapter.(c) of this Section</u>. Should this occur, the Department shall notify the appropriate Administrator before the Application is submitted to C-RAC for review, comments and approval. The Department and the Administrator will work together to jointly agree on the performance measures and proposed funding amounts for each Activity.

(i) The Department shall execute a <u>four-yearfour (4) year</u> Contract with the Administrator. No Contract extensions will be allowed. If the Administrator requirements are completed prior to the end of the <u>four-yearfour (4) year</u> Contract period, the Administrator may submit a new Application. <u>Contract extensions</u> may be granted for up to six months by the Department.

(j) The Department may decline to fund any Application if the Activities do not, in the Department's sole determination, represent a prudent use of <u>CSHCColonia Self-Help Center</u> funds. The Department is not obligated to proceed with any action pertaining to any Application which is received, and may decide it is in the Department's best interest to refrain from pursuing any selection process.

§25.725.6 Colonia Residents Advisory Committee Duties and Award of Contracts

(a) The Board shall appoint <u>one committee member to represent each of the counties in which a CSHC is</u> <u>located</u>not fewer than five (5) persons who are residents of Colonias to serve on the C-RAC. The members of the C-RAC shall be selected from lists of candidates submitted to the Department by local nonprofit organizations and the <u>Commissioners Court of the</u>commissioner's court of a county in which a <u>CSHCColonia</u> Self-Help Center is located. <u>Each committee member:</u>

(1) Must be a resident of a Colonia in the county the member represents;

(2) May not be a board member, contractor, or employee of the Administrator;

(3) May not have any ownership interest in an entity that is awarded a Contract under this Chapter; and

(4) Must undergo the Department's previous participation review and cannot be in default on any Department obligation.

(b) The C-RAC members' terms will expire every four (4)-years. C-RAC members may be reappointed by the Board; however, the Board shall review and <u>reappointapprove-all</u> members at least <u>once</u> every four (4) years. In the event that a C-RAC member is unable to complete the four-year term, Counties may propose an eligible candidate to be appointed by the Board to fulfill the remainder of the term.

(c) The Board shall appoint one committee member to represent each of the counties in which a Colonia Self-Help Center is located. Each committee member:

(1) Must be a resident of a Colonia in the county the member represents; and

(2) May not be a board member, contractor, or employee of the Administrator or have any ownership interest in an entity that is awarded a Contract under this Chapter and cannot be in default on any Department obligation.

(3) The Department will conduct a previous participation review on all members.

(c)(d) The Department may also select to have an alternate member from the list for each county in the event that the primary member is unable to attend meetings.

(d)(e) The C-RAC shall advise the Board regarding:

(1) The housing needs of Colonia residents;

(2) Appropriate and effective programs that are proposed or are operated through the <u>CSHCsColonia Self-Help Centers</u>; and

(3) Activities that might be undertaken through the <u>CSHCsColonia Self Help Centers</u> to serve the needs of Colonia residents.

(e)(f) The C-RAC shall advise the Colonia initiatives coordinator as provided by Section §775.005 of the Tex. Gov't Code.

(f)(g) Award of Contracts.

(1) <u>The Department will schedule C-RAC meetings for the review of satisfactorily completed CSHC applications from Administrators.</u> Upon reaching an Agreement with the Administrator, the Department will set the date for the C-RAC meeting. The C-RAC shall meet <u>no less than 30 days prior to the board meeting at</u> which the Board is scheduled to award a CSHC Contract, and may meet at other times as needed. before the 30th calendar day proceeding the date on which a Contract is scheduled to be awarded by the Board for the operation of a Colonia Self-Help Center and may meet at other times.

(2) <u>AnyThe</u> Administrator <u>whose Application is being considered</u><u>shall be present</u> at the C-RAC <u>meeting must</u> <u>be present</u><u>if its Application is being considered</u> to answer questions that C-RAC may have.

(3) After the C-RAC makes a recommendation on an Application, the recommendation will <u>then proceed</u> <u>throughundergo</u> the Department's award process.

(g)(h) Reimbursement $\frac{1}{0}$ C-RAC members for their reasonable travel expenses in the manner provided by <u>§25.9(1)</u>25.8(1) of this Chapter (relating to Administrative Thresholds) is allowable and shall be paid by the Administrator or Administrators whose Applications were considered at the meeting.

<u>§25.8</u><u>§25.7</u> Colonia Self-Help Center Contract Operation and Implementation

(a) The Department shall contract with ana UGLG for the operation of a <u>CSHCColonia Self-Help Center</u>. The

UGLG <u>may subaward the activity toshall subcontract with</u> a <u>Nonprofit Organization</u>, <u>Community Action</u> <u>Agency</u>, <u>or Housing Authoritylocal nonprofit organization</u>, <u>local community action agency</u>, <u>or local housing</u> authority that has demonstrated the ability to carry out all or part of the functions of a <u>CSHC</u>.<u>Colonia Self-Help Center</u>.

(b) Upon award of Colonia Self-Help Center funds by the Board, the Department shall deliver a Contract based on the scope of work to be performed within thirty (30) days of the award date, unless extenuating circumstances do not allow for delivery. Any Activity funded under the Colonia Self-Help Center Program will be governed by a written Contract that identifies the terms and conditions related to the awarded funds. The Contract will not be effective until executed by all parties to the Contract.

(b)(c) <u>The Administrator isAdministrators are</u> required to complete <u>antheir</u> environmental <u>reviewreviews</u> in accordance with 24 CFR Part 58, and receive the Authority to Use Grant Funds from the Department before: (1) Any commitment of <u>CDBGCommunity Development Block Grant (CDBG)</u> funds (i.e., execution of a legally binding Agreement and expenditure of CDBG funds) for Activities other than those that are specifically exempt from environmental review; and

(2) Any commitment of non-CDBG funds associated with the scope of work in the Contract that would have an adverse environmental impact (i.e., demolition, excavating, etc.) or limit the choice of alternatives (i.e., acquisition of real property, Rehabilitation of buildings or structures, etc.).

(c)(d) Request for Payments. The Administrator shall submit a properly completed request for reimbursement, as specified by the Department, at a minimum on a quarterly basis; however, the Department reserves the right to request more frequent reimbursement requests as it deems appropriate. The Department shall determine the reasonableness of each amount requested and shall not make disbursement of any such payment request until the Department has reviewed and approved such request. Payments under the Contract are contingent upon the Administrator's full and satisfactory performance of its obligations under the Contract. The Department may reduce a request for payment if documentation is insufficient or the performance is unsatisfactory.

(1) \$2,500 is the minimum amount for a Draw to be processed, unless it is the final Draw request. If an Administrator fails to submit a draw <u>for 12</u>within twelve (12) consecutive months the Contract <u>maywill</u> be subject to termination for failure to meet the Contract obligations.

(2) Draw requests will be reviewed to comply with all applicable laws, rules and regulations. The Administrator is responsible for maintaining a complete record of all costs incurred in carrying out the Activities of the Contract.

(3) Draw requests for all housing Activities will only be reimbursed upon satisfactory completion of types of Activities (e.g., all plumbing completed, entire roof is completed, etc.), consistent with the construction contract.

(4) The Administrator will be the principal contact responsible for reporting to the Department and submitting Draw requests.

(d)(e) Reporting. The Administrator shall submit to the Department reports on the operation and performance of the Contract on forms as prescribed by the Department. Quarterly Reports shall be due no later than the tenth (10th) calendar day of the month after the end of each calendar quarter. The Administrator shall maintain and submit to the Department up-to-date accomplishments in quarterly reports identifying quantity and cumulative data including the expended funds, Activities completed and total number of Beneficiaries. Processing of draws may be suspended until the Administrator's quarterly reports are submitted and approved by the Department. If an Administrator fails to submit Activity data within a 24-consecutive-month periodtwenty-four (24) consecutive months, the Contract maywill be subject to termination for failure to meet the Contract obligations.

(e)(f) Amendments. The Department's executive director or its designee, may authorize, execute, and

deliver amendments to any Contract.

(1) <u>One Contract Extension of no more than six months may be granted Time Extensions</u> beyond the <u>four-yearfour (4) year</u> Contract period will not be allowed for Colonia Self-Help Center Contracts.

(2) Changes in beneficiaries. <u>Any changesReductions</u> in contractual deliverables and beneficiaries shall require a Contract amendment. <u>Increases in contractual deliverables and beneficiaries that do not shift</u> funds, or cumulatively shift less than ten (10) percent of total Contract funds, shall be completed through a Contract modification.

(3) The Department, at its discretion and in coordination with an Administrator, may increase a Contract Budget amount and the number of Activities and beneficiaries to be assisted based on the availability of <u>CSHC</u>Colonia Self-Help Center funds, the exemplary performance in the implementation of an Administrator's current Contract, and the time available in the <u>four-yearfour (4) year</u> Contract period. Upon Board approval, the cap on the maximum Contract amount may be exceeded if the terms of this paragraph are met by the Administrator.

(g) New Construction, Reconstruction, or Rehabilitation Activity that is provided by the Colonia Self-Help Center Program to Households with annual incomes that are equal or exceed 50% of the area median family income shall have a recorded and enforceable lien placed on the property secured by a deferred Forgivable Loan not shorter than five (5) years or a repayable mortgage loan not to exceed thirty (30) years. The Department will be a lien holder.

(h) New Construction, Reconstruction, or Rehabilitation Activity that is provided by the Colonia Self-Help Center Program to Households with annual incomes that do not exceed 50% of the area median family income shall be a grant.

(f)(i) Participating Households must provide at least 15% of the labor necessary to construct or Rehabilitate the Single Family Housing Unit by contributing the labor personally and/or through non-contract labor assistance from family, friends, or volunteers. Volunteer hours at the CSHC may also fulfill the 15% labor requirement.

(g) Program funds can be used for Rehabilitation, Reconstruction or New Construction. Assistance may be provided in the form of a grant or a forgivable loan to the household. Additional funds from other sources may be leveraged with Program funds. Program funds cannot exceed the following limits:

(1) Program funds for Rehabilitation cannot exceed \$60,000 in Program funds per unit per Income Eligible Household.

(2) Program funds for Reconstruction or New Construction cannot exceed \$75,000 in Program funds per unit per Income Eligible Household.

(3) An additional \$5,000 in Program funds is available for properties with non-functioning and/or unpermitted cesspools or septic tanks that need replacement with an appropriately sized on-site sewage facility, or connection to a Department-approved source of potable water and wastewater disposal.

(h) All Direct Delivery Costs must be eligible and based on actual expenses for the specific housing unit. Subawardees acting on behalf of an UGLG shall incorporate Direct Delivery Costs into its bid proposals.

(i) Prior to Department approval of CSHC construction activity, the CSHC must document that existing onsite sewage facilities (septic systems) have been inspected by a Texas Commission on Environmental Quality-authorized agent to determine if the system is in substantial compliance with Health & Safety Code, Chapter 366 and the rules adopted under that chapter. Cesspools that have not been previously permitted are unacceptable and must be replaced by an appropriately sized on-site sewage facility or the home must be connected to a Department-approved source of potable water and wastewater disposal.

(j) New Construction, Reconstruction, and Rehabilitation activities under the CSHC Program must adhere to TDHCA's Minimum Energy Efficiency Requirements for Single Family Construction Activities under Chapter 21 of this Title.

(k) Inspections. A Qualified Inspector shall conduct all inspections with respect to applicable construction standards and documentation protocol prescribed by the Department.

(1) New Construction Requirements.

(A) No initial inspection is required, however building construction plans must be submitted to the Department for approval.

(B) A Certificate of Occupancy is acceptable confirmation of meeting construction requirements. If the activity occurs in a jurisdiction that does not issue Certificates of Occupancy, a Qualified Inspector shall inspect the property applying all applicable construction standards and forms prescribed by the Department.

(2) Reconstruction Requirements.

(A) The initial inspection must identify all substandard conditions as described by Texas Minimum Construction Standards (TMCS) and any health or safety concerns that are beyond repair; confirm that a governmental entity has condemned the unit; or identify the unit as an MHU that will not be rehabilitated. The work write-up and cost estimate shall address all substandard conditions in sufficient detail to justify the need for reconstruction.

(B) A Certificate of Occupancy is acceptable confirmation of meeting construction requirements. If the activity occurs in a jurisdiction that does not issue Certificates of Occupancy, a Qualified Inspector shall inspect the property applying all applicable construction standards and forms prescribed by the Department.

(C) Administrator must demonstrate compliance with §2306.514 Tex. Gov't Code, "Construction Requirements for Single Family Affordable Housing".

(3) Rehabilitation Requirements.

(A) The initial inspection must identify all substandard conditions as described by TMCS and any health or safety concerns. The work write-up and cost estimate shall address all substandard conditions in sufficient detail.

(B) The final inspection shall document that all elements incorporated into the contracted work-write up have been addressed satisfactorily prior to the final draw request.

(1)(i) The Administrator's initial and any revised HAG, as well as any amendments to the HAG, shall be approved by commissioners' court and the Department prior to implementation.

(m)(j) <u>Residents shall have access</u> to all Public Service Activities identified in the Contract shall be provided at least two (2)–Saturdays a month during hours preferable to Colonia residents. In addition, residents shall have access shall be provided at least one day during the workweek after hours for a period long enough to allow Colonia residents to utilize the services.

(n)(k) The purchase of new tools, new computers and computer equipment, if included in the approved budget, shall only occur within the first 24twenty four (24) months of the Contract Termterm. Any purchases of these items after 24twenty four (24) months must be approved by the Department in writing prior to purchase.

<u>§25.9</u>§25.8 Administrative Thresholds

Administrative Draw request. Administrative Draw requests are funded out of the portion of the Contract budget specified for administrative cost (administration line item of the Contract budget). These costs are not directly associated with an Activity. The administration line item will be disbursed as described in paragraphs (1) - (8) of this section:

(1) Threshold 1. The initial administrative Draw request allows up to 10% percent of the administration line item mayte be drawn down 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). Subsequent administrative funds will be reimbursed in proportion to the percentage of the work that has been completed as identified in paragraphs (2) - (8) of this section.

(2) Threshold 2. <u>UpAllows up</u> to an additional <u>15%fifteen (15) percent</u> (<u>25%twenty-five (25) percent</u> of the total) of the administration line item to be drawn down after a start of project Activity has been demonstrated. For the purposes of this threshold, if Davis-Bacon labor standards are required for a given Program Activity, the "start of project Activity" is evidenced by the submission of a start of construction form. If labor standards are not required on a given project Activity that has commenced (and for which reimbursement is being sought), the submission of a Draw request that includes sufficient back-up documentation for expenses of non-administrative project Activities evidences a start of project Activity. Direct Delivery Costs charges will not constitute a start of project Activity.

(3) Threshold 3. <u>UpAllows up</u> to an additional <u>25%</u>twenty five (25) percent (<u>50%fifty (50) percent</u> of the total) of the administration line item <u>mayto</u> be drawn down after compliance with the twenty (20)-month threshold requirement has been demonstrated as described in <u>§25.10</u><u>§25.9</u> of this chapter (relating to Expenditure Thresholds and Closeout Requirements).

(4) Threshold 4. <u>UpAllows up</u> to an additional <u>25%</u>twenty-five (25) percent (<u>75%</u>seventy-five (75) percent of the total) of the administration line item <u>may</u>to be drawn down after compliance with the <u>32</u>thirty-two (32)-month threshold requirement has been demonstrated as described in <u>§25.10 of</u> this chapter.

(5) Threshold 5. <u>UpAllows up</u> to an additional <u>15%</u>fifteen (15) percent (<u>90%</u>ninety (90) percent of the total) of the administration line item <u>mayto</u> be drawn down after compliance with the <u>44forty-four (44)</u>-month threshold requirement has been demonstrated as described in <u>§25.10 of</u> this chapter (relating to <u>Expenditure Thresholds and Closeout Requirements</u>).

(6) Threshold 6. <u>Up to</u>Allows an additional <u>5%five (5) percent</u> (<u>95%ninety-five (95) percent</u> of the total) of the administration line item <u>may</u>to be drawn down upon receipt of all required close-out documentation.

(7) Threshold 7. <u>TheAllows the</u> final <u>5%</u>five (5) percent (<u>100%</u>one hundred (100) percent of the total), less any administrative funds reserved for audit costs as noted on the Project Completion Report of the administration line item, <u>may</u> to be drawn down following receipt of the programmatic close-out letter issued by Department.

(8) Threshold 8. Any funds reserved for audit costs will be released upon completion and submission of an acceptable audit. Only the portion of audit expenses reasonably attributable to the Contract is eligible.

<u>§25.10</u>§25.9 Expenditure Thresholds and Closeout Requirements

(a) Administrators must meet the expenditure threshold requirements described in paragraphs (1) - (4) of this subsection. If an Administrator fails to expend and submit expenditure documentation by the due date, the <u>deobligation process outlined in §25.5 of this chapter may be initiated. A</u> Contract may <u>also</u> be subject to termination for failure to meet the Contract obligations, and the Department may elect not to provide future funds to the Administrator. In such cases, the Administrator will be notified in writing of the processes described in Tex. Gov't Code, Chapter 2105 and §1.411 of this Title (relating to Administration of Block Grants under Chapter 2105 of the Tex. Gov't Code).

(1) Six-Month Threshold. An Environmental Assessment that meets the requirements outlined in the environmental clearance requirements of the Contract must be <u>approved by</u>submitted to the Department within six (6) months from the start date of the Contract;

(2) Twenty-Month Threshold. <u>The To meet this requirement the</u> Administrator must have expended and submitted for reimbursement to the Department at least <u>30% thirty (30) percent</u> of the total <u>CSHCColonia</u> <u>Self-Help Center</u> funds awarded within <u>20twenty (20)</u> months from the start date of the Contract;

(3) Thirty-two-Month Threshold. <u>The To meet this requirement the</u> Administrator must have expended and submitted for reimbursement to the Department at least <u>60%sixty (60) percent</u> of the total <u>CSHCColonia</u> <u>Self-Help Center</u> funds awarded within <u>32</u>thirty-two (32) months from the start date of the Contract; and

(4) Forty-four-Month Threshold. <u>The To meet this requirement the</u> Administrator must have expended and submitted for reimbursement to the Department at least <u>90%ninety (90) percent</u> of the total <u>CSHCColonia</u> <u>Self-Help Center</u> funds awarded within <u>44forty-four (44)</u> months from the start date of the Contract.

(b) For purposes of meeting a threshold in this section, "expended and submitted" means that a Draw request was received by the Department, is complete, and all costs needed to meet a threshold are adequately supported. The Department will not be liable for a threshold violation if a Draw request is not received by the threshold date.

(c) The final Draw request and complete closeout documents must be submitted no later than <u>60</u>sixty (60) days after the Contract end date. If closeout documents are <u>not received by this deadline</u><u>late</u>, the remaining Contract balance may be subject to Deobligation as the Department's liability for such costs will have expired. If an Administrator has reserved funds in the project completion report for a final Draw request, the Administrator has <u>90ninety (90)</u> days after the Contract end date to submit the final Draw request, with the exception of <u>the Department's portion of audit costs</u> which may be reimbursed upon submission of the final <u>Single Auditsingle audit</u>.

9a

BOARD ACTION REQUEST

MULTIFAMILY FINANCE DIVISION

SEPTEMBER 5, 2019

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

RECOMMENDED ACTION

WHEREAS, the Board approved the 2019-1 Multifamily Direct Loan Notice of Funding Availability (2019-1 NOFA) on December 6, 2018, which included \$11.5 million in Tax Credit Assistance Program Ioan repayments (TCAP Repayment Funds or TCAP RF), \$9,638,041 in National Housing Trust Fund (NHTF), \$8,919,756 in HOME funds, and \$4.5 million in NSP Round 1 Program Income (NSP1 PI);

WHEREAS, the Board approved the First Amendment to the 2019-1 NOFA on April 25, 2019, which added \$6,023,465 in de-obligated HOME funds and \$3,660,000 in TCAP RF to the General set-aside, while reprogramming \$2,000,000 in unrequested TCAP RF from the Preservation set-aside and \$6,115,058 in unrequested HOME funds from the Community Housing Development Organization (CHDO) set-aside to the General set-aside, resulting in \$14,443,221 in HOME funds, \$11.16 million in TCAP RF, and \$4.5 million in NSP1 PI currently available under the General set-aside;

WHEREAS, the Board approved a conditional and then final Second Amendment to the 2019-1 NOFA (Second Amendment) on May 23, 2019, and July 25, 2019, respectively, which added \$8,401,779 in HOME PI and reprogrammed HOME funds to the 2019-1 NOFA under the General set-aside, originally subject to the Department of Housing and Urban Development's (HUD's) approval of the 2019 One Year Action Plan (OYAP), and staff setting up the financial mechanisms to allow expenditure of the funds by the Department;

WHEREAS, on July 25, 2019, the Board also approved the Third Amendment to the 2019-1 NOFA (Third Amendment), approving \$5,100,000 in HOME PI and reprogrammed HOME funds;

WHEREAS, the Department and the Department of Housing and Urban Development (HUD) have executed the Program Year 2019 NHTF Grant Agreement, making \$9,860,791.50 in non-administrative NHTF funds available for programming in the 2019-1 NOFA;

WHEREAS, staff recommends making all \$9,860,791.50 of the Program Year 2019 NHTF funds available for multifamily activities under the 2019-1 NOFA under the Supportive Housing/Soft Repayment (SH/SR) set-aside;

WHEREAS, staff further recommends increasing the maximum request amount for applications proposing new construction under the Supportive Housing/Soft Repayment (SH/SR) set-aside from \$2,000,000 to \$3,000,000; and

WHEREAS, staff has determined that adding all \$9,860,791.50 of the Program Year 2019 NHTF funds to the 2019-1 NOFA and increasing its maximum request amount may help the Department to more quickly meet the commitment deadline that this source of funds is subject to;

NOW, therefore, it is hereby

RESOLVED, that \$9,860,791.50 in NHTF 2019 Program Year funds be added to the 2019-1 NOFA under the Supportive Housing/Soft Repayment set-aside effective September 20, 2019;

FURTHER RESOLVED, that the maximum request amount for applications proposing new construction under the SH/SR set-aside be increased from \$2,000,000 to \$3,000,000; and

FURTHER RESOLVED, the Executive Director and staff as designated by the Executive Director are authorized, empowered, and directed, for and on behalf of the Department to execute such documents, instruments, and writings and perform such acts and deeds as may be necessary to effectuate the foregoing.

BACKGROUND

On December 21, 2018, the 2019-1 NOFA was published in the *Texas Register* announcing the availability of up to \$34,557,797, composed of \$11.5 million in TCAP RF, \$9,638,041 in NHTF, \$8,919,756 in HOME funds, and \$4.5 million in NSP1 PI – for the development of affordable multifamily rental housing. Of the total NOFA amount of \$34,557,797, \$12,304,698 was made available under the General set-aside.

On May 10, 2019, the First Amendment to the 2019-1 NOFA was published in the *Texas Register* announcing the availability of up to \$44,241,262, composed of \$15,160,000 in TCAP RF, \$9,638,041 in NHTF, \$14,943,221 in HOME funds, and \$4,500,000 in NSP1 PI. Of the total NOFA amount of \$44,241,262, \$30,103,221 was made available under the General set-aside, \$14,443,221 of which was HOME funds.

On June 7, 2019, the conditional Second Amendment to the 2019-1 NOFA was published in the *Texas Register* announcing the potential availability of up to \$8,401,779 in additional HOME funds under the General set-aside exclusively for award to 2019 9% HTC-layered applications. The proposed \$8,401,779 was contingent on approval of the Department's 2019 OYAP from HUD, which recently occurred.

With all conditions met, the Board approved the finalization of the Second Amendment on July 25, 2019, which confirmed the availability of \$8,401,779 in HOME funds for 2019 9% HTC-layered applications under the General set-aside. The Board also approved the Third Amendment to the 2019-1 NOFA on July 25, 2019, adding another \$5,100,000 in HOME PI and reprogrammed HOME funds.

On July 18, 2019, the Department received the Program Year 2019 NHTF Grant Agreement from HUD indicating its approval of the Department's 2019 One Year Action Plan (OYAP) and intent to allocate 9,860,791.50 in non-administrative and \$1,095,643.50 in administrative NHTF funds. The Department executed the 2019 Grant Agreement on July 22, 2019, whereupon HUD approved and issued the Department's allocation of NHTF Program Year funds.

With this addition of \$9,860,791.50 in NHTF funds, staff anticipates being able to make more awards of Direct Loan funds under the Supportive Housing/Soft Repayment (SH/SR) set-aside. The maximum per application request amount with the SH/SR set-aside for New Construction will increase to \$3,000,000.

, From September 20 through October 21, 2019, NHTF funds are limited to the amount available in the Region as reflected in the Regional Allocation Formula (RAF) provided in Attachment B to the Fourth Amendment to the 2019-1 NOFA. The RAF identifies maximum amounts available on a regional basis, and then funds are available statewide through November 26, 2019. An Applicant that submits a complete application for NHTF funds from September 20, 2019, through October 21, 2019, requesting greater amount than is available in the Region, will have an Application date of receipt of October 22, 2019. The Department has the ability to utilize NHTF funds for Development Sites in Participating and Non-Participating Jurisdictions.

Moving forward, Staff will continue to monitor the demand for Direct Loan funds and may recommend further amendments to the 2019-1 NOFA if necessary.



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS MULTIFAMILY DIRECT LOAN 2019-1 NOTICE OF FUNDING AVAILABILITY (NOFA) ANNUAL NOFA FOURTH AMENDMENT EFFECTIVE SEPTEMBER 20, 2019

THIS AMENDMENT ADDS \$9,860,791.50 IN NATIONAL HOUSING TRUST FUND (NHTF) FUNDS TO THE SUPPORTIVE HOUSING/SOFT-REPAYMENT (SH/SR) SET-ASIDE, AND INCREASES THE MAXIMUM PER APPLICATION REQUEST UNDER THE SH/SR SET-ASIDE FOR APPLICANTS PROPOSING ELIGIBLE NEW CONSTRUCTION ACTIVITIES TO \$3,000,000. FROM SEPTEMBER 20, 2019 THROUGH OCTOBER 21, 2019, AN APPLICANT APPLYING FOR NHTF FUNDS IS LIMITED TO THE AMOUNT AVAILABLE IN THE REGION AS PROVIDED IN THE 2019 NHTF REGIONAL ALLOCATION FORMULA (RAF) FOUND IN ATTACHMENT B.

This amendment replaces in its entirety sections 1, 2b, and 2d. All other sections of the 2019-1 NOFA remain as amended by the First, Second, and Third Amendments.

1) Summary. The Texas Department of Housing and Community Affairs (the Department) announces the availability of up to \$67,603,832.50 in Multifamily Direct Loan funding for the development of affordable multifamily rental housing for low-income Texans. Applications under the 2019-1 NOFA will be accepted from January 14, 2019, through November 26, 2019 (if sufficient funds remain). From September 20, 2019, through October 21, 2019, an Applicant applying for NHTF Funds is limited to the amount available in the region as provided in the 2019 NHTF Regional Allocation Formula found in Attachment B. An Applicant that submits a complete application for NHTF funds from September 20, 2019, through October 21, 2019, requesting a greater amount than is available in the Region, will have an Application date of receipt of October 22, 2019. The availability and use of these funds are subject to the following rules, as applicable:

Texas Administrative Code

10 TAC Chapter 1 (Administration)
10 TAC Chapter 2 (Enforcement)
10 TAC Chapter 10 (Uniform Multifamily Rules)
10 TAC Chapter 11 (Qualified Allocation Plan)
10 TAC Chapter 12 (Multifamily Housing Revenue Bonds)

10 TAC Chapter 13 (Multifamily Direct Loan Rule)

<u>Texas Government Code</u> Tex. Gov't. Code Chapter 2306

<u>U.S. Department of Housing and Urban Development (HUD) Program Regulations</u>
24 CFR Part 92 (HOME Investment Partnerships Program Final Rule)
24 CFR Part 93 (Housing Trust Fund Interim Rule)
24 CFR Part 570, as modified by Federal Register Notice (Neighborhood Stabilization Program Round 1)

<u>Fair Housing</u> Federal Fair Housing Act, 42 U.S.C. 3601-19.

Other Federal laws and regulations may that apply depending on funding source:

Environmental Compliance

All federal sources must have some type of environmental review in accordance with 24 CFR Part 93 or 24 CFR Part 58 as applicable.

Minimizing Resident Displacement

All federal sources must follow the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; HOME and NSP1 PI must follow Section 104(d) of Housing and Community Development Act of 1974; and all federal sources must follow the HUD Handbook 1378.

Labor Standards

HOME and NSP1 PI funds are regulated by Davis-Bacon and Related Labor Acts (40 U.S.C. §3141-3144 and 3146-3148, 24 CFR §92.354, and HUD Handbook Federal Labor Standards Compliance in Housing and Community Development Programs).

Employment Opportunities

HOME, NHTF, and NSP1 PI require compliance with 24 CFR Part 135 (Section 3).

Except as otherwise noted in this NOFA, Applicants proposing development of affordable multifamily rental housing should assume HOME, NSP1 PI and/or NHTF funds will be awarded and be prepared to comply with applicable regulations. An Applicant must familiarize itself with all of the applicable state and federal rules that govern the program. If HOME, NSP1 PI and/or NHTF funds are used and Federal regulations or subsequent guidance imposes additional requirements, such Federal regulations or guidance shall govern.

An Applicant that proposes refinancing with minimal rehabilitation must have a Market Analysis in accordance with 10 TAC §11.303 (unless an exception applies under 10 TAC §13.5(d)), and a PCA in accordance with 10 TAC §11.306, both of which must support the proposed level of

rehabilitation. The Applicant must receive a waiver from the Board of the rehabilitation amounts listed in 10 TAC §11.101(b)(3). An Application proposing Refinancing with Minimal Rehabilitation, or that requests supplemental funds for an Application that has received funding or allocation in a previous year, generally will only receive Tax Credit Assistance Program Repayment Funds ("TCAP RF"), but, except as otherwise noted in this NOFA, may receive HOME, NSP and/or NHTF funds if it is an eligible activity for a federal fund source. An award to a Development that proposes to refinance with minimal rehabilitation, or to obtain supplemental financing, will not be made in amount that exceeds the amount necessary to replace lost funding or maintain the anticipated levels of feasibility in the original Application, as determined by the Board.

2) a. <u>CHDO Set-Aside</u>. At least \$500,000 in HOME funds are set aside for nonprofit organizations that can be certified as Community Housing Development Organizations (CHDOs).

b. <u>Supportive Housing/ Soft Repayment Set-Aside</u>. Up to \$21,498,832.50 (\$2,000,000 in TCAP RF and \$19,498,832.50 in NHTF) is available in this set-aside. Applicants proposing new construction within this set-aside must restrict all Direct Loan-assisted units to 30% AMI, whereas Applicants proposing rehabilitation and targeting a Supportive Housing population may restrict Direct Loan units beyond 30% AMI up to 60% AMI.

c. <u>Preservation Set-Aside</u>. Up to \$2,000,000 in TCAP RF is available in this set-aside. Eligible activities under this set-aside include: (1) acquisition and rehabilitation; (2) rehabilitation without acquisition; and (3) refinancing with minimal rehabilitation (less than \$30,000 per unit).

d. <u>General Set-Aside</u>. All remaining TCAP RF, HOME, and NSP1 PI funds available, currently anticipated to be \$43,605,000. Eligible activities under this set-aside include those mentioned in the Preservation set-aside as well as New Construction.

Set-Aside	Eligible Activities	Amount Available		Maximum Request ¹
CHDO	NC, A/R, R	HOME	\$500,000	\$500,000
Supportive Housing / Soft Repayment	A/R, R, Refi MR	TCAP RF	\$2,000,000	\$2,000,000
	NC	NHTF	\$19,498,833	\$3,000,000
Preservation	A/R, R, Refi MR	TCAP RF	\$2,000,000	\$2,000,000
General	NC, A/R, R, Refi MR	HOME	\$27,945,000	\$4,000,000 if NC; \$2,000,000 if A/R, R, Refi MR
		TCAP RF	\$11,160,000	
		NSP1 PI	\$4,500,000	

¹ This total includes any other Multifamily Direct Loan Funds previously awarded to the Applicant by the Department.

Key: NC – New Construction A/R – Acquisition/Rehabilitation

R – Rehabilitation Refi MR – Refinancing with Minimal Rehabilitation

Attachment B

National Housing Trust Fund (NHTF) State of Texas 2019 Regional Allocation Formula (RAF)

Region	R	egional Allocation
1	\$	317,070.79
2	\$	177,004.36
3	\$	2,842,871.50
4	\$	334,726.74
5	\$	246,264.08
6	\$	2,528,072.62
7	\$	851,947.94
8	\$	467,006.31
9	\$	845,938.41
10	\$	280,498.73
11	\$	496,895.86
12	\$	182,142.15
13	\$	290,352.01
Total	\$	9,860,791.50

9b

BOARD ACTION REQUEST

MULTIFAMILY FINANCE DIVISION

SEPTEMBER 5, 2019

Presentation, discussion, and possible action regarding amendments and modifications to the Construction Loan Agreements and Promissory Notes for ADC West Ridge, LP

RECOMMENDED ACTION

WHEREAS, the Department awarded HOME and Tax Credit Assistance Payment Repayment Funds (TCAP RF) under the 2015-1 Multifamily Development Program Notice of Funding Availability to ADC West Ridge, LP (the Development Owner) for the construction of Westridge Villas on July 30, 2015;

WHEREAS, the HOME and TCAP RF loans closed on May 19, 2016, and Construction Loan Agreements (CLAs), which stipulated a completion date of not more than 18 months from the date of the agreement, were executed the same day;

WHEREAS, the CLAs have been amended by staff in accordance with 10 TAC §13.12(3), extending the completion date by 12 months to a total of 30 months – November 19, 2018 – from the date the CLA was executed;

WHEREAS, the CLAs have been further amended by Board action taken on October 11, 2018, in which the Board approved an extension to the completion date in the CLAs up to 40 months from the date of the agreements, resulting in a September 18, 2019, completion date;

WHEREAS, the most recent Construction Progress Schedule submitted in July 2018 indicates that construction is 95% complete while the August 2019 rent roll indicates that the Development has achieved 92% occupancy;

WHEREAS, the senior loan from Orix Real Estate Capital has not converted to a permanent loan as a result of the project not being complete;

WHEREAS, the Development Owner has been involved in litigation with the General Contractor as a result of the construction failing to be fully completed and the General Contractor subsequently filing a suit against the Development Owner and a lien against the property, which has led to the Development Owner being unable to request a final development inspection from the Department because it has not achieved 100% completion;

WHEREAS, a Closed Final Construction Inspection Letter – indicating all amenity and accessibility deficiencies identified during a final inspection have been cleared – issued by Inspection staff is a requirement for releasing final draw disbursements;

WHEREAS, staff will conduct a Final Construction Inspection before construction is 100% complete – within the next 30 days – in order to ensure a final HOME draw can be approved and the project closed out in the Department of Housing and Urban Development's (HUD's) reporting system by May 12, 2020, thereby meeting the requirements of 24 CFR §92.205(e); and

WHEREAS, 10 TAC §13.12 requires Board approval for an extension beyond 12 months to the construction completion date as well as documentation that the extension is necessary to complete construction and that there is good cause for the extension;

NOW, therefore, it is hereby

RESOLVED, that the Board has determined that the extension of the construction completion date is necessary and that there is good cause for the extension;

FURTHER RESOLVED, the Executive Director or his designee be and each of them hereby are authorized, empowered, and directed, for and on behalf of this Board to extend the completion date in the CLAs as necessary, but in no event beyond May 11, 2020, in order to ensure a final HOME draw can be approved and the project can be closed out in HUD's reporting system.

BACKGROUND

The HOME and TCAP RF loans for ADC West Ridge, LP closed on May 19, 2016. Construction commenced soon thereafter. The completion date in the CLAs was originally November 19, 2017, (18 months from loan closing). The First Amendments to the CLAs changed the completion date to November 19, 2018 (30 months from loan closing). The Second Amendments to the CLAs approved by the Board on October 11, 2018, extended the completion date to September 18, 2019 (40 months from loan closing). This proposed Third Amendment, contemplated in this Board Action item, would allow the Executive Director or his designee to extend the completion date beyond September 19, 2019, but in no event later than May 11, 2020, and would allow the borrower to request the remaining HOME funds in the Housing Contract System and the Integrated Housing and Disbursement System (IDIS: HUD's reporting system) provided that a UPCS and a Closed Final Construction Inspection Letter that ensures compliance with in the Property Standards in 24 CFR §92.251(a)is issued by the Department prior to that date. 10 TAC §13.13(a) requires documentation be submitted by the

Development Owner to substantiate necessary and good cause for extensions such as the one being requested. Documentation substantiating necessary and good cause for the extension is included behind this Board Action Request. Simply, litigation by the General Contractor has caused the need for the extension.

Construction was substantially complete by July 2018, but a Final Construction Inspection request has not yet been submitted to TDHCA inspection staff since construction of the swimming pool has not been completed. Typically, the Department requires construction to be fully complete before submitting a Final Construction Inspection request. However, because of the upcoming federal deadline of May 12, 2020, (four years from HOME funds being committed in IDIS) to close out the project in IDIS , and because the Development Owner has indicated that the property meets the minimum 10 points under the 2015 Uniform Multifamily Rules with the amenities currently in the Development, staff is recommending that the Development Owner submit all the documentation for a UPCS and a Final Construction Inspection. It is anticipated that the Final Construction Inspection Letter issued as a result of the Final Construction Inspection could potentially be issued within the next 45 days if the Development Owner timely submits all the necessary documentation. The letter will likely identify several deficiencies as is typical of many UPCS and Final Construction Inspection Letters. Corrective action documentation will be required to be submitted by the Development Owner to the Department within 90 days from the date the Final Construction Inspection Letter is issued, depending on the severity of the deficiencies. This aggressive timeline moving forward is necessary in order to ensure the final draw is submitted into the IDIS system prior to May 12, 2020; if that deadline is not met, the Department is at risk of having to repay the \$3,022,062.50 in HOME funds invested in the Development.

10 TAC §13.11(q)(10) requires that 25% of the Developer Fee for Direct Loan-funded developments be withheld until the development receives a Closed Final Construction Inspection Letter. At this time \$739,443.26 (\$611,734.25 of which is 25% of Developer Fee available upon receipt of a Closed Final Construction Inspection Letter) remains available to be drawn under the HOME and TCAP RF loan documents. This action will allow for \$22,062.50 in HOME funds to be drawn down after the Department has confirmed that the Development meets the Property Standards in 24 CFR §92.251(a), but no later than May 11, 2020. The majority of the remaining \$717,380.76 in TCAP RF, meanwhile, can only be drawn after the Closed Final Construction Inspection Letter and correction of any initial UPCS inspection deficiencies, which confirms all Department requirements have been met.

The Development Owner has also requested modifications to the Promissory Notes for the HOME and TCAP-RF loans. The Department is evaluating this request but has not had a sufficient opportunity to review and make a recommendation on this issue, and may bring one or both of these requested modifications to the Board at a future meeting.

Andrew Sinnott

From:	TERRI ANDERSON <terri_l_anderson@msn.com></terri_l_anderson@msn.com>
Sent:	Wednesday, August 28, 2019 11:07 PM
То:	Andrew Sinnott
Cc:	Marni Holloway; John Shackelford; Conor Bateman
Subject:	RE: KWA Lien dated 11/15/2018 @ 2:56PM
Attachments:	7.16.2019 List of Incomplete and Defective Work.pdf

Good evening Andrew,

Thank you for the email below. Per our discussion last Friday and today, the following items were provided earlier this evening under separate cover:

- 1. Operating Statements for the period ending 6/20/2019 and 7/31/2019. Those statements include the trailing 12 month operating statements dating back to the start of operations beginning in June 2018 after acceptance of the Leasing Office.
- 2. Fully executed Permission to Occupy forms, which replace the G704 according to the Construction Contract and HUD MAP Guidelines.
- 3. The Center for Housing Resources, Inc. 2018 Audit, which includes West Ridge Villas' operations.
- 4. November 9, 2018 correspondence requesting approval of TDHCA's loan modification documents.
- 5. Correspondence with HUD related to Substantial Completion and completion of Incomplete Items and Defective Items (lists attached).

As stated in our conversations, although HUD has not issued the Substantial Completion date to close out the 221d4 loan, according to the MAP GUIDE and the approved Construction Contract, that date should be July 31, 2018 (related correspondence was also provided). Additionally, the warranty period began 7/31/2018 and HUD instructed completion of the 9 Month and 12 Month Warranty Inspections by the Architect.

Although the attached list of incomplete work and defective work is extensive, the property is currently 92% occupied and the amenities which have been completed exceed the minimum points required to meet TDHCA's minimum construction requirements. No application amendment is requires. As such, we respectfully request a Final Inspection and to close out both the TDHCA HOME Loan and TCAP Loan.

Since March 2019, KWA Construction, LP, the Contactor, continues to be in breach of contract and in breach of warranty. Litigation is proceeding, and a court date has been set for early Spring 2020 with Mediation scheduled in November 2019.

Please let me know if you need additional information. Have a great evening.

Sincerely, ADC WEST RIDGE, LP By: CHR West Ridge Villas, LLC By: Center for Housing Resources, Inc. By: Terri L. Anderson, Chairperson of the Board of Directors

Items of Incomplete Work

- 1. Fenced Playground with equipment and safe surface not installed;
- 2. BBQ Grills and Tables not installed;
- 3. Gazebo with benches not installed;
- 4. Swimming Pool not installed;
- 5. 911 Phone not installed;
- 6. Water Fountain at Pool not installed;
- 7. Landscaping not complete;
- 8. Irrigation not complete and not functioning;
- 9. Change flooring from Carpet to Vinyl in living and dining rooms.
- 10. Change counter tops from Formica counter tops to Granite counter tops.
- 11. Permanent signage throughout property;
- 12. Air Conditioner Testing and Balancing;
- 13. Hardi Siding and Hardi Panels at Building Entries, Soffits, and Ceilings not installed;
- 14. Hardi Panel on exterior ceilings at Leasing Office and Building Entries not installed.;
- 15. Monument Sign not installed;
- 16. Utility bills paid by Owner.
- 17. Stained Concrete Flooring at Leasing Office, Boiler Room, Patios, and Garages not installed;
- 18. Maintenance Bathroom: No handrails or tile on floor or tile wainscot on walls;
- 19. Peeling paint on MDF trim and missing paint grade trim throughout Leasing Office;
- 20. Cabinets/Shelving at Leasing Office not installed;
- 21. Fire alarm relay switch between buildings missing second phone line (POTS).
- 22. Egress at Building 5 sidewalk missing; and trip hazards remain
- 23. Weather proofing incomplete.

- 24. Paint Siding at Roof.
- 25. Specified Roof Access Ladders;
- 26. Accessible route ramp painting, parking lot symbols and defective striping;
- 27. Braided stainless steel water hoses for Washer Hook ups;
- 28. Missing Splash Blocks at downspouts;
- 29. Shelving trim in Living Rooms and Bathrooms of Residential Units;
- 30. Leasing Office, Maintenance Room and Boiler Room Window Coverings;
- 31. Fencing throughout Property;
- 32. Reduced Site Work by lowering site four (4) feet and removing Engineered Retaining Walls;
- 33. Installation of Four (4") of Top Soil;
- 34. Fine Grading and backfill;
- 35. Site and Property Clean-up;
- 36. Mail Center at Leasing Office;
- 37. Faux cedar beams (2) in Leasing Office;
- 38. Individual Water Meters in Units;
- 39. Trash Enclosure incomplete, defective for function, and never stained;
- 40. Trash Compactor not installed;
- 41. Detention Pond Outfall Structure not covered or protected; steel grate not installed;
- 42. Radon Testing;
- 43. Fire Extinguishers in Each Residential Unit;
- 44. Industrial Cabinets, Shelving and Workbench not installed at Maintenance Building;
- 45. Water heater in Maintenance Building;
- 46. Nine (9) Brick Columns in Leasing Office;
- 47. Wall Sconces at Leasing Office Reception Area wall omitted;
- 48. Recessed Can Lights and Recessed Can Lenses omitted;

49. Garage Door Openers missing;

- 50. Omission of Access Panels near fan coils in each unit;
- 51. Omission of As Built Survey;
- 52. Six (6) missing parking stalls, errant installation of parking.
- 53. Missing Sidewalks.
- 54. Incomplete and otherwise temporary foam core signage.
- 55. Failure of key code locks at laundry and exercise room.
- 56. Incomplete sheetrock, trim and paint repairs at leaks from patio doors, defective plumbing, defective air conditioner installation, defective flashing and defective roofing and other unknown causes.
- 57. Salt in water softener omitted, and instructions to maintain and operate not provided.

Items of Defective Work

- 1. Permit for Elevator incomplete and Elevator not per specifications;
- 2. Defective Accessible path at Building 3 North egress and East of Building 3.
- 3. Incomplete corrections to trip hazards.
- 4. Improper workmanship on unapproved but installed defective elevators.
- 5. Improperly installed wood trim at roof. Hardi trim called out on drawings.
- 6. Improperly installed soffit vents. Facia venting is called out on drawings.
- 7. Numerous water leaks and resulting water damage.
- 8. Failure of the installation of the cast fit stone and cultured stone for water proofing.
- 9. Failure of nearly all exterior door thresholds. KWA stated previously these were <u>undercut.</u>
- 10. Removal of Plumbing Test-T's/Clean-outs inside residential units
- 11. Failure to complete landscape irrigation system and provide training for operation.
- 12. Improperly installed lighting inside Residential Units.
- 13. Multiple broken and heaving curbs. Curbs are clearly broken early in the process of construction as they are painted with fire lane striping.
- 14. Gypcrete installed at exterior corridors and are exposed to weather where Light weight Concrete is required.
- 15. Failure to correct MEP roof piping and dissimilar metal contact.
- 16. Taping of and blocking of vent piping.
- 17. Failure to adjust all cabinets.
- 18. Failure to install kick out flashing at Face Brick Per details.
- 19. Damage to lease office interior trim work. This Work was not authorized and was started by KWA after Permission to occupy. The Damage has been exposed for just short of a year.
- 20. Rusted exhaust vent at Maintenance.
- 21. Failures in sewer systems.

- 22. Failures in water pressure.
- 23. Failure to install self closing doors at Elevator Equipment Rooms and Fire Riser Rooms.
- 24. Failure of Cast Fit Stone at Parapet Return.
- 25. Shower Curtain Rods installed too high and too close to shower head;
- 26. Door Locks at Exterior Doors.
- 27. Fire Extinguishers in Corridors.
- 28. Retaining Walls modified, cut short or modified with slopes greater than 3% causing erosion.
- 29. Corridor Fans;
- 30. Indoor Light Fixtures installed in Outdoor Corridors;
- 31. Interior fans in Residential Units not per specifications;
- 32. Bathroom Mirrors at all B Type units needs replacing; all mirrors in all 236 Bathrooms need metal clips and installation free from all other construction.
- 33. Light Fixtures at Bathrooms not per specifications;
- 34. Water feed to refrigerator not copper per specifications;
- 35. Kitchen Faucet not per specifications and missing sprayers;
- 36. Shower mixer valve and shower head not per specifications;
- 37. All tubs not per specifications and not non-slip, and vary in size, shape, and color; Tubs are peeling and were resurfaced to hide defects;
- 38. Toilets not per specifications;
- 39. Tile Tub Surrounds not per specifications;
- 40. Individually keyed storage units;
- 41. Air Conditioner leaks throughout property;
- 42. Air Conditioner thermostats are non-conforming, defective and do not function as specified;
- 43. Air Conditioner drip lines and pans causing leaks;

- 44. Inoperable fireplace switch operation broken, defective and otherwise has never operated correctly and uninstalled fireplace screen at Leasing Office;
- 45. Inadequate site lighting, building entry lighting, and building lighting not per specifications;
- <u>46. Emergency lighting in corridors not per specifications or replaced as instructed by</u> <u>Architect and MEP;</u>
- 47. Fire Riser obstructs doorway inside Fire Riser Room in Building 2, and stand pipes are not installed inside Fire Riser closets or protected by cages for Health Safety Welfare.
- <u>48. Fire sprinkler heads and wood beams obstruction at headspace for attic access and roof access:</u>
- 49. Fire sprinkler heads and shunt trip located inside Elevator Equipment Room;
- 50. Sidewalk at Mail Kiosk is a trip hazard;
- 51. Garage entry- trip hazard at building 2;
- 52. Door thresholds not per specifications;
- 53. Windows not per specifications Water Intrusion and subsequent Water Damage;
- 54. Repair Trusses;
- 55. Window Coverings in Units;
- 56. Unauthorized construction at the Building Entry at breezeway of Building 2/3.
- 57. Installation of shower curtain rod in sheetrock, above tile and close to showerhead.
- 58. Installation of shower curtain rod in sheetrock, above tile and close to showerhead.
- 59. Unsightly hot water and cold water lines exposed at Laundry.
- 60. Installation of Laundry Room Doors that are two (2) inches too short.
- 61. Installation of Air Conditioner recirculation/intake duct into subfloor above ceiling, instead of venting into unit at installed vent grate with air filter.
- 62. Tub overflow valves installed on dissimilar metal tubs causing surface peeling and plumbing leaks throughout property.

08/26/2019 1:32:25PM

Page 1 of 10 mgt-521-003

RENT ROLL DETAIL

As of 08/25/2019

Parameters: Properties - ALL;Show All Unit Designations or Filter by - ALL;Subjournals - ALL;Exclude Formers? - Yes;Sort by - Unit;Report Type - Details + Summary;Show Unit Rent as - Market + Addl.; details

Unit	Floorplan	unit designation	SQFT	Unit/Lease Status	Name	Move-In Move-Out	Lease Start	Lease End	Market + Addl.		Lease Rent	Other Charges/ Credits	Total Billing	Dep On Hand	balance
2101	B1 HH/60%	N/A	995	Occupied	<i>,,</i>	09/07/2018	09/07/2018	09/30/2019	953.00	RESIDENT RENT	1,029.00	0.00	1,029.00	350.00	(1,047.00
2102	B2 MKT	N/A	996	Occupied	J J J	10/01/2018	10/01/2018	09/30/2019	1,540.00	RESIDENT RENT	381.00	0.00	381.00	350.00	(50.00
										SUBSIDY SUBR	1,075.00	0.00	1,075.00	0.00	0.00
2103	B2 MKT	N/A	996	Occupied	,	12/11/2018	12/11/2018	12/31/2019	1,540.00	RESIDENT RENT	0.00	0.00	0.00	350.00	0.00
										SUBSIDY SUBR	1,540.00	0.00	1,540.00	0.00	0.00
2104	B4 MKT	N/A	1259	Vacant	VACANT				1,588.00		0.00 ÷	0.00 *			
2105	B2 MKT	N/A	996	Occupied		04/01/2019	04/01/2019	03/22/2020	1,540.00	RESIDENT GARAGE	0.00	100.00	257.00	0.00	(82.00
										RESIDENT RENT	157.00	0.00			
										SUBSIDY SUBR	1,240.00	0.00	1,240.00	0.00	0.00
2106	B1 HH/60%	N/A	995	Occupied		09/15/2018	09/15/2018	08/31/2019	953.00	RESIDENT GARAGE	0.00	100.00	1,129.00	350.00	(19.00
										RESIDENT RENT	1,029.00	0.00			
2201	B1 HH/60%	N/A	995	Occupied-NTV		01/21/2019 09/20/2019	01/21/2019	01/20/2020	953.00	RESIDENT GARAGE	0.00	100.00	1,129.00	350.00	4,072.00
										RESIDENT RENT	1,029.00	0.00			
2202	B3 MKT	N/A	1019	Occupied		08/02/2019	08/02/2019	08/02/2020	1,540.00	RESIDENT RENT	1,345.00	0.00	1,345.00	0.00	(9,468.00
2203	B1 MKT	N/A	995	Occupied		09/01/2018	09/01/2018	08/31/2019	1,540.00	RESIDENT RENT	1,044.00	0.00	1,044.00	350.00	(110.00
										SUBSIDY SUBR	360.00	0.00	360.00	0.00	110.00
2204	B4 MKT	N/A	1259	Occupied		12/01/2018	12/01/2018	12/31/2019	1,588.00	RESIDENT RENT	0.00	0.00	0.00	350.00	0.00
										SUBSIDY SUBR	1,588.00	0.00	1,588.00	0.00	0.00
2205	B1 HH/60%	N/A	995	Occupied		09/08/2018	09/08/2018	08/31/2019	953.00	RESIDENT RENT	1,029.00	0.00	1,029.00	350.00	1,358.00
		N/A		Pending renewal		09/08/2018	09/01/2019	08/31/2020		RESIDENT RENT	1,029.00 *	0.00 *	1,029.00 *	0.00	0.00
2206	B1 HH/60%	N/A	995	Occupied		02/01/2019	02/01/2019	01/31/2020	953.00	RESIDENT RENT	1,029.00	0.00	1,029.00	350.00	(12.00
2207	A3 LH/50%	N/A	822	Vacant-Leased	VACANT				743.00		0.00 *	0.00 *			
		N/A		Applicant		08/30/2019	08/30/2019	08/22/2020		RESIDENT RENT	743.00 *	0.00 *	743.00 *	250.00	(50.00
2208	A4 MKT	N/A	838	Occupied		10/02/2018	10/02/2018	09/30/2019	1,250.00	RESIDENT PETRENT	0.00	20.00	278.00	1,250.00	0.00
										RESIDENT RENT	258.00	0.00			
										SUBSIDY SUBR	992.00	0.00	992.00	0.00	0.00
2301	B1 LH/50%	N/A	995	Occupied		10/15/2018	10/15/2018	11/30/2019	887.00	RESIDENT RENT	822.00	0.00	822.00	350.00	0.00
2302	B1 HH/60%	N/A	995	Occupied		02/08/2019	02/08/2019	01/28/2020	953.00	RESIDENT RENT	1,029.00	0.00	1,029.00	350.00	(2.00
2303	B1 HH/60%	N/A	995	Occupied		05/01/2019	05/01/2019	04/30/2020	953.00	RESIDENT RENT	813.00	0.00	813.00	350.00	(139.00
										SUBSIDY SUBR	217.00	0.00	217.00	0.00	0.00
2304	B4 MKT	N/A	1259	Occupied		09/29/2018	09/29/2018	09/30/2019	1,588.00	RESIDENT RENT	441.00	0.00	441.00	350.00	0.00

08/26/2019 1:32:25PM

Page 2 of 10

RENT ROLL DETAIL

mgt-521-003

As of 08/25/2019

Parameters: Properties - ALL;Show All Unit Designations or Filter by - ALL;Subjournals - ALL;Exclude Formers? - Yes;Sort by - Unit;Report Type - Details + Summary;Show Unit Rent as - Market + Addl.; details

Unit	Floorplan	unit designation	SQFT	Unit/Lease Status	Name	Move-In Move-Out	Lease Start	Lease End	Market + Addl.		Lease Rent	Other Charges/ <u>Credits</u>	Total Billing	Dep On Hand	balance
										SUBSIDY SUBR	1,147.00	0.00	1,147.00	0.00	(254.00
2305	B1 MKT	N/A	995	Occupied		09/01/2018	09/01/2018	08/31/2019	1,540.00	RESIDENT RENT	437.00	0.00	437.00	350.00	247.00
										SUBSIDY SUBR	963.00	0.00	963.00	0.00	0.00
		N/A		Pending renewal		09/01/2018	09/01/2019	08/31/2020		RESIDENT RENT	221.00 *	0.00 *	221.00 *	0.00	0.00
										SUBSIDY RENT	1,179.00 +	0.00 *	1,179.00 *	0.00	0.00
2306	B1 HH/60%	N/A	995	Occupied		04/19/2019	04/19/2019	04/19/2020	953.00	RESIDENT RENT	1,029.00	0.00	1,029.00	350.00	0.00
2307	A3 MKT	N/A	822	Occupied		09/27/2018	09/27/2018	09/30/2019	1,250.00	RESIDENT RENT	527.00	0.00	527.00	250.00	0.00
										SUBSIDY SUBR	723.00	0.00	723.00	0.00	0.00
2308	A4 MKT	N/A	838	Occupied-NTV		10/11/2018 08/30/2019	10/11/2018	10/31/2019	1,250.00	RESIDENT RENT	174.00	0.00	174.00	250.00	0.00
										SUBSIDY SUBR	1,042.00	0.00	1,042.00	0.00	3,126.00
2401	B3 HH/60%	N/A	1019	Occupied		03/13/2019	03/13/2019	03/14/2020	1,145.00	RESIDENT GARAGE	0.00	100.00	1,129.00	350.00	(2.00
										RESIDENT RENT	1,029.00	0.00			
2402	B3 MKT	N/A	1019	Occupied		08/06/2019	08/06/2019	07/19/2020	1,540.00	RESIDENT RENT	426.00	0.00	426.00	350.00	367.00
										SUBSIDY RENT	1,031.00	0.00	1,031.00	0.00	1,896.00
2403	B3 MKT	N/A	1019	Occupied		05/17/2019	05/17/2019	04/30/2020	1,540.00	RESIDENT RENT	913.00	0.00	913.00	350.00	0.00
										SUBSIDY SUBR	390.00	0.00	390.00	0.00	0.00
2404	B4 MKT	N/A	1259	Occupied		02/01/2019	02/01/2019	01/06/2020	1,588.00	RESIDENT GARAGE	0.00	100.00	1,688.00	350.00	84.00
										RESIDENT RENT	1,588.00	0.00			
2405	B3 MKT	N/A	1019	Occupied		10/01/2018	10/01/2018	09/30/2019	1,540.00	RESIDENT RENT	409.00	0.00	409.00	350.00	(1,131.00
										SUBSIDY SUBR	1,131.00	0.00	1,131.00	0.00	1,131.00
2406	B3 MKT	N/A	1019	Occupied		04/15/2019	04/15/2019	04/14/2020	1,540.00	RESIDENT GARAGE	0.00	100.00	1,403.00	350.00	10.00
										RESIDENT RENT	1,303.00	0.00			
3101	A1 HH/60%	N/A	754	Occupied		09/28/2018	09/28/2018	09/30/2019	953.00	RESIDENT RENT	838.00	0.00	838.00	250.00	0.00
3102	A2 HH/60%	N/A	770	Occupied		04/02/2019	04/02/2019	03/24/2020	953.00	RESIDENT RENT	842.00	0.00	842.00	250.00	0.00
3103	C1 MKT	N/A	1328	Vacant	VACANT				2,060.00		0.00 *	0.00 *			
3104	C1 HH/60%	N/A	1328	Occupied		11/10/2018	11/10/2018	12/31/2019	1,311.00	RESIDENT RENT	1,270.00	0.00	1,270.00	450.00	0.00
3105	B1 LH/50%	N/A	995	Occupied		08/13/2018	08/13/2018	07/31/2019	887.00	EMPLOYEE EMPLOYEER	ENT 822.00	0.00	822.00	0.00	411.00
3106	B1 HH/60%	N/A	995	Occupied		11/01/2018	11/01/2018	10/31/2019	953.00	RESIDENT RENT	1,029.00	0.00	1,029.00	350.00	(16.00
3107	B2 MKT	N/A	996	Occupied		09/13/2018	09/13/2018	08/31/2019	1,540.00	RESIDENT RENT	24.00	0.00	24.00	350.00	0.00
										SUBSIDY SUBR	1,376.00	0.00	1,376.00	0.00	0.00
		N/A		Pending renewal		09/13/2018	09/01/2019	08/31/2020		RESIDENT RENT	1,400.00 *	0.00 *	1,400.00 *	0.00	0.00
3108	B1 HH/60%	N/A	995	Occupied		02/12/2019	02/12/2019	02/04/2020	953.00	RESIDENT RENT	251.00	0.00	251.00	350.00	0.00
										SUBSIDY SUBR	778.00	0.00	778.00	0.00	0.00

08/26/2019 1:32:25PM

Page 3 of 10

RENT ROLL DETAIL

mgt-521-003

As of 08/25/2019

Parameters: Properties - ALL;Show All Unit Designations or Filter by - ALL;Subjournals - ALL;Exclude Formers? - Yes;Sort by - Unit;Report Type - Details + Summary;Show Unit Rent as - Market + Addl.; details

Unit	Floorplan	unit designation	SQFT	Unit/Lease Status	Name	Move-In Move-Out	Lease Start	Lease End	Market + Addl.		Lease Rent	Other Charges/ <u>Credits</u>	Total Billing	Dep On Hand	balance
3201	A1 MKT	N/A	754	Occupied		09/01/2018	09/01/2018	08/31/2019	1,250.00	RESIDENT RENT	94.00	0.00	94.00	250.00	(75.00)
										SUBSIDY RENT	826.00	0.00	1,578.00	0.00	752.00
										SUBSIDY SUBR	752.00	0.00			
3202	A2 HH/60%	N/A	770	Occupied		03/25/2019	03/25/2019	03/14/2020	953.00	RESIDENT RENT	842.00	0.00	842.00	250.00	0.00
3203	C1 HH/60%	N/A	1328	Occupied-NTVL		02/01/2019 08/31/2019	02/01/2019	01/24/2020	1,311.00	RESIDENT RENT	1,271.00	0.00	1,271.00	450.00	0.00
		N/A		Applicant		09/01/2019	09/01/2019	08/31/2020		RESIDENT RENT	1,311.00 +	0.00 *	1,311.00 *	0.00	0.00
3204	C1 LH/50%	N/A	1328	Occupied		09/08/2018	09/08/2018	08/31/2019	1,021.00	RESIDENT RENT	930.00	0.00	930.00	450.00	(13.00)
3205	B1 LH/50%	N/A	995	Occupied		08/16/2018	08/16/2018	07/31/2019	887.00	RESIDENT RENT	822.00	0.00	822.00	350.00	0.00
3206	B1 MKT	N/A	995	Occupied		09/29/2018	09/29/2018	09/30/2019	1,540.00	RESIDENT RENT	1,155.00	0.00	1,155.00	350.00	0.00
										SUBSIDY SUBR	385.00	0.00	385.00	0.00	0.00
3207	B1 MKT	N/A	995	Occupied		11/01/2018	11/01/2018	10/31/2019	1,540.00	RESIDENT RENT	419.00	0.00	419.00	350.00	0.00
										SUBSIDY SUBR	1,121.00	0.00	1,121.00	0.00	0.00
3208	B1 HH/60%	N/A	995	Occupied		12/06/2018	12/06/2018	01/31/2020	953.00	RESIDENT RENT	1,029.00	0.00	1,029.00	350.00	10.00
3301	A1 MKT	N/A	754	Occupied-NTV		09/01/2018 08/30/2019	09/01/2018	08/31/2019	1,250.00	RESIDENT RENT	463.00	0.00	463.00	250.00	0.00
										SUBSIDY SUBR	864.00	0.00	864.00	0.00	0.00
3302	A2 MKT	N/A	770	Occupied		10/03/2018	10/03/2018	09/30/2019	1,250.00	RESIDENT RENT	242.00	0.00	242.00	250.00	(21.00)
										SUBSIDY SUBR	973.00	0.00	973.00	0.00	0.00
3303	C1 MKT	N/A	1328	Occupied-NTV		04/27/2019 09/01/2019	04/27/2019	04/26/2020	2,060.00	RESIDENT RENT	1,650.00	0.00	1,650.00	450.00	0.00
3304	C1 MKT	N/A	1328	Occupied		06/03/2019	06/03/2019	05/31/2020	2,060.00	RESIDENT RENT	0.00	0.00	0.00	450.00	0.00
										SUBSIDY SUBR	1,812.00	0.00	1,812.00	0.00	181.00
3305	B1 MKT	N/A	995	Occupied		10/30/2018	10/30/2018	10/31/2019	1,540.00	RESIDENT RENT	19.00	0.00	19.00	350.00	272.00
										SUBSIDY SUBR	1,521.00	0.00	1,521.00	0.00	(12.00)
3306	B1 HH/60%	N/A	995	Occupied		11/17/2018	11/17/2018	01/31/2020	953.00	RESIDENT RENT	1,029.00	0.00	1,029.00	350.00	(20.00)
3307	B1 HH/60%	N/A	995	Occupied		05/01/2019	05/01/2019	04/30/2020	953.00	RESIDENT RENT	1,029.00	0.00	1,029.00	350.00	0.00
3308	B1 LH/50%	N/A	995	Occupied		09/21/2018	09/21/2018	09/30/2019	887.00	RESIDENT RENT	822.00	0.00	822.00	350.00	0.00
3401	A3 MKT	N/A	822	Vacant-Leased	VACANT				1,250.00		0.00 *	0.00 *			
		N/A		Applicant		09/01/2019	09/01/2019	08/31/2020		RESIDENT RENT	1,250.00 *	0.00 *	1,250.00 *	250.00	0.00
3402	A4 MKT	N/A	838	Occupied		02/09/2019	02/09/2019	02/08/2020	1,250.00	RESIDENT RENT	1,250.00	0.00	1,250.00	250.00	0.00
3403	C2 MKT	N/A	1340	Occupied		05/01/2019	05/01/2019	04/28/2020	2,060.00	RESIDENT RENT	170.00	0.00	170.00	450.00	48.00

details

08/26/2019 1:32:25PM

Page 4 of 10

RENT ROLL DETAIL

mgt-521-003

As of 08/25/2019

Parameters: Properties - ALL; Show All Unit Designations or Filter by - ALL; Subjournals - ALL; Exclude Formers? - Yes; Sort by - Unit; Report Type - Details + Summary; Show Unit Rent as - Market + Addl.;

Unit	Floorplan	unit designation	SQFT	Unit/Lease Status	Name	Move-In Move-Out	Lease Start	Lease End	Market + Addl.	Sub Trans Journal Code	Lease Rent	Other Charges/ Credits	Total Billing	Dep On Hand	balance
										SUBSIDY RENT	1,647.00	0.00	3,271.00	0.00	787.00
										SUBSIDY SUBR	1,624.00	0.00			
3404	C2 MKT	N/A	1340	Occupied		08/14/2019	08/14/2019	07/31/2020	2,060.00	RESIDENT RENT	298.36	0.00	298.36	0.00	(0.04
3405	B3 MKT	N/A	1019	Occupied		04/27/2019	04/27/2019	04/26/2020	1,540.00	RESIDENT RENT	1,283.00	0.00	1,283.00	350.00	(16.00
3406	B3 MKT	N/A	1019	Occupied		05/14/2019	05/14/2019	05/12/2020	1,540.00	RESIDENT RENT	1,270.00	0.00	1,270.00	350.00	0.00
3407	B3 MKT	N/A	1019	Occupied		04/06/2019	04/06/2019	04/07/2020	1,540.00	RESIDENT GARAGE	0.00	100.00	1,423.00	1,350.00	0.00
										RESIDENT PETRENT	0.00	20.00			
										RESIDENT RENT	1,303.00	0.00			
3408	B3 MKT	N/A	1019	Occupied		06/28/2019	06/28/2019	06/30/2020	1,540.00	RESIDENT RENT	186.00	0.00	186.00	0.00	(1.00
										SUBSIDY SUBR	1,159.00	0.00	1,159.00	350.00	0.00
4101	B2 HH/60%	N/A	996	Occupied		02/01/2019	02/01/2019	01/30/2020	1,145.00	RESIDENT RENT	317.00	0.00	317.00	350.00	0.00
										SUBSIDY SUBR	712.00	0.00	712.00	0.00	0.00
4102	B1 MKT	N/A	995	Vacant-Leased	VACANT				1,540.00		0.00 *	0.00 *			
		N/A		Applicant		08/30/2019	08/30/2019	08/29/2020		RESIDENT RENT	1,540.00 *	0.00 *	1,540.00 *	0.00	0.00
4103	B1 MKT	N/A	995	Occupied		05/03/2019	05/03/2019	05/02/2020	1,540.00	RESIDENT GARAGE	0.00	100.00	1,383.00	350.00	1,676.00
										RESIDENT RENT	1,283.00	0.00			
4104	B1 MKT	N/A	995	Occupied		02/25/2019	02/25/2019	01/31/2020	1,540.00	RESIDENT RENT	389.00	0.00	389.00	350.00	(4.00
										SUBSIDY SUBR	1,151.00	0.00	1,151.00	0.00	0.00
4105	C1 HH/60%	N/A	1328	Occupied		02/18/2019	02/18/2019	12/30/2019	1,311.00	RESIDENT RENT	1,271.00	0.00	1,271.00	450.00	0.00
4106	C1 HH/60%	N/A	1328	Occupied-NTV		09/29/2018 09/30/2019	09/29/2018	09/30/2019	1,311.00	SUBSIDY SUBR	1,270.00	0.00	1,270.00	0.00	0.00
										RESIDENT	0.00	0.00		450.00	0.00
4107	A1 MKT	N/A	754	Occupied		09/01/2018	09/01/2018	08/31/2019	1,250.00	RESIDENT RENT	207.00	0.00	207.00	250.00	0.00
										SUBSIDY SUBR	843.00	0.00	843.00	0.00	0.00
		N/A		Pending renewa		09/01/2018	09/01/2019	08/31/2020		RESIDENT RENT	191.00 *	0.00 *	191.00 *	0.00	0.00
										SUBSIDY RENT	859.00 *	0.00 *	859.00 *	0.00	0.00
4108	A2 MKT	N/A	770	Occupied		04/01/2019	04/01/2019	03/12/2020	1,250.00	RESIDENT RENT	63.00	0.00	63.00	250.00	0.00
										SUBSIDY SUBR	1,187.00	0.00	1,187.00	0.00	0.00
4201	B1 HH/60%	N/A	995	Occupied		06/14/2019	06/14/2019	06/07/2020	953.00	RESIDENT RENT	1,029.00	0.00	1,029.00	350.00	0.00
4202	B1 HH/60%	N/A	995	Occupied		10/19/2018	10/19/2018	11/30/2019	953.00	RESIDENT RENT	1,029.00	0.00	1,029.00	350.00	(16.00
4203	B1 LH/50%	N/A	995	Occupied		08/24/2018	08/01/2019	07/31/2020	887.00	RESIDENT RENT	822.00	0.00	822.00	350.00	0.00
4204	B1 HH/60%	N/A	995	Occupied		02/16/2019	02/16/2019	02/15/2020	953.00	RESIDENT RENT	1,029.00	0.00	1,029.00	350.00	1,248.00
4205	C1 MKT	N/A	1328	Occupied		07/17/2019	07/17/2019	07/14/2020	2,060.00	RESIDENT RENT	2,060.00	0.00	2,060.00	450.00	10.00
4206	C1 MKT	N/A	1328	Occupied		10/27/2018	10/27/2018	11/30/2019	2,060.00	RESIDENT RENT	329.00	0.00	329.00	450.00	(300.00

Page 5 of 10

08/26/2019 1:32:25PM

RENT ROLL DETAIL

mgt-521-003

As of 08/25/2019

Parameters: Properties - ALL; Show All Unit Designations or Filter by - ALL; Subjournals - ALL; Exclude Formers? - Yes; Sort by - Unit; Report Type - Details + Summary; Show Unit Rent as - Market + Addl.;

Unit	Floorplan	unit designation	SQFT	Unit/Lease Status	Name	Move-In Move-Out	Lease Start	Lease End	Market + Addl.	Sub Trans Journal Code	Lease Rent	Other Charges/ Credits	Total Billing	Dep On Hand	balance
										SUBSIDY SUBR	1,731.00	0.00	1,731.00	0.00	300.00
1207	A1 HH/60%	N/A	754	Occupied		08/23/2018	08/23/2018	08/31/2019	953.00	RESIDENT RENT	832.00	0.00	832.00	250.00	0.00
		N/A		Pending renewal		08/23/2018	09/01/2019	08/31/2020		RESIDENT RENT	842.00 *	0.00 *	842.00 *	0.00	0.00
1208	A2 MKT	N/A	770	Vacant	VACANT				1,250.00		0.00 *	0.00 *			
4301	B1 HH/60%	N/A	995	Occupied		08/16/2019	08/16/2019	08/09/2020	953.00	RESIDENT RENT	1,145.00	0.00	1,145.00	350.00	591.00
1302	B1 HH/60%	N/A	995	Occupied-NTVL		08/23/2018 08/30/2019	08/23/2018	07/31/2019	953.00	RESIDENT RENT	1,029.00	0.00	1,029.00	350.00	(16.00
		N/A		Applicant		09/15/2019	09/15/2019	09/20/2020		RESIDENT RENT	953.00 *	0.00 *	953.00 *	0.00	0.00
1303	B1 HH/60%	N/A	995	Occupied		05/01/2019	05/01/2019	05/03/2020	953.00	RESIDENT RENT	1,029.00	0.00	1,029.00	350.00	0.00
1304	B1 LH/50%	N/A	995	Occupied		08/29/2018	08/29/2018	08/31/2019	887.00	RESIDENT RENT	820.00	0.00	820.00	350.00	(2.00
1305	C1 HH/60%	N/A	1328	Occupied		12/01/2018	12/01/2018	12/31/2019	1,311.00	RESIDENT RENT	1,270.00	0.00	1,270.00	450.00	0.00
1306	C1 HH/60%	N/A	1328	Occupied		12/28/2018	12/28/2018	01/31/2020	1,311.00	RESIDENT GARAGE	0.00	100.00	1,370.00	450.00	0.00
										RESIDENT RENT	1,270.00	0.00			
1307	A1 HH/60%	N/A	754	Occupied		09/28/2018	09/28/2018	09/30/2019	953.00	RESIDENT RENT	838.00	0.00	838.00	250.00	0.00
1308	A2 MKT	N/A	770	Occupied		09/29/2018	09/29/2018	09/30/2019	1,250.00	RESIDENT RENT	435.00	0.00	435.00	250.00	0.00
										SUBSIDY RENT	815.00	0.00	815.00	0.00	0.00
1401	B3 MKT	N/A	1019	Occupied		09/28/2018	09/28/2018	09/30/2019	1,540.00	RESIDENT RENT	645.00	0.00	645.00	350.00	0.00
										SUBSIDY SUBR	755.00	0.00	755.00	0.00	645.00
		N/A		Pending renewal		09/28/2018	10/01/2019	10/31/2020		RESIDENT RENT	1,400.00 *	0.00 *	1,400.00 *	0.00	0.00
1402	B3 MKT	N/A	1019	Occupied		09/10/2018	09/10/2018	08/31/2019	1,540.00	RESIDENT RENT	418.00	0.00	418.00	350.00	0.00
										SUBSIDY SUBR	1,002.00	0.00	1,002.00	0.00	0.00
1403	B3 MKT	N/A	1019	Occupied		06/20/2019	06/20/2019	05/31/2020	1,540.00	RESIDENT RENT	0.00	0.00	0.00	350.00	0.00
										SUBSIDY SUBR	1,540.00	0.00	1,540.00	0.00	0.00
1404	B3 MKT	N/A	1019	Occupied		03/01/2019	03/01/2019	02/26/2020	1,540.00	RESIDENT RENT	1,283.00	0.00	1,283.00	350.00	0.00
1405	C2 MKT	N/A	1340	Occupied		05/01/2019	05/01/2019	04/30/2020	2,060.00	RESIDENT RENT	121.00	0.00	121.00	400.00	0.00
										SUBSIDY SUBR	1,939.00	0.00	1,939.00	0.00	10.00
1406	C2 MKT	N/A	1340	Occupied		08/06/2019	08/06/2019	08/02/2020	2,060.00	RESIDENT RENT	0.00	0.00	0.00	450.00	(1,562.00
										SUBSIDY RENT	1,615.00	0.00	1,615.00	0.00	1,355.00
1407	A3 MKT	N/A	822	Occupied		02/01/2019	02/01/2019	01/04/2020	1,250.00	RESIDENT RENT	261.00	0.00	261.00	250.00	0.00
										SUBSIDY SUBR	989.00	0.00	989.00	0.00	0.00
1408	A4 MKT	N/A	838	Occupied		11/19/2018	11/19/2018	12/31/2019	1,250.00	RESIDENT RENT	780.00	0.00	780.00	250.00	0.00
										SUBSIDY SUBR	470.00	0.00	470.00	0.00	0.00
5103	C1 HH/60%	N/A	1328	Occupied		08/31/2018	08/31/2018	08/31/2019	1,311.00	RESIDENT RENT	1,257.00	0.00	1,257.00	450.00	0.00

08/26/2019 1:32:25PM

Page 6 of 10

RENT ROLL DETAIL

mgt-521-003

As of 08/25/2019

Parameters: Properties - ALL;Show All Unit Designations or Filter by - ALL;Subjournals - ALL;Exclude Formers? - Yes;Sort by - Unit;Report Type - Details + Summary;Show Unit Rent as - Market + Addl.; details

Unit	Floorplan	unit designation	SQFT	Unit/Lease Status	Name	Move-In Move-Out	Lease Start	Lease End	Market + Addl.	Sub Trans Journal Code	Lease Rent	Other Charges/ <u>Credits</u>	Total Billing	Dep On Hand	balance
5104	C1 MKT	N/A	1328	Occupied		09/01/2018	09/01/2018	08/31/2019	2,060.00	RESIDENT RENT	742.00	0.00	742.00	450.00	(742.00
										SUBSIDY RENT	658.00	0.00	1,913.00	0.00	1,255.00
										SUBSIDY SUBR	1,255.00	0.00			
5105	B2 MKT	N/A	996	Vacant-Leased	VACANT				1,540.00		0.00 *	0.00 *			
		N/A		Applicant		09/01/2019	09/01/2019	08/31/2020		RESIDENT RENT	1,540.00 *	0.00 *	1,540.00 *	0.00	0.00
5106	B2 MKT	N/A	996	Occupied		10/01/2018	10/01/2018	09/30/2019	1,540.00	RESIDENT RENT	889.00	0.00	889.00	350.00	0.00
										SUBSIDY SUBR	658.00	0.00	658.00	0.00	0.00
5107	B1 HH/60%	N/A	995	Occupied		09/22/2018	09/22/2018	10/31/2019	953.00	RESIDENT RENT	1,029.00	0.00	1,029.00	350.00	157.00
5108	B1 HH/60%	N/A	995	Occupied		08/02/2019	08/02/2019	09/01/2020	953.00	SUBSIDY SUBR	1,145.00	0.00	1,145.00	0.00	0.00
										RESIDENT	0.00	0.00		0.00	778.00
5109	A2 HH/60%	N/A	770	Occupied		11/24/2018	11/24/2018	12/31/2019	953.00	RESIDENT RENT	838.00	0.00	838.00	250.00	0.00
5110	A2 MKT	N/A	770	Occupied-NTV		08/15/2018 08/30/2019	08/15/2018	07/31/2019	1,250.00	RESIDENT RENT	226.00	0.00	226.00	250.00	0.00
										SUBSIDY SUBR	1,194.00	0.00	1,194.00	0.00	0.00
5111	C1 MKT	N/A	1328	Occupied		04/06/2019	04/06/2019	04/04/2020	2,060.00	RESIDENT RENT	0.00	0.00	0.00	450.00	0.00
										SUBSIDY SUBR	1,812.00	0.00	1,812.00	0.00	0.00
5201	A2 HH/60%	N/A	770	Occupied		11/01/2018	11/01/2018	10/31/2019	953.00	RESIDENT RENT	838.00	0.00	838.00	250.00	0.00
5202	A2 MKT	N/A	770	Occupied-NTV		09/15/2018 08/28/2019	09/15/2018	09/30/2019	1,250.00	RESIDENT RENT	158.00	0.00	158.00	250.00	298.00
										SUBSIDY SUBR	1,063.00	0.00	1,063.00	0.00	(158.00
5203	C1 MKT	N/A	1328	Occupied		09/19/2018	09/19/2018	08/31/2019	2,060.00	SUBSIDY SUBR	1,407.00	0.00	1,407.00	0.00	0.00
										RESIDENT	0.00	0.00		450.00	0.00
		N/A		Pending renewal		09/19/2018	10/01/2019	09/30/2020		RESIDENT RENT	1,401.00 *	0.00 *	1,401.00 *	0.00	0.00
5204	C1 HH/60%	N/A	1328	Occupied		03/01/2019	03/01/2019	02/14/2020	1,311.00	RESIDENT RENT	1,271.00	0.00	1,271.00	450.00	(3,813.00
5205	B1 LH/50%	N/A	995	Occupied		11/01/2018	11/01/2018	11/30/2019	887.00	RESIDENT RENT	822.00	0.00	822.00	350.00	0.00
5206	B3 MKT	N/A	1019	Occupied		06/06/2019	06/06/2019	06/05/2020	1,540.00	RESIDENT RENT	0.00	0.00	0.00	350.00	0.00
										SUBSIDY SUBR	1,540.00	0.00	1,540.00	0.00	0.00
5207	B3 MKT	N/A	1019	Occupied		05/03/2019	05/03/2019	04/30/2020	1,540.00	RESIDENT RENT	0.00	0.00	0.00	350.00	398.00
										SUBSIDY RENT	1,540.00	0.00	2,725.00	0.00	(355.00
										SUBSIDY SUBR	1,185.00	0.00			
5208	B3 MKT	N/A	1019	Occupied		05/01/2019	05/01/2019	04/30/2020	1,540.00	RESIDENT RENT	0.00	0.00	0.00	350.00	0.00
										SUBSIDY SUBR	1,540.00	0.00	1,540.00	0.00	0.00
5209	A1 LH/50%	N/A	754	Occupied-NTVL		08/24/2018 08/31/2019	08/24/2018	07/31/2019	743.00	RESIDENT RENT	678.00	0.00	678.00	250.00	0.00

08/26/2019 1:32:25PM

Page 7 of 10

RENT ROLL DETAIL

mgt-521-003

As of 08/25/2019

Parameters: Properties - ALL;Show All Unit Designations or Filter by - ALL;Subjournals - ALL;Exclude Formers? - Yes;Sort by - Unit;Report Type - Details + Summary;Show Unit Rent as - Market + Addl.; details

Unit	Floorplan	unit designation	SQFT	Unit/Lease Status	Name	Move-In Move-Out	Lease Start	Lease End	Market + Addl.		Lease Rent	Other Charges/ Credits	Total Billing	Dep On Hand	balance
		N/A		Applicant		09/07/2019	09/07/2019	09/06/2020		RESIDENT RENT	743.00 *	0.00 *	743.00 *	0.00	0.0
5210	A2 MKT	N/A	770	Vacant	VACANT				1,250.00		0.00 *	0.00 *			
5211	C1 LH/50%	N/A	1328	Occupied		08/07/2019	08/07/2019	08/06/2020	1,021.00	RESIDENT RENT	1,021.00	0.00	1,021.00	0.00	0.00
5301	A1 MKT	N/A	754	Occupied		09/24/2018	09/24/2018	09/30/2019	1,250.00	RESIDENT RENT	140.00	0.00	140.00	250.00	0.00
										SUBSIDY SUBR	1,280.00	0.00	1,280.00	0.00	0.00
5302	A2 MKT	N/A	770	Occupied		04/18/2019	04/18/2019	04/14/2020	1,250.00	RESIDENT RENT	120.00	0.00	120.00	250.00	(19.39
										SUBSIDY SUBR	1,058.00	0.00	1,058.00	0.00	0.00
5303	C1 MKT	N/A	1328	Vacant-Leased	VACANT				2,060.00		0.00 *	0.00 *			
		N/A		Applicant		09/01/2019	09/01/2019	08/31/2020		RESIDENT RENT	2,060.00 *	0.00 *	2,060.00 *	0.00	0.00
5304	C1 HH/60%	N/A	1328	Occupied		01/04/2019	01/04/2019	01/31/2020	1,311.00	RESIDENT RENT	1,270.00	0.00	1,270.00	450.00	(1.00
5305	B1 HH/60%	N/A	995	Occupied		06/03/2019	06/03/2019	05/31/2020	953.00	EMPLOYEE RENT	1,029.00	0.00	1,029.00	0.00	3,018.00
5306	B1 HH/60%	N/A	995	Occupied		08/01/2019	08/01/2019	09/30/2020	953.00	RESIDENT RENT	1,145.00	0.00	1,145.00	350.00	(1,145.00
5307	B1 HH/60%	N/A	995	Occupied		08/16/2019	08/16/2019	08/23/2020	953.00	RESIDENT RENT	1,145.00	0.00	1,145.00	350.00	0.00
5308	B1 HH/60%	N/A	995	Occupied		06/01/2019	06/01/2019	05/31/2020	953.00	RESIDENT RENT	1,029.00	0.00	1,029.00	350.00	0.00
5309	A1 LH/50%	N/A	754	Occupied		08/16/2018	08/01/2019	08/01/2020	743.00	RESIDENT RENT	684.00	0.00	684.00	250.00	(4.00
5310	A2 MKT	N/A	770	Occupied		11/01/2018	11/01/2018	10/31/2019	1,250.00	RESIDENT RENT	379.00	0.00	379.00	250.00	599.00
										SUBSIDY SUBR	1,026.00	0.00	1,026.00	0.00	592.00
5311	C1 MKT	N/A	1328	Vacant-Leased	VACANT				2,060.00		0.00 *	0.00 *			
		N/A		Applicant		09/01/2019	09/01/2019	08/31/2020		RESIDENT RENT	2,060.00 *	0.00 *	2,060.00 *	0.00	0.00
5403	C2 MKT	N/A	1340	Occupied		06/15/2019	06/15/2019	06/14/2020	2,060.00	RESIDENT RENT	1,650.00	0.00	1,650.00	450.00	0.00
5404	C2 MKT	N/A	1340	Occupied		08/13/2019	08/13/2019	07/31/2020	2,060.00	RESIDENT RENT	2,060.00	0.00	2,060.00	450.00	1,313.00
5405	B3 MKT	N/A	1019	Occupied		06/20/2019	06/20/2019	05/31/2020	1,540.00	RESIDENT RENT	128.00	0.00	128.00	400.00	0.00
										SUBSIDY SUBR	1,412.00	0.00	1,412.00	0.00	0.00
5406	B3 MKT	N/A	1019	Occupied		07/19/2019	07/19/2019	07/18/2020	1,540.00	RESIDENT RENT	532.00	0.00	532.00	0.00	0.00
										SUBSIDY SUBR	1,008.00	0.00	1,008.00	0.00	1,431.00
5407	B3 MKT	N/A	1019	Occupied		06/08/2019	06/08/2019	05/31/2020	1,540.00	RESIDENT RENT	1,250.00	0.00	1,250.00	350.00	0.00
5408	B3 MKT	N/A	1019	Occupied		06/05/2019	06/05/2019	05/31/2020	1,540.00	RESIDENT RENT	0.00	0.00	0.00	350.00	0.00
										SUBSIDY SUBR	1,129.00	0.00	1,129.00	0.00	2,107.00
5409	A3 MKT	N/A	822	Occupied		11/26/2018	11/26/2018	12/31/2019	1,250.00	RESIDENT RENT	263.00	0.00	263.00	250.00	0.00
				•						SUBSIDY SUBR	987.00	0.00	987.00	0.00	0.00

08/26/2019 1:32:25PM

Page 8 of 10

RENT ROLL DETAIL

mgt-521-003

As of 08/25/2019

Parameters: Properties - ALL;Show All Unit Designations or Filter by - ALL;Subjournals - ALL;Exclude Formers? - Yes;Sort by - Unit;Report Type - Details + Summary;Show Unit Rent as - Market + Addl.; details

Unit	Floorplan	unit designation	SQFT	Unit/Lease Status	Name	Move-In Move-Out	Lease Start	Lease End	Market + Addl.	Sub Trans Journal Code	Lease Rent	Other Charges/ Credits	Total Billing	Dep On Hand	balance
5410	A4 MKT	N/A	838	Occupied		10/01/2018	10/01/2018	09/30/2019	1,250.00	RESIDENT RENT	242.00	0.00	242.00	250.00	(1.00)
										SUBSIDY SUBR	973.00	0.00	973.00	0.00	0.00
5411	C1 HH/60%	N/A	1328	Occupied		04/15/2019	04/15/2019	04/05/2020	1,311.00	RESIDENT RENT	53.00	0.00	53.00	450.00	(118.00)
										SUBSIDY SUBR	1,217.00	0.00	1,217.00	0.00	0.00
totals:									175,548.00		156,197.36	940.00	157,137.36	41,900.00	

Alpha Barnes Real Estate Services, LLC - West Ridge Villas (NEW)

08/26/2019 1:32:25PM

RENT ROLL DETAIL

As of 08/25/2019

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Amt / SQFT: Market = 135,559 SQFT; Leased = 125,141 SQFT;

		Average	Average	Market + Addl.	Average	Leased	Units		Units
Floorplan	# Units	SQFT	Market + Addl.	Amt / SQFT	Leased	Amt / SQFT	Occupied	Occupancy %	Available
A1 HH/60%	3	754	953.00	1.26	836.00	1.11	3	100.00	0
A1 LH/50%	2	754	743.00	0.99	681.00	0.90	2	100.00	0
A1 MKT	4	754	1,250.00	1.66	1,367.25	1.81	4	100.00	1
A2 HH/60%	4	770	953.00	1.24	840.00	1.09	4	100.00	0
A2 MKT	9	770	1,250.00	1.62	1,277.00	1.66	7	77.78	4
A3 LH/50%	1	822	743.00	0.90	0.00	0.00		0.00	0
A3 MKT	4	822	1,250.00	1.52	1,250.00	1.52	3	75.00	0
A4 MKT	5	838	1,250.00	1.49	1,236.20	1.48	5	100.00	1
B1 HH/60%	25	995	953.00	0.96	1,047.60	1.05	25	100.00	1
B1 LH/50%	7	995	887.00	0.89	821.71	0.83	7	100.00	0
B1 MKT	8	995	1,540.00	1.55	1,463.86	1.47	7	87.50	0
B2 HH/60%	1	996	1,145.00	1.15	1,029.00	1.03	1	100.00	0
B2 MKT	6	996	1,540.00	1.55	1,468.00	1.47	5	83.33	0
B3 HH/60%	1	1,019	1,145.00	1.12	1,029.00	1.01	1	100.00	0
B3 MKT	20	1,019	1,540.00	1.51	1,452.80	1.43	20	100.00	0
B4 MKT	4	1,259	1,588.00	1.26	1,588.00	1.26	3	75.00	1
C1 HH/60%	10	1,328	1,311.00	0.99	1,269.00	0.96	10	100.00	1
C1 LH/50%	2	1,328	1,021.00	0.77	975.50	0.73	2	100.00	0
C1 MKT	10	1,328	2,060.00	1.55	1,922.29	1.45	7	70.00	2
C2 MKT	6	1,340	2,060.00	1.54	1,854.06	1.38	6	100.00	0
totals / averages:	132	1,027	1,329.91	1.29	1,280.31	1.25	122	92.42	11

occupancy and rents summary for current date

unit status	Market + Addl.	# units	potential rent
Occupied, no NTV	147,876.00	112	144,086.36
Occupied, NTV	9,324.00	7	9,133.00
Occupied NTV Leased	3,007.00	3	2,978.00
Vacant Leased	9,193.00	6	9,193.00
Admin/Down		0	-
Vacant Not Leased	6,148.00	4	6,148.00

Alpha Barnes Real Estate Services, LLC - West Ridge Villas (NEW)

Page 10 of 10 mgt-521-003

08/26/2019 1:32:25PM

RENT ROLL DETAIL

As of 08/25/2019

Parameters: Properties - ALL;Show All Unit Designations or Filter by - ALL;Subjournals - ALL;Exclude Formers? - Yes;Sort by - Unit;Report Type - Details + Summary;Show Unit Rent as - Market + Addl.;

totals:	175,548.00	132	171,538.36
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summary billing by sub journal for curre	nt date
sub journal	amount
EMPLOYEE	1,851.00
RESIDENT	85,903.36
SUBSIDY	69,383.00
total:	157,137.36

summary billing by transaction code for current date

code	amount
EMPLOYEERENT	822.00
GARAGE	900.00
PETRENT	40.00
RENT	94,124.36
SUBR	61,251.00
total:	157,137.36



ORIX Real Estate Capital, LLC 10 West Broad Street, 8th Floor Columbus, OH 43215 Tel: 614-857-1400 800-837-5100

June 3, 2019

VIA ELECTRONIC MAIL

Terri Anderson Anderson Development & Construction 347 Walnut Grove Lane Coppell, TX 75019

RE: FHA Loan #113-35659 Red Loan #17-0006329 West Ridge Villas

Dear Ms. Anderson:

Please accept this letter in response to your email request on May 31, 2019. West Ridge Villas is a construction loan insured under the FHA 221(d)4 program. FHA construction loans being processed under the 221(d)4 program require completion of both an Initial Endorsement and a Final Endorsement process. Our records indicate that West Ridge Villas has yet to complete the HUD Final Endorsement component, which is necessary for the loan to convert to permanent status.

If you have any questions regarding this letter, please do not hesitate to contact me directly at 614-857-1540 or by email at <u>mpzimmerman@redcapitalgroup.com</u>.

Sincerely,

Michael Zimmerman Assistant Vice President Construction Loan Administrator

ADC WEST RIDGE, LP

December 12, 2018

Certified Mail 701302250 0001 2598 3233 U.S. Department of Housing and Urban Development ("HUD") 801 S. Cherry Street, Unit #45, Suite 2500 Fort Worth, TX 76102

Certified Mail 7013 2250 0001 2598 3240 RED Mortgage Capital, LLC ("RED") Attention: FHA Servicing 10 West Broad Street, 8th Floor Columbus, OH 43215

Re: West Ridge Villas, Collin County, TX. HUD Project No.: 113-35659 ("Project") Request for Written Approval of HUD and RED to Complete Work and Extend Deadline

Dear Madams and Sirs,

We appreciate HUD's exhaustive efforts to settle the dispute between ADC West Ridge, LP ("ADC," "Borrower" or "Owner") and the defaulting general contractor KWA Construction, L.P. ("Contractor") in the lawsuit styled Cause No. 366-00389-2018 pending in Collin County District Court related to the above referenced Project located at 9331 Westridge Boulevard in the City of Frisco Collin County Texas.

Unfortunately, the Contractor chose to drastically change the intent of previously agreed settlement agreement language, which altered existing contract terms and would further delay Project completion. As such, we have been unable to come to an agreement as preferred by ADC and HUD.

However, ADC has certain rights to terminate the Contractor and complete the Project, without prejudice to any other rights or remedies of the Owner. In accordance with AIA A201 General Conditions of the Contract for Construction ("AIA201") §2.4 and §14.2, the Owner may complete neglected Work and/or terminate the Contractor for cause. Proper notice has been given to the Contractor and surety for Work and termination, and the dispute will likely be settled separately through litigation.

Pursuant to §VI(35)(g) of the Regulatory Agreement between HUD and ADC executed on May 19, 2016, please accept this letter as a formal request for written approval of HUD allowing ADC to complete Work in accordance with the Contract Documents whether it be by (a) the Owner's own forces pursuant to AIA201 §2.4, (b) acceptance of assignment of subcontractors pursuant to AIA201 §5.4, or (c) finishing the Work by whatever reasonable method the Owner may deem expedient pursuant to AIA201 §14.2.2.3.

We also intend to file a claim on Performance Bond 46BCSHH1165.

Should there be other provisions within the Building Loan Agreement, Security Instrument, or other related loan documents between ADC and RED executed on May 19, 2016 requiring similar approvals from RED for completion of the Work, please consider this letter as a simultaneous request of same.

Finally, we specifically request written approval by HUD and RED of an extension to the deadline for the Borrower to complete the Project required by the Building Loan Agreement executed between ADC and RED on May 19, 2016 from September 19, 2017 to September 19, 2019.

We appreciate your expeditious consideration of our requests and look forward to your responses. You may contact me at (972) 567-4630 should you have any questions or concerns. Please note our mailing address has changed to 347 Walnut Grove Lane, Coppell, TX 75019.

Respectfully submitted,

ADC WEST RIDGE, LP, a Texas limited partnership

By: CHR West Ridge Villas, LLC its General Partner,
by: Center for Housing Resources, Inc., its sole member and manager
by: Terri L. Anderson, Chairperson of the Board of Directors

cc: Mason Joseph and Company Texas Department of Housing and Community Affairs

Andrew Sinnott

From: Sent:	TERRI ANDERSON [Terri_L_Anderson@msn.com] Wednesday, September 26, 2018 3:13 PM
То:	Andrew Sinnott
Cc:	Claire Palmer; Toni Jackson; LOUELLA J GS-13 USAF AETC 56 FSS/FSF ANDERSON
Subject:	Re: TDHCA 15502: Construction Loan Extension Deadline

Good afternoon Andrew,

The last Pay Application approved by HUD including the 95% construction completion schedule is the most recent. A subsequent draw request has not been submitted by the Contractor.

We have a Certificate of Compliance from Collin County as the construction permitting jurisdiction, and a license to operate from the City of Frisco. There are no other Certificates of Occupancy to be obtained from the City of Frisco for the property as it was in the ETJ when we began construction.

All residential units are located in Buildings 2-5 and the Leasing Office is Building 1. The detached garages and maintenance/boiler room were not numbered, but have also been accepted in the HUD PTO. I will forward under separate cover.

Our management staff is doing extremely well and we are currently 22.7% occupied as of this Monday. Our move-ins by week's end should bring us up to 30%, and 40% by October 1st. I will also forward this week's occupancy report under separate cover.

Please let me know if you have any additional questions.

Thank you, Terri

-Terri L. Anderson Sent from my iPhone (972) 567-4630

GENESIS 50:20 PSALMS <u>21:11</u> ISAIAH 54:17

On Sep 26, 2018, at 1:57 PM, Andrew Sinnott <<u>andrew.sinnott@tdhca.state.tx.us</u>> wrote:

Thanks, Terri. Please let us know if you have a more recent Construction Progress Schedule; the one we have shows 95% complete as of July 2018.

Also, we have a Certificate of Compliance from Collin County and a Multi-Family License from the City of Frisco, but I was curious if you have received a Certificate(s) of Occupancy. Was it McKinney that originally issued the building permits?

Finally, please confirm that Buildings 2, 3, 4, and 5 include all of the units, while Building 1 is the Clubhouse, and please let us know the current occupancy.

Thanks,

Andrew Sinnott Multifamily Loan Programs Administrator 512.475.0538 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)).

-----Original Message-----From: TERRI ANDERSON [<u>mailto:terri_l_anderson@msn.com</u>] Sent: Wednesday, September 26, 2018 9:54 AM To: Andrew Sinnott Cc: Claire Palmer; Toni Jackson; LOUELLA J GS-13 USAF AETC 56 FSS/FSF ANDERSON Subject: TDHCA 15502: Construction Loan Extension Deadline

Good morning,

Please accept this message as a formal request by ADC WEST RIDGE, LP to extend the construction period for the \$4,000,000 total combined HOME/TCAP loans from the current deadline of 11/18/2018 to 11/18/2019. Due to extenuating circumstances beyond the Owner's control, KWA Construction, LP, the general contractor, has failed to reach substantial completion by 7/19/2017.

Subsequently, it was determined by the Architect that KWA was overdrawn by approximately \$1,000,000 in September, 2017. KWA failed to proceed to completion and filed a lawsuit against the Owner in January, 2018, then filed a lien against the property on 3/9/2018 for the full contract balance (which was recently released).

While we accepted delivery of the Leasing Office on 6/1/2018 and all residential units on 7/31/2018 under duress, the Punchlist work on the units, accessory buildings, and building exteriors also remain incomplete. As of today, KWA has not completed construction of landscaping, irrigation, or hardscape. KWA also has not started construction of the swimming pool, playground, or gazebo and conducted unauthorized demolition in the Exercise Room after acceptance of the leasing building on 6/1/2018.

The items within the Owner's control have been completed as noted in the attached pictures: theatre room, exercise room, covered patio, business center, game room, warming kitchen, and community room.

U.S. Department of Housing and Urban Development Office of Public and Indian Housing

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. 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.

Construction practices and HUD administrative requirements establish the need that HAs maintain certain records or submit certain documents in conjunction with the oversight of the award of construction contracts for the construction of new low-income housing developments or modernization of existing developments. These forms are used by HAs to provide information on the construction progress schedule and schedule of amounts for contract payments. Responses to the collection of information are required to obtain a benefit or to retain a benefit. The information requested does not lend itself to confidentiality.

1. Name of Public Housing Agency/Indian Housing Authority (PHA/IHA)

Depar	tment of Hou	using and U	rban Dev	/elopment				
2. City	anna a' fairt ann an Alla Gradier a' Carl Bhar ann an tartain	anna mailte sa na sa		3. State	5. Project Neme	124		
				Texas	West Ridge V	lilas		
9331 West Ridge Blvd.					6. Project Number 113-35859			
7. Contract For General C	r Construction				8. Contract Time (De 430	1ys)		
8. From (mm/dd/yyy) To (mm/dd/yyy) 05/19/2016 07/19/2017					10. Contract Price \$ \$14,220,745,00			
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g cover the onstruction	period.) Month	Мау	June	ylut	August	September	October	November
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Anticipated Value	Monthly (\$)	199.090	369.739	639,934	639,934	711.037	711.037	2.133.112
Accumulate Scheduled	Progress (%)	1.40%	4.00%	8,50%	13,00%	18.00%	23.00%	38.00%
Submitted by	Contractor's Name KWA Const	ruction, LP			12	1	: 	<u> </u>
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U.S. Department of Housing and Urban Development Office of Public and Indian Housing

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Page 1.of2

form HUD-5372 (1/2014)

U.S. Department of Housing and Urban Development Office of Public and Indian Housing

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. 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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form HUD-5372 (1/2014)

U.S. Department of Housing and Urban Development Office of Public and Indian Housing

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. 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 velid OMB control number.

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1. Name of Public Housing Agency/Indian Housing Authority (PHA/IHA)

Depa	rtment of Ho	using and L	Irban Devel	opment				
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form HUD-5372 (1/2014)

Instructions for Preparation of Construction Progress Schedule Form HUD-5372

General. The information required for items 1 through 6 can be obtained from the contract documents. (7.) Enter the type of work awarded by the PHA/IHA. This may be "general construction," "plumbing," "heating," "electrical," etc., depending upon prime

contract awards. (8.) Enter the contract time in calendar days (unless otherwise stated). (9.) Enter the starting and completion dates as established by the Notice to Proceed.

Year and Month. At the top of the Schedule, space is provided for inserting the "Year" and "Month" to identify the times during which the work is to be performed.

Year. Enter the year when the Notice to Proceed was issued. If the starting date of the contract is such that the time assigned for completion will be carried into a succeeding year, two yearly designations will be shown, each centered over the applicable spread of time for each year.

Month. The body of the Schedule is divided into Columns, each representing a period of one month. Starting in the Column with the month stated in the Notice to Proceed, enter at the top of each column the successive months corresponding to the entire spread of the total contract time. The Schedule must contain monthly columns to cover the entire active period of contract, with extra columns for possible overruns in contract time.

Computation of Anticipated Monthly Value of Work in Place

Before presenting the form for approval, enter in each monthly column the dollar value (omit cents) of the increment of work anticipated to be put in place during that interval of time. This shall be the Contractor's best estimate of the rate of progress for each month. This section contains a suggested guide for the elapsed contract time vs. progress percentages.

The horizontal total of the monthly dollars shown for "Antici-pated Monthly Value" must equal the contract price shown in the heading.

Accumulated Scheduled Progress - %

Entries on this line shall show in percentage of total completion the cumulative stage of progress that is scheduled to be reached at the end of each monthly interval. It is generally sufficient to state this anticipated progress to the nearest tenth of one percent, but for very large contracts it may be advisable to extend compu- tations to the nearest hundredth.

The entry for the first month's column should be the % obtained by the anticipated monthly dollar value of work in place at the close of the first month being divided by the contract price.

The entry for the second month's column is obtained by the sum of the anticipated monthly dollar values of work in place for Columns 1 and 2 being divided by the contract price.

Enter in the third month's column the percentage computed similarly, using the sum of dollar values of work in place for Columns 1, 2, and 3. Continue in this manner for the succeeding monthly columns until "100" is reached in the final column.

Charting Actual Progress. The horizontal space extending through the monthly columns is divided into "Actual Monthly

Value of Work in Place – \$" and Actual Accumulated Progress – %. " In each monthly column show the actual accumulated % of progress and the actual value of work in place for that month, as the work progresses. An anticipated complete shutdown at some stage in the work because of adverse seasonal weather or otherwise, as may occur in road work, excavation (grading), etc., is readily shown by a gap.

The Contractor's name shall be placed in the lower left-hand corner of the form, together with the signature and title of the employee who prepared the Schedule and the date. The form then shall be sent to the Architect for review. If the Architect considers that changes are necessary to make the Schedule more realistic, it will withhold approval and so advise the Contractor. When the form is acceptable and approved by the Architect, and the PHA/ IHA, it will be returned to the Contractor, who shall reproduce and submit the number and style of prints required by the PHA/ IHA.

Normal building construction experience has proved that the rate of overall progress (as measured by work in place) accelerates slowly at the start, reaches its peak in the middle third of the construction period, and tapers down at the close. The data following illustrate the general average expectancy of a wellbalanced operation and may be used as a guide. If the proposed progress lies within reasonable range of these check points, the Schedule may be considered satisfactory insofar as the timeperformance feature is involved.

%of Contract	% of Accumulated
Time	Progress
0 10	208
20	
30	20
40	37
50	57
60	75
70	89
80	96
90	9
10	10

The foregoing percentages must be tempered by consideration of seasonal weather conditions and other known conditions which may affect the progress of the work. These percentages are offered for information only.

Permission to Occupy Project Mortgages

U.S. Department of Housing and Urban Development Office of Housing Federal Housing Commissioner OMB Approval No. 2502-0029 (Exp. 09/30/2016)

Public Reporting Burden for this collection of information is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. 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.

This information is being collected under Public Law 101-625 which requires the Department of to implement a system for mortgage insurance for mortgages insured under Sections 207,221,223,232, or 241 of the National Housing Act. The information will be used by HUD to approve rents, properly appraisals, and mortgage amounts, and to execute a firm commitment. Confidentiality to respondents is ensured if it would result in competitive harm in accord with the Freedom of Information Act (FOIA) provisions or if it could impact on the ability of the Department's mission to provide housing units under the various Sections of the Housing legislation.

Project Name ARidge VillAS		Project Number 1/3 - 35 4 5 9 Request Number
9,331 WESTRIDGEBING, M	CKINNEY TX 2507	
Request for Permission to Occupy Federal Housing Administration Permission is requested for the occupancy of (Number)	O living units	
Identified as LEASING Building		
and located in (Describe structure, wing, entrance, etc.) FREE STANCING Bu; I ding L All work in connection therewith has been substantially completed and	Building #1] all of the above-described living units are	sultable for occupancy, with the fixtures
and equipment installed and in operating condition. Light, fieat, water, gas have been inspected by the public authorities have jurisdiction and permis Safe and adequate approaches to the site and the aforesaid living units ha lights, and other provisions necessary to the protection of tenants and the proposal for management of the project and compensation to be paid there	, and sanitary services have been conne sion to occupy granted by them as evide ve been provided, including temporary o oublic. Proposed rental schedules or mo	cied and azavalizable for use. The premises need by the certificates attached hereto. r permanent gard relis, barricades, walks, nthy charges in triplicate and mortgagor's arter have beenor are herewith submitted.
ADC West Ridge, LP	HOC West Ridge	the William (I.C. CP
Mortgagor Date (mm/dd/yyyy) 05/29/2018	By Seurer For	Housing Lisoples the age.
Architect's Certificate of Substantial Completion I have inspected the units listed above and have found construction to i may occupy the above described living or service units for the uses intending public authorities having jurisdiction and found same to be in proper order.	be sufficiently complete and in accordance ed. I have examined all required certificat	e with contractequirements so that owner es of perm ission to occupy as issued by
Archited My Come Architer OH OH		
Date (mm/dd/yyyy) 29 MAG 18	or Jumbly all	lu
Contractor's Certification This is to certify that all work or correction necessary to complete the at manner acceptable to the Federal Housing Administration will be performed from the occupancy of the aforesaid living units.	ove-described living units in accordance d without delay and at no additional cost	wilh the contract requirements and in a regardlesare adverse conditions resulting
KWA Construction		-//
Date (mm/dd/yyyy) 11/12/17	By ST T-1	
Mortgagee's Statement Federal Housing Administration All insurance risks have been covered in conformity with Federal Housir project. The above request is acceptable to the undersigned.	ng Administration Hazard Insurance requ	rements issued in connection with this
RED MORTGAGE CAPITAL, LLC	- 16	·8.
$\frac{Mortgagee}{Date (mm/dd/wyy)} O8/20/2018$	By MIZ	
To (Name of Mortgagee, Street Address, City, State, Zip):	2007	
RED MORTGAGE CAPITAL, LLC 10 WEST BROAD STREET 8 TH FLOOR COLUMBUS, OH 43215		
	Page 1 of 2	form HUD-92485 (10/71)

(Original and four copies to be submitted to FHA)

ref. Handbook 4480

PT8 #1 -20180529

FHAInspection Report

Examination of the living units described above, including the available means of access thereto, reveals they are suitable forccupancy with the exception of those enumerated below, which are considered unsuitable for occupancy at this time for the reasons stated.

Inspected 5/29/68 (Date mm/dd/yyyy)	By Warne Crawful
Approved Date 08/20/2018	ByChief Underwriter, Chastefant Director for Technical Services Deputy
(mm/dd/yy\$y)	Chief Underwriter, Chestsfant Director for Technical Services Deputy

Permission to Occupy Permission is granted for the occupancy of the living units identified on the FHA Inspection Report portion of this form as sul table for occupancy. It is understood that this does not constitute and shall not be construed as acceptable of construction and that completion of these living units in accordance with the contract documents is essential and will be performed prior to acceptance of the construction.

Federal Housing Administration, Ву By (Authorized agent) Date (mm/dd/yyyy) D8/20/2018

Leasing Office – Building #1

Incomplete Construction:	
Exercise Room – Doors/Windows (Demo/Replace)	\$25,000.00
Recessed Can Light Lenses	\$ 1,000.00
Exit Lights/Emergency Lights/Strobe Lights	\$ 1,600.00
Permanent Signage – Interior and Exterior	\$ 2,500.00
Fire Place Screen & Switch	\$ 2,500.00
Cabinets – Missing @ Workroom/Adjustments @ Kitchen	\$ 1,000.00
Microwave	\$ 350.00
Stain Grade interior trim	\$ 3,500.00
Stain for interior trim	\$ 2,500.00
Paint touch-up & Stain for trim	\$ 1,000.00
Flooring	\$20,000.00
Reception – Exposed Stained Concrete	
Leasing Area – Exposed Stained Concrete	
Employee Kitchen – Tile	
(2) Hallways – Carpet	
Office – Carpet	
IT Room - Carpet	

Laundry Room - Vinyl

Mail Center (omitted) – Exposed Stained Concrete

(3) Porches – Exposed Stained Concrete

(2) Mechanical Rooms – Exposed Stained Concrete

Total Incomplete Construction

\$60,950.00

WEST RIDGE VILLAS - COST PLUS GUARANTEED MAX CONTRACT CHANGE SUMMARY as of 5.23.2018 - Provided under Rule 408 (Removing work not constructed)

COLOR KEY:

Owner denies within original scope of work

Contracto	r denies within original scope of work	-					
Possible	an-conforming Work acceptance with reduction in Contract Sum	-					
Incomplet	on-contract sum						
incomplet	e or Neglected scope of work (propose removing from contract)						
Proposed Changa Order #	Description	Contractor Change Order Amount Added	Contractor Change Order Removing Work not Installed	Contractor Change Order Amount Deducted	Location in Contract Documents, Plans or Specifications Manual	Owner Proposed	
		- Mindalite Paddicu	normatined	Deducted	ivianua:	Amount	Owner Comment
1	193 day extension of time (previously submitted to HUD).	N/A	N/A			80 Days	IDM denied 193 day request on 12/25/20017. Furthermore, inspection reports called by KWA indicate no Work Stops issued by either city due to no jurisdiction to do so. No support documentation included in expert opinion or the initial 80 day request despite repeated requests from Architect, Owner and Originator. Owner supplying KWA 8/4/16 delay letter: 8 days-civi; 16 days-water hauling; 4 days-weather. KWA initially contacted CoServ on 6/15/16 and failed any follow up until 10/20/16. The CoServ design was received by KWA on 11/20/2016. CoServ installation did not begin until 2/20/17 and continued thru 3/15/17, preventing oil possible areas and not wait for CoServ completion at fire lane crossings to start work.) Davenport inspection reports 10/18/2016 thru 1/6/2017 indicate no KWA staff on site - and no work being completed in November, 2016. Per Architect: 7 days-Weather; 18 days-Citles; 55 days- CoServ
							IDIM denied 80 day request on 11/25/2017 due to KWA failure to provide support
							documentation. Owner pictures/emails, Procore Log with 6/1/16 date of Civil Plans, 59 Inspection Reports by Kelly Davenport from 7/16-3/37, & MetroCode Inspection Logs rebut claims. Concrete subcontractor failed to perform & was replaced, 20 days may be supportable in accordance with the Contractor's letter to Owner. Contractor originally requested 80 days, but refused to provide support [HUD allows = \$732,475/61
	General requirements as a result of 193 day extended time (previously				1	ł	weeks@65% or \$7,805.06 per week with no consideration for partial weeks] 80 days =
2	submitted to HUD)	\$ 218,862.00	\$ 218,862.00				11.43 weeks. 11 weeks of additional General Requirements are allowed.
3	Installation of gas underground line from gas meter to leasing building for gas fireplace, install service line within leasing building to fireplace locations. No gas lines shown in the construction drawings	5 9,636.24			A1.01 General Notes #5, #9, #12; & Spec Section 103050 Man. Fireplaces Gas	\$ 85,855.68 \$ -	IDM denied Contractor claim for additional costs on 11/25/2017. Construction design completed by CoServ. KWA failed to ensure CoServ design provided gas to Leasing Office to operate the fireplace; but, did ensure CoServ design provided gas to boiler. No change in scope of work.
1							IDM denied Contractor claim for additional scope of work on 11/25/2017. Section
4	Contractor was required to contract with Alpha testing for materials testing services. Materials testing is not a par of the original Construction Contract.	\$ 26,315.87	\$ 26,315.87		A201-13.5.1; & HUD 92328 Line #1-Concrete	\$	13.5.10F AIA A201 explicitly requires "Contractorshell bear all related costs of tests, inspections and approvals." HUD 92328 Trade Value for Concrete includes "testing" in description. No change in scope of work.
5	Ad ditional work scope required due to utility design changes dated 6/1/2016	\$ 60,127.61	\$ 60,127.61				IDM denied Contractor claim for additional costs on 11/25/2017. HUD 92328 value = \$548,635 [Water 5284,521; Sanitary Sewer \$98,196; Storm Sewer/Drainage \$134,668; \$poils \$31,250]. Change Order @ costs per HUD guidelines indicates credit is due to Owner plus 6% & 2% at Cost Cert. [Similar Items: #5, #8, #9, #10 & #11]. Sub-contract price for Water/Sanitary Sewer/Storm Sewer is \$3+8,979. KWA met with Owner/Civil on 3/21/16 to finalize plans ofter county cmnts to elevations, drainage & utility design. Plans issued for construction on 6/1/16.
6	Cost for hauling water to site due to City of Frisco and City of McKinney refusing to issue temporary water meters.						IDM issued CCD #4 on 11/26/2017 addressing this item.
	- E i using to issue temporary water meters.	\$ 67,519.19	\$ 67,519.19	<u> </u>		\$ 67,519.19	
7	Civil design changes to sheet c-9 dated 8/26/2016, adding additional retaining Walls	\$ 8,799.71	Not Installed			-	IDM Issued CCD #2 on 13/22/2017 addressing this item. Net savings already exists in Item #27. No additional General Requirements or Overhead allowed See item 27 for net change. Contractor's support documentation indicates "ERWS RCO 1, 9-2-16" at a cost of only S2425. The S9,163 add is for "ERWS RCO 4, 7-16-17" status pending for "Added walls per B & A drawing L1.01 dated 5-10-17." Contractor did not Install C-9 wall on revised plans dated 8/26/2016.
							Plats usies of color

· · · · · · · · · · · · · · · · · · ·										
										IDM denied Contractor claim for additional costs on 11/25/2017. Architect confirmed
							1.01 General			fire sprinkler system is build to suit; no change in scope (Item #5, #8, #9, #10 & #11
8	Increase the size of water line service for the fire sprinkler systems in the					2	Notes #5, #9,	1		calculate net tavings to 2328 value - no cost change/net savings required at cost
	building. Increase line size from 4" to 6" diameter.	5	6,147.83	5 6,1	47.83		#12	5	6,147.83	certification per HUD guidelines)
		1								IOM denied Contractor claim for additional costs on 11/25/2017. Items #5. #8, #9, #10
	Storm water design changes due to changes in the civil drawings dated							1		& #11 to calculate net savings to 2328 value. No cost change/net savings required at
9	8/26/2015. Added 12" injet and storm line.	\$	5,11Z.95	\$ 5,1	12.95			5	5,117.95	cost certification per HUD guidelines.
				1				-		KWA letter dated 8/4/2016 claims 10 days due to denial of temporary water meter by
	Equipment down time due to temporary water meters being confiscated by						1	1		Frisco and McKinney for moisture conditioning, and 6 days lost to mobilize the trucking
	the City of Frisco and the City of McKinney. Cost includes 50 hours of down	1		1			8			solution of water from Allen, TX. See items #1 & #2. No change in scope of work.
10	time for two pieces of equipment and remobilization costs	\$	18,541.60	\$ 18.5	41.60			e		
		+		1						IDM denied Contractor claim for additional costs on 11/25/2017. HUD 92328 includes
1		1			1		C-6 dated	Į		Call 250 (or Samily Chill Brancher House Frederic Call 25/2017, HOD 92328 includes
1						,	12/9/2015, &	1		\$31,250 for Spolls. Civil Pians specifically dictate Erosion Control Scheduling and
1	Haul off utility spolls due to delay of utility start due to dispute with City of]					Phasing. Phase 1 - Grading and Phase 2 - Utilities. No additional scope of work; net
1	Frisco and City of McKinney over water and sever service. Utility spokes were	1				2	Spec Section			credit due to Owner at cost cartification. See Items #5, #8, #9 and #11 to calculate net
1 n	to be used for fill for the foundation pads	6	8,440.74	\$ 84	40.74		312000 -			savings required at cost certification per HUD guidelines. No change in scope of work.
	to be used for the for the individual of page	->	8,440.74	5 8,4	40.74		Earthwork	\$		
		1		1						IDM denied Contractor claim for additional scope of work on 11/25/2017.
1										Owner/Architect specifically instructed Contractor to follow original Construction
1		1								Documents - therefore no change in plans; with the exception to change thin brick over
1		ł								conventional brick to 100% conventional brick as a necessity due to contractor's inability
1										to install thin brick consistently based on prior experience and mock-up (It also provided
4		1		ł				ł		a costs savings). HUD 92328 Masonry/Lathe & Plaster = \$894,618.50. Actual contract of
1		l								\$906,130 (less \$3,075 Monument Sign & \$4,500 Trash Enclosure covered separately on
1		1			12		1	ł		92328 = \$898,555). No plans ksuod, "Cultured Brick" and "Cultured Stone" installed on
		1					1			"Ext Partiand Cement Platter on Matel Lath on Studies and Collored Stone Installed on
	In creased Brick Mason costs due to architectural changes in the building	Į.		1						"Ext Portland Cement Plaster on Metal Lath on Stucco wrap" except where brick ledge
	exteriors and the final brick selections of the actual exterior materials to be	1		1		A	44.00-A4.04,			exists. @ brick ledge, reduction in scope to install cheaper brick veneer on house wrap
		1				1	and Spec			in lieu of "Cultured Brick." Reduced scope of work @ all brick ledges. According to
	used. No official exterior drawings showing this work have been issued.			1			ction 047300			Architect, Contractor error missed installing two (2) brick ledges. Also see item #23.
12	Construction is now complete. Also includes zero cost for changes in leasing office.	1.				T	hin Masonry			
	OTRe.	\$	88,897.27	\$ 88,8	97.27		Veneer	\$	-	
										IDM Issued CCD #3 on 11/25/2017 addressing the issue. Per MAP Guide, owner is not
					1					responsible for price Increases. Reduced Carpet Scope of Work = Increased Resilient
1				1	I					Flooring scope; subcontractor error in Resilient Flooring increase by 5,000 more SF than
					- 1		1			reduction to Carper quantity in yards. Final result is net reduction to Contract Sum of
					I					\$39,600.41 including 2% & 6% after credit due for reduced corpet (HUD 92328 Carpet
1				1						value = \$134,603; cost = \$55,798,92. HUD 92328 Resilient Flooring value = \$70,552.28;
	Owner change in floor coverings from carpet to vinyl plank in designated areas	1		I						vanie = \$12,600, cost = \$35,796,92. Hold \$2328 Resilient Hooring Value = \$70,552.28; cost = \$112,690,05)
13	In the units. No revised floor covering drawings have been provided.	\$	38,557.73	10 300	57.73	1	1			rozr = 3115'020'02]
			50,537.73	30,3	57.75			\$ 3	13,362.00	
										IDM Issued CCD #4 on 11/26/2017 addressing this item. House 24 HR switch to local
1					- 1		1			circuit is \$25 ea. Necessity classification due to Contractor's removal of lighting kit and
14	I when the local difference of the state of].			1			substitution of corridor fans without proper review, approval, or change order credit.
	Labor to Install added light fortures at each entry door	s	3,234.00	5 3,2	34.00		E3.01	\$	3,234.00	Contractor failed to install lights; J-Box installed @ \$25 ea.
1						1	Ţ			IDM denied Contractor claim for additional scope of work on 11/25/2017. Cabinet pull
		1								hardware on plans. Not eligible for change order as there is no additional scope of
15	Upgrade cabinet pull hardware	5	6,532.68	\$ 6,5.	32.68		A3.00	\$.	work. No change in scope of work.
					1					IDM denied Contractor claim for additional costs on 11/25/2017. HUD 92328 Cabinets
1										value = 5473 401 and in extract of actual casts Caraba Caustanta in 1
					- 1	1				value = \$423,401 and in excess of actual costs. Granite Countertops installed instead of
1		1							l	Formica; change order required with credit to Owner for actual cost savings. \$5,940 in
1										additional costs not eligible for additional General Requirements or Overhead. See Item
16	Use undermount Kitchen sinks in lieu of rimmed drop in type									#34 below for total cost savings. No change in scape of work.
	and a section same as new or tailaned atop in type	3	6,403.32	ə 6,3	03.32			\$	-	
1				ł						IDM issued CCD #1 on 11/14/17 addressing the issue. Provide final invoke. Ensure
		1			ļ					Energy Star rated; correct copper leads per MEP Report and ASI. Replace ADA units
1		1								with 21 cu ft side by side refrigerators - Revise Change Order. HUD 92328 value =
1		1		1						\$211,273.49; New sub-contract price = \$220,122.00; difference is \$8, 848.51 + 6%
		1		1						General Requirements & 2% Overhead. Note - appliances installed are only stalniess
										steel on some surfaces of each appliance. GE was substituted for Whiripool.
17	Change in appliance colors from black to stainless steel	\$	22,993.74	\$ 22.9	93.74			Ś		the service services of each appliance. Ge was subsulted for Whitipool.
1								<u> </u>		IDBS dealed Contempore date for additional and a factor for the
1				1	- 1	1.	1.01 General			IDM denied Contractor claim for additional costs on 11/25/2017. HUD 92328 value
1										
	instaliation of electric conduits, conductors, secondary's and CoServerse				- 1	I `				provides adequate funds in excess of actual costs. Per Architect, CoServe design is build
18	Installation of electric conduits, conductors, secondary's and CoServ gas Installation	è	29,585.71	e	85.71	I `	lotes #5, #9, and #12			province: adequate funds in excess of actual costs. Per Architect, CoServe design is build to suit and Contractor can reasonably anticipate changes. There is no additional scope in work. No change in scope of work.

								Orighal bid was \$3,800. Added walks @ West of Leasing Office & North of Building 3;
19	Add sidewalk at West end of clubhouse to laundry area	\$ 5,821.0	0 \$ 5,823.00			5	5,821.00	modified @ all other building/amenity entries per the B&A Accessible Route/Hardscape plan. Contractor did not install walks per Civil plans. Not reduction in scope of work.
20	Installation of job built boller system in liels of Teal boller system originally contemplated	\$ 36,742.5	5 \$ 36,742.55		ME2.01	\$		IDM denied claim for additional scope of work on 11/25/2017. Boller not installed per plans and specifications or submittal. Installed system was non-conforming and did not function as designed. Subcontractor is correcting per original submittal to be verified by MEP/Architect. No change in scope of work.
21	Adjust club flooring. Add wall tile per owner final selections			\$ (524.72)	A8.00 (16) & A8.01b	Ş	(14,719.86)	IDM issued CCD #4 on 11/26/2017 addressing this issue. Wall the installed per plans with "Interceranic" substitutions w/o raview by Architect or credit for Dai-Tille per the specifications. Reduced scope of work: (1) <u>stained europsed concrete</u> @ Leasing Arca/Raception/3 Porches/2 Mech Rooms/Mail Center; (2) <u>corpet</u> . @ 2 Halls/1 Office/IT Room; (3) <u>tille</u> @ Kitchen; and (4) <u>vinvj</u> @ Laundry.
22	Paint unit ceilings a different color than the walls	\$ 72,441.6	0 Not painted			c	157 024 00	Architect issued ASI 001 prior to paint installation; Contractor rejected ASI. 10M issued CCD #7 on 12/25/2017 to address this item, and removing celling paint at \$52,800 from Contract Sum. 572,441.60 is a new corrective price after intentional hann by Contractor refusing to install celling paint even though it was purchased and on site. HUD 52328 volve required a \$36,760.46 credit to Ownor at actual cost if a Change Order was required for a different color on cellings. Paint is defective.
23	Add cultured stone to lireplace walls at club interior	\$ 2,102,1			A8.00 (09)	- S	100,000,	No change in scope of work or to Contract Documents. See Item #12
24	Light Fixture selections	\$			A1.01 General 'Notes #19; E1.17; & E3.01	States and a second	(151,000.00)	IDM issued CCD #7 on 12/25/2017 for Buildings 2 & 3. Owner Reserves rights for Buildings 4 & 5. Substitute/Non-conforming lights sud celling fans were installed without change order or credits to Owner. Most substitutions are unreviewed, rejected by MEP, and 100% non-conforming. Contractor must replace unraviewed/non- cenforming celling fans throughout, and bathroom lights rejected by MEP to meet mandatory TDHCA minimum cohstruction standards. Full Value of 2328 for non- conforming work at Buildings 1-5 plus 65% 2%. Owner will accept unit lights at kitchen, ber, and closets. [at 523,661.61= (5676-1584-8511.2+6864+633,6+658.5+981.6] Balance rejected including LEM to replace: bathroom lights, colling fans, halkvay lights, cortidor fans, corridor lights, wall packs, site pole lights, emergency lights, and building entry lights. Install per plans and spacefications. Owner willing to accept code compliant fire horms w/o strobe lights and smoke detectors w/o CO2 detectors in non ADA units.
25	Add postal boxes	\$ 5,449.2	9 \$ 5,449,29		A201-3.12	s	-	Contractor failed to submit shop drawings to Architect prior to construction of Mail Klosk. 10% parcel boxes required by USP5 - additional cost is result of Contractor failure. No charge in scope of work - contract documents require USPS compliance. Contractor chosen location interferes with playpround equip.
26	Reduce fencing for property			\$ (73,104.57)		s	(73 104 57)	IDM issued CCD #2 on 11/22/2017 addressing this item. 92328 provides \$84,725 for fences. \$4,800 crash gate installed. The only fence remaining is at pool \$5,028 and pool gates at \$2,400. \$72,497 plus 6% & 2% removed from Contract Sum. If pool is removed from scope, \$79,925 plus 6% & 2% is due to Owner as a credit.
27	Reduce site work due to site grades being lowered. Reduced imported fill; added retaining wall			\$ (131,408.20)		\$		IDM issued CCD #Z on 11/22/2017 addressing this item. (See item #7 for net change if wall would have been installed.) Reduced scope of work: NET savings of 579,200 for fill and \$76,361 for initial retaining walls.
28	Kitchen backsplash upgrade	\$ 35,353.0	1 Not Installed]				IDM Issued CCD #4 on 11/26/2017 addressing the Issue; rejected by Contractor. All Tile
		y 33,333.9	A NOL INSTAILED			\$	•	removed from Contract Sum in CCD #7 on 12/25/2017. Not Installed. HUD 92328 provides \$37,500 for Site Benches, BBQ grills, Tot Lot and Trash Compactor.
29	Delete Trash Compactor			5 (28,782,60)		\$	[28,782.60]	\$10,800 remaining.
								Stain grade trim was not installed. Owner DID NOT request any change in scope of work, nor did the Architect request any change; MDF flat square edge colonial installed
30	Replace stain grade hardwood trim in the clubhouse with square edge colonial			\$ (184.34)		\$	(3,426.04)	prior to completion of flooring. Remove and replace nonconforming work (HUD 92328
31	Delete mail center at the back of the clubhouse and add mail klosk			\$ (5,412.84)		s	(5,412.84)	IDM issued CCD #4 on 11/26/2017 addressing the issue. Mail center designed in detention pond due to detention pond conflict.
32	Delete faux cedar beams (2 each) in clubhouse			6 (1 309 701		s		IDM issued CCD #4 on 11/26/2017 addressing this item. Value based on KWA's initial
*******	Delete Individual water meters in each unit	·		\$ (1,358.28) \$ (12,522.05)		5	(1,358.28) (12,522,05)	PCO dacuments.
	Delete granite at clubhouse workroom/business center					1	(0),	Formica countertops were specified and replaced with granite; coffee bar added @ clubhouse. HUD 92328 cabinet value is \$432,449,20; total cabinet costs per PCO support documentation is \$392,588. HUD guidelines requires Change Order @ actual

							KWA claimed removal of sales tax savings from HUD 92328 prior to submission to HUD with net reduction to GMP of \$240,000. The original 92328 value of Total Land Improvements on line 47 with 8.25% soles tax was \$14,288,593, and final signed
35	Credit to developer for sales tax savings						92328 value of Total Land Improvements w/o sales tax was \$13,917,024. Reasonably
	Creating and an an and an			\$ (391,852.71)		\$ (391,862.71)	expected total savings is approximately \$650,000. Balance Due.
							IDM Issued CCD #5 on 12/23/2017 addressing this item; Contractor rejected CCD via letter on 1/5/2018. 1/8/18 plans do not exist. Initial B&A plans were issued and dated 5/10/17 (see Item #7 PCO support document) and 6/15/17 for bid. KWA requested fevisions to 6/15/2017 plans to VE pool/remove deck/gazeba. KWA submitted RFI on 12/12/17. Revised plans dated 12/19/2017 were issued on 12/23/2017. Verify scope
36	01/08/2018 Revised Landscape Plan costs	\$ 53,111.50	\$ 53,111.50			S 53.121.50	meets plans and specs. Work observed 4/17/18 does not meet original specifications from S&A or revised specifications from B&A.
						4 JJ,111,00	IDM issued CCD #6 on 12/23/2017 to address this item. 10 days for additional planting
37	01/08/2018 Revised Landscape Plan extended time	56 days	S& days			10 days	Was allowed; HOD formula to be applied to 10 days for additional planting. Rejected by Contractor in 1/5/2018 letter; work not started.
							Per CCD #6, HUD formula to be applied to 10 days for additional planting. Rejected by
38	T 10/2010 Builtond Landows a suburiled Connection distance			}			Contractor in 1/5/18 letter; no work started. One week allowed by HUD guidelines for
<u> </u>	1/8/2018 Revised Landscape extended General Conditions	\$ 63,504.00	\$ 53,504.00			\$7,805.06	additional GR.
39	01/08/2018 Revised Pool Pian costs	\$ 121,748.25	Not installed. Cost as of 5/6/18 is within budgat				IDM Issued CCD #6 on 12/23/2017 to address this item. Rejected by Contractor in 1/15/2018 letter. CCD added \$15,000 plus 6% & 2% to Contract Sum with existing \$85,000 HUD 92328 value. Received bid for pool & decking from Claffey for 595,715. KV/A falsely claimed bid did not meet Bankendorfer specs and Falsely claimed a \$211,666 re-bid for HUD job, creating enough concern Claffey declined to work with KWA. IDM additional \$15,000 plus 6% & 2% is generous considering reduced scope of work. Reduced scope of work; KWA 5/6/18 bid = \$75,500.
40							IDM issued CCD #6 on 12/23/2017 addressing this item. No additional time is provided.
40	01/08/2018 Revised Pool Pian extended time	91 days	91 days			0 days	KWA stated they are in no rush to complete the work.
41	01/08/2018 Revised Pool Plan extended General Conditions	\$ 103,194.11	\$ -			\$ -	IDM issued CCD #6 on 12/23/2017 addressing this item. No additional time is provided; therefore no extended General Requirements apply.
42	Modify Monument Sign	\$ 5,729.57	Not Installed			s -	No change - install monument sign per the plans.
43	Revised Site Amenities cost	\$ 161,504.38	Not Installed & Owner's Selections within budget			s -	IDM Issued CCD #6 on 12/23/2017 to address this item. Site Ameritics are required per Contract Documents and TDHCA application. Relocation was necessary due to Mail Center plans conflict. See Item #29 for other site ameritiles; additionally, 92328 includes \$18,500 for Athletic Court/Playground and \$37,500 for Site Benches, BBQ grills, and Tot Lot. Owner's Selections within budget. No work started to date.
1						<u> </u>	Interior substitution elevator installed without design professional review, owner
44	Non-conforming A&F Elevator Company substitution					S (168,480.00)	approval or proper change order. Per architect observation, does not meet spec, plan, or fit and finish. Strong oil smell in each elevator equipment room. Deep concern over quality
45	Water Meters & Temporary Water Meter paid by Owner - Backcharge						Contractor demanded Owner purchase five (5) 2" water meters @ \$6,000, claiming they were not in KWA's scope of Work. Owner also acquired temporary water meter for utility testing @ \$1,765 due to Contractor being slow to acquire. KWA also demanded Owner set up water account with \$10,000 deposit and made late payments for various bills (12/2018 bill = \$789.40 w/late (ee of \$78.94)
	MetroCode Inspections and Kelly Davenport Civil inspections paid by Owner -					(0,000.20)	MetroCode was paid \$22,308; Kelly Davenport was paid \$10,000
46	Backcharge				GR 13.5.1	S (34,892.64)	
47	City of McKinney Right of Way Permit Fee - Backcharge				GR 3.7.1		Owner psid \$150.00 right of way permit fee.
48	Non-conforming Emergency lights, horns, & equipment all locations						ASI's Issued Nonconforming Emergency lighting throughout property, including fire homs, strobe lights, exil lights, smoke/CO2 detectors. See Item #24.
49	Gazebo removed from scope and Benches relocated					s .	Gazebo omitted from plans due to construction of Mail Klosk. Use full budget for relocation of Playground/BBQ grills & tables/benches
50	Non-conforming Interceranic Tile Tub Surround substitution						IDM.lesued CCD #7 on 12/25/2017 to address this item. Monconforming work with subsitution interceramic tile; replacement for non-silp bathtubs required @ 10% of units. Therefore 10% of tile will need replacing ofter non-slip tub installation. 90% of tile accepted with \$52,598,L6 actual cost plus 15% & 2%
		L	1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	e		1 (10,415,03)	

anchitettura

14 March 2018

ADC West Ridge, LP Terri Anderson 347 Walnut Grove Lane Coppell, Texas 75019

Keller Webster KWA Construction, LP 16800 Westgrove Drive, Suite 300 Addison, TX 75001

RE: The West Ridge Villas, Collin County, Texas. HUD Project Number #113-35659

Dear Keller and Terri,

Attached is the inspection report for the lease office exterior and interior. It should be noted that KWA failed to provide a punch list for the Lease office.

If you have any questions, please do not hesitate to contact me at 972-509-0088 or Cell phone 972-567-0445 if there is anything that I can do to assist you. Sincerely,

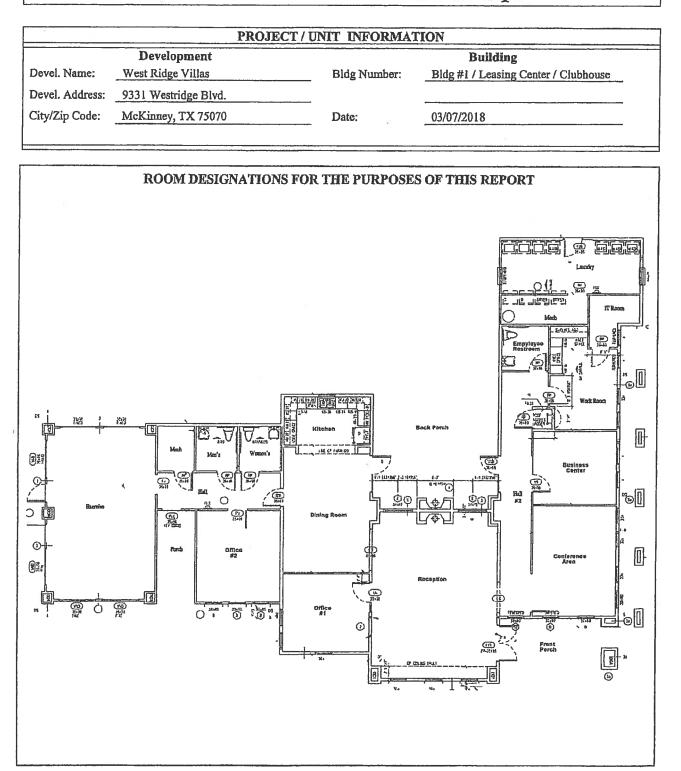
tesah W. Pallani

Frank W. Pollacia AIA, NCARB Principal

Cc: Claire Palmer, representative for CHR Wilkes Alexander, Attorney for Architettura Inc.

Architettura Inc. 808 18th Street Plano, Texas 75074 T. 972.509.0088 F. 972.509.0022

West Ridge Villas Clubhouse Interior Observation Report



GENERAL INTERIOR OBSERVATIONS & COMMENTS

- It appears the baseboards throughout the finished concrete floor areas were taped off prior to applying floor finishes. When the tape was removed, the paint was pulled off of the baseboards. The remaining paint on the baseboards may be wall paint, as it appears to have the characteristics of latex wall paint, as opposed to an oil based paint.
- No fire sprinkler heads were observed within the building
- Traditional smoke alarms do not appear to be present within the building
- · Emergency lighting fixtures do not all appear to be the same type / style
- No tamper resistant covers have been installed at thermostats
- Permanent signs yet to be installed outside of room entry doors within the building
- Paint
 - Miter cut joints at door casings and baseboards often times are not tight, flush and square and lack complete prepaint prep
 - o Paint present on a number of window frames
 - o Paint present on a number of switch and outlet plates
 - o Switch and outlet plates have been caulked to the wall in a number of areas
 - o Noticeable gap observed in areas between baseboards and finished concrete floor
 - o Inset panels have not been caulked to mullions and rails at wooden interior doors
 - o Rework window returns and caulking from returns to windows as needed
- Cabinets
 - Upper and lower cabinet doors and drawers have yet to be leveled / flushed up
 - o Door and drawer bumpers missing or yet to be installed in a number of areas

RECEPTION ROOM

- A blank has been installed at potential ceiling fan J-box location
- Unable to operate fireplace. Wiring hanging loose at wall out of J-box. Switch yet to be installed.
- Windows flanking fireplace are scratched at exterior side
- Touch up paint at front entry doors and hardware
 - o Paint observed on weather stripping
- Wall paint touchups visible by light switch to dining room area
- Emergency lighting fixture does not appear to have been installed in the location shown on the electrical plan
- Windows difficult to open and squeaking when opening
- Knicks on window stools

OFFICE #1

• One fluorescent light bulb is not operating

DINING ROOM

- Paint touchups visible at darker accent wall
- Crack in sheetrock observed above cased opening to hall
- Exit door to covered patio
 - o Paint touchups visible interior side
 - o Door appears to close quickly, while striking the frame with force
 - o No sealant observed between threshold and floor

<u>KITCHEN</u>

- A number of outlets at backsplash do not appear to be connected to a GFCI
- Hot water flow appears slow at sink
- Drywall work incomplete beneath island workspace area
- Rework caulking beneath island top
- Microwave door does not open when button is fully depressed
- Corner bead is damaged at wall between island workspace top and microwave
- Knee space panel below microwave needs touchup
- Touchup finish on upper cabinet door above microwave
- Corner bead damaged right side of refrigerator
- Wall area above upper cabinets over microwave yet to be painted
- One GFCI outlets trips when testing device is inserted, prior to pressing the test button
- (3) J-boxes at ceiling are blanked above island top
- Large wooden brackets have been used to brace island granite top overhang
- A number of cabinet pulls have been installed out of plumb / level
- Site built shelving does not appear to have been fully prepped prior to painting rough edges at shelving
- Refrigerator doors are not leveled up

CONFERENCE AREA

- Damaged areas to concrete floor from removing a stud wall have been filled o Similar damage observed beneath built in shelving area
- Two gang outlets are not leveled up

BUSINESS CENTER

- Adjust entry door strike plate
- Touch up paint at fixed side of entry door
- Caulk has separated between top and backsplash at workstations
- Top loose at wall on south workstation
- Outside corner trim not installed at toe kicks
 - o Unfilled nail holes observed
- Baseboards not caulked to knee space cabinet side panels
- Damage to baseboard right of entry door
- Paint incomplete in some of the knee space areas
- Third knee space on left side of room side cabinet panel is scratched

<u>Hall #2</u>

- Exit door to covered patio
 - o Door frame split at panic bar strike plate
 - o No sealant visible between threshold and floor
 - o Paint drips on exterior side of glass
 - o Door appears to close quickly, while striking the frame with force
 - Door knob missing to roof access closet
- Paint on door casing appears to be two different colors
- Black scuff mark along wall

WORK ROOM

- Caulk has separated between top and backsplash at workstation
- Water stains at ceiling in multiple locations
- Baseboards not caulked to knee space cabinet side panels
- Drywall patch at ceiling does not appear to have been painted
- Rework rough area beneath window stool
- Windows are difficult to open
- Two gang outlet plate is out of level

IT ROOM

- Drywall patches at ceiling does not appear to have been painted
- One electrical outlet strip observed sitting on floor while others have been mounted to the wall
- Equipment has not been mounted on plywood wall boards

EMPLOYEE RESTROOM

- Rough cut / chipped wall tiles observed around mirror
- Paint on mirror

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- Door casings not caulked to tile floor
- Toilet
 - o Escutcheon ring not fully covering hole in wall tile
 - o Rework caulking from toilet to tile
 - o Water stain at tile behind toilet may be indicative of failure to fully seal at wax ring
 - Water shutoff valve is touching toilet
 - Valve cannot be turned off by hand to do its proximity to the toilet
- Toilet paper roller location and "sharp edges" may present a TAS inspection concern
- Plastic protective wrap not fully removed from TP roller

MENS RESTROOM

- Fan vent cover out of square at ceiling
- Paint on mirror

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- Touchup paint between mirror and wall tile
- Toilet appears to be out of level
 - o Rework caulking from toilet to tile
 - Plastic protective wrap not fully removed from TP roller
- Rework grout as needed at inside corners throughout

LADIES RESTROOM

- Wall anchor mounting hole in wall tile next to sink skirt
- Rework caulking at toilet to floor
- Void observed in grout between toilet and tile
- Rough cut / chipped wall tiles observed around mirror
- Rework grout as needed at inside corners throughout
- Adjust door strike plate
- Drywall mud in sink drain
- Wide mortar joint cracked adjacent to toilet
- Paint drip inside toilet

MECHANICAL ROOM

- Clamp at TP&R drain line near floor drain is oversized and is unable to fully secure pipe o Female fitting at drain line is cracked and leaks when operating
- Hot water heater drain valve know missing
- Drywall patch over water heater has yet to be painted
- Piping coming up through foundation does not appear to have been sealed around
- Electrical conduits through ceiling have yet to be sealed around
- A trap primer does not appear to have been installed at the floor drain

OFFICE #2

- Rework inside corners at drywall as needed throughout
- Small hole in wall above outlet
- Caulking separated from door casing to wall
- Drywall patches yet to be painted between windows
- Corner bead rework incomplete at window
- Nail protruding from baseboard beneath window
- Rework drywall around outlets as needed

EXERCISE ROOM

- No televisions have been installed at walls
- No exercise equipment has been place in room
- Paint drips on floor
- Floor outlet plates not flush with floor
- Chip in entry door observed
- Fully paint or remove paint from exterior door sweeps
- · Exterior door weather strips have paint on them
- Hole in sheetrock next to A/V outlet above mirror, left side of entry door
- Drywall mud observed on top of exterior door valence boxes
 - o Sides of valence boxes are drywall, while faces are trim carpentry

LAUNDRY ROOM

- Paint drips and stains at concrete floor
- Through wall dryer vent penetrations have not been sealed around and have no escutcheon rings
- Water heater deck has been constructed over top of floor drain, allowing TP&R / pan drains little working room
 A trap primer does not appear to have been installed at the floor drain
- A floor drain docs not appear to have been installed at center of laundry area
 - o In the event of a water leak, the floor drain beneath the water heater deck may not provide adequate drainage

West Ridge Villas Clubhouse Exterior Observation Report

PROJECT / UNIT INFORMATION

	Development		Building
Devel. Name:	West Ridge Villas	Bldg Number:	Bldg #1 / Leasing Center / Clubhouse
Devel. Address:	9331 Westridge Blvd.		
City/Zip Code:	McKinney, TX 75070	Date:	03/07/2018

OBSERVATIONS & COMMENTS

ROOF

- Steel lintels not painted at parapet walls beneath brick
- Chimney
 - o Screws at cap do not have rubber gasket washers
 - o No sealant from stone to surface mounted GFCI box
- Misc construction debris scattered across roof membrane including nails and sharp sheet metal cutoff scraps
- Exposed framing material between flashing and steel lintel at parapet wall
- No counterflashing into brick at transition from parapet wall coping cap to brick parapet wall facade
- Screws a mechanical condensation drain vent hood does not appear to have rubber gasket washers
- No pipe thread sealant visible at male to female fitting connections at condensation drain line piping
- Parapet wall coping cap not installed in one area adjacent to roof access hatch
- Metal hood yet to be installed at condensation drain line through roof penetration area adjacent to roof access hatch
- "Backer Rod" comment observed hand written in red on roof membrane pointing toward rim of roof access hatch. Backer rod and sealant has yet to be installed between roofing membrane and roof access hatch rim.
- Water stains at ceiling observed at "Work Room" and "IT Room" may indicate an active roof leak

NORTH SIDE OF BUILDING

- Steel lintels over windows not painted
- Silicone sealant has been applied around surface mount J-box
- Nails protruding from foundation at brick ledge area
- Wooden stake in dirt at inside corner of foundation
- No joint has been constructed and no sealant has been applied between stone and brick inside corner transition. Area has been mortared together.
- Front entry door
 - o No sealant between door casing and stone façade
 - No sealant around surface mount J-box to stone façade adjacent to door
 - o Door closes quickly and strikes hard on frame. Closer may require adjustment.
- Scalant separated from one upper window (stone block wall area), and black sealant dripped on stone below this window
- No splash blocks installed beneath downspouts
 - o This comment applies to all downspouts surrounding the building
- Unsealed gap visible at head joint above windows. Confirm conformance with waterproofing standards.
 - o This comment applies to all windows at the building
- No sealant applied at surface mount sconce light fixtures, from fixture base to façade
 - This comment applies to all sconce light fixture on the building
- Corridor to entry door
 - o Paint on can light trim rings at ceiling
 - o No sealant visible from

NORTH SIDE OF BUILDING CONT.

- Fixed French doors at exercise room
 - o No sealant between door casing and stone façade
 - o Trim excess exposed house wrap along foundation
 - o Foundation chipped off beneath one door threshold
 - o Outside corner of foundation is broken beneath façade

EAST SIDE OF BUILDING

- Fixed French doors
 - o Silicone sealant beneath thresholds pulling loose from foundation and has voids within the bead
- Trim excess exposed house wrap along foundation
- Sealant drips observed on flatwork

SOUTH SIDE OF BUILDING

- Electrical meter base ground wire is running above grade in front of the fixed French doors and terminating into the ground.
- Wooden stake in ground along foundation adjacent to fixed French door
- No sealant applied around meter base and thru wall penetration boxes. Thru wall penetration box has been mortared to façade in one area.
- Exposed coil of communication wire hanging loose at flexible conduit at wall (Emergency Phone location per Landscaping Plan)
- No flapper or mesh guard observed at mechanical vent hoods at wall
- Small hole at foundation beneath stone block wall outside of kitchen. Possible location of kitchen sink plumbing vent.
- Mounting nail from dead ends of foundation tendons protruding through foundation throughout this side of building
- Steel lentil ends exposed through mortar above window. Lintel not painted.
- Concrete splatter stains on brick
- Covered Patio Area
 - Fireplace switch has no child proof / tamper proof cover box
 - o Fire box has no barrier screen to keep hands out of fire
 - o No mortar between metal firebox opening stop and stone façade
 - o Concrete splatter on brick
 - o No sealant observed between door thresholds and foundation
 - o Trim house wrap and plastic sheeting along foundation
 - o Touch up paint at ceiling around can lights & ceiling fan mount
 - o Remove paint from can light trim rings
 - o Frieze board not painted in one area
- Laundry Room Area
 - o Irrigation boxes appear to be installed in future accessible route sidewalk path to swimming pool area
 - o Paint touchups visible along fascia board
 - o No sealant around surface mount switch panel box
 - o Sconce light fixture above switch panel does not match other scone light fixtures on building
 - o No sealant around hose bibb
 - o Flatwork broken and loose at entry door threshold to laundry room
 - Laundry room door threshold not secure to foundation, is warped upward toward the center of the threshold, is out of level, and no sealant has been applied between threshold and foundation
 - o No flapper or mesh guard observed at mechanical vent hoods at wall
 - Hoods not flush with façade. Heavy amounts of silicone applied to make-up gap.

WEST SIDE OF BUILDING

- Steel lintel not painted over window
 - o Raw wood framing material visible behind lintel
- Metal cap in accessible route flatwork not flush top of sidewalk
- No sealant around gas or electrical conduit thru wall penetrations
- Gas riser is rusted
- · Gas locate wire running into concrete flatwork may be susceptible to foot traffic damage
- Paint not complete along edges of steel lintels at free standing wall area
- One brick appears loose at mortar below steel lintel at free standing wall
- Sharp edges at gas riser valve and downspouts may present TAS accessible route concerns

GENERAL EXTERIOR COMMENTS

- Irrigation system (or a portion of the system) appears to have been installed around the building
- Sod has been laid around the building but landscaping has yet to be installed at beds
- No trees observed having been installed
- No splash blocks installed beneath downspouts
- Unsealed gap visible at head joint above windows. Confirm conformance with development waterproofing standards.
- No sealant applied at surface mount sconce light fixtures, from fixture base to façade
- Swimming pool has yet to be installed
- o Note: Per the landscaping sight plan, the swimming pool deck is part of the accessible route
- Pool equipment slab and fencing yet to be constructed
- · Fencing depicted on architectural site plan around detention area / leasing center / pool area yet to be installed
- Permeant signage yet to be installed at building
- No accessible route path observed to rear exit doors at covered patio area

Permission to Occupy Project Mortgages

U.S. Department of Housing and Urban Development Office of Housing Federal Housing Commissioner OMB Approval No. 2502-0029 (Exp. 09/30/2016)

Public Reporting Burden for this collection of information is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. 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.

This information is being collected under Public Law 101-625 which requires the Department of to Implement a system for mortgage insurance for mortgages insured under Sections 207,221,223,232, or 241 of the National Housing Act. The information will be used by HUD to approve rents, property appraisals, and mortgage amounts, and to execute a firm commitment. Confidentiality to respondents is ensured if it would result in competitive harm in accord with the Freedom of Information Act (FOIA) provisions or if it could impact on the ability of the Department's mission to provide housing units under the various Sections of the Housing legislation.

Project Name	Project Number
WEST NICCE VILLAS	113-35659
Project Location	Request Number
9331 WESTRIDGE Blud, MENNEY 1X	75070 Two (2)
Request for Permission to Occupy Federal Housing Administration Permission is requested for the occupancy of (Number)	nits ,
identified as Buildings 2,3,4 \$5 Borken/mA	NTEMANCE Bldg.
and located in (Describe structure, wing, entrance, etc.) GARAGE Bu	· Iding

All work in connection therewith has been substantially completed and all of the above-described living units are suitable for occupancy, with the fixtures and equipment installed and in operating condition. Light, heat, water, gas, and sanitary services have been connected and anvailable for use. The premises have been inspected by the public authorities have jurisdiction and permission to occupy granted by them as evidenced by the certificates attached hereto. Safe and adequate approaches to the site and the aforesald living units have been provided, including temporary or permanent gard rails, barricades, walks, lights, and other provisions necessary to the protection of tenants and the public. Proposed rental schedules or monthly charges in triplicate and mortgagor's proposal for management of the project and compensation to be paid therefor, if and as requested by corporate charter have been or are herewith submitted.

ADC IMPAT Redacil	By: CHR What Ridge Villas, LIC, 45, 6.P. By: Center for Hasing Lispin Een hu see By Selli Daduan, Champing on about
Mortgagor	by Center for How is a kispin een me see
Date (mm/dd/yyyy) _0+131/00/8	By Aut Alauxin, Champerson pu albeh

Architect's Certificate of Substantial Completion

I have inspected the units listed above and have found construction to be sufficiently complete and in accordance with contractequirements so that owner may occupy the above described living or service units for the uses intended. I have examined all required certificates of perm ission to occupy as issued by public authorities, having jurisdiction and found same to be in proper order.

Architatives INC		
Afchitect	-1. M. M. Allan	0 11 1
Date (mm/dd/yyyy) 3104918	By Jellah Utallan	Per ettacked

Contractor's Certification

This is to certify that all work or correction necessary to complete the above-described living units in accordance with the co-intract requirements and in a manner acceptable to the Federal Housing Administration will be performed without delay and at no additional cost regardlessery adverse conditions resulting from the occupancy of the aforesaid living units.

	1
Contractor / /	10
Date (mm/dd/yyyy) $03/12/2019$ By $12/2019$	$\underline{\mathcal{O}}$

Mortgagee's Statement

Federal Housing Administration

All insurance risks have been covered in conformity with Federal Housing Administration Hazard Insurance requirements issued in connection with this project. The above request is acceptable to the undersigned.

RED MORTGAGE CAPITAL, LLC Mortgagee Date (mm/dd/yyyy) 08/02/2018	By MA	1
To (Name of Mortgagee, Street Address, City, State, Zip): RED MORTGAGE CAPITAL, LLC 10 WEST BROAD STREET 8 TH FLOOR COLUMBUS, OH 43215		-

form HUD-92485 (10/71) ref. Handbook 4480

FHA Inspection Report

Examination of the living units described above, including the available means of access thereto, reveals they are suitable forccupancy with the exception of those enumerated below, which are considered unsuitable for occupancy at this lime for the reasons stated.

Inspected B١ Construction Representative (Date mm/dd/yyyy Approved Desteported above; as modified by me ng Section Deputy 08 Date Approved: Bv Deputy Chief Underwriter ssistant Director for Technical Services mm/dd/v

Permission to Occupy

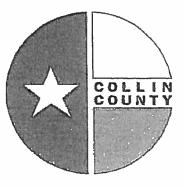
Permission is granted for the occupancy of the living units identified on the FHA inspection Report portion of this form as sul table for occupancy. It is understood that this does not constitute and shall not be construed as acceptable of construction and that completion of these living units in accordance with the contract documents is essential and will be performed prior to acceptance of the construction.

Federal Housing Administration, R Date (mm/dd/yyyy)

INCOMPLETE ITEMS as of 7/31/2018

- 1. Permit for Elevator and Elevator not per specifications;
- 2. Fenced Playground not installed;
- 3. BBQ Grills and Tables not installed;
- 4. Gazebo with benches not installed;
- 5. Swimming Pool not installed;
- 6. 911 Phone not installed;
- 7. Water Fountain at Pool not installed;
- 8. Landscaping not complete;
- 9. Irrigation not complete and not functioning;
- 10. Corridor Fans not per specifications; needs replacing with outdoor/wet rated fans with light kit;
- 11. Corridor Light Fixtures finish retrofitted and not per specifications; needs replacing;
- 12. Unit fans not per specifications; needs replacing to Energy Star rated to meet TDHCA minimum construction standards;
- 13. 21" side by side refrigerators in all ADA/accessible units not installed;
- 14. Bathroom Mirrors at all B Type units needs replacing; at least one mirror missing in unit 5103;
- 15. Light Fixtures at bathrooms not per specifications; needs replacing to wet rated fixture;
- 16. Water feed to refrigerator not per specifications;
- 17. Kitchen Faucet not per specifications and missing sprayers;
- 18. Shower mixer valve and shower head not per specifications;
- 19. All tubs not per specifications and non-slip, and vary in color;
- 20. Toilets not per specifications;
- 21. Tile Tub Surrounds not per specifications;
- 22. Individually keyed storage units;
- 23. Permanent signage throughout property;
- 24. Air Conditioner leaks throughout property;
- 25. Building Entry Siding not installed;
- 26. Hardie Panel on exterior ceilings at Leasing Office and Building Entries not installed;
- 27. Monument Sign not installed;
- 28. Utilities in the name of the Owner need payment;
- 29. Flooring at Leasing Office, Boiler Room, Patios, and Garages not installed;
- 30. Maintenance Bathroom: No hand rails or tile on floor or wainscot;
- 31. Pealing paint and missing paint grade trim througout Leasing Office;
- 32. Cabinets/Shelving at Leasing missing;
- 33. Inoperable fireplace and screen at Leasing Office;
- 34. In adequate site lighting, building entry lighting, and corridor lighting not per specifications;
- 35. Emergency lighting in corridors not per specifications or replaced as instructed by Architect and MEP;
- 36. Fire alarm relay switch between buildings 2/3 & 4/5 faulty'
- 37. Fire alarm wiring bypass a trip hazard;
- 38. Sidewalk at Mail Kiosk is a trip hazard;
- 39. Garage entry trip hazard at building 2;
- 40. Door thresholds not per specifications;
- 41. Diamond steel plates not flush mounted with sidewalks;
- 42. Egress at Building 5 blocked; sidewalk missing; and
- 43. Weather proofing incomplete.
- 44. REPAIR TRUSSES
- 45. PAINT SIDING C ROOF
- 46. WINDOW COVERINGS
- 47. REPAIR WALL & DEAD SKUNK

WE STOOK ON PARTY



CERTIFICATE OF COMPLIANCE

This certificate is issued pursuant to the requirements of the International Building & Fire Code, certifying that at the time of issuance this occupancy was in compliance with the various orders of Collin County and certified by the Collin County Fire Marshal's Office, who regulates use for the following:

Use Classification /Group Residential/Group R-2

Property Owner Ker-Seva Ltd

Address 9421 Westridge Blvd., McKinney, TX 75070

Address 9331 Westridge Blvd., McKinney, TX 75070 Occupant of Building Westridge Villas

Building Address 9331 Westridge Blvd., McKinney, TX 75070 Use Zone Unincorporated Collin County

Fire Marshal

Date: $\frac{5/1/18}{Inspector O / 17 Males}$ By the Authority of Collin County:



Multi-Family License City of Frisco, Texas Building Inspections Division - Multi-Family Inspections 6101 Frisco Square Blvd 3rd Floor, Frisco TX 75034

This license is issued pursuant to the requirements of the Multi-Family Ordinance and hereby certifies that at the time of issuance this property is register with the City of Frisco, Texas

Multi-Family License Number: MFAM18-00008

Issued Date: Property Name:

Property Address:

Property Phone:

05/03/2018 WESTRIDGE ADDITION (GCN), BLK A, LOT 2 9331 WESTRIDGE BLVD FRISCO , TX 75070 (972) 567-4630

Expiration Date: Owner Name:

Owner Address:

Owner Phone: Applicant Name: Applicant Address:

Applicant Phone:

Legal Description: WESTRIDGE ADDITION (GCN), BLK A, LOT 2

Chief Building Offical POST IN A CONSPICUOUS PLACE

ADC West Ridge, LP PO Box 1850 Coppell , TX 75019 (972) 567-4630 ADC West Ridge, LP PO Box 1850 Coppell, TX 75019 (972) 567-4630

12/31/2018



BOARD ACTION REQUEST

MULTIFAMILY FINANCE DIVISION

SEPTEMBER 5, 2019

Presentation, discussion, and possible action regarding an changes to the capital structure for Avanti at Sienna Palms (HTC #18188/ TCAP RF Contract 13150019504)

RECOMMENDED ACTION

WHEREAS, Avanti at Sienna Palms Legacy received an allocation of 9% Housing Tax Credits (HTC) on July 26, 2018, and an award of \$1,650,000 in Tax Credit Assistance Payment Repayment Funds (TCAP RF) under the General set-aside of the 2019-1 Multifamily Direct Loan Notice of Funding Availability at the Board meeting of May 23, 2019;

WHEREAS, the Applicant has provided updated financing documentation and a final development cost schedule with supporting documentation in anticipation of closing on all financing within the next 45 days;

WHEREAS, the documentation provided reflects an increase in the first lien loan amount from \$2,575,000 to \$3,200,000 and a decrease in the interest rate on the first lien loan from 5.65% to 5.35%, resulting in an increase in debt service ahead of the Department's TCAP RF loan from \$168,987 to \$202,455;

WHEREAS, the Real Estate Analysis (REA) Division has not had the opportunity to evaluate the increase to the first lien loan and repayment amount in accordance with 10 TAC §13.8, and may recommend changes to principal amount and/or repayment structure for the TCAP-RF Loan that will allow the Department to mitigate any increased risk;

WHEREAS, the increase in first lien loan proceeds is achievable due to increased rental income as a result of 2019 Housing Tax Credit rents recently being published and a 30 basis point decrease to the interest rate;

WHEREAS, 10 TAC §13.8(b) of the Multifamily Direct Loan Rule states that "increases in the principal or payment amount of any superior loans after the initial Underwriting Report must be approved by the Board;" and

WHEREAS, staff recommends approving the increases to the first lien loan and repayment amounts at this meeting in order to preserve the ability for an October TCAP RF Loan closing, but has not yet evaluated the impact on the TCAP RF Loan;

NOW, therefore, it is hereby

RESOLVED, that the Board hereby conditionally approves Avanti at Sienna Palms Legacy's request to increase the first lien loan amount and repayment amounts; and

FURTHER RESOLVED, that if, as a result of the increase to the first lien loan amount and repayment amount, REA recommends changes to principal amount and/or repayment structure for the Multifamily Direct Loan to allow the Department to mitigate any increased risk, such changes will go to the Executive Director or return to the Board for approval as applicable, in accordance with 10 TAC §13.12.

BACKGROUND

Avanti at Sienna Palms Legacy received a \$1,500,000 9% HTC allocation on July 26, 2018, for the new construction of a 114-unit Development serving an Elderly population. The Applicant subsequently submitted an application for Direct Loan funds under the 2019-1 NOFA on March 11, 2019. The Board approved an award of \$1,650,000 in TCAP RF on May 23, 2019, with total development costs of \$18,693,100. Permanent debt from Community Bank of Texas (CBoT) at that time was anticipated to be \$2,575,000, with the TCAP RF award structured as a hard repayable loan, with a 2.5% interest rate, 30-year amortization, and 18-year term.

In August 2019, in anticipation of closing the TCAP RF loan, the Applicant submitted a revised budget and revised financing documentation, which reflected a \$226,243 net increase in total costs and roughly a \$150,000 decrease in equity proceeds since May 2019. The increased costs are primarily a result of increased site work, contractor fees, and soft costs, while savings were found in off-site and site amenities costs. The decrease in equity proceeds is a result of equity pricing decreasing from \$0.91 to \$0.90 for every tax credit dollar. All of the increase in total costs, and decrease in equity proceeds, is being absorbed by the increased CBoT loan. The CBoT loan is also helping to reduce deferred developer fee from \$735,965 to \$487,193.

REA has not completed its evaluation of the information submitted in August 2019. If, in accordance with 10 TAC §13.8(b), staff recommends changes to principal amount and/or repayment structure for the Multifamily Direct Loan to allow the Department to mitigate any increased risk, such changes will go to the Executive Director or to the Board for approval in accordance with 10 TAC §13.12.

Development Cost Schedule

Self Score Total: 12

This Development Cost Schedule must be consistent with the Summary Sources and Uses of Funds Statement. All Applications must complete the total development cost column and the Tax Payer Identification column. Only HTC applications must complete the Eligible Basis columns and the Requested Credit calculation below:

Total Eligible Basis (If Applicable)	TOTAL DEVELOPMENT SUMMARY				
Cost Acquisition New/Rehab	Total	Eligible Basis (If A	pplicable)		
requisition networkenus	Cost	Acquisition	New/Rehab.		

ACQUISITION

Site acquisition cost Existing building acquisition cost Closing costs & acq. legal fees Other (specify) - see footnote 1 Other (specify) - see footnote 1

Subtotal Acquisition Cost

OFF-SITES²

Off-site concrete Storm drains & devices Water & fire hydrants Off-site utilities Sewer lateral(s) Off-site paving Off-site electrical Other (specify) - see footnote 1 Other (specify) - see footnote 1

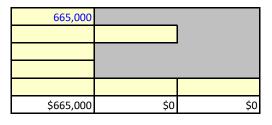
Subtotal Off-Sites Cost

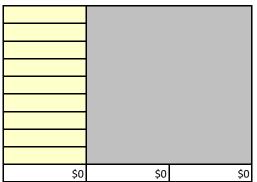
SITE WORK³

Demolition Asbestos Abatement (Demolition Only) Detention Rough grading Fine grading On-site concrete On-site concrete On-site electrical On-site paving On-site utilities Decorative masonry Bumper stops, striping & signs Other (specify) - see footnote 1 Subtotal Site Work Cost SITE AMENITIES

Landscaping Pool and decking Athletic court(s), playground(s) Fencing Monument sign & entry gates

Subtotal Site Amenities Cost





44,633		37,938
204,420		173,757
105,034		89,279
94,246		94,246
166,540		166,540
340,650		340,650
468,394		468,394
23,656		23,656
31,983		31,983
\$1,479,556	\$0	\$1,426,443

180,166		153,141
150,075		135,068
0		0
54,315		54,315
28,387		28,387
\$412,943	\$0	\$370,911

Scratch Paper/Notes

BUILDING COSTS*:

BUILDING COSTS*:			
Concrete	855,348		855,348
Masonry	774,623		774,623
Metals	44,657		44,657
Woods and Plastics	1,366,324		1,366,324
Thermal and Moisture Protection	162,310		162,310
Roof Covering	120,230		120,230
Doors and Windows	342,655		342,655
Finishes	2,150,393		2,150,393
Specialties	95,325		95,325
Equipment			
Furnishings			
Special Construction			
Conveying Systems (Elevators)	167,463		167,463
Mechanical (HVAC; Plumbing)	1,246,953		1,246,953
Electrical	708,496		708,496
Individually itemize costs below:			
Detached Community Facilities/Building	239,601		239,601
Carports and/or Garages	249,047		0
Lead-Based Paint Abatement			
Asbestos Abatement (Rehabilitation Only)			
Structured Parking			
Commercial Space Costs			
Security Cameras & Project Signage	64,409		64,409
Subtotal Building Costs Before 11.9(e)(2)	\$8,587,833	\$0	\$8,338,786
Voluntary Eligible Building Cost Enter amount to be used to acl		\$77.99 psf	\$7,816,469

If NOT seeking to score points under §11.9(e)(2), E77:E78 should remain BLANK. True eligible building cost should be entered in line items E33:E74. If requesting points under §11.9(e)(2) related to Cost of Development per Square Foot, enter the true or voluntarily limited costs in E77:E78 that produces the target cost per square foot in D77:D78. Enter Requested Score for §11.9(e)(2) at the bottom of the schedule in D202.

TOTAL BUILDING COSTS & SITE WORK		\$10,480,332	\$0	\$9,613,823	1	
	I	Ş10,460,552	ζŪ	\$9,013,625		
(including site amenities)						
Contingency	5.00%	\$524,017		480,691		
TOTAL HARD COSTS		\$11,004,349	\$0	\$10,094,514		
OTHER CONSTRUCTION COSTS	%тнс				%EHC	
General requirements (<6%)	6.00%	660,261		605,671	6.00%	
Field supervision (within GR limit)						
Contractor overhead (<2%)	2.00%	220,087		201,890	2.00%	
G & A Field (within overhead limit)						
Contractor profit (<6%)	6.00%	660,261		605,671	6.00%	
TOTAL CONTRACTOR FEES		\$1,540,609	\$0	\$1,413,232		
	-					
TOTAL CONSTRUCTION CONTRACT	\$12,544,958	\$0	\$11,507,746			
Before 11.9(e)(2)						
Voluntary Eligible "Hard Costs" (After 11.9(e)(2))* Enter amount to be used to achieve desired score.			\$0.00 psf			

If NOT seeking to score points under §11.9(e)(2), E96:E97 should remain BLANK. True eligible cost should be entered in line items E83 and E87:E91. If requesting points under §11.9(e)(2) related to Cost of Development per Square Foot, enter the true or voluntarily limited costs in E96:E97 that produces the target cost per square foot in D96:D97. Enter Requested Score for §11.9(e)(2) at the bottom of the schedule in D202.

SOFT COSTS³

Architectural - Design fees
Architectural - Supervision fees
Engineering fees
Real estate attorney/other legal fees
Accounting fees
Impact Fees
Building permits & related costs
Appraisal
Market analysis
Environmental assessment
Soils report
Survey
Marketing
Hazard & liability insurance
Real property taxes
Personal property taxes
Tenant Relocation
See Notes Column
FF&E & outdoor recreation area
Other (specify) - see footnote 1
Subtotal Soft Cost

FINANCING:

CONSTRUCTION LOAN(S)³

CONSTRUCTION LOAN(3)
Interest
Loan origination fees
Title & recording fees
Closing costs & legal fees
Inspection fees
Credit Report
Discount Points
Lender & Equity Attorney
Other (specify) - see footnote 1

PERMANENT LOAN(S)

0
Closing costs & legal fees
Other (specify) - see footnote 1
Other (specify) - see footnote 1

77,741 7 228,655 22 114,568 11 44,568 4 307,637 30 32,749 3 0 1 12,568 1 17,147 1 29,568 2 140,239 18	1,827 7,741 8,655 4,568 4,568 7,637 2,749 0 2,568
228,655 22 114,568 11 44,568 4 307,637 30 32,749 33 0 1 12,568 1 18,068 1 17,147 1 29,568 2 140,239 18	8,655 4,568 4,568 7,637 2,749 0 2,568
114,568 11 44,568 4 307,637 30 32,749 3 0 1 12,568 1 18,068 1 17,147 1 29,568 2 140,239 18	4,568 4,568 7,637 2,749 0 2,568
44,568 4 307,637 30 32,749 33 0 1 12,568 1 18,068 1 17,147 1 29,568 2 140,239 18	4,568 7,637 2,749 0 2,568
307,637 30 32,749 33 0 1 12,568 1 18,068 1 17,147 1 29,568 2 140,239 18	7,637 2,749 0 2,568
32,749 3 0 1 12,568 1 18,068 1 17,147 1 29,568 2 140,239 18	2,749 0 2,568
0 12,568 12,568 1 18,068 1 17,147 1 29,568 2 140,239 18	0 2,568
12,568 1 18,068 1 17,147 1 29,568 2 140,239 1 180,288 18	2,568
18,068 1 17,147 1 29,568 2 140,239 1 180,288 18	
17,147 1 29,568 2 140,239 1 180,288 18	0.000
29,568 2 140,239 180,288	8,068
140,239 180,288 18	7,147
180,288 18	9,568
	0,288
81,396 8	1,396
15,482	5,482
0	
91,637 9	1,637
354,568 35	4,568
\$1,918,707 \$0 \$1,77	

570,679	349,826
104,843	83,874
99,597	74,698
20,000	13,000
28,000	28,000
70,000	0

24,000	
10,000	

Plan printing, constr	r. mgt. software,
travel, grand openir	ng, ground
breaking & renderin	igs

OTHER FINANCING COSTS³

Tax credit fees	67,730		
Tax and/or bond counsel			
Payment bonds			
Performance bonds	181,942		145,554
Credit enhancement fees			
Mortgage insurance premiums			
Cost of underwriting & issuance			
Syndication organizational cost			
Tax opinion			
Refinance (existing loan payoff amt)			
Other (specify) - see footnote 1			
Other (specify) - see footnote 1			
Subtotal Financing Cost	\$1,176,790	\$0	\$694,951

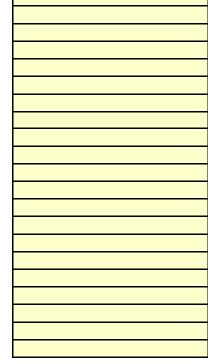
DEVELOPER FEES³

	-					
Housing consu	Iltant fees ⁴					
General & adn	ninistrative	893,600		838,800		
Profit or fee		1,340,400		1,258,200		
	Subtotal Developer Fees 15.00%	\$2,234,000	\$0	\$2,097,000	15.00%	
RESERVES						

Rent-up - new funds				l
Rent-up - existing reserves*				l
Operating - new funds	379,887			l
Operating - existing reserves*				l
Replacement - new funds				l
Replacement - existing reserves*				l
Escrows - new funds				l
Escrows - existing reserves*				l
Subtotal Reserves	\$379,887	\$0	\$0	l
*Any existing reserve amounts should be listed on the Schedule of Sources.				
TOTAL HOUSING DEVELOPMENT COSTS ⁵	\$18,919,343	\$0	\$16,078,166	l

The following calculations are for HTC Applications only.

Deduct From Basis:				
Federal grants used to finance costs in Eligible Basis				
Non-qualified non-recourse financing				
Non-qualified portion of higher quality units §42(d)(5)			
Historic Credits (residential portion only)				
Total Eligible Basis		\$0	\$16,078,166	
**High Cost Area Adjustment (100% or 130%)			130%	
Total Adjusted Basis		\$0	\$20,901,616	
Applicable Fraction			83.33%	
Total Qualified Basis	\$17,418,013	\$0	\$17,418,013	
Applicable Percentage ⁶			9.00%	
Credits Supported by Eligible Basis	\$1,567,621	\$0	\$1,567,621	
Credit Request (from 17.Development Narrative)	\$-			
Requested Score for 11.9(e)(2)		12		



*11.9(c)(2) Cost Per Square Foot: DO NOT ROUND! Applicants are advised to ensure that the figure is not rounding down to the maximum dollar figure to support the elected points.

Name of contact for Cost Estimate:

Henry Flores

Phone Number for Contact:

512-914-0953

If a revised form is submitted, date of submission:

Schedule of Sources of Funds and Financing Narrative

Einaneing Participante Eunding Description		Construction Period		Lien	Permanent Period						Lien
	Financing Participants Funding Description	Loan/Equity Amount	Interest Rate (%)	Position	L	Loan/Equity Amount	Interest Rate (%)	Amort - ization	Term (Yrs)	Syndication Rate	Position
Debt				<u>.</u>			<u> </u>				1
TDHCA	MF Direct Loan Const. to Perm. (Repayable)	\$1,650,000		2	\$	1,650,000	2.50%	30	18		2
TDHCA	MF Direct Loan Const. Only (Repayable)	\$0	0.00%								
TDHCA	Multifamily Direct Loan (Soft Repayable)	\$0	0.00%		\$	-	0.00%		0		
TDHCA	Mortgage Revenue Bond	\$0	0.00%		\$	-	0.00%	0	0		
Community Bank of Texas		\$13,983,000	5.00%	1	\$	3,200,000	5.35%	35	18		1
											-
Third Party Equity				•							
RBC Capital Markets	<u>HTC</u> \$ -	\$ 2,024,798			\$	13,498,650				\$0.90	
Grant				l							1
City of Weslaco	§11.9(d)(2)LPS Contribution	\$ 500			\$	500					
County of Hidalgo	In-Kind Contribution	\$ 500			\$	500					_
Deferred Developer Fee					L					_	-
Avanti at Sienna Palms Legacy		\$-			\$	487,193					3
Development, LLC											
Other				•							-
Couric Enterprises, LLC	Direct Loan Match	\$ 82,500			\$	82,500					
	Total Sources of Funds	\$ 17,741,298			\$	18,919,343					
	Total Uses of Funds	+ 1,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,	L		\$	18,919,343			1 1		-

9d

BOARD ACTION REQUEST

MULTIFAMILY FINANCE DIVISION

SEPTEMBER 5, 2019

Presentation, discussion, and possible action regarding a request for waiver of rules for:

19126	3104 Division Lofts	Arlington
19244	Mariposa at Harris Road	Arlington
19319	Bardin Apartments	Arlington

RECOMMENDED ACTION

WHEREAS, the Developments named above received a 9% Housing Tax Credit award on July 25, 2019, for the construction of multifamily units in the City of Arlington (the City);

WHEREAS, each Development Owner was issued a Commitment Notice on August 16, 2019, with an expiration date of September 16, 2019;

WHEREAS, one of the conditions of the Commitment Notices requires the Development Owners to provide evidence of appropriate zoning for each of their Developments prior to the expiration of the Commitment Notice;

WHEREAS, staff of the City of Arlington has informed the Department that the City will not be able to provide evidence of appropriate zoning for the Developments prior to the expiration of the Commitment Notice;

WHEREAS, the 2019 Uniform Multifamily Rule at 10 TAC §10.402(d)(4) requires that evidence of final zoning be submitted no later than the expiration date of the Commitment Notice;

WHEREAS, as allowed by 10 TAC §11.207 of the 2019 Qualified Allocation Plan, an Applicant may request a waiver of the Department; and

WHEREAS, the staff believes the waiver request satisfies the requirements of 10 TAC §11.207(1) which specifies that the need for a waiver was neither reasonable foreseeable nor preventable, and staff believes that such a waiver in this case serves the policies and purposes set forth in statute, particularly the commitment to assisting local government in providing essential public services for their residents, and providing for the housing needs of low income individuals and families, which would be significantly hindered in Arlington if all Arlington awards in the 2019 round were summarily precluded from proceeding;

NOW, therefore, it is hereby

RESOLVED, that the requirement that evidence of appropriate zoning for the

Developments named above be provided prior to the expiration of the Commitment Notice is hereby waived; and

FURTHER RESOLVED, that evidence of appropriate zoning for the Developments named above will be required to be provided to the Department prior to 5:00 p.m., Austin local time, on September 25, 2019.

BACKGROUND

Bardin Apartments, Mariposa at Harris Road, Reserve at New York, and 3104 Division Lofts were each approved for an award of 9% HTCs on July 25, 2019, for the new construction of multifamily units in Arlington, Tarrant County. On August 16, 2019, the Department issued a Commitment Notice to each the Development Owners with an expiration date of September 16, 2019.

In a letter dated August 15, 2019, Arlington City staff informed the Department that the timing of zoning approval by the City's Planning and Zoning Commission and City Council are ongoing, and may not be concluded until September 24, 2019, which is eight days after the expiration of the Commitment Notices. Per the request, the City has expedited and compressed the timeframe in order to meet the deadline, but one or more of the Developments may not receive a determination until the evening of September 24, 2019. Upon receipt of this communication from the city, Department staff reached out to each of the Applicants. The Applicant for Reserve at New York (19143) informed staff that their zoning request was denied and they would not move forward with their development plans. Each remaining Applicant has subsequently submitted a request for waiver as provided for in 10 TAC §11.207.

Staff believes the waiver request satisfies the requirements of 10 TAC §11.207(1) in that the need for a waiver was not reasonably foreseeable or preventable, and that it serves the policies and purposes set forth in statute. Staff recommends the Board approve this limited waiver of the evidence of zoning deadline for these developments to allow the City of Arlington to complete its approval process.

Letter from City of Arlington



August 15, 2019

Ms. Sharon D. Gamble, MSW, PMP Competitive (9%) Housing Tax Credit Program Administrator Texas Department of Housing and Community Affairs

> Re: Application No. 19126 (3104 Division Lofts) Application No. 19143 (Reserve at New York) Application No. 19319 (Bardin Apartments) Application No. 19244 (Mariposa at Harris Road)

Dear Ms. Gamble:

In July the TDHCA tentatively awarded tax credits to the four Arlington projects listed above. All of these projects are currently making their way through our rezoning process to secure entitlements for their proposed site. I am writing to let you know how the City of Arlington hearing calendar effects these projects and the timing of their required response to your Commitment Letters.

Timing of Arlington Zoning Approval

All four projects were heard by the Planning and Zoning Commission on August 7. This was their first opportunity post-award to appear before the Commission, as the Commission's last meeting took place on July 10. Three projects (19126, 19143 and 19244) are now docketed on the August 20 City Council agenda in an appeal status. The Commission continued the hearing for the fourth project (19319) at no fault of the applicant and are scheduled to take action on August 21. Depending upon the outcome of next week's hearings, one of more of the projects will advance to the City Council meeting of September 10. At that time, in the interest of expediting a final decision, a project will be docketed on the Council agenda for both first and second reading. According to the Arlington City Council's procedural rules, if a rezoning is approved <u>unanimously</u> on first reading, it may proceed immediately to second reading for final approval. However, a single dissenting vote on first reading will push the second reading and possible approval to September 24. It's my understanding that the 30-day response period for the Commitment Letters may expire prior to that date.

Request in the Event Commitment Letters are Issued Prior to August 26

As a municipality interested in securing development compliant with our rules and regulations, we understand and appreciate the importance of TDHCA's procedures, evaluation criteria and rules of decision. The City of Arlington is doing what it can to ensure that each of the four projects

has every opportunity to exhaust their right to a full and fair hearing. Accordingly, we are working to compress the timeframe for Council action and attempting to conform with the TDHCA calendar as much as possible. But as mentioned, it is possible that one or more projects may not reach a second reading and final action until September 24.

With that in mind, we respectfully request that in the event Commitment Letters are issued for the above-mentioned projects prior to August 26, that TDHCA provide some leeway for the response of any project that remains in the Arlington queue for the September 24 Council agenda. Those projects, if any, will be revealed with certainty during the City Council meeting on the evening of September 10.

Thank you for your consideration of our request. If you have questions or need additional information, please let me know.

Sincerely,

Richard G. Gertson, AICP Assistant Director of Planning and Development Services

Cc: Gincy Thoppil, Director, Planning and Development Services Mindy Cochran, Executive Director, Arlington Housing Authority

Waiver Requests



August 22, 2019

Marni Holloway, Multifamily Finance Director Texas Department of Housing and Community Affairs 221 East 11th Street Austin, TX 78701

RE: Waiver Request 19126 Division Lofts, Arlington

Dear Ms. Holloway,

We respectfully request a waiver of 10 TAC §10.402(d)(4) for ten (10) additional days to provide evidence of final zoning by the expiration of the Commitment. We have been working diligently with the City of Arlington for six (6) months on the rezoning application since February 26, 2019. We projected that this would be ample time, since the City's website estimates an average of 12 weeks for a zoning change.

A sophisticated city such as Arlington has a comprehensive and regimented rezoning procedure. The initial and subsequent review periods addressing comments can take up to 30 days each. We responded promptly to City comments issued March 21, 2019 and May 16, 2019. The City requested that we provide a Traffic Impact Analysis and a Tree Survey. There is a lag between the time staff concludes their review and the start of the first public hearing to coincide with the City's Planning and Zoning Commission and City Council zoning calendar and abide by statutory public notice requirements. The earliest the City would place us on the first of three (3) required public meetings was August 7, 2019.

Unfortunately, the meeting for the final City Council reading for Division Lofts – as well as the other Arlington tax credit developments – is scheduled for September 24, 2019, eight (8) days after the Commitment is set to expire. Please see the attached letter from the City of Arlington also requesting "leeway" or a waiver from the Commitment expiration deadline for zoning. Thank you for considering the waiver to provide an additional ten (10) days for an approved TDHCA Housing Tax Credit development that the Applicant has been expending substantial time and resources on since October 2018.

If you need additional information, please do not hesitate to contact me at 512/473-2527 or sallie@structuretexas.com.

Sallie Burchett

BONNER CARRINGTON

Τ ο :	MARNI HOLLOWAY
FROM:	CASEY BUMP
R E G A R D I N G :	19244 Mariposa At Harris Road Potential Zoning Delay
D A T E :	AUGUST 27, 2019

Dear Ms. Holloway,

I am contacting you at the request of the applicant for Mariposa Apartment Homes at Harris Road. We respectfully request that the TDHCA approve the extension requested by the City of Arlington in the attached letter.

Our team is working with the City to meet the current deadline but allowing for a second hearing to verify the results that occur on September 10 would be beneficial to all parties that are participating in this process in the event support, but not unanimous vote is received.

If you have any questions or need additional information, please let me know.

Sincerely, Casey Bump

Applicant's Representative

Attachment – City of Arlington Request



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

August 28, 2019

Via Electronic Mail

Mr. J.B. Goodwin, Chair Texas Department of Housing and Community Affairs 221 East 11th Street Austin, Texas 78701

> Re: Bardin Apartments in Arlington, Texas (the "**Development**") *Request for Waiver* TDHCA No. 19319

Dear Mr. Goodwin:

We represent AT Bardin Housing, LP ("Applicant"), which has received a commitment for Competitive Housing Tax Credits¹ for the construction of the Development. Applicant received a Commitment for the Housing Tax Credits on August 16, 2019. By this letter, Applicant requests a waiver of 10 TAC §10.402(d)(4) of the 2019 Qualified Allocation Plan, with regard to rescission of the Commitment if Applicant fails to deliver evidence of final zoning by the expiration date of the Commitment.

Background

As verified in the Application, the Development Site requires a change in zoning. Applicant began working with the City of Arlington on January 4, 2019, with a pre-submittal meeting. An application for zoning change was filed, and the site development plan was submitted on March 1, 2019. Staff comments to the site development plan were received on March 13, 2019 and did not indicate any material issues. Once it became apparent that the Application would have a competitive position and be likely to receive an award of Housing Tax Credits, Applicant began working on a response to City staff's comments, which was submitted on June 25, 2019. On August 2, 2019, three business days prior to the Planning and Zoning hearing, City staff released a report with recommendations that included moving a building on the site. At the Planning and Zoning hearing on August 7, 2019, the City confirmed that Applicant would need to comply with the staff recommendations in order to receive approval of the zoning change. The City also required Applicant to meet with a nearby church, which had expressed opposition to the zoning change.

Since August 7, 2019, Applicant has moved rapidly to satisfy these unexpected requirements from the City. Applicant met with the church on August 13, 2019. The church expressed concerns regarding

¹ Capitalized terms used but not defined in this letter shall have the meanings given them in the 2019 Qualified Allocation Plan.

Mr. J.B. Goodwin, Chair August 28, 2019 Page

security and traffic. Applicant addressed those concerns by agreeing to move garages on the Development Site, move a building, install a masonry screen, plant additional trees, and change certain access. Applicant also addressed comments from City staff, including the request to move a building, reconfigure parking, move the detention pond, and change landscaping and greenspace. None of the proposed changes impact the Development's scoring for Competitive Housing Tax Credits or the number or size of affordable Units provided. Applicant believes these changes do not require TDHCA approval under 10 TAC §10.405(a)(2)(B). A notification regarding the changes will be sent under separate cover.

On August 21, 2019, the revised plan was approved by the City of Arlington's Planning and Zoning by a vote of 7-1. The zoning change will be on the agenda for the City Council on September 10. If the zoning change is unanimously approved at that meeting, it can move to a second reading on the same date. If the zoning change does not receive unanimous approval at the City Council's meeting on September 10, it cannot proceed to second reading until September 24. TDHCA has received a letter from the City of Arlington, outlining the process going forward, and requesting that TDHCA allow the process to conclude through its normal course. This will necessitate TDHCA accepting evidence of a zoning change after the deadline for return of the Commitment.

Analysis

In order to receive a waiver of the application of 10 TAC §10.402(d)(4) of the 2019 Qualified Allocation Plan, Applicant is required to show that the need for the waiver was not reasonably foreseeable or preventable. Applicant properly and timely applied for the zoning change and did not receive any indication from City staff by its first response in June 2019 that the City would have issues with the site plan. Between June 25 and August 2, Applicant did not hear anything from the City regarding the zoning application. Applicant did not know that the City would want to make changes to the site plan until August 2, 2019. Once the City's requests were identified, Applicant worked promptly to satisfy them, as evidenced by approval at the Planning and Zoning hearing on August 21. Now, Applicant is subject to the timing of City Council meetings that are outside of its control.

Applicant is further required to show that granting the requested waiver better serves the Department's policies and purposes than not granting the waiver. TDHCA's purposes include assisting local governments in providing essential public services for their residents.² Four Applications in the City of Arlington are affected by this issue, and the City of Arlington has asked for TDHCA's assistance for all four of them. If TDHCA does not assist the City of Arlington and grant this waiver, there will be no Housing Tax Credits awarded to the City of Arlington in 2019, and the seventh largest city³ in Texas will miss out on this valuable resource.

The Competitive Housing Tax Credit scoring system has determined that the Application for Bardin Apartments is superior to other Applications in Region 3 Urban. Thus, it can be assumed that this Application better promotes TDHCA's purpose to "encourage the development and preservation of appropriate types of rental housing for households that have difficulty finding suitable, affordable rental housing in the private marketplace"⁴ than its competitors that did not receive Commitments.

² Tex. Gov't Code §2306.001(1)(A).

³ <u>www.worldatlas.com</u>

⁴ Tex. Gov't Code §2306.6701(1).

Mr. J.B. Goodwin, Chair August 28, 2019 Page

Request

While Applicant may not need the waiver, if its zoning application can be approved on first and second reading at City Council on September 10, out of an abundance of caution, it is requesting the waiver to allow the second reading of the zoning application to be heard on September 24, if required. This request will not unduly burden TDHCA or other Applicants. The result will be known, one way or another, by September 24. If Applicant is unsuccessful in the zoning change, TDHCA will have sufficient time to award the Housing Tax Credits to Applicants on the waiting list. Thank you for your consideration and please let us know if you need further information.

Sincerely,

Cynthia X Bast

Cynthia L. Bast

cc: Deepak Sulakhe Alyssa Carpenter

BOARD REPORT ITEM

MULTIFAMILY FINANCE DIVISION

September 5, 2019

Report on the Meeting of the Rules Committee

REPORT ITEM

Verbal report.

BOARD ACTION REQUEST

MULTIFAMILY FINANCE DIVISION

SEPTEMBER 5, 2019

Presentation, discussion, and possible action on the proposed repeal of 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan, proposed new 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan, and directing their publication for public comment in the *Texas Register*

RECOMMENDED ACTION

WHEREAS, the Texas Department of Housing and Community Affairs (the Department) is authorized by Tex. Gov't Code Ch. 2306, Subchapter DD, to make Housing Tax Credit allocations for the State of Texas;

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

WHEREAS, the Department, as required by §42(m)(1) of the Internal Revenue Code and Tex. Gov't Code §2306.67022, developed this proposed Qualified Allocation Plan (QAP) to establish the procedures and requirements relating to an allocation of Housing Tax Credits;

WHEREAS, upon approval of the proposed QAP, the rule will be made available for public comment in the *Texas Register* through October 11, 2019, and then returned to the Board for final approval; and

WHEREAS, pursuant to Tex. Gov't Code §2306.6724, the Board shall adopt a proposed Qualified Allocation Plan no later than September 30 and, on or before November 15, submit it to the Governor, to approve, reject, or modify and approve not later than December 1;

NOW, therefore, it is hereby

RESOLVED, that the proposed repeal of 10 TAC Chapter 11, and a proposed new 10 TAC Chapter 11 concerning the Housing Tax Credit Qualified Allocation Plan together with the preambles presented to this meeting, are hereby approved for publication in the *Texas Register* for public comment; and

FURTHER RESOLVED, that the Executive Director and his designees be and each of them are hereby authorized, empowered, and directed, for and on behalf of the Department, to cause the proposed Qualified Allocation Plan, together with the changes, if any, made at this meeting and the preambles, in the form presented to this meeting, to be published in the *Texas Register* for public

comment and, in connection therewith, make such non-substantive technical corrections, including any required revisions to the preambles, as they may deem necessary to effectuate the foregoing.

BACKGROUD

<u>General Information</u>: Attached to this Board Action Request is the Qualified Allocation Plan (QAP), which reflects staff's recommendations for the Board's consideration. The attached QAP identifies the differences between the 2019 QAP and the proposed 2020 QAP in blackline format. The QAP submitted to the *Texas Register* will be a proposed new version of the 2020 QAP, and will not identify the changes between 2019 and 2020. The Department's Public Comment page will also include a blackline version of the proposed 2020 QAP as approved by the Board to facilitate stakeholders' engagement with the changes.

In December 2018, staff began meeting with stakeholders to discuss the 2020 QAP. Over four meetings, items such as proximity to the urban core, proximity to jobs, preservation strategies of existing affordable housing and new affordable housing, green building standards, Development costs, Direct Loan funding and policies, Tax-Exempt Bond policies, Supportive Housing, and statutory changes to the QAP as the result of the 86th Legislative Session were discussed. Staff posted several topics to the Department's Online Forum, where stakeholders were invited to comment on aspects of the QAP and new proposals from staff. Staff published an informal staff draft on August 5, 2019, and stakeholders were invited to submit their input by letter, email, or phone. Some input spoke of the general policy goals of certain scoring items or threshold criteria, other input offered targeted feedback on the mechanics of the rules, pointing out grammatical/clerical errors, omissions, and inconsistencies. The 2020 QAP provided in this action item reflects Department consideration of the submitted stakeholder input on the staff draft.

After consideration of the input and feedback provided and after evaluating the 2019 Application round, staff believes that the proposed 2020 QAP will serve the State of Texas' interests well, furthering the policies of both statute and the Board. In keeping with those policies, staff has proposed changes to specific sections of the QAP.

<u>Rule-Making Timeline:</u> Upon Board approval, the proposed 2020 QAP will be posted to the Department's website and published in the *Texas Register*. Public comment will be accepted between September 20, 2019, and October 11, 2019. Staff will then consider and prepare reasoned responses to public comment as part of the final action on the QAP that will be brought before the Board on November 7, 2019, for approval. Subsequently, the QAP will be submitted to the Office of the Governor not later than November 15, 2019, for him to approve, approve with changes, or reject. Upon the Governor's approval, approval with modifications, or rejection, which must occur no later than December 1, 2019, the adopted 2020 QAP will be published in the *Texas Register* and posted to the Department's website.

<u>Statutory Changes</u>: There were two statutorily mandated changes to the QAP for 2020 and the expiration of a statute originally passed in the 85th Legislative session in 2017.

§11.3(b) — **Two Mile Same Year Rule (Competitive HTC Only)** SB 493 provides exemptions to the two mile, same year rule. Houston is the only municipality that currently meets the

requirements. (page 26 of the QAP)

§11.9(d)(5) — Community Support from State Representative. HB 1973 allows a State Representative's eight points to be "transferred" to the applicable local government(s) scoring category. Staff has amended this rule to explain the scenarios by which points are transferred and the applicable values of the points in question, depending on the resolution received from the local government(s). The highest possible score for Financial Feasibility at §11.9(e)(1) is also increased to maintain the integrity of the hierarchy of scoring provided in statute, in the case that the local government receives points from the State Representative. (page 61 of the QAP)

§11.9(c)(4) — **Opportunity Index**. The text of Tex. Gov't Code §2306.6710(a) expired on September 1, 2019. That text had limited the consideration of educational quality in the QAP to only threshold requirements. Because the Department's consideration of educational quality is no longer limited to threshold requirements; it can now also be considered, and incentivized, in scoring. Therefore, staff has added educational quality as one potential feature under Opportunity Index. (page 48 of the QAP)

<u>Summary of Proposed Changes</u>: While largely administrative in nature, a significant change to the QAP for 2020 involves ensuring that all aspects of the Application review process will be subject to the rules of 10 TAC §11.201(7), Deficiency Process, and 10 TAC §11.902, Appeals Process. In previous years' QAPs, some matters pertaining to threshold and eligibility requirements would effectively bypass both the Deficiency Process and the Appeals Process, appearing only before the Board, where determinations made by the Board could not be appealed. In addition, various deficiency requirements were consolidated in §11.201(7) for ease of reference. The Department believes that both the interests of Applicants and the Department can be better served by ensuring that the Deficiency and Appeals Processes are generally available to Applicants regarding determinations made as to tax credit Applications.

While not inclusive of all changes proposed, a description of some of the significant recommendations that are considered changes of policy are described below. Page references to the QAP included in this Board Action Request are indicated for ease of reference in parentheses at the end of each summary.

<u>10 TAC Chapter 11, Subchapter A</u>

§11.1(d) – **Definitions.** Staff made substantial revisions to the definition of Supportive Housing. In addition to setting more stringent requirements for what actually constitutes a permanent supportive housing Development, the definition no longer prohibits Supportive Housing from having permanent debt containing foreclosure or must-pay provisions if certain conditions are met. (page 16)

§11.2 – Program Calendar. This section is modified to reflect dates for the 2020 Application round. (page 23)

§11.3(g) – **Proximity of Development Sites**. This rule prohibits two or more Competitive HTC Applications from being within 1,000 feet of each other. Both the 2018 and 2019 QAPs only applied the 1,000 foot distance if certain conditions existed prior to the filing of an Application. In an effort

to simplify the rule, staff has removed those conditions. The rule will only apply in a county with a population that is less than one million. (page 28)

§11.3(h) — One Award per Census Tract Limitation (Competitive HTC Only). In the staff draft of the 2020 QAP, staff had proposed limiting the award of certain scoring items under 10 TAC §11.9(c)(5), Underserved Area, to the highest scoring Application in a given census tract. Multiple stakeholders asked staff to move that policy to 10 TAC §11.3, and simply set a Department policy statewide that only one award will be made within any given census tract. Staff has made this suggested change in light of stakeholder input, but has limited the applicability of that policy to urban subregions only and has exempted Applications receiving Competitive HTC awards under the At-Risk Set-Aside. (page 29)

§11.4(a) – **Credit Amount.** Applicants that have Applications pending in excess of the \$3 million cap now must notify the Department of which Application(s) they will not pursue prior to posting the agenda for the last Board meeting in June, as opposed to the previous deadline of July 15. This is to help ensure the Department has sufficient time to review all applications that are being considered for an award at the last Board meeting in July. (page 29)

§11.6(5) — **Credit Returns Resulting from Force Majeure Events.** Staff has added language in subparagraph (B), stating that if a Development Owner is claiming *Force Majeure* provisions due to rainfall, material shortages, or labor shortages, then the Development Owner must be sure to clearly explain how such conditions were truly outside his or her reasonable control and could not have been reasonably foreseen and mitigated through appropriate planning. Additionally, staff has added language allowing the Governing Board to impose deadlines earlier than the Placed in Service deadline or additional Development conditions if a Development Owner requests *Force Majeure*. (page 39)

§11.8 – Pre-Application Requirements (Competitive HTC Only). In the pre-application notification packet, Applicants will now be required to provide information on how and when an interested party or Neighborhood Organization can provide input to the Department on any Application. Staff will provide Applicants with standard language that can be used to meet this requirement. (page 44)

§11.9 – Competitive HTC Selection Criteria. Staff has made several changes to this section. They are addressed separately.

\$11.9(c)(1) - Income Levels of Residents. The QAP has had provisions that award more points to Supportive Housing Developments under certain scoring items. In the past few years, Supportive Housing has been able to pursue an additional three points, compared to non-Supportive Housing Developments, if certain conditions were met. Staff has moved one of those additional points from \$11.9(c)(3), Resident Services, to \$11.9(c)(1). This change not only helps to create more stringent requirements for those seeking the rule-based scoring benefits of being Supportive Housing Developments serve populations that are extremely and very low-income. Therefore, while most Developments will commit to devoting 40% or 20% of their Units to households earning 50% AMGI or less (depending on where the proposed Development is located in Texas), Supportive Housing Developments will be incentivized to devote 60% of their units to the 50% AMGI income band. (page 46)

\$11.9(c)(5) - Underserved Area. Staff has created an additional Underserved Area scoring item based on there not having been an award of Departmental funding made in a census tract within the previous 20 years. Previously, this type of scoring item was only available for the past 15 year and 30 year periods. By adding the 20 year period, more census tracts in Texas become eligible for these points. Additionally, staff has changed the methodology for the "gentrification" scoring item in subparagraph (G). The primary reason for changing the methodology is so that it does not conflict with the first tie breaker factor in 10 TAC \$11.7(1). (page 53)

\$11.9(c)(6) — Residents with Special Housing Needs. The Section 811 PRA Program has been removed from scoring in the QAP. A two point scoring item will continue to exist if the Applicant agrees to devote 5% of the Development's Units to persons with special housing needs. (page 54)

\$11.9(c)(7) - Proximity to Job Areas. An important scoring item in previous years' QAPs has beenProximity to the Urban Core. In regions with cities that have populations above 200,000, this scoring item has helped to locate affordable multifamily housing near places where people would like to live and work. However, in the 2019 cycle, staff's analysis of cost data from Applications suggested that per Unit land costs for urban core Developments had increased drastically, whereas land costs for non-urban core Developments had not. Thus, in order to counteract the likely price pressure Applicants are experiencing in urban core markets, staff worked with stakeholders to develop and implement an additional, but mutually exclusive, scoring item based on proximity to jobs. In reviewing public data, it is apparent that there many large job centers across the state that are not located in urban cores. Additionally, in smaller cities and towns whether on the periphery of large metros or in more sparsely populated subregions—the proximity to jobs scoring item may also help to locate affordable multifamily housing in desirable locations where people would like to live and work. Given the obvious benefits of the urban core, staff recommends leaving it in the QAP, but as a mutually exclusive scoring item with proximity to jobs. It is staff's hope that by expanding eligible sites with this new scoring item, Applicants will not experience upward pressure on costs due to land availability and, instead, multiple highscoring sites will be available throughout each subregion. (page 55)

\$11.9(c)(8) — Readiness to proceed in disaster impacted counties. The period of eligibility was expanded from two years to three years so that the counties impacted by Hurricane Harvey remain eligible for this scoring item. (page 56)

§11.9(e)(5) — *Extended Affordability*. The number of options for extended affordability have been increased. Previously, Applicants were incentivized to commit to Affordability Periods of 35 years. Now there is also a 40-year scoring item and a 45-year scoring item. (page 70)

\$11.9(e)(6) — Historic Preservation. In order to help facilitate timely Applications to the Texas Historical Commission and to ensure that the Department is receiving Applications proposing historic preservation that are actually eligible for the historic tax credits, the QAP now requires that Applicants demonstrate that their requests for preliminary eligibility were provided to the Texas Historical Commission by February 1 of the application year. (page 70)

10 TAC Chapter 11, Subchapter B

§11.101 – Site and Development Requirements and Restrictions. Staff has made several changes to this section.

• (a)(1) Floodplain. Staff has added the requirement that, for Applications proposing the

rehabilitation of existing Developments that are located in the federal 100 year floodplain, the Development must state in its Tenant Rights and Resource Guide that part or all of the Development Site is located in a floodplain, and that it is encouraged that they consider getting appropriate insurance or take necessary precautions. (page 73)

(a)(3) Neighborhood Risk Factors. Due to changes in how campuses are evaluated by the Texas Education Agency, staff has made changes to the Neighborhood Risk Factor regarding educational quality. 10 TAC §11.101(a)(3)(B)(iv) now requires that the Applicant disclose if the Development Site falls within the attendance zone of a school that was rated D in 2019 and Improvement Required in 2018 by TEA. The 2019 QAP, in contrast, required disclosure if a school was rated Improvement Required for just one year; the 2020 QAP requires disclosure if that poor rating persists for two years. As stated in 10 TAC §11.101(b)(1)(C) related to Neighborhood Risk Factors, any Development that falls within the attendance zone of a school that is rated F by the Texas Education Agency will be considered ineligible with no opportunity for mitigation, although there is an exception to this prohibition for properties under a Department LURA as of the first day of the Application or pre-application acceptance period. In 2019, less than 5% of campuses statewide were rated F by TEA.

Staff has also made revisions to how an Applicant may mitigate a Neighborhood Risk Factor. Regarding Applications located in census tracts where the poverty rate is above 40%, mitigation must be in the form of a resolution from the Governing Body of the appropriate municipality or county containing the Development, referencing this rule and/or acknowledging the high poverty rate and authorizing the Development to move forward.

In regards to mitigation for schools, staff has reduced the number of options from four to three, because of concerns with how the fourth method of mitigation in the 2019 QAP, busing school-aged children to a school that has met TEA standards, would be confirmed in a Development's Land Use Restriction Agreement (LURA) and monitored by the Department's Compliance division. (page 75)

• (b)(1)(C) Ineligible Developments. Staff is recommending that for Developments that fall within the attendance zone of any school that has been rated F by TEA, that Development is ineligible with no opportunity for mitigation, although there is an exception to this prohibition for properties currently under a Department LURA as of the first day of the Application or pre-application acceptance period. (page 83)

10 TAC Chapter 11, Subchapter C

§11.201(2) – Filing of Application for Tax-Exempt Bond Developments. Staff has made several changes to facilitate the efficient processing and review of Applications seeking Tax-Exempt Bond funding, especially as it relates to timelines associated with the Texas Bond Review Board. (page 99)

§11.201(7) – **Deficiency Process.** In subparagraph (C), regarding the Deficiency process for Tax-Exempt Bond Developments, staff has clearly delineated the causes that will lead to the termination of an Application. Staff did the same for subparagraph (D), regarding Direct Loan only Applications. (page 104)

§11.204(15) – **Feasibility Report**. This paragraph has been clarified to ensure that the Department, and especially the Multifamily Finance and Real Estate Analysis divisions, receive Applications that

have done their due diligence on Development requirements, given Development Site constraints and local jurisdictional requirements. (page 129)

§11.205(3) – **Scope and Cost Review.** Previously referred to as the Property Condition Assessment in the 2019 QAP, this paragraph has been renamed in light of the extensive revisions made to 10 TAC §11.306 of the QAP (and which are explained below). (page 132)

§11.205(4) – **Appraisal.** The Department will require appraisals for Adaptive Reuse Developments. (page 132)

10 TAC Chapter 11, Subchapter D

§11.302(e)(1) – Acquisition Costs. Staff has clarified how the Acquisition costs will be determined for USDA Developments and identity of interest transactions. (page 144)

§11.302(e)(7) – **Developer Fee.** Staff has removed the provision that allowed Public Housing Authorities to claim 20% Developer Fee on Developments utilizing HUD's Rental Assistance Demonstration program when utilizing Tax-Exempt Bonds. All Low Income Housing Tax Credit Developments will be held to the same standard and limited to 15% Developer Fee when the Development has 50 Units or more.

Additionally, in clause (C)(iii) of this paragraph, staff has limited Developer Fee on Acquisition costs to 5% if the transaction can be considered an Identity of Interest.

For Multifamily Direct Loan-only Developments, the Developer Fee will be limited to 7.5%. (page 148)

§11.306 – Scope and Cost Review Guidelines. As stated above, staff has changed the name of the Property Condition Assessment to Scope and Cost Review (SCR). Staff has expounded on the requirements of a SCR, with the goal of receiving Applications that clearly articulate the capital improvement requirements of a Development undergoing Rehabilitation or Adaptive Reuse. (page 171)

10 TAC Chapter 11, Subchapter E

§11.901 – Fee Schedule. The Commitment and Determination Fees have been reduced to 2%, as opposed to the previous 4%, for 2020 only. Additionally, in the Compliance Monitoring fee section, the requirement that a property receiving both a Direct Loan and tax credits must pay a fee for both programs has been removed. Only the tax credit fee amount will be required in these transactions. (page 176)

Attachment 1: Preamble, including required analysis, for proposed repeal of 10 TAC Chapter 11, Qualified Allocation Plan

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC Chapter 11, Qualified Allocation Plan (QAP). The purpose of the proposed repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

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

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

1. Mr. Robert Wilkinson, Executive Director, has determined that, for the first five years the proposed repeal would be in effect, the proposed repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, concerning the allocation of Low Income Housing Tax Credits (LIHTC).

2. The proposed repeal does not require a change in work that would require the creation of new employee positions, nor is the proposed repeal significant enough to reduce work load to a degree that any existing employee positions are eliminated.

3. The proposed repeal does not require additional future legislative appropriations.

4. The proposed repeal does not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department.

5. The proposed repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The proposed action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, concerning the allocation of LIHTC.

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 takings by the Department; therefore, no Takings Impact Assessment is required.

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

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

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(5).

Mr. Wilkinson has also 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 and more germane rule for administering the allocation of LIHTC. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(4).

Mr. Wilkinson 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 September 20, 2019, to October 11, 2019 to receive stakeholder comment on the proposed repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Patrick Russell, QAP Public Comment, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-1895, attn: Patrick Russell, QAP Public Comments, or by email to htc.public-comment@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin local time OCTOBER 11, 2019.

STATUTORY AUTHORITY. The proposed repeal is made pursuant to TEX. GOV'T CODE §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed repealed sections affect no other code, article, or statute.

10 TAC Chapter 11, Qualified Allocation Plan

SUBCHAPTER A

- §11.1 General
- §11.2 Program Calendar for Housing Tax Credits
- §11.3 Housing De-Concentration Factors
- §11.4 Tax Credit Request and Award Limits
- §11.5 Competitive HTC Set-Asides. (§2306.111(d))
- §11.6 Competitive HTC Allocation Process
- §11.7 Tie Breaker Factors
- §11.8 Pre-Application Requirements (Competitive HTC Only)
- §11.9 Competitive HTC Selection Criteria
- §11.10 Third Party Request for Administrative Deficiency for Competitive HTC Applications

SUBCHAPTER B

§11.101 Site and Development Requirements and Restrictions

SUBCHAPTER C

- §11.201 Procedural Requirements for Application Submission
- §11.202 Ineligible Applicants and Applications
- §11.203 Public Notifications (§2306.6705(9))
- §11.204 Required Documentation for Application Submission
- §11.205 Required Third Party Reports

 $11.206\,$ Board Decisions ($\2306.6725(c);\,2306.6731;\,and\,42(m)(1)(A)(iv))$ $11.207\,$ Waiver of Rules

SUBCHAPTER D

- §11.301 General Provisions
- §11.302 Underwriting Rules and Guidelines
- §11.303 Market Analysis Rules and Guidelines
- §11.304 Appraisal Rules and Guidelines
- §11.305 Environmental Site Assessment Rules and Guidelines
- §11.306 Property Condition Assessment Guidelines

SUBCHAPTER E

- §11.901 Fee Schedule
- §11.902 Appeals Process
- §11.903 Adherence to Obligations
- §11.904 Alternative Dispute Resolution (ADR) Policy

Attachment 2 Preamble, including required analysis, for proposed new 10 TAC Chapter 11, Qualified Allocation Plan

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 11, Qualified Allocation Plan (QAP). The purpose of the proposed new section is to provide compliance with Tex. Gov't Code §2306.67022 and to update the rule to: implement statutory changes to Tex. Gov't Code Chapter 2306 that have direct effects on the QAP; clarify how Applications will be treated in the Deficiency Process and Appeals Process; clarify and amend the definition of Supportive Housing; update the Program Calendar; apply policies that encourage the dispersion of HTC awards; specify when Applicants must select the Applications they wish to proceed with if they are eligible for awards in excess of \$3 million; clarify when instances of Force Majeure pertaining to rainfall, material shortages, and labor shortages will be approved; revise how Supportive Housing gains additional points through competitive scoring; add additional Underserved Area scoring items; amend the Residents with Special Housing Needs scoring item; add proximity to jobs as a new scoring item that is mutually exclusive with proximity to the urban core; amend the readiness to proceed in disaster impacted counties scoring item to look back three years so that Applications in Hurricane Harvey counties are still eligible for these points; add additional scoring items under Extended Affordability; revise the requirements for Applications seeking points under Historic Preservation; require certain notifications be made to Residents in Developments where that Development falls within the 100 year floodplain; update provisions to Neighborhood Risk Factors and mitigation allowed for those factors; add to Ineligible Developments any Development located in the attendance zone of a school rated F by the Texas Education Agency; revise timelines associated with Tax-Exempt Bond Developments; specify provisions for termination for Applications seeking Tax-Exempt Bond or Direct Loan funds; move the Right of First Refusal provision from competitive scoring to threshold for Competitive HTC Developments; rename the Property Condition Assessment requirements as Scope and Cost Review requirements, and to clarify what those requirements are; and revise certain Developer Fee provisions.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action for two reasons: 1) the state's adoption of the QAP is necessary to comply with IRC §42; and 2) the state's adoption of the QAP is necessary to comply with Tex. Gov't Code §2306.67022. 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. Robert Wilkinson, Executive Director, has determined that, for the first five years the proposed new rule would be in effect:

1. The proposed rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to an existing activity, concerning the allocation of Low Income Housing Tax Credits (LIHTC).

2. The proposed new rule does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.

3. The proposed rule changes do not require additional future legislative appropriations.

4. The proposed rule changes will not result in an increase in fees paid to the Department, but may, result in a decrease in fees paid to the Department. The proposed rule suggests a one-time adjustment

to the Commitment and Determination Fee amounts from 4% to 2%.

5. The proposed rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.

6. The proposed rule will not limit or repeal an existing regulation, but can be considered to "expand" the existing regulations on this activity because the proposed rule has added new scoring options and has sought to clarify Application requirements.

Some "expansions" are offset by corresponding "contractions" in the rules, compared to the 2019 QAP. Notably, the Department has sought to remove superfluous language wherever possible and to consolidate rules into just one section.

These additions, removals, and revisions to the QAP are necessary to ensure compliance with IRC §42 and Tex. Gov't Code §2306.67022.

7. The proposed rule will not increase nor decrease the number of individuals subject to the rule's applicability; and

8. The proposed rule will not negatively affect the state's economy, and may be considered to have a positive effect on the state's economy because changes at 10 TAC §11.9(c)(7), Proximity to Job Areas, may help to encourage the Development of affordable multifamily housing in robust markets with strong and growing economies.

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, §2306.67022. Some stakeholders have reported that their average cost of filing an Application is between \$50,000 and \$60,000, which may vary depending on the specific type of Application, location of the Development Site, and other non-state of Texas funding sources utilized. The proposed rules do not, on average, result in an increased cost of filing an application as compared to the existing program rules. Additionally, because of revisions to how Applicants may mitigate neighborhood risk factors, recipients of HTC awards may be able to decrease the cost of having to comply with this rule.

1. The Department has evaluated this rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. There are approximately 100 to 150 small or micro-businesses subject to the proposed rule for which the economic impact of the rule may range from \$480 to many thousands of dollars, just to submit an Application for Competitive or non-Competitive HTCs. The Department bases this estimate on the potential number of Applicants and their related parties who may submit applications to TDHCA for LIHTC. The fee for submitting an Application for LIHTC is \$30 per unit, and all Applicants are required to propose constructing, at a minimum, 16 Units. While, in theory, there is no limit to the number of Units that could be proposed in a single Application, practically speaking, the Department sees few proposed Developments larger than 350 Units, which, by way of example, would carry a fee schedule of \$10,500. These Application Fee costs are not inclusive of external costs required by the basic business necessities underlying any real estate transaction, from placing earnest money on land, conducting an Environmental Site Assessment, conducting a market study, potentially retaining counsel, hiring an architect and an engineer to construct basic site designs and elevations,

and paying any other related, third-party fees for securing the necessary financing to construct multifamily housing. Nor does this estimate include fees from the Department for Applications that successfully attain an award.

There are 1,296 rural communities potentially subject to the proposed rule for which the economic impact of the rule is projected to be \$0. The proposed rule places no financial burdens on rural communities, as the costs associated with submitting an Application are born entirely by private parties. If anything, a rural community securing a LIHTC Development will experience an economic benefit, not least among which is the potential increased property tax revenue from a large multifamily Development.

3. The Department has determined that because there are rural tax credit awardees, this program helps promote construction activities and long term tax base in rural areas of Texas. Aside from the fees and costs associated with submitting an Application, there is a probable positive economic effect on small or micro-businesses or rural communities that receive LIHTC awards and successfully use those awards to construct multifamily housing, although the specific impact is not able to be quantified in advance.

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

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

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the proposed rule may provide a possible positive economic effect on local employment in association with this rule since LIHTC Developments often involve a total input of, typically at a minimum, \$5 million in capital, but often an input of \$10 million - \$30 million. Such a capital investment has concrete direct, indirect, and induced effects on the local and regional economies. However, because the exact location of where program funds and development are directed is not determined in rule, there is no way to determine during rulemaking where the positive effects may occur. Furthermore, while the Department knows that any and all impacts are positive, that impact is not able to be quantified for any given community until a proposed Development is actually awarded LIHTC, given the unique characteristics of each proposed multifamily Development and region in which it is being developed.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that significant construction activity is associated with any LIHTC Development and that each apartment community significantly increases the property value of the land being developed, there are no probable negative effects of the new rule on particular geographic regions. If anything, positive effects will ensue in those communities where developers receive LIHTC awards.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be an updated and more germane rule for administering the allocation of LIHTC. There is no change to the economic cost to any individuals required to comply

with the new section because the same processes described by the rule have already been in place through the rule found at this section being repealed. The average cost of filing an application remains between \$50,000 and \$60,000, which may vary depending on the specific type of application, location of the development site, and other non-state of Texas funding sources utilized. The proposed rules do not, on average, result in an increased cost of filing an application as compared to the existing program rules. The proposed rules will result in a slightly lower cost of participating in an HTC Application for 2020 only as the Department has made a temporary one-time reduction in the Commitment and Determination Notice fees.

f. FISCAL NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments because the same processes described by the rule have already been in place through the rule found at this section being repealed. If anything, Departmental revenues may increase due to a comparatively higher volume of Applications, which slightly increases the amount of fees TDHCA receives.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 20, 2019, to October 11, 2019 to receive stakeholder comment on the new proposed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Patrick Russell, QAP Public Comment, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-1895, attn: Patrick Russell, QAP Public Comments, or by email to htc.public-comment@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin local time OCTOBER 11, 2019.

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed new sections affect no other code, article, or statute.

Chapter 11, Housing Tax Credit Program Qualified Allocation Plan

Subchapter A – Pre-application, Definitions, Threshold Requirements and Competitive Scoring

§11.1.General.

(a) Authority. This chapter applies to the awarding and allocation by the Texas Department of Housing and Community Affairs (the Department) of Competitive and non-Competitive Housing Tax Credits. The federal laws providing for the awarding and allocation of Housing Tax Credits require states to adopt a qualified allocation plan. Pursuant to Tex. Gov't Code, Chapter 2306, Subchapter DD, the Department is assigned responsibility for this activity. As required by Internal Revenue Code (the Code), §42(m)(1), the Department has developed this Qualified Allocation Plan (QAP) and it has been duly approved to establish the procedures and requirements relating to an award and allocation of Housing Tax Credits. All requirements herein and all those applicable to a Housing Tax Credit Development or an Application under Chapter 10 of this title (relating to Post Award and Asset Management and Requirements, Compliance Monitoring, and Incomes and Rents rules) collectively constitute the QAP required by Tex. Gov't Code §2306.67022. Unless otherwise specified, certain provisions in sections §11.1 through §11.4 also apply to non-Competitive Housing Tax Credits. Subchapters B through E of this chapter also apply to non-Competitive Housing Tax Credits and Multifamily Direct Loans. Applicants are required to certify, among other things, that they have familiarized themselves with the rules that govern that specific program including, but not limited to, Chapter 1 of this title (relating to Administration), Chapter 2 of this title (relating to Enforcement), Chapter 8 of this title (relating to 811 Project Rental Assistance Program Rule), Chapter 12 of this title (relating to Multifamily Housing Revenue Bond Rules), Chapter 13 (relating to Multifamily Direct Loan Rule), and other Department rules. This subchapter does not apply to operating assistance programs or funds unless incorporated by reference in whole or in part in a Notice of Funding Availability (NOFA) or rules for such a program except to the extent that Developments receiving such assistance and otherwise subject to this chapter remain subject to this chapter.

(b) Due Diligence and Applicant Responsibility. Department staff may, from time to time, make available for use by Applicants information and informal guidance in the form of reports and responses to specific questions. The Department encourages communication with staff in order to clarify any issues that may not be fully addressed in the QAP₂ or may be unclear when applied to specific facts. However, while these resources are offered to help Applicants prepare and submit accurate information, Applicants should also appreciate that this type of guidance is limited by its nature₂ and that staff will apply the rules of the QAP to each specific situation as it is presented in the submitted Application. The Multifamily Programs Procedures Manual is not a rule and is provided as good faith guidance and assistance, but in all respects the statutes and rules governing the Low Income Housing Tax Credit program supersede these guidelines and are controlling. Moreover, after the time that an issue is initially presented and guidance is provided, additional information may be identified and/or the issue itself may continue to develop based upon additional research and guidance. Thus, until confirmed through final action of the Board, staff guidance must be considered merely as an aid and an Applicant continues to assume full

responsibility for any actions Applicant takes regarding an Application. In addition, although the Department may compile data from outside sources in order to assist Applicants in the Application process, it remains the sole responsibility of the Applicant to perform independently the necessary due diligence to research, confirm, and verify any data, opinions, interpretations, or other information upon which an Applicant bases an Application or includes in any submittal in connection with an Application. As provided by Tex. Gov't Code \$2306.6715(c) for Competitive HTC Applications, an Applicant is given until the later of the seventh day of the publication on the Department's website of a scoring log reflecting that Applicant's score or the seventh day from the date of transmittal of a scoring notice; provided, however, that an Applicant may not appeal any scoring matter after the award of credits unless they are within the above-described time limitations and have appeared at the meeting when the Department's Governing Board makes competitive tax credit awards and stated on the record that they have an actual or possible appeal that has not been heard. Appeal rights may be triggered by the publication on the Department's website of the results of the evaluation process.

(c) Competitive Nature of Program. Applying for Competitive Housing Tax Credits is a technical process that must be followed completely and correctly. Any person who desires to request any reasonable accommodation for any aspect of this process is directed to 10 TAC §1.1.§1.1 of this Title (relating to Reasonable Accommodation Requests to the Department). As a result of the highly competitive nature of applying for Housing Tax Credits, an Applicant should proceed on the assumption that deadlines are fixed and firm as further provided for in subsection (f) of this section with respect to both date and time and cannot be waived except where authorized and for truly extraordinary circumstances, such as the occurrence of a significant natural disaster that could not have been anticipated and makes timely adherence impossible. If an Applicant chooses, where permitted, to submit by delivering an item physically to the Department, it is the Applicant's responsibility to be within the Department's doors by the appointed deadline. Applicants should further ensure that all required documents are included, legible, properly organized, and tabbed, and that materials in required formats involving digital media are complete and fully readable. Applicants are strongly encouraged to submit the required items well in advance of established deadlines.

(d) Definitions. The capitalized terms or phrases used herein are defined below. Any capitalized terms not specifically mentioned in this section or any section referenced in this document shall have the meaning as defined in Tex. Gov't Code Chapter 2306, Internal Revenue Code (the Code) §42, the HOME Final Rule, and other federal or Department rules, as applicable. Defined terms, when not capitalized, are to be read in context and construed according to common usage.

(1) Adaptive Reuse--The change-in-use of an existing building not, at the time of Application, being used, in whole or in part, for residential purposes (e.g., school, warehouse, office, hospital, hotel, etc.), into a building which will be used, in whole or in part, for residential purposes. Adaptive Reuse requires that <u>at leasta-substantial portion75%</u> of the original building remains at completion of the proposed Development. Ancillary non-residential buildings, such as a clubhouse, leasing office and/or amenity center may be newly constructed outside the walls of the existing building or as detached buildings on the Development Site. Adaptive Reuse Developments will be considered as New Construction.

(2) Administrative Deficiency--Information requested by Department staff that staff requires to clarify or explain one or more inconsistencies; to provide non-material missing information in the original Application or pre-application; or to assist staff in evaluating the Application or pre-application that, in the Department staff's reasonable judgment, may be cured by supplemental information or explanation which will not necessitate a substantial reassessment or re-evaluation of the Application or pre-application. Administrative Deficiencies may be issued at any time while the Application or pre-application or Contract is under consideration by the Department, including at any time while reviewing performance under a Contract, processing documentation for a Commitment of Funds, closing of a loan, processing of a disbursement request, closeclosing out of a Contract, or resolution resolving of any issues related to compliance. A matter may begin as an Administrative Deficiency but later be determined to have constituted a Material Deficiency. -By way of example, if if an Applicant checks a box for threeclaims points for a particular scoring item, but provides supporting documentation that would support two fewer points for that item, staff would treat this as an inconsistency and issue an Administrative Deficiency which might ultimately lead towill result in a correction of the checked boxes claimed points to align with the provided supporting documentation. and support an award of two points. However, if If the supporting documentation was missing altogether, this could is not be remedied and provided for claimed points, the point item would be assigned no points.

(3) Affiliate--An individual, corporation, partnership, joint venture, limited liability company, trust, estate, association, cooperative or other organization or entity of any nature whatsoever that directly, or indirectly through one or more intermediaries, has Control of, is Controlled by, or is under common Control with any other Person. All entities that share a Principal are Affiliates.

(4) Affordability Period--The Affordability Period commences as specified in the Land Use Restriction Agreement (LURA) or federal regulation, or commences on the first day of the Compliance Period as defined by the Code §42(i)(1), and continues through the appropriate program's affordability requirements or termination of the LURA, whichever is earlier. The term of the Affordability Period shall be imposed by the LURA or other deed restriction, and in some circumstances may be terminated upon foreclosure or deed in lieu of foreclosure. The Department reserves the right to extend the Affordability Period for Direct Loan Developments that fail to meet program requirements. During the Affordability Period, the Department shall monitor to ensure compliance with programmatic rules as applicable, regulations, and Application representations.

(5) Applicable Percentage--The percentage used to determine the amount of the Housing Tax Credit for any Development, as defined more fully in Code, §42(b).

(A) for For purposes of the Application, the Applicable Percentage will be projected at:

(i) Ninenine percent for 70% present value credits, pursuant to Code, §42(b); or

(ii) fifteen basis points over the current Applicable Percentage for 30% present value credits, unless fixed by Congress, pursuant to Code, §42(b) for the month in which the Application is submitted to the Department.

(B) For purposes of making a credit recommendation at any other time, the Applicable Percentage will be based on:

(i) the percentage indicated in the Agreement and Election Statement, if executed; or

(ii) the percentage as calculated in subparagraph (A) of this paragraph if the Agreement and Election Statement has not been executed and no buildings have been placed in service.

(6) Applicant--Means any individual Person or a group of individuals Persons and any Affiliates of those Persons who file an Application for with the Department requesting funding or a tax credits credit allocation subject to the requirements of this chapter or 10 TAC Chapters 12 or 13 and who have undertaken or may contemplate the later formation of one or more business entities, such as a limited partnership, that is to be engaged in the ownership of a Development. In administering the application process the Department staff will assume that the Applicant will be able to form any such entities and that all necessary rights, powers, and privileges including, but not limited to, Site Control will be transferable to that entity. The formation of the ownership entity, qualification to do business (if needed), and transfer of any such rights, powers, and privileges must be accomplished as required in this Chapter and 10 TAC Chapters 12 and 13, as applicable.

(7) Application Acceptance Period--That period of time during which Applications may be submitted to the Department. For Tax-Exempt Bond Developments it is the date the Application is submitted to the Department.

(8) Award Letter and Loan Term Sheet--A document that may be issued to an awardee of a Direct Loan before the issuance of a Commitment and/or Contract which preliminarily sets forth the terms and conditions under which the Direct Loan will be made available. An Award Letter and Loan Term Sheet will typically be contingent on the awardee satisfying certain requirements prior to executing a Commitment and/or Contract.

(9) Bank Trustee--A federally insured bank with the ability to exercise trust powers in the State of Texas.

(10) Bedroom--A portion of a Unit which is no less than 100 square feet; has no width or length less than <u>8eight</u> feet; is self contained with a door (or the Unit contains a second level sleeping area of 100 square feet or more); has at least one window that provides exterior access; and has at least one closet that is not less than <u>2two</u> feet deep and <u>3three</u> feet wide and high enough to accommodate <u>5 five</u> feet of hanging space. A den, study or other similar space that could reasonably function as a Bedroom and meets this definition is considered a Bedroom.

(11) Breakeven Occupancy--The occupancy level at which rental income plus secondary income is equal to all operating expenses, including replacement reserves and taxes, and mandatory debt service requirements for a Development.

(12) Building Costs--Cost of the materials and labor for the vertical construction or rehabilitation of buildings and amenity structures.

(13) Carryover Allocation--An allocation of current year tax credit authority by the

Department pursuant to the provisions of the Code, §42(h)(1)(C) and U.S. Treasury Regulations, §1.42-6.

(14) Carryover Allocation Agreement--A document issued by the Department, and executed by the Development Owner, pursuant to §10.402(f) of this Title (relating to <u>Carryover for</u> <u>Competitive</u> Housing Tax <u>CreditCredits Only</u> and Tax Exempt Bond Developments).

(15) Cash Flow--The funds available from operations after all expenses and debt service required to be paid have been considered.

(16) Certificate of Reservation or Traditional Carryforward Designation--The notice given by the Texas Bond Review Board (TBRB) to an issuer reserving a specific amount of the private activity bond state ceiling for a specific Development.

(17) Code--The Internal Revenue Code of 1986, as amended from time to time, together with any applicable regulations, rules, rulings, revenue procedures, information statements or other official pronouncements issued thereunder by the U.S. Department of the Treasury or the Internal Revenue Service (IRS).

(18) Code of Federal Regulations (CFR)--The codification of the general and permanent rules and regulations of the federal government as adopted and published in the *Federal Register*.

(19) Commitment (also referred to as Contract)--A legally binding written contract, setting forth the terms and conditions under which housing tax credits, loans, grants, or other sources of funds or financial assistance from the Department will be made available.

(20) Commitment of Funds--Occurs after the Development is approved by the Board and once a Commitment or Award Letter and Loan Term Sheet is executed between the Department and Development Owner. For Direct Loan Programs, this process is distinct from "Committing to a specific local project" as defined in 24 CFR Part 92 and Part 93, which may occur when the activity is set up in the disbursement and information system established by HUD, known as the Integrated Disbursement and Information System (IDIS). The Department's Commitment of Funds may not align with commitments made by other financing parties.

(21) Committee--See Executive Award and Review Advisory Committee.

(22) Common Area--Enclosed space outside of Net Rentable Area, whether conditioned or unconditioned, to include such area contained in: property management offices, resident service offices, 24-hour front desk office, clubrooms, lounges, community kitchens, community restrooms, exercise rooms, laundry rooms, mailbox areas, food pantry, meeting rooms, libraries, computer labs, classrooms, break rooms, flex space programmed for resident use, interior corridors, common porches and patios, and interior courtyards. Common Area does not include individualized garages, maintenance areas, equipment rooms, or storage.

(23) Comparable Unit--A Unit, when compared to the subject Unit, is similar in net rentable square footage, number of Bedrooms, number of bathrooms, overall condition, location (with respect to the subject Property based on proximity to employment centers, amenities, services and travel patterns), age, Unit amenities, utility structure, and common amenities.

(24) Competitive Housing Tax Credits (HTC)--Tax credits available from the State Housing Credit Ceiling.

(25) Compliance Period--With respect to a building financed, in part with proceeds of Housing Tax Credits, the period of fifteen (15) taxable years, beginning with the first taxable year of the credit period pursuant to Code, §42(i)(1).

(26) Continuously Occupied--The same household has resided in the Unit for at least twelve (12) months.

(27) Contract--See Commitment.

(28) Contract Rent--Net rent based upon current and executed rental assistance contract(s), typically with a federal, state or local governmental agency.

(29) Contractor--See General Contractor.

(30) Control (including the terms "Controlling," "Controlled by," and/or "under common Control with")--The power, ability, or authority, acting alone or in concert with others, directly or indirectly, to manage, direct, superintend, restrict, regulate, govern, administer, or oversee. As used herein "acting in concert" involves more than merely serving as a single member of a multi-member body. For example a single director on a five person board is not automatically deemed to be acting in concert with the other members of the board because they retain independence of judgment. However, by way of illustration, if that director is one of three directors on a five person board who all represent a single shareholder, they clearly represent a single interest and are presumptively acting in concert. Similarly, a single shareholder owning only a five percent interest might not exercise control under ordinary circumstances, but if they were in a voting trust under which a majority block of shares were voted as a group, they would be acting in concert with others and in a control position. However, even if a member of a multi-member body is not acting in concert and therefore does not exercise control in that role, they but may have other roles, such as executive officer positions, which involve actual or apparent authority to exercise control. Controlling entities of a partnership include the general partners, may include special limited partners when applicable, but not investor limited partners or special limited partners who do not possess other factors or attributes that give them Control. Controlling individuals and entities are set forth in subparagraphs (A) - (E) of this paragraph. Multiple Persons may be deemed to have Control simultaneously.

(A) for For for-profit corporations, any officer authorized by the board of directors, regardless of title, to act on behalf of the corporation, including but not limited to the president, vice president, secretary, treasurer, and all other executive officers, and each stock holder having a 50% or more interest in the corporation, and any individual who has Control with respect to such stock holderstockholder;

(B) for non-profit For nonprofit corporations or governmental instrumentalities (such as housing authorities), any officer authorized by the board, regardless of title, to act on behalf of the corporation, including but not limited to the president, vice president, secretary, treasurer, and all other executive officers, the Audit committee chair, the

Board chair, and anyone identified as the **Executive Director** executive director or equivalent;

(C) for For trusts, all beneficiaries that have the legal ability to Control the trust who are not just financial beneficiaries; and

(D) for For limited liability companies, all managers, managing members, members having a 50% or more interest in the limited liability company, any individual Controlling such members, or any officer authorized to act on behalf of the limited liability company; or

(E) for For partnerships, Principals include all General Partners, and Principals with ownership interest and special limited partners with ownership interest who also possess factors or attributes that give them Control.

(31) Debt Coverage Ratio (DCR)--Sometimes referred to as the "Debt Coverage" or "Debt Service Coverage." Calculated as Net Operating Income for any period divided by scheduled debt service required to be paid during the same period, and as described in §11.302(d)(4) of this chapter.

(32) Deferred Developer Fee--The portion of the Developer Fee used as a source of funds to finance the development and construction of the Property, and as described in §11.302(i)(2) of this chapter.

(33) Deobligated Funds--The funds released by the Development Owner or recovered by the Department canceling a Contract or award involving some or all of a contractual financial obligation between the Department and a Development Owner or Applicant.

(34) Determination Notice--A notice issued by the Department to the Development Owner of a Tax-Exempt Bond Development which specifies the Department's preliminary determination as to the amount of tax credits that the Development may be eligible to claim pursuant to the Code, 42(m)(1)(D).

(35) Developer--Any Person entering into a contractual relationship with the Owner to provide Developer Services with respect to the Development and receiving the right to earn a fee for such services and any other Person receiving any portion of a Developer Fee, whether by subcontract or otherwise, except if the Person is acting as a consultant with no Control. The Developer may or may not be a Related Party or Principal of the Owner.

(36) Developer Fee--Compensation in amounts defined in §11.302(e)(7) of this chapter (relating to <u>Total Housing Development Costs</u>, <u>Developer Fee in the</u> Underwriting Rules and Guidelines) paid by the Owner to the Developer for Developer Services inclusive of compensation to a Development Consultant(s), Development Team member or any subcontractor that performs Developer Services or provides guaranties on behalf of the Owner will be characterized as Developer Fee. A person who is entitled to a Developer Fee assumes the risk that it may not be paid if the anticipated sources of repayment prove insufficient.

(37) Developer Services--A scope of work relating to the duties, activities and responsibilities for pre-development, development, design coordination, and construction oversight of the

Property generally including but not limited to:

(A) site<u>Site</u> selection and purchase or lease contract negotiation;

(B) **identifying**<u>identifying</u> and negotiating sources of construction and permanent financing, including financing provided by the Department;

(C) coordination<u>Coordination</u> and administration of activities, including the filing of applications to secure such financing;

(D) coordination<u>Coordination</u> and administration of governmental permits, and approvals required for construction and operation;

(E) <u>selectionSelection</u> and coordination of development consultants including architect(s), engineer(s), third-party report providers, attorneys, and other design or feasibility consultants;

(F) selectionSelection and coordination of the General Contractor and construction contract(s);

(G) construction Construction oversight;

(H) other Other consultative services to and for the Owner;

(I) guaranties Guaranties, financial or credit support if a Related Party or Affiliate; and

(J) anyAny other customary and similar activities determined by the Department to be Developer Services.

(38) Development--A residential rental housing project that consists of one or more buildings under common ownership and financed under a common plan which has applied for Department funds. This includes a proposed qualified low income housing project, as defined by Code, §42(g), that consists of one or more buildings containing multiple Units owned that is financed under a common plan, and that is owned by the same <u>personPerson</u> for federal tax purposes and may consist of multiple buildings that are located on scattered sites and contain only rent restricted Units. (§2306.6702(a)(6))

(39) Development Consultant or Consultant--Any Person who provides professional or consulting services relating to the filing of an Application, or post award documents as required by the program.

(40) Development Owner (also referred to as "Owner")--Any Person, General Partner, or Affiliate of a Person who owns or proposes a Development or expects to acquire Control of a Development under a purchase contract or ground lease approved by the Department and is responsible for performing under the allocation and/or Commitment with the Department. (§2306.6702(a)(7))

(41) Development Site--The area or, if more than one tract (which may be deemed by the Internal Revenue Service and/or the Department to be a scattered site), areas on which the Development is proposed and to be encumbered by a LURA.

(42) Development Team--All Persons and Affiliates thereof that play a role in the development, construction, rehabilitation, management and/or continuing operation of the

subject Development, including any Development Consultant and Guarantor.

(43) Direct Loan--Funds provided through the HOME Program, Neighborhood Stabilization Program, National Housing Trust Fund, Tax Credit Assistance Program Repayment Funds (TCAP RF) or State Housing Trust Fund or other program available through the Department for multifamily development. The terms and conditions for Direct Loans will be determined by provisions in Chapter 13 of this title (relating to Multifamily Direct Loan Rule) and the NOFA under which they are awarded, the Contract₂ or the loan documents. The tax-exempt bond program is specifically excluded.

(44) Economically Distressed Area--An area that is in a census tract that has a median household income that is 75% or less of the statewide median household income and in a municipality or, if not within a municipality, in a county that has been awarded funds under the Economically Distressed Areas Program administered by the Texas Water Development Board_within the five (5) years ending at the beginning of the Application Acceptance Period. Notwithstanding all other requirements, for funds awarded to another type of political subdivision (*e.g.*, a water district), the Development Site must be within the jurisdiction of the political subdivision.

(45) Effective Gross Income (EGI)--<u>As provided for in §11.302(d)(1)(D) of this chapter.</u> The sum total of all sources of anticipated or actual income for a rental Development, less vacancy and collection loss, leasing concessions, and rental income from employee-occupied units that is not anticipated to be charged or collected.

(46) Efficiency Unit--A Unit without a separately enclosed Bedroom.-designed principally for use by a single person.

(47) Elderly Development--A Development that either meets the requirements of the Housing for Older Persons Act (HOPA) under the Fair Housing Act, or a Development that receives federal funding that has a requirement for a preference or limitation for elderly persons or households, but must accept qualified households with children.

(48) Eligible Hard Costs--Hard Costs includable in Eligible Basis for the purposes of determining a Housing Credit Allocation.

(49) Environmental Site Assessment (ESA)--An environmental report that conforms to the Standard Practice for Environmental Site Assessments: Phase I Assessment Process (ASTM Standard Designation: E 1527) and conducted in accordance with §11.305 of this chapter (relating to Environmental Site Assessment Rules and Guidelines) as it relates to a specific Development.

(50) Executive Award and Review Advisory Committee (EARAC also referred to as the "Committee"). The Department committee required by Tex. Gov't Code §2306.1112.

(51) Existing Residential Development--Any Development Site which contains existing residential Units at any time as of the beginning of the Application Acceptance Period.

(52) Extended Use Period--With respect to an HTC building, the period beginning on the first day of the Compliance Period and ending the later of:

(A) the The date specified in the LURA; or

(B) the The date which is fifteen (15) years after the close of the Compliance Period-

(53) First Lien Lender--A lender whose lien has first priority as a matter of law or by operation of a subordination agreement or other intercreditor agreement.

(54) General Contractor (including "Contractor")--One who contracts to perform the construction or rehabilitation of an entire Development, rather than a portion of the work. The General Contractor hires subcontractors, such as plumbing contractors, electrical contractors, etc., coordinates all work, and is responsible for payment to the subcontractors. A prime subcontractor will also be treated as a General Contractor, and any fees payable to the prime subcontractor will be treated as fees to the General Contractor, in the scenarios described in subparagraphs (A) and (B) of this paragraph:

(A) any<u>Any</u> subcontractor, material supplier, or equipment lessor receiving more than 50% of the contract sum in the construction contract will be deemed a prime subcontractor; or

(B) **if** more than 75% of the contract sum in the construction contract is subcontracted to three or fewer subcontractors, material suppliers, and equipment lessors, such parties will be deemed prime subcontractors.

(55) General Partner--Any person or entity identified as a general partner in a certificate of formation for the partnership or is later admitted to an existing partnership as a general partner that is the Development Owner and that Controls the partnership. Where a limited liability corporation is the legal structure employed rather than a limited partnership, the manager or managing member of that limited liability corporation is deemed, for the purposes of these rules, to be the functional equivalent of a general partner.

(56) Governing Body--The elected or appointed body of public or tribal officials, responsible for the enactment, implementation, and enforcement of local rules and the implementation and enforcement of applicable laws for its respective jurisdiction.

(57) Governmental Entity--Includes federal, state or local agencies, departments, boards, bureaus, commissions, authorities, and political subdivisions, special districts, tribal governments and other similar entities.

(58) Gross Capture Rate--Calculated as the Relevant Supply divided by the Gross Demand, and as described in §11.302(i)(1) of this chapter.

(59) Gross Demand--The sum of Potential Demand from the Primary Market Area (PMA) and demand from other sources, as described in §11.303(d)(9)(E)(ii) of this chapter.

(60) Gross Program Rent--Maximum rent limits based upon the tables promulgated by the Department's division responsible for compliance, which are developed by program and by county or Metropolitan Statistical Area (MSA) or Primary Metropolitan Statistical Area (PMSA) or national non-metro area.

(61) Guarantor--Any Person that provides, or is anticipated to provide, a guaranty for all or a portion of the equity or debt financing for the Development.

(62) HTC Development (also referred to as "HTC Property")--A Development subject to an active LURA for Housing Tax Credits allocated by the Department.

(63) HTC Property--See HTC Development.

(64) Hard Costs--The sum total of Building Costs, Site Work costs, Off-Site Construction costs and contingency.

(65) Historically Underutilized Businesses (HUB)--An entity that is certified as such under and in accordance with Tex. Gov't Code, Chapter 2161.

(66) Housing Contract System (HCS)--The electronic information system established by the Department for tracking, funding, and reporting Department Contracts and Developments. The HCS is primarily used for Direct Loan Programs administered by the Department.

(67) Housing Credit Allocation--An allocation of Housing Tax Credits by the Department to a Development Owner as provided for in Code.

(68) Housing Credit Allocation Amount--With respect to a Development or a building within a Development, the amount of Housing Tax Credits the Department determines to be necessary for the financial feasibility of the Development and its viability as a Development throughout the Affordability Period and which the Board allocates to the Development.

(69) Initial Affordability Period--The Compliance Period or such longer period as shall have been elected by the Owner as the minimum period for which Units in the Development shall be retained for low-income tenants and rent restricted, as set forth in the LURA.

(70) Integrated Disbursement and Information System (IDIS)--The electronic grants management information system established by HUD to be used for tracking and reporting HOME funding and progress and which may be used for other sources of funds as established by HUD.

(71) Land Use Restriction Agreement (LURA)--An agreement, regardless of its title, between the Department and the Development Owner which is a binding covenant upon the Development Owner and successors in interest, that, when recorded, encumbers the Development with respect to the requirements of the programs for which it receives funds. (§2306.6702)

(72) Low-Income Unit--A Unit that is intended to be restricted for occupancy by an income eligible household, as defined by the Department utilizing its published income limits.

(73) Managing General Partner--A general partner of a partnership (or, as provided for in paragraph (55) of the definition of General Partner in this subsection, its functional equivalent) that is vested with the authority to take actions that are binding on behalf of the partnership and the other partners. The term Managing General Partner can also refer to a manager or managing member of a limited liability company where so designated to bind the limited liability company and its members under its Agreement or any other person that has such powers in fact, regardless of their organizational title.

(74) Market Analysis--Sometimes referred to as "Market Study." An evaluation of the economic conditions of supply, demand and rental rates conducted in accordance with

§11.303 of this chapter (relating to Market Analysis Rules and Guidelines) as it relates to a specific Development.

(75) Market Analyst--A real estate appraiser or other professional <u>satisfying the qualifications</u> in <u>§11.303(c) of this chapter, and</u> familiar with the subject property's market area who prepares a Market Analysis.

(76) Market Rent--The achievable rent at the subject Property for a Unit without rent and income restrictions determined by the Market Analyst or Underwriter after adjustments are made to actual rents on Comparable Units to account for differences in net rentable square footage, functionality, overall condition, location (with respect to the subject Property based on proximity to primary employment centers, amenities, services and travel patterns), age, Unit amenities, utility structure, and Common Area amenities. The achievable rent conclusion must also consider the proportion of market Units to total Units proposed in the subject Property.

(77) Market Study--See Market Analysis.

(78) Material Deficiency--Any deficiency in a Pre-Application or an Application or other documentation that exceeds the scope of an Administrative Deficiency. Inability to provide documentation that existed prior to submission of an Application to substantiate claimed points or meet threshold requirements is material and may result in denial of the requested points or a termination in the case of threshold items. It is possible that multiple deficiencies that could individually be characterized as Administrative Deficiencies, when taken as a whole would create a need for substantial re-review of the Application and as such would be characterized as Constituting a Material Deficiency.

(79) Multifamily Programs Procedures Manual--The manual produced and amended from time to time by the Department which reiterates and implements the rules and provides guidance for the filing of multifamily related documents.

(80) Net Operating Income (NOI)--The income remaining after all operating expenses, including replacement reserves and taxes have been paid, as provided for in §11.302(d)(3) of this chapter.

(81) Net Program Rent--Calculated as Gross Program Rent less Utility Allowance.

(82) Net Rentable Area (NRA)--The Unit space that is available exclusively to the tenant and is typically heated and cooled by a mechanical HVAC system. NRA is measured to the outside of the studs of a Unit or to the middle of walls in common with other Units. If the construction does not use studs, NRA is measured to the outside of the material to which the drywall is affixed. Remote Storage of no more than 25 square feet per Unit may be included in NRA. For Developments using Multifamily Direct Loan funds the Remote Storage may only be included in NRA if the storage area shares a wall with the residential living space. NRA does not include common hallways, stairwells, elevator shafts, janitor closets, electrical closets, balconies, porches, patios, or other areas not actually available to the tenants for their furnishings, nor does NRA include the enclosing walls of such areas.

-(83) Non-HTC Development--Sometimes referred to as Non-HTC Property. Any Development

not utilizing Housing Tax Credits or Exchange funds.

(84) Notice of Funding Availability (NOFA)--A notice issued by the Department that announces funding availability, usually on a competitive basis, for multifamily rental programs requiring Application submission from potential Applicants.

(85) Off-Site Construction--Improvements up to the Development Site such as the cost of roads, water, sewer, and other utilities to provide access to and service the Site.

-(86) Office of Rural Affairs--An office established within the Texas Department of Agriculture; formerly the Texas Department of Rural Affairs.

(87) One Year Period (1YP)--The period commencing on the date on which the Department and the Owner agree to the Qualified Contract price in writing and continuing for twelve (12) calendar months.

(88) Owner--See Development Owner.

(89) Person--Without limitation, any natural person, corporation, partnership, limited partnership, joint venture, limited liability company, trust, estate, association, cooperative, government, political subdivision, agency or instrumentality or other organization or entity of any nature whatsoever, and shall include any group of Persons acting in concert toward a common goal, including the individual members of the group.

(90) Person or Persons with Disabilities--With respect to an individual, means that such person has:

(A) a physical or mental impairment that substantially limits one or more major life activities of such individual;

(B) a record of such an impairment; or

(C) is regarded as having such an impairment, to include persons with severe mental illness and persons with substance abuse disorders.

(91) Physical Needs Assessment--See Property Condition Assessment. Scope and Cost Review.

(92) Place--An area defined as such by the United States Census Bureau, which, in general, includes an incorporated city, town, or village, as well as unincorporated areas known as census designated places Census Designated Places. Any part of a Census Designated Place that, at the time of Application, is within the boundaries of an incorporated city, town or village will be considered as part of the incorporated area. The Department may provide a list of Places for reference.

(93) Post Award Activities Manual--The manual produced and amended from time to time by the Department which explains the post award requirements and provides guidance for the filing of such documentation.

(94) Potential Demand--The number of income-eligible, age-, size-, and tenure-appropriate target households in the designated market area at the proposed placement in service date.

(95) Preservation--Activities that extend the Affordability Period for rent-restricted Developments that are at risk of losing low-income use restrictions or subsidies.

(96) Primary Market--Sometimes referred to as "Primary Market Area." The area defined by the Market Analyst as described in §11.303 of this chapter from which a proposed or existing Development is most likely to draw the majority of its prospective tenants or homebuyers.

(97) Primary Market Area (PMA)--See Primary Market.

(98) Principal--Persons that will be capable of exercising Control pursuant to §11.1(d)(30) of this chapter (relating to the definition of Control) over a partnership, corporation, limited liability company, trust, or any other private entity.

(99) Pro Forma Rent--For a restricted Unit, the lesser of the Net Program Rent or the Market Rent. For an unrestricted Unit, the Market Rent. Contract Rents, if applicable, will be used as the Pro Forma Rent.

(100) Property--The real estate and all improvements thereon which are the subject of the Application (including all items of personal property affixed or related thereto), whether currently existing or proposed to be built or rehabilitated thereon in connection with the Application.

(101) Property Condition Assessment (PCA--Sometimes referred to as "Physical Needs Assessment," "Project Capital Needs Assessment," or "Property Condition Report." The PCA provides an evaluation of the physical condition of an existing Property to evaluate the immediate cost to rehabilitate and to determine costs of future capital improvements to maintain the Property. The PCA must be prepared in accordance with §11.306 of this chapter (relating to Property Condition Assessment Guidelines) as it relates to a specific Development.

(102101) Qualified Contract (QC)--A bona fide contract to acquire the non-low-income portion of the building for fair market value and the low-income portion of the building for an amount not less than the Applicable Fraction (specified in the LURA) of the calculation as defined within §42(h)(6)(F) of the Code.

(103102) Qualified Contract Price (QC Price)--Calculated purchase price of the Development as defined within Code, §42(h)(6)(F) and as further delineated in §10.408 of this Title (relating to Qualified Contract Requirements).

(104103) Qualified Contract Request (Request)--A request containing all information and items required by the Department relating to a Qualified Contract.

(105104) Qualified Entity--Any entity permitted under Code, 42(i)(7)(A) and any entity controlled by such a qualified entity.

(106105) Qualified Nonprofit Development--A Development which meets the requirements of Code, §42(h)(5), includes the required involvement of a Qualified Nonprofit Organization, and is seeking Competitive Housing Tax Credits.

(107106) Qualified Nonprofit Organization--An organization that meets the requirements of Code §42(h)(5)(C) for all purposes, and for an allocation in the nonprofit set-aside or subsequent transfer of the property, when applicable, meets the requirements of Tex. Gov't Code §2306.6706, and §2306.6729, and Code, §42(h)(5), including having a Controlling

interest in the Development.

(108107) Reconstruction--The demolition of one or more residential buildings in an Existing Residential Development and the construction of Units on the same or another Development Site. At least one Unit must be reconstructed in order to qualify as Reconstruction. The total number of Units to be reconstructed will be determined by program requirements. Developments using Multifamily Direct Loan funds are required to follow the applicable federal requirements.

(109108) Rehabilitation--The improvement or modification of an Existing Residential Development through alteration, incidental addition or enhancement. The term includes the demolition of an Existing Residential Development and the Reconstruction of any Development Units on the Development Site, but does not include Adaptive Reuse. (§2306.004(26-a)) More specifically, Rehabilitation is the repair, refurbishment and/or replacement of existing mechanical and/or structural components, fixtures and finishes. Rehabilitation will correct deferred maintenance, reduce functional obsolescence to the extent possible and may include the addition of: energy efficient components and appliances, life and safety systems; site and resident amenities; and other quality of life improvements typical of new residential Developments.

(110109) Relevant Supply--The supply of Comparable Units in proposed and Unstabilized Developments targeting the same population including:

(A) the proposed subject Units;

(B) Comparable Units in another proposed <u>development_Development</u> within the PMA with a priority in an Application <u>submitted prior to over</u> the subject, based on the Department's evaluation process described in §11.201(6) of this chapter (relating to Procedural Requirements for Application Submission) that may not yet have been presented to the Board for consideration of approval; and

(C) Comparable Units in previously approved but Unstabilized Developments in the PMA.

(<u>111110</u>) Report--See Underwriting Report.

(<u>112</u><u>111</u>) Request--See *Qualified Contract Request*.

(113112) Reserve Account--An individual account:

(A) created Created to fund any necessary repairs or other needs for a Development; and

(B) maintained Maintained by a First Lien Lender or Bank Trustee.

(114113) Right of First Refusal (ROFR)--An Agreement to provide a series of priority rights to negotiate for the purchase of a Property by a Qualified Entity or a Qualified Nonprofit Organization at a negotiated price at or above the minimum purchase price as defined in Code §42(i)(7) or as established in accordance with an applicable LURA.

(115114) Rural Area--

(A) <u>aA</u> Place that is located:

(i) outside the boundaries of a primary metropolitan statistical area or a metropolitan

statistical area;

(ii) within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area, if the statistical area has a population of 25,000 or less and does not share a boundary with an Urban Area; or

(iii) within the boundaries of a local political subdivision that is outside the boundaries of an Urban Area.

(B) for For areas not meeting the definition of a Place, the designation as a Rural Area or Urban Area is assigned in accordance with \$11.204(5)(A) of this chapter (relating to Required Documentation for Application Submission) or as requested in accordance with \$11.204(5)(B).

(115) Scope and Cost Review (SCR)--Sometimes referred to as "Physical Needs Assessment," "Project Capital Needs Assessment," or "Property Condition Report." The SCR provides an evaluation of the physical condition of an existing Property to evaluate the immediate cost to rehabilitate and to determine costs of future capital improvements to maintain the Property. The SCR must be prepared in accordance with §11.306 of this chapter (relating to Scope and Cost Review Guidelines), as it relates to a specific Development.

(116) Scoring Notice--Notification provided to an Applicant of the score for their Application after Staff review. More than one Scoring Notice may be issued for an Application.

(116117) Single Room Occupancy (SRO)--An Efficiency Unit that meets all the requirements of a Unit except that it may, but is not required, to be rented on a month to month basis to facilitate Transitional Housing. Buildings with SRO Units have extensive living areas in common and are required to be Supportive Housing and include the provision for substantial supports from the Development Owner or its agent on site.

(117118) Site Control--Ownership or a current contract or series of contracts, that meets the requirements of §11.204(10) of this chapter, that is legally enforceable giving the Applicant the ability, not subject to any legal defense by the Owner or anyone else, to develop and operate a Property and subject it to a LURA reflecting the requirements of any awards of assistance it may receive from the Department.

(118119) Site Work--Materials and labor for the horizontal construction generally including excavation, grading, paving, underground utilities, and site amenities.

(119120) State Housing Credit Ceiling--The aggregate amount of Housing Credit Allocations that may be made by the Department during any calendar year, as determined from time to time by the Department in accordance with applicable federal law, including Code, §42(h)(3)(C), and Treasury Regulation §1.42-14.

(120121) Sub-Market--An area defined by the Underwriter based on general overall market segmentation promulgated by market data tracking and reporting services from which a proposed or existing Development is most likely to draw the majority of its prospective tenants or homebuyers.

(1224) Supportive Housing--A residential rental Development: and Target Population meeting

the requirements of subparagraphs (A) through (F) of this paragraph.

(A) that is <u>Be</u> intended for <u>and targeting</u> occupancy <u>by</u> for households in need of specialized and specific non-medical services in order to maintain <u>housing or transition</u> <u>into</u> independent living;

(B) in which the provision of services are Be owned and operated by an Applicant or General Partner that must:

(i) have Supportive Services provided primarily on site by the Applicant, an Affiliate of the Applicant, or a third party provider and if the service provider must be is able to demonstrate a record of providing substantive services similar to those proposed in the subject Application in residential settings for at least three years prior to the beginning of the Application Acceptance Period; or Application Submission Date for Multifamily Direct Loan Applications;

(C) in which the services offered must include case management and resident services that either aid tenants in addressing debilitating conditions or assist residents in securing the skills, assets, and connections needed for independent living. Resident populations primarily include the homeless and those at-risk of homelessness;

(D) for which the Applicant, General Partner, or Guarantor must meet the following:

(i) demonstrate that it, alone or in partnership with a third party provider, has at least three years experience in developing and operating housing similar to the proposed housing;

(ii) demonstrate that it has secured secure sufficient funds necessary to maintain the Development's Supportive Housing Development's operations through throughout the entire Affordability Period;

(iii) provide evidence of a history of fundraising activities reasonably deemed to be sufficient to address any unanticipated operating losses; and

(iv) provide a fully executed guaranty agreement whereby the Applicant or its Affiliate assume financial responsibility of any outstanding operating deficits, as they arise, and throughout the entire Affordability Period.

(C) Where Supportive Services are tailored for members of a household with specific needs, such as:

(i) homeless or persons at-risk of homelessness;

(ii) persons with physical, intellectual, and/or developmental disabilities;

(iii) youth aging out of foster care;

(iv) persons eligible to receive primarily non-medical home or community-based services;

(v) persons transitioning out of institutionalized care;

(vi) persons unable to secure permanent housing elsewhere due to specific, non-

medical, or other high barriers to access and maintain housing;

(vii) Persons with Special Housing Needs including households where one or more individuals have alcohol and/or drug addictions, Violence Against Women Act Protections (domestic violence, dating violence, sexual assault, and stalking), HIV/AIDS, or is a veteran with a disability; or

(viii) other target populations that are served by a federal or state housing program in need of the type and frequency of supportive services characterized herein, as represented in the Application and determined by the Department on a case-by-case basis.

(D) (E) that is not Supportive Services must meet the minimum requirements provided in clauses (i) – (iv) of this subparagraph:

(i) regularly and frequently offered to all residents;

(ii) easily accessible and offered at times that residents are able to use them;

(iii) must include readily available resident services and/or service coordination that either aid in addressing debilitating conditions, or assist residents in securing the skills, assets, and connections needed for independent living; and

(iv) a resident may not be required to access supportive services in order to qualify for or maintain tenancy in a rent restricted Unit that the household otherwise qualifies for; and,

(E) Supportive Housing Developments must either be:

(i) not_financed, except for construction financing, with any debt containing foreclosure provisions or debt that contains must-pay repayment provisions (including cash-flow debt). Permanent foreclosable, must-pay debt is permissible if sourced by federal funds, but the Development will not be exempted from Subchapter D of this chapter (relating to Underwriting and Loan Policy). In addition, permanent foreclosable, cash-flow debt provided by an Affiliate is permissible if originally sourced from charitable contributions or pass-through local government non-federal funds. Any amendment to an Application or LURA-Underwriting Report_resulting in the addition of debt prohibited under this definition will result in the revocation of IRS Form(s) 8609-, and may not be made for Developments that have Direct Loans after a LURA is executed, except as a part of an approved Asset Management Division work out arrangement; or

(ii) financed with debt that meets feasibility requirements under Subchapter B of this chapter without exemptions and must also be supported by project-based rental or operating subsidies for all Units for the entire affordability period; and

(I) the Application includes documentation of how resident feedback has been incorporated into design of the proposed Development;

(II) the Development is located less than ½ mile from regularly-scheduled public transportation, including evenings and weekends;

(III) at least 10% of the Units in the proposed Development meet the 2010 ADA standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" 79 Federal Register 29671 for persons with mobility impairments;

(IV) multiple systems will be in place for residents to provide feedback to Development staff;

(V) a resident is or will be a member of the Development Owner or service provider board of directors;

(VI) the Development's Tenant Selection Criteria will include a clear description of any credit, criminal conviction, or prior eviction history that may disqualify a potential resident. The disqualification cannot be a total prohibition, unless such a prohibition is required by federal statute or regulation (i.e. the Development must have an appeal process for non federally required criteria);

(VII) the Development will have a comprehensive written eviction prevention policy that includes an appeal process; and

(VIII) the Development will have a comprehensive written services plan that describes the available services, identifying whether they are provided directly or through referral linkages, by whom, and in what location and during what days and hours. A copy of the services plan will be readily accessible to residents.

(122123) TDHCA Operating Database--Sometimes referred to as "TDHCA Database." A consolidation of recent actual income and operating expense information collected through the Department's Annual Owner Financial Certification process, as required and described in Chapter 10, Subchapter F of this title (relating to Compliance Monitoring), and published on the Department's web site (www.tdhca.state.tx.us).

(123124) Target Population--The designation of types of housing populations shall include Elderly Developments, and those that are Supportive Housing. All others will be considered to serve general populations without regard to any subpopulations, although the Application may request that any other populations required for targeting, preference, or limitation by a federal or state fund source are identified.

(124125) Tax-Exempt Bond Development--A Development requesting or having been awarded Housing Tax Credits and which receives a portion of its financing from the proceeds of Tax-Exempt Bonds which are subject to the state volume cap as described in Code, §42(h)(4), such that the Development does not receive an allocation of tax credit authority from the State Housing Credit Ceiling.

(125126) Tax-Exempt Bond Process Manual--The manual produced and amended from time to time by the Department which explains the process and provides guidance for the filing of a Housing Tax Credit Application utilizing Tax-Exempt Bonds.

(126127) Third Party--A Person who is not:

(A) anAn Applicant, General Partner, Developer, or General Contractor; or

(B) anAn Affiliate to the Applicant, General Partner, Developer, or General Contractor; or

(C) anyone<u>Anyone</u> receiving any portion of the administration, contractor, or Developer Fee from the Development; or

(D) <u>in In</u> Control with respect to the Development Owner.

(127128) Total Housing Development Cost--The sum total of the acquisition cost, Hard Costs, soft costs, Developer Fee and General Contractor fee incurred or to be incurred through lease-up by the Development Owner in the acquisition, construction, rehabilitation, and financing of the Development.

(128129) Transitional Housing--A Supportive Housing <u>D</u>development <u>funded with HOME</u>, <u>NSP</u>, or TCAP_RF, and not layered with Housing Tax Credits</u> that includes living Units with more limited individual kitchen facilities and is:

(A) <u>usedUsed</u> exclusively to facilitate the transition of homeless individuals and those atrisk of becoming homeless, to independent living within twenty-four (24) months; and

(B) is owned by a Development Owner that includes a Governmental Entity or a nonprofit which provides temporary housing and supportive services to assist such individuals in, among other things, locating and retaining permanent housing. The limited kitchen facilities in individual Units must be appropriately augmented by suitable, accessible shared or common kitchen facilities.

(129130) U.S. Department of Agriculture (USDA)--Texas Rural Development Office (TRDO) serving the State of Texas.

(130131) U.S. Department of Housing and Urban Development (HUD)-regulated Building--A building for which the rents and utility allowances of the building are reviewed by HUD.

(131132) Underwriter--The author(s) of the Underwriting Report.

(132133) Underwriting Report--Sometimes referred to as the "Report-". A decision making tool prepared by the Department's Real Estate Analysis Division that is used by the Department and Board containingcontains a synopsis and reconciliation of the proposed Development and that reconciles the Application information submitted by, including its financials and market analysis, with the Applicant and that Division's conclusion as tounderwriter's analysis. The Report allows the Department and Board to determine whether the Development will be financially feasible as required by Code §42(m), or other federal or state regulations.

(133134) Uniform Multifamily Application Templates--The collection of sample resolutions and form letters, produced by the Department, as may be required under this chapter or Chapters 12 and 13 of this title <u>(relating to Multifamily Housing Bond Rules and Multifamily Direct Loan Rule, respectively)</u> that may be used, (but are not required to be used), to satisfy the requirements of the applicable rule.

(134135) Uniform Physical Condition Standards (UPCS)--As developed by the Real Estate Assessment Center of HUD.

(135136) Unit--Any residential rental Unit in a Development consisting of an accommodation, including a single room used as an accommodation on a non-transient basis, that contains complete physical facilities and fixtures for living, sleeping, eating, cooking and sanitation.

(136137) Unit Type--Units will be considered different Unit Types if there is any variation in the number of Bedrooms, full bathrooms or a square footage difference equal to or more than 120 square feet. A powder room is the equivalent of a half-bathroom, but does not by itself constitute a change in Unit Type.

(137138) Unstabilized Development--A Development with Comparable Units that has been approved for funding by the Department's Board of Directors or is currently under construction or has not maintained a 90% occupancy level for at least ninety (90) days following construction completion. A development may be deemed stabilized by the Underwriter based on factors relating to a development's lease-up velocity, Sub-Market rents, Sub-Market occupancy trends and other information available to the Underwriter. The Market Analyst may not consider such development stabilized in the Market Study.

(138139) Urban Area--A Place that is located within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area other than a Place described by paragraph (115)(subparagraph (A) within the definition of Rural Area in this subsection. For areas not meeting the definition of a Place, the designation as a Rural Area or Urban Area is assigned in accordance with §11.204(5) of this chapter.

(139140) Utility Allowance--The estimate of tenant-paid utilities made in accordance with Treasury Regulation, §1.42-10 and §10.614 of this Title (relating to Utility Allowances).

(1419) Work Out Development--A financially distressed Development for which the Owner and/or a primary financing participant is seeking a change in the terms of Department funding or program restrictions.

(e) Data. Where this chapter requires the use of American Community Survey or Housing & Urban Development data, the Department shall use the most current data available as of October 1, 20182019, unless specifically otherwise provided in federal or state law or in the rules. All American Community Survey data must be 5-year estimates, unless otherwise specified. The availability of more current data shall be disregarded. Where other data sources are specifically required, such as Neighborhoodscout, the data available after October 1, but before Pre-Application Final Delivery Date, will be permissible. The NeighborhoodScout report submitted in the Application must include the report date.

(f) Deadlines. Where a specific date or deadline is identified in this chapter, the information or documentation subject to the deadline must be received by the Department on or before 5:00 p.m. Austin local time on the day of the deadline. If the deadline falls on a weekend or holiday, the deadline is 5:00 p.m. Austin local time on the next day which is not a weekend or holiday and on which the Department is open for general operation. Unless otherwise noted or provided in statute, deadlines are based on calendar days. Unless otherwise noted or provided in statute, deadlines are based on calendar days. Deadlines, with respect to both date and time, cannot be waived except where authorized and for truly extraordinary circumstances, such as the occurrence of a significant natural disaster that could not have been anticipated and makes

timely adherence impossible. Applicants should further ensure that all required documents are included, legible, properly organized, and tabbed, and that materials in required formats involving digital media are complete and fully readable. Applicants are strongly encouraged to submit the required items well in advance of established deadlines.

(g) Documentation to Substantiate Items and Representations in an Application. In order to ensure the appropriate level of transparency in this highly competitive program, Applications and all correspondence and other information relating to each Application are posted on the Department's website and updated on a regular basis. Applicants must use the Application form posted online to provide appropriate support for each item substantiating a claim or representation, such as claims for points, qualification for set-asides, meeting of threshold requirements, or timely requesting a waiver or determination. Any Application that staff identifies as having insufficient support information will be directed to cure the matter via the Deficiency process. Applicants are reminded that this process may not be used to increase a scoring item's points or to change any aspect of the proposed Development, financing structure, or other element of the Application. Although a responsive narrative will be created after Application submission, all facts and materials to substantiate any item in response to such an Administrative Deficiency must have been clearly established at the time of submission of the Application.

(h) Board Standards for Review. Some issues may require or benefit from board review. The Board is not constrained to a particular standard, and while its actions on one matter are not binding as to how it will address another matter, the Board does seek to promote consistency with its policies, including the policies set forth in this chapter.

(i) Public Information Requests. Pursuant to Tex. Gov't Code §2306.6717, any pre-application and any full Application, including all supporting documents and exhibits, must be made available to the public, in their entirety, on the Department's website. The filing of a pre-application or Application with the Department shall be deemed as consent to the release of any and all information contained therein, including supporting documents and exhibits. As part of its certifications, the Applicant shall certify that the authors of the reports and other information and documents submitted with the Application have given their consent to the Applicant to submit all reports and other information and documents to the Department, and for the Department to publish anything submitted with the Application on its website and use such information and documents for authorized purposes.

(j) Responsibilities of Municipalities and Counties. In considering resolutions regarding housing de-concentration issues, threshold requirements, or scoring criteria, municipalities and counties should consult their own staff and legal counsel as to whether their handling of actions regarding such resolution(s) are consistent with Fair Housing laws as they may apply, including, as applicable, consistency with any Fair Housing Activity Statement-Texas (FHAST) form on file, any current Analysis of Impediments to Fair Housing Choice, any current Assessment of Fair Housing, or any current plans such as one year action plans or five year consolidated plans for HUD block grant funds, such as HOME or CDBG funds.

(k) Request for Staff Determinations. Where the requirements of this Chapter do not readily align with the activities proposed in an Application, an Applicant may request and Department

staff may provide a determination to an Applicant explaining how staff will review an Application in relation to the applicable rules. In no instance will staff provide a determination regarding a scoring item. Any such request must be received by the Department prior to submission of the pre-application (if applicable to the program) or Application (if no pre-application was submitted). Staff may, in its sole discretion, provide the request to the Board for it to make the determination. Staff's determination may take into account the articulated purpose of or policies addressed by a particular rule or requirement, materiality of elements, substantive elements of the development plan that relate to thea term or definition, thea common usage of the particular term, or other issues relevant to thea rule or requirement. All such determinations such requests and determinations will be conveyed in writing. If the determination is finalized after submission of the pre-application or Application, the Department may allow corrections to the preapplication or the Application that are directly related to the issues in the determination. It is an Applicant's sole responsibility to request a determination and an Applicant may not rely on any determination for another Application regardless of similarities in a particular fact pattern. For any Application that does not request and subsequently receive a determination, the definitions and applicable rules will be applied as used and defined herein. An Applicant may appeal a determination for their Application, using the Appeal Process provided for in §11.902 of this chapter, if the determination provides for a treatment that relies on factors other than the explicit definition. A Board determination may not be appealed. A staff or Executive Director determination not timely appealed cannot be further appealed or challenged. Any part of an Application that received a Staff Determination prior to Application submission may not be appealed after submission.

§11.2 Program Calendar for Housing Tax Credits

(a) Competitive HTC Deadlines. Non-statutory deadlines specifically listed in the Program Calendar may be extended by the Department for a period of not more than five (5) business days provided that the Applicant has, in writing, requested an extension prior to the date of the original deadline and has established to the reasonable satisfaction of the Department that there is good cause for the extension. Except as provided for under 10 TAC §1.1 relating to Reasonable Accommodation Requests, extensions relating to Administrative Deficiency deadlines may only be extended if documentation needed to resolve the item is needed from a Third Party or the documentation involves signatures needed on certifications in the Application.

Deadline	Documentation Required
01/03/2020	Application Acceptance Period Begins. Public Comment period starts.
01/08/2020	Pre-Application Final Delivery Date (including waiver requests).
02/14/2020	Deadline for submission of Application for .ftp access if pre- application not submitted.

Deadline	Documentation Required
02/28/2020	End of Application Acceptance Period and Full Application Delivery Date. (including Quantifiable Community Participation documentation; Environmental Site Assessments (ESAs), Scope and Cost Reviews (SCRs); Appraisals; Primary Market Area Map; Site Design and Development Feasibility Report; all Resolutions necessary under §11.3 of this chapter related to Housing De-Concentration Factors).
	Final Input from Elected Officials Delivery Date (including Resolution for Local Government Support pursuant to §11.9(d)(1) of this chapter and State Representative Input pursuant to §11.9(d)(5) of this chapter).
04/01/2020	Market Analysis Delivery Date pursuant to §11.205 of this chapter.
05/01/2020	Deadline for Third Party Request for Administrative Deficiency.
Mid-May 2020	Scoring Notices Issued for Majority of Applications Considered "Competitive."
06/19/2020	Public comment to be included in the Board materials relating to presentation for awards are due in accordance with 10 TAC §1.10.
June 2020	On or before June 30, publication of the list of Eligible Applications for Consideration for Award in July.
July 2020	Final Awards.
Mid-August	Commitments are Issued.
11/02/2020	Carryover Documentation Delivery Date.
11/30/2020	Deadline for closing under §11.9(c)(8) (if applicable) (not subject to an extension under 10 TAC §11.2(a) pursuant to the requirements of 10 TAC §11.9(c)(8)).
07/01/2021	10% Test Documentation Delivery Date.

Deadline	Documentation Required
12/31/2022	Placement in Service.
Five business days after the date on the Deficiency Notice (without incurring point loss)	Administrative Deficiency Response Deadline (unless an extension has been granted).

(b) Tax-Exempt Bond and Direct Loan Development Dates and Deadlines. This section reflects key dates for all multifamily development programs except for the Competitive Housing Tax Credit Program. Applicants are strongly encouraged to submit the required items well in advance of established deadlines. Non-statutory deadlines specifically listed in this section may be extended by the Department for a period of not more than five (5)-business days provided; however, that the Applicant requests an extension prior to the date of the original deadline. Other deadlines may be found in 10 TAC Chapters 12 and 13 or a NOFA. and has established to the reasonable satisfaction of the Department that there is good cause for the extension. Except as provided for under 10 TAC §1.1 relating to Reasonable Accommodation Requests, extensions relating to Deficiency deadlines may only be extended if documentation needed to resolve the item is needed from a Third Party or the documentation involves signatures needed on certifications in the Application.

(1) Full Application Delivery Date. The deadline by which the Application must be received by the Department. For Direct Loan Applications, such deadline will generally be defined in the applicable NOFA and for Tax-Exempt Bond Developments, such deadlines are more fully explained in §11.201(2) of this chapter (relating to Procedural Requirements for Application Submission).

(2) Notice to Submit Lottery Application Delivery Date. No later than December 7, 20186, 2019, Applicants that receive an advance notice regarding a Certificate of Reservation shall submit a notice to the Department, in the form prescribed by the Department.

(3) Applications Associated with Lottery Delivery Date. No later than December <u>14, 201813</u>, <u>2019</u>, Applicants that participated in the Texas Bond Review Board Lottery must submit the complete tax credit Application, <u>including all required Third Party Reports</u>, to the Department.

(4) Administrative Deficiency Response Deadline. Such deadline shall be five (5)-business days after the date on the deficiency notice without incurring a penalty fee pursuant to §11.901 of this chapter (relating to Fee Schedule), unless extended as provided for in 10 TAC §11.201(7) related to the Deficiency Process.

(5) Third Party Report Delivery Date (Environmental Site Assessment (ESA), Property Condition Assessment (PCAScope and Cost Review (SCR), Appraisal (if applicable), Market

Analysis and the Site Design and Development Feasibility Report). For Direct Loan Applications, the Third Party reports meeting specific requirements described in §11.205 of this chapter must be submitted with the Application in order for it to be considered a complete Application, unless the Application is made in conjunction with an Application for Housing Tax Credits or Tax-Exempt Bond, in which case the Delivery Date for those programs will apply. For Tax-Exempt Bond Developments, the Third Party Reports must be received by the Department no later than seventy five (75) calendar days prior to the Board meeting at which the tax credits will be considered. The seventy five (75) calendar day deadlines are available on the Department's website.pursuant to §11.201(2) of this chapter.

(6) Resolutions Delivery Date. Resolutions required for Tax-Exempt Bond Developments must be received by the Department no later than fourteen (14) calendar days before the Board meeting at which consideration of the award will occur. If the Direct Loan Application is made in conjunction with an Application for Housing Tax Credits, or Tax-Exempt Bond Developments, the Resolution Delivery Date for those programs will apply to the Direct Loan Application.

(7) Challenges to Neighborhood Organization Opposition Delivery Date. Challenges must be received by the Department no later than forty-five (45) calendar days prior to the Board meeting at which consideration of the award will occur.

§11.3.Housing De-Concentration Factors.

(a) Rules reciting statutory limitations are provided as a convenient reference only, and to the extent there is any deviation from the provisions of statute, the statutory language is controlling.

(b) Two Mile Same Year Rule (Competitive HTC Only).

(1) As required by Tex. Gov't Code §2306.6711(f), staff will not recommend for award, and the Board will not make an award to an Application that proposes a Development Site located in a county with a population that exceeds one million, if the proposed Development Site is also located less than two linear miles from the proposed Development Site of another Application within said county that is awarded in the same calendar year. If two or more Applications are submitted that would violate this rule,§2306.6711(f), the lower scoring Application will be considered a non-priority Application, and will not be reviewed unless the higher scoring Application is terminated or withdrawn.

(2) This subsection does not apply if an Application is located in an area that, within the past five years, meets the requirements of Tex. Gov't Code §2306.6711(f-1), which excludes any municipality with a population of two million or more where a federal disaster has been declared by the Full Application Delivery Date as identified in §11.2(a) of this chapter, and the governing body of the municipality containing the Development has by vote specifically authorized the allocation of housing tax credits for the Development in a resolution submitted by the Full Application Delivery Date as identified in §11.2(a) of this chapter, and the municipality is authorized to administer disaster recovery funds as a subgrant recipient, for the disaster identified in the federal disaster declaration.

(c) Twice the State Average Per Capita (Competitive and Tax-Exempt Bond Only). As provided for in Tex. Gov't Code §2306.6703(a)(4), if a proposed Development is located in a municipality, or if located completely outside a municipality, a county, that has more than twice the state average of units per capita supported by Housing Tax Credits or private activity bonds at the time the Application Acceptance Period Begins (or for Tax-Exempt Bond Developments, Applications submitted after the Application Acceptance Period Begins), then the Applicant must obtain prior approval of the Development from the Governing Body of the appropriate municipality or county containing the Development. Such approval must include a resolution adopted by the Governing Body of the municipality or county, as applicable, setting forth a written statement of support, specifically citing Tex. Gov't Code §2306.6703(a)(4) in the text of the actual adopted resolution, and authorizing an allocation of Housing Tax Credits for the Development. An acceptable, but not required, form of resolution may be obtained in the Uniform Multifamily Application Templates. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2(a) of this chapter (relating to Competitive HTC Deadlines Program Calendar for Competitive Housing Tax Credits) or Resolutions Delivery Date in §11.2(b) of this chapter (relating to Tax-Exempt Bond and Multifamily Loan Development Dates and Deadlines), as applicable.

(d) One Mile Three Year Rule. (Competitive and Tax-Exempt Bond Only). (§2306.6703(a)(3))

(1) An Application that proposes the New Construction or Adaptive Reuse of a Development that is located one linear mile or less (measured between closest boundaries by a straight line on a map) from another development that meets all of the criteria in subparagraphs (A) - (C) of this paragraph shall be considered ineligible.

(A) The<u>A</u> Development serves the same type of household<u>Target Population</u> as the proposed Development,-regardless of whether the Development serves families, general. elderly individuals<u>Elderly</u>, or another type of household<u>Supportive Housing</u>; and

(B) TheA Development has received an allocation of Housing Tax Credits or private activity bonds for any New Construction at any time during the three-year period preceding the date the Application Round begins (or for Tax-Exempt Bond Developments the three-year period preceding the date the Certificate of Reservation is issued); and

(C) The Development<u>in subparagraph B</u> has not been withdrawn or terminated from the Housing Tax Credit Program.

(2) Paragraph (1) of this subsection does not apply to a proposed Development:

(A) that That is using federal HOPE VI (or successor program) funds received through HUD;

(B) that That is using locally approved funds received from a public improvement district or a tax increment financing district;

(C) that That is using funds provided to the state under the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. §§12701 et seq.);

(D) that That is using funds provided to the state and participating jurisdictions under the Housing and Community Development Act of 1974 (42 U.S.C. §§5301 et seq.);

(E) that That is located in a county with a population of less than one million;

(F) that That is located outside of a metropolitan statistical area; or

(G) that That the Governing Body of the appropriate municipality or county where the Development is to be located has by vote specifically allowed the construction of a new Development located within one linear mile or less from a Development described under paragraph (1)(A) of this subsection. An acceptable, but not required, form of resolution may be obtained in the Uniform Multifamily Application Templates. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2(a) of this chapter, regarding Competitive HTC Deadlines, or Resolutions Delivery Date in §11.2(b) of this chapter, regarding Tax-Exempt Bond and Direct Loan Development Dates and Deadlines, as applicable.

(3) Where a specific source of funding is referenced in paragraph (2)(A) - (D) of this subsection, a commitment or resolution documenting a commitment of the funds must be provided in the Application.

(e) Limitations on Developments in Certain Census Tracts. An Application that proposes the New Construction or Adaptive Reuse of a Development proposed to be located in a census tract that has more than 20% Housing Tax Credit Units per total households as established by the 5-year American Community Survey shall be considered ineligible unless the Governing Body of the appropriate municipality or county containing the Development has, by vote, specifically allowed the Development and submits to the Department a resolution stating the proposed Development is consistent with the jurisdiction's obligation to affirmatively further fair housing. Rehabilitation Developments are not required to obtain such resolution. The resolution must be submitted by the Full Application Delivery Date as identified in §11.2(a) of this chapter, regarding Competitive HTC Deadlines, or Resolutions Delivery Date in §11.2(b) of this chapter, regarding Tax-Exempt Bond and Direct Loan Development Dates and Deadlines, as applicable.

(f) Additional Phase. Applications An Application proposing an additional phase of an existing tax credit Development that is under common <u>or Affiliate</u> ownership, <u>or Control</u> serving the same Target Population or Applications proposing Developments that are adjacent to an existing tax credit Development that is under common <u>Affiliate</u> ownership <u>or Control</u> serving the same Target Population, shall be considered ineligible unless the other Developments or phase(s) of the Development have been completed and have maintained occupancy of at least 90% for a minimum six month period as reflected in the submitted rent roll. If the Additional Phase is proposed by any Principal of the existing tax credit Development, the Developer Fee included in Eligible Basis for the Additional Phase may not exceed 15%, regardless of the number of Units. If the Application proposes the Rehabilitation or replacement of existing federally-assisted affordable housing Units or federally-assisted affordable housing Units demolished on the same site within two years of the beginning of the Application Acceptance Period, this provision does not apply.

(g) Proximity of Development Sites. <u>(Competitive HTC Only)</u> In a county with a population that is less than one million, lif two or more Competitive-HTC Applications-that, regardless of the Applicant(s), are proposing Developments serving the same Target Population on contiguous sites or on-sites separated by not more than 1,000 feet where the intervening property does not have a clear and apparent economic reason and/or was not created for the apparent purpose of

creating separation under this rule, or on sites carved out of either a single parcel or a group of contiguous parcels that were under common ownership or control at any time during the preceding twenty four month period are submitted in the same program year<u>or less</u>, the lower scoring Application(s), including consideration of tie-breaker factors if there are tied scores<u>breakers</u>, will be considered a non priority Application<u>ineligible</u> and will not be reviewed unless the higher scoring Application is terminated or withdrawn.

(h) One Award per Census Tract Limitation (Competitive HTC Only). If two or more Competitive HTC Applications are proposing Developments in the same census tract in an urban subregion, the lower scoring Application(s), including consideration of tie breakers, will be considered ineligible and will not be reviewed unless the higher scoring Application is terminated or withdrawn. This subsection does not apply to Applications submitted under the USDA Set-Aside (10 TAC §11.5(2)) or the At-Risk Set-Aside (10 TAC §11.5(3)).

§11.4 Tax Credit Request and Award Limits

(a) Credit Amount (Competitive HTC Only). (§2306.6711(b)) The Board may not award or allocate to an Applicant, Developer, Affiliate, or Guarantor (unless the Guarantor is also the General Contractor or provides the guaranty only during the construction period, and is not a Principal of the Applicant, Developer or Affiliate of the Development Owner) Housing Tax Credits in an aggregate amount greater than \$3 million in a single Application Round. Prior to July 15 posting the agenda for the last Board meeting in June, an Applicant that has Applications pending for more than \$3 million in credit may notify staff in writing or by email of the Application(s) they will not pursue in order to bring their request within the \$3 million cap. Any other Applications they do not wish to pursue will remain on the waiting list if not otherwise terminated. If the Applicant has not made this self-selection by this date, staff will assign-first priority to anselect the Application(s) that will enable the Department to comply with the state and federal nonprofit set-asides, and second to will then select the highest scoring Application, including consideration of tie-breakers if there are tied scores. The Application(s) that does not meet Department criteria will not be considered a priority Application and will not be reviewed unless the Applicant withdraws an priority_Application_that is eligible for an award and has been reviewed. All entities that are under common Control are Affiliates. For purposes of determining the \$3 million limitation, a Person is not deemed to be an Applicant, Developer, Affiliate, or Guarantor solely because it:

- (1) raises<u>Raises</u> or provides equity;
- (2) provides Provides "qualified commercial financing;"

(3) isls a Qualified Nonprofit Organization or other not-for-profit entity that is providing solely loan funds, grant funds or social services; or

(4) receives Receives fees as a consultant or advisor that do not exceed \$200,000.

(b) Maximum Request Limit (Competitive HTC Only). For any given Development, an Applicant may not request more than 150% of the credit amount available in the subregion based on estimates released by the Department on December 1, or \$1,500,000, whichever is less, or \$2,000,000 for Applications under the At-Risk Set-Aside. In addition, for Elderly Developments in

a Uniform State Service Region containing a county with a population that exceeds one million, the request may not exceed the final amount published on the Department's website after the <u>annual</u> release of the Internal Revenue Service notice regarding the 2019-credit ceiling. For all Applications, the Department will consider the amount in the funding request of the pre-application and Application to be the amount of Housing Tax Credits requested and will automatically reduce the Applicant's request to the maximum allowable under this subsection if exceeded through the underwriting process. Regardless of the credit amount requested or any subsequent changes to the request made by staff, the Board may not award to any individual Development more than \$2 million in a single Application Round. (§2306.6711(b))

(c) Increase in Eligible Basis (30% Boost). Applications will be evaluated for an increase of up to but not to exceed 30% in Eligible Basis provided they meet the criteria identified in paragraphs (1) - (3) of this subsection, or if required under Code, §42. Staff will recommend no increase or a partial increase in Eligible Basis if it is determined it would cause the Development to be over sourced, as evaluated by the Real Estate Analysis division, in which case a credit amount necessary to fill the gap in financing will be recommended. In no instance will the boost exceed more than the amount of credits required to create the HTC rent-restricted Units, as determined by the Real Estate Analysis division of TDHCA. The criteria in paragraph (3) of this subsection are not applicable to Tax-Exempt Bond Developments.

(1) The Development is located in a Qualified Census Tract (QCT) (as determined by the Secretary of HUD) that has less than 20% Housing Tax Credit Units per total households in the tract as established by the U.S. Census Bureau for the 5-year American Community Survey. New Construction or Adaptive Reuse Developments located in a QCT that has in excess of 20% Housing Tax Credit Units per total households in the tract are not eligible to qualify for a 30% increase in Eligible Basis, which would otherwise be available for the Development Site pursuant to §42(d)(5) of the Code, unless the Application includes a resolution stating that the Governing Body of the appropriate municipality or county containing the Development has by vote specifically allowed the construction of the new Development and referencing this rule. Rehabilitation Developments located in a QCT with 20% or greater Housing Tax Credit Units per total households are eligible to qualify for the boost and are not required to obtain such a resolution from the Governing Body. For Tax-Exempt Bond Developments, as a general rule and unless federal guidance states otherwise, a QCT designation would have to coincide with the program year the Certificate of Reservation is issued in order for the Department to apply the 30% boost in its underwriting evaluation. An acceptable, but not required, form of resolution may be obtained in the Multifamily Programs Procedures Manual. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2(a) of this chapter, regarding Competitive HTC Deadlines, or Resolutions Delivery Date in §11.2(b) of this chapter, regarding Tax-Exempt Bond and Direct Loan Development Dates and Deadlines, as applicable. Applicants must submit a copy of the census map that includes the 11-digit census tract number and clearly shows that the proposed Development is located within a QCT; OR

(2) The Development is located in a Small Area Difficult Development Area (SADDA) (based on Small Area Fair Market Rents (FMRs) as determined by the Secretary of HUD) that has high construction, land and utility costs relative to the AMGI. For Tax-Exempt Bond Developments, as a general rule, a SADDA designation would have to coincide with the program year in which the Certificate of Reservation is issued in order for the Department to apply the 30% boost in its underwriting evaluation. Applicants must submit a copy of the SADDA map that clearly shows the proposed Development is located within the boundaries of a SADDA; OR

(3) The For Competitive Housing Tax Credits, Development meets one of the criteria described in subparagraphs (A) - (F) of this paragraph pursuant to Code, §42(d)(5)(B)(v):

(A) the The Development is located in a Rural Area;

(B) the <u>The</u> Development is proposing entirely Supportive Housing and is expected to be debt free or have no foreclosable or non-cash flow debt_in accordance with 10 TAC §11.1(d)(122)(E) related to the definition of Supportive Housing;

(C) the <u>The</u> Development meets the criteria for the Opportunity Index as defined in §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria);

(D) the The Applicant elects to restrict an additional 10% of the proposed low income Units for households at or below 30% of AMGI. These Units must may not be used to meet any in addition to Units required under any other provision of this chapter, scoring criteria, or required under any other funding source from the used to meet any Multifamily Direct Loan program requirement;

(E) the The Development is in an area covered by a concerted revitalization plan, is not an Elderly Development, and is not located in a QCT. A Development will be considered to be in an area covered by a concerted revitalization plan if it is eligible for and elects points under §11.9(d)(7) of this chapter; or

(F) the The Development is located in a Qualified Opportunity Zone designated under the Bipartisan Budget Act of 2018 (H.R. 1892).

§11.5 Competitive HTC Set-Asides. (§2306.111(d)) This section identifies the statutorilymandated Set-asides which the Department is required to administer. An Applicant may elect to compete in each of the Set-asides for which the proposed Development qualifies. In order to be eligible to compete in the Set-aside, the Application must meet the requirements of the Set-aside as of the Full Application Delivery Date. Election to compete in a Set-aside does not constitute eligibility to compete in the Set-aside, and Applicants who are ultimately deemed not to qualify to compete in the Set-aside will be considered not to be participating in the Set-aside for purposes of qualifying for points under §11.9(e)(3) of this chapter (related to pre-application Participation). Commitments of Competitive HTCs issued by the Board in the current program year will be applied to each Set-aside, Rural regional allocation, Urban regional allocation, and/or USDA Set-aside for the current Application round as appropriate.

(1) Nonprofit Set-Aside. (§2306.6729 and §2306.6706(b)) At least 10% of the State Housing Credit Ceiling for each calendar year shall be allocated to Qualified Nonprofit Developments which meet the requirements of Code, §42(h)(5) and Tex. Gov't Code §2306.6729 and §2306.6706(b). Qualified Nonprofit Organizations must have the controlling interest in the Development Owner applying for this Set-aside (*i.e.*, greater than 50% ownership in the General Partner). If the Application is filed on behalf of a limited partnership, the Qualified

Nonprofit Organization must be the Managing General Partner. If the Application is filed on behalf of a limited liability company, the Qualified Nonprofit Organization must be the controlling Managing Member. Additionally, for Qualified Nonprofit Development in the Nonprofit Set-aside the nonprofit entity or its nonprofit Affiliate or subsidiary must be the Developer or a co-Developer as evidenced in the development agreement. An Applicant that meets the requirements to be in the Qualified Nonprofit Set-aside is deemed to be applying under that Set-aside unless their Application specifically includes an affirmative election to not be treated under that Set-aside and a certification that they do not expect to receive a benefit in the allocation of tax credits as a result of being affiliated with a nonprofit. The Department reserves the right to request a change in this election and/or not recommend credits for those unwilling to change elections if insufficient Applications in the Nonprofit Set-Aside are received. Applicants may not use different organizations to satisfy the state and federal requirements of the Set-aside.

(2) USDA Set-Aside. (§2306.111(d-2)) At least 5% of the State Housing Credit Ceiling for each calendar year shall be allocated to Rural Developments which are financed through USDA. If an Application in this Set-aside involves Rehabilitation it will be attributed to and come from the At-Risk Development Set-aside; if an Application in this set-aside involves New Construction it will be attributed to and come from the applicable Uniform State Service Region and will compete within the applicable subregion unless the Application is receiving USDA Section 514 funding. Applications must also meet all requirements of Tex. Gov't Code §2306.111(d-2).

(A) Eligibility of Certain Developments to Participate in the USDA or Rural Set-asides. (§2306.111(d-4)) A proposed or Existing Residential Development that, before September 1, 2013, has been awarded or has received federal financial assistance provided under Section 514, 515, or 516 of the Housing Act of 1949 (42 U.S.C. Section 1484, 1485, or 1486) may be attributed to and come from the At-Risk Development Set-aside or the Uniform State Service Region in which the Development is located, regardless of whether the Development is located in a Rural Area.

(B) All Applications that <u>can score are eligible to participate</u> under the USDA Set-aside will be considered Rural for all scoring items under this chapter. If a Property receiving USDA financing is unable to <u>score participate</u> under the USDA Set-aside and it is located in an Urban subregion, it will be scored as Urban.

(3) At-Risk Set-Aside. (§2306.6714; §2306.6702)

(A) At least 15-percent% of the State Housing Credit Ceiling for each calendar year will be allocated under the At-Risk Development Set-aside and will be deducted from the State Housing Credit Ceiling prior to the application of the regional allocation formula required under §11.6 of this chapter (relating to Competitive HTC Allocation Process). Through this Set-aside, the Department, to the extent possible, shall allocate credits to Applications involving the preservation of Developments identified as At-Risk Developments. (§2306.6714) Up to five (5) percent% of the State Housing Credit Ceiling associated with this Set-aside may be given priority to Rehabilitation Developments under the USDA Set-aside.

(B) An At-Risk Development qualifying under Tex. Gov't Code §2306.6702(a)(5)(A) must meet the following requirements-:

(i) Pursuant to Tex. Gov't Code §2306.6702(a)(5)(A)(i), a Development must have received the benefit of a subsidy in the form of a qualified below-market interest rate loan, interest rate reduction, rental subsidy, Section 8 housing assistance payment, rental supplement payment, rental assistance payment, or equity incentive, from any of the programs provided in subclauses (I) to (VIII) of this clause. Applications participating in the At-Risk Set-Aside must include evidence of the qualifying subsidy.

(I) Sections 221(d)(3) and (5), National Housing Act (12 U.S.C. Section 1715l);

(II) Section 236, National Housing Act (12 U.S.C. Section 1715z-1);

(III) Section 202, Housing Act of 1959 (1 2 U.S.C. Section 1701q);

(IV) Section 101, Housing and Urban Development Act of 1965 (12 U.S.C. Section 1701s);

(V) the Section 8 Additional Assistance Program for housing developments with HUD-Insured and HUD-Held Mortgages administered by the United States Department of Housing and Urban Development as specified by 24 C.F.R. Part 886, Subpart A;

(VI) the Section 8 Housing Assistance Program for the Disposition of HUD-Owned Projects administered by the United States Department of Housing and Urban Development as specified by 24 C.F.R. Part 886, Subpart C;

(VII) Sections 514, 515, and 516, Housing Act of 1949 (42 U.S.C. Sections 1484, 1485, and 1486); or

(VIII) Section 42, Internal Revenue Code of 1986.

(ii) Any stipulation to maintain affordability in the contract granting the subsidy pursuant to Tex. Gov't Code §2306.6702(a)(5)(A)(ii)(a), or any HUD-insured or HUD-held mortgage as described in §2306.6702(a)(5)(A)(i) will be considered to be nearing expiration or nearing the end of its term if the contract expiration will occur or the term will end within two (2)-years of July 31 of the year the Application is submitted. Developments with HUD-insured or HUD-held mortgages qualifying as At-Risk under §2306.6702(a)(5)(A(i))(ii)(b) may be will be considered eligible if the HUD-insured or HUD-held mortgage is eligible for prepayment or has been prepaid.

(iii) Developments with existing Department <u>LIHTC</u> LURAs must have completed all applicable Right of First Refusal procedures prior to the pre-application Final Delivery Date.

(C) An At-Risk Development qualifying under Tex. Gov't Code §2306.6702(a)(5)(B) must meet one of the following requirements <u>under clause (i) or (ii) or (iii) of this subparagraph</u>:

(i) Units to be Rehabilitated or Reconstructed must be owned by a public housing authority or a public facility corporation created by a public housing authority under

Chapter 303, Local Government Code and received assistance under §9, United States Housing Act of 1937 (42 U.S.C. section 1437g); or

(ii) Units to be Rehabilitated or Reconstructed must have been <u>proposed to be</u> disposed of or demolished, or already disposed or demolished, by a public housing authority <u>or public facility corporation created by a public housing authority under</u> Chapter 303, Local Government Code and received assistance under §9, United States Housing Act of 1937 (42 U.S.C. section 1437g) in the two-year period preceding the Application for housing tax credits; and-or

(iii) For Developments including Units to be Reconstructed, the Application will be categorized as New Construction; and

(iv)—To the extent that an Application is eligible under Tex. Gov't Code §2306.6702(a)(5)(B)(iii), the Development must receive assistance through the Rental Assistance Demonstration (RAD) program administered by the United States Department of Housing and Urban Development (HUD). Applications must include evidence that RAD participation is included in the applicable public housing plan that was most recently approved by HUD, and evidence (in the form of a Commitment to enter into a Housing Assistance Payment (CHAP)) that HUD has approved the Units proposed for Rehabilitation or Reconstruction for participation in the RAD program; and

(iv) Notwithstanding any other provision of law, an At-Risk Development described by Tex. Gov't Code §2306.6702(a)(5)(B) that was previously allocated housing tax credits set aside under Subsection (a) does not lose eligibility for those credits if the portion of Units reserved for public housing as a condition of eligibility for the credits under Tex. Gov't Code §2306.6714 (a-1)(2) are later converted under RAD.

(D) An Application for a Development that includes the demolition of the existing Units which have received the financial benefit described in Tex. Gov't Code §2306.6702(a)(5)(i) will not qualify as an At-Risk Development unless the redevelopment will include at least a portion of the same site. Alternatively, pursuant to Tex. Gov't Code §2306.6702(a)(5)(B), an Applicant may propose relocation of the existing Units in an otherwise qualifying At-Risk Development if:

(i) the affordability restrictions and any At-Risk eligible subsidies are approved to be transferred with the units proposed for Rehabilitation or Reconstruction prior to the tax credit Carryover deadline;

(ii) the Applicant seeking tax credits must propose the same number of restricted Units (the Applicant may, however, add market rate Units); and

(iii) the new Development Site must either qualify for points on the Opportunity Index under §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria); OR

(iv) the local Governing Body of the applicable municipality or county (if completely outside of a municipality) in which that Development is located must submit a resolution confirming that the proposed Development is supported by the

municipality or county in order to carry out a previously adopted plan that meets the requirements of §11.9(d)(7). Development Sites that cross jurisdictional boundaries must provide such resolutions from both local governing bodies.

(E) If Developments at risk of losing affordability from the financial benefits available to the Development are able to retain, renew, or replace the existing financial benefits and affordability they must do so unless regulatory barriers necessitate elimination of all or a portion of that benefit for the Development.

(i) Evidence of the legal requirements that will unambiguously cause the loss of affordability and that this will occur within the two calendar years after the year of July 31 of the year the Application is submitted, in which the Application is made and must be included with the application.

(ii) For Developments qualifying under Tex. Gov't Code §2306.6702(a)(5)(B), only a portion of the subsidy must be retained for the proposed Development, but no less than 25% of the proposed Units must be public housing units supported by public housing operating subsidy. (§2306.6714(a-1). If less than 100% of the public housing benefits are transferred to the proposed Development, an explanation of the disposition of the remaining public housing benefits must be included in the Application, as well as a copy of the HUD-approved plan for demolition and disposition.

(F) Nearing expiration on a requirement to maintain affordability includes Developments eligible to request a Qualified Contract under Code, §42. Evidence must be provided in the form of a copy of the recorded LURA, the first year's IRS Forms 8609 for all buildings showing Part II of the form completed and, if applicable, documentation from the original application regarding the Right of First Refusal. The Application must also include evidence that any applicable Right of First Refusal procedures have been completed prior to the pre-application Final Delivery Date.

(G) An amendment to any aspect of the existing tax credit property sought to enable the Development to qualify as an At-Risk Development, that is submitted to the Department after the Application has been filed and is under review will not be accepted.

§11.6 Competitive HTC Allocation Process

This section identifies the general allocation process and the methodology by which awards are made.

(1) Regional Allocation Formula. The Department shall initially make available in each Rural Area and Urban Area of each Uniform State Service Region (subregion) Housing Tax Credits in an amount not less than \$600,000 in each Rural and Urban subregion, consistent with the Regional Allocation Formula developed in compliance with Tex. Gov't Code §2306.1115. As authorized by Tex. Gov't Code §2306.111(d-3), the Department will reserve \$600,000 in housing tax credits for Applications in rural areas in each uniform state service region. The process of awarding the funds made available within each subregion shall follow the process described in this section. Where a particular situation that is not contemplated and addressed

explicitly by the process described herein, Department staff shall formulate a recommendation for the Board's consideration based on the objectives of the regional allocation formula together with other policies and purposes set out in Tex. Gov't Code, Chapter 2306 and the Department shall provide the public the opportunity to comment on and propose alternatives to such a recommendation. In general, such a recommendation shall not involve broad reductions in the funding request amounts solely to accommodate regional allocation and shall not involve rearranging the priority competitive ranking of Applications within a particular subregion or set-aside except as described herein. If the Department determines that an allocation recommendation would cause a violation of the \$3 million credit limit per Applicant, the Department will make its recommendation based on the criteria described in §11.4(a) of this chapter. Where sufficient credit becomes available to award an Application on the waiting list late in the calendar year, staff may allow flexibility in meeting the Carryover Allocation submission deadline and/or changes to the Application as necessary to ensure to the fullest extent feasible that available resources are allocated by December 31. The Department will, for each such Urban subregion, calculate the maximum percentage in accordance with Tex. Gov't Code §2306.6711(h) and will publish on its website on or before December 1, 20182019, such-initial estimates of Regional Allocation Formula percentages-including the Elderly Development maximum percentage and limits of credits available, and the calculations periodically, if those calculations change, until the credits are fully allocated.

(2) Credits Returned and National Pool Allocated After January 1. For any credits returned after January 1 and eligible for reallocation (not including credit returned and reallocated under *force majeure* provisions), the Department shall first return the credits to the subregion or set-aside from which the original allocation was made. The credits will be treated in a manner consistent with the allocation process described in this section and may ultimately flow from the subregion and be awarded in the collapse process to an Application in another region, subregion or set-aside. For any credit received from the "national pool" after the initial approval of awards in late July, the credits will be added to any remaining credits and awarded to the next Application on the waiting list for the state collapse, if sufficient credits are available to meet the requirements of the Application as may be amended after underwriting review.

(3) Award Recommendation Methodology. (§2306.6710(a) - (f); §2306.111) The Department will assign, as described herein, Developments for review by the program and underwriting divisions. In general, Applications <u>reviews will be conducted in the order described in subparagraphs</u> (A) through (F) of this paragraph will be prioritized for assignment, with highest priority given to those identified as most competitive-based upon the Applicant self-score and an initial program review. The procedure identified in subparagraphs (A) - (F) of this paragraph will also be used in making recommendations to the Board.

(A) USDA Set-Aside Application Selection (Step 1). The first level of priority set of reviews will be those Applications with the highest scores in the USDA Set-Aside until the minimum requirements stated in §11.5(2) of this chapter (relating to Competitive HTC Set-Asides. (§2306.111(d)) are attained. The minimum requirement may be exceeded in

order to award the full credit request or underwritten amount of the last Application selected to meet the USDA Set-Aside requirement;

(B) At-Risk Set-Aside Application Selection (Step 2). The second level of priority set of reviews will be those Applications with the highest scores in the At-Risk Set-Aside statewide until the minimum requirements stated in §11.5(3) of this chapter (relating to <u>At-Risk Set-Aside</u>) are attained. This may require the minimum requirement to be exceeded to award the full credit request or underwritten amount of the last Application selected to meet the At-Risk Set-Aside requirement. This step may leave less than originally anticipated in the 26 subregions to award under the remaining steps;

(C) Initial Application Selection in Each Subregion (Step 3). The highest scoring Applications within each of the 26 subregions will then be selected provided there are sufficient funds within the subregion to fully award the Application. Applications electing the At-Risk or USDA Set-Asides will not be eligible to receive an award from funds made generally available within each of the subregions. The Department will, for each such Urban subregion, calculate the maximum percentage in accordance with Tex.-Gov't Code \$2306.6711(h) and will publish such percentages on its website.

(i) In Uniform State Service Regions containing a county with a population that exceeds one million, the Board may not allocate more than the maximum percentage of credits available for Elderly Developments, unless there are no other qualified Applications in the subregion. The Department will, for each such Urban subregion, calculate the maximum percentage in accordance with Tex. Gov't Code §2306.6711(h), and will publish such percentages on its website.

(ii) In accordance with Tex. Gov't Code, \$2306.6711(g), in Uniform State Service Regions containing a county with a population that exceeds 1.7 million, the Board shall allocate competitive tax credits to the highest scoring development, if any, that is part of a concerted revitalization plan that meets the requirements of \$11.9(d)(7) (except for \$11.9(d)(7)(A)(ii)(III) and \$11.9(d)(7)(B)(iii), is located in an urban subregion, and is within the boundaries of a municipality with a population that exceeds 500,000.

(D) Rural Collapse (Step 4). If there are any tax credits set-aside for Developments in a Rural Area in a specific Uniform State Service Region (Rural subregion) that remain after award under subparagraph (C) of this paragraph, those tax credits shall be combined into one "pool" and then be made available in any other Rural Area in the state to the Application in the most underserved Rural subregion as compared to the subregion's allocation. This rural redistribution will continue until all of the tax credits in the "pool" are allocated to Rural Applications and at least 20% of the funds available to the State are allocated to Applications in Rural Areas. (§2306.111(d)(3)) In the event that more than one subregion is underserved by the same percentage, the priorities described in clauses (i) - (ii) of this subparagraph will be used to select the next most underserved subregion:

(i) the subregion with no recommended At-Risk Applications from the same Application Round; and

(ii) the subregion that was the most underserved during the Application Round during the year immediately preceding the current Application Round.

(E) Statewide Collapse (Step 5). Any credits remaining after the Rural Collapse, including those in any subregion in the State, will be combined into one "pool"..." The funds will be used to award the highest scoring Application (not selected or eliminated in a prior step) in the most underserved subregion in the State compared to the amount originally made available in each subregion. In Uniform State Service Regions containing a county with a population that exceeds one million, the Board may not allocate more than the maximum percentage of credits available as calculated through the RAFRegional Allocation Formula (RAF) for Elderly Developments within an urban subregion of that service region. Therefore, certain Applications for Elderly Developments may be excluded from receiving an award from the collapse. The Department will, for each such Urban subregion, calculate the maximum percentage in accordance with Tex. Gov't Code §2306.6711(h) and will publish such percentages on its website. This process will continue until the funds remaining are insufficient to award the next highest scoring Application that is not rendered ineligible through application of the elderly cap in the next most underserved subregion. At least seven calendar days prior to the July Board meeting of the Department at which final awards of credits are authorized, the Department will post on its website the most current 20192020 State of Texas Competitive Housing Tax Credit Ceiling Accounting Summary which includes the Regional Allocation Formula percentages including the maximum funding request/award limits, the Elderly Development maximum percentages and limits of credits available, and the methodology used for the determination of the award determinations within the State Collapse. In the event that more than one subregion is underserved by the same degree, the priorities described in clauses (i) and (ii) of this subparagraph will be used to select the next most underserved subregion:

(i) the subregion with no recommended At-Risk Applications from the same Application Round; and

(ii) the subregion that was the most underserved during the Application Round during the year immediately preceding the current Application Round.

(F) Contingent Qualified Nonprofit Set-aside Step (Step 6). If an insufficient number of Applications participating in the Nonprofit Set-Aside are selected after implementing the criteria described in subparagraphs (A) - (E) of this paragraph to meet the requirements of the 10% Nonprofit Set-Aside, action must be taken to modify the criteria described in subparagraphs (A) - (E) of this paragraph to ensure the Set-aside requirements are met. Therefore, the criteria described in subparagraphs (C) - (E) of this paragraph will be repeated after selection of the highest scoring Application(s) under the Nonprofit Set-aside statewide are selected to meet the minimum requirements of the Nonprofit Set-Aside. This step may cause some lower scoring Applications in a subregion to be selected instead of a higher scoring Application not participating in the Nonprofit Set-aside.

(4) Waiting List. The Applications that do not receive an award by July 31 and remain active and eligible will be recommended for placement on the waiting list. The waiting list is not

static. The allocation process will be used in determining the next Application to award. For example, if If credits are returned through any process, those credits will first be made available in the set-aside or subregion from which they were originally awarded. This means that the The first Application on the waiting list is in part contingent on the nature of the credits that became available for award. The Department shall hold all credit available after the late-July awards until September 30 in order to collect credit that may become available when tax credit Commitments are submitted. Credit confirmed to be available, as of September 30, may be awarded to Applications on the waiting list unless insufficient credits are available to fund the next Application on the waiting list. For credit returned after September 30, awards from the waiting list will be made when the remaining balance is sufficient to award the next Application as may be amended on the waiting list based on the date(s) of returned credit. Notwithstanding the foregoing, if decisions related to any returns or rescissions of tax credits are under appeal or are otherwise contested, the Department may delay awards until resolution of such issues. The Department will evaluate all waiting list awards for compliance with requested Set-asides. This may cause some lower scoring Applications to be selected instead of a higher scoring Application. Where sufficient credit becomes available to award an Application on the waiting list later in the calendar year, staff may allow flexibility in meeting the Carryover Allocation submission deadline and/or changes to the Application as necessary to ensure to the extent possible so that available resources are allocated by December 31. (§2306.6710(a) - (f); §2306.111)

(5) Credit Returns Resulting from Force Majeure Events. In the event that the Department receives a return of Competitive HTCs during the current program year from an Application that received a Competitive Housing Tax Credit award during any of the preceding three years, such returned credit will, if the Board determines that all of the requirements of this paragraph are met to its satisfaction, be allocated separately from the current year's tax credit allocation, and not be subject to the requirements of paragraph (2) of this section. The Board determination must indicate the year of the Multifamily Rules to be applied to the Development. The Department's Governing Board may impose a deadline that is earlier than the Placed in Service Deadline and may impose conditions that were not placed on the original allocation. Requests to allocate returned credit separately where all of the requirements of this paragraph have not been met or requests for waivers of any part of this paragraph will not be considered. For purposes of this paragraph, credits returned after September 30 of the preceding program year may be considered to have been returned on January 1 of the current year in accordance with the treatment described in §(b)(2)(C)(iii) of Treasury Regulation 1.42-14. The Department's Governing Board may approve the execution of a current program year Carryover 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 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; unrelated party 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;

(B) Acts or events caused by the negligent or willful act or omission of the Development Owner, Affiliate or a Related Party shall under no circumstance be considered to be caused by *Force Majeure*. In order for rainfall, material shortages, or labor shortages to constitute *Force Majeure*, the Development Owner must clearly explain and document how such events could not have been reasonably foreseen and mitigated through appropriate planning and risk management. Staff may use Construction Status reports for the subject or other Developments in conducting their review and forming a recommendation to the Board.

(C) A Development Owner claiming *Force Majeure* must provide evidence of the type of event, as described in subparagraph (A) of this paragraph, when the event occurred, and that the loss was a direct result of the event;

(D) The Development Owner must prove that reasonable steps were taken to minimize or mitigate any delay or damages, that the Development Owner substantially fulfilled all obligations not impeded by the event, including timely closing of all financing and start of construction, that the Development and Development Owner was properly insured and that the Department was timely notified of the likelihood or actual occurrence of an event described in subparagraph (A) of this paragraph;

(E) The event prevents the Development Owner from meeting the placement in service requirements of the original allocation;

(F) The requested current year Carryover Agreement allocates the same amount of credit as that which was returned; and

(G) The Department's Real Estate Analysis Division determines that the Development continues to be financially viable in accordance with the Department's underwriting rules after taking into account any insurance proceeds related to the event.

§11.7 Tie Breaker Factors

In the event there are Competitive HTC Applications that receive the same number of points in any given set-aside category, rural regional allocation or urban regional allocation, or rural or statewide collapse, the Department will utilize the factors in this section, in the order they are presented, to determine which Development will receive preference in consideration for an award. For the purposes of this section, all measurements will include ingress/egress requirements and any easements regardless of how they will be held. The tie breaker factors are not intended to specifically address a tie between equally underserved subregions in the rural or statewide collapse.

(1) Applications proposed to be located in a census tract with a poverty rate below the average poverty rate for all awarded Competitive HTC Applications from the past three years

(with Region 11 adding an additional 15% to that value and Region 13 adding an additional 5% to that value). The poverty rate for each census tract will come from the most recent American Community Survey data. If a tie still persists, then the Development in the census tract with the highest percentage of statewide rent burden for renter households at or below 80% Area Median Family Income (AMFI), as determined by the U.S. Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy (CHAS) dataset and as reflected in the Department's current Site Demographic Characteristics Report.

(2) Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit assisted Development that serves the same Target Population and that was awarded less than 15 years ago according to the Department's property inventory tab of the Site Demographic Characteristics Report. Developments awarded Housing Tax Credits but do not yet have a Land Use Restriction Agreement in place will be considered Housing Tax Credit assisted Developments for purposes of this paragraph according to the property inventory included in the HTC Site Demographic Characteristics Report. The linear measurement will be performed from closest boundary to closest boundary of the Site presented at Pre-Application, if a pre-application is submitted, or the Site presented at full Application, whichever is closest.

§11.8 Pre-Application Requirements (Competitive HTC Only)

(a) General Submission Requirements. The pre-application process allows Applicants interested in pursuing an Application to assess potential competition across the thirteen (13) state service regions, subregions and set-asides. Based on an understanding of the potential competition they can make a more informed decision about whether they wish to proceed to prepare and submit an Application. A complete pre-application is a pre-application that meets all of the Department's criteria, as outlined in subsections (a) and (b) of this section.

(1) The pre-application must be submitted using the URL provided by the Department, as outlined in the Multifamily Programs Procedures Manual, along with the required pre-application fee as described in §11.901 of this chapter (relating to Fee Schedule), not later than the pre-application Final Delivery Date as identified in §11.2(a) of this chapter (relating to <u>Competitive HTC Deadlines</u> Program Calendar for <u>Competitive Housing Tax Credits</u>). If the pre-application and corresponding fee is not submitted on or before this deadline the Applicant will be deemed to have not made a pre-application.

(2) Only one pre-application may be submitted by an Applicant for each Development Site and for each Site Control document.

(3) Department review at this stage is limited, and not all issues of eligibility and threshold are reviewed or addressed at pre-application. Acceptance by staff of a pre-application does not ensure that an Applicant satisfies all Application eligibility, threshold or documentation requirements. While the pre-application is more limited in scope than the Application, pre-applications are subject to the same limitations, restrictions, or causes for disqualification or termination as Applications, and pre-applications will thus be subject to the same consequences for violation, including but not limited to loss of points and termination of the pre-application.

(4) The pre-application becomes part of the full Application if the full Application claims preapplication points.

(5) Regardless of whether a Full Application is submitted, a pre-application may not be withdrawn after the Full Application Delivery Date described in 10 TAC §11.2(a) edrelated relating to Competitive HTC Deadlines Program Calendar for Competitive Housing Tax Credits.

(b) Pre-Application Threshold Criteria. Pursuant to Tex. Gov't Code §2306.6704(c) preapplications will be terminated unless they meet the threshold criteria described in subsection (a) of this section and paragraphs (1) and (2) of this subsection:

(1) Submission of the Competitive HTC pre-application in the form prescribed by the Department which identifies at a minimum:

(A) Site Control meeting the requirements of §11.204(10) of this title (relating to Required Documentation for Application Submission). For purposes of meeting this specific requirement related to pre-application threshold criteria, proof of consideration and any documentation required for identity of interest transactions is not required at the time of pre-application submission but will be required at the time of full application submission;

(B) Funding request;

(C) Target Population;

(D) Requested set-asides (At-Risk, USDA, Nonprofit, and/or Rural);

(E) Total Number of Units proposed;

(F) Census tract number in which the Development Site is located, and a map of that census tract with an outline of the proposed Development Site;

(G) Expected score for each of the scoring items identified in the pre-application materials;

(H) Proposed name of ownership entity; and

(I) Disclosure of the following Neighborhood Risk Factors under §11.101(a)(3)-:

(i) The Development Site is located in a census tract (or for any adjacent census tract with a boundary less than 500 feet from the proposed Development Site that is not separated from the Development Site by a natural barrier such as a river or lake, or an intervening restricted area, such as a military installation) in an Urban Area and the rate of Part I violent crime is greater than 18 per 1,000 persons (annually) as reported on neighborhoodscout.com; and

(ii) The Development Site is located within the attendance zones of an elementary school, a middle school, or a high school that does not have a Met Standardrating by the Texas Education Agency is rated D for 2019, and Improvement Required for 2018, or that is rated F for 2019.

(2) Evidence in the form of a certification provided in the pre-application, that all of the notifications required under this paragraph have been made and that a reasonable search for applicable entities has been conducted. (§2306.6704)

(A) The Applicant must list in the pre-application all Neighborhood Organizations on record with the county or state whose boundaries include the entire proposed Development Site as of the beginning of the Application Acceptance Period.

(B) Notification Recipients. No later than the date the pre-application is submitted, notification must be sent to all of the persons or entities prescribed in clauses (i) - (viii) of this subparagraph. Developments located in an ETJ of a municipality are required to notify both municipal and county officials. The notifications may be sent by e-mail, fax or mail with registered return receipt or similar tracking mechanism in the format included in the Public Notification Template provided in the Uniform 20192020 Multifamily Application Template or in an alternative format that meets the applicable requirements and achieves the intended purpose. The Applicant is required to retain proof of delivery in the event the Department requests proof of notification. Acceptable evidence of such delivery is demonstrated by signed receipt for mail or courier delivery and confirmation of delivery for fax and e-mail. Officials to be notified are those officials in office at the time the preapplication is submitted. Between the time of pre-application (if made) and full Application, such officials may change and the boundaries of their jurisdictions may change. If there is a change between pre-application and the Full Application Delivery Date, additional notifications must be made at full Application to any person or entity that has not been previously notified by the Applicant. Meetings and discussions do not constitute notification. Only a timely and compliant written notification to the correct person constitutes notification.

(i) Neighborhood Organizations on record with the state or county as of the beginning of the Application Acceptance Period whose boundaries include the entire proposed Development Site;

(ii) Superintendent of the school district in which the Development Site is located;

(iii) Presiding officer of the board of trustees of the school district in which the Development Site is located;

(iv) Mayor of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);

(v) All elected members of the Governing Body of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);

(vi) Presiding officer of the Governing Body of the county in which the Development Site is located;

(vii) All elected members of the Governing Body of the county in which the Development Site is located; and

(viii) State Senator and State Representative of the districts whose boundaries include the proposed Development Site_;

(C) Contents of Notification.

(i) The notification must include, at a minimum, all of the information described in subclauses (I) - ($\frac{VH_VIII}{I}$) of this clause.

(I) the The Applicant's name, address, an individual contact name and phone number;

(II) the The Development name, address, city, and county;

(III) **a**<u>A</u> statement informing the entity or individual being notified that the Applicant is submitting a request for Housing Tax Credits with the Texas Department of Housing and Community Affairs;

(IV) whether Whether the Development proposes New Construction, Reconstruction, Adaptive Reuse, or Rehabilitation;

(V) the <u>The</u> physical type of Development being proposed (*e.g.* single family homes, duplex, apartments, high-rise, etc.);

(VI) the The approximate total number of Units and approximate total number of Low-Income Units; and

(VII) the The residential density of the Development, i.e., the number of Units per acre-; and

(VIII) Information on how and when an interested party or Neighborhood Organization can provide input to the Department.

(ii) The notification may not contain any false or misleading statements. Without limiting the generality of the foregoing, the notification may not create the impression that the proposed Development will serve a Target Population population exclusively or as a preference unless such targeting or preference is documented in the Application and is in full compliance with all applicable state and federal laws, including state and federal fair housing laws; and

(iii) Notifications or any other communications may not contain any statement that violates Department rules, statute, code, or federal requirements.

(c) Pre-Application Results. Only pre-applications which have satisfied all of the pre-application requirements, including those in §11.9(e)(3) of this chapter, will be eligible for pre-application points. The order and scores of those Developments released on the pre-application Submission Log do not represent a Commitment on the part of the Department or the Board to allocate tax credits to any Development and the Department bears no liability for decisions made by Applicants based on the results of the pre-application Submission Log. Inclusion of a pre-application on the pre-application Submission Log does not ensure that an Applicant will receive points for a pre-application.

§11.9 Competitive HTC Selection Criteria

(a) General Information. This section identifies the scoring criteria used in evaluating and ranking Applications. The criteria identified in subsections (b) - (e) of this section include those items

required under Tex. Gov't Code, Chapter 2306, Code §42, and other criteria established in a manner consistent with Chapter 2306 and Code §42. There is no rounding of numbers in this section for any of the calculations in order to achieve the desired requirement or limitation, unless rounding is explicitly stated as allowed for that particular calculation or criteria. The Application must include one or more maps indicating the location of the Development Site and the related distance to the applicable facility. Distances are to be measured from the nearest boundary of the Development Site to the nearest boundary of the property or easement containing the facility, unless otherwise noted. For the purposes of this section, all measurements will include ingress/egress requirements and any easements regardless of how they will be held. Due to the highly competitive nature of the program, Applicants that elect points where supporting documentation is required but fail to provide any supporting documentation will not be allowed to cure the issue through an Administrative Deficiency. However, Department staff may provide the Applicant an opportunity to explain how they believe the Application, as submitted, meets the requirements for points or otherwise satisfies the requirements.

(b) Criteria promoting development of high quality housing.

(1) Size and Quality of the Units. (§2306.6710(b)(1)(D); §42(m)(1)(C)(iii)) An Application may qualify for up to fifteen (15) points under subparagraphs (A) and (B) of this paragraph.

(A) Unit Sizes (6 points). The Development must meet the minimum requirements identified in this subparagraph to qualify for points. Points for this item will be automatically granted for Applications involving Rehabilitation (excluding Reconstruction), for Developments receiving funding from USDA, or for Supportive Housing Developments without meeting these square footage minimums only if requested in the Self Scoring Form.

(i) five-hundred fifty (550) square feet for an Efficiency Unit;

- (ii) six-hundred fifty (650) square feet for a one Bedroom Unit;
- (iii) eight-hundred fifty (850) square feet for a two Bedroom Unit;
- (iv) one-thousand fifty (1,050) square feet for a three Bedroom Unit; and
- (v) one-thousand two-hundred fifty (1,250) square feet for a four Bedroom Unit.

(B) Unit and Development Features (9 points). Applicants that elect in an Application to provide specific amenity and quality features in every Unit at no extra charge to the tenant will be awarded points based on the point structure provided in §11.101(b)(6)(B) of this title <u>(relating to Unit and Development Construction Features)</u> and as certified to in the Application. The amenities will be required to be identified in the LURA. Rehabilitation Developments will start with a base score of five (5) points and Supportive Housing Developments will start with a base score of five (5) points.

(2) Sponsor Characteristics. (§42(m)(1)(C)(iv)) An Application may qualify to receive either one (1) or two (2) points if it meets one of the following conditions. Any Application that includes a HUB must include a narrative description of the HUB's experience directly related to the housing industry.

(A) The ownership structure contains either a HUB certified by the Texas Comptroller of Public Accounts by the Full Application Delivery Date or it contains a Qualified Nonprofit Organization, provided the Application is under the Nonprofit Set-Aside. The HUB or Qualified Nonprofit Organization must have some combination of ownership interest in <u>each of</u> the General Partner of the Applicant, Cash Flow from operations, and Developer Fee which taken together equal at least 50% and no less than 5% for any category. For example, a HUB or Qualified Nonprofit Organization may have 20 percent ownership interest, 25 percent of the Developer Fee, and 5 percent of Cash Flow from operations. For HUD 202 Rehabilitation projects which prohibit for-profit ownership, ownership will not be required for a HUB, only for Cash Flow and/or Developer Fee; the total ownership percentage must still equal 50%, even if it is only attributable to one of the two categories.

(i) The HUB or Qualified Nonprofit Organization must-also materially participate in the Development and operation of the Development throughout the Compliance Period and must have experience directly related to the housing industry, which may include experience with property management, construction, development, financing, or compliance. Material participation means that the HUB or Qualified Nonprofit is regularly, continuously, and substantially involved in providing services integral to the Development Team; providing services as an independent contractor is not sufficient.

(ii) A Principal of the HUB or Qualified Nonprofit Organization cannot be a Related Party to any other Principal of the Applicant or Developer (excluding another Principal of said HUB or Qualified Nonprofit Organization). (2 points)

(B) The HUB or Nonprofit Organization must be involved with the Development Services or in the provision of on-site tenant services during the Development's Affordability Period. <u>A Principal of the HUB or Nonprofit Organization cannot be a Related Party to or Affiliate, including the spouse of, any other Principal of the Applicant or Developer (excluding another Principal of said HUB or Nonprofit Organization).</u> Selecting this item because of the involvement of a Nonprofit Organization does not make an Application eligible for the Nonprofit Set-Aside. (1 point)

(c) Criteria to serve and support Texans most in need.

(1) Income Levels of $\frac{\text{Tenants}\text{Residents}}{\text{Tenants}}$. (§§2306.111(g)(3)(B) and (E); 2306.6710(b)(1)(C) and (e); and §42(m)(1)(B)(ii)(I)) An Application may qualify for up to sixteen (16) points for rent and income restricting a Development for the entire Affordability Period at the levels identified in subparagraph (A), (B), (C), or (D) of this paragraph.

(A) For any Development located within a non-Rural Area of the Dallas, Fort Worth, Houston, San Antonio, or Austin MSAs that propose to use either the 20-50 or 40-60 election under 42(g)(1)(A) or 42(g)(1)(B) of the Code, respectively:

(i) <u>At least 60% of all Low-Income Units at 50% or less of AMGI in a Supportive Housing</u> <u>Development proposed by a Qualified Nonprofit (16 points);</u>

(ii) At least 40 % of all Low-Income Units at 50% or less of AMGI (1615 points);

(ii<u>i</u>) At least 30% of all Low-Income Units at 50% or less of AMGI (<u>14 points13points</u>); or

(iiiv) At least 20-% of all Low-Income Units at 50 % or less of AMGI (1211 points).

(B) For Developments proposed to be located in areas other than those listed in subparagraph (A) of this paragraph and that propose to use either the 20-50 or 40-60 election under 42(g)(1)(A) or 42(g)(1)(B) of the Code, respectively:

(i) <u>At least 60% of all Low-Income Units at 50% or less of AMGI in a Supportive Housing</u> <u>Development proposed by a Qualified Nonprofit (16 points);</u>

(iii) At least 20% of all Low-Income Units at 50% or less of AMGI (16 points);

() at least 15% of all Low-Income Units at 50% or less of AMGI (14 points); or

(iii) At least 15% of all Low-Income Units at 50% or less of AMGI (13 points); or

(iv) At least 10% of all Low-Income Units at 50% or less of AMGI (1211 points).

(C) For any Development located within a non-Rural Area of the Dallas, Fort Worth, Houston, San Antonio, or Austin MSAs that propose to use the Average Income election under 42(g)(1)(C) of the Code:

(i) the The Average Income and Rent restriction for all Low-Income Units for the proposed Development will be 54% or lower (1615 points);

(ii) the The Average Income and Rent restriction for all Low-Income Units for the proposed Development will be 55% or lower (1413 points); or

(iii) the The average income and Rent restriction for all Low-Income Units for the proposed Development will be 56% or lower ($\frac{1211}{211}$ points).

(D) For Developments proposed to be located in the areas other than those listed in subparagraph (C) of this paragraph and that propose to use the Average Income election under 42(g)(1)(C) of the Code:

(i) the The Average Income and Rent restriction for all Low-Income Units for the proposed Development will be 55% or lower (1615 points);

(ii) the The Average Income and Rent restriction for all Low-Income Units for the proposed Development will be 56% or lower (1413 points); or

(iii) <u>the The</u> Average Income <u>and Rent restriction for all Low-Income Units</u> for the proposed Development will be 57% or lower (<u>1211</u> points).

(2) Rent Levels of Tenants. (\$2306.6710(b)(1)(E)) An Application may qualify to receive up to thirteen (13) points for rent and income restricting a Development for the entire Affordability Period. These If selecting points from \$11.9(c)(1)(A) or \$11.9(c)(1)(B), these levels are in addition to those committed under paragraph (1) of this subsection. If selecting points from \$11.9(c)(1)(C) or \$11.9(c)(1)(D), these levels are included in the income average calculation under paragraph (1) of this subsection. These units must be maintained at this rent level throughout the Affordability Period regardless of the Average Income calculation.

(A) At least 20% of all Low-Income Units at 30% or less of AMGI for Supportive Housing Developments proposed by a Qualified Nonprofit (13 points);

(B) At least 10% of all Low-Income Units at 30% or less of AMGI or, for a Development located in a Rural Area, 7.5% of all Low-Income Units at 30% or less of AMGI (11 points); or

(C) At least 5% of all Low-Income Units at 30% or less of AMGI (7 points).

(3) Resident Services. (§2306.6710(b)(1)(G) and §2306.6725(a)(1)) A Supportive Housing Development proposed by a Qualified Nonprofit may qualify to receive up to eleven (11) points and all other Developments may receive up to ten (10) points.

(A) By electing points, the The Applicant certifies that the Development will provide a combination of supportive services, which are listed in §11.101(b)(7) of this chapter, appropriate for the proposed residents and that there is adequate space for the intended services. The provision and complete list of supportive services will be included in the LURA. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application will remain the same. No fees may be charged to the residents for any of the services. Services must be provided on-site or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one scoring item. (10 points for Supportive Housing, 9 points for all other Development(10 points)

(B) The Applicant certifies that the Development will contact local nonprofit and governmental providers of services that would support the health and well-being of the Department's residents, and will make Development community space available to them on a regularly-scheduled basis to provide outreach services and education to the tenants. Applicants may contact service providers on the Department list, or contact other providers that serve the general area in which the Development is located. (1 point)

(4) Opportunity Index. The Department may refer to locations qualifying for points under this scoring item as high opportunity areas in some materials. A Development is eligible for a maximum of seven (7) opportunity index points.

(A) A proposed Development is eligible for up to two (2) opportunity index points if it is located entirely within a census tract with a poverty rate of less than the greater of 20% or the median poverty rate for the region and meets the requirements in (i) or (ii) of this subparagraph.

(i) The Development Site is located entirely within a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region and a median household income rate in the two highest quartiles within the uniform service region. (2 points)

(ii) The Development Site is located entirely within a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region, with a median household income in the third quartile within the region, and is contiguous to a census tract in the first or second quartile, without physical barriers such as <u>(but not</u>)

<u>limited to</u>) highways or rivers between, and the Development Site is no more than 2 miles from the boundary between the census tracts. For purposes of this scoring item, a highway is a limited-access road with a speed limit of 50 miles per hour or more; and, (1 point)

(B) An Application that meets <u>one of</u> the foregoing criteria <u>in subparagraph</u> (A) of this <u>paragraph</u> may qualify for additional points for any one or more of the following factors. Each amenity may be used only once for scoring purposes, unless allowed within the scoring item, regardless of the number of categories it fits. All members of the Applicant or Affiliates cannot have had an ownership position in the amenity or served on the board or staff of a nonprofit that owned or managed that amenity within the year preceding the Pre-Application Final Delivery Date. All amenities must be operational or have started Site Work at the Pre-Application Final Delivery Date. Any age restrictions associated with an amenity must positively correspond to the Target Population of the proposed Development.

(i) For Developments located in an Urban Area (other than Applicants competing in the USDA Set-Aside), an Application may qualify to receive points through a combination of requirements in subclauses (I) through (XIV) of this clause.

(I) The Development Site is located on a route, with sidewalks for pedestrians, that is 1/2 mile or less from the entrance to a public park with a playground or from a multiuse hike-bike trail. The entirety of the sidewalk route must consist of smooth hard surfaces, curb ramps, and marked pedestrian crossings when traversing a street. (1 point)

(II) The Development Site is located on a route, with sidewalks for pedestrians, that is within a specified distance from the entrance of a public transportation stop or station with a route schedule that provides regular service to employment and basic services. The entirety of the sidewalk route must consist of smooth hard surfaces, curb ramps, and marked pedestrian crossings when traversing a street. Only one of the following may be selected.

(-a-) the The Development Site is 1/2 mile or less from the stop or station and the scheduled service is beyond 8 a.m. to 5 p.m., plus weekend service (both Saturday and Sunday). (1 point); or

(-b-) the The Development Site is 1/2 mile or less from the stop or station and the scheduled service arrives every 15 minutes, on average, between 6 a.m. and 8 p.m., every day of the week. (2 points)

(III) The Development Site is located within 1 mile of a full-service grocery store. A full service grocery store is a store of sufficient size and volume to provide for the needs of the surrounding neighborhood including the proposed Development; and the space of the store is dedicated primarily to offering a wide variety of fresh, frozen, canned and prepared foods, including but not limited to a variety of fresh meats, poultry, and seafood; a wide selection of fresh produce including a selection of different fruits and vegetables; a selection of baked goods and a wide

array of dairy products including cheeses, and a wide variety of household goods, paper goods and toiletry items. (1 point)

(IV) The Development Site is located within 1 mile of a pharmacy. For the purposes of this menu item only, the pharmacy may be claimed if it is within the same building as a grocery store. (1 point)

(V) The Development Site is located within 3 miles of a health-related facility, such as a full service hospital, community health center, minor emergency center, emergency room or urgent care facility. Physician offices and physician specialty offices are not considered in this category. (1 point)

(VI) The Development Site is within 2 miles of a center that is licensed by the Department of Family and Protective Services (DFPS) specifically to provide a school-age program or to provide a child care program for infants, toddlers, and/or pre-kindergarten. The Application must include evidence from DFPS that the center meets the above requirements. (1 point)

(VII) The Development Site is located in a census tract with a property crime rate of 26 per 1,000 persons or less as defined by neighborhoodscout.com, or local law enforcement data sources. If employing the latter source, the formula for determining the crime rate will include only data relevant to the census tract in which the Development Site is located. (1 point)

(VIII) The development Site is located within 1 mile of a public library that has indoor meeting space, physical books that can be checked out and that are of a general and wide-ranging subject matter, computers and internet access, and that is open 50 hours or more per week. The library must not be age or subject-restricted and must be at least partially funded with government funding. (1 point)

(IX) The Development Site is located within 5 miles of an accredited university or community college, as confirmed by the Texas Higher Education Coordination Board (THECB). To be considered a university for these purposes, the provider of higher education must have the authority to confer bachelor's degrees. Two-year colleges are considered community colleges, and to be considered for these purposes must confer at least associate's degrees. The university or community college must have a physical campus, where classes are regularly held for students pursuing their degrees, within the required distance; online-only institutions do not qualify under this item. (1 point)

(X) Development Site is located in a census tract where the percentage of adults age 25 and older with an Associate's Degree or higher is 27% or higher as tabulated by the most recent American Community Survey 5-year Estimate. (1 point)

(XI) Development Site is within 1 mile of an indoor recreation facility available to the public. Examples <u>includea</u><u>include</u>, <u>but are not limited to</u>, <u>a</u> gym, health club, a bowling alley, a theater, or a municipal or county community center. (1 point)

(XII) Development Site is within 1 mile of an outdoor, dedicated, and permanent recreation facility available to the public. Examples include, <u>but are not limited to</u>, swimming pools or splash pads, tennis courts, golf courses, softball fields, or basketball courts. (1 point)

(XIII) Development Site is within 1 mile of community, civic or service organizations that provide regular and recurring substantive services, beyond exclusively congregational or member-affiliated activities, available to the entire community (this could include religious organizations or organizations like the Kiwanis or Rotary Club as long as they make services available without regard to affiliation or membership). (1 point)

(XIV) Development Site is in the current service area of Meals on Wheels or similar nonprofit service that provides regular visits and meals to individuals in their homes. (1 point)

(XV) Development Site is located in the attendance zone of a general enrollment public school rated A or B by TEA for the past academic year. (1 point)

(ii) For Developments located in a Rural Area and any Application qualifying under the USDA set-aside, an Application may qualify to receive points through a combination of requirements in subclauses (I) through (XIII) of this clause.

(I) The Development Site is located within 4 miles of a full-service grocery store. A full service grocery store is a store of sufficient size and volume to provide for the needs of the surrounding neighborhood including the proposed Development; and the space of the store is dedicated primarily to offering a wide variety of fresh, frozen, canned and prepared foods, including but not limited to a variety of fresh meats, poultry, and seafood; a wide selection of fresh produce including a selection of different fruits and vegetables; a selection of baked goods and a wide array of dairy products including cheeses, and a wide variety of household goods, paper goods and toiletry items. (1 point)

(II) The Development Site is located within 4 miles of a pharmacy. For the purposes of this menu item only, the pharmacy may be claimed if it is within the same building as a grocery store. (1 point)

(III) The Development Site is located within 4 miles of health-related facility, such as a full service hospital, community health center, minor emergency center, or a doctor with a general practice that takes walk-in patients. Physician specialty offices are not considered in this category. (1 point)

(IV) The Development Site is located within 4 miles of a center that is licensed by the Department of Family and Protective Services (DFPS) specifically to provide a school-age program or to provide a child care program for infants, toddlers, and/or pre-kindergarten. The Application must include evidence from DFPS that the center meets the above requirements. (1 point)

(V) The Development Site is located in a census tract with a property crime rate 26 per 1,000 or less, as defined by neighborhoodscout.com, or local law enforcement data sources. If employing the latter source, the formula for determining the crime rate will include only data relevant to the census tract in which the Development Site is located. (1 point)

(VI) The Development Site is located within 4 miles of a public library that has indoor meeting space, physical books that can be checked out and that are of a general and wide-ranging subject matter, computers and internet access, and that is open 40 hours or more per week. The library must not be age or subject-restricted and must be at least partially funded with government funding. (1 point)

(VII) The Development Site is located within 4 miles of a public park with a playground. (1 point)

(VIII) The Development Site is located within 15 miles of an accredited university or community college, as confirmed by the Texas Higher Education Coordination Board (THECB). To be considered a university for these purposes, the provider of higher education must have the authority to confer bachelor's degrees. Two-year colleges are considered community colleges, and to be considered for these purposes must confer at least associate's degrees. The university or community college must have a physical campus, where classes are regularly held for students pursuing their degrees, within the required distance; online-only institutions do not qualify under this item. (1 point)

(IX) Development Site is located in a census tract where the percentage of adults age 25 and older with an Associate's Degree or higher is 27% or higher. (1 point)

(X) Development Site is within 3 miles of an indoor recreation facility available to the public. Examples include, <u>but are not limited to</u>, a gym, health club, a bowling alley, a theater, or a municipal or county community center. (1 point)

(XI) Development Site is within 3 miles of an outdoor, dedicated, and permanent recreation facility available to the public. Examples include, <u>but are not limited to</u>, swimming pools or splash pads, tennis courts, golf courses, softball fields, or basketball courts. (1 point)

(XII) Development Site is within 3 miles of community, civic or service organizations that provide regular and recurring substantive services, beyond exclusively congregational or member-affiliated activities, available to the entire community (this could include religious organizations or organizations like the Kiwanis or Rotary Club as long as they make services available without regard to affiliation or membership). (1 point)

(XIII) Development Site is in the current service area of Meals on Wheels or similar nonprofit service that provides regular visits and meals to individuals in their homes. (1 point)

(XIV) Development Site is located in the attendance zone of a general enrollment public school rated A or B by TEA for the past academic year. (1 point)

(5) Underserved Area. (\S 2306.6725(b)(2); 2306.127(3), 42(m)(1)(C)(ii)) An Application may qualify to receive up to five (5) points if the Development Site is located in one of meets the areascriteria described in subparagraphs (A) - (GH) of this paragraph. and the Application contains evidence substantiating qualification for the points. Points are not cumulative and an Applicant is therefore limited to selecting one subparagraph. If an Application qualifies for points under paragraph §11.9(c)(4) of this subsection, then the Application is not eligible for points under subparagraphs (A). (B), and (F) of this paragraph. and (B) of this paragraph. Years are measured by deducting the most recent year of award on the property inventory of the Site Demographic Characteristics Report from January 1 of the current year. The Application must include evidence that the Development Site meets the requirements.

(A) The Development Site is located wholly or partially within the boundaries of a colonia as such boundaries are determined by the Office of the Attorney General and within 150 miles of the Rio Grande River border. For purposes of this scoring item, the colonia must lack water, wastewater, or electricity provided to all residents of the colonia at a level commensurate with the quality and quantity expected of a municipality and the proposed Development must make available any such missing water, wastewater, and electricity supply infrastructure physically within the borders of the colonia in a manner that would enable the current dwellings within the colonia to connect to such infrastructure (2 points);

(B) The Development Site is located entirely within the boundaries of an Economically Distressed Area (1 point); that has been awarded funds by the Texas Water Development Board in the previous five years ending at the beginning of the Application Acceptance Period (1 point);

(C) The Development Site is located entirely within a census tract that does not have another Development that was awarded less than 30 years ago according to the Department's property inventory tab of the Site Demographic Characteristics Report (4 points);

(D) For areas not scoring points for <u>subparagraph</u> (C) above, the Development Site is located entirely within a census tract that does not have another Development <u>that was</u> <u>awarded less than 20 years ago according to the Department's property inventory tab of the Site Demographic Characteristics Report (3 points);</u>

(E) For areas not scoring points for subparagraphs (C) or (D) of this paragraph, the Development Site is located entirely within a census tract that does not have another Development that was awarded less than 15 years ago according to the Department's property inventory tab of the Site Demographic Characteristics Report (2 points);

(EF) The Development Site is located entirely within a census tract whose boundaries are wholly within an incorporated area and the census tract itself and all of its contiguous census tracts do not have another Development that was awarded less than 15 years ago according to the Department's property inventory tab of the Site Demographic

Characteristics Report. This item will apply in Places with a population of 100,000 or more, and will not apply in the At-Risk Set-Aside. (5 points)

(FG) The Development Site is located entirely within a census tract thatwhere, according to American Community Survey 5-year Estimates, has both a the population share of persons below 200% federal poverty rate greater than 20% level decreased by 10% or more and a median gross rent for a two bedroom unit greater than its county's 2016 HUD Fair Market Rent for a two bedroom unitwhere the total number of persons at or above 200% federal poverty level hads increased by 15% or more between the years 2010 and 2017. This measure is referred to as the Affordable Housing Needs Indicator in the Site Demographic Characteristics Report. (2 points). (3 points); or

(GH) An At-risk or USDA Development placed in service <u>3025</u> or more years ago, that is still occupied, and that has not yet received federal funding, or LIHTC equity, for the purposes of Rehabilitation for the Development. If the Application involves multiple sites, the age of all sites will be averaged for the purposes of this scoring item. (3 points).

(6) <u>Tenant PopulationsResidents</u> with Special Housing Needs. (§42(m)(1)(C)(v)) An Application may qualify to receive two (2) points by serving <u>TenantsResidents</u> with Special Housing Needs. Points will be awarded as described in subparagraphs (B) through (D) of this paragraph. Subparagraphs (B) and (C) pertain to the requirements of the Section 811 Project Rental Assistance Program (("Section 811 PRA Program)") (10 TAC Chapter 8).

(A) If selecting points under this scoring item, Applicants must first attempt to meet the requirements in subparagraph (B) of this paragraph.). If the Applicant is not able to meet the requirements in subparagraph (C), unless the Applicant must attempt to meet the requirements in subparagraph (C), unless the Applicant can establish its lack of legal authority to commit Section 811 PRA Program Units in a Development. To establish its lack of legal authority where an Applicant Owns or Controls an Existing Development that otherwise meets the criteria established by 10 TAC 1.9(C)(G)(B) of this chapter, the Application must include the information as described in clauses (i) — (iii) of this subparagraph in the Section 811 PRA Program Supplement Packet. The Department may request additional information from the Applicant as needed.

(i) Evidence that a Third Party has a legal right to withhold approval for a Property to commit voluntarily to the Section 811 PRA Program. The specific legally enforceable agreement or other instrument that gives the Third Party, such as a lender, the unambiguous legal right to withhold consent must be provided;

(ii) Documentation that the Third Party, such as a lender, that has the legal right to withhold a required consent was asked to give their consent; and AND

(iii) Documentation that the Third Party possessing the legal right to withhold a required consent has provided notice of their decision not to provide a required consent.

(B) An Applicant or Affiliate that Owns or Controls an Existing Development that is eligible to participate in the Section 811 PRA Program, as evidenced by its appearance on the List of Qualified Existing Developments referenced in 10 TAC §8.5, must do so. In order to qualify

for points, the Existing Development must commit to the Section 811 PRA Program at minimum 10 Section 811 PRA Program Units, unless the Integrated Housing Rule, 10 TAC §1.15, or the 811 Project Rental Assistance Rule (("811 Rule),"), 10 TAC Chapter 8, limits the Existing Development to fewer than 10 Section 811 PRA Program Units. The same Section 811 PRA Program Units cannot be used to qualify for points in more than one HTC Application. The Applicant or Affiliate will comply with the requirements of 10 TAC Chapter 8. (2 points)

(C) An Applicant or Affiliate that does not meet the Existing Development requirements of 10 TAC Chapter 8 but still meets the requirements of 10 TAC §8.3 is eligible by committing Units in the proposed Development to participate in the Department''s Section 811 PRA Program. In order to be eligible for points, Applicants must commit at least 10 Section 811 PRA Program Units in the proposed Development for participation in the Section 811 PRA Program unless the Integrated Housing Rule, 10 TAC §1.15, or the 811 Rule, 10 TAC Chapter 8, limits the Development to fewer than 10 Section 811 PRA Program Units. The same Section 811 PRA Program Units cannot be used to qualify for points in more than one HTC Application. The Applicant will comply with the requirements of 10 TAC Chapter 8. (2 points)

(D)) Applications that are unable to meet the requirements of subparagraphs (B) or (C) of this paragraph may qualify by meeting the requirements of this subparagraph, (D). In order to qualify for points, Applicants must agree to set aside at least The Development must commit at least 5% of the total Units for to Persons with Special Housing Needs. The Units identified for this scoring item may not be the same Units identified previously for the Section 811 PRA Program. For purposes of this subparagraph, Persons with Special Housing Needs is defined as households household where one individual has or more individuals have alcohol and/or drug addictions, is a Colonia resident, Persons Person with **Disabilities**, a Disability, has Violence Against Women Act Protections (domestic violence, dating violence, sexual assault, and stalking), persons with HIV/AIDS, homeless populations, veterans, wounded warriors (as defined by the Caring for Wounded Warriors Act of 2008), and farmworkers. Throughout the Compliance Period, unless otherwise permitted by the Department, the Development Owner agrees to specifically market Units to Persons with Special Housing Needs. In addition, the Department will require an initial minimum twelve-month period during which Units must either be occupied by Persons with Special Housing Needs or held vacant, unless the Units receive HOME funds from any source. After the initial twelve-month period, the Development Owner will no longer be required to hold Units vacant for Persons with Special Housing Needs, but will be required to continue to specifically market Units to Persons with Special Housing Needs. (2 points)

(7) Proximity to Job Areas. An Application may qualify to receive up to six (6) points if the Development Site is located in one of the areas described in subparagraphs (A) or (B) of this paragraph, and the Application contains evidence substantiating qualification for the points. Points are mutually exclusive and, therefore, an Applicant may only select points from subparagraph (A) or (B).

(A) Proximity to the Urban Core. A Development in a Place, as defined by the US Census Bureau, with a population over 200,000 may qualify for points under this item. The

Development Site must be located within 4 miles of the main municipal government administration building if the population of the Place is 750,000 or more, or within 2 miles of the main municipal government administration building if the population of the city is 200,000 - 749,999. The main municipal government administration building will be determined by the location of regularly scheduled municipal Governing Body meetings. Distances are measured from the nearest property boundaries, not inclusive of non-contiguous parking areas. This scoring item will not apply to Applications under the At-Risk Set-Aside. (56 points)

(B) Proximity to Jobs. A Development may qualify for points under this subparagraph if it meets one of the criteria in clauses (i) through (vi) of this subparagraph. The data used will be based solely on that available through US Census' OnTheMap tool. Jobs counted are limited to those based on the work area, all workers, and all primary jobs. Only the most recently available data set (as of October 1) will be used. The Development will use either OnTheMap's selection tool to identify a point within the Development Site or OnTheMap's function to import GPS coordinates that fall within the Development Site. This scoring item will not apply to Applications under the At-Risk Set-Aside.

(i) The Development is located within 1 mile of 16,500 jobs. (6 points)

(ii) The Development is located within 1 mile of 13,500 jobs. (5 points)

(iii) The Development is located within 1 mile of 10,500 jobs. (4 points)

(iv) The Development is located within 1 mile of 7,500 jobs. (3 points)

(v) The Development is located within 1 mile of 4,500 jobs. (2 points)

(vi) The Development is located within 1 mile of 2,000 jobs. (1 point)

(8) Readiness to proceed in disaster impacted counties. An Application for a proposed Development that is located in a county declared by the Federal Emergency Management Agency to be eligible for individual assistance within two-three years preceding December 1, 20189, that provides a certification that they will close all financing and fully execute the construction contract on or before the last business day of November- or as otherwise permitted under subparagraph (C) of this paragraph. For the purposes of this paragraph only, an Application may be designated as "priority." (5 points)

(A) Applications must include evidence that appropriate zoning will be in place at award and acknowledgement from all lenders and the syndicator of the required closing date.

(B) 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 November deadline will result in penalty under 10 TAC §11.9(f), as determined solely by the Board.

(C) Non priority Applications seeking points under this paragraph will receive an extension of the November deadline equivalent to the period of time they were in nonnot indicated as a priority status Application, if they ultimately receive an award. The period of non-priority status the extension begins on the date the Department publishes a list <u>or log showing an Application without a priority designation, and ends on the earlier</u> of the date a log is not inposted that shows the Application with a priority statusdesignation, or the date of award.

(d) Criteria promoting community support and engagement.

(1) Local Government Support. (§2306.6710(b)(1)(B)) An Application may qualify for up to seventeen (17) points for a resolution or resolutions voted on and adopted by the bodies reflected in subparagraphs (A) - (C) of this paragraph, as applicable. The resolution(s) must be dated prior to Final Input from Elected Officials Delivery Date and must be submitted to the Department no later than the Final Input from Elected Officials Delivery Date as identified in §11.2(a) of this chapter, relating to Competitive HTC Deadlines. Such resolution(s) must specifically identify the Development whether by legal description, address, Development name, Application number or other verifiable method. A municipality or county should consult its own staff and legal counsel as to whether its handling of their actions regarding such resolution(s) are consistent with Fair Housing laws as they may apply, including, as applicable, consistency with any Fair Housing Activity Statement-Texas (FHAST) form on file, any current Analysis of Impediments to Fair Housing Choice, or any current plans such as one year action plans or five year consolidated plans for HUD block grant funds, such as HOME or CDBG funds. Resolutions received by the Department setting forth that the municipality and/or county objects to or opposes the Application or Development will result in zero points awarded to the Application for that Governing Body. Such resolutions will be added to the Application posted on the Department's website. Once a resolution is submitted to the Department it may not be changed or withdrawn. For an Application with a proposed Development Site that, at the time of the initial filing of the Application, is:

(A) Within a municipality, the Application will receive:

(i) <u>seventeenSeventeen</u> (17) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development; or

(ii) <u>fourteenFourteen</u> (14) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development.

(B) Within the extraterritorial jurisdiction of a municipality, the Application may receive points under clause (i) or (ii) of this subparagraph and under clause (iii) or (iv) of this subparagraph:

(i) <u>eightEight</u> and one-half (8.5) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development; or

(ii) <u>sevenSeven</u> (7) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development; and

(iii) <u>eightEight</u> and one-half (8.5) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development; or

(iv) <u>sevenSeven</u> (7) points for a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development.

(C) Within a county and not within a municipality or the extraterritorial jurisdiction of a municipality:

(i) <u>seventeenSeventeen</u> (17) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development; or

(ii) <u>fourteenFourteen</u> (14) points for a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development.

(2) Commitment of Development Funding by Local Political Subdivision. (§2306.6725(a)(5)) An Application may receive one (1) point for a commitment<u>The source</u> of <u>Developmentthe</u> funding from the city (if located in a city) or county in which cannot be the <u>Development Site</u> is located. Applicant, <u>Developer</u>, or an Affiliate of the <u>Applicant</u>. The commitment of Development funding must be reflected in the Application as a financial benefit to the Development, i.e. reported as a source of funds on the Sources and Uses Form and/or reflected in a lower cost in the Development Cost Schedule, such as notation of a reduction in building permits and related costs. Documentation must include a letter from an official of the municipality, county, or other instrumentality with jurisdiction over the proposed Development stating they will provide a loan, grant, reduced fees or contribution of other value that equals \$500 or more for Applications located in Urban subregions or \$250 or more for Applications located in Rural subregions for the benefit of the Development. The letter must describe the value of the contribution, the form of the contribution, e.g. reduced fees or gap funding, and any caveats to delivering the contribution. Once a letter is submitted to the Department it may not be changed or withdrawn. (<u>1 point</u>)

(3) Declared Disaster Area. (§2306.6710(b)(1)(H)) An Application may receive ten (10) points if at the time of Application submission or at any time within the two-year period preceding the date of submission, the Development Site is located in an area declared to be a disaster area under the Tex. Gov't Code §418.014.

(4) Quantifiable Community Participation. (§2306.6710(b)(1)(I); §2306.6725(a)(2)) An Application may qualify for up to nine (9) points for written statements from a Neighborhood Organization. In order for the statement to qualify for review, the Neighborhood Organization must have been in current, valid existence with boundaries that contain the entire Development Site 30 days prior to the beginning of the Application Acceptance Period. In addition, the Neighborhood Organization must be on record with the Secretary of State or county in which the Development Site is located as of the beginning of the Application Acceptance Period. Once a letter is submitted to the Department it may not be changed or

withdrawn. The written statement must meet all of the requirements in subparagraph (A) of this paragraph. Letters received by the Department setting forth that the eligible Neighborhood Organization objects to or opposes the Application or Development will be added to the Application posted on the Department's website. Written statements from the Neighborhood Organizations included in an Application and not received by the Department from the Neighborhood Organization will not be scored but will be counted as public comment.

(A) Statement Requirements. If an organization cannot make the following affirmative certifications or statements then the organization will not be considered a Neighborhood Organization for purposes of this paragraph.

(i) the Neighborhood Organization's name, a written description and map of the organization's boundaries, signatures and contact information (phone, email and mailing address) of at least two individual members with authority to sign on behalf of the organization;

(ii) certification that the boundaries of the Neighborhood Organization contain the entire Development Site and that the Neighborhood Organization meets the definition pursuant to Tex. Gov't Code §2306.004(23-a) and includes at least two separate residential households;

(iii) certification that no person required to be listed in accordance with Tex. Gov't Code §2306.6707 with respect to the Development to which the Application requiring their listing relates participated in any way in the deliberations of the Neighborhood Organization, including any votes taken;

(iv) certification that at least 80% of the current membership of the Neighborhood Organization consists of homeowners and/or tenants living within the boundaries of the Neighborhood Organization; and

(v) an explicit expression of support, opposition, or neutrality. Any expression of opposition must be accompanied with at least one reason forming the basis of that opposition. A Neighborhood Organization should be prepared to provide additional information with regard to opposition.

(B) Technical Assistance. For purposes of this paragraph, if and only if there is no Neighborhood Organization already in existence or on record, the Applicant, Development Owner, or Developer is allowed to provide technical assistance in the creation of and/or placing on record of a Neighborhood Organization. Technical assistance is limited to:

(i) the use of a facsimile, copy machine/copying, email and accommodations at public meetings;

(ii) assistance in completing the QCP Neighborhood Information Packet, providing boundary maps and assisting in the Administrative Deficiency process; and

(iii) presentation of information and response to questions at duly held meetings where such matter is considered; and

(iv) notification regarding deadlines for submission of responses to Administrative Deficiencies.

(C) Point Values for Quantifiable Community Participation. An Application may receive points based on the values in clauses (i) - (vi) of this subparagraph. Points will not be cumulative. Where more than one written statement is received for an Application, the average of all statements received in accordance with this subparagraph will be assessed and awarded.

(i) nine (9) points for explicit support from a Neighborhood Organization that, during at least one of the three prior Application Rounds, provided a written statement that qualified as Quantifiable Community Participation opposing any Competitive Housing Tax Credit Application and whose boundaries remain unchanged;

(ii) eight (8) points for explicitly stated support from a Neighborhood Organization;

(iii) six (6) points for explicit neutrality from a Neighborhood Organization that, during at least one of the three prior Application Rounds provided a written statement, that qualified as Quantifiable Community Participation opposing any Competitive Housing Tax Credit Application and whose boundaries remain unchanged;

(iv) four (4) points for statements of neutrality from a Neighborhood Organization or statements not explicitly stating support or opposition, or an existing Neighborhood Organization provides no statement of either support, opposition or neutrality, which will be viewed as the equivalent of neutrality or lack of objection;

(v) four (4) points for areas where no Neighborhood Organization is in existence, equating to neutrality or lack of objection, or where the Neighborhood Organization did not meet the explicit requirements of this section; or

(vi) zero (0) points for statements of opposition meeting the requirements of this subsection.

(D) Challenges to opposition. Any written statement from a Neighborhood Organization expressing opposition to an Application may be challenged if it is contrary to findings or determinations, including zoning determinations, of a municipality, county, school district, or other local Governmental Entity having jurisdiction or oversight over the finding or determination. If any such statement is challenged, the challenger must declare the basis for the challenge and submit such challenge by the Challenges to Neighborhood Organization Opposition Delivery Date May 1, 20192020. The Neighborhood Organization expressing opposition will be given seven (7) calendar days to provide any information related to the issue of whether their assertions are contrary to the findings or determinations of a local Governmental Entity. All such materials and the analysis of the Department's staff will be provided to a fact finder, chosen by the Department, for review and a determinations as to the accuracy of the statements presented, but only with regard to whether the statements are contrary to findings or determinations of a local Governmental are contrary to findings or determinations of a local Governmental Entity. The fact finder's determination will be final and may not be waived

or appealed. Should the Neighborhood Organization's Organization's statements be found to be contrary to findings or determinations of a local Government Entity, or should the Neighborhood Organization not respond in seven (7)-calendar days, then the Application shall be eligible for four (4) points under subparagraph (C)(v) of this subsection.

(5) Community Support from State Representative. (§2306.6710(b)(1)(J); §2306.6725(a)(2; §2306.6710(g)) Applications may receive up to eight (8) points for express support, zero points for neutral statements, or have deducted up to eight (8) points for this scoring item.express opposition.

(A) Letter from a State Representative. To qualify under this paragraphsubparagraph, letters must be on the State Representative's letterhead, be signed by the State Representative, identify the specific Development and express whether the letter conveys support, neutrality, or opposition. This documentation will be accepted with the Application or through delivery to the Department from the Applicant or the State Representative and must be submitted no later than the Final Input from Elected Officials Delivery Date as identified in §11.2(a) of this chapter, relating to Competitive HTC Deadlines. Letters received by the Department setting forth that the State Representative objects to or opposes the Application or Development will be added to the Application posted on the Department's website. Once a letter is submitted to the Department it may not be changed or withdrawn. Therefore, it is encouraged that letters not be submitted well in advance of the specified deadline in order to facilitate consideration of all constituent comment and other relevant input on the proposed Development. State Representatives to be considered are those in office at the time the letter is submitted and whose district boundaries include the Development Site. If the office is vacant, the Application will be considered to have received a neutral letter. Neutral letters, letters of opposition, or letters that do not specifically refer to the Development will receive zero (0) points. A letter from a state representative expressing the level of community support may be expressly based on the representative's understanding or assessments of indications of support by others, such as local government officials, constituents, and/or other applicable representatives of the community. In providing this letter, pursuant to Tex. Gov't Code §2306.6710(b)(1)(J), a representative may either express their position of support, opposition, or neutrality regarding the Application, which shall be presumed to reflect their assessment of the views of their constituents, or they may provide a statement of the support, opposition, or neutrality of their constituents regarding the Application without expressing their personal views on the matter.

(B) No Letter from a State Representative. To qualify under this subparagraph, no written statement can be received for an Application from the State Representative who represents the geographic area in which the proposed Development is located, unless the sole content of the written statement is to convey to the Department that no written statement of support, neutrality, or opposition will be provided by the State Representative for a particular Development. Points available under this subparagraph will be based on how an Application scores under §11.9(d)(1), of this section, relating to Local Government Support. For an Application with a proposed Development Site that, at the time of the initial filing of the Application, is: (i) Within a municipality, the Application will receive:

(I) Eight (8) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development; or

(II) Zero (0) points for no resolution or a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development; or

(III) Negative eight (-8) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality opposes the Application or Development.

(ii) Within the extraterritorial jurisdiction of a municipality, the Application will receive points under subclause (I) or (II) or (III) of this subparagraph and under subclause (IV) or (V) or (VI) of this subparagraph:

(I) Four (4) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development; or

(II) Zero (0) points for no resolution or a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development; or

(III) Negative four (-4) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality opposes the Application or Development; and

(IV) Four (4) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development; or

(V) Zero (0) points for no resolution or a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development; or

(VI) Negative four (-4) points for a resolution from the Governing Body of that county expressly setting forth that the county opposes the Application or Development.

(iii) Within a county and not within a municipality or the extraterritorial jurisdiction of a municipality:

(I) Eight (8) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development; or

(II) Zero (0) points for no resolution or a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development.

(III) Negative eight (-8) points for a resolution from the Governing Body of that county expressly setting forth that the county opposes the Application or Development.

(6) Input from Community Organizations. (§2306.6725(a)(2)) Where, at the time of Application, the Development Site does not fall within the boundaries of any qualifying Neighborhood Organization, or there is a qualifying Neighborhood Organization that has given no statement or a statement of neutrality (as described in clauses (4)(C)(iv) or (v) of this subsection), then, in order to ascertain if there is community support, an Application may receive up to four (4) points for letters that qualify for points under subparagraphs (A), (B), and/or (C) of this paragraph. No more than four (4) points will be awarded under this point item under any circumstances. All letters of support must be submitted within the Application. Once a letter is submitted to the Department it may not be changed or withdrawn. Should an Applicant elect this option and the Application receives letters in opposition, then one (1) point will be subtracted from the score under this paragraph for each letter in opposition, provided that the letter is from an organization that would otherwise qualify under this paragraph. However, at no time will the Application receive a score lower than zero (0) for this item. Letters received by the Department setting forth that the community organization objects to or opposes the Application or Development will be added to the Application posted on the Department's website.

(A) An Application may receive two (2) points for each letter of support submitted from a community or civic organization that serves the community in which the Development Site is located. Letters of support must identify the specific Development and must state support of the specific Development at the proposed location. To qualify, the organization must be qualified as tax exempt and have as a primary (not ancillary or secondary) purpose the overall betterment, development, or improvement of the community as a whole or of a major aspect of the community such as improvement of schools, fire protection, law enforcement, city-wide transit, flood mitigation, or the like. The Applicant must provide evidence that the community or civic organization remains in good standing by providing evidence from a federal or state government database confirming that the exempt status continues. An Organization must also provide evidence of its participation in the community in which the Development Site is located including, but not limited to, a listing of services and/or members, brochures, annual reports, etc. Letters of support from organizations that cannot provide reasonable evidence that they are active in the area that includes the location of the Development Site will not be awarded points. For purposes of this subparagraph, community and civic organizations do not include neighborhood organizations, governmental entities (excluding Special Management Districts as described in subparagraph C), or taxing entities.

(B) An Application may receive two (2) points for a letter of support from a property owners association created for a master planned community whose boundaries include

the Development Site and that does not meet the requirements of a Neighborhood Organization for the purpose of awarding points under paragraph (4) of this subsection.

(C) An Application may receive two (2) points for a letter of support from a Special Management District<u>formed under Tex. Local Gov't Code ch. 375</u> whose boundaries, as of the Full Application Delivery Date as identified in §11.2(a) of this chapter, (relating to <u>Competitive HTC Deadlines</u>, Program Calendar for Competitive Housing Tax Credits), include the Development Site.

(D) Input that evidences unlawful discrimination against classes of persons protected by Fair Housing law or the scoring of which the Department determines to be contrary to the Department's efforts to affirmatively further fair housing will not be considered. If the Department receives input that could reasonably be suspected to implicate issues of non-compliance under the Fair Housing Act, staff will refer the matter to the Texas Workforce Commission for investigation, but such referral will not, standing alone, cause staff or the Department to terminate the Application. Staff will report all such referrals to the Board and summarize the status of any such referrals in any recommendations.

(7) Concerted Revitalization Plan. An Application may qualify for <u>up to seven (7)</u> points under this paragraph only if no points are elected under subsection (c)(4) of this section, related to Opportunity Index.

(A) For Developments located in an Urban Area:

(i) An Application may qualify to receive points if the Development Site is located in a distinct area that was once vital and has lapsed into a condition requiring concerted revitalization, and where a concerted revitalization plan (plan or CRP) has been developed and executed.

(ii) A plan may consist of one or <u>two</u>multiple, but complementary, local planning documents that together create a cohesive agenda for the plan's specific area. The plan and supporting documentation must be submitted using the CRP Application Packet. No more than <u>two</u>² local plans may be submitted for each proposed Development. A Consolidated Plan, One-year Action Plan or any other plan prepared to meet HUD requirements will not meet the requirements under this clause, unless evidence is presented that additional efforts have been undertaken to meet the requirements in clause (iii) of this subparagraph. The concerted revitalization plan may be a Tax Increment Reinvestment Zone (TIRZ) or Tax Increment Finance (TIF) or similar plan. A city- or county-wide comprehensive plan, by itself, does not equate to a concerted revitalization plan.

(iii) The area targeted for revitalization must be larger than the assisted housing footprint and should be a neighborhood or small group of contiguous neighborhoods with common attributes and problems. The Application must include a copy of the plan or a link to the online plan and a description of where specific information required below can be found in the plan. The plan must meet the criteria described in subclauses (I) - (IV) of this clause:

(I) The concerted revitalization plan, or each of the local planning documents that compose the plan, must have been adopted by the municipality or county in which the Development Site is located. The resolution adopting the plan, or if development of the plan and budget were delegated, the resolution of delegation and other evidence in the form of certifications by authorized persons confirming the adoption of the plan and budget, must be submitted with the application.

(II) The problems in the revitalization area must be identified through a process in which affected local residents had an opportunity to express their views on problems facing the area, and how those problems should be addressed and prioritized. Eligible problems that are appropriate for a concerted revitalization plan may include the following:

(-a-) long-term disinvestment, such as significant presence of residential and/or commercial blight, streets infrastructure neglect, and/or sidewalks in significant disrepair;

(-b-) declining quality of life for area residents, such as high levels of violent crime, property crime, gang activity, or other significant criminal matters such as the manufacture or distribution of illegal substances or overt illegal activities; or

(-c-) lack of a robust economy for that neighborhood area, or, if economic revitalization is already underway, lack of new affordable housing options for long-term residents.

(III) The goals of the adopted plan must have a history of sufficient, documented and committed funding to accomplish its purposes on its established timetable. This funding must be flowing in accordance with the plan, such that the problems identified within the plan are currently being or have been sufficiently addressed.

(IV) The plan must either be current at the time of Application and must officially continue for a minimum of three years thereafter OR the work to address the items in need of mitigation or rehabilitation has begun and, additionally, the Applicant must include confirmation from a public official who oversees the plan that accomplishment of those objectives is on schedule and there are no budgetary or other obstacles to accomplishing the purposes of the plan.

(iv) Up to seven (7) points will be awarded based on:

(I) <u>Applications will receive four (4) points for aA</u> letter from the appropriate local official <u>for the municipality (or county if the Development Site is completely outside of a municipality)</u> providing documentation of measurable improvements within the revitalization area based on the targeted efforts outlined in the plan and in reference to the requirements of 10 TAC §11.9(d)(7)(A)(iii)(I-IV). The letter must also discuss how the improvements will lead to an appropriate area for the placement of housing; (4 points); and

(II) Applications may receive (2) points in addition to those under subclause (I) of this clause if the Development is explicitly identified in aA resolution by the municipality (or county if the Development Site is completely outside of a municipality). municipality, or county that explicitly identifies the proposed Development as contributing more than any other to the concerted revitalization efforts of the municipality or county (as applicable). A municipality or county may only identify one Development per CRP area during each Application Round for the additional points under this subclause, unless the concerted revitalization plan includes more than one distinct area within the city or county, in which case a resolution may be provided for each Development in its respective area. The resolution from the Governing Body of the municipality or county that approved the plan is required to be submitted in the Application. If multiple Applications submit resolutions under this subclause from the same Governing Body for the same CRP area, none of the Applications shall be eligible for the additional points, unless the resolutions address the respective and distinct areas described in the plan; (2 points); and

(III) Applications will receive (1) point in addition to those under subclause (I) and (II) if thes The development is in a location that would score at least $4 \frac{\text{five} (5)}{1.9 \text{ (c)}}$ points under Opportunity Index, \$11.9(c)(4)(B), except for the criteria found in \$11.9(c)(4)(A) and subparagraphs \$11.9(c)(4)(A)(i) and \$11.9(c)(4)(A)(ii). (1 point)

(B) For Developments located in a Rural Area-

(i) Applications will receive 4 points for tThe Rehabilitation, or demolition and Reconstruction, of a developmentDevelopment in a rural area that has been leased at 85% or greater for the six months preceding Application by low income households and which was initially constructed 25 or more years prior to Application submission as either public housing or as affordable housing with support from USDA, HUD, the HOME program, or the CDBG program. The occupancy percentage will not include Units that cannot be occupied due to needed repairs, as confirmed by the PCA-SCR or CNA. Demolition and relocation of units must be determined locally to be necessary to comply with the Affirmatively Furthering Fair Housing Rule, or if necessary to create an acceptable distance form Undesirable Site Features or Neighborhood Risk Factors. (4 points)

(ii) Applications may receive (2) points in addition to those under clause (i) of this subparagraph if the The Development is explicitly identified in a resolution by the municipality (or county if the Development Site is completely outside of a city) as contributing more than any other to the concerted revitalization efforts of the municipality or county (as applicable). Where a Development Site crosses jurisdictional boundaries, resolutions from all applicable governing bodies must be submitted. A municipality or county may only identify one single Development during each Application Round for each specific area to be eligible for the additional points under this subclause. If multiple Applications submit resolutions under this subclause

from the same Governing Body for a specific area described in the plan, none of the Applications shall be eligible for the additional points; (2 points); and

(iii) Applications may receive (1) additional point if the The development is in a location that would score at least five (5) points under Opportunity Index, \$11.9(c)(4)(B), except for the criteria found in \$11.9(c)(4)(A) and subparagraphs \$11.9(c)(4)(A)(i) and \$11.9(c)(4)(A)(ii). (1 point)

(e) Criteria promoting the efficient use of limited resources and applicant accountability.

(1) Financial Feasibility. (§2306.6710(b)(1)(A)) An Application may qualify to receive a maximum of eighteen (18) points for this item. To qualify for points, a 15-year pro forma itemizing all projected income including Unit rental rate assumptions, operating expenses and debt service, and specifying the underlying growth assumptions and reflecting a minimum must-pay debt coverage ratio of 1.15 for each year must be submitted. The pro forma must include the signature and contact information evidencing that it has been reviewed and found to be acceptable by an authorized representative of a proposed Third Party construction or permanent lender. In addition to the signed pro forma, a lender approval letter must be submitted. An acceptable form of lender approval letter may be obtained in the Uniform Multifamily Application Templates. If the letter evidences review of the Development alone it will receive sixteen-twenty-four (1624) points. If the letter is from the Third Party permanent lender and evidences review of the Development and the Principals, it will receive eighteen-twenty-six (1826) points.

(2) Cost of Development per Square Foot. (§2306.6710(b)(1)(F); §42(m)(1)(C)(iii)) An Application may qualify to receive up to twelve (12) points based on either the Eligible Building Cost or the Eligible Hard Costs per square foot of the proposed Development voluntarily included in eligible basis as originally submitted in the Application. For For the purposes of this scoring item, Eligible Building Costs will be defined as Building Costs includablevoluntarily included in Eligible Basis for the purposes of determining a Housing Credit Allocation. Eligible Building Costs will exclude structured parking or commercial space that is not included in Eligible Basis, and voluntary Eligible Hard Costs will include general contractor overhead, profit, and general requirements. Structured parking or commercial space costs must be supported by a cost estimate from a Third Party General Contractor or subcontractor with experience in structured parking or commercial construction, as applicable. The square footage used will be the Net Rentable Area (NRA). The calculations will be based on the cost listed in the Development Cost Schedule and NRA shown in the Rent Schedule. If the proposed Development is a Supportive Housing Development, the NRA will include conditioned Common Area up to 75 square feet per Unit.

(A) A high cost development is a Development that meets one <u>or more</u> of the following conditions:

(i) the Development is elevator served, meaning it is either an Elderly Development with an elevator or a Development with one or more buildings any of which have elevators serving four or more floors;

(ii) the Development is more than 75% single family design;

(iii) the Development is Supportive Housing; or

(iv) the Development Site qualifies for a minimum of five (5) points under subsection (c)(4) of this section, related to Opportunity Index, and is located in an Urban Area.

(B) Applications proposing New Construction or Reconstruction <u>or Adaptive Reuse</u> will be eligible for twelve (12) points if one of the following conditions is met:

(i) The<u>the</u> voluntary Eligible Building Cost per square foot is less than \$76.44 per square foot;

(ii) Thethe voluntary Eligible Building Cost per square foot is less than \$81.90 per square foot, and the Development meets the definition of a high cost development;

(iii) The<u>the</u> voluntary Eligible Hard Cost per square foot is less than \$98.28 per square foot; or

(iv) The the voluntary Eligible Hard Cost per square foot is less than \$109.20 per square foot, and the Development meets the definition of high cost development.

(C) Applications proposing New Construction or Reconstruction will be eligible for eleven (11) points if one of the following conditions is met:

(i) The<u>the</u> voluntary Eligible Building Cost per square foot is less than \$81.90 per square foot;

(ii) Thethe voluntary Eligible Building Cost per square foot is less than \$87.36 per square foot, and the Development meets the definition of a high cost development;

(iii) The the voluntary Eligible Hard Cost per square foot is less than \$103.74 per square foot; or

(iv) <u>Thethe</u> voluntary Eligible Hard Cost per square foot is less than \$114.66 per square foot, and the Development meets the definition of high cost development.

(D) Applications proposing New Construction or Reconstruction will be eligible for ten (10) points if one of the following conditions is met:

(i) The<u>the</u> voluntary Eligible Building Cost is less than \$98.28 per square foot; or

(ii) Thethe voluntary Eligible Hard Cost is less than \$120.12 per square foot.

(E) Applications proposing <u>Adaptive Reuse or</u> Rehabilitation (excluding Reconstruction) will be eligible for points if one of the following conditions is met:

(i) Twelve (12) points for Applications which include voluntary Eligible Hard Costs plus acquisition costs included in Eligible Basis that are less than \$109.20 per square foot;

(ii) Twelve (12) points for Applications which include voluntary Eligible Hard Costs plus acquisition costs included in Eligible Basis that are less than \$141.96 per square foot, located in an Urban Area, and that qualify for 5 or <u>more</u>⁷ points under subsection (c)(4) of this section, related to Opportunity Index; or

(iii) Eleven (11) points for Applications which include voluntary Eligible Hard Costs plus acquisition costs included in Eligible Basis that are less than \$141.96 per square foot.

(3) Pre-application Participation. (§2306.6704) An Application may qualify to receive up to six (6) points provided a pre-application was submitted by the Pre-Application Final Delivery Date. Applications that meet<u>all of</u> the requirements described in subparagraphs (A) - (H) of this paragraph will qualify for six (6) points:

(A) The total number of Units does not increase by more than 10% from pre-application to Application;

(B) The designation of the proposed Development as Rural or Urban remains the same;

(C) The proposed Development serves the same Target Population;

(D) The pre-application and Application are participating in the same set-asides (At-Risk, USDA, Non-Profit, and/or Rural);

(E) The Application final score (inclusive of only scoring items reflected on the self score form) does not vary by more than four (4) points from what was reflected in the pre-application self score;

(F) The Development Site at Application is at least in part the Development Site at preapplication, and the census tract number listed at pre-application is the same at Application. The site at full Application may not require notification to any person or entity not required to have been notified at pre-application;

(G) The Development Site does not have the following Neighborhood Risk Factors as described in 10 TAC §11.101(a)(3) that were not disclosed with the pre-application:

(i) The the Development Site is located in a census tract (or for any adjacent census tract with a boundary less than 500 feet from the proposed Development Site that is not separated from the Development Site by a natural barrier such as a river or lake, or an intervening restricted area, such as a military installation) in an Urban Area and the rate of Part I violent crime is greater than 18 per 1,000 persons (annually) as reported on neighborhoodscout.com.

(ii) The Development Site is located within the attendance zones of an elementary school, a middle school, or a high school that does not have a Met Standardrating by the Texas Education Agency is rated D for 2019 and Improvement Required for 2018, or a school that is rated F for 2019.

(H) The pre-application met all applicable requirements.

(4) Leveraging of Private, State, and Federal Resources. (§2306.6725(a)(3))

(A) An Application may qualify to receive up to three (3) points if at least 5% of the total Units are restricted to serve households at or below 30% of AMGI (restrictions elected under other point items may count) and the Housing Tax Credit funding request for the

proposed Development meet one of the levels described in clauses (i) - (iv) of this subparagraph:

(i) the Development leverages CDBG Disaster Recovery, HOPE VI, RAD, or Choice Neighborhoods funding and the Housing Tax Credit Funding Request is less than 9% of the Total Housing Development Cost (3 points). The Application must include a commitment of such funding; or

(ii) **H**if the Housing Tax Credit funding request is less than 9% of the Total Housing Development Cost (3 points); or

(iii) **H**<u>if</u> the Housing Tax Credit funding request is less than 10% of the Total Housing Development Cost (2 points); or

(iv) <u>If if</u> the Housing Tax Credit funding request is less than 11% of the Total Housing Development Cost (1 point).

(B) The calculation of the percentages stated in subparagraph (A) of this paragraph will be based strictly on the figures listed in the Funding Request and Development Cost Schedule. Should staff issue an Administrative Deficiency that requires a change in either form, then the calculation will be performed again and the score adjusted, as necessary. However, points may not increase based on changes to the Application. In order to be eligible for points, no more than 50% of the Developer Fee can be deferred. Where costs or financing change after completion of underwriting or award (whichever occurs later), the points attributed to an Application under this scoring item will not be reassessed unless there is clear evidence that the information in the Application was intentionally misleading or incorrect.

(5) Extended Affordability. (§§2306.6725(a)(5); 2306.111(g)(3)(C); 2306.185(a)(1) and (c); 2306.6710(e)(2); and 42(m)(1)(B)(ii)(II)) In accordance with the Code, each Development is required to maintain its affordability for a 15-year Compliance Period and, subject to certain exceptions, an additional 15-year Extended Use Period. Development Owners that agree to extend the Affordability Period for a Development to thirty-five (35) years total may receive two (2) points An Application may qualify to receive up to four (4) points for this item.

(A) Development Owners that agree to extend the Affordability Period for a Development to 45 years total (4 points).

(B) Development Owners that agree to extend the Affordability Period for a Development to 40 years total (3 points).

(C) Development Owners that agree to extend the Affordability Period for a Development to 35 years total. (2 points)

(6) Historic Preservation. (§2306.6725(a)(6)) <u>An Application may qualify to receive five (5)</u> <u>points if</u> at least 75% of the residential <u>unitsuUnits</u> shall reside within the Certified Historic Structure <u>and the. The</u> Development must <u>reasonably be expected to qualify to receive and</u> <u>document receipt of receive</u> historic tax credits before or by the issuance of Forms 8609. The Application must include either documentation from the Texas Historical Commission that the Property is currently a Certified Historic Structure, or documentation determining preliminary eligibility for Certified Historic Structure status <u>and evidence that the Texas</u> <u>Historic Commission received the request for determination of preliminary eligibility and</u> <u>supporting information on or before February 1 of the current year</u> (5 points).

(7) Right of First Refusal. (§2306.6725(b)(1); §42(m)(1)(C)(viii)) An Application may qualify to receive (1 point) for Development Owners that will agree to provide a right of first refusal to purchase the Development upon or following the end of the Compliance Period in accordance with Tex Gov't Code, §2306.6726 and the Department's rules including §10.407 of this title (relating to Right of First Refusal) and §10.408 of this title (relating to Qualified Contract Requirements).

_(8) Funding Request Amount. An Application may qualify to receive one (1) point if the Application reflects a Funding Request of Housing Tax Credits, as identified in the original Application submission, of The Application requests no more than 100% of the amount of LIHTC available within the subregion or set-aside as determined by the application of the regional allocation formula on or before December 1, 20182019. (1 point)

(f) Factors Affecting Scoring and Eligibility in current and future Application Rounds

Staff may recommend to the Board and the Board may find that an Applicant or Affiliate should be ineligible to compete in the following year's competitive Application Round or that it should be assigned a penalty deduction in the following year's competitive Application Round of no more than two points for each submitted Application (Tex. Gov't Code §2306.6710(b)(2)) because it meets the conditions for any of the items listed in paragraphs (1) - (4) of this subsection. For those items pertaining to non-statutory deadlines, an exception to the penalty may be made if the Board or Executive Director, as applicable, makes an affirmative finding setting forth that the need for an extension of the deadline was 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. The Executive Director may make a determination that the matter does not warrant point deduction only for paragraph (1). (\$2306.6710(b)(2)) Any deductions assessed by the Board for paragraphs (1+), (2), (3), or (4) of this subsection based on a Housing Tax Credit Commitment from a preceding Application round will be attributable to the Applicant or Affiliate of an Application submitted in the Application round referenced above.

(1) If the Applicant or Affiliate failed to meet the original Carryover submission or 10% Test deadline(s) or has requested an extension of the Carryover submission deadline or the 10% Test deadline (relating to either submission or expenditure).

(2) If the Applicant or Affiliate failed to meet the commitment or expenditure requirements or benchmarks of their Contract with the Department for a HOME or National Housing Trust Fund award from the Department.

(3) If the Applicant or Affiliate, in the Competitive HTC round immediately preceding the current round, failed 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.

(4) If the Developer or Principal of the Applicant has violated and/or violates the Adherence to Obligations.

§11.10. Third Party Request for Administrative Deficiency for Competitive HTC Applications

The purpose of the Third Party Request for Administrative Deficiency (RFAD) process is to allow an unrelated person or entity to bring new, material information about an Application to staff's attention. Such Person may request staff to consider whether a matter in an Application in which the Person has no involvement should be the subject of an Administrative Deficiency. Staff will consider the request and proceed as it deems appropriate under the applicable rules including, if the Application in question is determined by staff to not be a priority Application has a noncompetitive score relative to other Applications in the same Set-Aside or subregion or will not be eligible for an award through the collapse as outlined in 10 TAC §11.6(3), not reviewing the matter further. If the assertion(s) in the RFAD have been addressed through the Application review process, and the RFAD does not contain new information, staff will not review or act on it. The RFAD may not be used to appeal staff decisions regarding competing Applications (§2306.6715(b)). Any RFAD that questions a staff decision regarding staff's scoring of an Application filed by another Applicant will be disregarded. Requestors must provide, at the time of filing the request, all briefings, documentation, and other information that the requestor offers in support of the deficiency. A copy of the request and supporting information must be provided by the requestor directly to the Applicant at the same time it is provided to the Department. Requestors must provide sufficient credible evidence that, if confirmed, would substantiate the deficiency request. Assertions not accompanied by supporting documentation susceptible to confirmation will not be considered. Staff shall provide to the Board a written report summarizing each third party request for administrative deficiency and the manner in which it was addressed. Interested persons may provide testimony on this report before the Board takes any formal action to accept the report. The results of a RFAD may not be appealed by the Requestor. A scoring notice or termination notice that results from a RFAD may be appealed by the Applicant as further described in §11.902 of this chapter, relating to Appeals Process. Information received after the RFAD deadline will not be considered by staff or presented to the Board unless the information is of such a matter as to warrant a termination notice. When the Board receives a report on the disposition of RFADs it may, for any staff disposition contained in the report, change the conclusion if it believes the change is necessary to bring the result into compliance with applicable laws and rules as construed by the Board; or if based on public testimony, it believes staff's conclusion should be revisited, it may remand the RFAD to staff for further consideration, which may result in a reaffirmation, reversal, or modification.

Subchapter B – Site and Development Requirements and Restrictions

§11.101.Site and Development Requirements and Restrictions.

(a) Site Requirements and Restrictions. The purpose of this section is to identify specific requirements and restrictions related to a Development Site seeking multifamily funding or assistance from the Department.

(1) Floodplain. New Construction or Reconstruction Developments located within a onehundred (100) year floodplain as identified by the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps must develop the site in full compliance with the National Flood Protection Act and all applicable federal and state statutory and regulatory requirements. The Applicant will have to use floodplain maps and comply with regulation as they exist at the time of commencement of construction. Even if not required by such provisions, the Site must be developed so that all finished ground floor elevations are at least one foot above the floodplain and parking and drive areas are no lower than six inches below the floodplain. If there are more stringent federal or local requirements they must also be met. Applicants requesting funds from the Supportive Housing/Soft Repayment setaside must also meet the federal environmental provisions under 24 CFR §93.301(f)(1)(vi). Applicants requesting funds from all other direct loan setasides, must meet the federal environmental provisions under 24 CFR Part 58, as in effect at the time of execution of the Contract between the Department and the Owner. If no FEMA Flood Insurance Rate Maps are available for the proposed Development Site, flood zone documentation must be provided from the local government with jurisdiction identifying the one hundred (100) year floodplain. Rehabilitation (excluding Reconstruction) Developments with existing and ongoing federal funding assistance from HUD or USDA are exempt from this requirement.exempt from this requirement, but must state in the Tenant Rights and Resource Guide that part or all of the Development Site is located in a floodplain, and that it is encouraged that they consider getting appropriate insurance or take necessary precautions. Rehabilitation (excluding Reconstruction) Developments requesting funds in the Supportive Housing/Soft Repayment setaside are not eligible for the exemption. However, where existing and ongoing federal assistance is not applicable such Rehabilitation (excluding Reconstruction) Developments will be allowed in the one-hundred (100) year floodplain provided the local government has undertaken and can substantiate sufficient mitigation efforts and such documentation is submitted in the Application or the existing structures meet the requirements that are applicable for New Construction or Reconstruction Developments, as certified to by a Third Party engineer.

(2) Undesirable Site Features. Development Sites within the applicable distance of any of the undesirable features identified in subparagraphs (A) (KL) of this paragraph will be considered ineligible unless it is determined by the Board that information regarding mitigation of the applicable undesirable site feature(s) is sufficient and supports Site eligibility. Ato the Board separate Rehabilitation (excluding Reconstruction) Developments with ongoing and existing federal assistance from HUD, USDA, or Veterans Affairs (VA) may be granted an exemption by the Board; however, depending on the undesirable site feature(s) staff may recommend mitigation still be provided as appropriate. Such an exemption must be requested at the time

of or prior to the filing of an Application. Historic Developments that would otherwise qualify under §11.9(e)(6) of this chapter may be granted an exemption by the Board, and such exemption must be requested at the time of or prior to the filing of an Application. The distances are to be measured from the nearest boundary of the Development Site to the nearest boundary of the property or easement containing the undesirable feature, unless otherwise noted below. Where there is a local ordinance that regulates specifies the proximity of such undesirable feature to a multifamily development that has smaller distances than the minimum distances noted below, then such smaller distances may be used and documentation such as a copy of the local ordinance identifying such distances relative to the Development Site must be included in the Application. Pre-existing zoning does not meet the requirement for a local ordinance. If a state or federal cognizant agency would require a new facility under its jurisdiction to have a minimum separation from housing, the Department will defer to that agency and require the same separation for a new housing facility near an existing regulated or registered facility. In addition to these limitations, a Development Owner must ensure that the proposed Development Site and all construction thereon comply with all applicable state and federal requirements regarding separation for safety purposes. If Department staff identifies what it believes would constitute an undesirable site feature not listed in this paragraph or covered under subparagraph (K) of this paragraph, staff may request a determination from the Board as to whether such feature is acceptable or not. If the Board determines such feature is not acceptable and that, accordingly, the Site is ineligible, the Application shall be terminated and such determination of Site ineligibility and termination of the Application cannot be appealed issue a Deficiency.

(A) Development Sites located within 300 feet of junkyards. For purposes of this paragraph, a junkyard shall be defined as stated in Texas Transportation Code §396.001;

(B) Development Sites located within 300 feet of a solid waste facility or sanitary landfill facility or illegal dumping sites (as such dumping sites are identified by the local municipality);

(C) Development Sites located within 300 feet of a sexually-oriented business. For purposes of this paragraph, a sexually-oriented business shall be defined in Local Government Code §243.002, or as zoned, licensed and regulated as such by the local municipality;

(D) Development Sites in which any of the buildings or designated recreational areas (including pools) are to be located within 100 feet of the nearest line or structural element of any overhead high voltage transmission line, support structures for high voltage transmission lines, or other similar structures. This does not apply to local service electric lines and poles;

(E) Development Sites located within 500 feet of active railroad tracks, measured from the closest rail to the boundary of the Development Site, unless:

(i) the Applicant provides evidence that the city/community has adopted a Railroad Quiet Zone<u>covering the area within 500 feet of the Development Site</u>; or

(ii) the Applicant has engaged a qualified Third Party to perform a noise assessment

and the Applicant commits to perform sound mitigation in accordance with HUD standards as if they were directly applicable to the Development; or

(iii) the railroad in question is commuter or light rail;

(F) Development Sites located within 500 feet of heavy industry (i.e. facilities that require extensive use of land and machinery, produce high levels of external noise such as manufacturing plants, or maintains fuel storage facilities (excluding gas stations);

(G) Development Sites located within 10 miles of a nuclear plant;

(H) Development Sites in which the buildings are located within the accident potential zones or the runway clear zones of any airport;

(I) Development Sites that contain one or more pipelines, situated underground or aboveground, which carry highly volatile liquids or Development Sites located adjacent to a pipeline easement (for a pipeline carrying highly volatile liquids), the Application must include a plan for developing near the pipeline(s) and mitigation, if any, in accordance with a report conforming to the Pipelines and Informed Planning Alliance (PIPA);

(J) Development Sites located within 2 miles of refineries capable of refining more than 100,000 barrels of oil daily; or

(K) Any other Site deemed unacceptable, which would include, without limitation, those with exposure to an environmental factor that may adversely affect the health and safety of the residents or render the Site inappropriate for housing use and which cannot be adequately mitigated. If staff believe that a Site should be deemed unacceptable under this provision <u>due to information that was not included in the Application</u>, it will provide the Applicant with written notice and an opportunity to respond.<u>- and place the matter before the Board for a determination</u>.

(3) Neighborhood Risk Factors.

(A) If the Development Site has any of the characteristics described in subparagraph (B) of this paragraph, the Applicant must disclose the presence of such characteristics in the Application submitted to the Department. For Competitive HTC Applications, an Applicant must disclose at pre-application as required by §11.8(b) of this chapter. For all other Applications, an Applicant may choose to disclose the presence of such characteristics at the time the pre-application (if applicable) is submitted to the Department. Requests for pre-determinations of Site eligibility prior to pre-application or Application submission will not be binding on full Applications submitted at a later date. For Tax-Exempt Bond Developments where the Department is the Issuer, the Applicant may submit the documentation described under subparagraphs (C) and (D) of this paragraph at pre-application or for Tax-Exempt Bond Developments utilizing a local issuer such documentation may be submitted with the request for a pre-determination and staff may perform an assessment of the Development Site to determine Site eligibility. An Applicant should understand that any determination made by staff or the Board at that point in time regarding Site eligibility based on the documentation presented, is preliminary in nature. Should additional information related to any of the neighborhood

risk factors Neighborhood Risk Factors become available while the full Tax- Exempt Bond Development or Direct Loan only Application is under review, or the information by which the original determination was made changes in a way that could affect eligibility, then such information will be re-evaluated and presented to the Board for its determination by staff and may result in staff issuing a Deficiency. Should staff determine that the Development Site has any of the characteristics described in subparagraph (B) of this paragraph and such characteristics were not disclosed, the Application may be subject to termination.staff will issue a Material Deficiency An Applicant's own non-disclosure is not appealable as such appeal is in direct conflict with certifications made in the Application and within the control of the Applicant. The presence of any characteristics listed in subparagraph (B) of this paragraph will prompt staff to perform an assessment of the Development Site and neighborhood, which may include a site visit, and include, where applicable, a review as described in subparagraph (C) of this paragraph. The assessment of the Development Site and neighborhood will be presented to the Board with a staff recommendation with respect to the eligibility of the Development Site. Additional mitigating Ffactors to be considered by the Boardstaff besides those allowed in subparagraph (C) of this paragraph, despite the existence of the neighborhood risk factorsNeighborhood Risk Factors, are identified in subparagraph (E) of this paragraph. Preservation of affordable units alone does not present a compelling reason to support a conclusion of eligibility. Should the Board make a determination that a Development Site is ineligible, the termination of the Application resulting from such Board action is final and not subject to appeal.

(B) The Neighborhood Risk Factors include those noted in clauses (i) - (iv) of this subparagraph and additional information as applicable to the neighborhood risk factor(s) disclosed as provided in subparagraphs (C) and (D) of this paragraph must be submitted in the Application. In order to be considered an eligible Site despite the presence of such sneighborhood risk factor Neighborhood Risk Factors, an Applicant must demonstrate actions being taken that would lead staff and/or the Board to conclude that there is a high probability and reasonable expectation the risk factor will be sufficiently mitigated or significantly improved within a reasonable time, typically prior to placement in service, and that the risk factor demonstrates a positive trend and continued improvement. Conclusions for such reasonable expectation may need to be affirmed by an industry professional, as appropriate, and may be dependent upon the severity of the neighborhood risk factor Neighborhood Risk Factor disclosed.

(i) Thethe Development Site is located within a census tract that has a poverty rate above 40% for individuals (or 55% for Developments in regions 11 and 13).

(ii) The the Development Site is located in a census tract (or for any adjacent census tract with a boundary less than 500 feet from the proposed Development Site that is not separated from the Development Site by a natural barrier such as a river or lake, or an intervening restricted area, such as a military installation) in an Urban Area and the rate of Part I violent crime is greater than 18 per 1,000 persons (annually) as reported on neighborhoodscout.com.

(iii) The<u>the</u> Development Site is located within 1,000 feet (measured from nearest boundary of the Site to the nearest boundary of blighted structure) of multiple vacant structures that have fallen into such significant disrepair, overgrowth, and/or vandalism that they would commonly be regarded as blighted or abandoned.

(iv) Thethe Development Site is located within the attendance zoneszone of an elementary school, a middle school or a high school that does not have has a Met Standard ratingby 2019 TEA Accountability Rating of D and a 2018 Improvement Required Rating by the Texas Education Agency. In districts with district-wide enrollment or choice districts an Applicant shall use the rating of the closest elementary, middle and high school, respectively, which may possibly be attended by the tenants in determining whether or not disclosure is required. Schools with an application process for admittance, limited enrollment or other requirements that may prevent a child from attending will not be considered as the closest school or the school which attendance zone contains the site. The applicable school rating will be the 20182019 accountability rating assigned by the Texas Education Agency, unless the school is "Not Rated" because it meets the TEA Hurricane Harvey Provision, in which case the 20172018 rating will apply. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K-6), middle schools (typically grades 6-8 or 7-8) and high schools (typically grades 9-12), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions. In determining the ratings for all three levels of schools, ratings for all grades K-12 must be included, meaning that two or more schools' ratings may be combined. For example, in the case of an elementary school which serves grades K-4 and an intermediate school that serves grades 5-6, the elementary school rating will be the lower of those two schools' ratings. Also, in the case of a 9th grade center and a high school that serves grades 10-12, the high school rating will be considered the lower of those two schools' ratings. Sixth grade centers will be considered as part of the middle school rating. Elderly Developments that are not required by a federal funding source to accept qualified households with children, and Developments encumbered by a TDHCA LURA on the first day of the application or pre-application acceptance period (if applicable) are not required to provide mitigation for this subparagraph. Except for a Development encumbered by a TDHCA LURA on the first day of the application or pre-application acceptance period (if applicable), a Development that falls within the attendance zone of a school that is rated F by the Texas Education Agency is ineligible with no opportunity for mitigation. considered exempt and do not have to disclose the presence of this characteristic.

(C) Should any of the neighborhood risk factors described in subparagraph (B) of this

paragraph exist, the Applicant must submit the Neighborhood Risk Factors Report that contains the information described in clauses (i) - (viii) of this subparagraph and mitigation pursuant to subparagraph (D) of this paragraph as <u>if</u> such information <u>might be</u> considered to pertains to the <u>neighborhood risk factor Neighborhood Risk Factor</u>(s) disclosed so that staff may conduct a further Development Site and neighborhood review. The Neighborhood Risk Factors Report cannot be supplemented or modified unless requested by staff through the deficiency process.

(i) Aa determination regarding neighborhood boundaries, which will be based on the review of a combination of natural and manmade physical features (rivers, highways, etc.), apparent changes in land use, the Primary Market Area as defined in the Market Analysis, census tract or municipal boundaries, and information obtained from any Site visits;

(ii) Anan assessment of general land use in the neighborhood, including comment on the prevalence of residential uses;

(iii) Anan assessment concerning any of the features reflected in paragraph (2) of this subsection if they are present in the neighborhood, regardless of whether they are within the specified distances referenced in paragraph (2) of this subsection;

(iv) Anan assessment of the number of existing affordable rental units (generally includes rental properties subject to TDHCA, HUD, or USDA restrictions) in the Primary Market Area, including comment on concentration based on the size of the Primary Market Area;

(v) Anan assessment of the percentage of households residing in the census tract that have household incomes equal to or greater than the median household income for the MSA or county where the Development Site is located;

(vi) Anan assessment of the number of market rate multifamily units in the neighborhood and their current rents and levels of occupancy;

(vii) An assessment of school performance A copy of the TEA Accountability Rating Report for each of the schools in the attendance zone containing the Development that did not achieve a 2018 Met Standard achieved a D rating, for the previous two academic years (regardless of whether the school Met Standard in those years), that includes the TEA Accountability Rating Report, 2019 or a 2018 Improvement Required rating, along with a discussion of performance indicators and what progress has been made over the prior year, and progress relating to the goals and objectives identified in the campus improvement plan or turnaround plan pursuant to §39.107 of the Texas Education Code in effect. This is not just the submission of the The actual campus improvement plan, but does not need to be submitted unless there is an update to the plan or if such update is not available, information from a school official that speaks to progress made under the plan as further indicated under subparagraph (D)(iv) of this paragraph; and

(viii) Any additional information necessary to complete an assessment of the

Development Site, as requested by staff.

(D) Information regarding mitigation of neighborhood risk factors should be relevant to the risk factors that are present in the neighborhood. Mitigation must include documentation of efforts underway at the time of Application, and may include, but is not-limited to, the measures described in clauses (i) - (iv) of this subparagraph or such other mitigation as the Applicant determines appropriate to support a Board determination finding that the proposed Development Site should be found eligible. of eligibility. If staff determines that the Development Site cannot be found eligible and the Applicant appeals that decision to the Board, the Applicant may not present new information at the Board meeting. In addition to those measures described herein, documentation from the local municipality may also be submitted stating the Development is consistent with their obligation to affirmatively further fair housing.

(i) mitigation for Developments in a census tract that has a poverty rate that exceeds 40% must be in the form of a resolution from the Governing Body of the appropriate municipality or county containing the Development, referencing this rule and/or acknowledging the high poverty rate and authorizing the Development to move forward. Evidence that the poverty rate within the census tract has decreased over the five year period preceding the date of Application, or that the census tract is contiguous to a census tract with a poverty rate below 20% and there are no physical barriers between them such as highways or rivers which would be reasonably considered as separating or dividing the neighborhood containing the proposed Development from the low poverty area must be submitted. Other mitigation may include, but is not limited to, evidence of sustained job growth and employment opportunities, career training opportunities or job placement services, evidence of gentrification in the area (including an increase in property values) which may include contiguous census tracts that could conceivably be considered part of the neighborhood containing the proposed Development, and a clear and compelling reason that the Development should be located at the Site.

(ii) evidence by the most qualified person that the data and evidence establish that there is a reasonable basis to proceed on the belief that the crime data shows, or will show, a favorable trend such that within the next two years Part I violent crime for that location is expected to be less than 18 per 1,000 persons or the data and evidence reveal that the data reported on neighborhoodscout.com does not accurately reflect the true nature of what is occurring and what is actually occurring does not rise to the level to cause a concern to the Board over the level of Part I violent crime for the location. The data and evidence may be based on violent crime data from the city's police department or county sheriff's department, as applicable based on the location of the Development, for the police beat or patrol area within which the Development Site is located, based on the population of the police beat or that would yield a crime rate below the threshold indicated in this section by the time the Development is placed into service. The instances of violent crimes within the police beat or patrol area that encompass the census tract, calculated based on the population of the

census tract, may also be used. A map plotting all instances of violent crimes within a one-half mile radius of the Development Site may also be submitted, provided that it reflects that the crimes identified are not at a level that would warrant an ongoing concern. The data must include incidents reported during the entire 2017 and 2018 and 2019 calendar year. Violent crimes reported through the date of Application submission mustmay be requested by staff as part of the assessment performed under subparagraph (C) of this paragraph. A written statement from the most qualified person (i.e. Chief of Police or Sherriff (as applicable) or the police officer/detective for the police beat or patrol area containing the proposed Development Site), including a description of efforts by such enforcement agency addressing issues of crime and the results of their efforts must be provided, and depending on the data provided by the Applicant, such written statement may be required, as determined by staff. It is expected that such written statement would also speak to whether there is a reasonable expectation that based on the efforts underway there is crime data that reflects a favorable downward trend in crime rates. For Rehabilitation or Reconstruction Developments, to the extent that the high level of criminal activity is concentrated at the Development Site, documentation may be submitted to indicate such issue(s) could be remedied by the proposed Development. Evidence of such remediation should go beyond what would be considered a typical scope of work and should include a security plan, partnerships with external agencies, or other efforts to be implemented that would deter criminal activity. Information on whether such security features have been successful at any of the Applicant's existing properties should also be submitted, if applicable.

(iii) Evidence_evidence of mitigation efforts to address blight or abandonment may include new construction in the area already underway that evidences public and/or private investment. Acceptable mitigation to address extensive blight should include a plan, whereby it is contemplated such blight and/or infestation will have been remediated within no more than two years from the date of the award and that a responsible party will use the blighted property in a manner that complies with local ordinances. In instances where blight exists but may only include a few properties, mitigation efforts could include partnerships with local agencies to engage in community-wide clean-up efforts, or other efforts to address the overall condition of the neighborhood.

(iv) Evidence of mitigation for alleach of the schools in the attendance zone that have not achieved Met Standardhas a 2019 TEA Accountability Rating of D and 2018 Improvement Required Rating may include, but is not limited to, satisfying the requirements of subclauses (I) - (IV) of this clause.

(I) documentation Documentation from a person authorized to speak on behalf of the school district with oversight of the school in question that indicates the specific plans in place and current progress towards meeting the goals and performance objectives identified in the Campus Improvement Plan and in restoring the school(s) to an acceptable rating status. The documentation should include actual data from progress already made under such plan(s) to date

demonstrating favorable trends and should speak to the authorized persons assessment that the plan(s) and the data supports a reasonable conclusion that the school(s) will have an acceptable rating by the time the proposed Development places into service. The letter shouldmay, to the extent applicable, identify the efforts that have been undertaken to increase student performance, decrease mobility rate, benchmarks for re-evaluation, increased parental involvement, plans for school expansion, plans to implement early childhood education, and long-term trends that would point toward their achieving Met Standardan A, B, or C Rating by the time the Development is placed in service. The letter from such education professional should also speak to why they believe the staff tasked with carrying out the plan will be successful at making progress towards acceptable student performance considering that prior Campus Improvement Plans were unable to do so. Such assessment could include whether the team involved has employed similar strategies at prior schools and were successful.

(II) The school district has confirmed that a school age person at the proposed Development Site may, as a matter of right, attend a school in the District that has a Met Standard rating or better, and the Applicant has committed that if the school district will not provide no cost transportation to such a school, the Applicant will provide such no cost transportation until such time as the school(s) in whose primary attendance zone(s) the proposed Development Site is located have all achieved a Met Standard rating or better.

(III) The Applicant provides evidence that it has entered into agreement with the applicable school district or elementary school that has not achieved Met Standard, a Head Start provider with capacity in their charter, or a charter school provider to provide suitable and appropriately designed space on-site for the provision of an early childhood pre-K program at no cost to residents of the proposed Development. Suitable and appropriately designed space includes at a minimum a bathroom and large closet in the classroom space, appropriate design considerations made for the safety and security of the students, and satisfaction of the requirements of the applicable building code for school facilities. Such provision must be made available to the school or provider, as applicable, until the later of the elementary school that had not Met Standard achieving an acceptable achieved a rating of A, B or C, or the school or provider electing to end the agreement. If a charter school or Head Start provider is the provider in the named agreement and that provider becomes defunct or no longer elects to participate in the agreement prior to the achievement of a Met Standard rating of A, B or C, the Development Owner must document their attempt to identify an alternate agreement with one of the other acceptable provider choices. However if the contracted provider is the school district or the school who is lacking the Met StandardA, B or C rating and they elect to end the agreement prior to the achievement of a Met Standardsuch rating, the Development will not be considered to be in violation of its commitment to the Department.

(IVIII) The Applicant has committed that until such time that the school(s) that had not Met Standard have achieved an acceptableachieves a rating of A, B, or C it will operate an after school learning center that offers at a minimum 15 hours of weekly, organized, on-site educational services provided middle and high school children by a dedicated service coordinator or Third-Party entity which includes at a minimum: homework assistance, tutoring, test preparation, assessment of skill deficiencies and provision of assistance in remediation of those deficiencies (e.g., if reading below grade level is identified for a student, tutoring in reading skills is provided), research and writing skills, providing a consistent weekly schedule, provides for the ability to tailor assistance to the age and education levels of those in attendance, and other evidence-based approaches and activities that are designed to augment classroom performance. Up to 20% of the activities offered may also include other enrichment activities such as music, art, or technology.

(E) In order for the Development Site to be found eligible by the Board when mitigation described in subparagraph (D) of this paragraph is not provided in the Application, despite the existence of neighborhood risk factors one or more Neighborhood Risk Factors, the Board Applicant must find, based on testimony and data from the most appropriate professional with knowledge and details regarding the neighborhood risk factor(s) or based,) that explain how the use of Department funds at the Development Site must be consistent with achieving the goals in clauses (i) - (iii) of this subparagraph. Pursuant to Tex. Gov't Code Chapter 2306, iIf the Board grants an Appeal of staff's determination of Site eligibility, the Board shall document the reasons for a determination of eligibility that conflicts with the recommendations made by staff.

(i) <u>Preservation preservation</u> of existing occupied affordable housing units to ensure they are safe and suitable or the new construction of high quality affordable housing units that are subject to federal rent or income restrictions; and

(ii) Determination<u>determination</u> that the risk factor(s) that has been disclosed are not of such a nature or severity that should render the Development Site ineligible based on the assessment and mitigation provided under subparagraphs (C) and (D) of this paragraph; or

(iii) The<u>no mitigation was provided, or in staff's determination the mitigation was</u> considered unsatisfactory and the Applicant has requested a waiver of the presence of neighborhood risk factors Neighborhood Risk Factors on the basis that the Development is necessary to enable the state, a participating jurisdiction, or an entitlement community to comply with its obligation to affirmatively further fair housing, a HUD approved Conciliation Agreement, or a final and non-appealable court order and such documentation is submitted with the disclosure.

(b) Development Requirements and Restrictions. The purpose of this section is to identify specific restrictions on a proposed Development <u>submitted for requesting</u> multifamily funding by the Department.

(1) Ineligible Developments. A Development shall be ineligible if any of the criteria in

(A) General Ineligibility Criteria.

(i) Developments such as hospitals, nursing homes, trailer parks, dormitories (or other buildings that will be predominantly occupied by students) or other facilities that are usually classified as transient housing (as provided in Code §42(i)(3)(B)(iii) and (iv));

(ii) Aany Development with any building(s) with four or more stories that does not include an elevator;

(iii) Aa Housing Tax Credit Development that provides on-site continual or frequent nursing, medical, or psychiatric services. Refer to IRS Revenue Ruling 98-47 for clarification of assisted living;

(iv) A<u>a</u> Development that <u>proposes population limitations that</u> violates §1.15 of this title (relating to Integrated Housing Rule);

(v) Aa Development seeking Housing Tax Credits that will not meet the general public use requirement under Treasury Regulation, §1.42-9 or a documented exception thereto; or

(vi) A<u>a</u> Development utilizing a Direct Loan that is subject to the Housing and Community Development Act, §104(d) requirements and proposing Rehabilitation or Reconstruction, if the Applicant is not proposing at least the one-for-one replacement of the existing Unit mix. Adding additional units would not violate this provision.

(B) Ineligibility of Elderly Developments.

(i) <u>Anyany</u> Elderly Development of two stories or more that does not include elevator service for any Units or Common Areas above the ground floor;

(ii) <u>Anyany</u> Elderly Development with any Units having more than two Bedrooms with the exception of up to three employee Units reserved for the use of the manager, maintenance, and/or security officer. These employee Units must be specifically designated as such; or

(iii) <u>Anyany</u> Elderly Development (including Elderly in a Rural Area) proposing more than 70% two-Bedroom Units.

(C) Ineligibility of Developments within Certain School Attendance Zones. Except for Developments that are encumbered by a TDHCA LURA on the first day of the application or pre-application acceptance period (if applicable), any Development that falls within the attendance zone of a school that is rated F by the Texas Education Agency is ineligible with no opportunity for mitigation.

(2) Development Size Limitations. The minimum Development size is 16 Units. <u>Competitive</u> <u>Housing Tax Credit or Multifamily Direct Loan-only Developments involving</u> New Construction or Adaptive Reuse <u>Developments</u>-in Rural Areas are limited to a maximum of 80 total Units <u>for Competitive Housing</u>. Tax<u>Credit</u>-Exempt Bond Developments and Multifamily Loan <u>Developments</u>, and <u>involving New Construction or Adaptive Reuse in a Rural Area</u> are limited to a maximum of 120 total Units for Tax Exempt Bond Developments. Other. Rehabilitation Developments do not have a limitation as to the maximum number of Units.

(3) Rehabilitation Costs. Developments involving Rehabilitation must establish a scope of work that will substantially improve the interiors of all units and exterior deferred maintenance, and meet the minimum Rehabilitation amounts identified in subparagraphs (A) – (C) of this paragraph. Such amounts must be maintained through the issuance of IRS Forms 8609. For Developments with multiple buildings that have varying placed in service dates, the earliest date will be used for purposes of establishing the minimum Rehabilitation amounts. Applications must meet the minimum standards and Rehabilitation amounts identified in subparagraphs (A), (B) or (C) of this paragraph.

(A) For Housing Tax Credit Developments under the USDA Set-Aside the minimum Rehabilitation will involve at least \$25,000 per Unit in Building Costs and Site Work;

(B) For Tax-Exempt Bond Developments, less than twenty (20) years old, based on the placed in service date, the minimum Rehabilitation will involve at least \$20,000 per Unit in Building Costs and Site Work. If such Developments are greater than twenty (20) years old, based on the placed in service date, the minimum Rehabilitation will involve at least \$30,000 per Unit in Building Costs and Site Work; or

(C) For all other Developments, the minimum Rehabilitation will involve at least \$30,000 per Unit in Building Costs and Site Work.

(4) Mandatory Development Amenities. (§2306.187) New Construction, Reconstruction or Adaptive Reuse Units must include all of the amenities in subparagraphs (A) - (N) of this paragraph. Rehabilitation (excluding Reconstruction) Developments must provide the amenities in subparagraphs (D) - (N) of this paragraph unless stated otherwise. Supportive Housing Developments are not required to provide the amenities in subparagraph (B), (E), (F), (G), (H), (L), or (M) of this paragraph; however, access must be provided to a comparable amenity in a Common Area. All amenities listed below must be at no charge to the residents. Residents must be provided written notice of the applicable required amenities for the Development. The Board may waive one or more of the requirements of this paragraph for Developments that will include Historic Tax Credits, with evidence <u>submitted with the Application</u>, or prior to Award that the amenity has not <u>bebeen</u> approved by the Texas Historical Commission.

(A) All Bedrooms, the dining room and living room in Units must be wired with current cabling technology for data and phone;

(B) Laundry connections;

(C) Exhaust/vent fans (vented to the outside) in the bathrooms;

(D) Screens on all operable windows;

(E) Disposal and Energy-Star <u>or equivalently</u> rated dishwasher (not required for USDA; Rehabilitation Developments exempt from dishwasher if one was not originally in the Unit);

(F) Energy-Star or equivalently rated refrigerator;

(G) Oven/Range;

(H) Blinds or window coverings for all windows;

(I) At least one Energy-Star or equivalently rated ceiling fan per Unit;

(J) Energy-Star<u>or equivalently</u> rated lighting in all Units;

(K) All areas of the Unit (excluding exterior storage space on an outdoor patio/balcony) must have heating and air-conditioning;

(L) Adequate parking spaces consistent with local code, unless there is no local code, in which case the requirement would be one and a half (1.5)-spaces per Unit for non-Elderly Developments and one (1) space per Unit for Elderly Developments. The minimum number of required spaces must be available to the tenants at no cost. If parking requirements under local code rely on car sharing or similar arrangements, the LURA will require the Owner to provide the service at no cost to the tenants throughout its term;

(M) Energy-Star <u>or equivalently</u> rated windows (for Rehabilitation Developments, only if windows are planned to be replaced as part of the scope of work); <u>and</u>

(N) Adequate accessible parking spaces consistent with the requirements of the 2010 ADA Standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" 79 FR 29671, the Texas Accessibility Standards, and if covered by the Fair Housing Act, HUD's Fair Housing Act Design Manual.

(5) Common Amenities.

(A) All Developments must include sufficient common amenities as described in subparagraph (C) of this paragraph to qualify for at least the minimum number of points required in accordance with clauses (i) - (vi) of this subparagraph.

(i) Developments with 16 to 40 Units must qualify for four (4) points;

(ii) Developments with 41 to 76 Units must qualify for seven (7) points;

(iii) Developments with 77 to 99 Units must qualify for ten (10) points;

(iv) Developments with 100 to 149 Units must qualify for fourteen (14) points;

(v) Developments with 150 to 199 Units must qualify for eighteen (18) points; or

(vi) Developments with 200 or more Units must qualify for twenty-two (22) points.

(B) These points are not associated with any selection criteria points. The amenities must be for the benefit of all residents and made available throughout normal business hours and maintained throughout the Affordability Period. Residents must be provided written notice of the elections made by the Development Owner. If fees or deposits in addition to rent are charged for amenities, then the amenity may not be included among those provided to satisfy the requirement. All amenities must meet all applicable accessibility standards, including those adopted by the Department, and where a specific space or size requirement for a listed amenity is not specified then the amenity must be reasonably adequate based on the Development size. Applications for non-contiguous scattered site housing, excluding non-contiguous single family sites, will have the test applied based on the number of Units per individual site and the amenities selected must be distributed proportionately across all sites. In the case of additional phases of a Development any amenities that are anticipated to be shared with the first phase development cannot be claimed for purposes of meeting this requirement for the second phase. The second phase must include enough points to meet this requirement that are provided on the Development Site. For example, if a swimming pool exists on the phase one Property and it is anticipated that the second phase tenants will be allowed it use it, the swimming pool cannot be claimed for points for purposes of this requirement for the second phase Development. All amenities must be available to all <u>unitsUnits</u> via an accessible route.

(C) The common amenities and respective point values are set out in clauses (i) - (v) of this subparagraph, which are grouped primarily for organizational purposes. Applicants are not required to select a specific number of amenities from each section. An Applicant can only count an amenity once; therefore combined functions (a library which is part of a community room) will only qualify for points under one category:

(i) Community Space for Resident Supportive Services

(I) Except in Applications where more than 10% of the units in the proposed Development are Supportive Housing SRO $\bigcup_{i=1}^{i=1}$ nits, an Application may qualify to receive half of the points required under 10 TAC §11.101(b)(5)(A)(i)-(vi) by electing to provide a High Quality Pre-Kindergarten (HQ Pre-K) program and associated educational space at the Development Site. To receive the points the Applicant must commit to all of items (-a-) through (-c-) of this subclause.

(-a-) Space and Design. The educational space for the HQ Pre-K program must be provided on the Development Site and must be a suitable and appropriately designed space for educating children that an independent school district or open-enrollment charter school can utilize to establish and operate a HQ Pre-K program. This space includes at a minimum a bathroom and large closet in the classroom space; appropriate design considerations made for the safety and security of the students; including limited and secure ingress and egress to the classroom space; and satisfaction of the requirements of all applicable building <u>codecodes</u> for school facilities. The Applicant must provide in the Application a copy of the current school facility code requirements applicable to the Development Site and Owner and Architect certifications that they understand the associated space and design requirements reflected in those code requirements. The Application must also include acknowledgement by all lenders, equity providers and partners that the Application includes election of these points.

(-b-) Educational Provider. The Applicant must enter into an agreement, <u>addressing all items</u> as described in subitems (-1-) through (-5-) below, and provide evidence of such agreement to the Department on or before submission of the Cost Certification . Lack of evidence of such agreement by

the deadline will be cause for rescission of the <u>Commitment Notice</u>.<u>Carryover</u> <u>Agreement</u>.

(-1-) The agreement must be between the Owner and any one of the following: a school district; open-enrollment charter school; or Education Service Center. Private schools and private childcare providers, whether nonprofit or for profit, are not eligible parties, unless the private school or private childcare provider has entered into a partnership with a school district or open-enrollment charter school to provide a HQ Pre-K program in accordance with Texas Education Code Chapter 29, Subchapter E-1.

(-2-) The agreement must reflect that at the Development Site the educational provider will provide a HQ Pre-K program, in accordance with Texas Education Code Chapter 29, Subchapter E-1, at no cost to residents of the proposed Development and that is available for general public use, meaning students other than those residing at the Development may attend.

(-3-) Such agreement must reflect a provision that the option to operate the HQ Pre-K program in the space at the Development Site will continue to be made available to the school or provider until such time as the school or provider wishes to withdraw from the location. This provision will not limit the Owner's right to terminate the agreement for good cause.

(-4-) Such agreement must set forth the responsibility of each party regarding payment of costs to use the space, utility charges, insurance costs, damage to the space or any other part of the Development, and any other costs that may arise as the result of the operation of the HQ Pre-K program.

(-5-) The agreement must include provision for annual renewal, unless terminated under the provisions of item (-c-).

(-c-) If an education provider who has entered into an agreement becomes defunct or elects to withdraw from the agreement and provision of services at the location, as provided for in <u>itemsubitem</u> (-b-)(-3-) of this subclause, the Owner must notify the Texas Commissioner of Education at least 30 days prior to ending the agreement to seek out any other eligible parties listed in <u>subitem</u> (-b-)(-1-) <u>of this subclause</u> above. If another interested open-enrollment charter school or school district is identified by the Texas Commissioner of Education or the Owner, the Owner must enter into a subsequent agreement with the interested open-enrollment charter school or school district. If another interested provider cannot be identified, and the withdrawing provider certifies to the Department that their reason for ending the agreement is not due to actions of the Owner, the Owner will not be considered to be in violation of its commitment to the Department. If the Owner is not able to find a provider, they must notify the

Commissioner annually of the availability of the space.

(II) Multifunctional learning and care center(s) or conference room(s) with the appropriate furnishings to deliver the Resident Supportive Services pertaining to classes or care for children and selected by the Development Owner. The room(s) devoted to meeting this requirement must equal 15 square feet times the total number of Units, but need not exceed 2,000 square feet in total. It This space must be separate from any other community space but may include a full kitchen. The room(s) must include storage space, such as closets and/or cabinetry (4 points);

(III) Multifunctional learning and care center(s) or conference room(s) with the appropriate furnishings to deliver the Resident Supportive Services pertaining to classes or care for adults and selected by the Development Owner. The room(s) devoted to meeting this requirement must equal 10 square feet times the total number of Units, but need not exceed 1,000 square feet in total. <u>ItThis space</u> must be separate from any other community space but may include a full kitchen. The room(s) must include storage space, such as closets and/or cabinetry (2 points);

(IV) Service provider office in addition to leasing offices (1 point);

(ii) Safety

(I) Controlled gate access for entrance and exit areas, intended to provide access that is limited to the Development's tenancy (1 point);

(II) Secured Entry (applicable only if all Unit entries are within the building's interior) (1 point);

(III) Twenty-four hour, seven days a week monitored camera/security system in each building. Monitoring may be on-site or off-site (2 points);

(IV) Twenty-four hour, seven days a week recorded camera / security system in each building (1 point);

(V) The provision of a courtesy patrol service that, at a minimum, answers afterhour resident phone calls regarding noise and crime concerns or apartment rules violations and that can dispatch to the apartment community a courtesy patrol officer in a timely manner (3 points);

(iii) Health/ Fitness / Play

(I) Accessible walking/jogging path, equivalent to the perimeter of the Development or a length that reasonably achieves the same result, separate from a sidewalk and in addition to required accessible routes to Units or other amenities (1 point);

(II) Furnished fitness center. Equipped with a variety of fitness equipment (at least one item for every 40 Units). Choose from the following: stationary bicycle, elliptical trainer, treadmill, rowing machine, universal gym, multi-functional weight bench, stair-climber, dumbbell set, or other similar equipment. Equipment shall be commercial use grade or quality. Fitness center must be located indoors or be a designated room with climate control and allow for after-hours access. (1 point);

(III) Furnished fitness center. Equipped with a variety of fitness equipment (at least one item for every 20 Units). Choose from the following: stationary bicycle, elliptical trainer, treadmill, rowing machine, universal gym, multi-functional weight bench, stair-climber, dumbbell set, or other similar equipment. Equipment shall be commercial use grade or quality. Fitness center must be located indoors or be a designated room with climate control and allow for after-hours access. (2 points);

(IV) One Children's Playscape Equipped for <u>Sfive</u> to 12 year olds, or one Tot Lot (2 points). Must be covered with a shade canopy or awning, intended to keep equipment cool, <u>and</u> provide shade and ultraviolet protection. <u>Can_This item can</u> only <u>select this item be selected</u> if clause (V) of this subparagraph is not selected; or

(V) Two Children's Playscapes Equipped for <u>5 five</u> to 12 year olds, two Tot Lots, or one of each (4 points). Must be covered with a shade canopy or awning, intended to keep equipment cool, <u>and</u> provide shade and ultraviolet protection. <u>CanThis</u> <u>item can</u> only <u>select this item be selected</u> if clause (IV) of this subparagraph is not selected;

(VI) Horseshoe pit; putting green; shuffleboard court; pool table; or ping pong table in a dedicated location accessible to all residents to play such games (1 point);

(VII) Swimming pool (3 points);

(VIII) Splash pad/water feature play area (1 point);

(IX) Sport Court or field (including, but not limited to, Tennis, Basketball, Volleyball, Soccer or Baseball Field) (2 points);

(iv) Design / Landscaping

(I) Full perimeter fencing that includes parking areas and all amenities (excludes guest or general public parking areas) (2 points);

(II) Enclosed community sun porch or covered community porch/patio (1 point);

(III) Dog Park area that is fully enclosed (the perimeter fencing may be used for part of the enclosure) and intended for tenant owned dogs to run off leash (requires that the Development allow dogs) (1 point);

(IV) Shaded rooftop or structural viewing deck of at least 500 square feet (2 points);

(V) Porte-cochere (1 point);

(VI) Lighted pathways along all accessible routes (1 point);

(VII) a resident-run community garden with annual soil preparation and mulch

provided by the Owner and access to water (which may be subject to local water usage restrictions) (1 point);

(v) Community Resources

(I) Gazebo or covered pavilion w/sitting area (seating must be provided) (1 point);

(II) Community laundry room with at least one washer and dryer for every 40 Units (2 points);

(III) Barbecue grill and picnic table with at least one of each for every 50 Units (1 point). Grill must be permanently installed (no portable grills);

(IV) Business center with workstations and seating internet access, 1 printer and at least one scanner which may be integrated with the printer, and either 2 desktop computers or laptops available to check-out upon request (2 points);

(V) Furnished Community room (2 points);

(VI) Library with an accessible sitting area (separate from the community room) (1 point);

(VII) Activity Room stocked with supplies (Arts and Crafts, board games, etc.) (2 points);

(VIII) Community Dining Room with full or warming kitchen furnished with adequate tables and seating (3 points);

(IX) Community Theater Room equipped with a 52 inch or larger screen or projection with surround sound equipment; DVD player or a streaming service at no cost to residents; and seating (3 points);

(X) High-speed Wi-Fi of 10 Mbps download speed or more with coverage throughout the clubhouse and/or community building (1 point);

(XI) High-speed Wi-Fi of 10 Mbps download speed or more with coverage throughout the Development (2 points);

(XII) Bicycle parking that allows for, at a minimum, <u>1one</u> bicycle for every <u>5five</u> Units, within reasonable proximity to each residential building that allows for bicycles to be secured with lock (lock not required to be provided to tenant) (1 point);

(XIII) Package Lockers. Automated Package Lockers provided at a location within the complex that can be accessed by residents 24/7 and at no charge to the resident. To qualify, there would need to be at least <u>1 one</u> locker for every <u>8 eight</u> residential units (2 points);

(XIV) Recycling Service (includes providing a storage location and service for pickup) (1 point);

(XV) Community car vacuum station (1 point).

(6) Unit Requirements.

(A) Unit Sizes. Developments proposing New Construction or Reconstruction will be required to meet the minimum sizes of Units as provided in clauses (i) - (v) of this subparagraph. These minimum requirements are not associated with any selection criteria. Developments proposing Rehabilitation (excluding Reconstruction) or Supportive Housing Developments will not be subject to the requirements of this subparagraph.

- (i) five hundred (500) square feet for an Efficiency Unit;
- (ii) six hundred (600) square feet for a one Bedroom Unit;
- (iii) eight hundred (800) square feet for a two Bedroom Unit;
- (iv) one thousand (1,000) square feet for a three Bedroom Unit; and
- (v) one thousand, two-hundred (1,200) square feet for a four Bedroom Unit.

(B) Unit and Development Construction Features. Housing Tax Credit Applicants may select amenities for the score of an Application under this section, but must maintain the points associated with those amenities by maintaining the amenity selected or providing substitute amenities with equal or higher point values. Tax-Exempt Bond Developments must include enough amenities to meet a minimum of nine (9) points. Direct Loan Applications not layered with Housing Tax Credits must include enough amenities to meet a minimum of nine (9) points. Direct Loan Applications not layered with Housing Tax Credits must include enough amenities to meet a minimum of four (4) points. The amenity shall be for every Unit at no extra charge to the tenant. The points selected at Application and corresponding list of amenities will be required to be identified in the LURA, and the points selected at Application must be maintained throughout the Affordability Period. Applications involving scattered site Developments must have a specific amenity located within each Unit to count for points. Rehabilitation Developments will start with a base score of five (5) points.

(i) Unit Features

- (I) Covered entries (0.5 point);
- (II) Nine foot ceilings in living room and all Bedrooms (at minimum) (1 point);
- (III) Microwave ovens (0.5 point);
- (IV) Self-cleaning or continuous cleaning ovens (0.5 point);
- (V) Energy-Star_or equivalently rated refrigerator with icemaker (0.5 point);

(VI) Storage room or closet, of approximately 9 square feet or greater, separate from and in addition to Bedroom, entryway or linen closets and which does not need to be in the Unit but must be on the Property site (0.5 point);

(VII) Energy-Star <u>qualified</u>or <u>equivalently rated</u> laundry equipment (washers and dryers) for each individual Unit; must be front loading washer and dryer in required accessible Units (2 points);

(VIII) Covered patios or covered balconies (0.5 point);

(IX) High Speed Internet service to all Units (can be wired or wireless; required

equipment for either must be provided) (1 point);

(X) Built-in (recessed into the wall) shelving unit (0.5 point);

(XI) Recessed LED lighting or LED lighting fixtures in kitchen and living areas (1 point);

(XII) Breakfast Bar (a space, generally between the kitchen and dining area, that includes an area for seating although actual seating such as bar stools does not have to be provided) (0.5 point);

(XIII) Walk-in closet in at least one Bedroom (0.5 point);

(XIV) Energy-Star or equivalently rated ceiling fans in all Bedrooms (0.5 point);

(XV) 48" upper kitchen cabinets (1 point);

(XVI) Kitchen island (0.5 points);

(XVII) Kitchen pantry with shelving (may include the washer/dryer unit for Rehabilitation Developments only) (0.5 point);

(XVIII) EPA WaterSense or equivalent qualified toilets in all bathrooms (0.5 point);

(XIX) EPA WaterSense or equivalent qualified showerheads and faucets in all bathrooms (0.5 point);

(XX) Natural stone or quartz countertops in kitchen and bath (1 point);

(XXI) Double vanity in at least one bathroom (0.5 point);

(XXII) Hard floor surfaces in over 50% of unit NRA (0.5 point).

(ii) Development Construction Features

(I) Covered parking (may be garages or carports, attached or freestanding) and include at least one covered space per Unit (1.5 points);

(II) 15 SEER HVAC, or in Region 13, an efficient evaporative cooling system. For Rehabilitation (excluding Reconstruction) where such systems are not being replaced as part of the scope of work, a radiant barrier in the attic is provided, or in applicable regions of the state, an efficient evaporative cooling system (1.5 points(1 point);

(III) 16 SEER HVAC or for Rehabilitation (excluding Reconstruction) where such systems are not being replaced as part of the scope of work, a radiant barrier in the attic is provided, or in applicable regions of the state, an efficient evaporative cooling system (1.5 points);

III) 16 SEER HVAC, for New Construction or Rehabilitation (1.5 points);

(IV) Thirty-(30) year roof (0.5 point);

(V) Greater than 30% stucco or masonry (includes stone, cultured stone, and brick but excludes cementitious and metal siding) on all building exteriors; the percentage calculation may exclude exterior glass entirely (2 points); (VI) Electric Vehicle Charging Station (0.5 points); and

(VII) An Impact Isolation Class (IIC) rating of at least 55 and a Sound Transmission Class (STC) rating of 60 or higher in all Units, as certified by the architect or engineer of record (3 points);

(VIII) A rainwater harvesting/collection system and/or locally approved greywater collection system (0.5 points); and

(IX) Green Building Features. Points under this item are intended to promote energy and water conservation, operational savings and sustainable building practices. PointsFour (4) points may be selected from only one of threethe categories: Enterprise Green Communities, Leadership described in Energy and Environmental Design (LEED), and ICC 700 National Green Building Standard. A Development may qualify for no more than four (4) points totalitems (-a-) through (-d-) of under-this subclause. If the Development involves scattered sites, there must be green building features incorporated into each site in order to qualify for these points.

(-a-) Enterprise Green Communities. The Development must incorporate all mandatory and optional items applicable to the construction type (i.e. New Construction, Rehabilitation, etc.) as provided in the most recent version of the Enterprise Green Communities Criteria found at http://www.greencommunitiesonline.org.

(-b-) <u>Leadership in Energy and Environmental Design (LEED-)</u>. The Development must incorporate, at a minimum, all of the applicable criteria necessary to obtain a LEED Certification, regardless of the rating level achieved (i.e., Certified, Silver, Gold or Platinum).

(-c-) ICC/ASHRAE - 700 National Green Building Standard. (NGBS). The Development must incorporate, at a minimum, all of the applicable criteria necessary to obtain a NGBS Green Certification, regardless of the rating level achieved (i.e. Bronze, Silver, Gold, or Emerald).

(-d-) 2018 International Green Construction Code.

(7) Resident Supportive Services. The supportive services include those listed in subparagraphs (A) - (E) of this paragraph, which are grouped primarily for organizational purposes. Applicants are not required to select a specific number of services from each section. Tax Exempt Bond Developments must select a minimum of eight (8)-points; Direct Loan Applications not layered with Housing Tax Credits must include enough services to meet a minimum of four (4)-points. The points selected and complete list of supportive services will be included in the LURA and the timeframe by which services are offered must be in accordance with §10.619 of this title (relating to Monitoring for Social Services) and maintained throughout the Affordability Period. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application must remain the same. A Development Owner may be required to substantiate such service(s) if requested

by staff. Should the QAP in subsequent years provide different services than those listed in subparagraphs (A) – (E) of this paragraph, the Development Owner may request an Amendment as provided in 10 TAC §10.405(a)(2). The services provided should be those that will directly benefit the Target Population of the Development. Residents must be provided written notice of the elections made by the Development Owner. No fees may be charged to the residents for any of the services, there must be adequate space for the intended services and services offered should be accessible to all (e.g. exercises classes must be offered in a manner that would enable a person with a disability to participate). Services must be provided on-site or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one scoring item. These services are intended to be provided by a qualified and reputable provider in the specified industry such that the experience and background of the provider demonstrates sufficient knowledge to be providing the service. In general, on-site leasing staff or property maintenance staff would not be considered a qualified provider. Where applicable, the services must be documented by a written agreement with the provider. Unless otherwise noted in a particular clause, courses and services must be offered by an onsite instructor(s).

(A) Transportation Supportive Services

(i) shuttle, at least three days a week, to a grocery store and pharmacy and/or a major, big-box retailer that includes a grocery store and pharmacy, OR a daily shuttle, during the school year, to and from nearby schools not served by a school bus system for children who live at the Development (3.5 points);

(ii) monthly transportation to community/social events such as mall trips, community theatre, bowling, organized tours, etc. (1 point);

(B) Children Supportive Services

(i) <u>Provideprovide</u> a High Quality Pre-Kindergarten (HQ Pre-K) program and associated educational space at the Development Site meeting the requirements of 10 TAC §11.101(b)(5)(C)(i)(I). (Half of the points required under 10 TAC §11.101(b)(7));

(ii) <u>12Twelve</u> hours of weekly, organized, on-site services provided to K-12 children by a dedicated service coordinator or third-party entity. Services include after-school and summer care and tutoring, recreational activities, <u>character building programs</u>, mentee opportunities, test preparation, and similar activities that promote the betterment and growth of children and young adults (3.5 points);

(C) Adult Supportive Services

(i) 4<u>Four</u> hours of weekly, organized, on-site classes provided to an adult audience by persons skilled or trained in the subject matter being presented, such as character building programs, English as a second language classes, computer training, financial literacy courses, health education courses, certification courses, GED preparation classes, resume and interview preparatory classes, general presentations about community services and resources, and any other course, class, or presentation that may equip residents with new skills that they may wish to develop (3.5 points);

(ii) annual income tax preparation (offered by an income tax prep service) or IRScertified VITA (Volunteer Income Tax Assistance) program (offered by a qualified individual) that also emphasizes how to claim the Earned Income Tax Credit (1 point);

(iii) contracted career training and placement partnerships with local worksource offices, culinary programs, or vocational counseling services; also may include resident training programs that train and hire residents for job opportunities inside the development in areas like leasing, tenant services, maintenance, landscaping, or food and beverage operation (2 points);

(iv) external partnerships for provision of weekly substance abuse meetings at the Development Site (1 point);

(D) Health Supportive Services

(i) Food<u>food</u> pantry consisting of an assortment of non-perishable food items and common household items (i.e. laundry detergent, toiletries, etc.) accessible to residents at least on a monthly basis or upon request by a resident. While it is possible that transportation may be provided to a local food bank to meet the requirement of this resident service, the resident must not be required to pay for the items they receive at the food bank (2 points);

(ii) annual health fair provided by a health care professional_(1 point);

(iii) weekly exercise classes (offered at times when most residents would be likely to attend) (2 points);

(iv) contracted onsite occupational or physical therapy services for Elderly Developments or Developments where the service is provided for Persons with Disabilities and documentation to that effect can be provided for monitoring purposes (2 points);

(E) Community Supportive Services

(i) partnership with local law enforcement and/or local first responders to provide quarterly on-site social and interactive activities intended to foster relationships with residents (such activities could include playing sports, having a cook-out, swimming, card games, etc.) (2 points);

(ii) Notary Services during regular business hours (§2306.6710(b)(3)) (1 point);

(iii) twice monthly arts, crafts, and other recreational activities (*e.g.* Book Clubs and creative writing classes) (1 point);

(iv) twice monthly on-site social events (i.e. potluck dinners, game night, sing-a-longs, movie nights, birthday parties, holiday celebrations, etc.) (1 point);

(v) specific <u>case managementservice coordination</u> services offered by a qualified Owner or Developer, qualified provider or through external, contracted parties for seniors, Persons with Disabilities or Supportive Housing (3 points);

(vi) weekly home chore services (such as valet trash removal, assistance with

recycling, furniture movement, etc., and quarterly preventative maintenance including light bulb replacement) for Elderly Developments or Developments where the service is provided for Persons with Disabilities and documentation to that effect can be provided for monitoring purposes (2 points);

(vii) any of the programs described under Title IV-A of the Social Security Act (42 U.S.C. §§601, et seq.) which enables children to be cared for in their homes or the homes of relatives; ends the dependence of needy families on government benefits by promoting job preparation, work and marriage; prevents and reduces the incidence of unplanned pregnancies; and encourages the formation and maintenance of two-parent families (1 point);

(viii) a part-time resident services coordinator with a dedicated office space at the Development or a contract with a third-party to provide the equivalent of 15 hours or more of weekly resident supportive services at the Development (2 points);

(ix) provision, by either the Development Owner or a community partner, of an education tuition- or savings-match program or scholarships to residents who may attend college (2 points).

(8) Development Accessibility Requirements. All Developments must meet all specifications and accessibility requirements as identified in subparagraphs (A) - (\in F) of this paragraph and any other applicable state or federal rules and requirements. The accessibility requirements are further identified in the Certification of Development Owner as provided in the Application.

(A) The Development shall comply with the accessibility requirements under Federal law and as further defined in Chapter 1, Subchapter B of this title (relating to Accessibility Requirements). (§§2306.6722; 2306.6730)

(B) Regardless of building type, all Units accessed by the ground floor or by elevator ("affected units") must comply with the visitability requirements in clauses (i) – (iii) of this subparagraph. Design specifications for each item must comply with the standards of the Fair Housing Act Design Manual. Buildings occupied for residential use on or before March 13, 1991 are exempt from this requirement. If the townhome Units of a Rehabilitation Development do not have a bathroom on the ground floor, the Applicant will not be required to add a bathroom to meet the requirements of $\frac{10 \text{ TAC}}{511.101(b)(8)(B)(iii)}$.clause (iii) of this subparagraph.

(i) All common use facilities must be in compliance with the Fair Housing Design Act Manual;

(ii) To the extent required by the Fair Housing Design Act Manual, there must be an accessible or exempt route from common use facilities to the affected units;

(iii) Each affected unit must include the features in subclauses (I) - (V) of this clause.

(I) at <u>At</u> least one zero-step, accessible entrance;

(II) at<u>At</u> least one bathroom or half-bath with toilet and sink on the entry level.

The layout of this bathroom or half-bath must comply with one of the specifications set forth in the Fair Housing Act Design Manual;

(III) the The bathroom or half-bath must have the appropriate blocking relative to the toilet for the later installation of a grab bar, if ever requested by the tenant of that Unit;

(IV) there<u>There</u> must be an accessible route from the entrance to the bathroom or half-bath, and the entrance and bathroom must provide usable width; and

(V) <u>lightLight</u> switches, electrical outlets, and thermostats on the entry level must be at accessible heights.

(C) The Development Owner is and will remain in compliance with state and federal laws, including but not limited to, fair housing laws, including Chapter 301, Property Code, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), the Fair Housing Amendments Act of 1988 (42 U.S.C. §§3601 et seq.); the Civil Rights Act of 1964 (42 U.S.C. §§2000a et seq.); the Americans with Disabilities Act of 1990 (42 U.S.C. §§12101 et seq.); the Rehabilitation Act of 1973 (29 U.S.C. §§701 et seq.); Fair Housing Accessibility; the Texas Fair Housing Act; and that the Development is designed consistent with the Fair Housing Act Design Manual produced by HUD, and the Texas Accessibility Standards. (§2306.257; §2306.6705(7))

(D) All Applications proposing Rehabilitation (including Reconstruction) will be treated as substantial alteration, in accordance with Chapter 1, Subchapter B of this title (relating to Section 504 of the Rehabilitation Act of 1973 and the Fair Housing Act).

(E) For all Developments other than Direct Loan Developments, for the purposes of determining the appropriate distribution of accessible Units across Unit Types, only the number of Bedrooms and full bathrooms will be used to define the Unit Type, but accessible Units must have an equal or greater square footage than the square footage offered in the smallest non-accessible Unit with the same number of Bedrooms and full bathrooms. For Direct Loan Developments, for purposes of determining the appropriate distribution of accessible Units Types, the definition of Unit Type will be used.

(F) Alternative methods of calculating the number of accessible Units required in a Development must be approved by the Department prior to award or allocation.

Subchapter C - Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules

§11.201. Procedural Requirements for Application Submission. This subchapter establishes the procedural requirements for Application submission. Only one Application may be submitted for a Development Site in an Application Round. While the Application Acceptance Period is open or prior to the Application deadline, an Applicant may withdraw an Application and subsequently file a new Application utilizing the original pre-application fee (as applicable) that was paid as long as no substantive evaluation was performed by the Department and the re-submitted Application relates to the same Development Site, consistent with §11.9(e)(3) regarding pre-application Site changes. Applicants are subject to the schedule of fees as set forth in §11.901 of this chapter (relating to Fee Schedule).

(1) General Requirements.

(A) An Applicant requesting funding from the Department must submit an Application in order to be considered for an award. An Application must be complete (including all required exhibits and supporting materials) and submitted by the required program deadline. If an Application, including the corresponding Application fee as described in §11.901 of this chapter, is not submitted to the Department on or before the applicable deadline, the Applicant will be deemed not to have made an Application; provided, however, that errors in the calculation of applicable fees may be cured via an Administrative Deficiency. The deficiency period for curing fee errors will be three business days from the date the fee was originally required to be submitted, and may not be extended. Failure to cure such an error timely will be grounds for termination.

(B) Applying for multifamily funds from the Department is a technical process that must be followed completely. As a result of the competitive nature of some funding sources, an Applicant should proceed on the assumption that deadlines are fixed and firm with respect to both date and time and cannot be waived except where authorized and for truly extraordinary circumstances, such as the occurrence of a significant natural disaster that makes timely adherence impossible. If an Applicant chooses to submit by delivering an item checks or original Carryover Allocation Agreements are physically delivered to the Department, it is the Applicant's responsibility to be within the Department's doors by the appointed deadline. All Applications and all related materials are to be delivered electronically pursuant to the Multifamily Programs Procedures Manual. Applicants are strongly encouraged to submit the required items well in advance of established deadlines. Applicants must ensure that all documents are legible, properly organized and tabbed, and that materials provided in digital media are fully readable by the Department. Department staff receiving an application may perform a cursory review to see if there are any glaring or readily apparent problems. This is a cursory review and may not be relied upon as confirmation that the Application was complete or in proper form. are fully readable by the Department.

(C) The Applicant must timely upload a PDF copy and Excel copy of the complete Application to the Department's secure web transfer server. Each copy must be in a single file and individually bookmarked as further described in the Multifamily Programs

Procedures Manual. Additional files required for Application submission (e.g., Third Party Reports) outside the Uniform Application must also be uploaded to the secure web transfer server. It is the responsibility of the Applicant to confirm the upload to the Department's secure web transfer server was successful and to do so in advance of the deadline. Where there are instances of computer problems, mystery glitches, etc. that prevent the Application from being received by the Department prior to the deadline the Application may be terminated.

(D) Applications must include materials addressing each and all of the items enumerated in this chapter and other chapters as applicable. If an Applicant does not believe that a specific item should be applied, the Applicant must include, in its place, a statement identifying the required item, stating that it is not being supplied, and a statement as to why the Applicant does not believe it should be required.

(2) Filing of Application for Tax-Exempt Bond Developments. Applications <u>maymust</u> be submitted to the Department as described in <u>subparagraphseither subparagraph</u> (A) and or (B) of this paragraph. <u>Multiple site applications by the same Applicant for Tax-Exempt Bond</u> Developments will be considered to be one Application as identified in Tex. Gov't Code, Chapter 1372. Applications will be required to satisfy the requirements of the Qualified Allocation Plan (QAP) this chapter and applicable Department rules in place at that coincide with the timeyear the Application Certificate of Reservation is received by the Department. Issued. Those Applications that receive a Traditional Carryforward Designation after November 15 will not be accepted until after January 2 and will be subject to the QAP and applicable Department, unless determined otherwise by staff.

(A) Lottery Applications. For Applicants participating in the TBRB lottery for private activity bond volume cap and whereby advance notice is given regarding a Certificate of Reservation, the Applicant must submit a Notice to Submit Lottery Application form to the Department no later than the Notice to Submit Lottery Application Delivery Date described in §11.2(b) of this chapter (relating to Tax-Exempt Bond and Multifamily Loan Development Dates and Deadlines). The complete Application, including all required Third Party Reports, accompanied by the Application Fee described in §11.901 of this chapter must be submitted no later than the Applications Associated with Lottery Delivery Date described in §11.2(b) of this chapter.

(B) Waiting List<u>Non-Lottery</u> Applications.

(i) Applications designated as Priority 1 or 2 by the TBRB and receiving advance notice of a Certificate of Reservation for private activity bond volume cap must submit Parts 1 4 of the Application and the the Application Fee described in §11.901 of this chapter and the complete Application, with the exception of the Third Party Reports, prior to the issuance of the Certificate of Reservation by the TBRB. The remaining partsThe Third Party Reports must be submitted on the fifth day of the month and the Application must be submitted at least seventy-five (75) days prior to themay be scheduled for a Board meeting at which the decision to issue a Determination Notice would be made. An Application designated as Priority 3 will not be accepted until after the issuer has induced the bonds, with such documentation included in the Application, and is subject to the <u>approximately 90 days</u> following additional timeframes: such submission deadline. If the fifth day falls on a weekend or holiday, the submission deadline shall be on the next business day.

(i) The Applicant must submit to the Department confirmation that a Certificate of Reservation from the TBRB has been issued not more than thirty (30) days after the Application is received by the Department. The Department may, for good cause, administratively approve an extension for up to an additional thirty (30) days to submit confirmation the Certificate of Reservation has been issued. The Application may be terminated if the Certificate of Reservation is not received within the required timeframe;

(ii) An Application designated as Priority 3 will not be accepted until after the TBRB has issued a Certificate of Reservation and may be submitted on the fifth day of the month. Priority 3 Application submissions must be complete, including all Third Party Reports, before they will be considered accepted by the Department and meeting the submission deadline for the applicable Board meeting date.

(iii) If, as of November 15, an Applicant is unable to obtain a Certificate of Reservation from the current program year because there is no private activity bond volume cap, an Applicant may submit a complete Application without a bond reservation, provided that, a copy of the inducement resolution is included in the Application, and a Certificate of Reservation is issued as soon as possible by BRB staff in January 2021. The determination as to whether a 2020 Application can be submitted and supplemented with 2021 forms and certifications, will be at the discretion of staff. Applicants are encouraged to communicate with staff any issues and timing considerations unique to a Development as early in the process as possible.

(C) The Department will require at least seventy-five (75)90 days to review an Application, unless Department staff can complete its evaluation in sufficient time for <u>an earlier</u> Board consideration. Applicants should be aware that unusual financing structures, portfolio transactions, and the need to resolve Administrative Deficiencies may require additional time to review and the prioritization of Applications will be subject to the review priority established in paragraph (6) of this subsection.

(iiiD) Department staff may choose to delay presentation to the Board in instances in whichwhere an Applicant is not reasonably expected to close within sixty (60) days of a reasonable timeframe following the issuance of a Determination Notice. Applications that receive a Traditional Carryforward Designation will be subject to closing within the same general timeframe as would be typical of the Certificate of Reservation. This will be a condition of the award and reflected in the Determination Notice.

(3) Certification of Tax Exempt Bond Applications with New Docket Numbers. Applications that receive an affirmative Board Determination, but for which closing on the bonds does not occur prior to the Certificate of Reservation expiration date, and which subsequently have that docket number withdrawn from the TBRB, may have their Determination Notice

reinstated. In the event that the Department's Board has not yet approved the Application, the Application will continue to be processed and ultimately provided to the Board for consideration. The Applicant would need to receive a new docket number from the TBRB and meet the requirements described in subparagraphs (A) - (C) of this paragraph:

(A) The Application must remain unchanged with regard to: Site Control, total number of Units, unit mix (Bedroom sizes and income restrictions), design/site plan documents, financial structure including bond and Housing Tax Credit amounts, development costs, rent schedule, operating expenses, sources and uses, ad valorem tax exemption status, Target Population, scoring criteria (if TDHCA is bond issuer) or and TBRB priority status including the effect on the inclusive capture rate. The entities involved in the Applicant entity and Developer cannot change; however, the certification can be submitted even if the lender, syndicator or issuer changes, as long as the financing structure and terms remain unchanged. Should any of the aforementioned items have changed, but in staff's determination and review such change is determined not to be material or determined not to have an effect on the original underwriting <u>conclusions</u> or program review then the Applicant may be allowed to submit the certification and subsequently have the Determination Notice re-issued. Notifications under §11.203 of this chapter (relating to Public Notifications (§2306.6705(9)) are not required to be reissued. A revised Determination Notice will be issued once notice of the assignment of a new docket number has been provided to the Department and the Department has confirmed that the capture rate and market demand remain acceptable. This certification must be submitted no later than thirty (30) calendar days after the date the TBRB issues the new docket number; or

(B) the new docket number may not be issued more than four (4)-months from the date the original application was withdrawn from the TBRB. The new docket number must be from the same program year as the original docket number or, for Applications that receive a new docket number from the program year that is immediately succeeding the program year of the original docket number, the requirements in clauses (i) and (ii) of this subparagraph must be met:

(i) The<u>the</u> Applicant must certify that the Development will meet all rules and requirements in effect at the time the new docket number is issued; and

(ii) Thethe Department must determine that the changes in the rules applicable to the program(s) under which the Application was originally awarded are not of a material nature that would necessitate a new Application and that any new forms and clarifications to the Application are of a nature that can be resolved through the Administrative Deficiency process; or

(C) if there are changes to the Application as referenced in subparagraph (A) of this paragraph or if such changes in the rules pursuant to subparagraph (B)(ii) of this paragraph are of a material nature the Applicant will be required to submit a new Application in full, along with the applicable fees, to be reviewed and evaluated in its entirety for a new Determination Notice to be issued. If there is public opposition but the Application remains the same pursuant to subparagraph (A) of this paragraph, a new

Application will not be required to be submitted; however, the Application must be presented before the Board for consideration of the re-issuance of the Determination Notice.

(4) Withdrawal of Application. An Applicant may withdraw an Application prior to or after receiving an award of funding by submitting to the Department written notice of the withdrawal. For Tax Exempt Bond Applications that are under review by staff and there are changes to or a lapse in the financing structure or there are still aspects of the Application that are in flux, staff may consider the Application withdrawn and will provide the Applicant of notice to that effect. Once it is clear to staff that the various aspects of the Application have been solidified staff may re-instate the Application, or staff may require an entirely new Application be submitted if it is determined that such changes will necessitate a new review of the Application. This provision does not apply to Direct Loan Applications that may be layered with Tax-Exempt Bonds.

(5) Evaluation Process. Priority Applications, which shall include those Applications believed likely to be competitive, will undergo a program review for compliance with submission requirements and selection criteria, as applicable. In general, Application reviews by the Department shall be prioritized conducted based upon the likelihood that an Application will be competitive for an award based upon the region, set-aside, self score, received date, or other ranking factors. Thus, non-competitive or lower scoring Applications may never be reviewed. The Director of Multifamily Finance will identify those Applications that will receive a full program review based upon a reasonable assessment of each Application's priority and its relative position to other Applications, but no Application with a competitive ranking shall be skipped or otherwise overlooked. This initial assessment may be a high level assessment, not a full assessment. Applications deemed to be priority Applications may change from time to time. The Real Estate Analysis division shall underwrite Applications that received a full program review and remain competitive to determine financial feasibility and an appropriate funding amount. In making this determination, the Department will use §11.302 of this chapter (relating to Underwriting Rules and Guidelines) and §13.6 of this title (relating to Multifamily Direct Loan Rule). The Department may have an external party perform all or part of the underwriting evaluation and components thereof to the extent it determines appropriate. The expense of any external underwriting shall be paid by the Applicant prior to the commencement of the aforementioned evaluation pursuant to §11.901(5) of this chapter (relating to Fee Schedule, Appeals and other Provisions). Applications will undergo a previous participation review in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation) and a Development Site may be evaluated by the Department or its agents through a physical site inspection or site visit, (which may include neighboring areas), independent of or concurrent with a site visit that may be performed in conjunction with §11.101(a)(3) (relating to Neighborhood Risk Factors). The Department will, from time to time during the review process, publish an application log which shall include the self-score and any scoring adjustments made by staff. The posting of such scores on the application log may trigger appeal rights and corresponding deadlines pursuant to Tex. Gov't. Code §2306.6715 and §11.902 of this chapter (relating to Appeals Process); in such cases the corresponding deadlines are based on the date on which the log is posted to the Department's website. The Department may also provide a courtesy scoring notice reflecting such score to the Applicant- which will also trigger appeal rights and corresponding deadlines pursuant to Tex. Gov't. Code §2306.6715 and §11.902 of this chapter (relating to Appeals Process).

(6) Prioritization of Order of review of Applications under various Programs. This paragraph identifies how ties or other prioritization matters will be handled when dealing with deconcentration requirements, capture rate calculations, and general order of review priority of Applications submitted under different programs.

(A) De-concentration and Capture Rate. Priority will be established based on the earlier date associated with an Application. The dates that will be used to establish priority are as follows:

(i) Forfor Tax-Exempt Bond Developments, the issuance date of the Certificate of Reservation issued by the TBRB; or in instances where there is a Traditional Carryforward Designation associated with an Application the Department will utilize the date the complete HTC Application that is associated with the Traditional Carryforward Designation is submitted to the Department; and

(ii) Forfor all other Developments, the date the Application is <u>considered</u> received by the Department; and

(iii) Notwithstanding notwithstanding the foregoing, after July 31 of the current program year, a Tax-Exempt Bond Development with a Certificate of Reservation from the TBRB will take precedence over any Housing Tax Credit Application from the current Application Round on the waiting list.

(B) General Review Priority. Order of Review reviews of priority for Applications under various multifamily programs will be established based on Department staff's consideration of any statutory timeframes associated with a program or Application in relation to the volume of Applications being processed. Those with statutory deadlines or more restrictive deadlines will be prioritized for review and processing ahead of those that are not subject to the same constraints. In general, any non-Competitive Housing Tax Credit Applications received during the competitive tax credit round that include a request to be placed on the May, June, or July Board agendas will not may not be prioritized for reviewed or underwriting underwritten due to the statutory constraints on the award and allocation of competitive tax credits. Applicants are advised to keep this in consideration when planning the submission of an Application and issuance of the Certificate of Reservation. Should an Applicant submit an Application regardless of this provision, the Department is not obligated to include the Application on the requested Board meeting agenda and the Applicant should be prepared to be placed on a subsequent Board meeting agenda. Moreover, Applications that have undergone a program review and there are threshold, eligibility or other items that remain unresolved, staff may suspend further review and processing of the Application, including underwriting and previous participation reviews, until such time the item(s) has been

resolved or there has been a specific and reasonable timeline provided by which the item(s) will be resolved. By way of illustration, if during staff's review a question has been raised regarding whether the Applicant has demonstrated sufficient site control, such Application will not be prioritized for further review until the matter has been sufficiently resolved to the satisfaction of staff.

(7) Deficiency Process. The purpose of the deficiency process is to allow an Applicant to provide clarification, explanation, or non-material missing information to resolve inconsistencies in the original Application or to assist staff in evaluating an efficient and effective review of the Application. Deficiencies may be Administrative or Material, in either case they will be treated similarly in that Applicants will may receive a deficiency notice and have an opportunity to respond. -Applicants are encouraged to utilize manuals, frequently asked questions, or other materials produced by staff, as additional guidance in conjunction with the rules to provide appropriate support for each item substantiating a claim or representation, such as claims for points, gualification for set-asides, or meeting of threshold requirements. Applicants are also encouraged to contact staff directly with questions regarding completing parts of the Application.and eligibility requirements. Any Application that staff identifies as having insufficient support information will be directed to cure the matter via the deficiency process. Applicants are reminded that this process may not be used to increase a scoring item's points or to change any aspect of the proposed developmentDevelopment, financing structure, or other element of the Application. The sole purpose of the Administrative Deficiency will be to substantiate one or more aspects of the Application to enable an efficient and effective review by staff. Any narrative created by response to a Deficiency cannot contain new information. Staff will request such information via a deficiency notice. Because the review of an Application occurs in several phases, deficiency notices may be issued during any of these phases. Staff will send the deficiency notice via an e-mail to the Applicant and one other contact party if identified by the Applicant in the Application. It is the Applicant's responsibility to ensure that e-mails sent from TDHCA staff to the Applicant or contact are not electronically blocked or redirected by a security feature as they will be considered to be received once they are sent. The time period for responding to a deficiency notice commences on the first business day following the deficiency notice date. Deficiency notices may be sent to an Applicant prior to or after the end of the Application Acceptance Period and may also be sent in response to reviews on post-award submissions. Responses are required to be submitted electronically as a PDF or multiple PDF files. A review of the response provided by the Applicant may reveal that issues initially identified as an Administrative Deficiency are actually determined to be beyond the scope of an Administrative Deficiency process, meaning that they in fact implicated matters of a material nature are Material Deficiencies not susceptible to being resolved. Department staff may in good faith provide an Applicant confirmation that an Administrative Deficiency response has been received or that such response is satisfactory. Communications from staff that the response was satisfactory do not establish any entitlement to points, eligibility status, or to any presumption of having fulfilled any requirements. Final determinations regarding the sufficiency of documentation submitted to cure a Deficiency as well as the distinction between material and non-material missing information are reserved for the Director of Multifamily Finance, Executive Director, and Board.

(A) It is critical that the use of the deficiency process not unduly slow the review process, and since the process is intended to clarify or explain matters or obtain at the Department's request missing information (that should already been in existence prior to Application submission), there is a reasonable expectation that a party responding to an Administrative Deficiency will be able to respond immediately. It is the responsibility of a person who receives a deficiency to address the matter in a timely manner so that staff has the ability to review the response by the close of business on the date by which resolution must be complete and the deficiency fully resolved. Merely submitting materials prior to that time places the responsibility on the responding party that if the materials do not fully resolve the matter there may be adverse consequences such as point deductions or termination. Extensions relating to Administrative Deficiency deadlines may only be extended up to five days if documentation needed to resolve the item is needed from a Third Party or the documentation involves Third Party signatures needed on certifications in the Application. A Deficiency response may not contain documentation that did not exist prior to submission of the Pre-Application or Full Application, as applicable.

(B) Deficiencies for Competitive HTC Applications. Unless an extension has been timely requested and granted prior to the deadline, if a deficiency is not fully resolved to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice, then (5 five points) shall be deducted from the selection criteria score for each additional day the deficiency remains unresolved. The Applicant's right to appeal the deduction of points is limited to appeal of staff'sstaff's decision regarding the sufficiency of the response. If deficiencies are not resolved by 5:00 p.m. on the seventh business day following the date of the deficiency notice, then the Application shall be terminated, subject to appeal of staff's decision regarding the sufficiency of the response the Applicant's right to appeal. An Applicant may not change or supplement any part of an Application in any manner after the filing deadline or while the Application is under consideration for an award, and may not add any set-asides, increase the requested credit amount, revise the Unit mix (both income levels and Bedroom mixes), or adjust their self-score except in response to a direct request from the Department to do so as a result of an Administrative Deficiency. (§2306.6708(b); §2306.6708) To the extent that the review of deficiency documentation or the imposing of point reductions for late responses alters the score assigned to the Application, such score will be reflected in the updated application log published on the Department's website or a Scoring Notice may be issued.

(C) Deficiencies for all other Applications or sources of funds. DeficienciesTax-Exempt Bond Developments. Unless an extension has been requested prior to the deadline, deficiencies must be resolved to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice. Applications with unresolved deficiencies after 5:00 p.m. on the seventhon the fifth business day following the date of the deficiency notice will be suspended from further processing and the Applicant will be provided with notice to that effect. If, on the fifth business day following the date of the suspension notice, there are deficiencies that remain unresolved, the Application will be terminated and the Applicant will be provided notice to that effect. Should an Applicant still desire to move forward with the Development, staff will require a completely new Application be submitted, along with a new Application Fee pursuant to §11.901 of this chapter. All of the deficiencies noted in the original deficiency notice must be incorporated into the re-submitted Application. Staff will proceed with a new review of the Application, but it will not be prioritized over other Applications that are under review or were submitted prior to its re-submission.

(D) Deficiencies for Direct Loan Applications. Deficiencies must be resolved to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice. Applications with unresolved deficiencies after 5:00 p.m. on the fifth business day following the date of the deficiency notice will be suspended from further processing and the Applicant will be provided with notice to that effect, until such time the item(s) are sufficiently resolved to the satisfaction of the Department. §. If, during the period of time when the Application is suspended from review private activity bond volume cap or Direct Loan funds in the set aside become oversubscribed, the Applicant will be informed that unless the outstanding item(s) are resolved within one business day the Application will be terminated. For purposes of priority under the Direct Loan set-asides, if the outstanding item(s) are resolved within one business day, the date by which the item is submitted shall be the new received date pursuant to §13.5(c) of this chapter (relating to Multifamily Direct Loan Rule). Applicants should be prepared for additional time needed for completion of staff reviews as described in paragraph (2)(B) of this section. If, on the fifth business day following the date of the suspension notice, there are deficiencies that remain unresolved and the Direct Loan funds are not oversubscribed, the Application will be terminated, and the Applicant will be provided notice to that effect. Should an Applicant still desire to move forward with the Development, staff will require a completely new Application be submitted, along with a new Application Fee, as applicable, pursuant to rule. All of the deficiencies noted in the original deficiency notice must be incorporated into the re-submitted Application. Staff will proceed with a new review of the Application, but it will not be prioritized over other Applications that are under review or were submitted prior to its re-submission, and will obtain a new received date pursuant to §13.5(c) of this chapter.

(8) Limited Priority Reviews. If, after the submission of the Application, an Applicant identifies an error in the Application that could likely be the subject of ana Deficiency, the Applicant may request a limited priority review of the specific and limited issues in need of clarification or correction. The issue may not relate to the score of an Application. This limited priority review may only cover the specific issue and not the entire Application. If the limited priority review results in the identification of an issue that requires correction or clarification, staff will request such through the Deficiency process as stated in paragraph (7) of this section, if deemed appropriate. A limited priority review is intended to address:

(A) <u>clarification</u> of issues that Department staff would have difficulty identifying due to the omission of information that the Department may have access to only through Applicant disclosure, such as a prior removal from a tax credit transaction

or participation in a Development that is not identified in the previous participation portion of the Application; or

(B) technical <u>Technical</u> correction of non-material information that would cause an Application deemed non-competitive to be deemed competitive and, therefore, subject to a staff review. For example, failure to mark the Nonprofit Set-Aside in an Application that otherwise included complete submission of documentation for participation in the Nonprofit Set-Aside.

(9) Challenges to Opposition. Any written statement from a Neighborhood Organization expressing opposition to an Application may be challenged if it is contrary to findings or determinations, including zoning determinations, of a municipality, county, school district, or other local Governmental Entity having jurisdiction or oversight over the finding or determination. If any such comment is challenged, the challenger must declare the basis for the challenge and submit such challenge by the Challenges to Neighborhood Organization Opposition Delivery Date as identified in §11.2 of this chapter and no later than May 1, 2019 of the current year for Competitive HTC Applications. The Neighborhood Organization expressing opposition will be given seven (7) calendar days to provide any information related to the issue of whether their assertions are contrary to the findings or determinations of a local Governmental Entity. All such materials and the analysis of the Department's by staff will be provided to a fact finder, chosen by the Department, for review and a determination -of the issue presented by this subsection. The fact finder will not make determinations as to the accuracy of the statements presented, but only with regard to regarding whether the statements are contrary to findings or determinations of a local Governmental Entity. The fact finder's determination will be final and may not be waived or appealed.

§11.202 Ineligible Applicants and Applications. The purpose of this section is to identify those situations in which an Application or Applicant may be considered ineligible for Department funding and subsequently terminated. Such matters may be brought to the attention of staff by anyone, including members of the general public. If such ineligibility is raised by non-staff members it must be made in writing to the Executive Director and the Applicant and must cite the specific ineligible criteria under paragraph (1) of this section and provide factual evidence to support the claim. Any unsupported claim or claim determined to be untrue may be subject to all remedies available to the Department or Applicant. Staff will make enquiry as it deems appropriate and may send a notice to the Applicant and provide them the opportunity to explain how they believe they or their Application is eligible. Staff will present the matter to the Board, accompanied by staff's recommendation. The Board may take such action as it deems warranted by the facts presented, including any testimony that may be provided, either declining to take action, in which case the Applicant or Application, as applicable, remains eligible, or finding the Applicant is ineligible, or, for a matter relating to a specific Application, that that Application is ineligible. A Board finding of ineligibility is final. The items listed in this section include those requirements in Code, §42, Tex. Gov't Code, Chapter 2306, and other criteria considered important by the Department, and does not represent an exhaustive list of ineligibility criteria that may otherwise be identified in applicable rules, federal statutes or regulations, or a specific program NOFA. The Application may include, or Department staff may request, documentation or verification of compliance with any requirements related to the eligibility of an Applicant,

<u>Application, Development Site, or Development.</u> NOFA specific to the programmatic funding. One or more of the matters enumerated in paragraph (1) of this section may also serve as a basis for debarment, or the assessment of administrative penalties, and nothing herein shall limit the Department's ability to pursue any such matter. <u>Failure to provide disclosure may be cause for</u> <u>termination</u>.

(1) Applicants. An Applicant may be considered ineligible if any of the criteria in subparagraphs (A) - (N) of this paragraph apply to those identified on the organizational chart for the Applicant, Developer and Guarantor. An Applicant is ineligible if the Applicant, Developer, or Guarantor:

(A) has Has been or is barred, suspended, or terminated from participation in a state or Federal program, including those listed in HUD's System for Award Management (SAM); (§2306.0504)

(B) has Has been convicted of a state or federal felony crime involving fraud, bribery, theft, misrepresentation of material fact, misappropriation of funds, or other similar criminal offenses within fifteen (15) years preceding the received date of Application or Pre-Application submission (if applicable);

(C) isis, at the time of Application, subject to an order in connection with an enforcement or disciplinary action under state or federal securities law or by the NASD; subject to a federal tax lien (other than a contested lien for which provision has been made); or the subject of a proceeding in which a Governmental Entity has issued an order to impose penalties, suspend funding, or take adverse action based on an allegation of financial misconduct or uncured violation of material laws, rules, or other legal requirements governing activities considered relevant by the Governmental Entity;

(D) has Has materially breached a contract with a public agency, and, if such breach is permitted to be cured under the contract, has been given notice of the breach and a reasonable opportunity to cure, and failed to cure that breach within the time specified in the notice of breach;

(E) has <u>Has</u> 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 agency;

(F) hasHas been found by the Board to be ineligible based on a previous participation review performed in accordance with Chapter 1 Subchapter C of this title; (relating to Previous Participation and Executive Award Review and Advisory Committee);

(G) is delinquent in any loan, fee, or escrow payments to the Department in accordance with the terms of the loan, as amended, or is otherwise in default with any provisions of such loans, and for which no repayment plan has been approved by the Department;

(H) has Has failed to cure any past due fees owed to the Department within the time frame provided by notice from the Department and at least ten (10) days 10 days prior to the Board meeting at which the decision for an award is to be made;

(I) would Would be prohibited by a state or federal revolving door or other standard of conduct or conflict of interest statute, including Tex. Gov't Code, §2306.6733, or a provision of Tex. Gov't Code, Chapter 572, from participating in the Application in the manner and capacity they are participating;

(J) has Has, without prior approval from the Department, had previous Contracts or Commitments that have been partially or fully Deobligated during the twelve (12) months prior to the submission of the Application, and through the date of final allocation due to a failure to meet contractual obligations, and the Person is on notice that such Deobligation results in ineligibility under this chapter;

(K) has Has provided false or misleading documentation or made other intentional or negligent material misrepresentations or omissions in or in connection with an Application (and certifications contained therein), Commitment, or Determination Notice for a Development;

(L) wasWas the Owner or Affiliate of the Owner of a Department assisted rental Development for which the federal affordability requirements were prematurely terminated and the affordability requirements have not been re-affirmed or Department funds repaid;-or

(M) failsFails to disclose, in the Application, any Principal or any entity or Person in the Development ownership structure who was or is involved as a Principal in any other affordable housing transaction, that has terminated voluntarily or involuntarily within the past ten (10) years, or plans to or is negotiating to terminate, their relationship with any other affordable housing development. Failure to disclose is grounds for termination. The disclosure must identify the person or persons and development involved, the identity of each other development, and contact information for the other Principals of each such development, a narrative description of the facts and circumstances of the termination or proposed termination, and any appropriate supporting documents. An Application may be referred to the Board for termination based upon factors in the disclosure. Staff shall present a determination to the Board as toof a person's fitness to be involved as a Principal with respect to an Application, which may include a staff recommendation, using the factors described in clauses (i) – (v) of this subparagraph as considerations:

(i) The the amount of resources in a Development and the amount of the benefit received from the Development;

(ii) the legal and practical ability to address issues that may have precipitated the termination or proposed termination of the relationship;

(iii) the role of the person in causing or materially contributing to any problems with the success of the development;

(iv) the person's compliance history, including compliance history on other or developments; and

(v) any other facts or circumstances that have a material bearing on the question of the person's ability to be a compliant and effective participant in their proposed role

as described in the Application; and or

(N) fails Fails to disclose in the Application any voluntary compliance agreement or similar agreement with any governmental agency that is the result of negotiation regarding noncompliance of any affordable housing Development with any requirements. Any such agreement impacting the proposed Development or any other affordable housing Development controlled by the Applicant must be disclosed.

(2) Applications. An Application shall be ineligible if any of the criteria in subparagraphs (A) - (C) of this paragraph apply to the Application:

(A) <u>A</u> violation of Tex. Gov't Code, §2306.1113, exists relating to Ex Parte Communication. An ex parte communication occurs when an Applicant or Person representing an Applicant initiates substantive contact (other than permitted social contact) with a board member, or vice versa, in a setting other than a duly posted and convened public meeting, in any manner not specifically permitted by Tex. Gov't Code, §2306.1113(b). Such action is prohibited. For Applicants seeking funding after initial awards have been made, such as waiting list Applicants, the ex parte communication prohibition remains in effect so long as the Application remains eligible for funding. The ex parte provision does not prohibit the Board from participating in social events at which a Person with whom communications are prohibited may, or will be present; provided that no matters related to any Application being considered by the Board may be discussed <u>i</u>. An attempted but unsuccessful prohibited ex parte communication, such as a letter sent to one or more board members but not opened, may be cured by full disclosure in a public meeting, and the Board may reinstate the Application and establish appropriate consequences for cured actions, such as denial of the matters made the subject to the communication.

(B) the The Application is submitted after the Application submission deadline (time or date); is missing multiple parts of the Application; or has a Material Deficiency; or

(C) for For any Development utilizing Housing Tax Credits or Tax-Exempt Bonds:

(i) at the time of Application or at any time during the two-year period preceding the date the Application Round begins (or for Tax-Exempt Bond Developments any time during the two-year period preceding the date the Application is submitted to the Department), the Applicant or a Related Party is or has been a person covered by Tex. Gov't Code, §2306.6703(a)(1)(ii) i or or §2306.6733;);

(ii) if the Application is represented or communicated about by a Person that would prompt the violations covered by Tex. Gov't Code §2306.6733; or

(iii) the Applicant proposes to replace in less than fifteen (15) years 15 years any private activity bond financing of the Development described by the Application, unless the exceptions in Tex. Gov't Code, §2306.6703(a)(2) of the are met.

§11.203 Public Notifications (§2306.6705(9))

A certification, as provided in the Application, that the Applicant met the requirements and deadlines identified in paragraphs (1) - (3) of this section must be submitted with the Application. For Applications utilizing Competitive Housing Tax Credits, notifications must not be older than

three (3)-months from the first day of the Application Acceptance Period. For Tax-Exempt Bond Developments and Direct Loan Applications, notifications and proof thereof-must not be older than three (3)-months prior to the date Parts 5 and 6 of the Application are submitted, and for all other Applications no older than three (3) months prior to the date the<u>complete</u> Application is submitted. If notifications were made in order to satisfy requirements of pre-application submission (if applicable to the program) for the same Application, then no additional notification is required at Application. However, re-notification is required by all Applicants who have submitted a change from pre-application to Applicated as units per acre) as a result of a change in the size of the Development Site. In addition, should the person holding any position or role described in paragraph (2) of this section change between the submission of a pre-application and the submission of an Application, Applicants are required to notify the new person no later than the Full Application Delivery Date.

(1) Neighborhood Organization Notifications.

(A) The Applicant must identify and notify all Neighborhood Organizations on record with the county or the state as of 30 days prior to the beginning of the Application Acceptance Period and whose boundaries include the entire proposed Development Site. As used in this section, "on record with the state" means on record with the Secretary of State.

(B) The Applicant must list, in the certification form provided in the pre-application and Application, all Neighborhood Organizations on record with the county or state as of 30 days prior to the beginning of the Application Acceptance Period and whose boundaries include the proposed Development Site as of the submission of the Application, and the Applicant must certify that a reasonable search for applicable entities has been conducted.

(2) Notification Recipients. No later than the date the Application is submitted, notification must be sent to all of the persons or entities identified in subparagraphs (A) - (H) of this paragraph. Developments located in an Extra Territorial Jurisdiction (ETJ) of a city are required to notify both city and county officials. The notifications may be sent by e-mail, fax or mail with return receipt requested or similar tracking mechanism. A template for the notification is included in the Application Notification Template provided in the Application. Evidence of notification is required in the form of a certification provided in the Application. The Applicant is required to retain proof of delivery in the event it is requested by the Department. Evidence of proof of delivery is demonstrated by a signed receipt for mail or courier delivery and confirmation of receipt by recipient for fax and e-mail. Officials to be notified are those officials individuals in office at the time the Application is submitted. Note that between the time of pre-application (if made) and full Application, such officials individuals may change and the boundaries of their jurisdictions may change. By way of example and not by way of limitation, events such as redistricting may cause changes which will necessitate additional notifications at full Application. Meetings and discussions do not constitute notification. Only a timely and compliant written notification to the correct person constitutes notification.

(A) Neighborhood Organizations on record with the state or county as of 30 days prior to

the beginning of the Application Acceptance Period whose boundaries include the entire Development Site;

(B) Superintendent of the school district in which the Development Site is located;

(C) Presiding officer of the board of trustees of the school district in which the Development Site is located;

(D) Mayor of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);

(E) All elected members of the Governing Body of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);

(F) Presiding officer of the Governing Body of the county in which the Development Site is located;

(G) All elected members of the Governing Body of the county in which the Development Site is located; and

(H) State Senator and State Representative of the districts whose boundaries include the Development Site.

(3) Contents of Notification.

(A) The notification must include, at a minimum, all information described in clauses (i) - (viiviii) of this subparagraph.

(i) the Applicant's name, address, individual contact name, and phone number;

(ii) the Development name, address, city and county;

(iii) a statement indicating the program(s) to which the Applicant is applying with the Texas Department of Housing and Community Affairs;

(iv) whether the Development proposes New Construction, Reconstruction, Adaptive Reuse or Rehabilitation;

(v) the physical type of Development being proposed (e.g. single family homes, duplex, apartments, high-rise etc.);

(vi) the total number of Units proposed and total number of Low-Income Units proposed; and

(vii) the residential density of the Development, i.e., the number of Units per acre; and

(viii) information on how and when an interested party or Neighborhood Organization can provide input to the Department.

(C) The notification may not contain any false or misleading statements. Without limiting the generality of the foregoing, the notification may not create the impression that the proposed Development will<u>target</u>, <u>provide a preference</u>, <u>or</u> serve a Target Population exclusively, <u>or as a preference</u>-unless such<u>population limitation</u>, targeting, or preference

is documented in the Application, and is or will be in full compliance with all applicable state and federal laws, including state and federal fair housing laws; and

(D) Notifications or any other communications may not contain any statement that violates Department rules, statute, code, or federal requirements.

§11.204. Required Documentation for Application Submission. The purpose of this section is to identify the <u>threshold</u> documentation that is required at the time of Application submission, unless specifically indicated or otherwise required by Department rule. If any of the documentation indicated in this section is not resolved, clarified or corrected to the satisfaction of the Department through either original Application submission or the Administrative Deficiency process, the Application will be terminated. Unless stated otherwise, all documentation identified in this section must not be dated more than six (6) months prior to the close of the Application Acceptance Period or the date of Application submission as applicable to the program. The Application may include, or Department staff may request, documentation or verification of compliance with any requirements related to the eligibility of an Applicant, Application, Development Site, or Development.

(1) Certification, Acknowledgement and Consent of Development Owner. A certification of the information in this subchapter as well as Subchapter B of this chapter must be executed by the Development Owner and addresses the specific requirements associated with the Development. The Person executing the certification is responsible for ensuring all individuals referenced therein are in compliance with the certification and that they have given it with all required authority and with actual knowledge of the matters certified.

(A) The Development will adhere to the Texas Property Code relating to security devices and other applicable requirements for residential tenancies, and will adhere to local building codes or, if no local building codes are in place, then to the most recent version of the International Building Code.

(B) This Application and all materials submitted to the Department constitute records of the Department subject to Tex. Gov't Code, Chapter 552. All persons who have a property interest in the Application, along with all plans and third-party reports, must acknowledge Any person signing the Certification acknowledges that they have the authority to release all materials for publication on the Department's website, that the Department may publish them on the Department's website, and release them in response to a request for public information, and make other use of the information as authorized by law.

(C) All representations, undertakings and commitments made by Applicant in the Application process for Development assistance expressly constitute conditions to any Commitment, Determination Notice, Carryover Allocation, or Direct Loan Commitment for such Development which the Department may issue or award, and the violation of any such condition shall be sufficient cause for the cancellation and rescission of such Commitment, Determination Notice, Carryover Allocation, or Direct Loan Commitment by the Department. If any such representations, undertakings and commitments concern

or relate to the ongoing features or operation of the Development, they shall each and all shall be enforceable even if not reflected in the Land Use Restriction Agreement. All such representations, undertakings and commitments are also enforceable by the Department and the residents of the Development, including enforcement by administrative penalties for failure to perform (consistent with Chapter 2, Subchapter C of this title relating to Administrative Penalties), in accordance with the Land Use Restriction Agreement.

(D) The Development Owner has read and understands the Department's fair housing educational materials posted on the Department's website as of the beginning of the Application Acceptance Period.

(E) The Development Owner agrees to implement a plan to use Historically Underutilized Businesses (HUB) in the development process consistent with the Historically Underutilized Business Guidelines for contracting with the State of Texas. The Development Owner will be required to submit a report of the success of the plan as part of the cost certification documentation, in order to receive IRS Forms 8609 or, if the Development does not have Housing Tax Credits, release of retainage.

(F) The Applicant will attempt to ensure that at least 30% of the construction and management businesses with which the Applicant contracts in connection with the Development are Minority Owned Businesses as further described in Tex. Gov't Code, §2306.6734.

(G) The Development Owner will specifically market to veterans through direct marketing or contracts with veteran's organizations. The Development Owner will be required to identify how they will specifically market to veterans and report to the Department in the annual housing report on the results of the marketing efforts to veterans. Exceptions to this requirement must be approved by the Department.

(H) The Development Owner will comply with any and all notices required by the Department.

(I) If the Development has an existing LURA with the Department, the Development Owner will comply with the existing restrictions.

(2) Applicant Eligibility Certification. A certification of the information in this subchapter as well as Subchapter B of this chapter must be executed by any individuals required to be listed on the organizational chart and also identified in 10 TAC §11.1(d)(30), the definition of Control.meeting the definition of Control. The certification must identify the various criteria relating to eligibility requirements associated with multifamily funding from the Department, including but not limited to the criteria identified under §11.202 of this chapter (relating to Ineligible Applicants and Applications).

(3) <u>Engineer/Architect Certification Form.</u> The certification, addressing all of the accessibility requirements applicable to the Development Site, must be executed by the Development engineer or accredited architect after careful review of the Department's accessibility requirements, and including. (§2306.6722; §2306.6730) The certification must include a statement describing how the accessibility requirements relating to Unit distribution will be

met and certification that they have reviewed and understand the Department's fair housing educational materials posted on the Department's website as of the beginning of the Application Acceptance Period. The certification must also include the following statement, ""all persons who have a property interest in this plan hereby acknowledge that the Department may publish the full plan on the Department's Department's website, release the plan in response to a request for public information, and make other use of the plan as authorized by law." An acceptable, but not required, form of such statement may be obtained in the Multifamily Programs Procedures Manual.<u>(Tex. Gov't Code §2306.6722 and; §2306.6730).</u>

(4) Notice, Hearing, and Resolution for Tax-Exempt Bond Developments. In accordance with Tex. Gov't Code, §2306.67071, the following actions must take place with respect to the filing of an Application and any Department awards for a Tax-Exempt Bond Development.

(A) Prior to submission of an Application to the Department, an Applicant must provide notice of the intent to file the Application in accordance with §11.203 of this chapter (relating to Public Notifications (§2306.6705(9)).

(B) The Governing Body of a municipality must hold a hearing if the Development Site is located within a municipality or the extra territorial jurisdiction (ETJ) of a municipality. The Governing Body of a county must hold a hearing unless the Development Site is located within a municipality. For Development Sites located in an ETJ the county and municipality must hold hearings; however, the county and municipality may arrange for a joint hearing. The purpose of the hearing(s) must be to solicit public input concerning the Application or Development and the hearing(s) must provide the public with such an opportunity. The Applicant may be asked to substantively address the concerns of the public or local government officials.

(C) An Applicant must submit to the Department a resolution of no objection from the applicable Governing Body. Such resolution(s) must specifically identify the Development whether by legal description, address, Development name, Application number or other verifiable method. In providing a resolution, a municipality or county should consult its own staff and legal counsel as to whether such resolution will be consistent with Fair Housing laws as they may apply, including, as applicable, consistency with any FHAST form on file, any current Analysis of Impediments to Fair Housing Choice, or any current plans such as one year action plans or five year consolidated plans for HUD block grant funds such as HOME or CDBG funds. For an Application with a Development Site that is:

(i) Withinwithin a municipality, the Applicant must submit a resolution from the Governing Body of that municipality;

(ii) Withinwithin the ETJ of a municipality, the Applicant must submit both:

(I) A resolution from the Governing Body of that municipality; and

(II) <u>A</u> resolution from the Governing Body of the county; or

(iii) Withinwithin a county and not within a municipality or the ETJ of a municipality, a resolution from the Governing Body of the county.

(D) For purposes of meeting the requirements of subparagraph (C) of this paragraph, the resolution(s) must be submitted no later than the Resolutions Delivery Date described in §11.2(b) of this chapter (relating to Tax-Exempt Bond and <u>MultifamilyDirect</u> Loan Development Dates and Deadlines). An acceptable, but not required, form of resolution may be obtained in the Multifamily Programs Procedures Manual. Applicants should ensure that the resolutions all have the appropriate references and certifications or the resolution may be determined by staff to be invalid. The resolution(s) must certify that:

(i) Noticenotice has been provided to the Governing Body in accordance with Tex. Gov't Code, §2306.67071(a);

(ii) <u>Thethe</u> Governing Body has had sufficient opportunity to obtain a response from the Applicant regarding any questions or concerns about the proposed Development;

(iii) Thethe Governing Body has held a hearing at which public comment may be made on the proposed Development in accordance with Tex. Gov't Code, §2306.67071(b); and

(iv) After<u>after</u> due consideration of the information provided by the Applicant and public comment, the Governing Body does not object to the proposed Application.

(5) Designation as Rural or Urban.

(A) Each Application must identify whether the Development Site is located in an Urban Area or Rural Area of a Uniform State Service Region. The Department shall make available a list of Places meeting the requirements of Tex. Gov't Code, §2306.004(28-a)(A) and (B), for designation as a Rural Area and those that are an Urban Area in the Site Demographics Characteristics Report. Some Places are municipalities. For any Development Site located in the ETJ of a municipality and not in a Place, the Application shall have the Rural Area or Urban Area designation of the municipality whose ETJ within which the Development Site is located. For any Development Site not located within the boundaries of a Place or the ETJ of a municipality, the applicable designation is that of the closest Place.

(B) Certain areas located within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area can request a Rural designation from the Department for purposes of receiving an allocation Housing Tax Credits (§2306.6740). In order to apply for such a designation, a letter must be submitted from a duly authorized official of the political subdivision or census designated place addressing the factors outlined in clauses (i) - (vi) of this subparagraph. Photographs and other supporting documentation are strongly encouraged. In order for the area to be designated Rural by the Department for the 2019<u>current</u> Application Round, such requests must be made no later than December 14, 2018<u>15 of the previous year</u>. If staff is able to confirm the findings outlined in the request, the Rural designation will be granted without further action and will remain in effect until such time that the population as described in clause (i) of this subparagraph will be given an opportunity to supplement their case. If, after receiving any supplemental information, staff still cannot confirm the rural nature of the

Application, a recommendation for denial will be presented to the Board.

(i) The the population of the political subdivision or census designated place does not exceed 25,000;

(ii) <u>Thethe</u> characteristics of the political subdivision or census designated place and how those differ from the characteristics of the area(s) with which it shares a contiguous boundary;

(iii) Thethe percentage of the total border of the political subdivision or census designated place that is contiguous with other political subdivisions or census designated places designated as urban. For purposes of this assessment, less than 50% contiguity with urban designated places is presumptively rural in nature;

(iv) Thethe political subdivision or census designated place contains a significant number of unimproved roads or relies on unimproved roads to connect it to other places;

(v) Thethe political subdivision or census designated place lacks major amenities commonly associated with urban or suburban areas; and

(vi) Thethe boundaries of the political subdivision or census designated place contain, or are surrounded by, significant areas of undeveloped or agricultural land. For purposes of this assessment, significant being more than one-third of the total surface area of political subdivision/census designated place, or a minimum of 1,000 acres immediately contiguous to the border.

(6) Experience Requirement. Evidence that meets the criteria as stated in subparagraph (A) of this paragraph must be provided in the Application, unless an experience certificate was issued by the Department in the years 20142017 through 20182019, which may be submitted as acceptable evidence of this requirement. Experience of multiple parties may not be aggregated to meet this requirement.

(A) A natural Person, with control of the Development who intends and has the ability to remain in control through placement in service, who is also a Principal of the Developer, Development Owner, or General Partner must establish that they have experience that has included the development and placement in service of 150 units or more in the ten years preceding submission. Applicants requesting Multifamily Direct Loan funds only may meet the alternative requirement at \$13.25(dh)(1) of this title. (relating to Experience). Acceptable documentation to meet this requirement shall include any of the items in clauses (i) - (ix) of this subparagraph:

(i) American Institute of Architects (AIA) Document (A102) or (A103) 2007 - Standard Form of Agreement between Owner and Contractor;

(ii) AIA Document G704--Certificate of Substantial Completion;

(iii) AIA Document G702--Application and Certificate for Payment;

(iv) Certificate of Occupancy;

(v) IRS Form 8609 (only one per development is required);

(vi) HUD Form 9822;

(vii) Development agreements;

(viii) Partnershippartnership agreements; or

(ix) other documentation satisfactory to the Department verifying that a Principal of the Development Owner, General Partner, or Developer has the required experience.

(B) The names on the forms and agreements in subparagraph (A)(i) - (ix) of this paragraph must reflect that the individual seeking to provide experience is a Principal of the Development Owner, General Partner, or Developer as listed in the Application. For purposes of this requirement any individual attempting to use the experience of another individual or entity must demonstrate they had the authority to act on their behalf that substantiates the minimum 150 unit requirement.

(C) If <u>For competitive HTC Applications, if</u> a Principal is determined by the Department to not have the required experience, <u>an acceptablea</u> replacement for that Principal <u>mustwill</u> <u>not</u> be <u>identified prior to the date the award is made by the Board</u><u>allowed</u>.

(D) Notwithstanding the foregoing, no person may be used to establish such required experience if that Person or an Affiliate of that Person would not be eligible to be an Applicant themselves.

(7) Financing Requirements.

(A) Non-Department Debt Financing. Interim and permanent financing sufficient to fund the proposed Total Housing Development Cost less any other funds requested from the Department must be included in the Application. For any Development that is a part of a larger development plan on the same site, the Department may request and evaluate information related to the other components of the development plan in instances in which the financial viability of the Development is in whole or in part dependent upon the other portions of the development plan. Any local, state or federal financing identified in this section which restricts household incomes at any level that is lower than restrictions required or elected in accordance with this Chapter or Chapter 13 of this title (relating to Multifamily Direct Loan) must be identified in the rent schedule and the local, state or federal income restrictions must include corresponding rent levels in accordance with Code §42(g) if the Development will receive housing tax credits. The income and corresponding rent restrictions will be memorialized reflected in a recorded the LURA and monitored for compliance. Financing amounts must be consistent throughout the Application and acceptable documentation shall include those described in clauses (i) and (ii) of this subparagraph.

(i) Financing financing is in place as evidenced by:

(I) a valid and binding loan agreement; and

(II) <u>A</u> valid recorded deed(s) of trust lien on the Development in the name of the Development Owner as grantor in favor of the party providing such financing and

covered by a lender's policy of title insurance in their name; and

(ii) <u>Termterm</u> sheets for interim and permanent loans issued by a lending institution or mortgage company that is actively and regularly engaged in the business of lending money must: <u>must:</u>

(I) have <u>Have</u> been signed by the lender;

(II) beBe addressed to the Development Owner or Affiliate;

(III) for For a permanent loan, include a minimum loan term of fifteen (15) years with at least a thirty (30) year amortization; or for non-amortizing loan structures a term of not less than 30 years;

(IV) <u>include</u> either a committed and locked interest rate, or the currently projected interest rate and the mechanism for determining the interest rate;

(V) include Include all required Guarantors, if known;

(VI) include Include the principal amount of the loan;

(VII) includeInclude an acknowledgement of the amounts and terms of all other anticipated sources of funds and if the Application reflects an intent to elect income averaging there must be an acknowledgement to that effect in the term sheet; and

(VIII) includeInclude and address any other material terms and conditions applicable to the financing. The term sheet may be conditional upon the completion of specified due diligence by the lender and upon the award of tax credits, if applicable.; or

(iii) For Developments proposing to refinance an existing USDA Section 514, 515, or 516 loan, a letter from the USDA confirming that it has been provided with the Preliminary Assessment Tool.

(iv) For Direct Loan Applications or Tax-Exempt Bond Development Applications utilizing FHA financing, the Application shall include the applicable pages from the HUD Application for Multifamily Housing Project. If the HUD Application has not been submitted at the time the Application is submitted then a statement to that effect should be included in the Application along with an estimated date for submission. Applicants should be aware that staff's underwriting of an Application will not be finalized and presented to the Board until staff has evaluated the HUD Application relative to the Application.

(B) Gap Financing. Any anticipated federal, state, local or private gap financing, whether soft or hard debt, must be identified and described in the Application. Applicants must provide evidence that an application for such gap financing has been made. Acceptable documentation may include a letter from the funding entity confirming receipt of an application or a term sheet from the lending agency which clearly describes the amount and terms of the financing. Other Department funding requested with Housing Tax Credit Applications must be on a concurrent funding period with the Housing Tax Credit

Application, and no term sheet is required for such a request. Permanent loans must include a minimum loan term of fifteen (15) years with at least a thirty (30) year amortization or for non amortizing loan structures a term of not less than thirty (30) years. A term loan request must also A term loan request must comply with the applicable terms of the NOFA under which an Applicant is applying.

(C) Owner Contributions. If the Development will be financed in part with a capital contribution or debt by the General Partner, Managing General Partner, any other partner or investor that is not a partner providing the syndication equity, a Guarantor or a Principal in an amount that exceeds 5% of the Total Housing Development Cost, a letter from a Third Party CPA must be submitted that verifies the capacity of the contributor to provide the capital from funds that are not otherwise committed or pledged. Additionally, a letter from the contributor's bank(s) or depository(ies) must be submitted confirming sufficient funds are readily available to the contributor. The contributor must certify that the funds are and will remain readily available at Commitment and until the required investment is completed. Regardless of the amount, all capital contributions other than syndication equity will be deemed to be a part of, and therefore will be added to, the Deferred Developer Fee for feasibility purposes under §11.302(i)(2) of this chapter (relating to Underwriting Rules and Guidelines) or where scoring is concerned, unless the contribution is a seller note equal to or less than the acquisition price of the subject Development, the Development is a Supportive Housing Development, the Development is not supported with Housing Tax Credits, or the ownership structure includes a nonprofit organization with a documented history of fundraising sufficient to support the development of affordable housing.

(D) Equity Financing. (§2306.6705(2) and (3)) If applicable to the program, the Application must include a term sheet from a syndicator that, at a minimum, includes:

(i) an estimate of the amount of equity dollars expected to be raised for the Development;

(ii) the amount of Housing Tax Credits requested for allocation to the Development Owner;

(iii) pay-in schedules;

(iv) syndicator consulting fees and other syndication costs. No syndication costs should be included in the Eligible Basis; and

(v) include an acknowledgement of the amounts and terms of all other anticipated sources of funds and if the Application reflects an intent to elect income averaging there must be an acknowledgement to that effect in the term sheet.

(E) Financing Narrative. (§2306.6705(1)) A narrative must be submitted that describes all aspects of the complete financing plan for the Development, including but not limited to, as applicable the sources and uses of funds; construction, permanent and bridge loans, rents, operating subsidies, project-based assistance, and replacement reserves; and the status (dates and deadlines) for applications, approvals and closings, etc. associated with

the <u>commitmentsterm sheets</u> for all funding sources. For Applicants requesting Direct Loan funds, Match-, as applicable, must be documented with a letter from the anticipated provider of Match indicating the provider's willingness and ability to make a financial commitment should the Development receive an award of Direct Loan funds. The information provided must be consistent with all other documentation in the Application.

(8) Operating and Development Cost Documentation.

(A) <u>15Fifteen</u>-year Pro forma. All Applications must include a 15-year pro forma estimate of operating expenses, in the form provided by the Department. Any "other" debt service included in the pro forma must include a description.

(B) Utility Allowances. This exhibit, as provided in the Application, must be submitted along with documentation from the source of the utility allowance estimate used in completing the Rent Schedule provided in the Application. This exhibit must clearly indicate which utility costs are included in the estimate and must comply with the requirements of §10.614 of this title (relating to Utility Allowances), including deadlines for submission. Where the Applicant uses any method that requires Department review, documentation indicating that the requested method has been granted by the Department must be included in the Application.

(C) Operating Expenses. This exhibit, as provided in the Application, must be submitted indicating the anticipated operating expenses associated with the Development. Any expenses noted as "other" in any of the categories must <u>be identified.include a</u> <u>description.</u> "Miscellaneous" or other nondescript designations are not acceptable.

(D) Rent Schedule. This exhibit, as provided in the Application, must indicate the type of Unit designation based on the Unit's rent and income restrictions. The rent and utility limits available at the time the Application is submitted should be used to complete this exhibit. Gross rents cannot exceed the maximum rent limits unless documentation of project-based rental assistance is provided and rents are consistent with such assistance and applicable legal requirements. The unit mix and net rentable square footages must be consistent with the site plan and architectural drawings. For Units restricted in connection with Direct Loans, the restricted Units will generally be designated "floating" unless specifically disallowed under the program specific rules. For Applications that propose utilizing Direct Loan funds, at least 90% of the Units restricted in connection with the Direct Loan funds, at least 90% of the Units restricted in connection with the set available to households or families whose incomes do not exceed 60% of the Area Median Income. For Applications that propose to elect income averaging, Units restricted by any fund source other than housing tax credits must be specifically identified, and all restricted Units, regardless of fund source, must be included in the average calculation.

(E) Development Costs. This exhibit, as provided in the Application, must include the contact information for the person providing the cost estimate and must meet the requirements of clauses (i) and (ii) of this subparagraph.

(i) Applicants must provide a detailed cost breakdown of projected Site Work costs (excluding site amenities), if any, prepared by a Third Party engineer or cost estimator.

If Site Work costs (excluding site amenities) exceed \$15,000 per Unit and are included in Eligible Basis, a letter must be provided from a certified public accountant allocating which portions of those site costs should be included in Eligible Basis.

(ii) If costs for Off-Site Construction are included in the budget as a line item, or embedded in the site acquisition contract, or referenced in the utility provider letters, then thean Off-Site Cost Breakdown prepared by a Third Party engineer must be provided. The certification from a Third Party engineer must describe the necessity of the off-site improvements, including the relevant requirements of the local jurisdiction with authority over building codes. If any Off-Site Construction costs are included in Eligible Basis, a letter must be provided from a certified public accountant allocating which portions of those costs should be included in Eligible Basis. If off-site costs are included in Eligible Basis based on PLR 200916007, a statement of findings from a CPA must be provided which describes the facts relevant to the Development and affirmatively certifies that the fact pattern of the Development matches the fact pattern in PLR 200916007.

(F) Rental Assistance/Subsidy. (§2306.6705(4)) If rental assistance, an operating subsidy, an annuity, or an interest rate reduction payment is proposed to exist or continue for the Development, any related contract or other agreement securing those funds or proof of application for such funds must be provided. Such documentation shall, at a minimum, identify the source and annual amount of the funds, the number of units receiving the funds, and the term and expiration date of the contract or other agreement.

(G) Occupied Developments. The items identified in clauses (i) - (vi) of this subparagraph must be submitted with any Application where any structure on the Development Site is occupied at any time after the Application Acceptance Period begins or if the Application proposes the demolition of any housing occupied at any time after the Application Acceptance Period begins. If the Application includes a request for Direct Loan funds, Applicants must follow the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) and other HUD requirements including Section 104(d) of the Housing and Community Development Act. HUD Handbook 1378 provides guidance and template documents. Failure to follow URA or 104(d) requirements will make the proposed Development ineligible for Direct Loan funds and may lead to penalty under 10 TAC §13.11(b) of this title (relating to Multifamily Direct Loan Rule). If the current property owner is unwilling to provide the required documentation then a signed statement from the Applicant attesting to that fact must be submitted. If one or more of the items described in clauses (i) - (vi) of this subparagraph is not applicable based upon the type of occupied structures on the Development Site, the Applicant must provide an explanation of such non-applicability. Applicant must submit:

(i) at least one of the items identified in subclauses (I) - (IV) of this clause:

(I) historical Historical monthly operating statements of the Existing Residential Development for twelve (12) consecutive months ending not more than three (3) months from the first day of the Application Acceptance Period;

(II) the The two-(2) most recent consecutive annual operating statement summaries;

(III) the <u>The</u> most recent consecutive six (6) months of operating statements and the most recent available annual operating summary; or

(IV) all<u>All</u> monthly or annual operating summaries available; and

(ii) a rent roll not more than six-(6) months old as of the first day the Application Acceptance Period that discloses the terms and rate of the lease, rental rates offered at the date of the rent roll, Unit mix, and tenant names or vacancy; any vacant units;

(iii) a written explanation of the process used to notify and consult with the tenants in preparing the Application; (§2306.6705(6))

(iv) a relocation plan outlining relocation requirements and a budget with an identified funding source; (§2306.6705(6))

(v) any documentation necessary for the Department to facilitate, or advise an Applicant with respect to or to ensure compliance with the Uniform Relocation Act and any other relocation laws or regulations as may be applicable; and

(vi) if applicable, evidence that the relocation plan has been submitted to all appropriate legal or governmental agencies or bodies. (§2306.6705(6))

(9) Architectural Drawings. All Applications must include the items identified in subparagraphs (A) - (D) of this paragraph, unless specifically stated otherwise, and must be consistent with all applicable exhibits throughout the Application. The drawings must have a legible scale and show the dimensions of each perimeter wall and floor heights.

(A) For all Developments a site plan is must be submitted that includes the items identified in clauses (i) - (xii) of this subparagraph:

(i) states the size of the site on its face;

(ii) includes a Unit and building type table matrix that is consistent with the Rent Schedule and Building/Unit Configuration forms provided in the Application in labeling buildings and Units;

(iii) includes a table matrix specifying the square footage of Common Area space on a building by building basis;

(iv) identifies all residential and common buildings in place on the Development Site and labels them consistently with the Rent Schedule and Building/Unit Type Configuration forms provided in the Application;

(v) shows the locations (by Unit and floor) of mobility and hearing/visual accessible Units (unless included in residential building floor plans);

(vi) clearly delineates the flood plain boundary lines or states there is no floodplain;

(vii) indicates placement of detention/retention pond(s) or states there are no detention ponds;

(viii) describes, if applicable, how flood mitigation or other required mitigation will be accomplished;

(ix) indicates the location and number of parking spaces, garages, and carports;

(x) indicates the location and number of accessible parking spaces, garages, and carports, including van accessible spaces;

(xi) includes information regarding local parking requirements; and

(xii) indicates compliant accessible routes or if a route is not accessible a cite to the provision in the Fair Housing Design Manual providing for its exemption.

(B) Building floor plans must be submitted for each building type. Building floor plans must include the locations of the accessible Units and must also include square footage calculations for balconies, breezeways, corridors and any other areas not included in net rentable area;

(C) Unit floor plans for each type of Unit must be included in the Application and must include the square footage for each type of Unit. Unit floor plans must be submitted for the accessible Units. Applications for Adaptive Reuse are only required to include Unit floor plans for each distinct floor plan such as one-Bedroom, <u>or</u> two-Bedroom, and for all floor plans that vary in Net Rentable Area by 10% from the typical floor plan; and

(D) Elevations must be submitted for each side of each building type (or include a statement that all other sides are of similar composition as the front) and include a percentage estimate of the exterior composition and proposed roof pitch. Applications for Rehabilitation and Adaptive Reuse may submit photographs if the Unit configurations are not being altered and post-renovation drawings must be submitted if Unit configurations are proposed to be altered.

(10) Site Control.

(A) Evidence that the Development Owner has Site Control must be submitted. If the evidence is not in the name of the Development Owner, then an Affiliate of the Development Owner must have Site Control that allows for an ability to assign the Site Control to the Development Owner. All of the sellers of the proposed Property for the thirty-six (36) months 36 month period prior to the first day of the Application Acceptance Period and their relationship, if any, to members of the Development Team must be identified at the time of Application. The Department may request documentation at any time after submission of an Application of the Development Owner's ability to compel title of any Affiliated property acquisition(s) and the Development Owner must be able to promptly provide such documentation or the Application, award, or Commitment may be terminated. The Department acknowledges and understands that the Property may have one or more encumbrances at the time of Application submission and the Department will take into account whether any such encumbrance is reasonable within the legal and financial ability of the Development Owner to address without delaying development on the timeline contemplated in the Application. Tax-Exempt Bond Lottery Applications must have Site Control valid through December 1 of the prior program year with the option to extend through March 1 of the current program year.

(B) In order to establish Site Control, one of the items described in clauses (i) - (iii) of this subparagraph must be provided. In the case of land donations, Applicants must demonstrate that the entity donating the land has Site Control as evidenced through one of the items described in clauses (i) - (iii) of this subparagraph or other documentation acceptable to the Department.

(i) a recorded warranty deed vesting indefeasible title in the Development Owner or, if transferrable to the Development Owner, an Affiliate of the Owner, with corresponding executed settlement statement (or functional equivalent for an existing lease with at least forty-five (45) years remaining); or

(ii) a contract or option for lease with a minimum term of forty-five (45) years that includes a price; address and/or legal description; proof of consideration in the form specified in the contract; and expiration date; or

(iii) a contract for sale or an option to purchase that includes a price; address and/or legal description; proof of consideration in the form specified in the contract; and expiration date;:

(C) If the acquisition can be characterized as an identity of interest transaction, as described in §11.302 of this chapter, <u>regarding Underwriting Rules and Guidelines</u>, then the documentation<u>required</u> as further described therein must be submitted in addition to that of subparagraph (B) of this paragraph.

(D) If ingress and egress to a public right of way are not part of the Property described in the site control documentation, the Applicant must provide evidence of an easement, leasehold, or similar documented access, along with evidence that the fee title owner of the property agrees that the LURA may extend to the access easement<u>by the time of Commitment</u>.

(E) If control of the entire proposed Development Site requires that a plat or right of way be vacated, evidence that the vacation/re-platting process has started must be included in the Application, and evidence of control of the entire Development Site must be provided by the time of Commitment.

(11) Zoning. (§2306.6705(5)) Acceptable evidence of zoning for all Developments must include one of subparagraphs (A) - (D) of this paragraph. In instances where annexation of a Development Site occurs while the Application is under review, the Applicant must submit evidence of appropriate zoning with the Commitment or Determination Notice.

(A) No Zoning Ordinance in Effect. The Application must include a letter from a local government official with appropriate jurisdiction stating that the Development is located within the boundaries of a political subdivision that has no zoning-; or

(B) Zoning Ordinance in Effect. The Application must include a letter from a local government official with appropriate jurisdiction stating the Development is permitted under the provisions of the zoning ordinance that applies to the location of the Development₋; or

(C) Requesting a Zoning Change. The Application must include evidence in the form of a letter from a local government official with jurisdiction over zoning matters that the Applicant or Affiliate has made formal application for a required zoning change and that the jurisdiction has received a release whereby the applicant for the zoning changeApplicant has agreed to hold the political subdivision and all other parties harmless in the event the appropriate zoning is not granted. Documentation of final approval of appropriate zoning must be submitted to the Department with the Commitment or Determination Notice; or

(D) Zoning for Rehabilitation Developments. In an area with zoning, the Application must include documentation of current zoning. If the Property is currently conforming but with an overlay that would make it a non-conforming use as presently zoned, the Application must include a letter from a local government official with appropriate jurisdiction which addresses the items in clauses (i) - (v) of this subparagraph:

- (i) a detailed narrative of the nature of non-conformance;
- (ii) the applicable destruction threshold;
- (iii) that it will allow the non-conformance;
- (iv) Owner's rights to reconstruct in the event of damage; and
- (v) penalties for noncompliance.

(12) Title Commitment/Policy. A title commitment or title policy must be submitted that includes a legal description that is consistent with the Site Control. If the title commitment or policy is dated more than six (6) months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications, then a letter from the title company indicating that nothing further has transpired during the six-month period on the commitment or policy must be submitted.

(A) The title commitment must list the name of the Development Owner as the proposed insured and <u>listslist</u> the seller or lessor as the current owner of the Development Site.

(B) The title policy must show that the ownership (or leasehold) of the Development Site is vested in the name of the Development Owner.

(13) Ownership Structure and Previous Participation.

(A) The Department assumes that the Applicant will be able to form any one or more business entities, such as a limited partnership, that are to be engaged in the ownership of a Development as represented in the Application, and that all necessary rights, powers, and privileges including, but not limited to, Site Control will be transferable to that entity. The formation of the ownership entity, qualification to do business (if needed), and transfer of any such rights, powers, and privileges must be accomplished as required in this chapter and 10 TAC Chapters 12 and 13, as applicable.

(B) Organizational Charts. A chart must be submitted that clearly illustrates the complete organizational structure of the final proposed Development Owner and of any Developer and Guarantor, identifying all Principals thereof and providing the names and ownership

percentagesownership percentages of all Persons having an ownership interest in the Development Owner, Developer and Guarantor, as applicable, whether directly or through one or more subsidiaries, whether or not they have Control. Persons having Control should be specifically identified on the Chart. Individual board members and executive directors of nonprofit entities, governmental bodies, and corporations, as applicable, must be included in this exhibit and trusts must list all beneficiaries that have the legal ability to control or direct activities of the trust and are not just financial beneficiaries. The List of Organizations form, as provided in the Application, must include all Persons identified on the organizational charts, and further identify which of those Persons listed exercise Control of the Development.

(BC) Previous Participation. Evidence must be submitted that each individual and entity shown on the organizational charts described in subparagraph (A) of this paragraph has provided a copy of the completed previous participation information to the Department. Individual Principals of such entities identified on the organizational chart and on the List of Organizations form, must provide the previous participation information, unless excluded from such requirement pursuant to Chapter 1 Subchapter C of this title₇ (relating to Previous Participation and Executive Award Review and Advisory Committee). The information must include a list of all Developments that are, or were, previously under ownership or Control of the Applicant and/or each Principal, including any Person providing the required experience. All participation in any Department funded or monitored activity, including non-housing activities, as well as Housing Tax Credit developments or other programs administered by other states using state or federal programs must be disclosed. The individuals providing previous participation information information willmust authorize the parties overseeing such assistance to release compliance histories to the Department.

(D) Direct Loan. In addition to the information required in (B) and (C) of this subparagraph, if the Applicant is applying for Direct Loan funds then the Applicant must also include the definitions of Person, Affiliate, Principal, and Control found in 2 CFR Part 180, when completing the organizational chart and the Previous Participation information.

Applications (14) Nonprofit Ownership. that involve а §501(c)(3) or (4) nonprofitGeneral nonprofit, housing finance corporation or public facility corporation as the General Partner or Owner shall submit the documentation identified in subparagraph (A) or (B) of this paragraph, as applicable. Additionally, a resolution approved at a regular meeting of the majority of the board of directors of the nonprofit, indicating clear approval their awareness of the organization's participation in each specific Application, and naming all members of the board and employees who may act on its behalf, must be provided.

(A) Competitive HTC Applications₇ for the Nonprofit Set-Aside. Applications for Competitive Housing Tax Credits involving a \$501(c)(3) or (4) nonprofit General Partner and which meet the Nonprofit Set-Aside requirements, must submit all of the documents described in <u>clauses (i) to (v) of</u> this subparagraph and indicate the nonprofit status on the carryover documentation and IRS Forms 8609. (\$2306.6706) Applications that include

an affirmative election to not be treated under the saset-asideNonprofit Set-Aside and a certification that they do not expect to receive a benefit in the allocation of tax credits as a result of being Affiliated with a nonprofit, only need to submit the documentation in subparagraph (B) of this paragraph.

(i) An IRS determination letter which states that the nonprofit organization has been determined by the Internal Revenue Service to be tax-exempt under §501(c)(3) or (4) of the Code;

(ii) The Nonprofit Participation exhibit as provided in the Application, including a list of the names and contact information for all board members, directors, and officers;

(iii) A Third Party legal opinion stating:

(I) that That the nonprofit organization is not Affiliated with or Controlled by a forprofit organization and the basis for that opinion;

(II) that That the nonprofit organization is eligible, as further described, for a Housing Credit Allocation from the Nonprofit Set-Aside pursuant to Code, §42(h)(5) and the basis for that opinion;

(III) that That one of the exempt purposes of the nonprofit organization is to provide low-income housing;

(IV) that<u>That</u> the nonprofit organization prohibits a member of its board of directors, other than a chief staff member serving concurrently as a member of the board, from receiving material compensation for service on the board. If the Application includes a request for <u>CHDO</u><u>Community Housing Development Corporation (CHDO</u>) funds, no member of the board may receive compensation, including the chief staff member;

(V) that That the Qualified Nonprofit Development will have the nonprofit entity or its nonprofit Affiliate or subsidiary be the Developer or co-Developer as evidenced in the development agreement; and

(VI) that That the nonprofit organization has the ability to do business as a nonprofit in Texas;

(iv) a copy of the nonprofit organization's most recent financial statement as prepared by a Certified Public Accountant; and

(v) evidence in the form of a certification that a majority of the members of the nonprofit organization's board of directors principally reside:

(I) in this state, if the Development is located in a Rural Area; or

(II) not more than ninety (90) miles from the Development, if the Development is not located in a Rural Area.

(B) All Other Applications. Applications that involve a §501(c)(3) or (4) nonprofitGeneral nonprofit, housing finance corporation or public facility corporation as the General Partner or Owner must submit an IRS determination letter which states that the nonprofit organization has been determined by the Internal Revenue Service to be

tax-exempt under §501(c)(3) or (4) of the Code; and the Nonprofit Participation exhibit as provided in the Application. If the Application involves a nonprofit that is not exempt from taxation under §501(c)(3) or (4) of the Code, then they must disclose in the Application the basis of their nonprofit status. Housing finance corporations or public facility corporations that do not have such IRS determination letter shall submit documentation evidencing creation under Chapter 394 of the Texas Local Government Code and corresponding citation for an exemption from taxation.

(15) Site Design and Development Feasibility Report. This report, compiled by the Applicant or Third Party Consultant, and prepared in accordance with this paragraph, which reviews site conditions and development requirements of the Development and Development Site, is required for any New Construction, Reconstruction or Adaptive Reuse Development. (A) Executive Summary as and must meet all of the criteria provided in subparagraphs (A) to (F) of this paragraph.

(A) For all Applications, careful focus and attention should be made regarding any atypical items materially impacting costs or the successful and timely execution of the Development plan. The report must also include the following statement, "any person signing this Report acknowledges that the Department may publish the full report on the Department's website, release the report in response to a request for public information and make other use of the report as authorized by law."

(B) An Executive Summary must provide a narrative overview of the Development in sufficient detail that would help a reviewer of the Application better understand the site, the site plan, off site requirements (including discussion of any seller contributions or reimbursements), any other unique development requirements, and their impact on Site Work and Off_ Site Construction costs. It should specifically describe any atypical or unusual factors that will impact site design or costs.

(C) The summaryReport should contain a general statement regarding the level of due diligence that has been done relating to site development (including discussions with local government development offices). Additionally, the overview should contain a summary of zoning requirements, subdivision requirements, property identification number(s) and millage rates for all taxing jurisdictions, development ordinances, fire department requirements, site ingress and egress requirements, building codes, and (viii) local design requirements impacting the Development (include website links but do not attach copies of ordinances). Careful focus and attention should be made regarding any atypical items materially impacting costs or the successful and timely execution of the Development plan. The report must also include the following statement, "all persons who have a property interest in this report hereby acknowledge that the Department may publish the full report on the Department's website, release the report in response to a request for public information and make other use of the report as authorized by law." Where ordinances or similar information is required, provide website links rather than copies of the ordinance. Additionally, it should contain

(B(i) a summary of zoning requirements,

(ii) subdivision requirements,

(iii) property identification number(s) and millage rates for all taxing jurisdictions,

(iv) development ordinances,

(v) fire department requirements,

(vi) site ingress and egress requirements, and

(vii) building codes, and local design requirements impacting the Development.

(D) Survey as defined by the Texas Society of Professional Surveyors in their Manual of Practice for Land Surveying in Texas (Category 1A - Land Title Survey or Category 1B - Standard Land Boundary Survey). Surveys may not be older than 24 months from the beginning of the Application Acceptance Period. Applications proposing noncontiguous single family scattered sites are not required to submit surveys or plats at Application, but this information may be requested during the Real Estate Analysis review.

(CE) Preliminary site plan prepared by the civil engineer with a statement that the plan materially adheres to all applicable zoning, site development, and building code ordinances. The site plan must identify all structures, site amenities, parking spaces and driveways, topography (using either existing seller topographic survey or U.S. Geological Survey (USGS)/other database topography), site drainage and detention, water and waste water utility tie-ins, general placement of retaining walls, set-back requirements, and any other typical or locally required items. Off-site improvements required for utilities, detention, access or other requirement must be shown on the site plan or ancillary drawings.

(**Đ**<u>F</u>) Architect or civil engineer prepared statement describing the entitlement, site development permitting process and timing, building permitting process and timing, and an itemization specific to the Development of total anticipated impact, site development permit, building permit, and other required fees.

§11.205 Required Third Party Reports

The Environmental Site Assessment, Property Condition AssessmentScope and Cost Review, Appraisal (if applicable), and the Market Analysis must be submitted no later than the Third Party Report Delivery Date as identified in §11.2(b) of this chapter (relating to Tax-Exempt Bond and Multifamily Direct Loan Development Dates and Deadlines). For Competitive HTC Applications, the Environmental Site Assessment, Property Condition AssessmentScope and Cost Review, Appraisal (if applicable), and the Primary Market Area map (with definition based on census tracts, and site coordinates in decimal degrees, area of PMA in square miles, and list of census tracts included) must be submitted no later than the Full Application Delivery Date as identified in §11.2(a) of this title (relating to <u>Competitive HTC Deadlines</u> Program Calendar for Competitive Housing Tax Credits) and the Market Analysis must be submitted no later than the Market Analysis Delivery Date as identified in §11.2(a) of this chapter. For Competitive HTC Applications, if the reports, in their entirety, are not received by the deadline, the Application will be terminated. An electronic copy of the report in the format of a single file containing all information and exhibits clearly labeled with the report type, Development name and Development location are required. All Third Party reports must be prepared in accordance with Subchapter D of this chapter (relating to Underwriting and Loan Policy). The Department may request additional information from the report provider or revisions to the report as needed. In instances of non-response by the report provider, the Department may substitute in-house analysis. The Department is not bound by any opinions expressed in the report.

(1) Environmental Site Assessment. This report, required for all Developments and prepared in accordance with the requirements of §11.305 of this chapter (relating to Environmental Site Assessment Rules and Guidelines), must not be dated more than twelve (12) months prior to the date of Application submission for non-Competitive Applications, or the first day of the Application Acceptance Period for Competitive HTC Applications. If this timeframe is exceeded, then a letter or updated report must be submitted, dated not more than six (6) months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitives from the Person or organization which prepared the initial assessment confirming that the site has been re-inspected and reaffirming the conclusions of the initial report or identifying the changes since the initial report.

(A) Existing Developments funded by USDA will not be required to supply this information; however, it is the Applicant's responsibility to ensure that the Development is maintained in compliance with all state and federal environmental hazard requirements.

(B) If the report includes a recommendation that an additional assessment be performed, then a statement from the Applicant must be submitted with the Application indicating <u>that</u> those additional assessments and recommendations will be performed prior to closing. If the assessments require further mitigating recommendations, then evidence indicating <u>that</u> the mitigating recommendations have been carried out must be submitted at cost certification.

(2) Market Analysis. The Market Analysis, required for all Developments and prepared in accordance with the requirements of §11.303 of this chapter (relating to Market Analysis Rules and Guidelines), must not be dated more than six (6)-months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications. If the report is older than six (6)-months, but not more than twelve (12) months prior to the date of Application submission or the first day of the Applications, but not more than twelve (12) months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications, the Qualified Market Analyst that prepared the report may provide a statement that reaffirms the findings of the original Market Analysis. The statement may not be dated more than six (6)-months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications, the Application Market Analysis. The statement may not be dated more than six (6)-months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications and must be accompanied by the original Market Analysis.

(A) The report must be prepared by a disinterested Qualified Market Analyst approved by the Department in accordance with the approval process outlined in §11.303 of this chapter;

(B) Applications in the USDA Set-Aside proposing Rehabilitation with residential structures at or above 80-percent⁶/₂ occupancy at the time of Application submission, the

appraisal, required for Rehabilitation Developments and Identity of Interest transactions prepared in accordance with §11.304 of this chapter (relating to Appraisal Rules and Guidelines), will satisfy the requirement for a Market Analysis; however, the Department may request additional information as needed. (§2306.67055; §42(m)(1)(A)(iii))

(C) It is the responsibility of the Applicant to ensure that this analysis forms a sufficient basis for the Applicant to be able to use the information obtained to ensure that the Development will comply with fair housing laws.

(3) Property Condition Assessment (PCAScope and Cost Review (SCR). This report, required for Rehabilitation (excluding Reconstruction) and Adaptive Reuse Developments and prepared in accordance with the requirements of §11.306 of this chapter (relating to Property Condition Assessment Scope and Cost Review Guidelines), must not be dated more than six (6)-months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications. If the report is older than six (6) months, but not more than twelve (12) months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications, the report provider may provide a statement that reaffirms the findings of the original PCASCR. The statement may not be dated more than six-(6) months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications and must be accompanied by the original PCASCR. For Developments which require a capital needs assessment from USDA the capital needs assessment may be substituted for the SCR and may be more than six (6) months old, as long as USDA has confirmed in writing that the existing capital needs assessment is still acceptable and it meets the requirements of §11.306 of this chapter. All Rehabilitation Developments financed with Direct Loans must also submit a capital needs assessment estimating the useful life of each major system. This assessment must include a comparison between the local building code and the International Existing Building Code of the International Code Council. The report must be accompanied by the Department's Property Condition Assessment Cost Schedule Supplement SCR Supplement in the form of an excel workbook as published on the Department's website.

(4) Appraisal. This report, required for all Rehabilitation and Adaptive Reuse Developments and prepared in accordance with the requirements of §11.304 of this chapter, (relating to <u>Appraisal Rules and Guidelines</u>), is required for any Application claiming any portion of the building acquisition in Eligible Basis, and Identity of Interest transactions pursuant to Subchapter D of this chapter, must not be dated more than six (6)-months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications. For Developments that require an appraisal from USDA, the appraisal may be more than six (6)-months old, as long as USDA has confirmed in writing that the existing appraisal is still acceptable.

§11.206. Board Decisions (§§2306.6725(c); 2306.6731; and 42(m)(1)(A)(iv)). The Board's decisions regarding awards shall be based upon the Department's <u>staff</u> and the Board's evaluation of the proposed Developments' consistency with, and fulfillment of, the criteria and requirements set forth in this chapter, Chapter 13 of this title (relating to <u>the</u> Multifamily Direct

Loan <u>Rule</u>) and other applicable Department rules and other applicable state, federal and local legal requirements, whether established in statute, rule, ordinance, <u>NOFApublished binding</u> policy, official finding, or court order. The Board shall document the reasons for each Application's selection, including any discretionary factors used in making its determination, including good cause, and the reasons for any decision that conflicts with the recommendations made by Department staff. Good cause includes the Board's decision to apply discretionary factors where authorized. The Department reserves the right to reduce the amount of funds requested in an Application, condition the award recommendation or terminate the Application based on the Applicant's inability to demonstrate compliance with program requirements.

§11.207. Waiver of Rules.

An Applicant may request a waiver in writing at or prior to the submission of the pre-application (if applicable) or the Application or subsequent to an award. Waiver requests on Competitive HTC Applications will not be accepted between submission of the Application and any award for the Application. Staff may identify and initiate a waiver request as part of another Board action request. Where appropriate, the Applicant must submit with the requested waiver any plans for mitigation or alternative solutions. Any such request for waiver must be specific to the unique facts and circumstances of an actual proposed Development and must be submitted to the Department in the format required in the Multifamily Programs Procedures Manual. Any waiver, if granted, shall apply solely to the Application and shall not constitute a general modification or waiver of the rule involved. All waiver requests must meet the requirements of paragraphs (1) and (2) of this subsection.

(1) TheA waiver request made at or prior to pre-application or Application must establish howthat the need for the waiver was bothis not reasonably foreseeable and was not preventable bywithin the control of the Applicant. In applicable circumstances, this may include limitations of local building or zoning codes, limitations of existing building structural elements for Adaptive Reuse or Rehabilitation (excluding Reconstruction) Developments, required amenities or design elements in buildings designated as historic structures that would conflict with retaining the historic nature of the building(s), or provisions of the design element or amenity that would not benefit the tenants due to limitations of the existing layout or design of the units for Adaptive Reuse or Rehabilitation (excluding Reconstruction) Developments. A recommendation for a waiver may be subject to the Applicant's provision of alternative design elements or amenities of a similar nature or that serve a similar purpose. Waiver requests for items that were elected to meet scoring criteria or where the Applicant was provided a menu of options to meet the requirement will not be considered to satisfy this paragraph as such waiver request would be <u>either or both foreseeable and preventablewithin the Applicant's control</u>.

(2) The waiver request must establish how, by granting the waiver, it better serves the policies and purposes articulated in Tex. Gov't Code, §§2306.001, 2306.002, 2306.359, and 2306.6701, (which are general in nature and apply to the role of the Department and its programs, including the Housing Tax Credit program) than not granting the waiver.

(3) The Board may not grant a waiver to provide directly or implicitly any forward

commitments or any waiver that is prohibited by statute (i.e., statutory requirements may not be waived).to waive any requirement contained in statute. The Board may grant a waiver that is in response to a natural, federally declared disaster that occurs after the adoption of the multifamily rules Qualified Allocation Plan to the extent authorized by a governor declared disaster proclamation suspending regulatory requirements.

Subchapter D — Underwriting and Loan Policy

§11.301. General Provisions.

(a) Purpose. This subchapter applies to the underwriting, Market Analysis, appraisal, Environmental Site Assessment, Property Condition Assessment, and Direct Loan, and Scope and Cost Review standards employed by the Department. This subchapter provides rules for the underwriting review of an affordable housing Development's financial feasibility and economic viability that ensures the most efficient allocation of resources while promoting and preserving the public interest in ensuring the long-term health of the an awarded Application and the Department's portfolio. In addition, this subchapter guides staff in making recommendations to the Executive Award and Review Advisory Committee (EARAC or the "Committee"), Executive Director, and the Board to help ensure procedural consistency in the determination of Development feasibility (Texas Government Code, §§2306.081(c), 2306.185, and 2306.6710(d)). Due to the unique characteristics of each Development, the interpretation of the rules and guidelines described in this subchapter is subject to the discretion of the Department and final determination by the Board.

(b) Appeals. Certain programs contain express appeal options. Where not indicated, §11.902 of this chapter (relating to Appeals Process (§2306.0321; §2306.6715)) includes general appeal procedures. In addition, the Department encourages the use of Alternative Dispute Resolution (("ADR)") methods, as outlined in §11.904 of this chapter (relating to Alternative Dispute Resolution (ADR) Policy).

§11.302. Underwriting Rules and Guidelines.

(a) General Provisions. Pursuant to Tex. Gov't Code, §2306.148 and §2306.185(b), the Board is authorized to adopt underwriting standards as set forth in this section. Furthermore, for Housing Credit Allocation, Code §42(m)(2), requires the tax credits allocated to a Development not to exceed the amount necessary to assure feasibility. Additionally, 24 CFR Parts 92 and 93, as further described in CPD Notice 15-11 require the Department to adopt rules and standards to determine the appropriate Multifamily Direct Loan feasibility. The rules adopted pursuant to the Tex. Gov't Code and the Code are developed to result in an Underwriting Report (Report) used by the Board in decision making with the goal of assisting as many Texans as possible by providing no more financing than necessary based on an independent analysis of Development feasibility. The Report generated in no way guarantees or purports to warrant the actual performance, feasibility, or viability of the Development.

(b) Report Contents. The Report provides a synopsis and reconciliation of the Application information submitted by the Applicant. For the purpose of this subchapter the term Application includes additional documentation submitted after the initial award of funds that is relevant to any subsequent reevaluation. The Report contents will be based upon information that is provided in accordance with and within the timeframes set forth in <u>this chapter</u>, 10 TAC Chapters 11, <u>12</u>, or <u>13</u>, <u>Subchapter A-or in</u> a Notice of Funds Availability (NOFA), as applicable.

(c) Recommendations in the Report. The conclusion of the Report, if being recommended, includes a recommended award of funds or Housing Credit Allocation Amount and states any

feasibility or other conditions to be placed on the award. The award amount is based on the lesser of the following amounts determined using the methods in paragraphs (1) to (3) of this subsection:

(1) Program Limit Method. For Housing Credit Allocations, this method is based upon calculation of Eligible Basis after applying all cost verification measures and program limits as described in this section. The Applicable Percentage used is defined in §11.1(d) of this chapter (relating to Definitions). For Department programs other than Housing Tax Credits, this method is based upon calculation of the funding limit in current program rules or NOFA at the time of underwriting.

(2) Gap Method. This method evaluates the amount of funds needed to fill the gap created by Total Housing Development Cost less total non-Department-sourced funds or Housing Tax Credits. In making this determination, the Underwriter resizes any anticipated Deferred Developer Fee downward (but not less than zero) before reducing the amount of Department funds or Housing Tax Credits. In the case of Housing Tax Credits, the syndication proceeds needed to fill the gap in permanent funds are divided by the syndication rate to determine the amount of Housing Tax Credits. In making this determination and based upon specific conditions set forth in the Report, the Underwriter may assume adjustments to the financing structure (including treatment of cash flow a Cash Flow loans as if fully amortizing over its term) or make adjustments to any Department financing, such that the cumulative Debt Coverage Ratio (DCR) conforms to the standards described in this section. For Housing Tax Credit Developments at cost certification, timing adjusters may be considered as a reduction to equity proceeds for this purpose. Timing adjusters must be consistent with and documented in the original partnership agreement (at admission of the equity partner) but relating to causes outside of the Developer's or Owner's control. The equity partner must provide a calculation of the amount of the adjuster to be used by the Underwriter.

(3) The Amount Requested. The amount of funds that is requested by the Applicant. For Housing Tax Credit Developments (exclusive of Tax-Exempt Bond Developments) this amount is limited to the amount requested in the original Application documentation.

(d) Operating Feasibility. The operating feasibility of a Development funded by the Department is tested by analyzing its Net Operating Income (NOI) to determine the Development's ability to pay debt service and meet other financial obligations throughout the Affordability Period. NOI is determined by subtracting operating expenses, including replacement reserves and taxes, from rental and other income sources.

(1) Income. In determining the first year stabilized pro forma, the Underwriter evaluates the reasonableness of the Applicant's income pro forma by determining the appropriate rental rate per unit based on subsidy contracts, program limitations including but not limited to Utility Allowances, actual rents supported by rent rolls and Market Rents and other market conditions. Miscellaneous income, vacancy and collection loss limits as set forth in subparagraphs (B) and (C) of this paragraph, respectively, are used unless well-documented support is provided and independently verified by the Underwriter.

(A) Rental Income. The Underwriter will review the Applicant's proposed rent schedule

and determine if it is consistent with the representations made throughout the Application. The Underwriter will independently calculate a Pro Forma Rent for comparison to the Applicant's estimate in the Application.

(i) Market Rents. The Underwriter will use the Market Analyst's conclusion of Market Rent if reasonably justified and supported by the attribute adjustment matrix of Comparable Units as described in §11.303 of this chapter (relating to Market Analysis Rules and Guidelines). Independently determined Market Rents by the Underwriter may be used based on rent information gained from direct contact with comparable properties, whether or not used by the Market Analyst and other market data sources. For a Development that contains less than 15% unrestricted units, the Underwriter will limit the Pro Forma Rents to the lesser of Market Rent or the Gross Program Rent at 60% AMI, or 80% if the Applicant will makemake the Income Average election. As an alternative, if the Applicant submits market rents Market Rents that are up to 30% higher than the Gross Program Rent at 60% AMIAMGI gross rent, or Gross Program Rent at 80% AMIAMGI gross rent ifand the Applicant will make the Income Average election, and the Applicant submits an investor commissioned market study with the application, the Underwriter has the discretion to use the market rents supported by the investor commissioned market study in consideration of the independently determined rents. The Applicant must also provide a statement by the investor indicating that they have reviewed the market study and agree with its conclusions.

(ii) Gross Program Rent. The Underwriter will use the Gross Program Rents for the year that is most current at the time the underwriting begins. When underwriting for a simultaneously funded competitive round, all Applications are underwritten with the Gross Program Rents for the same year. If Gross Program Rents are adjusted by the Department after the close of the Application Acceptance Period, but prior to publication of the Report, the Underwriter may adjust the Effective Gross Income (EGI) to account for any increase or decrease in Gross Program Rents for the purposes of determining the reasonableness of the Applicant's EGI.

(iii) Contract Rents. The Underwriter will review rental assistance contracts to determine the Contract Rents currently applicable to the Development. Documentation supporting the likelihood of continued rental assistance is also reviewed. The Underwriter will take into consideration the Applicant's intent to request a Contract Rent increase. At the discretion of the Underwriter, the Applicant's proposed rents may be used as the Pro Forma Rent, with the recommendations of the Report conditioned upon receipt of final approval of such an increase.

(iv) Utility Allowances. The Utility Allowances used in underwriting must be in compliance with all applicable federal guidance, and §10.614 of this title (relating to Utility Allowances). Utility Allowances must be calculated for individually metered tenant paid utilities.

(v) Net Program Rents. Gross Program Rent less Utility Allowance.

(vi) Actual Rents for existing Developments will be reviewed as supported by a current

rent roll. For Unstabilized Developments, actual rents will be based on the most recent units leased with occupancy and leasing velocity considered. Actual rents may be adjusted by the Underwriter to reflect lease-up concessions and other market considerations.

(vii) Collected Rent. Represents the monthly rent amount collected for each Unit Type. For rent-assisted units, the Contract Rent is used. In absence of a Contract Rent, the lesser of the Net Program Rent, Market Rent or actual rent is used.

(B) Miscellaneous Income. All ancillary fees and miscellaneous secondary income, including but not limited to, late fees, storage fees, laundry income, interest on deposits, carport and garage rent, washer and dryer rent, telecommunications fees, and other miscellaneous income, are anticipated to be included in a \$5 to \$20 per Unit per month range. Exceptions may be made at the discretion of the Underwriter and must be supported by either the normalized operating history of the Development or other existing comparable properties within the same market area.

(i) The Applicant must show that a tenant will not be required to pay the additional fee or charge as a condition of renting a Unit and must show that the tenant has a reasonable alternative.

(ii) The Applicant's operating expense schedule should reflect an itemized offsetting line-item associated with miscellaneous income derived from pass-through utility payments, pass-through water, sewer and trash payments, and cable fees.

(iii) Collection rates of exceptional fee items will generally be heavily discounted.

(iv) If an additional fee is charged for the optional use of an amenity, any cost associated with the construction, acquisition, or development of the hard assets needed to produce the additional fee for such amenity must be excluded from Eligible Basis.

(C) Vacancy and Collection Loss. The Underwriter generally uses a normalized vacancy rate of 7.5% (5% vacancy plus 2.5% for collection loss). The Underwriter may use other assumptions based on conditions in the immediate market area. 100% project-based rental subsidy developments and other well documented cases may be underwritten at a combined 5% <u>vacancy rate</u> at the discretion of the Underwriter if the immediate market area's historical performance reflected in the Market Analysis is consistently higher than a 95% occupancy rate.

(D) Effective Gross Income (EGI). EGI is the total of Collected Rent for all Units plus Miscellaneous Income less Vacancy and Collection Loss. If the Applicant's pro forma EGI is within 5% of the EGI independently calculated by the Underwriter, the Applicant's EGI is characterized as reasonable in the Report; however, for purposes of calculating the underwritten DCR the Underwriter's pro forma will be used unless the Applicant's pro forma meets the requirements of paragraph (3) of this subsection.

(2) Expenses. In determining the first year stabilized operating expense pro forma, the Underwriter evaluates the reasonableness of the Applicant's expense estimate based upon

the characteristics of each Development, including the location, utility structure, type, the size and number of Units, and the Applicant's management plan. Historical, stabilized and certified financial statements of an existing Development or Third Party quotes specific to a Development will reflect the strongest data points to predict future performance. The Underwriter may review actual operations on the Applicant's other properties monitored by the Department, if any, or review the proposed management company's comparable properties. The Department's database of properties located in the same market area or region as the proposed Development also provides data points; expense data from the Department's Database database is available on the Department's website. Data from the Institute of Real Estate Management's (IREM) most recent Conventional Apartments-Income/Expense Analysis book for the proposed Development's property type and specific location or region may be referenced. In some cases local or project-specific data such as PHA Utility Allowances and property tax rates are also given significant weight in determining the appropriate line item expense estimate. Estimates of utility savings from green building components, including on-site renewable energy, must be documented by an unrelated contractor or component vendor.

(A) General and Administrative Expense. (G&A)--Accounting fees, legal fees, advertising and marketing expenses, office operation, supplies, and equipment expenses. G&A does not include partnership related expenses such as asset management, accounting or audit fees. Costs of tenant services are not included in G&A.

(B) Management Fee. Fee paid to the property management company to oversee the operation of the Property and is most often based upon a percentage of EGI as documented in an existing property management agreement or proposal. Typically, 5% of EGI is used, though higher percentages for rural transactions may be used. Percentages as low as 3% may be used if well documented.

(C) Payroll Expense. Compensation, insurance benefits, and payroll taxes for on-site office, leasing and maintenance staff. Payroll does not include Third-Party security or tenant services contracts. Staffing specific to tenant services, security or other staffing not related to customary property operations should be itemized and included in other expenses or tenant services expense.

(D) Repairs and Maintenance Expense. Materials and supplies for the repairs and maintenance of the Development including Third-Party maintenance contracts. This lineitem does not include costs that are customarily capitalized that would result from major replacements or renovations.

(E) Utilities Expense. Gas and electric energy expenses paid by the Development. Estimates of utility savings from green building components, including on-site renewable energy, must be documented by an unrelated contractor or component vendor.

(F) Water, Sewer, and Trash Expense (WST). Includes all water, sewer and trash expenses paid by the Development.

(G) Insurance Expense. Cost of Insurance coverage for the buildings, contents, and general liability, but not health or workman's compensation insurance.

(H) Property Tax. Includes real property and personal property taxes but not payroll taxes.

(i) An assessed value will be calculated based on the capitalization rate published by the county taxing authority. If the county taxing authority does not publish a capitalization rate, a capitalization rate of 10% or a comparable assessed value may be used.

(ii) Other assessed values or property tax estimates may be used based on development specific factors as determined by the Underwriter.

(iii) If the Applicant proposes a property tax exemption or <u>Payment in Lieu of Taxes</u> (PILOT) agreement the Applicant must provide documentation in accordance with §10.402(d) of this title<u>r</u> (relating to Documentation Submission Requirements at <u>Commitment of Funds</u>). At the underwriter's discretion, such documentation may be required prior to Commitment if deemed necessary.

(I) Replacement Reserves. Periodic deposits to a reserve account to pay for the future replacement or major repair of building systems and components (generally items considered capitalized costs). The Underwriter will use a minimum reserve of \$250 per Unit for New Construction and Reconstruction Developments and \$300 per Unit for all other Developments. The Underwriter may require an amount above \$300 for the Development based on information provided in the Property Condition Assessment(PCA") Scope and Cost Review (SCR) or, for existing USDA developments, an amount approved by USDA. The Applicant's assumption for reserves may be adjusted by the Underwriter if the amount provided by the Applicant is insufficient to fund capital needs as documented by the PCASCR during the first fifteen (15) years of the long term pro forma. Higher reserves may be used if documented by a primary lender or syndicator.

(J) Other Operating Expenses. The Underwriter will include other reasonable, customary and documented property-level operating expenses such as audit fees, security expense, telecommunication expenses (tenant reimbursements must be reflected in EGI) and TDHCA's compliance fees. For Developments financed by USDA, a Return to Owner (RTO) may be included as an operating expense in an amount consistent with the maximum approved by USDA or an amount determined by the Underwriter. This category does not include depreciation, interest expense, lender or syndicator's asset management fees, or other ongoing partnership fees.

(K) Resident Services. <u>TenantResident</u> services are not included as an operating expense or included in the DCR calculation unless:

(i) There is a documented financial obligation on behalf of the Owner with a unit of state or local government to provide <u>tenantresident</u> supportive services at a specified dollar amount. The financial obligation must be identified by the permanent lender in their term sheet and the dollar amount of the financial obligation must be included in the DCR calculation on the permanent lender's 15-year pro forma at Application. At cost certification and as a minimum, the estimated expenses underwritten at Application will be included in the DCR calculation regardless if actually incurred; or,

(ii) The Applicant demonstrates a history of providing comparable supportive services and expenses at existing Affiliated affiliated properties within the local area. Except for Supportive Housing Developments, the estimated expense of supportive services must be identified by the permanent lender in their term sheet and included in the DCR calculation on the 15-year pro forma. At cost certification and as a minimum, the estimated expenses underwritten at Application will be included in the DCR calculation regardless if actually incurred;

(iii) On-site staffing or pro ration of staffing for coordination of services only, <u>and</u> not <u>the</u> provision of services, can be included as a supportive services expense without permanent lender documentation.

(L) Total Operating Expenses. The total of expense items described in 10 TAC 11.302(d)(2+) subparagraphs (A) – (K+) of this paragraph. If the Applicant's total expense estimate is within 5% of the final total expense figure calculated by the Underwriter, the Applicant's figure is characterized as reasonable in the Report; however, for purposes of calculating DCR, the Underwriter's independent calculation will be used unless the Applicant's first year stabilized pro forma meets the requirements of paragraph (3) of this subsection.

(3) Net Operating Income (NOI). The difference between the EGI and total operating expenses. If the Applicant's first year stabilized NOI figure is within 5% of the NOI calculated by the Underwriter, the Applicant's NOI is characterized as reasonable in the Report; however, for purposes of calculating the first year stabilized pro forma DCR, the Underwriter's calculation of NOI will be used unless the Applicant's first year stabilized EGI, total operating expenses, and NOI are each within 5% of the Underwriter's estimates. For Housing Tax Credit Developments at cost certification, actual NOI will be used as adjusted for stabilization of rents and extraordinary lease-up expenses. Permanent lender and equity partner stabilization requirements documented in the loan and partnership agreements will be considered in determining the appropriate adjustments and the NOI used by the Underwriter.

(4) Debt Coverage Ratio. DCR is calculated by dividing NOI by the sum of scheduled loan principal and interest payments for all permanent debt sources of funds. If executed loan documents do not exist, loan terms including principal and/or interest payments are calculated based on the terms indicated in the most current term sheet(s). Otherwise, actual terms indicated in the executed loan documents will be used. Term sheet(s) must indicate the DCR required by the lender for initial underwriting as well as for stabilization purposes. Unusual or non-traditional financing structures may also be considered.

(A) Interest Rate. The rate documented in the term sheet(s) or loan document(s) will be used for debt service calculations. Term sheets indicating a variable interest rate must provide a breakdown of the rate index and any component rates comprising an all-in interest rate. The term sheet(s) must state the lender's underwriting interest rate assumption, or the Applicant must submit a separate statement from the lender with an estimate of the interest rate as of the date of such statement. At initial underwriting, the Underwriter may adjust the underwritten interest rate assumption based on market data

collected on similarly structured transactions or rate index history. Private Mortgage Insurance premiums and similar fees are not included in the interest rate but calculated on outstanding principal balance and added to the total debt service payment.

(B) Amortization Period. For purposes of calculating DCR, the permanent lender's amortization period will be used if not less than thirty (30) years and not more than forty (40) years. Up to fifty (50) years may be used for federally sourced or insured loans. For permanent lender debt with amortization periods less than thirty (30) years, thirty (30) years will be used. For permanent lender debt with amortization periods greater than forty (40) years, forty (40) years will be used. For non-Housing Tax Credit transactions a lesser amortization period may be used if the Department's funds are fully amortized over the same period as the primary senior debt.

(C) Repayment Period. For purposes of projecting the DCR over a thirty (30) year period for developments with permanent financing structures with balloon payments in less than thirty (30) years, the Underwriter will carry forward debt service based on a full amortization at the interest rate stated in the term sheet(s).

(D) Acceptable Debt Coverage Ratio Range. Except as set forth in clauses (i) or (ii) of this subparagraph, the acceptable first year stabilized pro forma DCR for all priority or foreclosable lien financing plus the Department's proposed financing must be between a minimum of 1.15 and a maximum of 1.35 (maximum of 1.50 for Housing Tax Credit Developments at cost certification).

(i) If the DCR is less than the minimum, the recommendations of the Report may be based on a reduction to debt service and the Underwriter will make adjustments to the financing structure in the order presented in subclauses (I) - (III) of this clause subject to a Direct Loan NOFA and program rules:

(I) $\frac{1}{2}$ reduction to the principal amount of a Direct Loan;

(II) <u>in In</u> the case where the amount of the Direct Loan determined in <u>(I)</u><u>subclause</u> (I) of this clause is insufficient to balance the sources and uses;

(-a-) a reduction to the interest rate; and/or

(-b-) an increase in the amortization period;

(III) anAn assumed reduction in the permanent loan amount for non-Department funded loans based upon the rates and terms in the permanent loan term sheet(s) as long as they are within the ranges in subparagraphs (A) and (B) of this paragraph.

(ii) If Except for Developments financed with a Direct Loan as the senior debt and the DCR is greater than the maximum, the recommendations of the Report may be based on an increase to debt service and the Underwriter will make adjustments to the assumed financing structure in the order presented in subclauses (I) - (III) of this clause subject to a Direct Loan NOFA and program rules:

(I) an increase to the interest rate up to the highest interest rate on any senior

debt or if no senior debt a market rate determined by the Underwriter based on current market interest rates;

(II) or a decrease in the amortization period but not less than thirty (30) years;

(III) an assumed increase in the permanent loan amount for non-Department funded loans based upon the rates and terms in the permanent loan term sheet as long as they are within the ranges in subparagraphs (A) and (B) of this paragraph.

(iii) For Housing Tax Credit Developments, a reduction in the recommended Housing Credit Allocation Amount may be made based on the Gap Method described in subsection (c)(2) of this section as a result of an increased debt assumption, if any.

(iv) For Developments financed with a Direct Loan subordinate to FHA financing, DCR on the Direct Loan will be calculated using 75% of the Surplus Cash (as defined by the applicable FHA program).

(v) The Underwriter may limit total debt service that is senior to a Direct Loan to produce an acceptable DCR on the Direct Loan <u>and may limit total debt service if the Direct Loan is the senior primary debt</u>.

(5) Long Term Pro forma. The Underwriter will create a 30-year operating pro forma using the following criteria provided in subparagraphs (A) to (C) of this paragraph:

(A) The Underwriter's or Applicant's first year stabilized pro forma as determined by paragraph (3) of this subsection.

(B) A 2% annual growth factor is utilized for income and a 3% annual growth factor is utilized for operating expenses except for management fees that are calculated based on a percentage of each year's EGI.

(C) Adjustments may be made to the long term pro forma if satisfactory support documentation is provided by the Applicant or as independently determined by the Underwriter.

(e) Total Housing Development Costs. The Department's estimate of the Total Housing Development Cost will be based on the Applicant's Development cost schedule to the extent that costs can be verified to a reasonable degree of certainty with documentation from the Applicant and tools available to the Underwriter. For New Construction Developments, the Underwriter's total cost estimate will be used unless the Applicant's Total Housing Development Cost is within 5% of the Underwriter's estimate. The Department's estimate of the Total Housing Development Cost for Rehabilitation Developments or Adaptive Reuse Developments will be based in accordance withon the estimated cost provided in the PCASCR for the scope of work as defined by the Applicant and §11.306(a)(5) of this chapter (relating to PCASCR Guidelines); the Underwriter may make adjustments to the PCA estimated costs. If the Applicant's cost estimate is utilized and the Applicant's line item costs are inconsistent with documentation provided in the Application provided in the Applicant's to the Applicant's Total Housing Development's cost estimate is utilized and the Applicant's line item costs are inconsistent with documentation provided in the Application provided provided provided provided provided provided provi

(1) Acquisition Costs. The underwritten acquisition cost is verified with Site Control document(s) for the Property. At Cost Certification, the underwritten acquisition cost used will be the amount verified by the settlement statement. For Identify of Interest acquisitions at cost certification, the cost will be limited to the underwritten acquisition cost at initial Underwriting, or for Developments financed by USDA, the transfer value approved by USDA.

(A) Excess Land Acquisition. In cases where more land is to be acquired (by the Applicant or a Related Party) than will be utilized as the Development Site and the remainder acreage is not accessible for use by tenants or dedicated as permanent and maintained green space, the value ascribed to the proposed Development Site will be prorated based on acreage from the total cost reflected in the Site Control document(s). An appraisal containing segregated values for the total acreage, the acreage for the Development Site and the remainder acreage, or tax assessment value may be used by the Underwriter in making a proration determination based on relative value; however, the Underwriter will not utilize a prorated value greater than the total amount in the Site Control document(s).

(B) Identity of Interest Acquisitions.

(i) An acquisition will be considered an identity of interest transaction when an Affiliate of the seller is an Affiliate of, a Related Party to, any Owner at any level of the Development Team or a Related Party lender; and

(I) is the current owner in whole or in part of the Property; or

(II) has or had within the prior 36 months, <u>(60 months for Developments meeting</u> the requirements of subclause (iii)(V) of this subparagraph), legal or beneficial ownership of the property or any portion thereof or interest therein prior to the first day of the Application Acceptance Period.

(ii) In all identity of interest transactions the Applicant is required to provide:

(I) the original acquisition cost in the most recent non-identity of interest transaction evidenced by an executed settlement statement or, if a settlement statement is not available, the original asset value listed in the most current financial statement for the identity of interest owner; and

(II) if the original acquisition cost evidenced by subclause (I) of this clause is less than the acquisition cost stated in the application:

(-a-) an appraisal that meets the requirements of §11.304 of this chapter (relating to Appraisal Rules and Guidelines); and

(-b-) any other verifiable costs of owning, holding, or improving the Property, excluding seller financing, that when added to the value from subclause (I) of this clause justifies the Applicant's proposed acquisition amount.

(-1-) For land-only transactions, documentation of owning, holding or improving costs since the original acquisition date may include property taxes, interest expense to unrelated Third Party lender(s), capitalized costs of any physical improvements, the cost of zoning, platting, and any off-site

costs to provide utilities or improve access to the Property. All allowable holding and improvement costs must directly benefit the proposed Development by a reduction to hard or soft costs. Additionally, an annual return of 10% may be applied to the original capital investment and documented holding and improvement costs; this return will be applied from the date the applicable cost is incurred until the date of the Department's Board meeting at which the Grant, Direct Loan and/or Housing Credit Allocation will be considered.

(-2-) For transactions which include existing residential or non-residential buildings that will be rehabilitated or otherwise retained as part of the Development, documentation of owning, holding, or improving costs since the original acquisition date may include capitalized costs of improvements to the Property, and in the case of USDA financed Developments the cost of exit taxes not to exceed an amount necessary to allow the sellers to be made whole in the original and subsequent investment in the Property and avoid foreclosure. Additionally, an annual return of 10% may be applied to the original capital investment and documented holding and improvement costs; this return will be applied from the date the applicable cost was incurred until the date of the Department's Board meeting at which the Grant, Direct Loan and/or Housing Credit Allocation will be considered. The annual return may not be applied F for any period of time during which the existing residential or non-residential buildings are occupied or otherwise producing revenue, holding and improvement costs will not include capitalized costs, operating expenses, property taxes, interest expense or any other cost associated with the operations of the buildings.

(Ciii) In no instance will the For Identity of Interest transactions, the acquisition cost used for underwriting will be utilized by the Underwriter exceed:

(<u>I</u>) the lesser of the original acquisition cost evidenced by clause (<u>B)(</u>ii)(I) of this subparagraph plus costs identified in <u>clauseitem</u> (<u>B)(</u>ii)(II)(-b-) of this subparagraph; <u>or</u>,

(II) if applicable, the "as-is" value conclusion evidenced by clause-item (B)(ii)(II)(a-) of this subparagraph if less than the value identified in subclause (I); or,

(III) if applicable, the transfer value approved by USDA.. Acquisition cost is limited to; or,

(IV) if applicable, the appraised land value for transactions which include where all existing buildings will be demolished.; or,

(V) if applicable, for Developments that will be demolished. The resulting financed using tax-exempt mortgage revenue bonds that currently have project-based rental assistance or currently have rent restrictions that will remain in place on the property after the acquisition cost will be referred to as the "Adjusted"

Acquisition Cost." and the current owner meets clause (e)(1)(B)(i) of this paragraph, the Underwriter shall only restrict the acquisition costs if it exceeds the "as-is" value conclusion evidenced by item (B)(ii)(II)(-a-) of this subparagraph. The appraisal used for this purpose must be reviewed by a licensed or certified appraiser by the Texas Appraisal Licensing and Certification Board that is not related to the original appraiser or anyone on the Development Team and in accordance with USPAP Standard 3. If the reviewing appraiser disagrees with the appraised value determined by the appraiser, the Underwriter will determine the acquisition cost to be used in the analysis.

(**PC**) Eligible Basis on Acquisition of Buildings. Building acquisition cost will be included in the underwritten Eligible Basis if the Applicant provided an appraisal that meets the Department's Appraisal Rules and Guidelines as described in §11.304 of this chapter. (relating to Appraisal Rules and Guidelines). The underwritten eligible building cost will be evaluation as described in clause (iv) of this subparagraph and with the lowest of the values determined based on clauses (i) - (iii) of this subparagraph:

(i) the Applicant's stated eligible building acquisition cost;

(ii) the total acquisition cost reflected in the Site Control document(s), or the Adjusted Acquisition Cost (as defined in subparagraph (B)(iii) of this paragraph), prorated using the relative land and building values indicated by the applicable appraised value; <u>or</u>

(iii) <u>the</u> total acquisition cost reflected in the Site Control document(s), or the Adjusted Acquisition Cost (as defined in subparagraph (B)(iii) of this paragraph), less the appraised "as-vacant" land value; or

(iv) the Underwriter will use the value that best corresponds to the circumstances presently affecting the Development that will continue to affect the Development after transfer to the new owner in determining the building value. These circumstances include but are not limited to operating subsidies, rental assistance, transfer values approved by USDA and/or property tax exemptions. Any value of existing favorable financing will be attributed prorata to the land and buildings.

(2) Off-Site Costs. The Underwriter will only consider costs of Off-Site Construction that are well documented and certified to by a Third Party engineer on the required Application forms with supporting documentation.

(3) Site Work Costs. The Underwriter will only consider costs of Site Work, including site <u>amenities</u>, that are well documented and certified to by a Third Party engineer on the required Application forms with supporting documentation.

(4) Building Costs.

(A) New Construction and Reconstruction. The Underwriter will use the Marshall and Swift Residential Cost Handbook, other comparable published Third-Party cost estimating data sources, historical final cost certifications of previous Housing Tax Credit developments and other acceptable cost data available to the Underwriter to estimate Building Cost. Generally, the "Average Quality" multiple, townhouse, or single family

costs, as appropriate, from the Marshall and Swift Residential Cost Handbook or other comparable published Third-Party data source, will be used based upon details provided in the Application and particularly building plans and elevations. <u>Costs for multi-level parking structures must be supported by a cost estimate from a Third Party contractor with demonstrated experience in structured parking construction.</u> The Underwriter will consider amenities, specifications and development types not included in the Average Quality standard. The Underwriter may consider a sales tax exemption for nonprofit General Contractors.

(B) Rehabilitation and Adaptive Reuse.

(i) The Applicant must provide a scope of work and narrative description of the work to be completed. The narrative should speak to all Off-Site Construction, Site Work, building components including finishes and equipment, and development amenities. The narrative should be in sufficient detail so that the reader can understand the work and it shouldmust generally be arranged consistent with the line-items on the PCA Cost ScheduleSCR Supplement and must also be consistent with the development cost scheduleDevelopment Cost Schedule of the Application.

(ii) The Underwriter will use cost data provided on the <u>PCA_Cost_ScheduleSCR</u> Supplement<u>as the basis for estimating Total Housing Development Costs</u>.

(5) Contingency. Total contingency, including any soft cost contingency, will be limited to a maximum of 7% of Building Cost plus Site Work and Off-Site Construction for New Construction and Reconstruction Developments, and 10% of Building Cost plus Site Work and Off-Site Construction for Rehabilitation and Adaptive Reuse Developments. For Housing Tax Credit Developments, the percentage is applied to the sum of the eligible Building Cost, eligible Site Work costs and eligible Off-Site Construction costs in calculating the eligible contingency cost.

(6) General Contractor Fee. General Contractor fees include general requirements, contractor overhead, and contractor profit. General requirements include, but are not limited to, on-site supervision or construction management, off-site supervision and overhead, jobsite security, equipment rental, storage, temporary utilities, and other indirect costs. General Contractor fees are limited to a total of 14% on Developments with Hard Costs of \$3 million or greater, the lesser of \$420,000 or 16% on Developments with Hard Costs less than \$3 million and greater than \$2 million, and the lesser of \$320,000 or 18% on Developments with Hard Costs at \$2 million or less. Any contractor fees to Affiliates or Related Party subcontractors regardless of the percentage of the contract sum in the construction contract (s) will be treated collectively with the General Contractor Fee limitations. For Housing Tax Credit Developments, the percentages are applied to the sum of the Eligible Hard Costs in calculating the eligible contractor fees. For Developments also receiving financing from USDA, the combination of builder's general requirements, builder's overhead, and builder's profit should not exceed the lower of TDHCA or USDA requirements. Additional fees for ineligible costs will be limited to the same percentage of ineligible Hard Costs but will not be included in Eligible Basis.

(7) Developer Fee.

(A) For Housing Tax Credit Developments, the Developer Fee included in Eligible Basis cannot exceed 15% of the project's eligible costs, less Developer Fee, for Developments proposing fifty (50) Units or more and 20% of the project's eligible costs, less Developer Fee, for Developments proposing forty nine (49) Units or less. For Public Housing Authority Developments for conversion under the HUD Rental Assistance Demonstration ("RAD") program that will be financed using tax exempt mortgage revenue bonds, the Developer Fee cannot exceed 20 percent of the project's eligible cost less Developer Fee.

(B) For Housing Tax Credit Developments, Any-any additional Developer Fee claimed for ineligible costs will be limited to the same percentage but applied only to ineligible Hard Costs (15% for Developments with fifty (50) or more Units, or 20-% for Developments with forty-nine (49) or fewer Units). Any Developer Fee above this limit will be excluded from Total Housing Development Costs. All fees to Affiliates and/or Related Parties for work or guarantees determined by the Underwriter to be typically completed or provided by the Developer or Principal(s) of the Developer will be considered part of Developer Fee.

(C) In the case of a transaction requesting acquisition Housing Tax Credits:

(i) the allocation of eligible Developer Fee in calculating Rehabilitation/New Construction Housing Tax Credits will not exceed 15% of the Rehabilitation/New Construction eligible costs less Developer Fee for Developments proposing 50 Units or more and 20% of the Rehabilitation/New Construction eligible costs less Developer Fee for Developments proposing fifty (50) Units or more and 20 percent of the Rehabilitation/New Construction eligible costs less Developer Fee for Developments proposing fifty (50) Units or more and 20 percent of the Rehabilitation/New Construction eligible costs less Developer Fee for Developments proposing forty-nine (49) Units or less; and 49 Units or less; and

(ii) no Developer Fee attributable to an identity of interest acquisition of the Development will be included -i

(iii) if applicable for Developments meeting the requirements of 10 TAC §11.302(e)(1)(B)(iii)(V), the allocation of eligible Developer Fee in calculating Rehabilitation/New Construction Housing Tax Credits will not exceed 5 percent of the Rehabilitation/New Construction eligible costs less Developer Fee.

(D) For Housing Tax Credit Developments, Eligible Developer Fee is multiplied by the appropriate Applicable Percentage <u>dependingdepending on</u> whether it is attributable to acquisition or rehabilitation basis.

(E) For non-Housing Tax Credit \underline{D} developments, the percentage can be up to $\underline{15}$ percent, 7.5%, but is based upon Total Housing Development Cost less the sum of the fee itself, land costs, the costs of permanent financing, excessive construction period financing described in paragraph (8) of this subsection, reserves, and any identity of interest acquisition cost.

(8) Financing Costs. All fees required by the construction lender, permanent lender and equity partner must be indicated in the term sheets. Eligible construction period interest is limited to the lesser of actual eligible construction period interest, or the interest on one (1)

year's fully drawn construction period loan funds at the construction period interest rate indicated in the term sheet(s). For tax-exempt bond transactions up to twenty four (24) months of interest may be included. Any excess over this amount will not be included in Eligible Basis. Construction period interest on Related Party or Affiliate construction loans is only included in Eligible Basis with documentation satisfactory to the Underwriter that the loan will be at a market interest rate, fees and loan terms and the Related Party lender can demonstrate that it is routinely engaged in construction financing to unrelated parties.

(9) Reserves. Except for the underwriting of a Housing Tax Credit Development at cost certification, the Underwriter will utilize the amount described in the Applicant's project cost schedule if it is within the range of two (2) to six (6) months of stabilized operating expenses plus debt service. Alternatively, the Underwriter may consider a greater amount proposed by the First Lien Lender or syndicator if the detail for such greater amount is found by the Underwriter to be both reasonable and well documented. Reserves do not include capitalized asset management fees, guaranty reserves, tenant services reserves or other similar costs. Lease up reserves, exclusive of initial start-up costs, funding of other reserves and interim interest, may be considered with documentation showing sizing assumptions acceptable to the Underwriter. In no instance at initial underwriting will total reserves exceed twelve (12) months of stabilized operating expenses plus debt service (and only for USDA or HUD financed rehabilitation transactions the initial deposits to replacement reserves and transferred replacement reserves for USDA or HUD financed rehabilitation transactions). Pursuant to §10.404(c) of this title (relating to Operative Reserve Accounts), and for the underwriting of a Housing Tax Credit Development at cost certification, operating reserves that will be maintained for a minimum period of five years and documented in the Owner's partnership agreement and/or the permanent lender's loan documents will be included as a development cost.

(10) Soft Costs. Eligible soft costs are generally costs that can be capitalized in the basis of the Development for tax purposes. The Underwriter will evaluate and apply the allocation of these soft costs in accordance with the Department's prevailing interpretation of the Code. Generally the Applicant's costs are used however the Underwriter will use comparative data and Third Party CPA certification as to the capitalization of the costs to determine the reasonableness of all soft costs.

(11) Additional Tenant Amenities. For Housing Tax Credit Developments and after submission of the cost certification package, the Underwriter may consider costs of additional building and site amenities (suitable for the tenant populationTarget Population being served) proposed by the Owner in an amount not to exceed 1.5% of the originally underwritten Hard Costs. The additional amenities may must be included in the LURA.

(12) Special Reserve Account. For Housing Tax Credit Developments at cost certification, the Underwriter may include a deposit of up to \$2,500 per Unit into a Special Reserve Account as a Development Cost.

(f) Development Team Capacity and Development Plan.

(1) The Underwriter will evaluate and report on the overall capacity of the Development

Team by reviewing aspects, including but not limited to those identified in subparagraphs (A) - (D) of this paragraph:

(A) personal Personal credit reports for development sponsors, Developer Fee recipients and those individuals anticipated to provide guarantee(s) in cases when warranted. The Underwriter may evaluate the credit report and identify any bankruptcy, state or federal tax liens or other relevant credit risks for compliance with eligibility and debarment requirements this cin this chapter found in Chapter 2 of this title (relating to Enforcement);

(B) qualityQuality of construction, Rehabilitation, and ongoing maintenance of previously awarded housing developments by review of construction inspection reports, compliance on-site visits, findings of UPCS violations and other information available to the Underwriter;

(C) for For Housing Tax Credit Developments, repeated or ongoing failure to timely submit cost certifications, requests for and clearance of final inspections, and timely response to deficiencies in the cost certification process; and

(D) adherence <u>Adherence</u> to obligations on existing or prior Department funded developments with respect to program rules and documentation.

(2) While all components of the <u>developmentDevelopment</u> plan may technically meet the other individual requirements of this section, a confluence of serious concerns and unmitigated risks identified during the underwriting process may result in an Application being referred to the Committee by the Director of Real Estate Analysis. The Committee will review aanydetermined to be infeasible by the Underwriter. Any recommendation made under this subsection to deny an Application for a Grant, Direct Loan and/or Housing Credit Allocation prior to completion of the Report and posting to the Department's website.is subject to Appeal as further provided for in §11.902 of this chapter (relating to Appeals).

(g) Other Underwriting Considerations. The Underwriter will evaluate additional feasibility elements as described in paragraphs (1) - (3) of this subsection.

(1) <u>Interim Operating Income.</u> Interim operating income listed as a source of funds must be supported by a detailed lease-up schedule and analysis.

(2) Floodplains. The Underwriter evaluates the site plan, floodplain map, survey and other information provided to determine if any of the buildings, drives, or parking areas reside within the 100-year floodplain. If such a determination is made by the Underwriter, the Report will include a condition that:

(A) The Applicant must pursue and receive a Letter of Map Amendment (LOMA) or Letter of Map Revision (LOMR-F); or

(B) the <u>The</u> Applicant must identify the cost of flood insurance for the buildings and for the tenant's contents for buildings within the 100-year floodplain and certify that the flood insurance will be obtained; and

(C) the The Development must be proposed to be designed to comply with the QAP,

Program Rules and NOFA, and applicable Federal or state requirements.

(23) Proximity to Other Developments. The Underwriter will identify in the Report any Developments funded or known and anticipated to be eligible for funding within one linear mile of the subject. Distance is measured in a straight line from nearest boundary point to nearest boundary point.

(34) Supportive Housing. The unique development and operating characteristics of Supportive Housing Developments may require special consideration in these areas:

(A) Operating Income. The extremely-low-income tenant population typically targeted by a Supportive Housing Development may include deep-skewing of rents to well-below the 50% AMGI level or other maximum rent limits established by the Department. The Underwriter should-will utilize the Applicant's proposed rents in the Report as long as such rents are at or below the maximum rent limit proposed for the Units or equal to any project based rental subsidy rent to be utilized for the Development if higher than the maximum rent limits;

(B) Operating Expenses. A Supportive Housing Development may have significantly higher expenses for payroll, management fee, security, resident supportive services, or other items than typical affordable housing developments. The Underwriter will rely heavily upon the historical operating expenses of other Supportive Housing Developments Affiliated with the Applicant or otherwise available to the Underwriter. Expense estimates must be categorized as outlined in subsection (d)(2) of this section;

(C) DCR and Long Term Feasibility. Supportive Housing Developments may be exempted from the DCR requirements of subsection (d)(4)(D) of this section if the Development is anticipated to operate without conventional or "must-pay" debt. Applicants must provide evidence of sufficient financial resources to offset any projected 15-year cumulative negative Cash Flow. Such evidence will be evaluated by the Underwriter on a case-by-case basis to satisfy the Department's long term feasibility requirements and may take the form of one or a combination of: executed subsidy commitment(s); set-aside of Applicant's financial resources to be substantiated by current financial statements evidencing sufficient resources; and/or proof of annual fundraising success sufficient to fill anticipated operating losses. If either a set aside of financial resources or annual fundraising are used to evidence the long term feasibility of a Supportive Housing Development, a resolution from the Applicant's governing board must be provided confirming their irrevocable commitment to the provision of these funds and activities; and/or

(D) Total Housing Development Costs. For Supportive Housing Developments designed with only Efficiency Units, the Underwriter may use "Average Quality" dormitory costs, or costs of other appropriate design styles from the Marshall & Swift Valuation Service, with adjustments for amenities and/or quality as evidenced in the Application, as a base cost in evaluating the reasonableness of the Applicant's Building Cost estimate for New Construction Developments.

(h) Work Out Development. As also described in §11.302(h), Developments that are

underwritten subsequent to Board approval in order to refinance or gain relief from restrictions may be considered infeasible based on the guidelines in this section, but may be characterized as "the best available option" or "acceptable available option" depending on the circumstances and subject to the discretion of the Underwriter as long as the option analyzed and recommended is more likely to achieve a better financial outcome for the property and the Department than the status quo.

(i) Feasibility Conclusion. An infeasible Development will not be recommended for a Grant, Direct Loan or Housing Credit Allocation unless the Underwriter can determine an alternative structure and/or conditions the recommendations of the Report upon receipt of documentation supporting an alternative structure. A Development will be characterized as infeasible if paragraph (1) or (2) of this subsection applies. The Development will be characterized as infeasible if one or more of paragraphs (3) - (5) of this subsection applies unless paragraph (6)(B) of this subsection also applies.

(1) Gross Capture Rate, AMGI Band Capture Rates, and Individual Unit Capture Rate. The method for determining capture rates for a Development is defined in §11.303 of this chapter. The Underwriter will independently verify all components and conclusions of the capture rates and may, at their discretion, use independently acquired demographic data to calculate demand and may make a determination of the capture rates based upon an analysis of the Sub-market. The Development:

(A) is characterized as an Elderly Development and the Gross Capture Rate or any AMGI bad capture rate exceeds 10%; or

(B) isis outside a Rural Area and targets the general population, and the Gross Capture Rate or any AMGI band capture rate exceeds 10% (or 15% for Tax-Exempt Bond Developments located in an MSA (as defined in the HTC Site Demographics Characteristics Report) with a population greater than <u>1one</u> million if the average physical occupancy is 92.5% or greater for all stabilized affordable housing developments located within a 20 minute drive time, as supported by the Market Analyst, from the subject Development); or

(C) is in a Rural Area and targets the general population, and the Gross Capture Rate or any AMGI band capture rate exceeds 30-%; or

(D) is Supportive Housing and the Gross Capture Rate or any AMGI band capture rate exceeds 30%; or,

(E) has Has an Individual Unit Capture Rate for any Unit Type greater than 65-%.

(F) Developments meeting the requirements of subparagraph (A), (B), (C), (D) or (E) of this paragraph may avoid being characterized as infeasible if clause (i) or (ii) of this subparagraph apply.

(i) Replacement Housing. The proposed Development is comprised of affordable housing which replaces previously existing affordable housing within the Primary Market Area as defined in §11.303 of this chapter on a Unit for Unit basis, and gives the displaced tenants of the previously existing affordable housing a leasing

preference.

(ii) Existing Housing. The proposed Development is comprised of existing affordable housing, whether defined by an existing land use and rent restriction agreement or if the subject rents are at or below 50% <u>AMIAMGI</u> rents, which is at least 50-% occupied and gives displaced existing tenants a leasing preference as stated in a relocation plan.

(2) Deferred Developer Fee. Applicants requesting an allocation of tax credits where the estimated Deferred Developer Fee, based on the underwritten capitalization structure, is not repayable from Cash Flow within the first fifteen (15) years of the long term pro forma as described in subsection (d)(5) of this section.

(3) Pro Forma Rent. The Pro Forma Rent for Units with rents restricted at 60% of AMGI, or above if the Applicant will make the Income Average election, is less than the Net Program Rent for Units with rents restricted at or below 50% of AMGI unless the Applicant accepts the Underwriter's recommendation, if any, that all restricted units have rents and incomes restricted at or below the 50% of AMGI level.

(4) Initial Feasibility.

(A) Except when underwritten at cost certification, the first year stabilized pro forma operating expense divided by the first year stabilized pro forma Effective Gross Income is greater than 68% for Rural Developments 36 Units or less, and 65% for all other Developments.

(B) The first year DCR is below 1.15 (1.00 for USDA Developments).

(5) Long Term Feasibility. The Long Term Pro forma at any time during years two through fifteen, as defined in subsection (d)(5) of this section, reflects:

(A) a Debt Coverage Ratio below 1.15; or,

(B) cash flow <u>Negative Cash Flow</u> (throughout the term of a Direct Loan).

(6) Exceptions. The infeasibility conclusions may be excepted when:

(A) Waived by the Executive Director of the Department or by the <u>CommitteeEARAC</u> if documentation is submitted by the Applicant to support unique circumstances that would provide mitigation.

(B) Developments not meeting the requirements of one or more of paragraphs (3), (4)(A) or (5) of this subsection will be re-characterized as feasible if one or more of clauses (i) - (v) of this subparagraph apply. A Development financed with a Direct Loan will not be re-characterized as feasible with respect to (5)(B).

(i) The the Development will receive Project-based Section 8 Rental Assistance or the HUD Rental Assistance Demonstration Program for at least 50% of the Units and a firm commitment, with terms including Contract Rent and number of Units, is submitted at Application₇.

(ii) The<u>the</u> Development will receive rental assistance for at least 50% of the Units in association with USDA financing.

(iii) <u>the</u> Development will be characterized as public housing as defined by HUD for at least 50% of the Units.

(iv) Thethe Development will be characterized as Supportive Housing for at least 50 percent of thethat is not financed, except for construction financing, with any debt containing foreclosure provisions or debt that contains must-pay repayment provisions (including cash-flow debt) for all Units and evidence of adequate financial support for the long term viability of the Development is provided. Permanent foreclosable, cash-flow debt provided by an Affiliate is permissible if originally sourced from charitable contributions or pass-through local government non-federal funds; or

(v) The the Development has other long term project based restrictions on rents for at least 50% of the Units that allow rents to increase based upon expenses and the Applicant's proposed rents are at least 10% lower than both the Net Program Rent and Market Rent.

§11.303 Market Analysis Rules and Guidelines

(a) General Provision. A Market Analysis prepared for the Department must evaluate the need for decent, safe, and sanitary housing at rental rates or sales prices that eligible tenants can afford. The analysis must determine the feasibility of the subject <u>Property_Development</u> rental rates or sales price, and state conclusions as to the impact of the <u>Property_Development</u> with respect to the determined housing needs. The Market Analysis must include a statement that the report preparer has read and understood the requirements of this section. The Market Analysis must also include a statement that the person or company preparing the Market Analysis is a disinterested party and will not materially benefit from the Development in any other way than receiving a fee for performing the Market Analysis, and that the fee is in no way contingent upon the outcome of the Market Analysis. The report must also include the following statement, "all persons who have a property interest in any person signing this report hereby must acknowledgeReport acknowledges that the Department may publish the full report on the Department's website, release the report in response to a request for public information and make other use of the report as authorized by law."

(b) Self-Contained. A Market Analysis prepared for the Department must allow the reader to understand the market data presented, the analysis of the data, and the conclusions derived from such data. All data presented should reflect the most current information available and the report must provide a parenthetical (in-text) citation or footnote describing the data source. The analysis must clearly lead the reader to the same or similar conclusions reached by the Market Analyst. All steps leading to a calculated figure must be presented in the body of the report.

(c) Market Analyst Qualifications. A Market Analysis submitted to the Department must be prepared and certified by an approved Qualified Market Analyst. (§2306.67055) The Department will maintain an approved Market Analyst list based on the guidelines set forth in paragraphs (1) - (3) of this subsection.

(1) The approved Qualified Market Analyst list will be updated and published annually on or about November 1st. If not listed as an approved Qualified Market Analyst by the Department, a Market Analyst may request approval by submitting items in subparagraphs

(A) - (F) of this paragraph at least thirty (30) calendar days prior to the first day of the competitive tax credit Application Acceptance Period or thirty (30) calendar days prior to submission of any other application for funding for which the Market Analyst must be approved. An already approved Qualified Market Analyst will remain on the list so long as at least one (1) Market Analysis has been submitted to the Department in the previous 12 months or items (A), (B), (C) and (E) are submitted prior to October 1st. Otherwise, the Market Analyst will automatically be removed from the list.

(A) Franchise Tax Account Status from the Texas Comptroller of Public Accounts (not applicable for sole proprietorships).

(B) A current organization chart or list reflecting all members of the firm who may author or sign the Market Analysis. A firm with multiple offices or locations must indicate all members expected to be providing Market Analysis. $\frac{1}{2}$

(C) Resumes for all members of the firm or subcontractors who may author or sign the Market Analysis.

(D) General information regarding the firm's experience including references, the number of previous similar assignments and timeframes in which previous assignments were completed $\frac{1}{2}$

(E) Certification from an authorized representative of the firm that the services to be provided will conform to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the Application Round in which each Market Analysis is submitted $\frac{1}{2}$; and

(F) A sample Market Analysis that conforms to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the year in which the sample Market Analysis is submitted.

An already approved Qualified Market Analyst will remain on the list so long as at least one (1) Market Analysis has been submitted to the Department in the previous 12 months or items (A), (),(B), (),(C) and (E) are submitted prior to October 1st. Otherwise, the Market Analyst will automatically be removed from the list.

(2) During the underwriting process each Market Analysis will be reviewed and any discrepancies with the rules and guidelines set forth in this section may be identified and require timely correction. Subsequent to the completion of the Application Round and as time permits, staff or a review appraiser will re-review a sample set of submitted market analyses to ensure that the Department's Market Analysis Rules and Guidelines are met. If it is found that a Market Analyst has not conformed to the Department's Market Analysis Rules and Guidelines, as certified to, the Market Analyst will be notified of the discrepancies in the Market Analysis and will be removed from the approved Qualified Market Analyst list.

(A) In and of itself, removal from the list of approved Market Analysts will not invalidate a Market Analysis commissioned prior to the removal date and at least ninety (90) days prior to the first day of the applicable Application Acceptance Period.

(B) To be reinstated as an approved Qualified Market Analyst, the Market Analyst must

amend the previous report to remove all discrepancies or submit a new sample Market Analysis that conforms to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the year in which the updated or new sample Market Analysis is submitted.

(d) Market Analysis Contents. A Market Analysis for a rental Development prepared for the Department must be organized in a format that follows a logical progression and must include, at minimum, items addressed in paragraphs (1) - (13) of this subsection.

(1) Title Page. Include Property Development address or location, effective date of analysis, date report completed, name and address of person authorizing report, and name and address of Market Analyst.

(2) Letter of Transmittal. The date of the letter must be the date the report was completed. Include Property Development's address or location, description of Property Development, statement as to purpose and scope of analysis, reference to accompanying Market Analysis report with effective date of analysis and summary of conclusions, date of Property inspection, name of persons inspecting subject Property, and signatures of all Market Analysts authorized to work on the assignment. Include a statement that the report preparer has read and understood the requirements of this section.

(3) Table of Contents. Number the exhibits included with the report for easy reference.

(4) Market Analysis Summary. Include the Department's Market Analysis Summary exhibit.

(5) Assumptions and Limiting Conditions. Include a description of all assumptions, both general and specific, made by the Market Analyst concerning the Property.

(6) Identification of the <u>PropertyReal Estate</u>. Provide a statement to acquaint the reader with the Development. Such information includes street address, tax assessor's parcel number(s), and Development characteristics.

(7) Statement of Ownership. Disclose the current owners of record and provide a three (3) year history of ownership for the subject PropertyDevelopment.

(8) Primary Market Area. A limited geographic area from which the Development is expected to draw most of its demand. The size and shape of the PMA should be reflective of proximity to employment centers, services and amenities and contain the most significant areas from which to draw demand. All of the Market Analyst's conclusions specific to the subject Development must be based on only one PMA definition. The Market Analyst must adhere to the methodology described in this paragraph when determining the market area. (§2306.67055)

(A) The PMA will be defined by the Market Analyst as:

(i) geographic size based on a base year population no larger than necessary to provide sufficient demand but no more than 100,000 people;

(ii) boundaries based on U.S. census tracts; and

(iii) the population of the PMA may exceed 100,000 if the amount over the limit is

contained within a single census tract.

- (B) The Market Analyst's definition of the PMA must include:
 - (i) a detailed narrative specific to the PMA explaining:

(I) how<u>How</u> the boundaries of the PMA were determined with respect to census tracts chosen and factors for including or excluding certain census tracts in proximity to the Development;

(II) whether Whether a more logical market area within the PMA exists but is not definable by census tracts and how this subsection of the PMA supports the rationale for the defined PMA;

(III) what What are the specific attributes of the Development's location within the PMA that would draw prospective tenants from other areas of the PMA to relocate to the Development;

(IV) what What are the specific attributes, if known, of the Development itself that would draw prospective tenants currently residing in other areas of the PMA to relocate to the Development;

(V) **if** the PMA crosses county lines, discuss the different income and rent limits in each county and how these differing amounts would affect the demand for the Development;

(VI) for For rural Developments, discuss the relative draw (services, jobs, medical facilities, recreation, schools, etc.) of the Development's immediate local area (city or populous area if no city) in comparison to its neighboring local areas (cities, or populous areas if no cities), in and around the PMA. A rural PMA should not include significantly larger more populous areas unless the analyst can provide substantiation and rationale that the tenants would migrate to the Development's location from the larger cities;

(VII) discuss Discuss and quantify current and planned single-family and non-residential construction (include permit data if available); and

(VIII) otherOther housing issues in general, if pertinent;

(ii) a complete demographic report for the defined PMA;

(iii) a scaled distance map indicating the PMA boundaries showing relevant U.S. census tracts with complete 11-digit identification numbers in numerical order with labels as well as the location of the subject Development and all comparable Developments. The map must indicate the total square miles of PMA; and,

(iv) a proximity table indicating distance from the Development to employment centers, medical facilities, schools, entertainment and any other amenities relevant to the potential residents and include drive time estimates.

(C) Comparable Units. Identify developments in the PMA with Comparable Units. In PMAs lacking sufficient rent comparables, it may be necessary for the Market Analyst to collect

data from markets with similar characteristics and make quantifiable and qualitative location adjustments. Provide a data sheet for each comparable development consisting of:

- (i) development name;
- (ii) address;
- (iii) year of construction and year of Rehabilitation, if applicable;
- (iv) property condition;
- (v) Target Population;

(vi) unit mix specifying number of Bedrooms, number of baths, Net Rentable Area; and

- (I) monthly rent and Utility Allowance; or
- (II) sales price with terms, marketing period and date of sale;
- (vii) description of concessions;

(viii) list of unit amenities;

(ix) utility structure;

(x) list of common amenities;

(xi) narrative comparison of its proximity to employment centers and services relative to targeted tenant population of the subject property; and,

(xii) for rental developments only, the occupancy and turnover.

(9) Market Information.

(A) Identify the number of units for each of the categories in clauses (i) - (vi) of this subparagraph-, if applicable:

(i) total housing;

(ii) all multi-family rental developments, including unrestricted and market-rate developments, whether existing, under construction or proposed;

- (iii) Affordable housing;
- (iv) Comparable Units;
- (v) Unstabilized Comparable Units; and
- (vi) proposed Comparable Units.

(B) Occupancy. The occupancy rate indicated in the Market Analysis may be used to support both the overall demand conclusion for the proposed Development and the vacancy rate assumption used in underwriting the Development described in §11.302(d)(1)(C) of this chapter (relating to <u>Underwriting RulesVacancy</u> and <u>GuidelinesCollection Loss</u>). State the overall physical occupancy rate for the proposed

housing tenure (renter or owner) within the defined market areas by:

(i) number of Bedrooms;

(ii) quality of construction (class);

(iii) Target Population; and

(iv) Comparable Units.

(C) Absorption. State the absorption trends by quality of construction (class) and absorption rates for Comparable Units.

(D) Demographic Reports.

(i) All demographic reports must include population and household data for a five (5) year period with the year of Application submission as the base year;

(ii) All demographic reports must provide sufficient data to enable calculation of income-eligible, age-, size-, and tenure-appropriate household populations;

(iii) For Elderly Developments, all demographic reports must provide a detailed breakdown of households by age and by income; and

(iv) A complete copy of all demographic reports relied upon for the demand analysis, including the reference index that indicates the census tracts on which the report is based.

(E) Demand. Provide a comprehensive evaluation of the need for the proposed housing for the Development as a whole and each Unit Type by number of Bedrooms proposed and rent restriction category within the defined market areas using the most current census and demographic data available. A complete demand and capture rate analysis is required in every Market Study, regardless of the current occupancy level of an existing Development.

(i) Demographics. The Market Analyst should use demographic data specific to the characteristics of the households that will be living in the proposed Development. For example, the Market Analyst should use demographic data specific to the elderly populations (and any other qualifying residents for Elderly Developments) to be served by an Elderly Development, if available, and should avoid making adjustments from more general demographic data. If adjustment rates are used based on more general data for any of the criteria described in subclauses (I) - (V) of this clause, they should be clearly identified and documented as to their source in the report.

(I) Population. Provide population and household figures, supported by actual demographics, for a five (5)-year period with the year of Application submission as the base year.

(II) Target. If applicable, adjust the household projections for the qualifying demographic characteristics such as the minimum age of the population to be served by the proposed Development.

(III) Household Size-Appropriate. Adjust the household projections or target

household projections, as applicable, for the appropriate household size for the proposed Unit Type by number of Bedrooms proposed and rent restriction category based on 2 persons per Bedroom or one person for Efficiency Units.

(IV) Income Eligible. Adjust the household size appropriate projections for income eligibility based on the income bands for the proposed Unit Type by number of Bedrooms proposed and rent restriction category with:

(-a-) the lower end of each income band calculated based on the lowest gross rent proposed divided by 40% for the general population and 50% for elderly households; and

(-b-) the upper end of each income band equal to the applicable gross median income limit for the largest appropriate household size based on 2 persons per Bedroom (round up) or one person for Efficiency Units.

(V) Tenure-Appropriate. Adjust the income-eligible household projections for tenure (renter or owner). If tenure appropriate income eligible target household data is available, a tenure appropriate adjustment is not necessary.

(ii) Gross Demand. Gross Demand is defined as the sum of Potential Demand from the PMA, Demand from Other Sources, and External Demand.

(iii) Potential Demand. Potential Demand is defined as the number of income-eligible, age-, size-, and tenure-appropriate target households in the designated market area at the proposed placed in service date.

(I) Maximum eligible income is equal to the applicable gross median income limit for the largest appropriate household size.

(II) For Developments targeting the general population:

(-a-) minimum eligible income is based on a 40% rent to income ratio;

(-b-) appropriate household size is defined as $\frac{2 \pm wo}{2}$ persons per Bedroom (rounded up); and

(-c-) the tenure-appropriate population for a rental Development is limited to the population of renter households.

(III) For Developments consisting solely of single family residences on separate lots with all Units having three (3)-or more Bedrooms:

(-a-) minimum eligible income is based on a 40% rent to income ratio;

(-b-) appropriate household size is defined as $\frac{2 \text{two}}{2 \text{two}}$ persons per Bedroom (rounded up); and

(-c-) Gross Demand includes both renter and owner households.

(IV) Elderly Developments:

(-a-) minimum eligible income is based on a 50% rent to income ratio; and

(-b-) Gross Demand includes all household sizes and both renter and owner households within the age range (and any other qualifying characteristics) to be served by the Elderly Development.

(V) Supportive Housing:

(-a-) minimum eligible income is \$1; and

(-b-) households meeting the occupancy qualifications of the Development (data to quantify this demand may be based on statistics beyond the defined PMA but not outside the historical service area of the Applicant).

(VI) For Developments with rent assisted units (<u>PBV's, PHU'sProject Based</u> <u>Vouchers, Project-Based Rental Assistance, Public Housing Units</u>):

(-a-) minimum eligible income for the assisted units is \$1; and

(-b-) maximum eligible income for the assisted units is the minimum eligible income of the corresponding affordable unit.

(iv) External Demand: Assume an additional 10% of Potential Demand from the PMA to represent demand coming from outside the PMA.

(v) Demand from Other Sources:

(I) the source of additional demand and the methodology used to calculate the additional demand must be clearly stated;

(II) consideration of Demand from Other Sources is at the discretion of the Underwriter;

(III) Demand from Other Sources must be limited to households that are not included in Potential Demand; and

(IV) if households with Section 8 vouchers are identified as a source of demand, the Market Study must include:

(-a-) documentation of the number of vouchers administered by the local Housing Authority; and

(-b-) a complete demographic report for the area in which the vouchers are distributed.

(F) Employment. Provide a comprehensive analysis of employment trends and forecasts in the Primary Market Area. Analysis must discuss existing or planned employment opportunities with qualifying income ranges.

(10) Conclusions. Include a comprehensive evaluation of the subject Property, separately addressing each housing type and specific population to be served by the Development in terms of items in subparagraphs (A) - (I) of this paragraph. All conclusions must be consistent with the data and analysis presented throughout the Market Analysis.

(A) Unit Mix. Provide a best possible unit mix conclusion based on the occupancy rates by Bedroom type within the PMA and target, income-eligible, size-appropriate and

tenure-appropriate household demand by Unit Type and income type within the PMA.

(B) Rents. Provide a separate Market Rent conclusion for each proposed Unit Type by number of Bedrooms and rent restriction category. Conclusions of Market Rent below the maximum Net Program Rent limit must be well documented as the conclusions may impact the feasibility of the Development under §11.302(i) of this chapter- (relating to Feasibility Conclusion). In support of the Market Rent conclusions, provide a separate attribute adjustment matrix for each proposed Unit Type by number of Bedrooms and rental restriction category.

(i) The Department recommends use of HUD Form 92273.

(ii) A minimum of three developments must be represented on each attribute adjustment matrix.

(iii) Adjustments for concessions must be included, if applicable.

(iv) Adjustments for proximity and drive times to employment centers and services narrated in the Comparable Unit description, and the rationale for the amount of the adjustments must be included.

(v) Total adjustments in excess of 15% must be supported with additional narrative.

(vi) Total adjustments in excess of 25% indicate the Units are not comparable for the purposes of determining Market Rent conclusions.

(C) Effective Gross Income. Provide rental income, secondary income, and vacancy and collection loss projections for the subject derived independent of the Applicant's estimates.

(D) Demand:

(i) state the Gross Demand for each Unit Type by number of Bedrooms proposed and rent restriction category (*e.g.* one-Bedroom Units restricted at 50% of AMGI; two-Bedroom Units restricted at 60% of AMGI); and

(ii) state the Gross Demand for the proposed Development as a whole. If some households are eligible for more than one Unit Type due to overlapping eligible ranges for income or household size, Gross Demand should be adjusted to avoid including households more than once.

(iii) state the Gross Demand generated from each AMGI band. If some household incomes are included in more than one AMGI band, Gross Demand should be adjusted to avoid including households more than once.

(E) Relevant Supply. The Relevant Supply of proposed and <u>unstabilized</u><u>Unstabilized</u> Comparable Units includes:

(i) the proposed subject Units to be absorbed;

(ii) Comparable Units in an Application with priority over the subject pursuant to §11.201(6) of this chapter; and

(iii) Comparable Units in previously approved Developments in the PMA that have not achieved 90% occupancy for a minimum of 90 days.

(F) Gross Capture Rate. The Gross Capture Rate is defined as the Relevant Supply divided by the Gross Demand. Refer to §11.302(i) of this chapter for feasibility criteria.

(G) Individual Unit Capture Rate. For each Unit Type by number of Bedrooms and rent restriction categories, the individual unit capture rate is defined as the Relevant Supply of proposed and <u>unstabilizedUnstabilized</u> Comparable Units divided by the eligible demand for that Unit. Some households are eligible for multiple Unit Types. In order to calculate individual unit capture rates, each household is included in the capture rate for only one Unit Type.

(H) Capture Rate by AMGI Band. For each AMGI band (30%, 40%, 50%, 60%, and also 20%, 70%, and 80% if the Applicant will make the Income Average election), the capture rate by AMGI band is defined as Relevant Supply of proposed and unstabilized Unstabilized Comparable Units divided by the eligible demand from that AMGI band. Some households are qualified for multiple income bands. In order to calculate AMGI band rates, each household is included in the capture rate for only one AMGI band.

(I) Absorption. Project an absorption period for the subject Development to achieve Breakeven Occupancy. State the absorption rate.

(J) Market Impact. Provide an assessment of the impact the subject Development, as completed, will have on existing Developments supported by Housing Tax Credits in the Primary Market. (§2306.67055)

(12) Photographs. Provide labeled color photographs of the subject Property, the neighborhood, street scenes, and comparables. An aerial photograph is desirable but not mandatory.

(13) Appendices. Any Third Party reports including demographics relied upon by the Market Analyst must be provided in appendix form. A list of works cited including personal communications also must be provided, and the Modern Language Association (MLA) format is suggested.

(14) Qualifications. Current Franchise Tax Account Status from the Texas Comptroller of Public Accounts (not applicable for sole proprietorships) and any changes to items listed in §11.303(c)(1)(B) and (C) of this chapter. (relating to Market Analyst Qualifications).

(e) The Department reserves the right to require the Market Analyst to address such other issues as may be relevant to the Department's evaluation of the need for the subject Development and the provisions of the particular program guidelines.

(f) In the event that the PMA for a subject Development overlaps the PMA's of other proposed or <u>unstabilizedUnstabilized</u> comparable Developments, the Underwriter may perform an extended Sub-Market Analysis considering the combined PMA's and all proposed and <u>unstabilizedUnstabilized</u> Units in the extended Sub-Market Area; the Gross Capture Rate from such an extended Sub-Market Area analysis may be used <u>by the Underwriter</u> as the basis for a feasibility conclusion.

(g) All Applicants shall acknowledge, by virtue of filing an Application, that the Department shall not be bound by any such opinion or Market Analysis, and may substitute its own analysis and underwriting conclusions for those submitted by the Market Analyst.

§11.304. Appraisal Rules and Guidelines.

(a) General Provision. An appraisal prepared for the Department must conform to the Uniform Standards of Professional Appraisal Practice (USPAP) as adopted by the Appraisal Standards Board of the Appraisal Foundation. The appraisal must include a statement that the report preparer has read and understood the requirements of this section. The appraisal must include a statement that the person or company preparing the appraisal, or reviewing the appraisal, is a disinterested party and will not materially benefit from the Development in any other way than receiving a fee for performing the appraisal and that the fee is in no way contingent upon the outcome of the appraisal.

(b) Self-Contained. An appraisal prepared for the Department must describe sufficient and adequate data and analyses to support the final opinion of value. The final value(s) must be reasonable, based on the information included. Any Third Party reports relied upon by the appraiser must be verified by the appraiser as to the validity of the data and the conclusions.

(c) Appraiser Qualifications. The qualifications of each appraiser are determined on a case-bycase basis by the Director of Real Estate Analysis or review appraiser, based upon the quality of the report itself and the experience and educational background of the appraiser. At minimum, a qualified The appraiser and reviewing appraiser must be appropriately certified or licensed by the Texas Appraiser Licensing and Certification Board.

(d) Appraisal Contents. An appraisal prepared for the Department must be organized in a format that follows a logical progression. In addition to the contents described in USPAP Standards Rule 2, the appraisal must include items addressed in paragraphs (1) - (12) of this subsection.

(1) Title Page. Include a statement identifying the Department as the client, acknowledging that the Department is granted full authority to rely on the findings of the report, and name and address of person authorizing report. The title page must also include the following statement, "all persons who have a property interest in any person signing this report hereby acknowledgeReport acknowledges that the Department may publish the full report on the Department's website, release the report in response to a request for public information and make other use of the report as authorized by law."

(2) Letter of Transmittal. Include reference to accompanying appraisal report, reference to all person(s) that provided significant assistance in the preparation of the report, date of report, effective date of appraisal, date of property inspection, name of person(s) inspecting the property, tax assessor's parcel number(s) of the site, estimate of marketing period, and signatures of all appraisers authorized to work on the assignment including the appraiser who inspected the property. Include a statement indicating the report preparer has read and understood the requirements of this section.

(3) Table of Contents. Number the exhibits included with the report for easy reference.

(4) Disclosure of Competency. Include appraiser's qualifications, detailing education and experience.

(5) Statement of Ownership of the Subject Property. Discuss all prior sales of the subject Property which occurred within the past three (3) years. Any pending agreements of sale, options to buy, or listing of the subject Property must be disclosed in the appraisal report.

(6) Property Rights Appraised. Include a statement as to the property rights (e.g., fee simple interest, leased fee interest, leasehold, etc.) being considered. The appropriate interest must be defined in terms of current appraisal terminology with the source cited.

(7) Site/Improvement Description. Discuss the site characteristics including subparagraphs (A) - (E) of this paragraph.

(A) Physical Site Characteristics. Describe dimensions, size (square footage, acreage, etc.), shape, topography, corner influence, frontage, access, ingress-egress, etc. associated with the Development Site. Include a plat map and/or survey.

(B) Floodplain. Discuss floodplain (including flood map panel number) and include a floodplain map with the subject Property clearly identified.

(C) Zoning. Report the current zoning and description of the zoning restrictions and/or deed restrictions, where applicable, and type of Development permitted. Any probability of change in zoning should be discussed. A statement as to whether or not the improvements conform to the current zoning should be included. A statement addressing whether or not the improvements could be rebuilt if damaged or destroyed, should be included. If current zoning is not consistent with the highest and best use, and zoning changes are reasonable to expect, time and expense associated with the proposed zoning change should be considered and documented. A zoning map should be included.

(D) Description of Improvements. Provide a thorough description and analysis of the improvements including size (Net Rentable Area, gross building area, etc.), <u>use (whether vacant, occupied by owner, or being rented)</u>, <u>number of residents</u>, <u>number of stories</u>, number of buildings, type/quality of construction, condition, actual age, effective age, exterior and interior amenities, items of deferred maintenance, energy efficiency measures, etc. All applicable forms of depreciation should be addressed along with the remaining economic life.

(E) Environmental Hazards. It is recognized appraisers are not experts in such matters and the impact of such deficiencies may not be quantified; however, the report should disclose any potential environmental hazards (such as discolored vegetation, oil residue, asbestos-containing materials, lead-based paint etc.) noted during the inspection.

(8) Highest and Best Use. Market Analysis and feasibility study is required as part of the highest and best use. The highest and best use analysis should consider paragraph (7)(A) - (E) of this subsection as well as a supply and demand analysis.

(A) The appraisal must inform the reader of any positive or negative market trends which could influence the value of the appraised Property. Detailed data must be included to support the appraiser's estimate of stabilized income, absorption, and occupancy.

(B) The highest and best use section must contain a separate analysis "as if vacant" and "as improved" (or "as proposed to be improved/renovated"). All four elements (legally permissible, physically possible, feasible, and maximally productive) must be considered.

(9) Appraisal Process. It is mandatory that all three approaches, Cost Approach, Sales Comparison Approach and Income Approach, are considered in valuing the Property. If an approach is not applicable to a particular property an adequate explanation must be provided. A land value estimate must be provided if the Cost Approach is not applicable.

(A) Cost Approach. This approach should give a clear and concise estimate of the cost to construct the subject improvements. The source(s) of the cost data should be reported.

(i) Cost comparables are desirable; however, alternative cost information may be obtained from Marshall & Swift Valuation Service or similar publications. The section, class, page, etc. should be referenced. All soft costs and entrepreneurial profit must be addressed and documented.

(ii) All applicable forms of depreciation must be discussed and analyzed. Such discussion must be consistent with the description of the improvements.

(iii) The land value estimate should include a sufficient number of sales which are current, comparable, and similar to the subject in terms of highest and best use. Comparable sales information should include address, legal description, tax assessor's parcel number(s), sales price, date of sale, grantor, grantee, three (3)-year sales history, and adequate description of property transferred. The final value estimate should fall within the adjusted and unadjusted value ranges. Consideration and appropriate cash equivalent adjustments to the comparable sales price for subclauses (I) - (VII) of this clause should be made when applicable.

(I) Property rights conveyed.

(II) Financing terms-:

(III) Conditions of sale-;...

(IV) Location.

(V) Highest and best use-;.

(VI) Physical characteristics (e.g., topography, size, shape, etc.); and

(VII) Other characteristics (e.g., existing/proposed entitlements, special assessments, etc.).

(B) Sales Comparison Approach. This section should contain an adequate number of sales to provide staff and the BoardUnderwriter with a description of the current market conditions concerning this property type. Sales data should be recent and specific for the property type being appraised. The sales must be confirmed with buyer, seller, or an individual knowledgeable of the transaction.

(i) Sales information should include address, legal description, tax assessor's parcel number(s), sales price, financing considerations and adjustment for cash equivalency,

date of sale, recordation of the instrument, parties to the transaction, three (3)-year sale history, complete description of the Property and property rights conveyed, and discussion of marketing time. A scaled distance map clearly identifying the subject and the comparable sales must be included.

(ii) The method(s) used in the Sales Comparison Approach must be reflective of actual market activity and market participants.

(I) Sale Price/Unit of Comparison. The analysis of the sale comparables must identify, relate, and evaluate the individual adjustments applicable for property rights, terms of sale, conditions of sale, market conditions, and physical features. Sufficient narrative must be included to permit the reader to understand the direction and magnitude of the individual adjustments, as well as a unit of comparison value indicator for each comparable.

(II) Net Operating Income/Unit of Comparison. The Net Operating Income statistics or for the comparables must be calculated in the same manner. It should be disclosed if reserves for replacement have been included in this method of analysis. At least one other method should accompany this method of analysis.

(C) Income Approach. This section must contain an analysis of both the actual historical and projected income and expense aspects of the subject Property.

(i) Market Rent Estimate/Comparable Rental Analysis. This section of the report should include an adequate number of actual market transactions to inform the reader of current market conditions concerning rental Units. The comparables must indicate current research for this specific property type. The comparables must be confirmed with the landlord, tenant or agent and individual data sheets must be included. The individual data sheets should include property address, lease terms, description of the property (e.g., Unit Type, unit size, unit mix, interior amenities, exterior amenities, etc.), physical characteristics of the property, and location of the comparables. Analysis of the Market Rents should be sufficiently detailed to permit the reader to understand the appraiser's logic and rationale. Adjustment for lease rights, condition of the lease, location, physical characteristics of the property, etc. must be considered.

(ii) Comparison of Market Rent to Contract Rent. Actual income for the subject along with the owner's current budget projections must be reported, summarized, and analyzed. If such data is unavailable, a statement to this effect is required and appropriate assumptions and limiting conditions should be made. The Contract Rents should be compared to the market-derived rents. A determination should be made as to whether the Contract Rents are below, equal to, or in excess of market rates. If there is a difference, its impact on value must be qualified.

(iii) Vacancy/Collection Loss. Historical occupancy data and current occupancy level for the subject should be reported and compared to occupancy data from the rental comparables and overall occupancy data for the subject's Primary Market.

(iv) Expense Analysis. Actual expenses for the subject, along with the owner's projected budget, must be reported, summarized, and analyzed. If such data is unavailable, a statement to this effect is required and appropriate assumptions and limiting conditions should be made. Historical expenses should be compared to comparables expenses of similar property types or published survey data (such as IREM, BOMA, etc.). Any expense differences should be reconciled. Include historical data regarding the subject's assessment and tax rates and a statement as to whether or not any delinquent taxes exist.

(v) Capitalization. The appraiser should present the capitalization method(s) reflective of the subject market and explain the omission of any method not considered in the report.

(I) Direct Capitalization. The primary method of deriving an overall rate is through market extraction. If a band of investment or mortgage equity technique is utilized, the assumptions must be fully disclosed and discussed.

(II) Yield Capitalization (Discounted Cash Flow Analysis). This method of analysis should include a detailed and supportive discussion of the projected holding/investment period, income and income growth projections, occupancy projections, expense and expense growth projections, reversionary value and support for the discount rate.

(10) Value Estimates. Reconciliation of final value estimates is required. The Underwriter may request additional valuation information based on unique existing circumstances that are relevant for deriving the market value of the Property.

(A) All appraisals shall contain a separate estimate of the "as vacant" market value of the underlying land, based upon current sales comparables. The "as vacant" value assumes that there are no improvements on the property and therefore demolition costs should not be considered. The appraiser should consider the fee simple or leased fee interest as appropriate.

(B) For existing Developments with any project-based rental assistance that will remain with the property after the acquisition, the appraisal must include an "as-is as-currently-restricted value"-, at current contract rents." For public housing converting to project-based rental assistance, the appraiser must provide a value based on the future restricted rents. The value used in the analysis may be based on the unrestricted market rents if supported by an appraisal. The Department may require that the appraisal be reviewed by a third-party appraiser acceptable to the Department but selected by the Applicant. Use of the restricted rents by the appraiser will not require an appraisal review. Regardless of the rents used in the valuation, the appraiser must consider any other ongoing restrictions that will remain in place even if not affecting rents. If the rental assistance has an impact on the value, such as use of a lower capitalization rate due to the lower risk associated with rental rates and/or occupancy rates on project-based developments, this must be fully explained and supported to the satisfaction of the Underwriter.

(C) For existing Developments with rent restrictions, the appraisal must include the "as-is as-restricted" value. In particular, the value must be based on the proposed restricted rents when deriving the value based on the income approach.

(D) For all other existing Developments, the appraisal must include the "as-is" value.

(E) For any Development with favorable financing (generally below market debt) that will remain in place and transfer to the new owner, the appraisal must include a separate value for the existing favorable financing with supporting information.

(F) If required the appraiser must include a separate assessment of personal property, furniture, fixtures, and equipment (FF&E) and/or intangible items. If personal property, FF&E, or intangible items are not part of the transaction or value estimate, a statement to such effect should be included.

(11) Marketing Time. Given property characteristics and current market conditions, the appraiser(s) should employ a reasonable marketing period. The report should detail existing market conditions and assumptions considered relevant.

(12) Photographs. Provide good quality color photographs of the subject Property (front, rear, and side elevations, on-site amenities, interior of typical Units if available). Photographs should be properly labeled. Photographs of the neighborhood, street scenes, and comparables should be included. An aerial photograph is desirable but not mandatory.

(e) Additional Appraisal Concerns. The appraiser(s) must be aware of the Department program rules and guidelines and the appraisal must include analysis of any impact to the subject's value.

§11.305. Environmental Site Assessment Rules and Guidelines.

(a) General Provisions. The Environmental Site Assessments (ESA) prepared for the Department must be conducted and reported in conformity with the standards of the American Society for Testing and Materials (ASTM). The initial report must conform with the Standard Practice for Environmental Site Assessments: Phase I Assessment Process (ASTM Standard Designation: E1527-13 or any subsequent standards as published). Any subsequent reports should also conform to ASTM standards and such other recognized industry standards as a reasonable person would deem relevant in view of the Property's anticipated use for human habitation. The ESA shall be conducted by a Third Party environmental professional at the expense of the Applicant, and addressed to the Department as a User of the report (as defined by ASTM standards). Copies of reports provided to the Department which were commissioned by other financial institutions must either address Texas Department of Housing and Community Affairs as a co-recipient of the report or letters from both the provider and the recipient of the report may be submitted extending reliance on the report to the Department. The ESA report must also include a statement that the person or company preparing the ESA report will not materially benefit from the Development in any other way than receiving a fee for performing the ESA, and that the fee is in no way contingent upon the outcome of the assessment. The report must also include the following statement, "all persons who have a property interest in any person signing this report hereby acknowledge Report acknowledges that the Department may publish the full report on the Department's website, release the report in response to a request for public information and make other use of the report as authorized by law." The ESA report must contain a statement indicating the report preparer has read and understood the requirements of this section.

(b) In addition to ASTM requirements, the report must:

(1) <u>stateState</u> if a noise study is recommended for a property in accordance with current HUD guidelines and identify its proximity to industrial zones, major highways, active rail lines, civil and military airfields, or other potential sources of excessive noise;

(2) <u>provide</u> a copy of a current survey, if available, or other drawing of the site reflecting the boundaries and adjacent streets, all improvements on the site, and any items of concern described in the body of the ESA or identified during the physical inspection;

(3) provide Provide a copy of the current FEMA Flood Insurance Rate Map showing the panel number and encompassing the site with the site boundaries precisely identified and superimposed on the map;

(4) if the subject Development Site includes any improvements or debris from pre-existing improvements, state if testing for Lead Based Paint and/or asbestos containing materials would be required pursuant to local, state, and federal laws, or recommended due to any other consideration;

(5) <u>stateState</u> if testing for lead in the drinking water would be required pursuant to local, state, and federal laws, or recommended due to any other consideration such as the age of pipes and solder in existing improvements. For <u>buildings constructed prior to 1980, a report</u> on the quality of the local water supply does not satisfy this requirementall Rehabilitation Developments, the ESA provider must state whether the on-site plumbing is a potential source of lead in drinking water;

(6) assess<u>Assess</u> the potential for the presence of Radon on the <u>PropertyDevelopment Site</u>, and recommend specific testing if necessary;

(7) identifyIdentify and assess the presence of oil, gas or chemical pipelines, processing facilities, storage facilities or other potentially hazardous explosive activities on-site or in the general area of the site that could potentially adversely impact the Development. Location of these items must be shown on a drawing or map in relation to the Development Site and all existing or future improvements. The drawing must depict any blast zones (in accordance with HUD guidelines) and include HUD blast zone calculations; and

(8) <u>include</u> Include a vapor encroachment screening in accordance with <u>the ASTM "Standard</u> <u>Guide for</u> Vapor <u>Intrusion</u> <u>Encroachment Screening on Property Involved in Real Estate</u> <u>Transactions" (E2600-10-).</u>

(c) If the report recommends further studies or establishes that environmental hazards currently exist on the Property, or are originating off-site, but would nonetheless affect the Property, the Development Owner must act on such a recommendation, or provide a plan for either the abatement or elimination of the hazard. Evidence of action or a plan for the abatement or elimination of the presented upon Application submittal.

(d) For Developments in programs that allow a waiver of the Phase I ESA such as an existing USDA

funded Development, the Development Owners are hereby notified that it is their responsibility to ensure that the Development is maintained in compliance with all state and federal environmental hazard requirements.

(e) Those Developments which have or are to receive first lien financing from HUD may submit HUD's environmental assessment report, provided that it conforms to the requirements of this section.

§11.306. Property Condition AssessmentScope and Cost Review Guidelines.

(a) General Provisions. The objective of the Property Condition AssessmentPCAScope and Cost Review Report (SCR) required for Rehabilitation Developments (excluding Reconstruction) and Adaptive Reuse Developments is to provide a self-contained report that provides ana comprehensive description and evaluation of the current conditions of the Development, and identifies a scope of work and cost estimates for the proposed repairs, replacements and improvements to an existing multifamily property or identifies a scope of work for both immediate and long-term physical needs, evaluates the conversion of a non-multifamily property to multifamily use.

The SCR author must evaluate the sufficiency of the Applicant's scope of work under 10 TAC §11.302(e)(4)(B)(i) for the rehabilitation or conversion of the building(s) from a non-residential use to multifamily residential use and provides and provide an independent review of the Applicant's proposed costs-based on the scope of work. The report shouldmust be in sufficient detail for the Underwriter to fully understand all current conditions, scope of work and cost estimates. It is the responsibility of the Applicant to ensure that the scope of work and cost estimates submitted in the Application is provided to the PCA author. The PCASCR must include a copy of the Applicant's scope of work narrative and Development Cost Schedule, submitted in the Application. The report must also include the following statement, "all persons who have a property interest in any person signing this report hereby acknowledgeReport acknowledges that the Department may publish the full report on the Department's website, release the report in response to a request for public information and make other use of the report as authorized by law."

(b) The PCAFor Rehabilitation Developments, the SCR must be conducted and reported include analysis in conformity with the American Society for Testing and MaterialsASTM "Standard Guide for Property Condition Assessments. Baseline Property Condition Assessment Process (ASTM Standard Designation: E 2018")]" except as provided for in subsections (f) and (g) of this section. Additional information is encouraged if deemed relevant by the PCA author.

(c) The PCA must include the Department's Property Condition Assessment Cost Schedule Supplement ("PCA Supplement"). The purpose of the PCA Supplement is to consolidate and show reconciliation of the scope of work and costs of the immediate physical needs identified by the PCA author with the Applicant's Applicant's scope of work and costs provided in the Application. The consolidated scope of work and costs shown on the PCA Supplement will be used by the Underwriter in the analysis. The PCA Supplement also details the projected repairs and replacements through at least thirty (30) years.

(d) The PCA (c) The SCR must include good quality color photographs of the subject Property-Real Estate (front, rear, and side elevations, on-site amenities, interior of the structure). Photographs should be properly labeled. Photographs of the neighborhood, street scenes, and comparables should <u>must</u> be included. An aerial photograph is desirable but not mandatory.

(ed) The PCASCR must also include discussion and analysis of:

(1) Description of Current Conditions. For both Rehabilitation and Adaptive Reuse, the PCASCR must contain a detailed description with good quality photographs of the current conditions of all major systems and components of the Development regardless of whether the system or component will be removed, repaired or replaced. For historic structures, the PCASCR must contain a description with photographs of each aspect of the building(s) that qualifies it as historic and must include a narrative explaining how the scope of work relates to maintaining the historic designation of the development_Development. Replacement or relocation of systems and components must be described.

(2) Description of Scope of Work. The PCASCR must provide a narrative of the consolidated scope of work either as a stand-alone section of the report or included with the description of the current conditions for each major system and components. Any New Construction must be described. Plans or drawings (that are in addition to any plans or drawings otherwise required by rule) and that relate to any part of the scope of work should be included, if available--;

(3) Useful Life Estimates. For each system and component of the property the <u>PCASCR</u> must estimate its remaining useful life, citing the basis or the source from which such estimate is derived;

(4) Code Compliance. The PCASCR must-review and document any known violations of any applicable federal, state, or local codes. In developing the cost estimates specified herein, it is the responsibility of the Applicant to ensure that the PCASCR adequately considers any and all applicable federal, state, and local laws and regulations which mayare applicable and govern any work-performed to the subject Property. For Applications requesting Direct Loan funding from the Department, the PCA provider SCR author must include a comparison between the local building code and the International Existing Building Code of the International Code Council.;

(5) Program Rules. The PCASCR must assess the extent to which any systems or components must be modified, repaired, or replaced in order to comply with any specific requirements of the housing program under which the Development is proposed to be financed, the Department's Uniform Physical Condition Standards, and any scoring criteria including amenities for which the Applicant may claim points; for Direct Loan Developments this includes, but is not limited to the requirements in the Lead-Based Paint Poisoning Prevention Act (42 USC §§4821-4846), the Residential Lead-Based Paint Hazard Reducation Act of 1992 (42 USC §§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, and R), and the Lead: Renovation, Repair, and Painting Program Final Rule and Response to Children with Environmental Intervention Blood Lead Levels (40 CFR Part 745);

(6) Accessibility Requirements. The <u>PCASCR</u> report must include an analysis of compliance with the <u>Department'sDepartment's'</u> accessibility requirements pursuant to Chapter 1, Subchapter B and <u>Section §11.101(b)(8) of this title</u> and <u>include</u>-identify the specific items in the scope of work and costs needed to ensure that the Development will meet these requirements upon Rehabilitation (including conversion and Adaptive Reuse)--:

(7) Reconciliation of Scope of Work and Costs. The PCASCR report must include the Department's PCA-Scope and Cost ScheduleReview Supplement (SCR Supplement) with the signature of the PCA provider; theSCR author. The SCR Supplement must reconcile the scope of work and costs of the immediate physical needs identified by the SCR author with the Applicant's scope of work and costs. The costs presented on the PCA Cost ScheduleSCR Supplement are expected tomust be consistent with both the scope of work and immediate costs identified in the body of the PCASCR report₇ and with the Applicant's scope of work and costs as presented on the Applicant's development cost schedule; any significant variationin the Application. Variations between the costs listed on the PCA Cost ScheduleSCR Supplement and the costs listed in the body of the PCASCR report or on the Applicant's development cost schedule must be reconciled in a narrative analysis from the PCA providerSCR provider. The consolidated scope of work and costs shown on the SCR Supplement will be used by the Underwriter in the analysis to the extent adequately supported in the report; and

(8) Cost Estimates. The Development Cost Schedule and PCASCR Supplement must include all costs identified below:

(A) Immediately Necessary Repairs and Replacement. For all Rehabilitation developments, and Adaptive Reuse developments if applicable, immediately necessary repair and replacement should be identified for systems or components which are expected to have a remaining useful life of less than one (1)-year, which are found to be in violation of any applicable codes, which must be modified, repaired or replaced in order to satisfy program rules, or which are otherwise in a state of deferred maintenance or pose health and safety hazards. The PCASCR must provide a separate estimate of the costs associated with the repair, replacement, or maintenance of each system or component which is identified as being an immediate need, citing the basis or the source from which such cost estimate is derived.

(B) Proposed Repair, Replacement, or New Construction. If the development plan calls for additional scope of work above and beyond the immediate repair and replacement items described in subparagraph (A) of this paragraph, the additional scope of work must be evaluated and either the nature or source of obsolescence to be cured or improvement to the operations of the Property discussed. The <u>PCASCR</u> must provide a separate estimate of the costs associated with the additional scope of work, citing the basis or the source from which such cost estimate is derived.

(C) Reconciliation of Costs. The combined costs described in subparagraphs (A) and (B) of this paragraph should be consistent with the costs presented on the Applicant's development cost schedule Development Cost Schedule and the PCASCR Supplement.

(D) Expected Repair and Replacement Over Time. The term during which the PCASCR should estimate the cost of expected repair and replacement over time must equal the lesser of thirty (30) years or the longest term of any land use or regulatory restrictions which are, or will be, associated with the provision of housing on the Property. The PCASCR must estimate the periodic costs which are expected to arise for repairing or replacing each system or component or the property, based on the estimated remaining useful life of such system or component as described in paragraph (1) of this subsection adjusted for completion of repair and replacement immediately necessary and proposed as described in subparagraphs (A) and (B) of this paragraph. The PCASCR must include a separate table of the estimated long term costs which identifies in each line the individual component of the property being examined, and in each column the year during the term in which the costs are estimated to be incurred for a period and no less than thirty (30) years. The estimated costs for future years should be given in both present dollar values and anticipated future dollar values assuming a reasonable inflation factor of not less than 2.5-percent% per annum.

(f) Any costs not identified and discussed in <u>sufficient detail</u> in the <u>PCASCR</u> as part of subsection (ad)(6), (d)(8)(A) and (d)(8)(B) of this section will not be included in the underwritten Total Development Cost in the Report.

(g) If a copy of such standards or a sample report have been provided for the Department's review, if such standards are widely used, and if all other criteria and requirements described in this section are satisfied, the Department will also accept copies of reports commissioned or required by the primary lender for a proposed transaction, which have been prepared in accordance with:

- (1) Fannie Mae's criteria for Physical Needs Assessments;
- (2) Federal Housing Administration's criteria for Project Capital Needs Assessments;
- (3) Freddie Mac's guidelines for Engineering and Property Condition Reports;
- (4) USDA guidelines for Capital Needs Assessment.

(h) The Department may consider for acceptance reports prepared according to other standards which are not specifically named in subsection (g) of this section, if a copy of such standards or a sample report have been provided for the Department's review, if such standards are widely used, and if all other criteria and requirements described in this section are satisfied.

(i) The <u>PCASCR</u> shall be conducted by a Third Party at the expense of the Applicant, and addressed to Texas Department of Housing and Community Affairs as the client. Copies of reports provided to the Department which were commissioned by other financial institutions should address Texas Department of Housing and Community Affairs as a co-recipient of the report, or letters from both the provider and the recipient of the report should be submitted extending reliance on the report to Texas Department of Housing and Community Affairs.

(j) The <u>PCASCR</u> report must include a statement that the individual and/or company preparing the <u>PCASCR</u> report will not materially benefit from the Development in any other way than receiving a fee for performing the <u>PCASCR</u>. Because of the Department's heavy reliance on the

independent cost information, the provider must not be a Related Party to or an Affiliate of any other Development Team member. The <u>PCASCR</u> report must contain a statement indicating the report preparer has read and understood the requirements of this section.

Subchapter E – Fee Schedule, Appeals, and other Provisions

§11.901. Fee Schedule. Any fees, as stated in this section, not paid will cause an Applicant to be ineligible to apply for Department funding, ineligible to receive additional Department funding associated with a Commitment, Determination Notice or Contract, and ineligible to submit extension requests, ownership transfers, and Application amendments until such time the Department receives payment. Payments of the fees shall be in the form of a check and to the extent there are insufficient funds available, it may cause the Application, Commitment, Determination Notice or Contract to be terminated or Allocation rescinded. Other forms of payment may be considered on a case-by-case basis. The DepartmentExecutive Director may extend the deadline for specific extenuating and extraordinary circumstances, provided the Applicant submits a written request for an extension to a fee deadline no later than ten (10) five business days prior to the deadline associated with the particular fee. For those requests that do not have a specified deadline, the written request for a fee waiver and description of extenuating and extraordinary circumstances must be included in the original request cover letter.

(1) Competitive Housing Tax Credit Pre-Application Fee. A pre-application fee, in the amount of \$10 per Unit, based on the total number of Units reflected in the pre-application, must be submitted with the pre-application in order for the pre-application to be considered accepted by the Department. Pre-applications in which a Community Housing Development Corporation (CHDO) or a private Qualified Nonprofit Organization intends to serve as the Managing General Partner of the Development Owner, or Control the Managing General Partner of the Development Owner, may be eligible to receive a discount of 10% off the calculated pre-application fee provided such documentation is submitted with the fee. (§2306.6716(d))

(2) Refunds of Pre-application Fees. (§2306.6716(c)) Upon written request from the Applicant, the Department shall refund the balance of the pre-application fee for a pre-application that is withdrawn by the Applicant and that is not fully processed by the Department. The amount of refund will be commensurate with the level of review completed. Initial processing will constitute 50% of the review, threshold review prior to a deficiency being issued will constitute 30% of the review, and review after deficiencies are submitted and reviewed will constitute 20% of the review. In no instance will a refund of the pre-application fee be made after the Full Application Delivery Date.

(3) Application Fee. Each Application must be accompanied by an Application fee.

(A) Housing Tax Credit Applications. For Applicants having submitted a Competitive Housing Tax Credit pre-application which met the pre-application threshold requirements, and for which a pre-application fee was paid, the Application fee will be \$20 per Unit based on the total number of Units in the full Application. Otherwise, the Application fee will be \$30 per Unit based on the total number of Units in the full Application intends to serve as the Managing General Partner of the Development Owner, or Control the Managing General Partner of the Development Owner, may be eligible to receive a discount of 10% off the calculated Application fee_ $_{\perp}$ provided such documentation is submitted with the fee. (§2306.6716(d))

(B) Direct Loan Applications. The fee will be \$1,000 per Application except for those Applications that are layered with Housing Tax Credits and submitted simultaneously with the Housing Tax Credit Application. Pursuant to Tex. Gov't Code §2306.147(b), the Department is required to waive Application fees for private nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services and if HOME funds are awarded. In lieu of the Application fee, these organizations must include proof of their exempt status and a description of their supportive services as part of the Application. The Application fee is not a reimbursable cost under the HOME Program.

(4) Refunds of Application Fees. Upon written request from the Applicant, the Department shall refund the balance of the Application fee for an Application that is withdrawn by the Applicant and that is not fully processed by the Department. The withdrawal must occur prior to any Board action regarding eligibility or appeal. The amount of refund will be commensurate with the level of review completed. Initial processing will constitute 10% of the review, the site visit will constitute 10% of the review, program evaluation review will constitute 40% of the review, and the underwriting review will constitute 40% of the review. In no instance will a refund of the Application fee be made after FAFinal Awardsfinal awards are made in July.

(5) Third Party Underwriting Fee. Applicants will be notified in writing prior to the evaluation in whole or in part of a Development by an independent external underwriter if such a review is required. The fee must be received by the Department prior to the engagement of the underwriter. The fees paid by the Development Owner to the Department for the external underwriting will be credited against the Commitment or Determination Notice Fee, as applicable, established in paragraphs (8) and (9) of this section, in the event that a Commitment or Determination Notice is issued by the Department to the Development Owner.

(6) Housing Tax Credit Commitment Fee. No later than the expiration date in the Commitment, a fee equal to 4% of the annual Housing Credit Allocation amount must be submitted; however, this amount is reduced to 2% in 2020 only. If the Development Owner has paid the fee and returns the credits by November 1 of the current Application Round, then a refund of 50% of the Commitment Fee may be issued upon request.

(7) Tax Exempt Bond Development Determination Notice Fee. No later than the expiration date in the Determination Notice, a fee equal to 4% of the annual Housing Credit Allocation amount, unless otherwise modified by a specific program NOFA, must be submitted; however, this amount is reduced to 2% in 2020 only. If the Development Owner has paid the fee and is not able close on the bonds, then a refund of 50% of the Determination Notice Fee may be issued upon request. The refund must be requested no later than 60 days after the bond closing date described in the Board action approving the Determination Notice.

(8) Building Inspection Fee. (For Housing Tax Credit and Tax-Exempt Bond Developments only.) No later than the expiration date in the Commitment or Determination Notice, a fee of \$750 must be submitted. If the Development Owner has paid the fee and returns the Housing Credit Allocation or for Tax-Exempt Bond Developments, is not able to close on the

bonds, then the Building Inspection Fee may be refunded upon request.

(89) Tax-Exempt Bond Credit Increase Request Fee. Requests for increases to the credit amounts to be issued on IRS Forms 8609 for Tax-Exempt Bond Developments must be submitted with a request fee equal to 4% of the amount of the credit increase for one (1) year.

(910) Extension Fees. All extension requests for deadlines relating to the Carryover, 10% Test (submission and expenditure), Construction Status Reports, or Cost Certification requirements submitted at least thirty (30) calendar days in advance of the applicable original deadline will not be required to submit an extension fee. Any extension request submitted fewer than thirty (30) days in advance or after the original deadline must be accompanied by an extension fee of \$2,500. Fees for each subsequent extension request on the same activity will increase by increments of \$500, regardless of whether the first request was submitted thirty (30) calendar days in advance of the applicable deadline. An extension fee will not be required for extensions requested on Developments that involve Rehabilitation when the Department or U.S. Department of Agriculture (USDA) is the primary lender, if USDA or the Department is the cause for the Applicant not meeting the deadline. For each Construction Status Report received after the applicable deadline, extension fees will be automatically due (regardless of whether an extension request is submitted). Unpaid extension fees related to Construction Status Reports will be accrued and must be paid prior to issuance of IRS Forms 8609. For purposes of Construction Status Reports, each report will be considered a separate activity.

(1011) Amendment Fees. An amendment request for a non-material change that has not been implemented will not be required to pay an amendment fee. Material amendment requests (whether implemented or not), or non-material amendment requests that have already been implemented will be required to submit an amendment fee of $2,500_{\pm}$ in order for the request to be processed. Fees for each subsequent amendment request related to the same application Application will increase by increments of 500. A subsequent request, related to the same applicationApplication, regardless of whether the first request was non-material and did not require a fee, must include a fee of 3,000. Amendment fees and fee increases are not required for the Direct Loan programs.

(1112) Right of First Refusal Fee. Requests for approval of the satisfaction of the Right of First Refusal provision of the Land Use Restriction Agreement (LURA) must be accompanied by a non-refundable fee of \$2,500.

(1213) Qualified Contract Pre-Request Fee. A Development Owner must file a preliminary Qualified Contract Request to confirm eligibility to submit a Qualified Contract request. The Pre-Request must be accompanied by a non-refundable processing fee of \$250.

(1314) Qualified Contract Fee. Upon eligibility approval of the Qualified Contract Pre-Request, the Development Owner may file a Qualified Contract Request. Such request must be accompanied by a non-refundable processing fee of \$3,000.

(1415) **Ownership Transfer Fee.** Requests to approve an ownership transfer must be accompanied by a non-refundable processing fee of \$1,000.

(1516) Unused Credit or Penalty Fee. Development Owners who have more tax credits allocated to them than they can substantiate through Cost Certification will return those excess tax credits prior to issuance of IRS Form 8609. For Competitive Housing Tax Credit Developments, a penalty fee equal to the one year credit amount of the lost credits (10% of the total unused tax credit amount) will be required to be paid by the Owner prior to the issuance of IRS Form 8609 if the tax credits are not returned, and 8609's issued, within one hundred eighty (180) days of the end of the first year of the credit period. This penalty fee may be waived without further Board action if the Department recaptures and re-issues the returned tax credits in accordance with Code, §42. If an Applicant returns a full credit allocation after the Carryover Allocation deadline required for that allocation, the Executive Director may recommend to the Board the imposition of a penalty on the score for any Competitive Housing Tax Credit Applications submitted by that Applicant or any Affiliate for any Application in an Application Round occurring concurrent to the return of credits as further provided for in §11.9(f) of this chapter (relating to Factors Affecting Scoring and Eligibility in current and future Application Rounds), or if no Application Round is pending, the Application Round immediately following the return of credits. If any such point penalty is recommended to be assessed and presented for final determination by the Board, it must include notice from the Department to the affected party not less than fourteen (14) calendar 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 penalties. The penalty will be assessed in an amount that reduces the Applicant's final awarded score by an additional 20 percent.

Upon receipt of the cost certification for HTC (1617) Compliance Monitoring Fee. Developments or HTC Developments that are layered with Direct Loan funds, or upon the completion of the 24-month development period and the beginning of the repayment period for Direct Loan only Developments, the Department will invoice the Development Owner for compliance monitoring fees. For HTC only Tthe amount due will equal \$40 per low-income unit. For Direct Loan Only Developments the fee will be \$34 per Direct Loan Designated Units. Developments with both HTCs and Direct Loan will only pay one fee equal to \$40 per low income unit. Existing HTC developments with a Land Use Restriction Agreement that require payment of a compliance monitoring fee that receive a second allocation of credit will pay only one fee; the fee required by the original Land Use Restriction Agreement will be disregarded. tax credit Unit and \$34 per Direct Loan designated Unit, with two fees due for units that are dually designated. For HTC Developments, the fee will be collected, retroactively if applicable, beginning with the first year of the credit period. For Direct Loan only Developments, the fee will be collected beginning with the first year of the repayment period. The invoice must be paid prior to the issuance of IRS Form 8609 for HTC properties. For Direct Loan only developments, the fee must be paid prior to the release of final retainage. Subsequent anniversary dates on which the compliance monitoring fee payments are due shall be determined by the month the first building is placed in service. Compliance fees may be adjusted from time to time by the Department.

(18) Public Information Request Fee. Public information requests are processed by the Department in accordance with the provisions of Tex. Gov't Code, Chapter 552. The

Department uses the guidelines promulgated by the Office of the Attorney General to determine the cost of copying and other costs of production.

(19) Adjustment of Fees by the Department and Notification of Fees. (§2306.6716(b)) All fees charged by the Department in the administration of the tax credit and Direct Loan programs may be revised by the Department from time to time as necessary to ensure that such fees compensate the Department for its administrative costs and expenses. Unless otherwise determined by the Department, all revised fees shall apply to all Applications in process and all Developments in operation at the time of such revisions.

§11.902. Appeals Process

(a) For Competitive HTC Applications, an Applicant or Development Owner may appeal decisions made by the Department pursuant to Tex. Gov't Code §2306.0321 and §2306.6715 and using the process identified in this section. For Tax-Exempt Bond Developments and Direct Loan only Applications Developments (not contemporaneously submitted with a Competitive HTC Application), an Applicant or Development Owner may appeal decisions made by the Department pursuant to §1.7 -of this title (relating to Appeals). Matters that can be appealed include:

(1) A determination regarding the Application's satisfaction of applicable requirements, 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 for Applications), pre-application threshold criteria, and underwriting criteria;

(2) The scoring of the Application under the applicable selection criteria;

(3) A recommendation as to the amount of Department funding to be allocated to the Application;

(4) Misplacement of an Application or parts of an Application, mathematical errors in scoring an Application, or procedural errors resulting in unequal consideration of the Applicant's proposal;

(5) Denial of a <u>requested</u> change to a Commitment or Determination Notice;

(6) Denial of a <u>requested</u> change to a loan agreement;

(7) Denial of a <u>requested</u> change to a LURA;

(8) Any Department decision that results in the termination <u>or change in set-aside</u> of an Application; and

(9) Any other matter for which an appeal is permitted under this chapter.

(b) An Applicant or Development Owner may not appeal a decision made regarding an Application filed by or an issue related to another Applicant or Development Owner.

(c) An Applicant or Development Owner must file its appeal in writing with the Department not later than <u>the</u> seven<u>th</u> (7)-calendar days after the date the Department publishes the results of any stage of the Application evaluation or otherwise notifies the Applicant or Development Owner of a decision subject to appeal. The appeal must be <u>signed-made</u> by <u>the a personPerson</u>

designated to act on behalf of the Applicant or an attorney that represents the Applicant. For Application related appeals, the Applicant must specifically identify the Applicant's grounds for appeal, based on the original Application and additional documentation filed with the original Application as supplemented in accordance with the limitations and requirements of this chapter.

(d) The Executive Director may respond in writing not later than fourteen (14) calendar days after the date of actual receipt of the appeal by the Department. If the Applicant is not satisfied with the Executive Director's response to the appeal or the Executive Director does not respond, the Applicant may appeal directly in writing to the Board. While additional information can be provided in accordance with any rules related to public comment before the Board, the Department expects that a full and complete explanation of the grounds for appeal and circumstances warranting the granting of an appeal <u>must</u> be disclosed in the appeal documentation filed with the Executive Director. Full disclosure allows the Executive Director to make a fully informed decision based on a complete analysis of the circumstances, and verification of any information that may warrant a granting of the appeal in the Applicant's or Development Owner's favor.

(e) An appeal filed with the Board must be received in accordance with Tex. Gov't Code $\frac{2306.6715(d)}{by}$ Department staff not more than seven (7) days after a response from the Executive Director and at least seven (7) days prior to the applicable Board meeting or if the period for an Executive Director response has elapsed, the appeal can be heard by the Board if filed at least three (3) days prior to the applicable meeting.

(f) Board review of an Application related appeal will be based on the original Application. A witness in an appeal may not present or refer to any document, instrument, or writing not already contained within the Application as reflected in the Department's records.

(g) The decision of the Board regarding an appeal is the final decision of the Department.

(h) The Department will post to its website an appeal filed with the Department or Board and any other document relating to the processing of an Application related appeal. (§2306.6717(a)(5))

§11.903- Adherence to Obligations (§2306.6720) Any Applicant, Development Owner, or other Person that fails to adhere to its obligations with regard to the programs of the Department, whether contractual or otherwise, made false or misleading representations to the Department with regard to an Application, request for funding, or compliance requirements, or otherwise violated a provision of Tex. Gov't Code, Chapter 2306 or a rule adopted under that chapter, may be subject to:

(1) Assessment of administrative penalties in accordance with <u>Chapter 2, Subchapter C of this</u> <u>title (relating to Administrative Penalties)</u> the Department's rules regarding the assessment of such penalties. Each day the violation continues or occurs is a separate violation for purposes of imposing a penalty; and/or

(2) inln the case of the competitive Low Income Housing Tax Credit Program, a point reduction of up to ten (10) points for any Application involving that Applicant over the next two Application Rounds succeeding the date on which the Department first gives written

notice of any such failure to adhere to obligations or false or misleading representations. Point reductions under this section may be appealed to the Board.

§11.904 Alternative Dispute Resolution (ADR) Policy

In accordance with Tex. Gov't Code, §2306.082, it is the Department's policy to encourage the use of appropriate ADR procedures under the Governmental Dispute Resolution Act, Tex. Gov't Code, Chapter 2010, to assist in resolving disputes under the Department's jurisdiction. As described in Civil Practices and Remedies Code, Chapter 154, ADR procedures include mediation. Except as prohibited by law and the Department's Ex Parte Communications policy, the Department encourages informal communications between Department staff and Applicants, and other interested persons, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at any time an Applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at §1.17 of this title. Any Applicant may request an informal conference with staff to attempt to resolve any appealable matter, and the Executive Director may toll the running of periods for appeal to accommodate such meetings. In the event a successful resolution cannot be reached, the statements made in the meeting process may not be used by the Department as admissions., as provided for in §1.17 of this title (relating to Alternative Dispute Resolution).

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